

In the Matter Of:

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

**INFORMAL APPEALS HEARING**

December 11, 2014

Reported By: Alicia Forberg CSR No. 12558

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DEPARTMENT OF TOXIC SUBSTANCES CONTROL  
INFORMAL APPEALS HEARING

Date: Thursday, December 11, 2014  
Place: Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826

Reported By: ALICIA FORBERG, C.S.R. 12558

APPEARANCES

Permit Appeals Officer:

California Environmental Protection Agency  
Department of Toxic Substances Control  
Hazardous Waste Management Program  
By: PAULINE BATARSEH  
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916/322-2817

Appearing on behalf of Filter Recycling Services:

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Environmental Regulatory Compliance, LLC  
By: WADE RIDDERING  
Registered Environmental Assessor  
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San Bernardino, California 92404  
909/553-4506

Appearing for Department of Toxic Substances Control:

California Environmental Protection Agency  
Department of Toxic Substances Control  
By: ROBERT SULLIVAN  
Staff Counsel  
1001 I Street  
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916/323-8127

California Environmental Protection Agency  
Department of Toxic Substances Control  
By: ALFRED WONG  
Senior Hazard Substance Engineer, Office of Permitting  
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DEPARTMENT OF TOXIC SUBSTANCES CONTROL  
Informal Appeals Hearing on 12/11/2014

1 California Environmental Protection Agency.  
2 Department of Toxic Substances Control  
3 By: ERIKA GIORGI  
4 Staff Counsel  
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8 California Environmental Protection Agency  
9 Department of Toxic Substances Control  
10 Office of Permitting  
11 By: EDWARD NIETO  
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16 California Environmental Protection Agency  
17 Department of Toxic Substances Control  
18 By: PAUL RUFFIN  
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Appearing by Telephone:  
Kavita Lesser, Attorney General's Office  
Trutanich

1 (On the record at 10:13 a.m.)

2 MS. BATARSEH: In a moment I will ask the parties,  
3 counsel, and pro pers to state their appearance for the record.

4 We are here today on the matter of Filter Recycling  
5 Services, Inc., permit appeal, to listen to additional oral  
6 arguments regarding the matters appealed in supplement to the  
7 written briefs that were filed in this matter.

8 This hearing was requested by the appellant. I am  
9 Pauline Batarseh, the permit appeals officer. With me today is  
10 Mr. Robert Sullivan, attorney for permit appeals, and Mr. Paul  
11 Ruffin, project manager and technical advisor for permit  
12 appeals.

13 Would the parties, counsel, and pro pers state their  
14 appearance for the record.

15 MS. PERLMAN: I'm Deborah Perlman. I'm attorney for  
16 Filter Recycling Services.

17 MR. RIDDERING: Wade Riddering, consultant for Filter  
18 Recycling Services.

19 MS. GIORGI: Erika Giorgi, attorney for DTSC.

20 MR. WONG: Alfred Wong, senior hazard substance  
21 engineer with the Department of Toxic Substances, office of  
22 permitting.

23 MR. NIETO: Edward Nieto, supervising hazardous  
24 substances engineer I, with the office of permitting.

25 MS. BATARSEH: Who's on the phone?

1 MS. LESSER: Good morning. This is Kavita Lesser, with  
2 the Office of the Attorney General, counsel for DTSC  
3 permitting.

4 MS. BATARSEH: Anyone else on the phone?

5 (No response.)

6 MS. BATARSEH: We prefer that the parties present their  
7 arguments issue by issue, meaning that appellants will present  
8 issue 1, the department will respond, and each side will be  
9 given one opportunity for rebuttal. Then we will move on to  
10 issue No. 2 and so on.

11 I believe that we have five issues to address today.  
12 So arguments and rebuttals should be limited to five minutes,  
13 if possible.

14 Should the parties wish to take a break or go off the  
15 record to discuss settlement, please indicate that clearly  
16 prior to engaging in those discussions.

17 We can proceed now with issue No. 1.

18 MS. PERLMAN: Okay. Issue No. 1 has to do with Special  
19 Condition 14, which states, "Except when moving to or from the  
20 IWSA, all containers, parenthetically, including transport  
21 vehicles, holding ignitable or reactive wastes shall be located  
22 entirely within the designated IWSA."

23 In appealing this condition, Filter seeks to clarify  
24 what it believes that the condition basically already provides,  
25 for which is merely that it can unload or load trucks as part

1 of a continuum of movement of hazardous waste to or from the  
2 IWSA. No one is suggesting that waste would be left unattended  
3 outside of the IWSA.

4 There are hundreds of companies that handle ignitable  
5 waste in the state of California, including other facilities,  
6 generators, transporters. None of them are subject to this  
7 potential requirement. And I say "potential" because I believe  
8 that the provision, as DTSC has phrased it, is ambiguous, and  
9 therefore, FRS is really seeking to just clarify that.

10 It does appear, as an example, that, in the DTSC brief,  
11 Mr. Nieto interprets what this means in one way, but in  
12 deposition, Richard Jones interpreted it completely  
13 differently.

14 Mr. Jones stated that he did not see that -- what he  
15 actually said was, anytime you have a container that is being  
16 stored, it must be within the IWSA. And he did not see  
17 loading/unloading of trucks outside of the IWSA as inconsistent  
18 with this condition, because it does allow for a continuum of  
19 movement. And this is how Filter itself interprets it.

20 Filter would like to see the parenthetical language  
21 that states "including transport vehicles" deleted, because  
22 without that language it provides more clarity.

23 With regard to the loading and unloading for the  
24 incidental time necessary to move hazardous waste within the  
25 IWSA, it's safer to do it this way. You're not going to end up

1 with trucks backed up, potentially, because they have to be  
2 completely within the IWSA before they can be unloaded. It's  
3 safer; it's more efficient; it's more practical.

4 In real terms, Filter Recycling is located in an  
5 industrial area. It has a huge buffer around it. This is not  
6 a safety concern. It's got hundreds of feet of area that  
7 surround the facility.

8 In asking -- in having this conference today, we were  
9 asked to address a couple of specifics with regard to the fire  
10 code, and with regard to federal regulations. So addressing,  
11 first, the fire code. And I will apologize. I may go a little  
12 bit over five minutes on this one, but it seems to be one of  
13 the bigger issues. So some of the other ones may take less.

14 But with respect to the fire code, Filter did ask to  
15 have a report prepared. I understand you're not prepared to  
16 take additional documentary evidence potentially today, but we  
17 did have a report prepared by a fire consultant, Response Fire  
18 Protection.

19 I can read the pertinent parts of that report, which  
20 basically are an analysis of the fire code, and why it does not  
21 pertain or affect this provision, and why Ms. Laura J. Debell  
22 (phonetic) did come to the conclusion that, "Offloading  
23 operations should be considered moving to the IWSA, and  
24 therefore, not required to be within the IWSA."

25 She reached her conclusions by reviewing the

1 application of Chapter 57 of the 2013 California Fire Code, to  
2 the offloading and loading of Class 1(b) through 3(a) liquids  
3 at Filter. In doing so, she started from the premise that,  
4 "Flammable and combustible liquids are received at the facility  
5 in 55-gallon drums and smaller containers. No incoming  
6 materials are delivered by vacuum trucks or tank vessels,  
7 therefore, the offloading of liquids is considered handling in  
8 accordance with the fire code."

9 And I believe in that regard the fire code has a  
10 different definition of "handling" than the regulations the  
11 department ordinarily deals with. Handling under the fire code  
12 is defined as, quote, The deliberate transport by any means to  
13 a point of storage or use, unquote.

14 Offloading occurs outside of the building below a fully  
15 sprinklered weather protection canopy, and is regulated by Fire  
16 Code Section 5705.3.8.1, which deals with use, dispensing, and  
17 handling outside of buildings. 5705.3.8.1 requires spill  
18 protection, which Filter has.

19 There is no fire code restriction regarding location of  
20 handling outside of the building; therefore, offloading is  
21 allowed per fire code at any location within the exterior  
22 canopy, and is not required to occur within the IWSA.

23 Any materials that are transferred are done in a closed  
24 vacuum process within the IWSA. That process is regulated by  
25 Fire Code Section 5706.5. And Filter is in compliance with

1 that section as well.

2 So she concluded that, "By conducting all process  
3 transfer within the IWSA, the facility exceeds the separation  
4 distance requirements of the fire code for process transfer  
5 operations. The fire code does not regulate minimum separation  
6 distance requirements for handling of flammable and combustible  
7 liquids in containers, because the hazardous involved does not  
8 warrant such limitation, as the quantities at risk of spill or  
9 release are limited by the container size." And summarized  
10 that, "Offloading operations therefore should be considered  
11 moving to the IWSA, and therefore not required to be within the  
12 IWSA." So the fire code does not in any way preclude Filter  
13 from unloading as part of continuum of movement into the IWSA.

14 And then as another point, we were asked to look at how  
15 the federal regulations pertained to this condition. And I  
16 want to make it clear that what Filter is doing is simply  
17 requesting the department to track the statute.

