

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:) Docket PAT-FY14/15-001
)
FILTER RECYCLING SERVICES, INC.) FINAL APPEALS DECISION AND
180 West Monte Avenue) ORDER
Rialto, California 92316)
County of San Bernardino) California Code of Regulations,
title 22, section 66271.18
U.S. EPA ID. NO. CAD982444481) Effective Date: February 3, 2015

I. INTRODUCTION

On April 21, 2014, the Department of Toxic Substances Control (Department or DTSC) issued a Class 2 Permit Modification decision for the Series A Standardized Hazardous Waste Facility Permit (Permit) for Filter Recycling Services, Inc. (FRS), located at 180 West Monte Avenue, Rialto, California.

On August 25, 2014, DTSC's Permit Appeal Officer¹ issued Order number PAT-FY14/15-001, granting review for five (5) issues raised by petitioners Mr. Wade Riddering and Ms. Deborah Perlman on behalf of FRS on May 27, 2014. Pursuant to California Code of Regulations, title 22, section 66271.18, subdivision (c), the Permit Appeals Officer established a briefing schedule for this appeal, which concluded on October 17, 2014. Interested persons were invited to submit written arguments pertaining to the issues granted review. An opening brief was submitted by Ms. Perlman and Mr. Riddering on September 17, 2014, a brief was submitted by DTSC's Office of Permitting on October 3, 2014, and a reply brief was submitted by Ms. Perlman and Mr. Riddering on October 17, 2014. An Informal Appeals Conference (IAC) was held on December 11, 2014.

¹ Ms. Pauline Batarseh, Branch Chief, Policy Implementation and Support, Hazardous Waste Management Program.

1 This Final Appeals Decision and Order constitutes the final decision on the merits
2 of the petition for review of the final permit modification decision for the FRS facility.

3 **II. JURISDICTION**

4 DTSC has jurisdiction over hazardous waste facility permits and the imposition of
5 conditions on such permits pursuant to the California Health and Safety Code sections
6 25200 et seq. and California Code of Regulations, title 22, section 66270.32 and to
7 issue a decision in permit appeals according to California Code of Regulations, title 22,
8 section 66271.18.

9 **III. BACKGROUND**

10 **A. LOCATION AND DESCRIPTION OF THE FACILITY**

11 The location, history, and description of the facility are presented in the Permit as
12 follows:

13 The Permittee's facility (hereafter the Permittee's Facility or the Facility) is
14 located at 180 West Monte Avenue, Rialto, in San Bernardino County, at
15 latitude 34 degrees 3 minutes 34 seconds and longitude 117 degrees
16 22 minutes 51 seconds. The Facility is located on land that is zoned by
17 the City of Rialto for heavy industrial land use. The Facility is not located
18 in a designated flood zone. The Facility is located on Parcel 4 of Parcel
19 Map 12364, as per Map recorded in Book 146, Pages 38 and 39 of Parcel
20 Maps, in the Office of the County Recorder of San Bernardino, State of
21 California.

22 Filter Recycling Services, Inc. (FRS) has operated at this location since
23 1990 and was granted Interim Status authorization in 1993 pursuant to
24 Health and Safety Code section 25201.6. In 1993, FRS also applied to
25 the DTSC for a Series A Standardized Hazardous Waste Facility Permit
26 (Standardized Permit or Permit) authorizing the operation of a hazardous
27 waste treatment and storage facility. DTSC issued the Standardized
28 Permit to FRS on December 17, 2001. The Permit became effective
January 22, 2002 and expired January 22, 2012. FRS has since
submitted an application to renew its Permit. The 2002 Permit remains
effective until DTSC makes a final decision on the FRS Permit renewal
application.

FRS accepts multiple wastestreams (mostly contaminated containers of
various types) and uses shredder/seperator units to generate metallic
material which are sent to an offsite smelter for metal reclamation. During

1 the shredding and separation process, hazardous wastes are generated
2 and are sent offsite to authorized treatment or disposal facilities. FRS also
3 uses the shredder/separator to shred consumer products which the
4 manufacturer requires to be destroyed. Hazardous wastes, including
5 ignitable waste, are also generated when FRS runs aerosol cans through
6 puncturing machines before putting the empty cans into the shredder/
7 separators. Additionally, FRS accepts waste antifreeze and used oil that
8 are bulked into larger containers to be sent to an offsite recovery facility.

9 The wastes accepted by the facility are limited to wastes that are not fully
10 regulated as hazardous wastes under the Resource Conservation and
11 Recovery Act (RCRA) in accordance with federal regulations contained in
12 Part 261, Title 40, Code of Federal Regulations. These wastes would be
13 considered RCRA hazardous wastes, but are exempted or excluded from
14 federal facility permitting requirements. Additionally, FRS also accepts
15 wastes that are regulated as hazardous wastes only in California. FRS
16 also accepts non-hazardous wastes. The management of the non-
17 hazardous wastes is not regulated under this Standardized Permit.

18 Accepted liquid wastes are either stored and shipped to an authorized
19 hazardous waste facility, or combined with similar liquids and shipped to
20 an authorized hazardous waste facility. Solid wastes are 1) stored and
21 shipped to an authorized hazardous waste facility, 2) combined with
22 similar solid wastes and shipped to an authorized hazardous waste facility,
23 or 3) treated through shredding and separating equipment and the
24 different separated wastes are shipped to either an authorized hazardous
25 waste facility or a non-hazardous waste management facility.

26 A written assessment that was certified by an independent, qualified,
27 professional engineer registered in California was completed for the
28 containment systems. In this assessment, the engineer certified that the
containment systems satisfy the requirements of sections 66264.175,
66264.193, 66270.15, and 66270.16 of Title 22 of the California Code of
Regulations. Additionally, safe management practices, operating
procedures, inspection programs, and the facility's contingency plan all
ensure environmentally safe operations at the Facility.

24 **B. PERMIT MODIFICATION DECISION**

25 In a letter dated February 24, 2008, FRS identified proposed permit
26 modifications. FRS submitted a Class 2 permit modification request to DTSC on
27 May 25, 2010, pursuant to California Code of Regulations, title 22, section 66270.42.
28 FRS published a public notice on June 6, 2010, and held a public meeting on

1 July 14, 2010. The public comment period closed on August 16, 2010. No substantive
2 comments were received by DTSC. Pursuant to California Code of Regulations,
3 title 22, section 66270.42, subdivision (b)(6)(A)3.b., DTSC announced a draft permit
4 modification decision in a public notice issued on February 15, 2013. The public notice
5 declared the start of a 45-day public comment period and solicited comments on the
6 Draft Modified Permit decision. On March 19, 2013, at 5:30 P.M., DTSC held a public
7 meeting and hearing at the Rialto Public Library to receive comments. The public
8 comment period ended on April 2, 2013. Mr. Riddering and Ms. Perlman provided
9 testimony at the public hearing and written comments during the public comment period.
10 On April 21, 2014, DTSC issued a Notice of Final Hazardous Waste Facility Permit
11 Modification Decision and established a period, ending on May 27, 2014, for filing a
12 request for review of the decision under California Code of Regulations, title 22, section
13 66271.18.

14
15 **C. PERMIT APPEAL PROCESS**

16 Pursuant to California Code of Regulations, title 22, section 66271.18,
17 subdivision (a), the period for filing a petition for review (appeal) of the FRS permit
18 modification decision ended on May 27, 2014. The petition for review was submitted by
19 Mr. Riddering and Ms. Perlman (Petitioners) on May 27, 2014. Pursuant to California
20 Code of Regulations, title 22, section 66271.18, subdivision (c), the Permit Appeals
21 Officer issued the "Order to Set Briefing Period for Petition for Review," Docket PAT-
22 FY14/15-001, on August 25, 2014, granting review for 5 appeal comments and staying
23 the permit. A public notice was issued on September 4, 2014, establishing a briefing
24 schedule for the purpose of allowing individuals an opportunity to file a written argument
25 concerning the 5 appeal comments granted review. Briefs were submitted by
26 Ms. Perlman and Mr. Riddering on September 17, 2014, and on October 17, 2014, and
27 by DTSC's Office of Permitting on October 3, 2014. No briefs were received from the
28 general public or other interested persons. In response to a request from Ms. Perlman

1 and Mr. Riddering, the Permit Appeals Officer held an Informal Appeals Conference on
2 December 11, 2014, at DTSC's Sacramento Regional Office, 8800 Cal Center Drive,
3 Sacramento, California. Oral arguments, rebuttal remarks, and/or responses to
4 questions from the Permit Appeals Officer were made by the following individuals:
5 Deborah Perlman, Wade Riddering, and DTSC staff Erica Giorgi, Edward Nieto and
6 Alfred Wong. A transcript of the IAC was prepared.

