

Permit Appeals Workshop

September 28, 2022

Questions and Comments Regarding Permit Decisions and Appeals in General	
Name / Affiliation	Comment
Chuck White, Manatt	Added that DTSC provides notice to public generally, in addition to those who have expressed interest. Suggested that we ought to look at the existing regulations and start there. The existing regulations work well. Asked about how and when during the process the Board would step in and get involved. Clarified that either an owner or an operator may appeal a permit decision. Suggested that the Board add a requirement for an allegation of harm that is backed up by evidence for standing to appeal.
Angela Johnson Meszaros, Earth Justice	Expressed that the Class 2 Modification has a public review period, asked for clarification regarding the difference between Class 2 Modification and other permit decisions regarding standing.
Debbie Bayer, Richmond Shoreline Alliance	Expressed that public notice provided during permit application review process may not be adequate.
Chuck White, Manatt	Suggested that someone who is distant from a facility would not be able to show potential for harm and should not have standing.
Mark Nechodom, Western States Petroleum Association	Asked about the legal standards that apply to the decision made by DTSC on a permit application and how those relate to the review of that decision by the Board. Expressed concern about the dynamic between the discretion of DTSC compared to the discretion of the Board.
Cynthia Babich, Del Amo Action Committee	Disputed the suggestion of a need for a showing of harm for standing. Expressed that there is not a level playing field and that requiring a showing of harm is not appropriate.
Florence Gharibian	Expressed that people in the community encounter difficulty in having meaningful engagement with permitting. Discussed difficulty that people in community have keeping track of permitting processes that may take several years to complete. Suggested that DTSC provide the public with an outline with time estimates of the anticipated steps in the permit process. DTSC needs to provide substantive responses to the comments raised. 30 days is not adequate and ¼ mile is not adequate for public notice. The permit application review process needs to better accommodate the public. Very few members of the public know enough about permitting to meaningfully engage in the permit review process.
Dante Angel Miguel, Healthy Contra Costa	Communities are frustrated by lack of accountability.
Chuck White, Manatt	Regarding Florence's comment, added that DTSC does provide a response to comments raised. Clarified that the issue is whether the response is adequate.

Question 1: What should be the timing for filing an Appeal?	
Name / Affiliation	Comment
Chuck White, Manatt	Suggested that the Board start with what is on the books now.
Angela Johnson Meszaros, Earth Justice	30 days is too tight of a turnaround. Suggested a tool that allows more time for filing, which includes an initial notice of appeal that would allow the petitioner more time to prepare the submission.
Cynthia Babich, Del Amo Action Committee	30 days is does not give communities enough time. Current notice is not adequate to inform the public. Additional outreach is needed. Clarified that better notice is needed for both permit application review and permit appeal.
Mark Nechodom, Western States Petroleum Association	Suggested a change to the timing rule that would allow the Board to grant additional time to file an appeal based on the complexity of the permit.
Florence Gharibian	Suggested that the time needed to file an appeal is different for the owner or operator of the facility than for the public.
Matt Williamson, Manatt	Agreed with Angela's suggestion. Expressed concern with extending the time to file an appeal and the time for deciding an appeal. Current time for permitting is already very lengthy. Taking years to make permit decisions is not a good outcome and Board should keep that in mind.
Dawn Koepke, California Council for Environmental and Economic Policy	Agrees with Matt. CCEP was involved with SB 158 and concern with delay was key to the reform. Stated that there are multiple opportunities for public comment and public engagement built into the permit review process, so the Board should keep that in mind. While she is open to the idea of an early notice of appeal, the Board should be mindful of the delay that is already inherent in the permit review process and the desire on the part of the business community as reflected in SB 158 to shorten the permit process.
Debbie Bayer, Richmond Shoreline Alliance	Felt that 30 days was too fast, 60 days would be better. The community is frustrated because they felt that they weren't being listened to. The Board was set up to address that frustration. There is an imbalance of power between the facility and the community because members of the community often are unaware, unorganized and lack technical expertise in order to be taken seriously. So the Board should be aware of the inequality that exists.
Dean Talley, California Manufacturers and Technology Association	Aligned his comments with Dawn and Matt. CMTA represents 500 businesses large and small. It is critical to meet the requirements of SB 158 to improve efficiency and transparency of the permitting process. It is important to have a process to resolve meritless appeals. The Board should use the best available science and provide avenues for discourse among all stakeholders to resolve appeals efficiently.
Question 2: Who may file an Appeal?	
Name / Affiliation	Comment