18 The federal regulation says containers holding  
19 ignitable or reactive waste must be located at least 50 feet  
20 from the facility's property line. The federal regulation does  
21 not say, including transport vehicles. That is an insertion  
22 that by one department interpretation, I believe Mr. Nieto's.  
23 It is a further restriction on what Filter can do.

24 As I said before, Mr. Jones seems to think it is not a  
25 further restriction, it is only by the interpretation that we

1 encountered in the opposition brief that Filter is contesting  
2 it. And that parenthetical language is in conflict with the  
3 federal regulation, if it is so interpreted.

4 In looking at the materials that we were asked to look  
5 at for the purpose of this hearing, which is part 49 CFR, parts  
6 171 and 174, Federal Register volume 70, starting at  
7 page 20018, the Federal Register defines loading incidental to  
8 movement, and unloading incidental to movement.

9 Loading incidental to movement is defined as the  
10 loading by carrier personnel, or in the presence of carrier  
11 personnel of packaged or containerized hazardous materials onto  
12 a transport vehicle, aircraft, or vessel for the purpose of  
13 transporting it. Unloading is the same thing in reverse,  
14 basically.

15 It is specified that loading incidental to movement is  
16 regulated under the HMR. This is an area of federal  
17 preemption. To the extent that it differs from California, the  
18 federal preempts it.

19 It's important to note the California regulation tracks  
20 the federal regulation. It's the same. It's only the law  
21 contained within the permit as DTSC now seeks to include that  
22 parenthetical language, that it is being altered from the  
23 federal and the California code.

24 To the extent that DTSC seeks to alter it from the  
25 California code, you can't do it. It's preempted. It is --

1 these are national standards. To quote, actually, from 68,  
2 Federal Register 61923, "The HMR are not minimum requirements  
3 that other jurisdictions may exceed if local conditions  
4 warrant. They are national standards that must be uniformly  
5 applied."

6 If this condition is interpreted to preclude unloading  
7 and loading of the truck, as part of movement into the IWSA, it  
8 makes it more restrictive than federal law. It's preempted by  
9 federal law.

10 With that, I would cede the floor. Thank you.

11 MR. SULLIVAN: One question. Who actually unloads the  
12 trucks?

13 MS. PERLMAN: The trucks --

14 MS. GIORGI: I'm sorry. I missed the question.

15 MR. SULLIVAN: Who actually unloads the trucks? I  
16 think -- in the materials submitted, I think it said the  
17 facility needs to unload trucks. It doesn't describe the  
18 actual procedure, or what personnel were involved.

19 MS. PERLMAN: It said, "The loading by carrier  
20 personnel or in the presence of carrier personnel." It's not  
21 so much who unloads it, but whether the transporter is still  
22 there while it's being unloaded. That was the distinction.

23 MR. SULLIVAN: Can you prescribe the procedure?

24 MS. PERLMAN: I'm going to let Mr. Riddering handle  
25 that one.

1 MR. RIDDERING: For materials that are incoming,  
2 55-gallon drums and such, and especially when they are from  
3 other transporters, the transporter is still present. When the  
4 items are being bulked into, say, a vacuum tanker, 55-gallon  
5 drum is being vacuumed up into a vacuum tanker, that action is  
6 handled by Filter Recycling employees.

7 Did that answer your question?

8 MR. SULLIVAN: Yes, it did. Thank you.

9 MR. WONG: Good morning. As Ms. Perlman stated, the  
10 first appeal comment had to do with Special Condition 14 that  
11 reads, "Except for when moving to or from the IWSA, all  
12 containers, (including transport vehicles) holding ignitable or  
13 reactive wastes shall be located entirely within the designated  
14 IWSA, as identified in the Facility Plot Plan, pursuant to  
15 California Code of Regulations, title 22, section 66264.176."  
16 And Petitioner is requesting that the words "including  
17 transport vehicles" be removed from this condition, and claims  
18 that these words are unnecessary, ambiguous, and impractical.

19 Ms. Perlman is also claiming that the inclusion of this  
20 condition was not due to safety codes, and she cited several  
21 examples of generators regularly moving ignitable waste through  
22 their facilities. Ms. Perlman also argues that the condition  
23 prohibits even the transport of ignitable waste from the street  
24 to the IWSA while still on the truck.

25 We believe that Special Condition 14 was misinterpreted

1 by the petitioner. Special Condition 14 does not restrict the  
2 transport of ignitable waste from the street to the IWSA while  
3 still on the truck, and nor does Special Condition 14 restrict  
4 the movement of containers of the ignitable waste going to or  
5 from the IWSA.

6 Special Condition 14 was revised to consolidate other  
7 special conditions in the Draft Permit to ensure that ignitable  
8 wastes are managed in compliance with the regulatory  
9 requirements, including but not limited to, Title 22,  
10 Section 66264.176.

11 66264.176 requires containers holding ignitable or  
12 reactive waste to be located at least 15 meters (50 feet) from  
13 the property -- facility's property line, and applies to  
14 facilities that store or transfers containers of hazardous  
15 waste. Containers include tanker trucks, vacuum trucks, and  
16 tanker trailers, which are also transport vehicles.

17 I think -- we consider that the petitioner was mistaken  
18 in their understanding that transport vehicles located within  
19 the permit facility are not required -- or are not subject to  
20 the 50 feet from the property line while offloading or loading.

21 The purpose of Section 66264.176 is to minimize the  
22 potential for harm to human health and the environment in the  
23 areas immediately adjacent to hazardous waste facilities from  
24 the harmful effects associated with fires or explosions  
25 involving ignitable waste.

1           Section 66264.176 clearly states that containers  
2 holding ignitable waste to be located, not stored, at least  
3 50 feet from the property line. DTSC believes that the  
4 probability of an accident which may result in the fire  
5 explosion is greatest during the loading and unloading  
6 operations.

7           Having transport vehicles located at least 50 feet from  
8 the property line, as required by the regulation, would reduce  
9 any impact from such an accident. I'd like to point out that  
10 the issue of whether ignitable waste is managed at a facility  
11 is not unique to FRS. It's a significant issue, and DTSC has  
12 taken enforcement actions at other facilities on this issue.

13           In other words, DTSC has taken enforcement action  
14 against facilities that had ignitable waste located less than  
15 50 feet from the property line; thus DTSC disagrees the words  
16 "including transport vehicles" are unnecessary, ambiguous, and  
17 impractical. The purpose of Special Condition 14 is to prevent  
18 similar enforcement issues at FRS by clearly laying out the  
19 ground rules for the location of ignitable waste.

20           In their brief, Petitioner states that FRS wants to be  
21 treated similarly to other permitted facilities. Please note  
22 that these types of conditions have been put in other permits.  
23 Petitioner cites in a sample, one facility permit which does  
24 not require transport vehicles to be in the ignitable waste  
25 storage area while unloading, and instead allows for transport

1 vehicles and also the loading rack for flammable liquids to be  
2 25 feet from the property line.

3           However, circumstances at FRS are different from other  
4 facilities. In the case of the facility the petitioner has  
5 cited in their brief, the facility provides written  
6 documentation from the local fire marshal, stating that the  
7 loading and unloading of flammable material less than 50 feet  
8 from the property line would not be a problem. That supporting  
9 documentation was submitted with the application. FRS did not  
10 provide such supporting documentation.

11           Now, in regards to the loading/unloading,  
12 Section 25200.19 in the Health and Safety Code provides  
13 requirements for loading and unloading operations, but only in  
14 the absence of permit conditions.

15           As simply stated, if the permit has conditions  
16 regulating loading and unloading hazardous waste, the  
17 requirements for loading and unloading in 25200.19 would not  
18 apply.

19           Thus Special Condition 14 regulates the loading and  
20 unloading of ignitable waste at FRS, so the permitting  
21 exceptions in 25200.19 do not apply, and the petitioner's  
22 argument regarding the loading and unloading is irrelevant.

23           DTSC recommends that the Permit Appeal Officer deny  
24 Petitioner's Appeal Comment No. 1. Thank you.

25           MS. PERLMAN: If I may address a couple of those

1 points. The Health and Safety Code section that Mr. Wong cited  
2 allows for loading and unloading for the incidental time  
3 necessary to move the waste into the ignitable waste storage  
4 area.

5 Mr. Wong says yes, but there's also a provision in that  
6 code section that says, unless the permit has a condition that  
7 says otherwise, which is a circular argument. We are here to  
8 contest that condition that says "otherwise," because there's  
9 no basis for it.

10 Whether DTSC, pursuant to that Health and Safety Code  
11 could do it, if there was a basis for it, is a different issue.  
12 In this particular situation, DTSC can't do it. It's  
13 preempted. It simply runs counter to federal law to interpret  
14 that statute, and therefore -- rather, to interpret that permit  
15 condition in a way that makes it more restrictive than the  
16 federal statute. And that's what Mr. Wong is saying. Can't do  
17 it.

18 MS. GIORGI: Is that -- do you have anything else?

19 MS. PERLMAN: With regard to it being a safety issue,  
20 clearly there are hundreds of facilities that move ignitable  
21 waste constantly throughout their facilities. They are not  
22 subject to this requirement, and they are doing it without a  
23 problem.

