



**Matthew Rodriguez**  
Secretary for  
Environmental Protection



## Department of Toxic Substances Control

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**Edmund G. Brown Jr.**  
Governor

Sent via E-Mail

October 3, 2014

Ms. Pauline Batarseh  
Permit Appeals Officer  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, California 95812-0806

BRIEF RE: PETITION FOR REVIEW: APRIL 21, 2014 FINAL CLASS 2 PERMIT  
MODIFICATION FOR FILTER RECYCLING SERVICES, INC., 180 MONTE AVENUE,  
RIALTO, SAN BERNARDINO COUNTY, CALIFORNIA, EPA ID NO. CAD982444481

Dear Ms. Batarseh:

The Department of Toxic Substances Control (DTSC), Office of Permitting is pleased to submit its brief regarding the pending appeal of the Class 2 Permit Modification issued by DTSC's Office of Permitting to Filter Recycling Services, Inc. Please see enclosed documents.

Sincerely,

  
// original signed by //

Edward Nieto, P.E.  
Supervising Hazardous Substances Engineer I  
Office of Permitting

Enclosure(s)

1 STATE OF CALIFORNIA  
2 ENVIRONMENTAL PROTECTION AGENCY  
3 DEPARTMENT OF TOXIC SUBSTANCES CONTROL  
4

5 IN THE MATTER OF: ) Docket Number: PAT-FY 14/15-001  
6 )  
6 FILTER RECYCLING SERVICES, )  
7 INC. ) BRIEF RE: PETITION FOR REVIEW  
7 180 West Monte Avenue ) DTSC OFFICE OF PERMITTING  
8 Rialto, California 92316 )  
9 ) California Code of Regulations  
9 EPA ID No. CAD982444481 ) Title 22, section 66271.18

10  
11 **I. INTRODUCTION**

12 The Department of Toxic Substances Control, Office of Permitting (hereinafter  
13 referred to as "DTSC" or "DTSC's Office of Permitting") submits the following brief  
14 regarding the pending appeal of a Class 2 Permit Modification issued by DTSC to Filter  
15 Recycling Services, Inc. (FRS). On April 21, 2014, DTSC approved a Class 2 Permit  
16 Modification for the Standardized Hazardous Waste Facility Permit, Series A (Final  
17 Modified Permit) for the hazardous waste facility owned/operated by Mr. Jon Bennett  
18 and FRS located at 180 West Monte Avenue, Rialto, California (Facility). On May 27,  
19 2014, Ms. Deborah Perlman and Mr. Wade Riddering filed on behalf of FRS (Petitioner)  
20 a Petition to Review (Appeal) DTSC's final permit decision. On August 25, 2014,  
21 DTSC's Permit Appeals Officer issued an "Order to Set Briefing Period for Petition for  
22 Review" (Order) and granted review of Petitioner's Appeal Comments 1, 2, 3, 4 and 5.  
23 DTSC's Permit Appeals Officer subsequently announced a briefing period to receive  
24 written arguments pertaining to the issues raised in the five Appeal Comments for which  
25 review was granted. Petitioner filed "Filter Recycling Service's Opening Brief on Appeal  
26 of Permit Modification Conditions and Request for: (1) Immediate Vacation of Stay; and  
27 (2) Setting of Informal Appeals Conference Upon Close of Briefing Period" on

28 ///

1 September 18, 2014 (Petitioner's Brief). This brief submits DTSC's written arguments in  
2 response to DTSC's Permit Appeals Officer's Order and Petitioner's Brief.

3 **II. PETITIONER'S APPEAL COMMENTS AND DTSC'S ARGUMENTS IN**  
4 **RESPONSE**

5 The following are the DTSC's written arguments regarding Petitioner's Appeal  
6 Comments 1, 2, 3, 4 and 5:

7 **A. Appeal Comment 1: Petition for Review Section III.1., pages 4 and 5**  
8 **Petitioner's Appeal Comment:**

9 Special Condition 14 of the Final Modified Permit issued by DTSC provides as  
10 follows:

11 "Except when moving to or from the IWSA, all containers (including  
12 transport vehicles) holding ignitable or reactive wastes shall be located  
13 entirely within the designated IWSA, as identified in the Facility Plot Plan  
14 (Attachment 1, Figure 2), pursuant to California Code of Regulations, title  
15 22, section 66264.176. The IWSA shall be delineated with a 6" red painted  
border." (Final Modified Permit, Part II, Special Condition 14, Page 10 of  
71; found at DTSC PER 000023).

16 Petitioner asserts that DTSC revised Special Condition 14 on page 10 of 71 of the Final  
17 Modified Permit based upon an erroneous finding of fact or conclusion of law.

18 (Petitioner's Brief, p. 7:15-16). Specifically, Petitioner states that DTSC has "erroneously  
19 failed" to read California Code of Regulations, title 22, section 66264.176 together with  
20 Health and Safety Code section 25200.19. (Petitioner's Brief, p. 7:1-2). Petitioner

21 further states that if read together:

22 "... it becomes clear that ignitable or reactive waste should be located  
23 within the IWSA, except for the incidental period of time necessary to  
24 safely and effectively move the waste from the transport vehicle to the  
authorized unit or from the authorized unit to the transport vehicle."  
(Petitioner's Brief, 7: 2-6).

25 Petitioner asserts that Special Condition 14 is "unduly burdensome" to FRS and that the  
26 Facility needs to be able to "unload the truck and place the containers of ignitable or  
27 reactive waste within the IWSA, rather than keep a truck waiting until such time as there  
28 is sufficient space for it within the IWSA." (Petitioner's Brief, p. 7:7). Petitioner requests

1 the parenthetical language "(including transport vehicles)" be deleted from Special  
2 Condition 14. (Petitioner's Brief, p. 7: 25-26).

3 **DTSC's Argument in Response:**

4 As stated in DTSC's Response to Comments, DTSC revised Special Condition  
5 14 to consolidate Special Condition 14 with other conditions (Special Condition 23, and  
6 24) and to ensure that ignitable wastes are managed in compliance with regulatory  
7 requirements, including but not limited to California Code of Regulations, title 22,  
8 section 66264.176. (See DTSC's Response to Comments, 1-18 (found at DTSC  
9 PER000098) and 5-3 (found at DTSC PER0000139). California Code of Regulations,  
10 title 22, section 66264.176 provides as follows: "Containers holding ignitable or reactive  
11 waste shall be located at least 15 meters (50 feet) from the facility's property line." (Cal.  
12 Code Regs., tit. 22, § 66264.176). Section 66264.176 applies to facilities that store or  
13 transfer containers of hazardous waste, and the term "transfer" includes both loading  
14 and unloading activities. (Cal. Code Regs., tit. 22, §§ 66260.10, 66264.170). The clear  
15 intent of section 66264.176 is to minimize the potential for harm to human health and  
16 the environment in the areas immediately adjacent to hazardous waste facilities from  
17 the harmful effects associated with fires or explosions involving ignitable or reactive  
18 waste. (See DTSC's Response to Comments, 1-18 (found at DTSC PER000098)).

19 DTSC disagrees with Petitioner's claim that Special Condition 14 is inconsistent  
20 with applicable statutory and regulatory sections or that DTSC made an erroneous  
21 conclusion of law or fact. (Petitioner's Brief, p. 7:1-2, 15-16) Consistent with the  
22 requirements of Section 66264.176, Special Condition 14 requires that all containers  
23 (including transport vehicles) holding ignitable or reactive wastes to be located entirely  
24 within the Ignitable Waste Storage Area (IWSA). Given the size and configuration of the  
25 Facility, the IWSA is the only area within the Facility that is greater than 50 feet from the  
26 property line and the only area within the Facility where ignitable or reactive wastes can  
27 be located in compliance with Section 66264.176. To locate ignitable or reactive wastes  
28 anyplace else at the Facility would violate Section 66264.176.