7 **IV. FINDINGS**

8 This Decision addresses only the five (5) appeal comments that were granted
9 review in the "Order to Set Briefing Period for Petition for Review," dated August 25, 2014.
10 The analysis of each appeal comment for the purpose of this Final Appeals Decision
11 and Order (Final Order) includes review of the relevant portions of all submissions on
12 that comment/issue by all parties, including but not limited to comments on the draft
13 permit, response to comments, appeal comments, briefs and counter briefs. However,
14 the issues raised by Petitioners that are not germane to the five (5) appeal comments
15 granted review were not addressed because they are outside the scope of this review.
16 The sequence and the petition for review text of each appeal comment addressed in
17 this Final Order is the same as presented in the "Order to Set Briefing Period for Petition
18 for Review." The following terms used throughout this order are defined as follows:

- 19 1. **"permit comment"** refers to a comment submitted on the draft permit
20 during the review period;
- 21 2. **"response to comment"** refers to DTSC's Office of Permitting's response
22 to a "permit comment" issued with the final permit decision;
- 23 3. **"appeal comment"** refers to one of the 5 appeal comments granted
24 review and as numbered in the "Order to Set Briefing Period for Petition
25 for Review," dated August 25, 2014;
- 26 4. **"appeal briefing statement"** refers to a statement submitted in response
27 to the "Order to Set Briefing Period for Petition for Review;"
28

1 5. "IAC statement" refers to a statement made during the Informal Appeals
2 Conference on December 11, 2014, and reported in the transcript;

3 6. "Briefing Order" refers to the "Order to Set Briefing Period for Petition for
4 Review," dated August 25, 2014; and,

5 7. "Final Order" refers to this Final Appeals Decision and Order containing
6 the final decision on the five (5) appeal comments granted review.

7 Before providing responses to the appeal comments, the Permit Appeals Officer
8 believes it necessary to address statements in Petitioners' opening appeal briefing
9 statement regarding United States Environmental Protection Agency (US EPA)
10 authorization to provide clarity.

11 "While pending, it was brought to FRS attention that the DTSC was taking
12 the position that the waste stream "water contaminated with gasoline" was
13 not specified with clarity in Filter Recycling's permit, although as indicated
14 above, Filter had been operating as early as 1990 under a U.S. EPA
15 authorization to accept this waste..." (Petitioners' opening briefing
16 statement page 3 lines 20-24).

17 "In 1993, The United States Environmental Protection Agency
18 acknowledged Filter Recycling Services' authorization to handle
19 hazardous waste under its EPA ID number CAD982444481, including
20 activity as a "Large Quantity Generator Transporter Treatment, Storage or
21 Disposal" handling D001, D008 and D018 waste codes (see attached as
22 Exh. 18)." (Petitioners' opening briefing statement page 2 lines 13-15).

23 A review of Exh. 18 attached to Petitioners' opening appeal briefing statement
24 shows that Exh. 18 is merely a letter from US EPA acknowledging receipt of the
25 Petitioners' submitted Form 8700-12, Notification of Hazardous Waste Activity. The
26 Form 8700-12 is submitted as part of a permit application to US EPA therefore it does
27 not function as an authorization.

28 Likewise, in regard Petitioners' opening appeal briefing statement that they were
operating as "early as 1990 under a US EPA authorization to accept this waste", the
Permit Appeals Officer notes in the administrative record that FRS submitted a Form
8700-12 to US EPA dated on September 9, 1990, and US EPA inspected the facility

1 on November 29, 1990. The only activities mentioned in the US EPA inspection report
2 are activities associated with receiving, handling and disposal of oil and fuel filters. The
3 conclusion of the US EPA Inspection Report is that "based on the available information
4 and observations of the facility operations, the facility is not treating, storing, or
5 disposing of hazardous waste and has not attained interim status for hazardous waste
6 management activities.", while cautioning that the facility activities may still be state
7 regulated. Based on a review of the available materials, it appears that the absence of
8 US EPA regulation has been parlayed into the impression of an affirmative
9 authorization by US EPA .

10
11 **Appeal Comment 1:** Petition for Review Section III.1., pages 4 and 5

12 Special Condition #14 on Page 10 of 71 of the Final Modified Permit.
13 Raised by Riddering Comments to Draft Permit Comment 1-18.
14 Raised by FRS Comments to Draft Permit; Comment 5-3.

15 This condition was commented upon, but the some language within this
16 condition is newly inserted by DTSC, after the receipt of Public Comments
17 and close of Public Comment Period, and therefore without prior
18 opportunity for objection to be stated.

19 The Draft Permit released for Public Comment stated:

20 "All ignitable and reactive wastes shall be stored in the designated
21 Ignitable Waste Storage Areas (IWSA) within Unit #8, #9, and #11 as
22 identified in the Facility Plot Plan (Attachment 1, Figure 1). The IWSA
23 shall be delineated with a 6" red painted border."

24 The newly revised special condition in the Final Modified Permit states:

25 "Except when moving to or from the IWSA, all containers (including
26 transport vehicles) holding ignitable or reactive wastes shall be located
27 entirely within the designated IWSA, as identified in the Facility Plot Plan
28 (Attachment 1, Figure 2), pursuant to California Code of Regulations,
section 66264.176. The IWSA shall be delineated with a 6" red painted
border."

The change in special condition suggests a new condition that trucks
holding ignitable or reactive waste be in the IWSA even when simply

1 unloading a container for transport to the IWSA, and is based upon an
2 erroneous conclusion of law. The application of CCR Title 22 §66264.176
3 refers to the management of containers at a permitted facility, stating,
4 "Containers holding ignitable or reactive waste shall be located at least 15
5 meters (50 feet) from the facility's property line." This Regulation should
6 be read consistently with H&S Code §25200.19(c)(1), that allows for the
7 unloading and loading activities for the incidental period of time that is
8 necessary to safety and effectively move waste from the transport vehicle
9 to the authorized unit or from the authorized unit to the transport vehicle.
10 The Code states in pertinent part: "The hazardous waste shall be moved
11 directly between the authorized unit and the transport vehicle and shall not
12 be held for any time off the transport vehicle outside of the authorized unit,
13 *except for that incidental period of time that is necessary to safely and
14 effectively move the waste from the transport vehicle to the authorized unit
15 or from the authorized unit to the transport vehicle.*" (Emphasis added).

16 DTSC has erroneously failed to read the Regulation and Code section
17 together, and in a manner in which they are consistent. In doing so, it
18 becomes clear that ignitable or reactive waste should be located within the
19 IWSA, except for the incidental period of time necessary to safely and
20 effectively move the waste from the transport vehicle to the authorized unit
21 or from the authorized unit to the transport vehicle.

22 The requirement is unduly burdensome on the facility. Even with the best
23 planning, given the vagaries of traffic congestion in the region, it may
24 occur that there is not sufficient room for an additional truck in the IWSA,
25 when one arrives with a shipment of ignitable or reactive waste. As a
26 practical matter, the facility needs to be able to unload the truck and place
27 the containers of ignitable or reactive waste within the IWSA, rather than
28 keep a truck waiting until such time as there is sufficient space for it within
the IWSA.

DTSC's Response demonstrates that the condition is based upon a finding
of fact or conclusion of law that is clearly erroneous. In responding to
Riddering's Public Comment, Comment 1-18, DTSC concurs that it is only
the "storage" of ignitable or reactive waste, and not the incidental period of
time necessary to safely and effectively move the waste from the transport
vehicle (including the unloading and loading) that must be within the
IWSA, that is its concern. DTSC states: "DTSC developed this condition
to ensure all ignitable wastes are *stored* in the IWSA in compliance with
regulatory requirements." (Emphasis Added). FRS agrees with DTSC
stated purpose of ensuring that all ignitable wastes are *stored* within the
IWSA, and believes that this purpose is effectuated by maintaining the
condition, but deleting the parenthetical language: "(including transport
vehicles)".

1 **Analysis of Appeal Comment 1:**

2 **Appealed Condition**

3 Except when moving to or from the IWSA, all containers (including
4 transport vehicles) holding ignitable or reactive wastes shall be located
5 entirely within the designated IWSA, as identified in the Facility Plot Plan
6 (Attachment 1, Figure 2), pursuant to California Code of Regulations,
7 section 66264.176. The IWSA shall be delineated with a 6" red painted
8 border. (Final Permit Mod 2014, page 10, condition 14.)

9 The Petitioners are appealing Special Condition 14 especially the inclusion of the
10 phrase (including transport vehicles) in the condition. The Petitioners concede in their
11 appeal comment that the remainder of the condition is appropriate if the phrase
12 (including transport vehicles) is removed. The Petitioners assert in their appeal briefing
13 statements that maintaining the phrase (including transport vehicles) restricts their
14 ability to unload vehicles containing ignitable or reactive waste outside of an area
15 designated as the IWSA and then move the unloaded waste into the IWSA. Because
16 some transport vehicles may also qualify as containers (i.e. tanker trucks) and transfer
17 vehicles may also carry containers; the Permit Appeals Officer notes that removing the
18 phrase (including transport vehicles) from the contested permit condition; while
19 maintaining the phrase "Except when moving to or from the IWSA, all containers..."
20 would not provide the Petitioners relief from the condition.

21 Prior to starting our discussion, we can review the history of the permit condition.
22 We note that in the 2002 permit, the Permittee was only required to conduct loading and
23 unloading operations with the facility boundary. With the 2010 permit application, it
24 appears the intent was to ensure that loading and unloading operations would take
25 place within permitted units. The Petitioners' intent is additionally reflected in a 2010
26 draft permit that was not public noticed; that requires "transport vehicles, including the
27 truck and trailer, must be within the permitted areas of the Facility." Petitioners were
28 notified that DTSC intended to public notice the 2010 Draft Permit, were requested to
review the permit, and did not object to the permit condition. With the 2013 Draft

1 Modification and the 2014 Final Permit Modification, DTSC did not impose the condition
2 that all loading and unloading activities needed to be within permitted units; and instead
3 added the condition that vehicles containing ignitable or reactive waste remain within
4 the IWSA, except when moving to or from the IWSA.