24 In Filter's case, as I said before, there's a huge  
25 buffer around the facility, and it potentially could be more

1 dangerous to have a situation where you've got -- where a truck  
2 needs to be entirely within the ignitable waste storage area  
3 before it can be unloaded, and potentially other trucks are  
4 entering the facility also to be offloaded.

5 But at the end of the day, all Filter is asking is that  
6 the condition track the federal regulation. The federal  
7 regulation says containers holding ignitable or reactive waste  
8 must be located at least 50 feet from the facility's property  
9 line. "Located" is not defined, but it would appear to mean  
10 "storage," in the way that it's described.

11 MR. NIETO: I'd like to add, the definition with  
12 regards to the "incidental to movement" actually speaks to when  
13 a material ends its transportation mode and gets into handling.  
14 So under the definition, under DOT, it states in the Federal  
15 Register that when a material reaches its destination facility,  
16 that transportation ends based on the shipping document that is  
17 used.

18 So the shipping documents are used at Filter Recycling  
19 that are at its destination are simply manifests, unless  
20 there's an exemption of using a shipping record. Those  
21 documents state that at that point the DOT requirements no  
22 longer apply, and thus that is why this facility is at that  
23 point now controlling -- controls the loading and unloading  
24 activities there.

25 Now, the other item Ms. Perlman talks about is this

1 100-foot -- she said it a couple times, there's hundreds of  
2 feet of buffer around FRS. Those hundreds of feet are there,  
3 but they are not controlled by FRS, the facility that we are  
4 permitting today. And thus what happens at those -- that area  
5 outside that facility can change over time, and thus I don't  
6 think that is a relevant point. The law was written for  
7 50 feet.

8 The other item that Ms. Perlman spoke to is this  
9 individual who is a fire consultant. In the case for the other  
10 facility that Alfred spoke to, it was the fire marshal. And  
11 that individual has the responsibility to ensure that the fire  
12 codes are being applied properly, or adjustments, not a  
13 third-party consultant.

14 The other item that Ms. Perlman has brought up talked  
15 about that the state and the federal regulations are the same.  
16 And I'm telling you 66264.170 has a word in there, that's  
17 "transfer." And that is absent of the federal regulations.

18 That word "transfer" is the authority that gives  
19 DTSC -- or obligates DTSC to address transfer. And as Alfred  
20 talked about, a state law was actually adopted in 2005 that  
21 spoke to transfer activities that recognized that DTSC had  
22 authority over transfer.

23 Those are the points that I wanted to make. Thank you.

24 MS. GIORGI: Just to supplement the discussion that he  
25 just gave, the discussion that's outlined in the US Department

1 of Transportation regulations has limitations. Those  
2 limitations are important for this discussion, and it goes into  
3 the normal course of transportation.

4 And the limitations are outlined in that 2005  
5 rule-making, where U.S. Department of Transportation clearly  
6 indicated that we are talking about transportation begins when  
7 a carrier takes physical possession of the hazardous materials  
8 for purpose of transporting, and continues until delivery of  
9 the package to the destination facility.

10 In here, it is very important what the purpose of, the  
11 manifest shows. When the waste is accepted or acknowledged,  
12 transportation ends. And that's important. And that's a  
13 factor that's underlying our Special Condition. It's a  
14 limitation in terms of the preemption discussion.

15 And I caution us here, it's really the purview of the  
16 U.S. Department of Transportation to interpret their  
17 regulations. We have limitations in what we can interpret, and  
18 we are interpreting the regulations that we have statutory  
19 authority over.

20 And we have outlined the reasons and bases for the  
21 permit conditions that are at issue here. And as Alfred and Ed  
22 both explained, the basis for the permit conditions is really  
23 in our permit regulations, as we explained.

24 Can we take a break before...

25 MS. BATARSEH: Sure. Any additional?

1 MR. NIETO: I thought someone else also joined us.

2 MR. TRUTANICH: Carmen Trutanich joined the line, for  
3 Filter Recycling. T-r-u-t-a-n-i-c-h.

4 MR. SULLIVAN: Do the parties want to take a break for  
5 five minutes and go off the record?

6 MS. PERLMAN: Sure.

7 (Break)

8 MS. PERLMAN: I have a couple of quick points to make  
9 in rebuttal.

10 MS. BATARSEH: Go ahead.

11 MS. PERLMAN: Filter Recycling has been in business  
12 since the early 1990s, and has been handling this type of waste  
13 in exactly the same way for the last 25 years without an  
14 incident.

15 It applied for a very simple minor modification to its  
16 permit, and suddenly is faced with a couple of people in  
17 permitting, or enforcement, adding all kinds of new conditions  
18 into a permit that didn't exist before, to alter the way that  
19 they have been safely and efficiently conducting business to  
20 recycle hazardous waste, and keep things out of landfills for  
21 the state of California since the early 1990s.

22 If this condition is interpreted to preclude Filter  
23 from unloading a truck outside of the IWSA, then all facilities  
24 within the state should be reworking the way they do business,  
25 including transporters and generators and other facilities. It

1 is an incredibly strained and unusual interpretation of this  
2 regulation, the way the department seeks to define it.

3 Mr. Wong has thrown in there the idea that one facility  
4 asked the fire marshal for a report. I would like to tender  
5 the report that Filter did obtain into evidence today. There  
6 is no supporting evidence from the department that the fire  
7 marshal has said that this is in any way dangerous or a fire  
8 hazard to continue to do business the way Filter has been doing  
9 business for 25 some-odd years. And to the contrary, the  
10 inference is, the fire regulations would define, what is fire  
11 safety. We are well within the fire regulations.

12 So by implication, clearly this is not a fire hazard.  
13 Fire regulations wouldn't be addressing it. That's what  
14 they're there for. This is a couple people in permitting, with  
15 no known background in fire safety or fire regulations, who are  
16 throwing out there the idea that Filter is the one who's  
17 supposed to come in with someone -- with a declaration from the  
18 fire marshal, saying it's not a hazard. The burden is not on  
19 us to do that. Nobody asked us to do that.

20 I think Mr. Riddering also had a point to make.

21 MR. RIDDERING: Can I continue, or wait for you?

22 MR. NIETO: Go ahead.

23 MR. RIDDERING: Not only have I been the project  
24 manager on the permit modification, I also worked at Filter  
25 Recycling for 16 years, beginning in 1996. So I'm familiar

1 with the operations. It was always understood that, when we  
2 received ignitable waste or reactive waste, it was stored in  
3 the ignitable waste storage area.

4 I don't recall, and I didn't have time to pull it up  
5 last night, whether it was a conversation with the permit  
6 writer, Waquar, or if it was actually in a draft of the  
7 permit -- I believe it was in a draft of the permit -- where  
8 the Special Condition was added that would have restricted us  
9 from even moving waste from the outside ignitable waste storage  
10 area to the inside-the-building ignitable waste storage area  
11 because the drums would have been closer to the property line  
12 than 50 feet.

13 This came about from two inspectors who don't like a  
14 process that Filter Recycling conducts itself in, and was  
15 trying very hard to restrict that. And that's where all of the  
16 negotiations began to figure out what this language actually  
17 meant. Because Rick Jones actually intended us not to be able  
18 to use the inside ignitable waste storage area.

19 And that's what I have been seeking is just to  
20 understand exactly what it means. Does it mean storage? Does  
21 it mean offloading? If a truck has one drum of ignitable waste  
22 on it, and that ignitable waste is going to a different  
23 facility, but they are offloading three drums at Filter  
24 Recycling, does that truck have to be parked in the ignitable  
25 waste storage area to offload the drums coming to Filter

1 Recycling?

2           These are the things that are confusing that we would  
3 like clarified. In speaking with Permitting, we do get  
4 clarification, but we talk to Enforcement and we get a  
5 different interpretation. That's why we want to make sure that  
6 it's clear in the permit.

7           And by having a permit is where this Title 22 code  
8 section comes into effect, 66264.176. If Filter Recycling were  
9 a transporter, operating an exempt transfer facility, there  
10 would be no limitation except for the fire code. If they were  
11 a generator, I don't believe there's any restriction except for  
12 the fire code.

13           So we have a permit so that we are controlled, we are  
14 governed, our actions are controlled, but yet some of them are  
15 much more restrictive than if we didn't have a permit. And  
16 that seems backwards.

17           MS. PERLMAN: In follow-up to what Mr. Riddering was  
18 just saying, what Richard Jones said, and it was quite clear,  
19 he was asked the question, is there any reason, from an  
20 enforcement standpoint, why Filter Recycling should not be  
21 permitted to unload trucks containing ignitable or reactive  
22 waste and move them directly in the IWSA, as opposed to having  
23 the entire truck within the IWSA as it's being unloaded?

24           He answers: "This says anytime you have a container  
25 that's being stored, it needs to be within greater than 50 feet

1 from the property line."

2 That's essentially what this is talking about. He's  
3 referencing that condition. "Question: So you are  
4 interpreting this condition to mean that Filter Recycling can  
5 unload a truck containing ignitable or reactive waste, and move  
6 the unloaded waste into the IWSA?"