1 The requirements of Section 66264.176 are not limited to the storage or holding  
2 of ignitable or reactive waste. Section 66264.176 uses the term "located," and not  
3 storage. (Cal. Code Regs., tit. 22, § 66264.176). FRS is required to comply with  
4 Section 66264.176 when transferring (e.g. loading or unloading) containers of ignitable  
5 or reactive waste. (Cal. Code Regs., tit. 22, §§ 66264.170, 66264.176). For example,  
6 FRS is prohibited from unloading or loading ignitable wastes to or from a transport  
7 vehicle in any area that is not within the IWSA because that would constitute locating  
8 containers of ignitable wastes in an area less than 15 meters (50 feet) from FRS's  
9 property line in violation of Section 66264.176. Similarly, Section 66264.176 requires a  
10 transport vehicle, such as a tanker truck (which is a type of container), holding ignitable  
11 waste to be located at least 50 feet from the Facility's property line. The definition of  
12 "container" includes a myriad of different types of portable devices that may be used to  
13 manage hazardous waste, such as tanker trucks and railroad cars. (See e.g. June  
14 1996 U.S. Environmental Protection Agency (U.S. EPA) Monthly Hotline Report  
15 (Resource Conservation and Recovery Act (RCRA) Online (RO) 13786) 9461.1996(01))  
16 listing tank cars and cargo tanks as examples of containers.) Consistent with Section  
17 66264.176, Special Condition 14 requires FRS to locate trucks holding ignitable or  
18 reactive waste within the IWSA, even when unloading or loading a container for  
19 transport to or from the storage units within the IWSA.

20 Petitioner cites DTSC's Response to Comments in support of its claim that the  
21 purpose of Special Condition 14 is to ensure all ignitable wastes are *stored* within the  
22 IWSA and that DTSC is not concerned about the "incidental period of time necessary to  
23 safely and effectively move the wastes from the transport vehicle (including unloading  
24 and loading) that must be within the IWSA". (Petition, p.7:17-20) However, DTSC used  
25 the terms "stored" or "storage" as they are defined in California Code of Regulations,  
26 title 22, section 66260.10, which means "the holding of hazardous waste for a  
27 *temporary* period, at the end of which the hazardous waste is treated, disposed of or  
28 stored elsewhere." (Cal.Code Reg., tit. 22, § 66260.10, emphasis added.) The term

1 "storage" includes the holding of hazardous waste for a temporary period of time, which  
2 would include even the "incidental period of time" discussed by Petitioner.

3 Petitioner claims that Section 66264.176 should be read consistently with Health  
4 and Safety Code section 25200.19, subdivision (c)(1). (Petitioner's Brief, at p. 7:1-2.)  
5 However, Petitioner omits relevant language from Health and Safety Code section  
6 25200.19, which authorizes DTSC to restrict loading and unloading activities through  
7 permit conditions. (Health & Saf. Code § 25200.19, subds. (a),(b) and (c)). For  
8 example, Health and Safety Code section 25200.19, subdivision (c) provides in part as  
9 follows:

10 "Unloading and loading operations subject to subdivisions (a) and (b) shall  
11 be conducted in accordance with all of the following requirements, *unless*  
12 *otherwise specified in the hazardous waste facilities permit....*" (Health &  
Saf. Code § 25200.19, subd. (c).)

13 In accordance with Health and Safety Code Section 25200.19, DTSC included, via  
14 Special Condition 14, restrictions on the Facility's loading and unloading operations that  
15 specify where containers of ignitable and reactive wastes must be managed and require  
16 all containers (including transport vehicles , i.e., one of many types of containers )  
17 holding ignitable waste to be located within the IWSA.

18 Petitioner references Health and Safety Code 25200.19, subdivision (c) (1) in its  
19 assertion that FRS should be authorized to move ignitable or reactive wastes to or from  
20 the transport vehicle to or from the IWSA. (Petitioner's Brief, pp.6-7). Petitioner claims  
21 that "as a practical matter, (FRS) needs to be able to unload the truck and place the  
22 containers of ignitable or reactive wastes within the IWSA, rather than keep a truck  
23 waiting until such time as there is sufficient space for it within the IWSA." (Petitioner's  
24 Brief, at p.7:10-14). It is unclear from the Petitioner's Brief what specifically Petitioner  
25 means by its stated need to "unload the truck and place the containers... within the  
26 IWSA." (Id.) Health and Safety Code section 25200.19, subdivision (c)(1) would not  
27 authorize FRS to unload ignitable hazardous waste from a transport vehicle in one  
28 place (outside of the IWSA) and *later* move or place the containers of ignitable waste to

1 another place (within the IWSA). Health and Safety Code section 25200.19, subdivision  
2 (c)(1), only authorizes, in part, hazardous waste to be held outside of an authorized unit  
3 for "that incidental period of time that is necessary to safely and effectively move the  
4 waste from the transport vehicle to the authorized unit or from the authorized unit to the  
5 transport vehicle." (Health & Saf. Code, § 25200.19, subd.(c)(1).) However, Health and  
6 Safety Code section 25200.19 does not address specific requirements related to  
7 ignitable wastes. Thus, Special Condition 14 is necessary to ensure that FRS complies  
8 with Section 66264.176 when conducting loading and/or unloading activities at the  
9 Facility.

10 As stated above, Section 66264.176 requires that all containers of ignitable or  
11 reactive waste must be located at least 50 feet from a facility's property line at all times.  
12 Because the size and configuration of the Facility restricts locating ignitable or reactive  
13 waste to the IWSA, DTSC believes that Special Condition 14 is an appropriate and  
14 necessary limitation on FRS's acceptance and handling of ignitable hazardous waste.  
15 DTSC, therefore, does not agree that the parenthetical language "(transport vehicles)"  
16 should be deleted from the relevant language of the condition. Moreover, as explained  
17 above, DTSC believes that it read Section 66264.176 consistently with Health and  
18 Safety Code section 25200.19 when drafting Special Condition 14. DTSC requests that  
19 Petitioner's Appeal Comment 1 be denied in its entirety.

20 **B. Appeal Comment 2: Section III.2, pages 5 and 6**

21 **Petitioner's Appeal Comment:**

22 Petitioner's Appeal Comment 2 concerns a special condition imposed by DTSC  
23 on the operation of Unit #1 (Shredder/Separator). Unit #1 is a steel structured  
24 mechanical machine comprised of conveyor belts connecting a shredder, a granulator  
25 (a second shredder), a magnetic separator, a rotary press and several liquid collection  
26 pans that are used to process containers by shredding the container and separating the  
27 shredded container from any residual materials that were in the containers. (Final  
28 Modified Permit, Part III, Unit 1, Pages 12-14; found at DTSC PER 000025- DTSC PER

1 000027) The Final Modified Permit authorizes FRS to process a number of waste  
2 streams in Unit #1, including but not limited to paints (latex and oil based), catalysts,  
3 pharmaceuticals, greases, inks, solidified petroleum tank residues, resins, glues, soaps,  
4 sand and bead blast residues, machining grinding residues and metal polishing debris  
5 in Unit #1. (Id.) Special Condition 1 on page 14 of 71 of the Final Modified Permit  
6 provides as follows:

7 "The Permittee shall ensure that all containers to be processed are emptied to  
8 the extent practicable before processing. (Final Modified Permit, Part III, Special  
9 Condition 1, Page 14 of 71; found at DTSC PER 000027)."

10 Petitioner claims Special Condition 1 on page 14 of 71 of the Final Modified  
11 Permit was drafted based upon an erroneous finding of fact. (Petitioner's Brief, at p.  
12 9:8-9) Petitioner states that DTSC has an incorrect understating of FRS's operating  
13 practices, implying that FRS does not empty containers before processing them through  
14 Unit #1. (Petitioner's Brief, at pp. 8:20-9:7) Petitioner also claims that this condition is  
15 based on an additional erroneous finding of fact because the requirement of pre-  
16 emptying, or hand emptying containers would increase the likelihood of splashing.  
(Petitioner' Brief, at p., 9:8-20).

17 Petitioner requests that Special Condition 1 be deleted in its entirety or be  
18 revised as follows: "The Permittee shall ensure all containers over 5 gallons to be  
19 processed are emptied to the extent practicable before processing." (Petitioner's Brief,  
20 at p. 9:20-23.)

