



VIA ELECTRONIC SUBMISSION: BEInfo@bes.dtsc.ca.gov

February 6, 2023

Jeanne Rizzo, Chair
Alexis Strauss Hacker, Vice Chair
Lizette Ruiz, Member
Sushma Dhulipala Bhatia, Member
Georgette Gómez, Member
Board of Environmental Safety
CalEPA Headquarters Building
1001 I Street
Sacramento, CA 95814-2828

RE: Development of the Board of Environmental Safety’s Permit Appeal Process

Dear Chair Rizzo and Members Strauss Hacker, Ruiz, Dhulipala Bhatia, & Gómez,

On behalf of the signatories to this letter, we again appreciate the opportunity to provide further input as the Board of Environmental Safety (Board) works to develop and adopt rules governing its handling of permit appeals. Signatories to this letter represent members of the regulated community, including owners and operators of hazardous waste facilities permitted by the Department of Toxic Substances Control (DTSC), that will be subject to the appeals process you ultimately adopt.

We wish to first thank the Board and its staff for taking the time to consider our comments and suggestions both in writing and during our opportunities to converse. It has made the process of providing input efficient and effective. We also look forward to the Board’s posting on February 10 of its updated/redlined “Draft Proposed Revisions to the Appeal Regulations,” and we will do our utmost to ensure a quick turnaround of any further comments that we provide to the Board on that draft. In that vein, the following is offered for your consideration as a follow-up to your most recent Board discussion of this topic.

During the Board’s January 26 meeting, we appreciated the robust discussion regarding timing for the adoption of final appeals rules, following a suggestion that more time should be allowed

for public comment on the proposed rules. We have serious concerns regarding this request to extend the rulemaking based on the need to provide more time for public input. As the Board is aware, the Board began substantive discussions (including the solicitation of public input) at its August 22, 2022, meeting with regards to revising the permit appeals rules, with proposed written draft rules made publicly available for review on December 2, 2022. As far as we are aware, the public (including that commenter) has largely not provided comments regarding the proposed rules. Given this lack of public engagement on the draft rules to date, it is unclear why granting additional time to solicit input from the public would be productive and we, therefore, see no reason to further extend the rulemaking, which will only contribute to further delays in DTSC's permitting process.

The regulated community would respectfully urge the Board to adopt its final draft proposed revisions to the appeal regulations at its next scheduled public meeting on March 23, 2023, and formally submit that language to the Office of Administrative Law to initiate the formal emergency rulemaking. It is important to note that since the time that the Board statutorily assumed its responsibilities under Senate Bill (SB) 158 (Chapter 73, Statutes of 2021) to hear and decide appeals of hazardous waste facility permit decisions issued by DTSC¹, the process has been at a complete standstill pending the Board's adoption of the final rules governing its appeals process. And because permitting approvals are stayed pending resolution of appeals, this current situation the permitted community finds itself in has also led to a delay of over 13-months for these projects subject to appeal to proceed.

Please understand that the impacts of any further delays in this rulemaking (contributing to further delays in obtaining final decisions from the Board on these appeals) are very real. For example, one permitted facility is seeking approval to operate new equipment onsite at that facility, which DTSC has repeatedly found will result in a significant environmental improvement to the facility's handling of hazardous waste. Unfortunately, without formalizing the rules allowing this particular appeal to proceed, the recognized environmental benefits cannot be realized -- an extremely frustrating situation (both for the facility and the community that stands to benefit from the environmental improvement) and which any further delay in adopting the final rules will only exacerbate.

Moreover, the uncertainty created by the Board's inability to process appeals because it lacks an approved appeals process has forced a number of facilities to delay improvement projects. Simply put, without certainty regarding the time-line for the Board's processing of appeals (or how these appeals will proceed under an adopted appeals process), facilities are understandably reluctant to take on the risk of initiating environmentally beneficial projects that require permitting authority from DTSC.

As enacted by the Legislature and the Governor, SB 158 mandates that the Board "improve the efficiency of the permitting process."² To meet this legislative mandate, we believe that it is imperative that the Board remain committed to adopting its final draft proposed revisions to the appeals regulations at its next scheduled public meeting on March 23, 2023, and that those revisions allow for the efficient resolution of permit appeals—particularly for temporary

¹ CA Health and Safety Code, Section 25125.2(b)(2)

² CA Health and Safety Code, Section 25125.2(b)(7)(A)

authorizations and permit modifications that allow for projects that benefit the environment and public safety. Since these proceedings began last August 25, 2022, all public stakeholders have been afforded over 160 days in which to provide public comments to the Board. As such, we believe that the Board has provided ample opportunities for all interested stakeholders to engage in this public process and respectfully urge the Board to move forward and adopt its final proposed revisions to the appeals process within the next seven weeks. Thank you.

Sincerely,

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