7 Mr. Jones says: "Yes, that would not be prohibited by  
8 this section."

9 And that's all that Filter is saying as well.

10 MR. NIETO: I want to speak to a couple of items.

11 MR. SULLIVAN: Can I interrupt for a second? It sounds  
12 like we are starting to reread information that's in the  
13 briefs. So if the information is in the briefs, we are already  
14 in possession of that.

15 So while we want you to make your case on the record,  
16 that information is already on the record. So for -- so we can  
17 get to the other issues and keep moving along, you know, if you  
18 want to keep your information -- if you want to reiterate  
19 strong points, but just be aware that we have the information  
20 if it's in the briefs.

21 Ed?

22 MR. NIETO: I heard a couple items Ms. Perlman talked,  
23 that the burden be on the department in terms of determining  
24 what is the appropriate requirements. And actually, in terms  
25 of specific -- this provision, USEPA wrote a letter, I believe

1 last year, and allowed the 50-foot to be adjusted based on  
2 information from the local fire department. That is a recent  
3 USEPA letter.

4 And the burden is on the facility to provide an  
5 application, not the department to find out what is all the  
6 applicable requirements. And that is consistent with the other  
7 facility Alfred referred to that actually had the fire marshal  
8 provide basis for waiver of the 50-foot.

9 Wade brought up this issue with regards to, well, if we  
10 actually weren't permitted, we wouldn't have this requirement.  
11 That's actually why you are permitted. You're not an exempt  
12 transfer facility.

13 Exempt transfer facilities have separate requirements  
14 that apply to them. Just like generators. There's other  
15 reasons why those laws are written. Those aren't what you're  
16 operating, thus those laws don't apply. Or if they apply, they  
17 don't undermine these other applicable requirements.

18 And in terms of using this avenue for determining, you  
19 know, what clarification for your operation of this facility,  
20 this isn't the avenue, or this permit appeal isn't the avenue  
21 for that.

22 We have correspondence with individual companies on a  
23 daily basis, saying what is our -- are we doing this correctly  
24 or not. And not in enforcement mode, but just in  
25 correspondence between the department and the facilities. I

1 suggest that we utilize that to resolve some of these  
2 misunderstandings.

3 MS. PERLMAN: Filter is not asking anyone to waive the  
4 50-foot requirement. We are not disputing that ignitables  
5 aren't to be stored within 50 feet. That's not the issue. We  
6 do not believe that loading/unloading comes within that  
7 requirement.

8 MS. GIORGI: The department -- I don't want to  
9 reiterate. We have addressed that point in our briefs.

10 MS. BATARSEH: Okay. If there are no additional  
11 arguments, we can move to issue No. 2.

12 MS. GIORGI: By issue 2, it's Appeal Comment 2?

13 MS. BATARSEH: Yes.

14 MS. PERLMAN: Appeal Comment 2, DTSC seems to concede  
15 and agree that the language "The permittee shall ensure all  
16 containers over five gallons to be processed are empty to the  
17 extent practical before processing."

18 Since we seem to be in agreement, I'm not sure what  
19 needs to be addressed there.

20 MS. GIORGI: DTSC agrees.

21 MR. WONG: We agree that with that revised condition,  
22 and just request that the permit be remanded back to the Office  
23 of Permitting to revise the permit accordingly.

24 MR. SULLIVAN: So the agreement is any container over  
25 five gallons shall be empty to the extent practical?

1 MR. WONG: The condition should read, "The permitting  
2 shall ensure all containers over five gallons to be processed,  
3 are empty to the extent practical before processing."

4 MR. SULLIVAN: Thank you.

5 MS. BATARSEH: Thank you. We can move to appeal  
6 comment No 3.

7 MS. PERLMAN: There's an agreement that it read:  
8 "Prohibited treatment includes gravity separation not conducted  
9 in accordance with Health and Safety Code 25123.5, subdivision  
10 (b)(2)(B).

11 MR. WONG: Yes. And then the rest of it should be,  
12 "The Permittee shall not blend or mix different weights of used  
13 oil, waste oil or oily wastes for recycling purposes." And we  
14 also -- oily water, not oily waste, for recycling purposes.  
15 And also request that the Permit Appeals Officer remand the  
16 permit back to the Office of Permitting to modify the language  
17 accordingly.

18 MS. BATARSEH: Okay.

19 MR. SULLIVAN: Both parties are in agreement on issue  
20 No. 3?

21 MR. WONG: Yes.

22 MR. RIDDERING: Yes.

23 MS. BATARSEH: With that, we move to appeal issue  
24 No. 4.

25 MS. PERLMAN: Okay. Appeal issue No. 4 has to do with

1 what appears to be a requirement that is completely unique to  
2 Filter Recycling, as a TSDF, which is completely  
3 overburdensome. And it is the restriction that Filter's permit  
4 is supposed to meet dual standard that is not required of other  
5 facilities, that the permit specified both common names and  
6 waste codes, and that it meets both standards.

7 The department argues that it is concerned that the  
8 proposed changes could potentially include waste streams such  
9 as gasoline that may be subject to federal permitting  
10 requirements. But if Filter isn't allowed to accept something,  
11 it's not allowed to accept something. If it's RCRA regulated  
12 and it can't accept it, it can't accept it.

13 Nobody is suggesting that by including a waste name or  
14 code in the permit, that it would mean that we can suddenly  
15 take RCRA waste. The department's argument appears that it  
16 could potentially expand the waste streams Filter is authorized  
17 to accept, but it really doesn't state how it's potentially  
18 going to be doing that.

19 DTSC attempts to -- seeks to rebut the argument that  
20 Filter is being uniquely treated here. Filter had brought as  
21 an example in the brief, the Demenno/Kerdoon permit, which  
22 doesn't have this requirement. And DTSC's response to that is  
23 that Demenno/Kerdoon has a RCRA-equivalent permit, but doesn't  
24 explain why this means that their permit should be allowed to  
25 be less clear, if that's the real reason behind this unique

1 requirement.

2 The department did agree to some revisions on page 16  
3 of their brief. And on those revisions, it appears there is an  
4 agreement on both sides. It's the parts that DTSC continues to  
5 dispute that Filter wants to address here.

6 DTSC makes example, for example, of liquid resin  
7 wastes. But there is no reason given why Filter should not be  
8 able to take non-RCRA liquid resin wastes. These are just new  
9 unique requirements that, after having a permit for 25 years  
10 that didn't have this requirement, the department seeks to  
11 insert into a minor permit modification.

12 I'm going to let Mr. Riddering address the specifics  
13 because he has more hands-on knowledge about the particulars of  
14 this.

15 MR. RIDDERING: I will be mindful of not reiterating  
16 what is in the briefs. It is not our intent to expand waste  
17 streams without going through the permitting process. It is  
18 just an attempt to clarify.

19 When the permit writer and I -- Waquar Ahmad and I  
20 first began on this, that was one of our first goals. And at  
21 first he actually just wanted to use state codes, but then  
22 probably he found out that it has to have the common names  
23 also.

24 In a discussion with Alfred Wong and I, he expressed  
25 that Table 1 was not intended to be a limiting list, but to

1 show examples of waste streams by each category. But then just  
2 moments later, I asked somebody in Enforcement, Paul Baranich,  
3 if we were to receive water contaminated with diesel fuel,  
4 would we be allowed to. And he stated no, that diesel fuel is  
5 not an oily water waste.

6 It has always been our interpretation that oily water  
7 is water with any amount of hydrocarbons that are non-RCRA,  
8 including gasoline that's been contaminated, or is old and is  
9 not ignitable.

10 So that's what we were attempting to do with the  
11 revision, was just to not have issues in the future with  
12 enforcement, that it was clear. And we have seen a recent  
13 permit, and I apologize, I can't remember if it was Bakersfield  
14 Transfer. I was sitting here trying to think of the new one in  
15 Irwindale that is under appeal.

16 MR. WONG: Clean Tech.

17 MR. RIDDERING: I know it was one of those two where  
18 their waste description is non-RCRA solids. And that's it. It  
19 doesn't describe any type of solids.

20 So that's what we were attempting to do, without  
21 following Enforcement's guidelines and ending up with a permit  
22 that has hundreds to thousands of waste streams, just looking  
23 at the oily water, oily hydrocarbon waste stream, you would  
24 have to have oil and diesel fuel, oil and mineral oil, oil and  
25 waste oil, oil and gasoline.

1           And we have asked Permitting, if that's what they want,  
2 we will write the permit that has eight, nine hundred waste  
3 streams. But, operationally, it seems more logical to try to  
4 condense them into smaller waste streams that includes them.  
5 And that's what we have tried to do.

6           MR. WONG: When we developed Special Condition 15,  
7 Special Condition 15 required that FRS receive transfer storage  
8 that treats only hazardous waste, specified in Table 1. And  
9 Table 1 consists of the waste codes, the common names -- I  
10 believe the EP waste code and a sample of the process that  
11 generates the waste.

12           Now, in order to fully understand the types of waste  
13 that FRS could accept, and also, as Wade said, he wanted  
14 clarity between DTSC and FRS, we developed this table in  
15 conjunction with Enforcement to make sure there wasn't any  
16 misunderstandings.