21 ///

22 **DTSC's Argument in Response:**

23 DTSC does not agree that Special Condition 1 is based on an erroneous finding  
24 of fact. As stated in its Response to Comments, the Final Modified Permit authorizes a  
25 number of new wastes streams to be processed in Unit #1 and DTSC included Special  
26 Condition 1 to minimize the risk of splashing liquid hazardous waste during the  
27 operation of the shredder. (See, e.g., Response to Comments 1-23, 5-12, 6-5, 1-21,  
28 and 7-10, found at DTSC PER 0000100, DTSC PER 0000143, DTSC PER 0000159,

1 DTSC PER 0000165- DTSC PER 0000166.) DTSC drafted the condition to require  
2 FRS to ensure that all containers are emptied to the extent practicable before  
3 processing them in the shredder unit to minimize or prevent releases to the environment  
4 and/or to protect public health and the environment.

5 Moreover, contrary to Petitioner's claim, the Final Modified Permit does not  
6 require that FRS pre-empty containers by hand. (See Petitioners' Brief, at p. 9:11-19.)  
7 FRS could purchase a machine that would remove the tops from containers and invert  
8 them, or a machine that could puncture containers to drain and empty them before  
9 processing in Unit #1. Applicable permit language requires FRS to ensure that all  
10 containers are emptied to the extent practicable before they are processed in Unit #1.  
11 (Final Modified Permit, Part III, Special Condition 1, Page 14 of 71; found at DTSC PER  
12 000027). In some cases, it may not be practical to empty containers before they are  
13 processed in the shredder unit and this permit condition would not require FRS to empty  
14 the containers in those circumstances. For example, smaller containers such as  
15 toothpaste tubes, or tubes of ointment, would not be practicable to empty before they  
16 are processed in Unit #1.

17 As noted above, Petitioner requested that this condition be deleted or modified to  
18 state as follows: "The Permittee shall ensure all containers *over 5 gallons* to be  
19 processed are emptied to the extent practicable before processing." (Petitioner's Brief,  
20 p. 9:20-23). Upon further review of information submitted by FRS as part of its request  
21 for a permit modification, including but, not limited to, the shredder containment capacity  
22 to capture liquids, and as well as permit conditions applicable to this Unit, including, but  
23 not limited to, Special Conditions #5 and #6 on page 14 of 71 of the Final Modified  
24 Permit, DTSC has determined that the alternate language proposed by Petitioner would  
25 be acceptable. DTSC therefore requests that Petitioner's Appeal Comment 2 be denied  
26 in part, but that Petitioner's suggested revisions to Special Condition 1 be adopted.

27 **C. Appeal Comment 3: Petition for Review Section III.3., pages 6 and 7**

28 ///

1           **Petitioner's Appeal Comment:**

2           Petitioner's Appeal Comment 3 concerns Special Condition 18, which is included  
3 in FRS's current permit and was not modified in the Final Modified Permit. Special  
4 Condition 18 of FRS's existing Permit and Special Condition 18 of the Final Modified  
5 Permit both state as follows:

6           "The Permittee shall not treat, as defined in H&SC section 25123.5 and  
7 CCR section 66260.10, used oil and oily wastewaters. Prohibited  
8 treatment for these wastes include, but are not limited to, gravity  
9 separation of Used Oil (WS-A), Waste Oil (WS-B) and Oily Water (WS-C)  
10 or blending/mixing of different weights of these waste streams for  
11 recycling purposes." (Permit, Part II, Special Condition 18, Page 9 of 39,  
12 found at DTSC PER 00002344 and Final Modified Permit, Part II, Special  
13 Condition 18, Page 11 of 71 found at DTSC PER 000024).

14           Petitioner claims that Special Condition 18 of the Final Modified Permit is based  
15 upon an erroneous conclusion of law or finding of fact. (Petitioner's Brief, at p.10: 5-7)  
16 Petitioner claims that Special Condition 18 is inconsistent with Health and Safety Code  
17 section 25123.5 and California Code of Regulations, title 22, section 66260.10.  
18 (Petitioner's Brief, at p. 10:7-8.) Petitioner also claims that Special Condition 18 is  
19 "inconsistent with the activity description of Unit #9 ..." (Petitioner's Brief, at p. 10:13-  
20 15.) Petitioner requests that Special Condition 18 be deleted or, in the alternative, that  
21 the second sentence of Special Condition be deleted. (Petitioner's Brief, at p. 10:3-4.)

22           **DTSC's Argument in Response:**

23           As explained in DTSC's Response to Comments 5-6 and 1-16, Special Condition  
24 18, is part of FRS's existing Permit, was not modified as part of the Final Modified  
25 Permit, and is not appropriately the subject of this Appeal. (e.g., Response to  
26 Comments 1-16 and 5-6 found at DTSC PER000096-DTSC PER000097 and DTSC  
27 PER0000141). DTSC requests that Petitioner's Appeal Comment 3 be denied in its  
28 entirety.

          However, if DTSC's Permit Appeal Officer decides not to deny Petitioner's  
Appeal Comment 3, DTSC offers the following clarification in response to

1 Petitioner's Brief on the issue of whether gravity separation is considered  
2 treatment or exempt treatment. Health and Safety Code section 25123.5  
3 includes gravity or phase separation as an exemption to the definition of  
4 treatment; however, it is an exemption to the definition of treatment only if it is  
5 done in accordance with the requirements of Health and Safety Code section  
6 25123.5, subdivision (b)(2)(B). Phase separation or gravity separation of used oil  
7 not done in accordance with Health and Safety Code section 25123.5 does not  
8 qualify for the exempt treatment status and constitutes treatment of used oil.  
9 Health and Safety Code section 25201.6, subdivision (g) (1), prohibits a facility  
10 operating pursuant to a standardized permit from conducting treatment of used  
11 oil. Consistent with Health and Safety Code section 25201.6, Special Condition  
12 18 also prohibits other forms of treatment of used oil and oily wastewater,  
13 including blending/mixing of different weights for recycling purposes Used Oil,  
14 Waste Oil and Oily Water. This prohibition of blending/mixing is necessary to  
15 ensure that FRS is not treating used oil. As an alternative to Petitioner's request  
16 to delete Special Condition 18, or Petitioner's alternate request to delete the  
17 second sentence of Special Condition 18, DTSC proposes that Special Condition  
18 18 be revised to specify that prohibited treatment includes gravity separation not  
19 conducted in accordance with Health and Safety Code Section 25123.5(b)(2)(B).  
20 DTSC requests the prohibition of blending/mixing for recycling purposes of used  
21 oil in Special Condition 18 be maintained to ensure that FRS is not treating used  
22 oil in violation of Health and Safety Code Section 25201.6, subdivision (g).

23 **D. Appeal Comment 4: Petition for Review Sections III.4. and III.5,**  
24 **pages 7 to 11**

25 **Petitioner's Appeal Comment:**

26 Special Condition 15 on page 10 of 71 of the Final Modified permit provides as  
27 follows:

28 "The Permittee is authorized to receive, transfer, store or treat only the  
hazardous wastestreams specified in Table 1 of this Permit. A wastestream must

1 meet the conditions specified in Table 1 that are applicable to that wastestream  
2 to be authorized. The wastestream must meet the applicable common name,  
3 waste codes (US EPA and/or California Waste Code) and be consistent with the  
4 description of waste (referred to as "Description of Waste" in Table 1) to be  
authorized." (Final Modified Permit, Part II, Special Condition 15, page 10 of 71;  
found at DTSC PER 000023).

5 Petitioner proposes to incorporate alternate definitions of authorized waste  
6 streams or, alternatively, proposes revisions to Table 1 of the Final Modified Permit to  
7 "clearly define the waste streams that are authorized to be accepted by FRS."  
8 (Petitioner's Brief, p. at 14:1-2.). Petitioner claims these revisions are necessary to  
9 resolve "an unworkable conundrum between what FRS is told by permitting staff ...and  
10 the various enforcement staff." (Petitioner's Brief, at p. 11:20-21). According to  
11 Petitioner, DTSC's enforcement and permitting staff have different opinions regarding  
12 the significance and interpretation of Table 1: DTSC's Office of Permitting views Table 1  
13 as providing examples of waste descriptions and DTSC's Enforcement staff view Table  
14 1 as limiting authorized waste streams to those specifically identified by common name.  
15 (Petitioner's Brief, at pp. 11-12).