5 To aid in visualization, the permitted areas are a subset of the facility, and the
6 IWSA is a subset of permitted Units #8, #9, and #11; which include shipping and
7 receiving areas. In the 2002 permit, the IWSA only covered a portion of Unit #8
8 (identified as Waste Storage (Interior) (S1)). In the 2010 Permit Application, the
9 Petitioners proposed expanding the IWSA to cover a portion of permitted Units #8, #9,
10 and #11. In the Draft Permit Mod and Final Permit Mod; the IWSA was expanded to
11 cover additional areas of permitted Unit #11; therefore the IWSA is within the originally
12 contemplated shipping and receiving areas, although the final permit only allows for the
13 IWSA subset area for the loading, unloading and storage of ignitable or reactive waste.
14 (See attached Figure 2 from Standardized Permit Application, draft May 25, 2010, and
15 Figure 2 from 2014 Final Permit Mod.)

16 History

17 The Permittee shall conduct all loading and unloading operations within
18 the boundary of the Facility. Transport vehicles, including the truck and
19 trailer, must be within the boundaries of the Facility. **(2002 Permit,
Page 9 of 39, condition 19.)**

20 All of the FRS treatment and storage activities are conducted on the
21 subject property which is comprised of one main 15,000 sq. ft. concrete
22 structured building, a receiving/shipping and waste storage area of
23 approximately 5,000 sq. ft., and an area approximately 4816 sq. ft. just
24 south of the receiving/shipping area. The egress and ingress to the
25 property is from Monte Avenue, either directly to the receiving/shipping
26 area (unit name Exterior) or directly south of the receiving/shipping area
27 (unit name Exterior South) to be used for truck parking, loading, off-
28 loading and truck to truck transfer activities. The total property is secured
with a wire mesh fence and all entrances are gated. **(2010 Application,
page 6 of 145.)**

1 **Waste Storage Exterior South Area (Unit ID No. #11)** – This area is
2 directly south of the receiving/shipping waste storage area (Unit #9)
3 consisting of an area approximately 4814 sq. ft. This area is used for the
4 loading and offloading of wastes to be received at FRS and being shipped
5 from FRS. This will take place by transport vehicles being parked in this
6 area and backed up to the receiving/shipping area. Containers will be
7 loaded and off-loaded using forklifts and drum-grabbers, pallets or by
8 hand truck and lift gates. Solid debris bins and end-dump trailers will be
9 stored and loaded using forklifts, by dumping/pouring, and by bucket type
10 loaders. Tank vehicle and container washout activities will take place in
11 this area with all washout material contained and collected for disposal at
12 off-site facilities. Tank vehicles can be connected for truck-to-truck
13 transfer activities. Tank vehicles can be used for container consolidation
14 for disposal at off-site facilities. **(2010 Application, page 9 of 145.)**

10 **Facility Plot Plan**

11 The legal boundaries of the subject property are shown on the City of
12 Rialto Parcel Map provided in this section for reference. The access to
13 the plant property by one of two driveways. The first is at the west end of
14 the Monte Avenue cul-de-sac which leads directly into the receiving
15 area/storage area unit #9 for loading, off-loading or transfer activities. The
16 second is at the south-west end of the Monte Avenue cul-de-sac.
17 Vehicles will exit Monte Avenue and then back into storage area unit #11
18 and back up to the receiving area for loading, offloading or transfer
19 activities. **(2010 Application, page 134 of 145.)**

17 The Permittee shall conduct all loading and unloading operations within
18 the confines of the permitted area. Transport vehicles, including the truck
19 and trailer, must be within the permitted areas of the Facility. **(Draft
20 October 2010 Permit, not public noticed, page 18, condition 18.)**

20 All ignitable and reactive wastes shall be stored in the designated Ignitable
21 Waste Storage Areas (IWSA) within Unit #8, #9, and #11 as identified in
22 the Facility Plot Plan (Attachment 1, Figure 1). The IWSA shall be
23 delineated with a 6" red painted border. **(Draft Permit Mod 2013, page
24 10, condition 14.)**

24 The Permittee shall conduct all loading and unloading operations within
25 the boundary of the Facility. Transport vehicles, including the tractor and
26 trailer, must be within the boundary of the Facility at all times during
27 loading and unloading operations. **(Draft Permit Mod 2013, page 11,
28 condition 19.)**

27 The Permittee shall ensure that all containers and transport vehicles
28 containing ignitable wastes remain entirely within the designated IWSA, as

1 identified in the Facility Plot Plan (Attachment 1, Figure 2), at all times.
2 **(Draft Permit Mod 2013, page 11, condition 23.)**

3 Except when moving to or from the IWSA, all containers (including
4 transport vehicles) holding ignitable or reactive wastes shall be located
5 entirely within the designated IWSA, as identified in the Facility Plot Plan
6 (Attachment 1, Figure 2), pursuant to California Code of Regulations,
7 section 66264.176. The IWSA shall be delineated with a 6" red painted
8 border. **(Final Permit Mod 2014, page 10, condition 14.)**

9 The Permittee shall conduct all loading and unloading operations within
10 the boundary of the Facility. Transport vehicles, including the tractor and
11 trailer, must be within the boundary of the Facility at all times during
12 loading and unloading operations. **(Final Permit Mod 2014, page 11,
13 condition 19.)**

14 **Final Permit Mod 2014, page 37**

15 **UNIT #11 – WASTE STORAGE EXTERIOR UNIT – SOUTH AREA (S4)**

16 This Unit is used for loading and off-loading of wastes to be received at
17 and shipped from the Facility. This will take place by transport vehicles
18 being parked in this area and backed up to the receiving/shipping area.
19 Containers will be loaded and off-loaded using forklifts and drum grabbers,
20 pallets or by hand truck and lift gates. Solid debris bins and end-dump
21 trailers will be stored and loaded using forklifts and by bucket type loaders.
22 Tank trucks or tank trailers can be connected for truck-to-truck transfer of
23 bulk liquids. **(Final Permit Mod 2014, page 37.)**

24 The Permit Appeals Officer believes that based solely on the facts that the
25 majority of the shipping and receiving area for Permitted Unit #11 is within the IWSA
26 and a sizeable portion of the shipping and receiving area for Permitted Unit #9 is within
27 the IWSA, coupled with the limitation that the condition only applies to operations
28 involving ignitable or reactive waste; the condition does not pose an unreasonable
burden of compliance.

However, the Petitioners also raised arguments during the IAC that the
application of California Health and Safety Code section 25200.19(a) and (b) are
preempted by the Federal Hazardous Materials Transportation regulations. The

1 California Constitution, Article 3, sec 3.5 provides that an administrative agency has no
2 power "to declare a statute unenforceable, or to refuse to enforce a statute on the basis
3 that federal law or federal regulations prohibit the enforcement of such statute unless an
4 appellate court has made a determination that the enforcement of such statute is
5 prohibited by federal law or federal regulations"; therefore the Permit Appeals Officer
6 declines to make a decision based on this argument, but will provide comments for
7 clarity.

8 The Research and Special Programs Administration, Department of
9 Transportation (DOT) (subsequently the Federal Pipeline and Hazardous Materials
10 Safety Administration (PHMSA)) explains the co-jurisdictional authority at hazardous
11 waste facilities as allowing both state agencies and local government bodies to impose
12 regulatory requirements at a facility despite the fact that transportation functions may be
13 performed at the same facility when the state or local requirements are aimed at
14 addressing hazardous waste management aspects of the facility.

15 As is the case with OSHA-regulated worker safety requirements, the fact
16 that pre-transportation or transportation functions subject to the HMR are
17 performed at a hazardous waste facility, including a RCRA transfer facility,
18 does not preclude EPA, RCRA authorized state agencies, or local
19 government bodies from also imposing regulatory requirements at that
20 facility. In particular, RCRA authorized state hazardous waste programs
21 may impose facility requirements that exceed the regulatory requirements
22 enacted by EPA, when these additional requirements are aimed at
23 addressing the hazardous waste management aspects of the facility, and
24 are aimed at accomplishing environmental protection objectives such as
25 preventing releases of hazardous wastes to the environment or protecting
26 the environment in the event of a release. Such state environmental
27 regulations are permissible as long as they are not aimed at regulating the
28 transportation or pre-transportation functions that are covered by the
HMR, and do not affect the performance of HMR-regulated transportation
or pre-transportation functions. (68 Fed. Reg. 61930, October 30, 2003).

26 The Special Condition appealed does not regulate the actual loading or
27 unloading function, but would result in the loading and unloading functions for ignitable
28 or reactive waste be conducted within the IWSA as a hazardous waste management

1 function for protecting the environment by insuring that ignitable or reactive waste will at
2 all times be located fifty (50) feet from the property line of the facility, except when the
3 vehicles are moving in or out of the IWSA.