17           Now, as we were going through the permit modification,  
18 we recognized there are certain ambiguities in terms of these  
19 waste names. So we had tried to ensure that the waste that you  
20 could accept were the ones that were actually in the permit,  
21 and that we understood what they were.

22           Now, in terms of speaking to your argument that this  
23 condition is unique to Filter Recycling Services, there are  
24 many other permits that we had issued that used such a table  
25 with waste codes, common names, you know, physical properties,

1 and the process that generates the waste.

2 Now, as you also said, in order to have clarity, we  
3 wrote the condition that made it very clear on what you have to  
4 do, so there wouldn't be any misunderstandings between  
5 Permitting and Enforcement and Filter Recycling Services.

6 Now, in terms of you citing the DK permit, the DK  
7 permit was issued many, many years ago, and it's undergoing  
8 permit renewal right now. You haven't seen -- permits are  
9 required to be updated at least every ten years when the permit  
10 expires. And that draft of the new permit hasn't been  
11 circulated yet. So you maybe have been looking at a permit  
12 from over ten years ago, but it will be updated when the permit  
13 renewal goes out.

14 Also, I guess in terms of your argument that -- we also  
15 want to make it clear, using waste codes by themselves we  
16 consider to be overly broad. When we were looking at the unit  
17 No. 1, the shredder, and we were looking at the waste codes by  
18 themselves, and one waste code had pharmaceutical waste, and we  
19 couldn't figure why would you be putting pharmaceutical  
20 waste -- and what is pharmaceutical waste -- into a shredder.  
21 It makes no technical sense to us.

22 So this is why we needed to have common names with  
23 waste codes, and samples of what these things were.

24 Do you want to follow that, Ed?

25 MR. NIETO: Yeah. I think I have a couple items. One

1 thing, Ms. Perlman said that this facility is not allowed to  
2 accept a waste stream that would cause to be -- require a RCRA  
3 permit. She described that they understand that, so they don't  
4 accept anything that's RCRA-regulated waste.

5 But actually they do accept certain RCRA-regulated  
6 waste. It's not fully regulated. It's a conditional exempt  
7 small quantity generators. And that is the kind of specificity  
8 that we placed in that table, to ensure they are operating in a  
9 way that is consistent with the federal hazardous waste laws.  
10 If they don't, then California is jeopardizing its RCRA  
11 authorization delegation. That's why it's so important to us.

12 Now, how do we do that? By asking these specific  
13 questions, what waste streams they are actually going to  
14 accept. Wade mentioned we could -- they could write an  
15 application -- not a permit, they could write an application  
16 that has hundreds of waste streams.

17 RCRA facilities, our landfills, have hundreds of waste  
18 streams identified. The way they identify them is the RCRA  
19 hazardous waste codes. They are specific, and there are  
20 hundreds of them.

21 That actually makes one of the big differences between  
22 a fully regulated facility, like what I call "RCRA equivalent  
23 facilities," and the standardized permit facilities. We need  
24 to know those things at that detail.

25 What Wade speaks to is that, instead of having hundreds

1 of waste codes, it should be regards to a smaller amount of  
2 waste streams that they can -- that they handle in the same  
3 manner.

4 What that means is, yes, you could have hundreds of  
5 waste codes accepted, but you're only doing a dozen or so  
6 different treatment processes. And that's actually how our  
7 RCRA-equivalent facilities do too. They might accept hundreds  
8 of waste streams, but they only do four or five different  
9 processes. I think that's all.

10 MR. WONG: Also, in regards to Ms. Perlman's argument  
11 in terms of the resin, actually, we looked at this information  
12 regarding the resin, and we will concede to change the  
13 condition, or the waste stream for the resin waste stream  
14 3A[21] and agree that should be revised to be "Used and/or  
15 unused resins and metals, plastics, fibers, cardboard, glass,  
16 containers with resin whether liquid, solids or sludges," as in  
17 the petitioner's opening brief.

18 MS. GIORGI: Just to clarify one final point, there's  
19 been some statements about the existing facility and existing  
20 permit. We addressed this in our brief, but FRS's existing  
21 permit has a similar condition to 15, and it specifies that the  
22 "Permitting is only authorized to transfer, store or treat  
23 hazardous waste streams requiring permit, and specified by  
24 common name in part three of this permit," which is a manifest  
25 under the waste -- for the waste stream.

1           So there's a similar condition that is existing in  
2 FRS's permit, and that's an important component to Special  
3 Condition 15. It modified the existing condition to  
4 incorporate Table 1 in the requirements of Table 1, and using  
5 the information provided by FRS in their Waste Analysis Plan.

6           MS. PERLMAN: Mr. Wong stated he looked at these, that  
7 these common names were examples. FRS's permit has been  
8 interpreted as examples for 25 some-odd years. And as part of  
9 the modification process, FRS should not be limited from  
10 accepting waste streams that it has accepted safely for  
11 25 years.

12           In fact, something that has not really been raised in  
13 the briefs, but I have queried in my mind, is that, in going in  
14 and asking for a couple of minor tweaks to a Class 2 permit  
15 modification, and having essentially the entire permit  
16 rewritten to make it more restrictive and more burdensome on  
17 the facility, it would seem to run counter to 22 CCR 66271.4,  
18 which says, "In a permit modification under this section, only  
19 those conditions to be modified shall be reopened when a new  
20 draft permit is prepared."

21           Seems like a lot of these things that were just  
22 unilaterally inserted by the department, while it's taken six  
23 and a half years to process a Class 2 permit modification, are  
24 reopening all kinds of things that were already status quo for  
25 the last six and a half years.

1           Again, the definitions and the tables that Filter  
2 provided in its briefs are really intended to make this as  
3 clear as possible. And a lot of thought went into those. It's  
4 something that I think, as the department starts looking at  
5 some of these things one by one, they have come to concede  
6 that -- as they said on page 16 of their brief, there's a  
7 number of items that they concede that Filter has in fact  
8 clarified.

9           And now we hear that on the resins they concede that  
10 that is in fact more clarity. And I think, in general, if one  
11 were to review those tables and definitions that Mr. Riddering  
12 spent a lot of time on, it's something that would make this  
13 permit clear and enforceable.

14           MR. SULLIVAN: One point of clarification, with the  
15 existing table, Appellants have proposed it, or would the table  
16 Appellants have proposed cover all of the 800 or 900 waste  
17 products that the facility would like to receive?

18           MR. RIDDERING: Yes.

19           MR. WONG: Now, in terms of what I meant examples, I'm  
20 not saying that the waste codes -- the waste common name for  
21 examples, what I meant for examples, because in Table 1, the  
22 waste streams are identified by, first, waste number, then  
23 waste common names, then the waste codes, the UPA waste codes,  
24 and examples of the process that were generating waste.

25           So I'm not saying that the common names are examples.

1 That is very specific. The common names and the waste codes  
2 are very specific in terms of what FRS could accept. Now, the  
3 only example that I meant -- and -- our permit, and our  
4 response to come and clarify is the examples would have to --  
5 or -- of the process that would generate that type of waste.

6 Now, this table that was the developed -- that Table 1  
7 that is in the permit was captured, more or less, from the FRS  
8 permit application, in terms of their Table 2 and the Waste  
9 Analysis Plan.

10 Now, they have a similar table in the Waste Analysis  
11 Plan that was used to develop this table. And I believe maybe  
12 five -- there's six columns in there. We took five of those  
13 columns directly from the Waste Analysis Plan, and we had just  
14 clarified some of the examples in there.

15 Now, in terms of...

16 (Discussion held off the record.)

17 MR. NIETO: Now, this Waste Analysis Plan that was  
18 submitted as part of the permit appeal process, that document  
19 has not been fully vetted by DTSC. And thus for us to concur  
20 that that is an appropriate replacement of the conditions in  
21 the permit, or revision to the application, we would have to  
22 have necessary technical staff and time to go through that  
23 before you could make a determination if it's adequate.

24 MR. WONG: Now, also, I'd like to address the point on  
25 what Ms. Perlman considers to be a minor permit modification.

1 Now, when you make a permit modification and you ask for  
2 certain requests, we don't just look at those requests in  
3 isolation, such as, you know, a request to either add  
4 additional waste streams would then necessitate us looking at  
5 those waste streams, and seeing what the associated treatments  
6 that go along with it are. And we need to do a technical  
7 evaluation whether those wastes could be safely stored or  
8 treated in the facility's operation.

9 So it's kind of like a domino effect. When one permit  
10 condition, or one request to change one part of the permit may  
11 require us to evaluate other parts of the permit application to  
12 ensure that there's consistency within the permit, and to  
13 ensure that the waste could be safely handled.

14 MS. BATARSEH: Just a clarification on the Waste  
15 Analysis Plan: So there wasn't a Waste Analysis Plan, a  
16 revised one submitted as part of the permit mod request? I'm  
17 not clear what Ed said regarding the waste analysis.

18 MR. NIETO: There's been several Waste Analysis Plan  
19 submittals. As Wade talked about, he started out with one. He  
20 met with Waquar. They began talking about changing the tables  
21 in the application, so it was a revised application. And the  
22 last version that we've seen is part of your brief.