16 **DTSC's Argument in Response:**

17 FRS's existing permit specifies that FRS is only authorized to transfer, store, or  
18 treat the hazardous waste streams specified both by common name and waste code in  
19 the existing Permit. Special Condition 15, on page 9 of 39 of FRS's existing Permit  
20 states:

21 "The Permittee is only authorized to transfer, store or treat the hazardous  
22 waste streams requiring a permit and specified by common name in Part  
23 III of this Permit which have been manifested under the California Waste  
24 Code specified for that waste stream in Part III of this Permit." (Permit,  
Part II, Special Condition 15, page 9 of 39; found at DTSC PER  
00002344)

25  
26 DTSC's revised Special Condition 15 in the Final Modified Permit to incorporate  
27 Table 1; however, the revised Special Condition 15 still specifies that FRS is only  
28 authorized to transfer, store, or treat the hazardous waste streams specified both by

1 common name and waste code. DTSC drafted Table 1 as a tool to identify all the waste  
2 streams that FRS is authorized to accept. Table 1 lists each authorized waste stream  
3 with its common name, waste codes, and general description of the waste.

4 It is DTSC's position that Table 1 needs to have as much specificity as possible  
5 for clarity and compliance purposes. Because FRS operates under a Standardized  
6 Permit, FRS is only authorized to accept hazardous wastes that are: 1) not regulated  
7 under RCRA, or 2) exempt or excluded from federal permitting requirements. (See,  
8 Health & Safety Code § 25201.6 and Cal. Code Regs., tit.22, § 66270.69.1). DTSC  
9 developed the permit condition language to ensure that FRS only accepts the  
10 appropriate waste streams authorized by the Permit.

11 DTSC disagrees with Petitioner's claim that different programs within DTSC are  
12 viewing the same condition differently. (Petitioner's Brief, p. 12:1-8). Special Condition  
13 15 both specifies that FRS is only authorized to accept waste streams that (1) meet  
14 applicable waste codes (U.S. EPA and California Waste Codes) and common names;  
15 and (2) that are consistent with examples of waste descriptions (referred to as  
16 "Description of Waste" in Table 1). (Final Modified Permit, Part II, page 10 of 71; found  
17 at DTSC PER 000023). The fifth column of Table 1 (titled "Description of Waste")  
18 provides descriptions of wastes streams as examples of waste streams that FRS is  
19 authorized to manage. The majority of the waste descriptions came from the revised  
20 Waste Analysis Plan prepared by FRS.

21 As explained in DTSC's Response to Comment, DTSC was concerned that  
22 authorization based solely on waste codes would be overly broad and would not  
23 accurately reflect the type of waste FRS is allowed to manage. (See e.g. Response to  
24 Comment 5-4; found at DTSC PER0000139- DTSC PER0000140). Thus, DTSC  
25 included the requirement that a waste stream must meet both the applicable waste  
26 codes and common names.

27 In DTSC's Response to Comments, DTSC discussed Unit #1 as an example of  
28 why it is important to require waste streams to meet both applicable waste codes and

1 common names. (See Response to Comment 5-4; found at DTSC PER0000139 –  
2 DTSC PER0000140). Unit #1 is allowed to manage an extensive list of waste codes;  
3 however, the use of waste codes alone would suggest that FRS may manage liquids  
4 (e.g., those that fall within waste codes 213, 214, 221, and 343) in this Unit. However,  
5 Special Condition 9 on page 14 of 71 specifies that free-flowing liquids are not allowed  
6 to be processed in Unit #1. (Final Modified Permit, Part III, Special Condition 9, page  
7 14 of 71; found at DTSC PER000027). Similarly, California Waste Code 214 is used for  
8 “Unspecified Solvent Mixture” which could apply to a number of different waste streams.  
9 (Final Modified Permit, Table 1, page 51 of 71; found at DTSC PER 000064). By  
10 including the common name and waste description, Table 1 clearly identifies that FRS  
11 may accept California Waste Code 214 in Unit #1 but only if the waste stream is “Paint  
12 (oil based)” and is consistent with the waste description of “Used and/or unused oil  
13 based paint (solid, liquid or sludge) waste in steel, cardboard, plastic or fiber  
14 containers.” (Final Modified Permit, Table 1, Waste Stream 2E[18], page 47 of 71; found  
15 at DTSC PER 000060). Adding the common name of the waste stream and description  
16 of waste provides the complete and proper description of those wastes FRS is actually  
17 allowed to manage.

18 DTSC offers specific responses to Petitioner's alternate definitions and alternate  
19 Table as follows:

20 I. Petitioner's alternate definitions:

21 DTSC reviewed Petitioner's alternate definitions (Petitioner's Brief, pp. 14 - 22)  
22 and determined that there are significant issues with the definitions proposed by  
23 Petitioner. First, Petitioner has not provided sufficient information to allow DTSC to fully  
24 evaluate the proposed revisions. Many of the proposed definitions could potentially  
25 expand the waste streams FRS is authorized to accept, and FRS did not submit  
26 additional information, including, but not limited to, a revised Waste Analysis Plan to  
27 demonstrate how FRS would properly identify or verify the chemical and physical  
28 properties of the waste, what procedures would be used to perform analysis of wastes

1 generated, treated, or stored. Before adopting Petitioner's proposed alternate  
2 definitions, DTSC would need to conduct a full evaluation of a complete, revised Waste  
3 Analysis Plan to ensure proper management of that waste.

4 For example, on page 22 of Petitioner's Brief, Petitioner proposes a new  
5 definition for "Household Hazardous Waste:"

6 "Wastes received from households as defined in CCR 66260.10 and  
7 40 CFR 261.4(b) (1). Wastes not exhibiting RCRA characteristics or any  
8 listed wastes may be processed with other waste streams 1-39 as  
9 applicable. Wastes that do not exhibit a RCRA characteristic or contain a  
RCRA listed waste will be consolidated into waste stream 51." (Petitioner's  
Brief, at p. 22:22-25).

10 Petitioner does not include information on how FRS would test for RCRA  
11 characteristics and FRS needs to submit a revised Waste Analysis Plan and supporting  
12 documentation explaining this for DTSC's review and consideration.

13 Petitioner first presents Petitioner's alternate definitions in Petitioner's Brief filed  
14 in support of Petitioner's Appeal. Petitioner did not present Petitioner's proposed  
15 definitions in their comments on the Draft Modified Permit. Because Petitioner's  
16 proposed definitions could potentially expand the waste streams FRS is authorized to  
17 accept, Petitioner's proposed definitions would constitute substantial revisions to the  
18 Permit and are beyond the scope of this appeal. Additionally, if granted as proposed,  
19 Petitioner's request for alternate definitions and/or modified definitions would bypass  
20 required public participation requirements. Finally, Petitioner includes inapplicable  
21 regulatory references in some of the definitions.

22 For all these reasons, DTSC requests that Petitioner's alternate definitions be  
23 denied.

#### 24 II. Petitioner's Alternate Table 1:

25 Petitioner also proposes significant revisions to Table 1. (Petitioner's Brief, at pp.  
26 23-29). DTSC reviewed Petitioner's proposed revisions to Table 1 and concluded some  
27 of Petitioner's proposed revisions to Table 1 do not provide the clarity or specificity that  
28 is necessary for compliance purposes.

1 For example, Petitioner's proposed revisions to Waste Streams C [3] Oily Water,  
2 D [4] Oily Debris, and H [8] Oil Contaminated Containers, proposes to delete references  
3 to "oil" in the waste description and instead adds the words "may or may not be  
4 contaminated with varying fractions of hydrocarbons." (Petitioner's Brief, at pp.23-24).  
5 DTSC is concerned that the proposed changes would make the waste streams less  
6 specific and potentially confusing because the common name for each of these waste  
7 streams includes oil but the description makes it unclear whether or not oil is in the  
8 waste streams. Moreover, Petitioner's proposed revisions to the description of each  
9 waste streams could potentially include other types of hydrocarbons, such as gasoline.  
10 Water contaminated with gasoline, debris contaminated with gasoline, and gasoline  
11 contaminated containers are waste streams that may be subject to federal permitting  
12 requirements.