4 The fifty (50) foot requirement is stated in the California Code of Regulations,
5 title 22, section 66264.176: "containers holding ignitable or reactive waste shall be
6 located at least 15 meters (50 feet) from the facility's property line." This section is
7 identical to the Code of Federal Regulations, title 40, section 264.176 promulgated by
8 US EPA with the explanation:

9 Special Requirement for Ignitable or Reactive Waste. The proposed rules
10 did not contain any special standards for ignitable or reactive wastes.
11 Simply as a matter of good practice, ignitable or reactive wastes should, of
12 course, be protected from any conditions or materials that could cause
13 them to ignite or react. In order to guard against fires, explosions, or
14 violent reactions, the requirement in these regulations that containers of
15 ignitable or reactive waste be 15 meters (50 feet) from the facility's
16 property line is taken from the National Fire Protection Association's
17 (NFPA) Flammable and Combustible Code of 1977. The purpose of the
18 setback required in the Code is to protect adjacent residences, businesses
19 and other public places from the acute effects of explosions and fires that
20 may be caused in facilities that store flammable materials. While the
21 Agency believes that the Code provides an adequate basis for requiring a
22 minimum setback of 50 feet, the Agency does not yet have enough data to
23 determine whether an additional setback should be required where highly
24 explosive or toxic waste are stored. The Agency expects to monitor the
25 effectiveness of this regulation and revise it if necessary. Since the NFPA
26 requirement is straightforward and already applies under OSHA
27 regulations of facilities, it is appropriate for inclusion in the interim status
28 standards. Since this regulation was not proposed, it is being
promulgated Interim final. (45 Fed. Reg. page 33200, May 19, 1980)

23 The requirement that "except when moving to or from the IWSA, all containers
24 (including transport vehicles) holding ignitable or reactive wastes shall be located
25 entirely within the designated IWSA, as identified in the Facility Plot Plan pursuant to
26 California Code of Regulations, section 66264.176" insures that vehicles that also
27 qualify as containers, and the offloading of containers from transport vehicles carrying
28

1 individual containers (i.e. drums), will result in the ignitable or reactive waste always
2 being located fifty (50) feet from the property line.

3 Finally, the Permit Appeals Officer notes that California Health and Safety Code
4 section 25200.19, subdivisions (a) and (b) limits the application of subdivision (c) of the
5 same section when the facility is subject to conditions and limitations in the permit
6 concerning the receipt and unloading of hazardous wastes from offsite locations.

7 25200.19. (a) A hazardous waste facility that obtains a hazardous waste
8 facilities permit to receive hazardous wastes from offsite locations may
9 conduct bulk, packaged, or containerized hazardous waste unloading
10 operations in accordance with the requirements of this section, except to
11 the extent that the facility is subject to conditions and limitations in the
12 permit concerning the receipt and unloading of hazardous wastes from
13 offsite locations.

14 (b) A hazardous waste facility that has a hazardous waste facilities
15 permit may conduct bulk, packaged, or containerized hazardous waste
16 loading operations in accordance with the requirements of this section,
17 except to the extent that the facility is subject to conditions and limitations
18 in the permit concerning the shipment and loading for shipment of
19 hazardous wastes to offsite locations.

20 The condition that transport vehicles be located in the IWSA, except when
21 moving to or from the IWSA that will implicitly result in loading and unloading operations
22 being conducted within the IWSA, appears consistent with the authority granted by
23 California Health and Safety Code section 25200.19, subdivisions (a) and (b).

24 **Conclusions for Appeal Comment 1:**

25 Based upon the aforementioned reasons, the Permit Appeals Officer denies
26 Petitioners' appeal comment 1 in its entirety.

27 **Appeal Comment 2:** This issue is whether the Permittee should be required to empty
28 containers of their contents prior to processing the containers in permitted Unit #1
(Shredder/Separator (T1)).

1 Petition for Review Section III.2, pages 5 and 6

2 Special Condition #1 on page 14 of 71 of the Final Modified permit.

3
4 Raised by Riddering Comments to Draft Permit Comment 1-23;
5 Raised by FRS Comment 5-12; Comment 6-5; Comment 7-10

6 The Special Condition states:

7 "The Permittee shall ensure that all containers to be processed are to be
8 emptied to the extent practicable before processing."

9 FRS Commented at 5-12 that:

10 "This condition is deleted because it is a waste of time. The machine
11 separates the waste, so there is no need for hand emptying. There is no
12 legitimate reason for this restriction. This was not required in the 2010
13 Draft Permit."

14 By 2010 draft permit, FRS is referencing a 2010 version of the permit as
15 modified, which was transmitted to FRS by DTSC as the permit which it
16 intended to take to Public Comment as of that date, and before the
17 Permitting Department transmitted it to Enforcement, who then revised
18 and inserted their own, onerous restrictions.

19 Riddering Commented at 1-23 that:

20 "Why are these limitations being placed on FRS? These special
21 conditions did not exist in the original permit, and they were not a part of
22 the permit modification."

23 This condition is based upon a finding of fact that is clearly erroneous.
24 DTSC Response at 1-23 indicates that that "DTSC does not consider this
25 condition to be a limit as it requires the containers to be emptied to the
26 extent 'practicable' which is consistent with FRS's operating practices." In
27 fact, DTSC is incorrect that emptying is consistent with FRS operating
28 practices. In FRS' submittal of Redlined Draft Permit, FRS corrected the
 misconception of its practices that it routinely emptied containers before
 shredding them by redlining and deleting the proposed language "The
 containers are emptied or only have a residual amount of material in them."
 (See, FRS Redlined Draft Permit at page 13 of 69). DTSC acknowledged
 that this language was inconsistent with FRS practice by agreeing to, and
 deleting, that language in the Final Modified Permit, which now omits that
 language. (See, Final Permit Modification at 13 of 71.

1 This condition is based upon an additional finding of fact that is clearly
2 erroneous. DTSC states that the intended purpose of the condition was to
3 "prevent splashing of hazardous waste liquids during the shredder
4 operation." (See, Response to Comment 5-12). However, as a practical
5 matter, the requirement of pre-emptying the containers increases the
6 likelihood of splashing during the pre-emptying process. The machine is
7 designed to, and historically has routinely been used, to shred containers
8 containing liquids. In the course of so doing, it avoids the need for human
9 contact as part of the process. While there is no splashing as a result of
10 the machine shredding process, assuming for the sake of discussion that
11 there were any, such splashing would not be on a human in the emptying
12 process. Conversely, hand emptying of containers containing liquids
13 increases the likelihood of splashing.

9 FRS proposes that the condition be deleted entirely, or alternatively be
10 restated as follows: "The Permittee shall ensure that all containers *over 5*
11 *gallons* to be processed are emptied to the extent practicable before
12 processing."

13 **Analysis of Appeal Comment 2:**

14 While it appears that the Petitioners and DTSC's Office of Permitting agree upon
15 the solution for this issue, the Permit Appeals Officer will comment on its review of the
16 record. Petitioners' opening appeal briefing statement page 8, line 23 to page 9
17 line 2 and Riddering permit comment 1-23 (supra) create the impression that emptying
18 containers was not a routine process at FRS.

19 "In fact, DTSC is incorrect that emptying is consistent with FRS operating
20 practices. In FRS' submittal of Redlined Draft Permit, FRS corrected the
21 misconception of its practices that it routinely emptied containers before
22 shredding them by redlining and deleting the proposed language "The
23 containers are emptied or only have a residual amount of material in them."

24 However, the Permit Appeals Officer notes the 1997 Part A and Part B permit
25 application submitted by FRS contains flow diagrams and process diagrams that show
26 "inspection and emptying" or "separate and emptying" of containers prior to processing
27 in shredder 1. These flow and process diagrams are included in the 2002 permit and
28 are included as attachments (draft) to the 2010 Revised/Renewal Notification for an
Existing Facility submitted to DTSC by FRS. Examination of these diagrams does not

1 indicate a pathway for containers that have not been "inspected and emptied" or
2 "separated and emptied" to continue the flow into shredder 1. It appears that if there is
3 a mistake in fact that it was created by the Petitioners due to the materials submitted to
4 DTSC.

5 The Petitioners and DTSC's Office of Permitting apparently agree that the
6 contested Special Condition 1 may be revised to read "The Permittee shall ensure that
7 all containers over 5-gallons to be processed are emptied to the extent practicable
8 before processing." as an alternative to striking Special Condition 1 entirely. DTSC
9 reached this conclusion based upon information submitted by Petitioners as part of the
10 permit modification process related to the design and operation of the equipment.
11 (DTSC appeal briefing statement page 8 lines 20-25.).

12 While DTSC's Office of Permitting and the Petitioners agree that it may be
13 appropriate for only containers greater than 5-gallons to be emptied as practicable, the
14 permit reviewed by the public for comment contained diagrams that indicated that
15 emptying of containers would be conducted and the special condition that containers
16 would be emptied. Based upon the volume of containers proposed to be process, this
17 could be a substantial change to operations for which there may be public interest.

18 **Conclusions for Appeal Comment 2:**

19 Based upon the reasons stated above, the Permit Appeals Officer denies
20 Petitioners' Appeal Comment 2 in its entirety. The Permit Appeals Officer also
21 recommends that the Petitioners and DTSC's Office of Permitting work through the
22 proper permit modification process to implement the agreed upon language relating to
23 the size of containers that must be emptied prior to processing.

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

25
26 Special Condition #18 on Page 11 of 71 of the Final Modified permit
27 Raised by Riddering Comments to Draft Permit Comment 1-16;
28 Raised by FRS Comments to Draft Permit 5-6

1 This Special Condition states that "The Permittee shall not treat, as
2 defined in H&SC section 25123.5 and CCR section 66260.10, used oil and
3 oily wastewaters. Prohibited treatment for these wastes include, but are
4 not limited to, gravity separation of Used Oil (WS-A), Waste Oil (WE-B)
5 and Oily Water (WE-C) or blending/mixing of different weights of these
6 waste streams for recycling purposes."