Eric Nollan	Background in environmental science. Agrees with Cynthia and comments made in support of the community. Members of the community do not have expertise to know how to participate. The Board is in a perfect position to provide that assistance as a liaison to the community.
Dawn Koepke, California Council for Environmental and Economic Policy	The standard established by the existing regulation is appropriate to resolve this issue. Businesses would be concerned about expanding standing too widely.
Angela Johnson Meszaros, Earth Justice	The issue of who may file an appeal is related to who receives notice of the permit in the first place. Placing limits on who may file an appeal adds constraints to a process that is already stretched out with long periods of inactivity where people lose track of the process. A long appeals process is necessary for the same reasons that a long permit process is needed, and it would be wrong to shorten the appeal process merely because the permit process took a long time. Given the importance of the issues at stake, anyone who is willing to participate in the process should have standing to appeal.
Cynthia Babich, Del Amo Action Committee	People in the community presume that businesses activities meet applicable standards but get involved when they find out that the standards are not being followed. The goal should be to have greater community awareness.
Matt Williamson, Manatt	The way that DTSC engages with the community during the permit process needs to be improved. Filing an appeal puts a great burden on the Board if DTSC's permitting staff have had no opportunity to address the concerns first. It is important in the rulemaking to balance these concerns. Added that the public comment period occurs during the review of the draft permit which typically occurs months, not years, before the final permit decision, certainly not a period of 5 to 10 years.
Chuck White, Manatt	The Board should keep in mind the broader concern to ensure that adequate capacity exists statewide to handle hazardous waste.
Question 3: What issues can be raised in an Appeal?	
Name / Affiliation	Comment
Debbie Bayer, Richmond Shoreline Alliance	In considering the potential grounds for appeal, what if an issue is raised in comments but not addressed? For example, what if the permitting decision refused to consider the latest science on sea level rise for a site? She would want another set of minds in the Board to take that up on appeal.
Mark Nechodom, Western States Petroleum Association	The Board needs to have a process of scientific review, such as the Science Advisory Board in EPA, to provide a level of peer review over DTSC.
Chuck White, Manatt	On the issue of sea level rise, it would be an exercise of discretion that the Board would be able to review.

Dawn Koepke, California Council for Environmental and Economic Policy	The topic of what issues can be raised on an appeal is very complex. Pointed out that SB 158 gives the Board the authority to hear from stakeholders well before an appeal is filed about a particular site. The intent of that was to promote greater accountability during the permitting process. Rewriting the grounds for an appeal to make them broader could have unintended consequences.
Eric Nollan	Grounds for an appeal are legalese which is hard for members of the community to understand. The Board should serve as a liaison to the community so that members of the public can better understand the process during the application review period and are better able to engage.
Cynthia Babich, Del Amo Action Committee	There are many reasons to require an appeal. Sometimes the land uses around them change, especially around housing and the lack of it, and local planning who fill every space and lose the opportunity for buffer zones. Sometimes science has determined that emissions are worse than originally thought, people should be able to raise any reasonable grounds to appeal.
Rebecca	Community concerns are so distinct from polluter concerns. Wondered if this process would work better if you could hold separate workshops, one for communities and one for polluters.
Cynthia Babich, Del Amo Action Committee	Supported Rebecca's idea
Mark Nechodom, Western States Petroleum Association	To clarify, would recommend having a scientific panel to advise the Board rather than having the Board itself setting scientific standards.
Question 4: What legal standards govern the Board's decision on an Appeal?	
Name / Affiliation	Comment
Matt Williamson, Manatt	Given the years that DTSC staff spends understanding the scientific and technical aspects of the permit, lowering the standard of review to de novo or less deferential would put a massive burden on the Board. It would be a big mistake because it would slow down the process and lead to bad results. A deferential standard is necessary considering the technical nature of permits.
Winston Hickox	Important to keep in mind the rule of law and have due respect for the laws and regulations that have already been enacted, which govern the process. Knowing that the intent is to increase transparency, the existing laws and regulations are very informative about how to administer appeals.
Angela Johnson Meszaros, Earth Justice	There is a lot to unpack with these questions about legal standards. There are places where it is appropriate to defer to staff and places where it is not. The Board should be less deferential when considering issues of process and public participation. Considering the importance of transparency for the Board, giving broad

	<p>discretion to staff on everything would be inappropriate because then the Board is not providing oversight. No one wants to repeat the entire process over again on appeal. But there needs to be a balance. Right now, the appeal process is too deferential.</p>
Florence Gharibian	<p>Agreed with Angela. It is important to understand the different roles that are played by the permitting staff and the Board. When an appeal comes to the Board, there may be an issue that was beyond the scope of what the permitting staff was able to consider. So there needs to be a clear line between the role of the staff and the role of the Board.</p>
Idalmis Vaquero	<p>There is an imbalance of power between industry and community and the status quo has not worked well for the community. The de novo standard would increase transparency. The board should change the standard of review. Abuse of discretion is not the right standard because that prevents the public from being able to fully participate.</p>