13 DTSC is concerned that many of Petitioner's proposed revisions could potentially  
14 expand the waste streams FRS is authorized to accept; however, FRS did not submit  
15 information to support such revisions for DTSC's consideration. Such information would  
16 include, but be not limited to, a revised Waste Analysis Plan that demonstrates how  
17 FRS would properly identify or verify the chemical and physical properties of the waste,  
18 and what procedures would be used to perform analysis of waste generated, treated, or  
19 stored. For example, Petitioner's proposed revision to waste stream 3D[24] Soaps  
20 (solid) would add *corrosive solids* to the list of authorized waste streams. (Petitioner's  
21 Brief, at p. 26). To consider this, DTSC would need FRS to submit additional  
22 information including, but not limited to, information regarding how FRS would manage  
23 potentially incompatible waste streams, before deciding whether or not FRS should be  
24 authorized to accept "corrosive solids."

25 In support of proposed revisions to Table 1, Petitioner's references the definitions  
26 contained in DeMenno-Kerdoon's Hazardous Waste Facility Permit. (Petitioner's Brief,  
27 at pp.12:12-13:12). However, the definitions contained in DeMenno-Kerdoon's  
28 Hazardous Waste Facility permit are not applicable to FRS because DeMenno-Kerdoon

1 has a RCRA-equivalent permit and authorization to manage a broader category of  
 2 wastes, including RCRA hazardous waste. DeMenno-Kerdoon Hazardous Waste  
 3 Facility Permit also contains conditions specific to that facility and type of authorization,  
 4 such as additional air emission requirements and storage restrictions, which are not  
 5 included in FRS's Standardized Permit.

6 For these reasons, DTSC requests that Petitioner's proposed revisions to waste  
 7 streams C[3] Oily Water; D[4] Oily Debris; J[10] Oil Contaminated Absorbents; 3D[24]  
 8 Soaps and Solids; and 4C2[43] Oily Water be denied.

9 However, DTSC has determined some of Petitioner's proposed revisions to  
 10 Table 1 are acceptable. Specifically, DTSC requests that Petitioner's proposed revisions  
 11 to the following waste streams be adopted: E[5] Oil Aerosol Cans; 2F[19] Paint Aerosol  
 12 Cans; 3G[27] Machining Grinding Residue (non RCRA); and 4C1[42] Waste Water.

13 Finally, DTSC has determined that some of Petitioner's proposed revisions would  
 14 be acceptable to DTSC with modifications. DTSC recommends that the following  
 15 revisions to Table 1 be adopted:

- 16 • DTSC recommends that waste stream G [7] in Table 1 be revised as follows:

G[7]	Used Oil and Gasoline Filters	None Exempt	221, 223, 352, 612	Oil filters from internal combustion engines and equipment oil filtering. Gasoline and diesel fuel filters may be included in this waste stream per Health & Safety Code § 25250.22 (A.B. 2254), with oil filters or separately.
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- 22 • DTSC recommends that waste stream H[8] in Table 1 be revised as follows:

H[8]	Oil-Contaminated Containers	None Exempt	352, 223, 513, 612	Oily RCRA empty contaminated containers constructed of steel, plastic and cardboard consisting of sizes from quart to 110 gallon capacity
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- 27 • DTSC recommends that waste stream I[9] in Table 1 be revised as follows:

1	I[9]	Hydrocarbon Contaminated Soil (non RCRA)	None	223, 261, 321, 322, 352, 521, 611, 612	Soils contaminated with diesel and oil varying fractions of hydrocarbons with or without CA metals
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- 2
- 3
- 4 • DTSC recommends that waste stream 3A[21] in Table 1 be revised as follows to ensure that FRS cannot accept liquid resin wastes, which may be considered reactive wastes:

5	3A[21]	Resin	None	271, 272, 352, 612	Used and spent <del>Solidified</del> reacted resin waste material
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9 For reference, DTSC has provided the revisions in ~~strikeout~~ to Table 1 as an attachment. (Attachment 1).

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11 For the above stated reasons, DTSC requests that Petitioner's Appeal Comment 4 be denied in part and granted in part, and that DTSC's proposed revisions to Table 1 be granted.

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14 **E. Appeal Comment 5: Petition for Review Section III.6., pages 11 to 15**

15 **Petitioner's Appeal Comment:**

16 Petitioner's Appeal Comment 5 concerns a special condition imposed by DTSC on the operation of Unit #9 (Waste Storage (Exterior)(S2)). Unit #9 is used for inspection and verification of incoming wastes and as a standby waste staging area. Unit #9 has three solid debris roll-off bins and FRS uses each bin to consolidate waste. Additionally, Unit #9 includes a 4,200 gallon liquid roll-off container for liquid waste storage and consolidation. Unit #9 is entirely roofed and bermed for secondary containment. (Final Modified Permit, Part III, pages 28-32 of 71; found at DTSC PER000041-DTSC PER000044).

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24 Petitioner claims Special Condition 12 on page 31 of 71 of the Final Modified Permit was drafted based upon an erroneous conclusion of law or finding of fact. (Petitioner's Brief, at p. 30). Special Condition 12 of the Final Modified Permit provides as follows:

1 "Any solid hazardous waste in this Unit must be in containers. All solid  
2 hazardous waste transfer shall occur directly from one container into  
3 another container. Dump trucks are containers. No solid waste transfer  
4 shall occur if visible emissions or clouds of dust are created that are likely  
5 to leave this Unit during the transfer of the waste." (Final Modified Permit,  
Part III, Unit 9, Special Condition 12, page 31 of 71; found at DTSC PER  
000044)

6 Petitioner claims that Special Condition number 12 places a barrier on the  
7 Facility's ability to inspect and potentially extract recyclable materials from other  
8 materials and conflicts with its Waste Analysis Plan, which requires FRS to inspect  
9 incoming waste. (Petitioner's Brief, at p. 30: 4-8.). Petitioner further claims that this  
10 sorting allows FRS to comply with AB 939. (Petitioner's Brief, at p.34: 7-9.). Petitioner  
11 asserts that DTSC is misinterpreting Special Condition 2 on page 9 of 71 of the Final  
12 Modified Permit as well as the definition of "waste pile" by concluding that unloading  
13 uncontainerized solid waste onto a 'concrete or asphalt slab' within a permitted unit is a  
14 waste pile. (Petitioner's Brief, at p. 30: 23-24) Special Condition 2 on page 9 of 71 of  
15 the Final Modified Permit states: Hazardous waste shall not be land disposed at the  
16 Facility, whether temporarily or permanently. (Final Modified Permit, Part II, page 9 of  
17 71; found at DTSC PER 000022).

18 Petitioner further claims that FRS's 180 West Monte building qualifies as a  
19 containment building pursuant to California Code of Regulations, title 22, section  
20 66260.10 and that FRS's "engineered, bermed, covered, security fenced, sprinklered,  
21 paved containment units qualify as containment buildings as well." (Petitioner's Brief, at  
22 p. 31: 4-5). Petitioner also claims that FRS's "fully enclosed" unit meets or exceeds the  
23 requirements of California Code of Regulations, title 22, section 66264.250, applicable  
24 to indoor waste piles. (Petitioner's Brief, at p. 32: 17).