7 This special condition is based upon a finding of fact or conclusion of law
8 that is clearly erroneous. The condition as worded is contradictory and
9 inconsistent with H&S Code §25123.5 and CCR Title 22 §66260.10 as
10 phase separation, sieving, and/or filtering, as long as heat or chemicals
11 are not used in the process, are specifically defined as *not* being
12 treatment. Gravity separation is a type of phase separation. See, 22 CCR
13 66450.11(a)(2)(C). Therefore, gravity separation is excluded from
14 definition of "treatment" under the Regulations.

15 Further, this Special Condition is inconsistent with the activity description
16 of Unit #9 on Page 30 of 71 that states "The liquid wastes will pass
17 through a filter and after gravity separation".

18 By CEQA Initial Study in regard to FRS' Permit Renewal Application, the
19 study determined that there is "No Impact" of any nature, from "Addition of
20 gravity separation of oily waters in the permitted roll-off containers Unit #6,
21 to remove solids and remove water layer from waste oil with no
22 treatment."²

23 FRS clearly cannot stop gravity, nor gravity separation from occurring.
24 FRS is being disparately treated because it is the only TSDF in California
25 that is prohibited from conducting gravity separation. Therefore, it is an
26 important policy consideration that this condition be deleted.

27 This special condition should be deleted, or alternatively, the second
28 sentence, which defines treatment inconsistently with the Regulation
which should be deleted.

Analysis of Appeal Comment 3:

23 The Petitioners and DTSC's Office of Permitting agree that Special Condition 18
24 may be worded

25 "Prohibited treatment includes gravity separation not conducted in
26 accordance with Health and Safety Code §25123.5(b)(2)B). The

27
28 ² [Exhibit 5 CEQA Initial Study, At Bate Stamp 008669]

1 permittee shall not blend or mix different weights of Used Oil, Waste Oil or
2 Oily Waters for recycling purposes."

3 The Petitioners and DTSC's Office of Permitting agree that newly worded Special
4 Condition 18 is merely a clarification of existing Special Condition 18 that was not
5 altered in the Final Permit Modification.

6
7 **Conclusions for Appeal Comment 3:**

8 The Permit Appeals Officer find that this clarification is not substantial, therefore,
9 the Permit Appeals Officer denies Petitioners' request to delete Special Condition 18
10 and remands the Permit to DTSC's Office of Permitting to modify the Condition as
11 agreed upon by the parties to read:

12 "Prohibited treatment includes gravity separation not conducted in
13 accordance with Health and Safety Code §25123.5(b)(2)B). The
14 permittee shall not blend or mix different weights of Used Oil, Waste Oil or
Oily Waters for recycling purposes."

15 **Appeal Comment 4:** The issue is whether proposed revisions to Table 1, that lists and
16 described waste streams received at the FRS facility, should be made as part of this
17 Permit Appeals process.

18 Petition for Review Sections III.4. and III.5, pages 7 to 11

19 Special Condition #15 on page 10 of 71 of the Final Modified permit.

20 Raised by Riddering Comments to Draft Permit 1-14;
21 Raised by FRS Comments to Draft Permit 5-4.

22
23 This Special Condition states:

24 "The Permittee is authorized to receive, transfer, store or treat only the
25 hazardous wastestreams specified in Table 1 of this Permit. A
26 wastestream must meet the conditions specified in Table 1 that are
27 applicable to that wastestream to be authorized. The wastestream must
28 meet the applicable common name, waste codes (US EPA and/or
California Waste Code) and be consistent with the description of waste,
(referred to as "Description of Waste" in Table I) to be authorized."

1 DTSC has responded by stating in pertinent part that "Table 1 does not
2 eliminate authorized waste streams."

3 Incorporated herein are the remarks in Par. 5, below, which reflect the
4 Table 1 waste streams.

5 Table 1 on Pages 46-51 of 71 of the Final Modified permit.
6 Comments to Draft permit; Comment 1-14

7 In discussions with permitting and enforcement it is still apparent that
8 though permitting does not intend for Table 1 to be a limiting list or waste
9 streams, but a list of examples; enforcement does still view this list as
10 narrow and limiting.

11 To clarify Table 1 to reflect more examples of the categories of common
12 names the following changes to Table 1 are proposed. BOLD lined out are
13 deleted words, and red italics are additions.

14 Table 1. Waste Streams Description

15 Waste Stream Number	16 Common Name	17 U.S. EPA Code	18 California Waste Code(s)	19 Description of Waste
20 A[1]	21 Used Oil	22 None	23 221, 261, 612	24 On specification recyclable oil 25 PCB <2 ppm
26 B[2]	27 Waste Oil	28 Exempt	221, 222, 223, 261, 612	Off specification waste oil >1000 ppm halogens PCB <50 ppm
29 C[3]	30 Oily Water	31 None	32 221, 222, 223, 33 231, 232, 241, 34 123, 133, 134, 35 135, 342, 343, 36 451, 531, 541, 37 551, 612	38 Oil and water mixtures with 39 varied amounts of settling 40 solids <i>and may or may not be</i> 41 <i>contaminated with varying</i> 42 <i>fractions of hydrocarbons.</i>

Table 1. Waste Streams Description

Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
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. <i>May or may not be contaminated with varying fractions of hydrocarbons.</i>
E[5]	Oil Aerosol Cans	Exempt D001 / Exempt D003	612	Contaminated aerosol 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 Filters	None	221, 223, 352, 612	Oil filters from internal combustion engines and equipment <i>oil filtering. Gasoline and diesel fuel filters may be included in this waste stream per [illegible].</i>
H[8]	Oil Contaminated Containers	None	352, 223, 513, 612	Oil y contaminated containers constructed of steel, plastic and cardboard consisting of sizes from quart to 110 gallon capacity. <i>May or may not be contaminated with varying fractions of hydrocarbons.</i>

Table 1. Waste Streams Description

Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
I[9]	Hydrocarbon Contaminated Soil (non RCRA)	None	223, 261, 321, 322, 352, 521, 611, 612	Soils contaminated with diesel and oil <i>varying fractions of hydrocarbons and/or CA metals.</i>
J[10]	Oil Contaminated Absorbents	None	221, 223, 352, 612	Cleanup of diesel and/or oil spills with granulated organic and inorganic absorbent materials <i>may or may not be contaminated with varying fractions</i>
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

Table 1. Waste Streams Description

Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
2C[16]	Paint Contaminated Containers	None	352, 512, 513, 612	Empty paint containers (steel, cardboard, plastic, fiber) with solidified paint waste residue
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	Contaminated unused 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	Used and spent solidified 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

Table 1. Waste Streams Description

Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
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 parts
3G[27]	Machining Grinding Residue (non- RCRA)	None	171, 172, 181, 223, 352	Non- RCRA metal shavings, <i>turnings, parts</i> 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

Table 1. Waste Streams Description

Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
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 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

Table 1. Waste Streams Description

Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
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
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.

Table 1. Waste Streams Description

Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
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.

Analysis of Appeal Comment 4:

As is noted from the appeal comment above, the issues appear limited to the waste descriptions in the Table 1. What is interesting about this appeal comment is the descriptions challenged by Petitioners were written by Petitioners and included in the permit by DTSC. Now DTSC is facing a challenge by Petitioners for including materials written by Petitioners. The Petitioners in their opening brief proposes one additional change not appearing in the appeal comment. That proposed change will be commented upon, but was not timely raised as an appeal comment.

The Petitioners in their opening brief requests alternate relief to include additional detailed definitions of the waste streams identified in Table 1 or to provide modifications

1 to the waste descriptions in Table 1. Since the alternate definitions were not properly
2 raised during the appeal period; this proposed relief will not be considered by the Permit
3 Appeals Officer. The proposed modifications to the waste descriptions will be
4 considered as part of the appeal.

5 Other issues raised within the appeal comment, within the Petitioners' appeal
6 briefing statement, and during the IAC related to the use of the table by enforcement
7 and whether the Table 1 is a new requirement.

8 To aid the reader an explanation is provided describing how Table 1 was
9 generated and how it became part of the permit a specific example will be tracked for
10 demonstration. Within the Petitioners' permit application is a Waste Analysis Plan
11 (WAP) that contains the columns identified in the appeal comment (supra); Waste
12 Stream Number, Common Name, US EPA Code, California Waste Code and
13 Description of Waste. We should be aware that the waste descriptions are not a new
14 condition of the permit, but may have simply been relayed from one part of the permit to
15 another. The WAP was made part of the 2002 FRS Permit and the 2014 Permit
16 Modifications by the following permit conditions:

17 The Standardized Permit Application dated March 23, 1994, including all
18 submittals and responses to Notices of Deficiencies dated July 9, 1997 and
19 September 30, 1997, is hereafter referred to as the "Permittee's
20 Standardized Permit Application." A list of all sections of the Permittee's
21 Standardized Permit Application is attached to the document as
22 Attachment 3. The Permittee's Standardized Permit Application is, by this
23 reference, made part of this Standardized Permit. In the event of any
24 conflict between this Standardized Permit and the Permittee's
25 Standardized Permit Application referenced herein, the provisions of the
26 Standardized Permit shall be controlling. **(2002 Permit, page 5 of 39,
27 condition 4.)**

28 The Standardized Permit Application dated March 23, 1994, including all
submittals and responses to Notices of Deficiencies dated July 9, 1997
and September 30, 1997 and the Standardized Permit Application dated
May 25, 2010 is hereafter referred to as the "Permittee's Standardized
Permit Application." A list of all sections of the Permittee's Standardized
Permit Application is attached as Attachment 3. The Permittee's
Standardized Permit Application is, by this reference, made part of this

1 Standardized Permit. In the event of any conflict between this
2 Standardized Permit and the Permittee's Standardized Permit Application
3 referenced herein, the provisions of the Standardized Permit shall be
4 controlling. **(Final Permit Mod. 2014, page 6, condition 4.)**

4 To aid the reader, a specific example of a contested condition will be tracked:

5 From the facility prepared permit application from 1997 we find and made part of
6 the permit by the permit conditions: (Waste Analysis Plan, September 26, 1997,
7 Table 2, Description of Waste Received)

8 Waste Stream Number: 3A
9 Common Name: Resin
10 EPA Waste Code: None
11 California Waste Codes: 352, 612
12 Waste Description: Used and spent solidified reacted waste material.