23 MR. RIDDERING: Part of the appeal process.

24 MR. NIETO: So that is another document that has not  
25 been vetted through a public review at all. And thus those are

1 all -- my point is that those -- that item needs to go through  
2 a public process.

3 MS. BATARSEH: That helps.

4 MS. PERLMAN: The department has made changes to this  
5 permit modification even following the public comment process,  
6 and clearly has the authority to do so, at any stage of this  
7 permitting process. I will let Wade address any other  
8 substantive issues.

9 MR. RIDDERING: No, I don't.

10 MS. BATARSEH: Okay. Any additional comments?

11 MS. GIORGI: Just a comment. The department has the  
12 regulations which allow it to modify the permit. It's not that  
13 the department modifies it at any time. There's a process that  
14 we follow, and that's what has been followed in this matter.

15 MS. PERLMAN: Well, the department wants to have it  
16 both ways. When the regulation says, as I just read it, that  
17 the department can't reopen all these new things based on a  
18 permit modification, and clearly has done so, but then speaks  
19 and says, oh, no, we can't do it further, which I don't agree  
20 with, I think the regulations allow the department to make  
21 modifications to the permit throughout this process. I think  
22 that's kind of what we are doing here.

23 MS. GIORGI: There are circumstances that came up with  
24 this permit where the department had to -- and it's outlined in  
25 the brief -- create special conditions to address deficiencies

1 or concerns in the modification request that was submitted.

2 And so there are components that were added by the  
3 department to address these issues that were identified in the  
4 request. The request itself, by its very nature, requesting as  
5 many new waste streams and waste codes, new waste streams as  
6 part of the permit mod, opened up a lot of different questions  
7 as to how those waste streams were going to be handled at the  
8 various different units that are permitted.

9 So as Alfred explained, it had a domino effect in terms  
10 of closure costs, and other components related to it that the  
11 department had to evaluate.

12 So the department modified the permit -- created permit  
13 conditions to address concerns that were identified in the  
14 submittal. I would not say that it sometimes modified the  
15 permit and sometimes didn't. We explain our rationale and our  
16 basis in the documents and in the administrative record of why  
17 it's done.

18 Here at this stage in the appeal, we have a new  
19 document that was submitted. It has to go through our vetting  
20 process and evaluation to make sure it technically will work  
21 for this permit, but it also potentially is opening up new  
22 issues that really should be vetted with the public as well.  
23 That's a question that we are raising on the new requests. Is  
24 it so substantial that it opens up something that should go  
25 back up for public comment and review.

1 MS. PERLMAN: We don't agree that it is. And with  
2 regard to what you're saying regarding opening up various  
3 items, as an example, the condition that we just described of,  
4 you know, ignitable or reactive waste needs to be located  
5 entirely within the IWSA, including transport vehicles, new  
6 waste codes didn't open up that condition. That's just one  
7 example.

8 I would ask the department, and I don't have the  
9 information on this, but I would defy the department to come up  
10 with one other facility where it's taken seven years to process  
11 a permit modification.

12 Be that as it may, we are here where we are now, and  
13 what we are trying to do is get a permit that is both clear and  
14 that furthers the mission purpose of allowing Filter to accept  
15 the waste streams that is appropriate and legal for them to  
16 accept, to further protect human health and the environment.  
17 That's all we are trying to do.

18 MR. NIETO: I want to bring up something that  
19 Ms. Perlman talks about, the length of this Class 2 permit mod.  
20 One of the items that I believe it's kind of been said today, I  
21 will make it clear, that this permit mod involves three aspects  
22 that is additional to a full permitted facility.

23 It requires us to ensure that we are consistent with  
24 hazardous waste -- federal hazardous waste laws. It requires  
25 us to be consistent with 25201.6, prohibitions or limitations

1 on operation of standardized permitted facilities, including  
2 the prohibition on the treatment of used oils. The prohibition  
3 on land disposal.

4 And those three items are all part of this Class 2  
5 permit mod. This wasn't just one Class 2 permit mod that added  
6 one more unit for treating the same waste stream but in a  
7 different manner, or resizing of a tank system.

8 This involved those three core questions that are vital  
9 to DTSC doing -- applying the California laws appropriately to  
10 this standardized permit tier. And yes, it -- it involves the  
11 experts throughout the department to get the correct answer to  
12 that.

13 And some of those RCRA waste streams that we want --  
14 both parties want to ensure that they are only accepting those  
15 that are eligible, and that required us to do a thorough  
16 investigation of that waste stream.

17 MS. GIORGI: Just to -- I don't want to belabor this,  
18 but going back to the IWSA issue. It wasn't just the waste  
19 codes that were requested -- the new waste streams that were  
20 requested. There was a new unit that was requested. There was  
21 truck-to-truck transfer, the facility size increased.  
22 Ignitable waste storage area increased to cover into kind of a  
23 crossover area of the various units.

24 So there was -- that condition is related to the permit  
25 mod request that was requested, and it is part of this domino

1 effect that the department had to evaluate.

2 MS. BATARSEH: Okay. If there are no additional  
3 comments on item 4, we can move to Appeal Comment No. 5.

4 MS. GIORGI: Actually, I just want to circle back on  
5 something.

6 You know, the department did agree to some revisions to  
7 Table 1, and agree to an additional one here. I want to make  
8 it clear that Permitting would then request that the permit be  
9 remanded back to the Office of Permitting to make those changes  
10 that we agreed upon.

11 We do not agree -- like we said before, we need to do a  
12 full analysis on the waste analysis plan and definitions that  
13 were provided. But there were some agreements on Table 1 that  
14 could be remanded back to Permitting.

15 MS. PERLMAN: With respect to the request to remand  
16 things to Permitting, I would ask there be some type of time  
17 frame put upon that, given how long we've already been in this  
18 process. It seems like this is basically a typing function,  
19 since the language has been agreed upon in certain instances.

20 MS. GIORGI: I think it just matters -- I think our  
21 question would be, it depends on what gets remanded back for  
22 evaluation.

23 MR. WONG: Yes.

24 MS. GIORGI: The ones that we have agreed to, I think  
25 it's reasonable to have a time period, but if there are larger

1 issues, and there are a lot of issues in this permit appeal, we  
2 defer to the permitting appeal officer in terms of if you want  
3 to put time periods associated with your remand. I don't know  
4 what has happened in previous permit appeal determinations.

5 MS. BATARSEH: We will look into the other thing that  
6 came up, which was the need -- if the changes are substantive  
7 enough to require us -- require you to go out to another public  
8 comment period. So those need to be evaluated, because that  
9 would impact the timeline as well.

10 MS. PERLMAN: Fair enough. I would just ask, when we  
11 are concluded with this, that there be a timeline. We can  
12 discuss what might be appropriate.

13 MS. BATARSEH: With this, we can move to Appeal Comment  
14 No. 5.

15 MS. PERLMAN: So Appeal Comment No. 5, Filter Recycling  
16 requested that Special Condition No. 12 be clarified to add the  
17 italicized language, "or into a containment unit" so that the  
18 sentence would read, "All solid hazardous waste transfers shall  
19 occur directly from one container into another container, or  
20 into a containment unit."

21 The condition, as it's worded, already takes care of  
22 prohibiting solid waste transfer from occurring if there are  
23 visible emissions or clouds of dust that are created or likely  
24 to be created.

25 The change that Filter has requested is not contrary to

1 regulation. It is not contrary to human health or the  
2 environment. DTSC acknowledges in its response brief on  
3 page 17 that this unit is used for, quote, inspection and  
4 verification of incoming waste. That's all Filter wants to be  
5 able to do: inspect, verify, and recycle.

6 It aids inspection, verification, and recycling if bulk  
7 solid hazardous waste can be unloaded onto a four-inch paved  
8 surface in a containment unit, so that we can look at it and  
9 see what it is, and make sure that it's, first of all, in  
10 compliance with what the generator stated it is, and second of  
11 all, to see if there's anything in there that can be recycled.  
12 It is safer to do it this way than to have a human being  
13 looking into a roll-off bed.

14 Department strains the regulations to come to an  
15 interpretation that somehow makes this contrary to regulation,  
16 although it doesn't ever really come up with any practical  
17 argument as to why this is problematic.

18 We don't agree. And I went on for some length in the  
19 brief about why in fact this is not contrary to regulation, and  
20 I'm mindful of the fact that you don't want us to reargue  
21 what's already in there. But again, this is a practice that  
22 has been conducted safely without any problems for 25-plus  
23 years, and predates the existence of the department, just as  
24 most of these other new conditions do.

25 In response to some of the arguments raised by the

1 department in its brief, Unit No. 9 does qualify as a  
2 container. Health and Safety Code Section 25200.19, which is  
3 the section cited by DTSC, states that a containment system or  
4 device is, quote, capable of collecting and containing leaks  
5 and spills that may reasonably be anticipated to occur during  
6 loading and unloading operations.

7 That is exactly what Unit No. 9 is. It is capable of  
8 collecting and containing leaks and spills that may be  
9 reasonably anticipated to occur during loading/unloading  
10 operations.