25 Petitioner claims that Health and Safety Code section 25200.19 authorizes FRS  
26 to offload solid waste into permitted units for the incidental time necessary to inspect,  
27 sort, separate and reload its waste. (Petitioner's Brief, at p. 31). Finally, Petitioner  
28 claims that DTSC's argument set forth in its Response to Comments is legally incorrect

1 because it is inconsistent with regulations. (Petitioner's Brief, at p.32: 18-19.)  
2 Specifically, Petitioner cites to Health and Safety Code section 25201.6, subdivision (g)  
3 and California Code of Regulations, title 22, section 66264.250. (Petitioner's Brief, at  
4 p.32: 22-26 ). Petitioner requests that Special Condition 12 be clarified to add the  
5 italicized language, stating: "all solid hazardous waste transfer shall occur directly from  
6 one container to another container, or into a containment unit." (Petitioner's Brief, at  
7 p.33:23-27)

8 **DTSC's Argument in Response:**

9 The Final Modified Permit designates Unit #9 as a Container Storage Unit. (Final  
10 Modified Permit, Part III, page 28 of 71; found at DTSC PER000041). Special Condition  
11 12 for Unit #9 requires, in part, that all solid hazardous waste must be in containers, all  
12 solid hazardous waste transfer shall occur directly from one container into another  
13 container and prohibits solid waste transfer from occurring if visible emissions or clouds  
14 of dust are created, or likely to be created. (Final Modified Permit, Part III, Special  
15 Condition 12, page 31 of 71; found at DTSC PER000044). Special Condition 12 is  
16 necessary to ensure that the type of activities that are allowed and prohibited in Unit #9  
17 are consistent with the type of authorized unit (container storage).

18 As discussed in DTSC's Response to Comment, FRS is not authorized to use  
19 Unit #9 for land disposal activities. (See Response to Comments 1-13, 1-29, 5-2, 5-30,  
20 7-6; found at DTSC PER000094, DTSC PER0000107- DTSC PER0000108, DTSC  
21 PER0000138, DTSC PER0000152- DTSC PER0000153, DTSC PER0000164). Health  
22 and Safety Code section 25201.6 and California Code of Regulations, title 22, section  
23 66270.69.1 prohibits a facility operating pursuant to a *standardized permit* from  
24 engaging in any land disposal activity. Specifically, Health and Safety Code section  
25 25201.6, subdivision (g) provides in relevant part that: "a facility ...that engages in ...  
26 any land disposal activity, is not eligible for a standardized permit." (Health & Saf. Code  
27 § 25201.6, subd.(g)(1); see also Cal. Code. Regs., tit. 22 § 66270.69.1 (a)(3)). Such

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1 activities would require RCRA-equivalent authorization and FRS does not currently  
2 possess such authorization.

3 California Code of Regulations, title 22, Section 66260.10 defines "land disposal"  
4 as:

5 "placement in or on the land, except in a corrective action management  
6 unit, and includes, but is not limited to, placement in a landfill, surface  
7 impoundment, waste pile, injection well, land treatment facility, salt dome  
8 formation, salt bed formation, underground mine or cave, or placement in  
a concrete vault or bunker intended for disposal purposes." (Cal. Code  
Regs., tit. 22, § 66260.10)

9 Contrary to Petitioner's assertion, DTSC has not misinterpreted the definition of  
10 "waste pile." A waste pile or pile is defined as: "any noncontainerized accumulation of  
11 solid, nonflowing hazardous waste that is used for treatment or storage and that is not a  
12 containment building." (Cal. Code Regs., tit. 22, § 66260.10; See also 57 Federal  
13 Register 37194, in which U.S. EPA indicates that waste stored or treated on concrete  
14 pads or similar flooring inside buildings would be classified as indoor waste piles.). The  
15 practice of unloading solid waste directly onto a concrete or asphalt slab (which is not a  
16 containment building) would constitute a noncontainerized accumulation of hazardous  
17 waste, or a waste pile. Waste piles are considered to be land disposal units and are  
18 required to be equipped with liners, leachate collection systems, and groundwater  
19 monitoring systems.

20 Petitioner cites to Health and Safety Code section 25200.19 as authority to allow  
21 FRS to off load solid waste for inspection, sorting, separating and reloading.

22 (Petitioner's Brief, at p. 31:17-27) But, Health and Safety Code section 25200.19  
23 provides limited authorization for loading and unloading activities. For example, the  
24 definitions of both loading and unloading specify that loading or unloading is the  
25 associated activities that occur either directly to or from transport vehicle to or from an  
26 authorized unit. (Health & Safety Code § 25200.19, subd. (d)(1), &(3)). Unit #9 is only  
27 authorized for container storage and container to container transfer activities. (Final

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1 Modified Permit, Part III, pages 28-32 of 71; found at DTSC PER000041-DTSC  
2 PER000045).

3         Additionally, Health and Safety Code section 25200.19 authorizes DTSC  
4 to restrict through permit conditions loading and unloading operations. (Health &  
5 Saf. Code § 25200.19, subd. (a),(b),(c).) Thus, DTSC included Special Condition  
6 12 of the Final Modified Permit to clarify that solid hazardous waste may not be  
7 unloaded or placed directly on the ground (or concrete/asphalt slab) for any  
8 period of time in Unit #9. Special Condition 12 requires that all solid hazardous  
9 waste transfer occur directly from one container into another container.

10         Petitioner also asserts Unit #9 has a containment system and mischaracterizes  
11 deposition testimony of DTSC personnel in support of its contention that allowing FRS  
12 to unload bulk solid waste directly onto the concrete pad of Unit #9 poses no threat to  
13 human health or the environment. (Petitioner's Brief, pp. 32-35). However, as used in  
14 Health and Safety Code section 25200.19, a hazardous waste facility with a  
15 containment device or other system refers to a system that is "capable of collecting and  
16 containing leaks and spills that may reasonably be anticipated to occur during loading  
17 and unloading operations." (Health & Safety Code § 25200.19, subd (c)(4)(A).)  
18 Therefore, Health and Safety Code, section 25200.19, subdivision(c) (4) (A) requires  
19 primary containment system to collect leaks and spills during loading and unloading  
20 operations.

21         Unit #9's bermed, covered, secondary containment system does not qualify as a  
22 "containment system" under Section 25200.19. The concrete pad at Unit #9 functions  
23 as a secondary containment device to catch any spillage of hazardous waste in the  
24 event of container failure. The container provides the primary containment, while the  
25 concrete base provides the secondary containment. The performance requirements are  
26 different for secondary containment systems and primary containment system. Primary  
27 containment systems are required to meet design requirements that allow for the unit to  
28 be operated in direct continuous contact with hazardous waste; whereas, secondary

1 containment systems, for example at a container storage unit, is designed to catch  
2 spillage of hazardous waste from a container failure. (June 30 1995 letter from Mr.  
3 Frank McAlister, Chief Permits Branch, Office of Solid Waste, U.S. EPA to Mr. William  
4 Hopper (RCRA Online 11909). In the case of Unit #9, a container storage area, the  
5 concrete pad functions as secondary containment, designed to catch any spillage of  
6 hazardous waste in the event of container failure; and the container provides the  
7 primary containment. Additionally, a concrete pad, would fail to meet the definition and  
8 performance requirements for primary containment. U.S. EPA has explained that:  
9 "Concrete is not impervious. It has a calculable permeability and operations on the pad  
10 will likely degrade any relatively impermeable coating that may be applied. Concrete  
11 has a tendency to expand the crack, allowing the escape of leachate." (March 30, 1987  
12 memorandum from Mr. Bruce R. Weddle, Director, U.S. EPA Permits & State Programs  
13 Division, to Hazardous Waste Management Division Directors, U.S. EPA (FAXBACK  
14 12890.) DTSC is concerned that using Unit #9 to unload bulk solid waste directly onto a  
15 paved unit would not be protective of public health and the environment because Unit  
16 #9 is not made of a material that would meet the performance standards required for a  
17 primary containment system.