12 From the facility prepared permit application from 2010 we find and made part of
13 the permit mod by the permit conditions: (Waste Analysis Plan, May 25, 2010, Table 2,
14 Description of Waste Received.)

15 Waste Stream Number: 21
16 Common Name: Resin
17 EPA Waste Code: None
18 California Waste Codes: 271, 272, 352, 612
19 Waste Description: Used and spent solidified reacted waste material.

19 As the waste stream appears in the 2014 Final Permit Modification (Table 1,
20 Waste Streams Description):

21 Waste Stream Number: 3A[21]
22 Common Name: Resin
23 EPA Waste Code: None
24 California Waste Codes: 271, 272, 352, 612
25 Waste Description: Used and spent solidified reacted waste material.

25 While DTSC appears to have included the waste description provided by the
26 Petitioners under which FRS has operated for years, this condition is appealed by
27 Petitioners under the rationale that DTSC included a new condition:
28

1 "DTSC makes example, for example, of liquid resin wastes. But there is
2 no reason given why Filter should not be able to take non-RCRA liquid
3 resin wastes. These are just new unique requirements that, after having a
4 permit for 25 years that didn't have this requirement, the department seeks
5 to insert into a minor permit modification." (Petitioners, IAC Transcript,
6 page 29, lines 6-11, December 11, 2014).

7 The Permit Appeals Officer examined the waste descriptions contested by the
8 Petitioners and found that they follow the same pattern as the example above; namely,
9 the Petitioners provided the descriptions, the descriptions were included in the permit by
10 DTSC, and they are now appealed by Petitioners.

11 Besides incorporating the WAP into the permit, the past and current special
12 conditions read as follows:

13 The Permittee is only authorized to transfer, store or treat the hazardous
14 wastestreams requiring a permit and specified by common name in Part III
15 of this Permit which have been manifested under the California Waste
16 Code specified for that wastestream in Part III of this Permit. **(2002
17 Permit, page 9 of 39, condition 15.)**

18 The Permittee is authorized to receive, transfer, store or treat only the
19 hazardous wastestreams specified in Table 1 of this Permit. A
20 wastestream must meet the conditions specified in Table 1 that are
21 applicable to that wastestream to be authorized. The wastestream must
22 meet the applicable common name, waste codes (US EPA and/or
23 California Waste Code) and be consistent with the description of waste
24 (referred to as "Description of Waste" in Table 1) to be authorized. **(Final
25 Permit Mod. 2014, page 10, condition 15.)**

26 demonstrating that DTSC attempted to expand Special Condition 15 to include
27 the waste description from the WAP. While the Petitioners raised an issue that the
28 Permitting Units and the Enforcement Units may be interpreting the term "consistent
with the description of the waste" in a different manner, the Petitioners only made vague
allegations and the Permit Appeals Officer could not find support for these allegations in
the record; therefore it is beyond the scope of this appeal for the Permit Appeals Officer
to comment. However, it can be noted from DTSC's Office of Permitting appeal briefing
statement the following: "The fifth column of Table 1 (titled "Description of Waste")

1 provides descriptions of wastes streams as examples of waste streams that FRS is
2 authorized to manage.” (DTSC’s appeals briefing statement, page 12, lines 17-19),
3 which implies that additional wastes not described in the examples could be managed
4 as long as the wastes were consistent with the common name, waste code, and waste
5 description examples.

6 Before we continue on with the analysis, there is some housekeeping that can be
7 done as the Petitioners and DTSC’s Office of Permitting have agreed on certain
8 modifications to Table 1 that will limit the contested issues. The agreed upon
9 modifications that are clarifications that do enlarge the scope of the waste streams
10 issues are as follows:

11 Waste Stream E[5] – remove the word “contaminated” from the waste
12 description.

13 Waste Stream G[7] – change the waste description to “Oil filters from
14 internal combustion engines and equipment oil filtering. Gasoline and
15 diesel fuel filters may be included in this waste stream per Health & Safety
Code § 25250.22 (A.B. 2254) with oil filters or separately.”

16 Waste Stream H[8] - change the waste description to “RCRA empty
17 contaminated containers constructed of steel, plastic and cardboard
consisting of sizes from quart to 110 gallon capacity.”

18 Waste Stream I[9] – change the waste description to “soils contaminated
19 with varying fractions of hydrocarbons with or without CA metals.”

20 Waste Stream 2F[19] – remove the word “contaminated unused” from the
21 waste description.

22 Waste Stream 3G[27] – change the waste description by adding the words
23 “turning, parts” as proposed by Petitioners.

24 Waste Stream 4C1[42] – remove the words “contaminated with oil” from
25 the waste description.

26 Waste steam 3A[21], Resin, requires additional examination as it also appears
27 from the record that the parties agree upon modified language. The Petitioners
28 proposed a definition of “Used and/or unused resins in metal, plastic, fibre, cardboard,

1 glass containers, whether liquid solid or sludge (Petitioners' opening appeal briefing
2 statement, page 18, lines 1-2). DTSC's Office of Permitting agreed that the waste
3 description in Table 3 for the resin waste stream could be replaced with Petitioners
4 proposed language. (Department, IAC Transcript, page 24, lines 11-16,
5 December 11, 2014). The proposed revision raised in Petitioners' opening appeal
6 briefing statement was the description "Resin Waste Material." The Permit Appeals
7 Officer notes the procedural quirk that the exact description proposed and agreed upon
8 by the parties was not raised during the comment period, but finds that the description
9 was properly raised, "Resin Waste Material" is broad enough to encompass the agreed
10 upon language as simply a clarification that does not expand the waste stream.

11 The Petitioners propose a revision to Waste Stream 3D[24], Soaps (solid), US
12 EPA waste code : none; State Waste Code: 141, 181, 331, 352, 561, Spent or surplus
13 solid detergent and soaps. The Petitioners propose to add the term "corrosive solids" to
14 the end of the phrase "Spent or surplus solid detergent and soaps." While the proposed
15 modification is not timely raised, appearing for the first time in Petitioners' opening
16 appeal briefing statement; the Permit Appeals Officer will comment as if the issue was
17 timely raised. Waste with a characteristic of corrosivity is required to be identified with
18 US EPA waste code D002 per California Code of Regulations, title 22, section
19 66262.23(b). Since the Table 1 does not have an US EPA waste code designated for
20 waste stream 3D[24], adding the term "corrosive solids" would not be factually correct;
21 therefore, if the comment had been timely raised, it would be denied by the Permit
22 Appeals Officer.

23 That leaves four disputed waste descriptions all of the same nature, so they will
24 be addressed together. These waste streams are identified as: Oily Water, C[3]; Oily
25 Debris, D[4]; Oil Contaminated Absorbent, J[10]; and, Oily water, 4C2[43]. The
26 Petitioners comment the descriptions should be revised in each case by eliminating any
27 reference to "oil" for waste streams C[3], D[4], and 4C2[43]; and eliminating the
28 reference to "oil and/or diesel" for waste stream J[10]. The Petitioners wish to add to

1 the waste descriptions the phrase "may or may not be contaminated with varying
2 fractions of hydrocarbons" in the case of C[3], D[4] and J[10]; and add the phrase
3 "varying fractions of hydrocarbons" to the description of 4C2[43]. The Permit Appeals
4 Officer finds as a factual matter that the proposed revisions to the waste stream
5 descriptions would be inconsistent with the common names of the waste streams as
6 "varying fractions of hydrocarbons" is broader than the terms "oil(y)" and "diesel" and
7 therefore denies this part of Petitioners' appeal comment.

8
9 **Conclusions for Appeal Comment 4:**

10 Therefore, based upon the foregoing the Permit Appeals Officer grants in part the
11 following revisions to Table 1 consistent with this order: E[5], G[7], H[8], I[9], 2F[19],
12 3G[27], 4C1[42], and 3A[21]. The Permit Appeals Officer denies in part Petitioners'
13 Appeals Comment 4 for waste streams 3D[24], C[3], D[4], J[10], and 4C2[43] for the
14 reasons put forth above.

15
16 **Appeal Comment 5:** The issue is whether the Permittee may unload uncontainerized
17 solid hazardous waste directly onto an existing concrete pad.

18 Petition for Review Section III.6., pages 11 to 15

19 Special Condition #2 on page 9 of 71 of the Final Modified Permit
20 Special Condition # 12 on page 31 of 71 of the Final Modified Permit
21 Raised by Riddering Comments to Draft Permit 1-13; Comment 1-29;
22 Raised by FRS Comments to Draft Permit 5-2 and Comment 5-30;
23 Comment 7-6.