11 That unit is not -- no one at Filter is suggesting that  
12 we are going to be unloading liquids there. This is strictly  
13 bulk solids. Even the department acknowledges -- while we do  
14 not agree with their interpretation and regulations, even the  
15 department acknowledges that non-liquid waste can qualify for a  
16 variance of requiring a secondary containment system. This is  
17 a fully paved, bermed, roofed, sprinklered, security-fenced  
18 unit, where these operations have been conducted safely and  
19 efficiently for a long time.

20 So Filter respectfully requests that the agency allow  
21 Filter to continue inspecting, verifying, sorting for recycling  
22 to occur, as it has done in the past.

23 MR. WONG: Now, Filter Recycling Services has stated  
24 that in their normal practice, that they have been allowed to  
25 offload solid waste, or they are allowed to -- permitted to

1 offload solid waste onto an asphalt pad, essentially Unit  
2 No. 9, for the purpose of sorting and inspection.

3 Now, we believe that that assertion stemmed from a  
4 single sentence in their 1093(a) form, which is equivalent to  
5 the RCRA part A form. In one section of that form, it talks  
6 about -- or that sentence that they use to justify offloading  
7 onto an asphalt pad, is that solid waste that is received at  
8 FRS are unloaded against the west wall of the  
9 receiving/shipping area for inspection and sorting.

10 Now, we believe that that sentence had been taken out  
11 of context. Now, if you look at the preceding sentences before  
12 that and in that paragraph, it states -- and let me read for  
13 you -- that, "FRS inspects and verifies incoming wastes and is  
14 used as a standby waste staging area before transferring into  
15 the treatment area inside the main building for consolidation.  
16 There are solid debris roll-off bins located in this area.  
17 Each bin is used to consolidate specific type of waste; such  
18 as, metal scraps, contaminated solids, solid paint-related  
19 debris, solid oil-related debris, and miscellaneous solid  
20 waste." Then it goes on to state that, "Solid waste that is  
21 received at FRS is unloaded against the west wall of the  
22 receiving/shipping area for inspection and sorting."

23 So this would imply that FRS was unloading the solid  
24 into the roll bins against the west wall. So we never agreed  
25 or permitted them to unload directly onto the concrete pad.

1           Now, even if this unloading of the concrete pad -- onto  
2 a concrete pad is prohibited in FRS's permit, Special  
3 Condition 2 clearly states that, "Hazardous waste shall not be  
4 land disposed at the facility, whether temporarily or  
5 permanently."

6           And this unloading onto a concrete pad, or an asphalt  
7 pad, is considered to be a waste pile. And waste pile is a  
8 form of land disposal.

9           Now, I would also like to point out that in this case  
10 where there may be some misunderstandings between the  
11 standardized permit application and the permit itself, there  
12 are provisions in the permit that -- and one of them states  
13 that, in the event of any conflict between the standardized  
14 permit and the permit -- standardized permit application  
15 referenced herein, the provisions of the standardized permit  
16 shall be controlling, which means, even though they may  
17 understand that statement in the application allows them to do  
18 land disposal, the permit itself specifically and especially  
19 prohibits that practice.

20           I guess in terms of Ms. Perlman citing 25200.19,  
21 talking about a containment system or device in which to  
22 capture the liquid, that containment system device speaks to  
23 secondary containment, not primary containment.

24           And we are unsure of what the petitioner is asking for  
25 in terms of what a containment unit would entail. The

1 regulations don't define containment unit, so we are unsure of  
2 what is being requested. Is it a container? A containment  
3 building? We need more specificity.

4 Oh. So, lastly, Unit 9, in which they want to directly  
5 offload the waste into, has already been designated as a  
6 container storage area in the permit. It's not -- a container  
7 storage area is an area for which containers of waste are to be  
8 placed into and stored, not for waste to be directly offloaded  
9 into, or, essentially, bulk waste is not to be offloaded  
10 directly into that unit, because then you would be using your  
11 secondary containment for primary containment.

12 MR. RIDDERING: Ready to throw it over?

13 MR. WONG: Yes.

14 MR. RIDDERING: That's what we are seeking is  
15 clarification beyond what our initial understanding of the  
16 permit was, how we have always operated, and even how  
17 inspectors have dealt with us.

18 This goes all the way back to, I believe it was 1995  
19 with Brian Wu cited Filter Recycling for operating a waste  
20 pile. And I wasn't there at the time, but it's my  
21 understanding that the agreement was that as long as we were  
22 working the pile, recovering and reloading, that it wasn't a  
23 waste pile.

24 And it was John Bennet's understanding that the global  
25 settlement in 2004 took care of that issue. I mentioned this

1 entire operation to Rick Jones in 2007 during an inspection and  
2 never heard anything else about it.

3 In 2012 or '13, he seemed very surprised that this was  
4 going on. I showed him in our permit where the facility  
5 mapping showed a consolidation area, and he agreed that he  
6 could see that in there.

7 So that's what we are seeking, is clarification. In  
8 response -- during this appeal process, in response to the  
9 USEPA fast back (phonetic) 12890, stating that our area 9 is  
10 not sufficiently impervious, that is why I submitted a  
11 clarification or a rewrite of the Unit 9 description, and in  
12 offering to place a half-inch steel plate in that area to act  
13 as primary containment.

14 MS. PERLMAN: And that offer still stands. Filter  
15 Recycling is perfectly willing to install that steel plate if  
16 it makes the department more comfortable with it.

17 On the legal issue, I would stress that this -- that  
18 the inspection and sorting does not mean that Filter is leaving  
19 the pile unattended. It is a working -- unload, inspect, sort,  
20 load. This is not a situation where there is an argument that  
21 there's supposed to be an accumulation that's left unattended.

22 The definition of a waste pile under Section 66260.10  
23 is, "Any non-containerized accumulation of solid non-flowing  
24 hazardous waste that is used for treatment or storage, and that  
25 is not in a containment building," that is not the situation

1 here. It is not being used for treatment or storage. It's  
2 being used for inspection.

3 Lastly, then I will let you get your two cents in,  
4 Mr. Wong expressed some concern about the language of "into a  
5 containment unit." The regs use the word "containment  
6 building." We can use the words "regulated unit" if that makes  
7 the department more comfortable. I don't really see that as  
8 being something that isn't clear, but if it needs to be more  
9 clear, as far as that's concerned, I'm sure we can come up with  
10 the appropriate language.

11 MR. NIETO: I just have to speak to a couple items. I  
12 appreciate Wade's point, saying that this is an opportunity for  
13 us to clarify this. So we have spoken already about  
14 standardized permits not allowing land disposal. That is an  
15 action by our legislature, telling us that no land disposal is  
16 occurring outside standardized tiers.

17 So then we speak to the definition of land disposal.  
18 And I do have problems with using the term "regulated units"  
19 because regulated units in the context of Title 22 does mean  
20 only units that are land disposal units. So we wouldn't use  
21 that term, Deborah. But I also believe that you brought up the  
22 idea of "containment building." I believe it's a 1992 Federal  
23 Register that established the containment building provisions  
24 in Section 66264.1101. And in that section, USEPA specifically  
25 stated that they are establishing this new type of unit called

1 a "containment building" because waste piles are a form of land  
2 disposal.

3 Now, given all that history, you speak to the  
4 definition of waste piles, and you're essentially telling USEPA  
5 that all you did with regards to containment buildings wasn't  
6 necessary. Storage, the definition of storage. You explained  
7 what the definition of waste pile is, and I'm sorry, Bob, I  
8 think we said this in our brief, but storage goes on to say  
9 that any -- I believe, placement of uncontained materials for  
10 any length of time is a form of waste piles.

11 And that's why it links back. Storage makes a waste  
12 pile -- storage for any amount of time on the ground makes a  
13 waste pile land disposal. Land disposal is prohibited under  
14 standardized tiers, and thus we are not allowed to do it.

15 And Wade properly suggested a different type of unit.  
16 I wouldn't call it a "container," necessarily, but we would  
17 probably -- regulatorily we would call it a miscellaneous unit,  
18 and we would have to evaluate that to make certain what  
19 conditions would be appropriate for your operations after you  
20 proposed how you would operate that unit. And you've got a  
21 revised Unit No. 9 there.

22 So given that, and given the previous discussion today  
23 in terms of the domino effect, here's a new unit, how much cost  
24 it would -- for example, which waste streams would be accepted  
25 there, it looks like you identified that. What cost would be

1 to remove that in terms of a closure plan, what associated  
2 closure cost estimates, are all things that we do evaluate  
3 whenever we get new information.

4 I think those are the points that come to mind as I  
5 hear your guys' points. Thank you for bringing them up.

6 MR. WONG: As Ed pointed out, in terms of the proposed  
7 installation of a steel plate for offloading, DTSC would need  
8 to evaluate whether FRS could install such a device into Unit  
9 No. 9.

10 We have concern over whether that would meet the  
11 standards in Chapter 14, Title 22. As the revised description  
12 says in Exhibit C in the reply brief, the waste may contain  
13 free liquids, but the waste will be placed into this area after  
14 any free liquids from settling and transportation have been  
15 drained.