18 Furthermore, FRS has not requested authorization to use Unit #9 or the 180  
19 West Monte Building as a containment building and has not submitted information to  
20 show that either Unit #9 or the 180 West Monte Building would meet the applicable  
21 requirements set forth in California Code of Regulations, title 22, sections 66264.1101.  
22 In order to qualify as a containment building, the unit must be (in part) completely  
23 enclosed and have self-supporting walls, a primary barrier, designed to be sufficiently  
24 durable to withstand the movement of personnel, wastes, and handling equipment in the  
25 unit, a secondary containment system (unless the unit manages non-liquid wastes only  
26 or has obtained a variance from the secondary containment standard), a liquid  
27 collection system, and controls for fugitive dust. (Cal.Code Regs., tit 22, § 66264.1101).  
28 The floors, walls, and roof of the unit must be constructed of man-made materials with

1 sufficient structural strength to support themselves, the waste contents, and any  
2 personnel and heavy equipment that operate within the unit. (Id.). The unit also must be  
3 designed and operated to prevent tracking of materials out of the unit. (Id.). Looking  
4 specifically at Unit #9, it does not have walls or a liquid collection system (among other  
5 items) and would not meet the requirements set forth in Section 66264.1101.

6 Likewise, FRS's 180 West Monte Building would not qualify as a  
7 containment building pursuant to California Code of Regulations, title 22, section  
8 66264.1101. For example, FRS's 180 West Monte building is not equipped with a  
9 secondary containment system, does not have controls for fugitive dust, does not  
10 have a primary barrier, and does not have a liquid collection system.

11 Finally, Petitioner claims that FRS's "fully enclosed unit" (DTSC assumes  
12 Petitioner is referring to Unit #9), would meet or exceed the requirements  
13 applicable to indoor waste piles set forth in California Code of Regulations, title  
14 22, section 66264.250, subdivision (c). (Petitioner's Brief, at p. 32: 17). However,  
15 FRS has not requested authorization to use Unit #9 as an indoor waste pile and  
16 has not submitted information to show that Unit #9 would meet the applicable  
17 requirements set forth in California Code of Regulations, title 22, section  
18 66264.250. California Code of Regulations, title 22, section 66264.250 provides  
19 the applicable standards for owners and operators of facilities that store or treat  
20 hazardous waste in a waste pile that is inside or under a structure. Indoor waste  
21 piles are required to exclude liquids or material containing free liquids, be  
22 protected from surface water run-on, control dispersal of waste by means other  
23 than wetting, and not generate leachate through decomposition or other  
24 reactions. (Cal.Code Regs., tit 22, § 66264.250(c)). Unit #9 would not meet the  
25 requirements applicable to indoor waste piles set forth in California Code of  
26 Regulations, title 22, section 66264.250 subdivision (c). For example, FRS is  
27 authorized to manage liquid hazardous waste in Unit #9. (Final Modified Permit,  
28 Part III, Unit #9, pp. 28-32, found at DTSC PER 000041-DTSC PER000045)

1 Finally, waste piles (including indoor waste piles) are considered to be land  
2 disposal units and Health and Safety Code section 25201.6, subdivision (g)  
3 would prohibit FRS from operating an indoor waste pile pursuant to a  
4 standardized permit.

5 For the following reasons, DTSC requests Petitioner's Appeal Comment five be  
6 denied.

7 **III. PETITIONER'S REQUEST FOR IMMEDIATE VACATION OF STAY ON**  
8 **UNCONTESTED PERMIT CONDITIONS**

9 Petitioner contends that the conditions at issue in its Appeal are "readily severable  
10 from the remaining permit, and the uncontested permit conditions" pursuant to California  
11 Code of Regulations, title 22, section 66271.15 and therefore DTSC should vacate the  
12 stay of FRS's Final Modified Permit. (See Petitioner's Brief, pp. 4-5.) The DTSC Permit  
13 Appeals Officer, not DTSC's Office of Permitting, determined the contested modified  
14 permit conditions are not severable from the uncontested modified permit conditions.  
15 (Order, p. 24:1-5) DTSC's Office of Permitting is not responding in this brief to  
16 Petitioner's request for vacation of the stay and instead defers to the evaluation of  
17 DTSC's Permit Appeals Officer regarding this issue.

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#### IV. CONCLUSION

For the reasons discussed above, the Office of Permitting requests that Petitioner's Appeal Comment 1 be denied in its entirety, Petitioner's Appeal Comment 2 be denied in part, but that Petitioner's suggested revisions to Special Condition 1 be adopted; Petitioner's Appeal Comment 3, be denied in its entirety, Petitioner's Appeal Comment 4 be denied in part and granted in part, and that DTSC's proposed revisions to Table 1 be granted; Petitioner's Appeal Comment 5 be denied in its entirety; and that the Permit Appeals Officer vacate the stay ordered accordingly.

Respectfully Submitted,

DATED: October 3, 2014

*[Handwritten signature in blue ink]*  
**// original signed by //**

Edward Nieto  
Edward Nieto  
Supervising Hazardous Substances Engineer  
Department of Toxic Substances Control

**ATTACHMENT**

**1**

Filter Recycling Services, Inc.  
Draft Standardized Permit

Effective 01/21/2002, Modified: April 21, 2014

Table 1. Waste Streams Description				
Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
A[1]	Used Oil	None	221, 261, 612	On specification recyclable oil PCB <2 ppm
B[2]	Waste Oil	Exempt	221, 222, 223, 261, 612	Off specification waste oil >1000 ppm halogens PCB <50 ppm
C[3]	Oily Water	None	221, 222, 223, 231, 232, 241, 123, 133, 134, 135, 342, 343, 451, 531, 541, 551, 612	Oil and water mixtures with varied amounts of settling solids
D[4]	Oily Debris	None	221, 222, 223, 232, 241, 343, 352, 551, 571, 581, 591, 612, 613	Oil contaminated debris including personal protective equipment, rags, metal and rubber hoses, plastic, wood, pads, socks, booms, socks, clothing, paper and cardboard
E[5]	Oil Aerosol Cans	Exempt D001 / Exempt D003	612	Contaminated aerosol <u>Aerosol</u> cans containing oil related products and residues, Universal Waste
F[6]	Spent Oil Aerosol Cans	Exempt	181, 223, 311, 513	Spent aerosol cans previously containing oil related products, Universal Waste
G[7]	Used Oil and <u>Gasoline</u> Filters	<u>None-Exempt</u>	221, 223, 352, 612	Oil filters from internal combustion engines and equipment <u>oil filtering. Gasoline and diesel fuel filters may be included in this waste stream per Health &amp; Safety Code § 25250.22 (A.B. 2254), with oil filters or separately.</u>
H[8]	Oil-Contaminated	<u>None-Exempt</u>	352, 223, 513, 612	<u>Oily RCRA empty</u> contaminated containers

Filter Recycling Services, Inc.  
Draft Standardized Permit

Effective 01/21/2002, Modified: April 21, 2014

Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
	Containers			constructed of steel, plastic and cardboard consisting of sizes from quart to 110 gallon capacity
I[9]	Hydrocarbon Contaminated Soil (non RCRA)	None	223, 261, 321, 322, 352, 521, 611, 612	Soils contaminated with <u>diesel and oil-varying factions of hydrocarbons</u> with or without CA metals
J[10]	Oil Contaminated Absorbents	None	221, 223, 352, 612	Cleanup of diesel and/or oil spills with granulated organic and inorganic absorbent materials
K[11]	Solid Grease	None	223, 352, 331, 612	Spent, surplus and aged lubricating grease
L[12]	Liquid Grease	None	221, 223, 331, 612	Spent, surplus and aged lubricating grease
M[13]	Solidified Petroleum Tank Residuals (non- RCRA)	None	221, 222, 223, 241, 252, 343, 352, 571	Absorbents added to tank bottom petroleum residuals to solidify crude, diesel, hydrocarbons and oil/water sediments
2A[14]	Paint Debris	None	352, 291, 612	Brushes, personal protective equipment, paint, hoses, rags, drop cloths, rollers, wipes, trays, masking tape, visqueen, wood, cardboard, and other paint related debris with dry solid paint or paint stained
2B[15]	Paint Filters	None	352, 291, 461, 612	Spent foam, cloth, cardboard, paper, plastic cartridge filters, fiber membrane filters
2C[16]	Paint Contaminated Containers	None	352, 512, 513, 612	Empty paint containers (steel, cardboard, plastic, fiber) with solidified paint waste residue