24 Special Condition #2 states:

25 "Hazardous waste shall not be land disposed at the Facility, whether
26 temporarily or permanently."

27 Special Condition #12 on page 31 of 71 states:

28 "Any solid hazardous waste in this Unit must be in containers. All solid
hazardous waste transfer shall occur directly from one container into
another container. Dump trucks are containers. No solid waste transfer

1 shall occur if visible emissions or clouds of dust are created that are likely
2 to leave this Unit during the transfer of the waste."

3 Transfer from one container to another container, that is, e.g. from drum to
4 drum or roll off bin to roll off bin, does not allow for inspection in between.
5 The very benefit to California is in the inspection allowing extraction of
6 recyclable material from the other material. This condition places a barrier
7 on the benefit, and makes it difficult to impossible to determine contents
8 that may be buried within, as well as contradicting FRS' WAP, which
9 requires it to inspect incoming waste.

10 DTSC interpretations to prevent open inspection and sorting are based
11 upon a clearly erroneous finding of fact and/or conclusion of law. DTSC
12 Response to Comments state: "uncontainerized solid waste unloaded or
13 placed on the ground or on a concrete or asphalt slab would be a waste
14 pile, and thus land disposal. Special Condition 12 on page 30 of 69 of the
15 Draft Modified Permit was included to clarify that solid hazardous waste
16 may not be unloaded or placed directly on the ground (or concrete/asphalt
17 slab) for any period of time in Unit #9. Special Condition 12 requires that
18 all solid hazardous waste transfer occur directly from one container into
19 another container to make certain that no land disposal takes place." See,
20 Response to Public Comments 1-29.

21 DTSC misinterprets the definition of "waste pile" to conclude that
22 unloading uncontainerized solid waste onto a "concrete or asphalt slab"
23 within a fully regulated unit would automatically be a "waste pile". The
24 Regulations define "waste pile" as: "any noncontainerized accumulation of
25 solid, nonflowing hazardous waste that is used for treatment or storage
26 and that is not [in] a containment building." 22 CCR section 66260.10.
27 Containment buildings are subject to rigorous design standards. 22 CCR
28 section 66264.1101.

FRS' 180 W. Monte building qualifies as a containment building pursuant
to CCR 66260.10 and its engineered, bermed, covered, security fenced,
sprinklered, paved containment units qualify as containment buildings as
well. FRS' concern is with its ability to unload bulk solids within a paved,
bermed, fully contained and regulated unit for the purpose of sorting, with
the objective of recycling. There is no factual basis to prohibit FRS from
doing so, nor any legal premise requiring prohibition of this activity. DTSC
mis-interprets the law, imposing Condition # 12 with apparent purpose of
restricting FRS ability to do so.

Over ten years ago, DTSC Enforcement addressed the issue of waste
piles, and instructed FRS that solid waste could be offloaded onto its
permitted units for the incidental time necessary to inspect, sort, separate
and reload, and that this was not, in fact, a "waste pile". This

1 interpretation is consistent with CCR 66260.10 and with Health & Safety
2 Code section 25200.19. H&S section 25200.19(a) provides that "A
3 hazardous waste facility ... may conduct bulk, packaged, or containerized
4 hazardous waste unloading operations in accordance with the
5 requirements of this section" subject to exception not applicable herein.
6 H&S section 25200.19(d) defines "unloading" as "activities associated with
7 the receipt of bulk, packaged, or containerized hazardous waste ... " H&S
8 25200.19 requires that such "unloading of bulk hazardous waste shall be
9 conducted ... with a containment system capable of collecting and
10 containing leaks and spills that may reasonably be anticipated to occur
11 during loading and unloading operations until the leaked or spilled material
12 is removed ... "

13 This is exactly the containment system developed and used by FRS, in its
14 fully engineered, bermed, covered, security fenced, sprinklered, paved
15 containment units.

16 Even assuming for the purpose of discussion that it were a waste pile,
17 there is no factual nor legal basis to prohibit FRS from inspecting and
18 sorting incoming material, to determine if it complies with the manifest, is
19 material that FRS is authorized to accept, and to sort recyclables, all of
20 which would be desirable objectives. While FRS vehemently disputes
21 that the incidental time necessary to unload, during which the material is
22 inspected, constitutes "storage" the Regulations provide that TSDFs that
23 do store or treat hazardous waste in piles - and that is inside or under a
24 structure providing protection from precipitation - is not subject to further
25 regulation regarding lining requirements. 22 CCR 66264.250(c). FRS' fully
26 enclosed unit meets or exceeds these requirements.

27 DTSC argument is legally incorrect because it is internally inconsistent,
28 and inconsistent with regulation. DTSC states that "any facility that
engages in any land disposal activity is ineligible for a standardized
permit." (Response to Comment 1-29, citing H&S section 25201.6(g)). If
maintaining a waste pile is automatically "land disposal" as DTSC also
maintains, then no TSDF could ever have a pile, or be permitted to have a
pile, under any circumstance, pursuant to H&S 25201.6(g). Yet, 22 CCR
66264.250, provides the requirements for a TSDF to store or treat piles.
Thus, it is apparent that neither the legislature, nor California EPA in
promulgating the Regulations, intended a waste pile, or pile, to be
automatically deemed a "land disposal" activity.

To be "land disposed," the material would in this circumstance need to be
placed in or on the bare ground ("land") which is not the case.

This correct conclusion of FRS is supported by CCR Title 22 §22260.10,
which defines "Land Disposal" as follows:

1 "Land disposal' means placement in or on the land, except in a corrective
2 action management unit, and includes, but is not limited to, placement in a
3 landfill, surface impoundment, waste pile, injection well, land treatment
4 facility, salt dome formation, salt bed formation, underground mine or
5 cave, or placement in a concrete vault or bunker intended for disposal
6 purposes."

7 Although not defined by Regulation, common meaning of the term "land"
8 as in "placement in or on the land" by Merriam Webster is the "solid part of
9 the surface of the Earth: an area of ground". FRS is not, and never has,
10 proposed to unload onto the bare ground.

11 The definition of "Land disposal method" sheds further clarity on the
12 meaning of "Land Disposal". Land Disposal Method is defined as; a)
13 disposing of hazardous waste, b) treatment of hazardous waste, c)
14 storage of hazardous waste for longer than one year. Disposal and
15 treatment are also defined in §66260.10. FRS does not dispose of
16 hazardous waste, nor treat hazardous waste, nor does it store hazardous
17 waste for longer than one year.

18 FRS requests that Special Condition #12 be clarified to add the italicized
19 language, stating:

20 "All solid hazardous waste transfer shall occur directly from one container
21 into another container, *or into a containment unit.*"

22 FRS's concern is that it continue to employ the procedures in accordance
23 with its WAP in sorting and inspecting the bulk solids for incompatible
24 materials, and those materials that are inconsistent with the generator
25 profile or the FRS permit, and that it do so by sorting and inspecting bulk
26 solids within a fully engineered, bermed, covered, security fenced,
27 sprinklered, paved, regulated unit.

28 The sorting process also allows for the removal of recyclables from the
waste stream. This allows FRS to comply with, and allows FRS to assist
its customers and government agencies to comply with AB939.

DTSC permit writer [project manger] Waqar Ahmad³ concurred in
deposition testimony that there is no concern for human health or the
environment by allowing FRS to unload bulk solid hazardous waste
directly into a paved, bermed, enclosed, regulated unit:

³ In Response to Comments, Comment 1-8, DTSC acknowledges that Mr. Ahmad was assigned
as the permit writer [project manager] and would be reviewing the Class 2 permit modification request.

1 Q: ... What concern, if any, is presented by unloading out of a
2 container solid hazardous waste onto a fully paved bermed
enclosed regulated unit?"

3 A: The way you are packing the statement, it is already taken
4 care of that no dust would be generated, nothing would be
5 coming out and there's no chance of any vapors, as you
6 already taking into consideration all the impact coming into
the atmosphere. *Under this situation, I would not have any
concern.*"⁴

7 Of course, Mr. Ahmad's concern regarding impact into the atmosphere is
8 addressed by the rest of the Special Condition itself, which requires that,
9 "No solid waste transfer shall occur if visible emissions or clouds of dust
10 are created that are likely to leave this Unit during the transfer of the
waste."

11 Moreover, Mr. Ahmad confirmed that it is not a violation of FRS' existing
12 permit, nor California law, for it to unload solid hazardous waste not in
containers and to offload them in the receiving area for inspection, stating:

13 Q: ... "if FRS receives solid hazardous waste that are not in
14 containers and offloads them in the receiving shipping area
15 for inspection, would that activity description cause them to
16 be in violation?"

17 A: I would say that it has to be unloaded in a regulated unit.⁵

18 Mr. Ahmad further confirmed that the Permit as drafted does not prohibit
19 unloading bulk solids directly into Unit 9.⁶

20 **Analysis of Appeal Comment 5:**

21 To describe the issue in simple terms, the matter simply involves a process
22 where solid waste material from a truck (i.e. a dump truck) is dumped onto a concrete
23 pad. FRS facility personnel sort the materials and place the sorted materials into
24 containers. The Permit Appeals Officer reviewed the administrative record searching
25 for a description of this type. The review included, but was not limited to, the FRS 1997
26 Part A and Part B submitted as part of a permit application, the 2002 facility permit, and

27 ⁴ Deposition of Waqar Ahmad v. II p. 272 Ins 17-273 Ins 5, lodged herewith.

