



BOARD OF SUPERVISORS COUNTY OF LOS ANGELES

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HILDA L. SOLIS
SUPERVISOR, FIRST DISTRICT

December 8, 2022

VIA EMAIL: BESINFO@BES.DTSC.CA.GOV

Board of Environmental Safety

**Re: Comments on the Board of Environmental Safety's Development of
Permit Appeal Regulations**

Dear Honorable Board Members:

I applaud the Board of Environmental Safety's commitment to soliciting public input in the development of regulations to guide the Board's oversight of appeals of hazardous waste permit decisions issued by the Department of Toxic Substances Control, consistent with the Board's mandate under SB 158. I understand that the Board has held a series of public "appeal process workshops," at which it sought input on eight aspects of the appeal process, namely: (1) timing of appeals, (2) standing to appeal; (3) grounds for appeal; (4) standard of review of appeals; (5) noticing of permit decisions; (6) participation in the appeal process; (7) contents of the appeal record; and (8) incorporation of alternative dispute resolution provisions in the appeal process. While a member of my staff participated in one of your workshops and provided oral comments on a handful of the topics under discussion, I wanted to provide you with a fuller set of comments, on the issues identified by the Board, which are provided below:

First, on the issue of "timing of appeals", it is clear that in most instances, 30 days to file an appeal is not sufficient for individuals other than the permit applicant and DTSC, including local residents, government and/or community activists, who require time to mobilize, galvanize support, and mount an appeal. Increasing the time from 30 to 60 days or more (at least for non-parties to the underlying appeal) would give more time for that to occur. Even if the Board is unwilling to grant a blanket extension of an additional 30-60 days, there should at least be a procedure, in cases where a facility is of significant public interest (e.g., Exide, Quemetco), where the deadline can routinely be extended upon request without undue burden.

On "standing to appeal," or who may appeal, the regulations should afford an opportunity for parties, other than those who are directly interested in a permit, to appeal. For instance, the option could be afforded to those living and working within several miles of the facility, community activists who represent those people, as well as state and local government in whose jurisdiction the facility and area of potential impact are located.

As to a "basis of an appeal," while an error of law or the facts is an important basis, the Board should consider recognizing policy considerations both at the permit level and on appeal, such as

environmental justice and cumulative impacts on the community. In such instances, both at the staff level initially and on appeal, the Board should take into consideration the cumulative impacts of the permitted operations on the local community, even if all permit requirements have otherwise been met. As to the requirement that issues on appeal must be raised first in the permitting process, such a rule would be limiting to non-parties, unless all are given robust notice throughout the permitting process -- the type of notice that has not been provided to date by DTSC.

On “standard of review,” the Board will need to strike a balance between recognizing some level of deference to DTSC staff who have the time, expertise, and resources to undertake a more detailed review than is possible by the Board, while remaining open to meritorious challenges, including challenges based on policy considerations larger than the issues in a single facility permit/appeal. Likewise, the Board should not give deference to staff determinations on procedural issues.

The issue of “notice” of a permit application or appeal is critically important and informs almost all of the other factors identified by the Board. Without robust notice, all of the other procedural safeguards will be unavailing. For instance, in the case of Class 2 permit modifications or alternations, the public is only notified once staff makes its decision on the application. Local and state government, as well as public interest groups should broadly be given notice on all permit applications and appeals. If the public does not have notice of permit applications and appeals, it cannot play a role in the process and will be shut out of the process. DTSC has the website and list-serve ability to do this efficiently and without undue cost.

“Permit participation” should be permitted by those other than the petitioner, DTSC, and the facility owner/operator. Restricting participation to the above parties would shut out community advocates and other local government entities like the County, who play a role in advocating for their constituents. For instance, participation could be afforded to those living and working within several miles of the facility who may be impacted by the permit decision, community activists who represent those people, as well as state and local government in whose jurisdiction the facility and area of impact is located, even if not formal parties to an appeal. The ability of interested parties to file “amicus”-type briefs should be widely accepted, so all issues and perspectives are vetted as part of the process.

On the administrative record on appeal, the Board should broadly incorporate comments and submissions on behalf of area residents, community activists, and governmental entities that represent the affected communities, not just those most intimately involved in the permitting process. Also consistent with the Board of Supervisors’ prior letters to DTSC on Quemetco’s permit applications, the Board could be encouraged to include in the record the applicant’s compliance with all oversight agencies’ Notices of Violation, compliance issues, and any investigation and/or cleanup orders issued by DTSC or other agencies with jurisdiction relating to the subject facility and impacted communities.

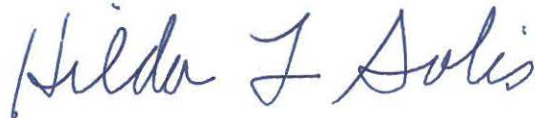
Finally, the Board’s suggestion of incorporating mandatory dispute resolution/settlement requirements in the appeal process could be beneficial, as settlement is often (but not always)

preferable to disputes and litigation, as long as the process is conducted in a fair and transparent fashion, so final decisions on permit appeals that are of interest to and have the potential to impact local communities are not made without notice to and input from interested stakeholders.

While the above factors identified by the Board are certainly important, many additional considerations will need to be evaluated to develop comprehensive procedures. Many of these will not be apparent until the Board undertakes the drafting process. To that end, I encourage the Board to circulate the draft appellate regulations for public comment and hold similar workshops to seek additional input from all interested parties before they are finalized and approved.

Your consideration of these comments are greatly appreciated. I look forward to working with you to protect the communities of Los Angeles County that I represent.

Sincerely,

A handwritten signature in blue ink that reads "Hilda L. Solis". The signature is written in a cursive style with a large initial "H" and "S".

HILDA L. SOLIS
Supervisor, First District
Board of Supervisors