Filter Recycling Services, Inc.  
Draft Standardized Permit

Effective 01/21/2002, Modified: April 21, 2014

Table 1. Waste Streams Description				
Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
2D[17]	Paints (latex based)	None	291, 461, 612	Used and/or unused latex paint (solid, liquid or sludge) waste in steel, cardboard, plastic or fiber containers
2E[18]	Paints (oil based)	None	461, 612, 211, 213, 214	Used and/or unused oil based paint (solid, liquid or sludge) waste in steel, cardboard, plastic or fiber containers
2F[19]	Paint Aerosol Cans	Exempt D001 / Exempt D003	612	<del>Contaminated unused</del> Aerosol cans containing paint related products and residuals, Universal Waste
2G[20]	Spent Paint Aerosol Cans	None	513	Spent aerosol cans containing paint related products and residuals, Universal Waste
3A[21]	Resin	None	271, 272, 352, 612	<del>Used and spent Solidified</del> reacted resin waste material
3B[22]	Glues	None	281, 352, 612	Used or unused water based liquid sludge or solid glues in glass, steel, plastic containers
3C[23]	Soaps (liquid)	None	141, 331, 343, 561, 612	Spent or surplus liquid or sludge detergent and soaps
3D[24]	Soaps (solid)	None	141, 181, 331, 352, 561, 612	Spent or surplus solid detergent and soaps
3E[25]	Oil Contaminated Asphalt Debris (non RCRA)	None	352, 612	Removed or unused solid roofing asphalt or asphalt composite waste material or excavated solid asphalt road base debris
3F[26]	Sand and Bead Blasting Residue (non-RCRA)	None	181, 352	Surface cleaning residues from painted, oily, rust coated surfaces, non RCRA used sand or bead blasting waste residue from metal

Filter Recycling Services, Inc.  
Draft Standardized Permit

Effective 01/21/2002, Modified: April 21, 2014

Table 1. Waste Streams Description				
Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
				parts
3G[27]	Machining Grinding Residue (non- RCRA)	None	171, 172, 181, 223, 352	Non- RCRA metal shavings, turning parts or waste residue from metal machine grinding operations, includes steel and/or other non RCRA metal parts (metal and grit)
3H[28]	Metal Polishing Debris (non-RCRA)	None	352	Non- RCRA used polishing rags, polishing and buffing wheels debris and polish material residue waste from surface cleaning of painted rust coated anodized surfaces
3I[29]	Metal Polishing Compounds	None	352	Wax, dust, granular waste
3J[30]	Clarifier Sludge (non- RCRA)	None	135, 181, 222, 223, 241, 252, 321, 352, 411, 421, 431, 441, 471, 491, 521	Non-RCRA clarifier tank bottom sludge and solids from industrial, commercial, automotive and waste water treatment solutions
3K[31]	Clarifier Filter Cake (non-RCRA)	None	222, 223, 241, 252, 352, 181, 411, 421, 431, 441, 471	Non- RCRA clarifier tank bottom solid filter cake from industrial, commercial, automotive and waste water treatment systems
3L[32]	Anti-freeze	None	133, 134, 135, 343, 612	Spent propylene and ethylene glycol waste solutions
3M[33]	Inks (liquid)	None	343, 331	Non- RCRA used or unused water based liquid waste inks in plastic, glass or metal containers
3N[34]	Inks (solid)	None	352	Non- RCRA used or unused water based solid waste inks in plastic, glass or metal

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Table 1. Waste Streams Description				
Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
				containers
3O[35]	Asbestos	None	151, 612	Triple bagged asbestos and asbestos containing waste
3P[36]	Other Spent Catalyst	None	162, 612	End-of-life and off-specification catalyst
3Q[37A]	Water/Gasoline (ignitable) (non-RCRA)	Exempt D001	133, 134, 135, 612	Non-RCRA ignitable water contaminated with gasoline, must be received from CESQG and HHW generators.
3Q[37B]	Water/Gasoline (non-ignitable) (non-RCRA)	None	133, 134, 135, 612	Non-RCRA non-ignitable water contaminated with gasoline
3R[38]	Pharmaceutical Waste	None	311, 612	Off-specification, outdated, defective
3S[39]	Treated Wood Waste	None	614, 612	Off-specification, used
4A[40]	Off Specification Waste Oil	None	221	Waste oil mixtures with >1000 ppm halogens .
4B-2[41]	Specification Waste Oil	None	221	Waste oil mixtures with <1000 ppm halogens
4C1[42]	Waste Water	None	223, 133, 134, 135	Non- RCRA waste water contaminated with oil
4C2[43]	Oily Water	None	223, 133, 134, 135	Non- RCRA waste water contaminated with oil
4D[44]	Scrap Metal	None	Recycled	Shredded steel
4E[45]	Paint Sludge	Exempt D001	461	Paint sludge from emptying containers generated by FRS, received from HHW and CESQGs.
4F[46]	Oil Contaminated Debris	None	352	Contaminated solids

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Table 1. Waste Streams Description				
Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
4G[47]	Paint contaminated debris	None	352	Paint contaminated solids
4H[48]	Carbon Filters	D001	352	Filters from depressurizing aerosol cans generated by FRS
4I[49]	Aerosol Oil Residue	D001	223	Liquid residues from puncturing oil aerosol cans generated by FRS.
4J[50]	Aerosol Paint Residue	D001	343	Liquid residues from puncturing paint aerosol cans generated by FRS.
4K[51]	Lab Pack	Any	343, 212, 213, 612, 211	Small containers of non-treatable waste from households or CESQG's
52	Water/Gasoline	Exempt D001	133, 134, 135, 612	Waste stream 52 will be shipped offsite and is generated from consolidating only waste stream 37A (Non-RCRA ignitable water/gasoline).
53	Recovered Gasoline	Exempt D001	133, 134, 135, 612	Waste Stream 53 is generated by consolidating the residual liquids resulting from the processing of excluded recyclable fuel filters and pump nozzles. This waste will be shipped offsite.

California Waste Codes:

131 - Aqueous solution (2 < pH < 12.5)    132 - Aqueous solution with metals    133 - Aqueous solution with 10% or more total organic residues  
 134 - Aqueous solution with less than 10% total organic residues    135 - Unspecified aqueous solution    151 - Asbestos containing waste  
 161 - Fluid - cracking catalyst (FCC) waste    162 - Other spent catalyst    171 - Metal sludge    172 - Metal dust and machining dust  
 181 - Other inorganic solid waste    211 - Halogenated solvents    212 - Oxygenated solvents    213 Hydrocarbon solvents  
 214 - Unspecified solvent mixture    221 - Waste oil and mixed oil    222 - Oil/water separation sludge  
 223 - Unspecified oil-containing waste    231 - Pesticide rinse water    232 - Pesticides and other waste associated with pesticide production  
 241 - Tank bottom waste    251 - Still bottoms with halogenated organics    252 - Other still bottom waste    261 - Polychlorinated biphenyls and materials containing PCB's  
 271 - Organic monomer waste    272 Polymeric resin waste    281 Adhesives    291 - Latex waste

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311 Pharmaceutical waste      321 - Sewer sludge      322 - Biological waste other than sewage sludge      331 - Off-specification, aged, or surplus organics      341 - Organic liquids (non-solvents) with organics      342 - Organic liquids with metals      343 - Unspecified organic liquid mixture  
351 - Organic solids with halogens      352 - Other organic solids      411 - Alum and gypsum sludge      421 - Lime sludge  
431 - Phosphate sludge      441 - Sulfur sludge      451 - Degreasing sludge      461 - Paint sludge      471 - Paper sludge/pulp  
481 - Tetraethyl lead sludge      491 - Unspecified sludge waste      511 - Empty pesticide containers 30 gallons or more  
512 - Other empty containers 30 gallons or more      513 - Empty containers less than 30 gallons      521 - Drilling mud      531 - Chemical toilet waste  
541 - Photochemicals / photoprocessing waste      551 - Laboratory waste chemicals      561 - Detergent and soap  
571 - Fly ash, bottom ash, and retort ash      581 - Gas scrubber waste      591 - Bag house waste      611 - Contaminated soil from site clean-ups  
612 - Household waste      613 - Auto shredder waste      614 - Treated wood waste

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