28 ⁵ Deposition of Waqar Ahmad v. II p. 316 Ins 15-22, lodged herewith.

⁶ Deposition of Waqar Ahmad v. II pg 316 In 9- pg. 319 In. 6, lodged herewith.

1 the 2010 "Revised/Renewal Notification for an Existing Facility" submitted to DTSC by
2 FRS. No such simple description was found. The first clue that such a process may be
3 employed was located on page 8 in the 2010 "Revised/Renewal Notification for an
4 Existing Facility" where it was noted that "solid wastes that is received at FRS are
5 un-loaded against the west wall of the receiving/shipping area for inspection and
6 sorting. The material is then loaded into the consolidation bins using a bucket type
7 loader." The lack of clarity is presumably why this issue is on appeal and requires
8 additional examination of the party's positions.

9 Perhaps the best place to start is to address the statement in DTSC's Office of
10 Permitting appeals briefing statement that Petitioners have mischaracterized the
11 deposition testimony of a DTSC permit writer (DTSC's appeals briefing statement,
12 page 21, line 10). The Permit Appeals Officer would not go so far as to state the
13 Petitioners have mischaracterized the testimony, but perhaps does not have a proper
14 understanding of the testimony.

15 Petitioners' opening appeal briefing statement, page 34, line 1-6 states:

16 FRS's concern is that it continue to employ the procedures in accordance
17 with its WAP in sorting and inspecting the bulk solids for incompatible
18 materials, and those materials that are inconsistent with the generator
19 profile or the FRS permit, and that it do so by sorting and inspecting bulk
20 solids within a fully engineered, bermed, covered, security fenced,
21 sprinklered, paved, regulated unit.

22 This clearly states that FRS's concern is being able to operate within a "regulated
23 unit." The deposition testimony referred to in Petitioners' appeal comment and
24 Petitioners' opening appeal briefing statement clearly indicate that the responses of
25 DTSC's permit writer are that the activities are OK if conducted within a "regulated unit"
26 with the exception of the final deposition testimony cited that is couched in the terms
27 that the unloading is OK if conducted in accordance with the Special Conditions of the
28 2013 Draft Permit (Deposition of Waqar Ahmad v. II pg 316 ln 9- pg. 319 ln. 6, lodged
herewith.). The Permit Appeals Officer finds the conclusion presented by Petitioners

1 that "Mr. Ahmad further confirmed that the Permit as drafted does not prohibit unloading
2 bulk solids directly into Unit 9." (Petitioners' opening appeal briefing statement, page 24,
3 line 11-12) to be a stretch as a stand-alone statement, but not a direct
4 mischaracterization as the citation to the deposition testimony is provided.

5 Petitioners' arguments become a bit circular in nature in arguing that they need
6 to operate within a "regulated unit." A "regulated unit" is defined as permitted facilities
7 that operate a surface impoundment, waste pile, land treatment unit, or landfill (Cal.
8 Code Regs., tit. 22, sec. 66262.10), while at the same time arguing that they are not
9 conducting land disposal activities, while at the same time stating the unloading area in
10 question qualifies as a "Containment Building", which in itself provides management
11 standards that operate as an exception to compliance with full land disposal
12 requirements. In other words, if an activity did not qualify to be regulated as land
13 disposal, there would be no need for a Containment Building.

14 In recognizing that there are wastes that are not amenable to management in
15 tanks and containers such as solid hazardous waste debris, US EPA in 57 Fed. Reg.
16 37194, August 18, 1992, discussed during the promulgation of standards for
17 Containment Buildings clearly indicating that wastes that are stored or treated on
18 concrete pads or similar floors inside of buildings would be considered a land disposal
19 unit.

20 Some of these non-liquid hazardous wastes are generated in large
21 volumes (often in batches), and may not be amenable to management in
22 RCRA tanks or containers. These wastes are sometimes stored or
23 treated on concrete pads or similar floors inside buildings. EPA currently
24 classifies this type of management unit as an indoor waste pile, which
25 EPA considers to be a land disposal unit based on the statutory definition
26 of land disposal in section 3004(k). See 52 FR 40605 (November 7,
27 1986). Lead slags and spent potliners from primary aluminum production
28 are examples of hazardous wastes that are amenable to management in
such units because of their volume or bulk; contaminated debris may also
be managed in such units. EPA believes that management of a
hazardous waste inside a unit designed and operated to contain the
hazardous waste within the unit—akin to storage in a RCRA tank or
container—does not pose the types of potential harms or uncertainties

1 Congress sought to address in defining land disposal, as it did in RCRA
2 section 3004(k).

3 Other than acknowledge the issue, the Permit Appeals Officer need not decide
4 whether the process requires a "regulated unit" or a "containment building" because the
5 Petitioners also argue that FRS is not conducting land disposal activities (Petitioners'
6 opening appeal briefing statement, page 32-33) and is not conducting treatment or
7 storage (Petitioners' reply appeal briefing statement, page 6, line 1) creating an
8 argument of "we are not engaging in the activity, but if we were engaging in the activity,
9 what we are doing is proper"; which in turn creates a hypothetical for the Permit Appeals
10 Officer to decide.

11 However, the Permit Appeals Officer will note that US EPA has interpreted the
12 placement of waste on the land for any duration to be disposal.

13 The Hazardous and Solid Waste Amendments (HSWA), enacted on
14 November 8, 1984, largely prohibit land disposal of hazardous wastes.
15 After a waste is prohibited from land disposal, the statute provides two
16 options: before land disposal occurs, comply with a specified treatment
17 standard which minimizes threats to human health and the environment,
18 or, dispose of the waste in an approved "no migration" unit. Land disposal
19 is the placement of waste in or on the land and includes, but is not limited
20 to, any placement of hazardous waste into a landfill, surface
21 impoundment, waste pile, injection well, land treatment facility, salt dome
22 formation, salt bed formation, or underground mine or cave. RCRA
23 section 3004 (k); 42 U.S.C. section 6924 (k). The statute draws no
24 distinction in the duration of disposal. "Temporary" placement in a land
25 disposal unit is "land disposal" just as much as is permanent disposal.
26 See RCRA Section 3004(k) and implementing regulations at 40 CFR Part
27 268.2 (c) (defining "land disposal" as including "any placement"). (EPA
28 Memorandum, Land Disposal Restriction Requirements, Barnes Johnson,
Director, Office of Resource and Conservation, April 11, 2014).

29 If we simply accept the Petitioners' argument that the dumping of solid hazardous
30 waste onto a concrete pad is not disposal, nor storage because the facility personnel
31 sort and remove it as soon as it is dumped; nor treatment because only sorting and
32 segregation is performed:

1 Unloading and sorting bulk solid waste does not constitute "treatment or
2 storage" pursuant to CCR, tit. 22 section 66260.10 definitions and
3 therefore does not fall within the CCR, tit. 22 section 66260.10 definition of
4 waste pile as "any noncontainerized accumulation of solid, nonflowing
5 hazardous waste *that is used for treatment or storage* and that is not a
6 containment building." DTSC in its Response fails to consider altogether
7 the words "treatment or storage" contained within that definition.
8 Unloading and sorting instead falls within the definition of "transfer" as:
9 "the loading, unloading, pumping or packaging of hazardous waste."
10 (Petitioners' reply appeal briefing statement, page 6, lines 4-11).

11 we need only consider California Health and Safety Code section 25200.19,
12 subdivision (d)(3) that defines unloading as "activities associated with the receipt of
13 bulk hazardous waste ... and ... placing the bulk hazardous waste into an
14 authorized container, tank or unit..."

15 The relief that FRS requests is "All solid hazardous waste transfer shall occur
16 directly from one container into another container, or *into a containment unit*."
17 (Petitioners' opening appeal briefing statement, page 33, line 26.) Note that it is exactly
18 the same as the statute, with the phrase "containment unit" substituted for "authorized
19 unit."

20 As we noted in our review of the record, the activities at issue have not appeared
21 clearly described in the record provided; thus the Permit Appeals Officer cannot
22 conclude that the concrete pad has been evaluated as an "authorized unit" to receive
23 the dumping of solid hazardous waste. The Permit Appeals Officer did take note that
24 the concrete pad area was included in secondary containment calculations, however it
25 was noted that only the consideration of solid hazardous waste bins was noted by the
26 certifying engineer and not the presence of non-containerized solid waste; thus implying
27 the activity was not ongoing. Additionally, the Permit Appeals Officer does take note of
28 DTSC's position that the area is currently permitted as a container storage area.

1 **Conclusions for Appeal Comment 5:**

2 For the reasons cited above, the Permit Appeals Officer denies Petitioners'
3 Appeal Comment 5.

4

5 **V. ORDER**

6 For the reasons set forth above, DTSC partially grants appeal comment 4.
7 Appeal comments 1, 2, 3, and 5 are denied. Modifications to the permit within the body
8 of this Final Order are incorporated herein by reference. The stay of the permit
9 modification decision is hereby vacated and the permit modification decision as
10 modified by this Final Order shall be effective this date.

11

12

13

14

15 Date: 2/3/2015

// original signed by //

16

Pauline Batarseh
Permit Appeals Officer
Hazardous Waste Management Program
Department of Toxic Substances Control

17

18

19 **Attachments**

20

- 21 1. Figure 2 from Standardized Permit Application, draft May 25, 2010.

22 2. Figure 2 from 2014 Final Permit Mod.

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