16 However, DTSC believes there may be residual liquids in  
17 that waste, and by the activity -- or by the act of offloading  
18 it onto a steel plate, that residual liquid may then run off  
19 that steel plate into the secondary containment. So that  
20 wouldn't meet the Chapter 14 requirements for such a device.

21 Now, as I said, this proposal is unusual, and so DTSC  
22 would fully need to evaluate this proposal to see -- to ensure  
23 it is protective of human health and environment. And DTSC  
24 doesn't believe that the permit appeal is the proper venue for  
25 evaluating such a device.

1           There are certain technical questions that would need  
2 to be answered in terms of this. Unit 9 right now is also used  
3 for storage of liquid waste. So would such a device reduce the  
4 usable capacity for secondary containment. If such technical  
5 issues exist, we would have to evaluate. And again, we believe  
6 that this appeal is not the proper venue for doing such an  
7 evaluation.

8           So we request that you deny the petitioner's Appeal 5.

9           MS. PERLMAN: I think Mr. Wong is inserting facts that  
10 don't pertain. We are not talking about liquid waste here.  
11 And I don't think there is any issue with respect to whether it  
12 would reduce the available space for storage. I think  
13 Mr. Riddering probably could address that better.

14           MR. RIDDERING: Being that the waste is -- still would  
15 not be intended to be a continuous pile, it is going to be  
16 offload, sort, reload. If it did have any effect on secondary  
17 containment, it would be for that short length of time.  
18 Without looking at the numbers, I believe we actually have  
19 sufficient secondary containment beyond what is required that  
20 would cover that.

21           MR. NIETO: I would simply say that, as part of their  
22 application -- or they have actually identified where the  
23 roll-off bins are actually located in their layout. And that  
24 is actually based on -- drives the independent engineer's  
25 certification of secondary containment, where this device,

1 which we don't know the dimensions of or how it's going to be  
2 adequately supported, are all things that the engineer will  
3 have to determine. This is not a container. This will be a  
4 miscellaneous unit.

5 So depending on the weights that could impact that  
6 asphalt item mostly during hot summers, again, all things that  
7 we would question or hope to have answered as part of the  
8 submittal of information, and as I speak, I'm thinking that the  
9 engineer should speak to those items. This obviously is a  
10 larger device, it's not a small device, and the weight on it  
11 could damage the secondary containment area that is there to  
12 protect releases of liquids.

13 Anyhow, that's why I think it is -- would require a  
14 significant evaluation, and follow the procedures that we do  
15 for any other kind of additions of new units to a permitted  
16 facility.

17 MS. GIORGI: Deborah, you raised a point that Alfred  
18 was bringing in new facts not before him. And I believe in his  
19 analysis and review was the review of the documents that were  
20 submitted by FRS in the process that this was explained. So  
21 his statements were based on the documents that were provided  
22 in your appeal brief.

23 MS. PERLMAN: I was referring to the fact that he was  
24 indicating that there could be liquids present, specifically.  
25 I don't think that was raised. In any event, the briefs say

1 what they say.

2 MR. SULLIVAN: Done with issue 5?

3 MS. BATARSEH: If we are done with issue 5, this  
4 concludes our conference.

5 MR. SULLIVAN: I have a point of -- question of  
6 clarification. On issue 2 and issue 3, which it appears the  
7 parties agree upon, is it being remanded back to Permitting, or  
8 your request, is it to be remanded back to Permitting to go out  
9 to public notice?

10 MR. WONG: We would leave that to the permit appeal  
11 officer's discretion.

12 MR. SULLIVAN: So you don't have --

13 MS. GIORGI: In other permitting cases where language  
14 was agreed upon, it was -- and the changes weren't substantial,  
15 the document was not recirculated for public comment. It was  
16 finalized, and that was the department's final decision. Some  
17 of the requests here, though, in DTSC's opinion rise above that  
18 level. I think --

19 MR. SULLIVAN: The reason I ask that as a point of  
20 clarification is, say, for example, on the issue of emptying  
21 the containers, I believe, in the permit application or the  
22 permit, there are diagrams that show emptying containers. And  
23 I think, in some of the materials submitted in one of the  
24 briefs, it indicates containers were never empty. They were  
25 always thrown in the shredder.

1           So the description that we might have might be  
2 inconsistent with the documentation that's existing for the  
3 permit or the permit application. So it seems like the parties  
4 are requesting the permit appeals office to be able to make  
5 those changes without going back to the public notice --

6           MS. PERLMAN: Yes.

7           MR. SULLIVAN: -- since they are insignificant.

8           So my question is how, in the parties' view, you know,  
9 since this proceeding is public notice, and the public could  
10 show up and listen to these comments and be fully informed and  
11 respond, do you think the permit appeals officer has that  
12 authority to make those changes, say, like on issue 2 or 3,  
13 which you have agreed upon, or maybe something more substantial  
14 like issue 4 or 1.

15           MS. GIORGI: Is there an opportunity for the public to  
16 respond to statements that were made here?

17           MS. PERLMAN: The public has had an opportunity to  
18 respond throughout the process. All of these issues were  
19 issues that were raised in the comments and in the subsequent  
20 briefing.

21           And I don't believe there is a provision in the  
22 regulations for it to go back to public comment if it's  
23 something that the permit appeals officer determines.  
24 That's -- whatever the outcome of this proceeding, and whatever  
25 the outcome of the decision, it doesn't go back to public

1 comment at that point.

2 I think the point is well made that this is a public  
3 hearing, and that the changes that are agreed upon are  
4 insignificant. But even if they weren't insignificant, clearly  
5 you have the authority to make the decisions that you see fit  
6 here, and that would not go back to public comment.

7 MR. SULLIVAN: I wasn't making a point. I was asking  
8 if the parties had an opinion or position.

9 MR. NIETO: My opinion is -- I think this would be  
10 directed towards Paul, is the scope of the mailing list that  
11 was informed of these proceedings.

12 MR. RUFFIN: We can review that.

13 MS. PERLMAN: It was published.

14 MR. NIETO: Well, typically, when we public notice  
15 things, we do use -- look at the facility's specific mailing  
16 list from our public participation officers -- office to ensure  
17 that all interested parties understand what's occurring, not  
18 just those that have been involved in the permit  
19 decision-making.

20 MR. RUFFIN: This appeal hearing -- or excuse me,  
21 informal appeals conference was public noticed in a way similar  
22 to a draft permit, in that we sent the notice to the mailing  
23 list that was the facility's established mailing list provided  
24 by our public participation staff. And it was published in the  
25 local newspaper.

1           So that was -- and it was on our website as well. So  
2 that was the extent of the public notice for this informal  
3 appeals conference.

4           MR. NIETO: Thanks.

5           MS. PERLMAN: Another item that hasn't yet been  
6 addressed is the current stay that's in effect. It's been  
7 almost seven years since Filter made the request for this  
8 permit modification. I do think that the uncontested permit  
9 conditions are severable from what remains of the contested  
10 permit conditions. And I think it's appropriate at this point  
11 to lift that stay.

12           MS. GIORGI: We addressed this in our brief and  
13 deferred to public appeals for decision.

14           MS. BATARSEH: All right. So this concludes our  
15 conference. We will get back to you about that request.

16           MS. PERLMAN: Okay. Then I guess I'm still a little  
17 unclear about how we will proceed from here with respect to the  
18 other items. Is that something that can simply be authorized  
19 by the permit appeals officer in terms of the agreed-upon  
20 changes, and then subsequent decision on the contested ones?

21           MR. SULLIVAN: When we issue a decision, we will  
22 address all of the issues. And we should be pretty quick in  
23 issuing a decision.

24           One final question for the parties: Does anyone have  
25 any objection if we take their fire consultant's report?

1           MR. NIETO: I guess my feeling is what I said in my  
2 statement, that that is not the local fire marshal.

3           MS. PERLMAN: No, it's not, but you have made that  
4 point --

5           MR. NIETO: But given that -- I did. Myself, as a  
6 permit writer, I would say thank you, let's get the fire  
7 marshal involved. I'm not certain --

8           MR. SULLIVAN: We will distribute it to all parties.

9           MR. NIETO: I know, but my gut feeling is, we are  
10 giving credence to something that the department -- our office  
11 of permitting would simply say thank you, let's go talk to the  
12 fire marshal.

13           So I object to it from that standpoint. And given also  
14 the direction that we were received in the frequently asked  
15 questions, that no information would be provided. And  
16 otherwise we would have had more supporting documents for our  
17 statements.

18           MR. SULLIVAN: Thank you. We won't take it. Contact  
19 Paul when transcript is ready.

20           (Whereupon the proceeding ended at 12:18 p.m.)

21

22

23

24

25

REPORTER'S CERTIFICATE

I, ALICIA R. FORBERG, do hereby certify:

That this proceeding was taken before me at the said time and place, and was taken down in shorthand writing by me;

That I am a Certified Shorthand Reporter of the State of California;

That the said proceeding was thereafter, under my direction, transcribed into computer-assisted transcription; and that the foregoing transcript constitutes a full, true, and correct report of the proceedings which then and there took place; that I am a disinterested person to the said action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this 19th day of December, 2014.

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ALICIA FORBERG, C.S.R. #12558

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