

Board Meeting

August 25, 2022

Questions and Comments Regarding the Permit Appeal Process	
Name/Affiliation	Comment
Ingrid Brostrom, Assistant Director Center on Race, Poverty & the Environment	<p>Currently, permit regs limit permit appeal to a condition of the permit decision rather than the permit itself.</p> <p>Guiding principles:</p> <ul style="list-style-type: none"> -residents impacted by hazardous waste facilities face significant barriers to participation in administrative and legal processes due to social and environmental vulnerabilities (which she feels the current process does not accommodate) -the Board should adopt processes that maximize impacted resident's ability to participate in the appeal process (to enable everyone to participate) -the Board should strive for independence from and accountability over DTSC, and transparency in its own decision-making process. The Board was created for additional transparency and accountability. The biggest criticism in current approach is that DTSC is reviewing appeals of its own decision, which creates conflicts. <p>What can be appealed?</p> <ul style="list-style-type: none"> -existing regs require petition to challenge a permit 'condition' -however, regulations provide DTSC with the authority to deny permits based on other factors, an authority DTSC rarely, if ever, uses: -recurring pattern of violations -violations that may pose a threat to public health or environment -any non-compliance with a permit condition -non-compliance with Civil Rights laws -non-compliance with SB 673 regulations once adopted <p>*Recommendation: Board can consider appeals of the issuance or denial of permits in their entirety</p>

Standard of Review: Current standard of review is:

- 1) a clearly erroneous finding of fact or law; or
- 2) an exercise of discretion or an important policy consideration the Dept should review

***Recommendation:** Provide de novo review for findings of fact and law; Retain review of DTSC's exercise of discretion and important policy considerations

Standing/Exhaustion

- standing: any person aggrieved by action, no administrative participation required
- exhaustion: no exhaustion requirement, or Petitioners can explain why issue not previously raised
- no fees required

Notification - big problem, community may not know that these appeals are going on

-DTSC website should be more community friendly. The BES website should include permit decisions that may be appealed.

-In addition, the Board should adopt a notification system for residents near permitted facilities. DTSC's mailing list system is not very good, very under-inclusive. Multiple modes are needed to get information out to those that need it - emailing, public notices, etc.

Accessibility

-translation

-hearings in times/locations accessible to impacted residents. We shouldn't be holding meetings in Sacramento; go to places where facilities are located.

-appeals heard via public hearing, with opportunity for public comment. The primary means for public appeal should be public, held in public setting.

-multiple means of providing information to the Board, no requirement for legal brief; they don't need legal briefs, if there are other ways that information can be transmitted for the board's review, those should be adopted. being flexible about how the Board accepts information that is going to be considered as part of the appeal decision.

	<p>-DTSC to assist with funding for technical advisors. The Board should figure out how technical advisors can help community present its appeal to board. how do we get these funds to the right folks?</p> <p>-90 days to appeal (increase from 30 days). For DTSC to have years and years and years, and then the public appeal process only 30 days is too short.</p> <p>-Board may grant extensions for good cause; the Board should be generous in its ability to grant extensions for good cause.</p> <p>Disclosures/Conflicts</p> <p>-Board members must disclose any potential or perceived financial conflicts of interest in a facility or operation subject to a permit appeal and recuse themselves from decision making process</p> <p>-Board members must disclose reasoning for their vote on appeal</p>
<p>Ingrid Brostrom, Assistant Director Center on Race, Poverty & the Environment</p>	<p>Requesting from Paul a sense of the numbers - how many permits get appealed? How many get appealed from the impacted residents/communities versus the stakeholders, permitted facilities, and regulated entities? How many of those appeals get to the first or second round of appeal?</p>
<p>Angela Johnson Meszaros, Earth Justice</p>	<p>First comment - encourages Board to think about this process as a process where the impacted community is actually part of the process. Three key stakeholder groups: (1) the regulated community, (2) the regulators, and (3) the impacted community</p> <p>The impacted community does not stop at the boundaries of a fence line community. Because these issues are statewide issues, the impacted community can be anyone in the state. The language currently available allowing any person to participate in the appeals process is on the right track as we're thinking how we move forward.</p> <p>The second comment - as we move forward, thinking about the permit, the appeals process as the next step almost in the permitting process - we need to have strong underlying permitting engagement. we need to have, if we're going to have support for people to understand and be involved in the decision, we can't add that at the permit appeal stage, we need to add that at the draft permit stage because that's where you have the time, the</p>

	<p>ability to build the kind of understanding that you need to have the ability to think about the complex issues before you get to the permit appeal. More prefer, not having to appeal - a good, solid, clean process that is efficient, fair, and thorough, which happens at the permitting process so you're not having to hash out the things that went wrong in the permitting process in the appeals process.</p> <p>Regarding Ingrid's comments on the limitations in the previous version of the permit regs, she agrees with Ingrid. Having clearly stated parameters that includes a range of things that one would be able to raise in the appeals process and the permitting dept and public and regulated businesses.</p> <p>Question: In moving forward, is Board intending to adopt emergency regulations or are you intending to have a standard regulatory package that goes forward for the final adoption of regulations?</p>
<p>Deborah Bayer, Richmond Shoreline Alliance</p>	<p>Supports all of Ingrid's comments -especially that DTSC reviews its own decisions. Would be better if BES felt like they were able to do an independent review -as community member, it is complicated. I've been doing this for years and I'm still unclear how DTSC administers CEQA -likes what Ingrid suggested about the board members explaining their votes instead of just voting poll -sometimes what you want is not just a scientific lecture but an explanation. For example, the limitations on a piece of property that there could be no schools or senior centers there, and yet children and old people and families can live on it. So logic is what we're up against. Most people that cannot figure that paradox out, needs more explaining.</p>
<p>Chuck White, Manatt, Phelps & Phillips, LLP</p>	<p>Communities near hazardous waste facilities and their issues that need to be addressed - there is also the issue of a need for HW facilities to handle the HW that is generated in CA. He is submitting to us that the alternatives, if we cannot do it in CA, it will go to Mexico or Pacific Rim countries. And somehow in our discussion of the permitting for these facilities,</p>

we need to take into account this question somehow. How is CA going to meet the need for processing hazardous waste?

Wants the board to recognize these needs through the hazardous waste management plan that unfortunately won't be around for another 3-4 years, that you're going to have to make some recognition for the need for some of these facilities to exist. He agrees that there needs to be some kind of dialogue between the facilities, the need for those facilities and the communities that have concerns about specific attributes of a facility. And how does that dialogue take place? Does it have to happen before it gets to the Board or is this something that the Board can facilitate to try to encourage a discussion of issues in a give and take situation.

It seems as if BES is setting itself up as an immovable object versus an irresistible force. The state must find a way to site facilities to meet the needs of California while at the same time trying to address the needs of the communities that are around them. This will be a tough balancing operation.

A need to facilitate communication on all aspects, open and free communication. A little concerned about Bagley Keene requirements of ex parte communication. Would like to have that conversation on situations when they come up just like board should have communications with the communities, but I would like to make sure that everybody has equal access to the board and deliberating on these appeals.