

Permit Appeals Process Comment – December 14, 2022

In the December 14, 2022 meeting, the Board requested comments on proposed changes to regulations. However, the proposed document is difficult to locate on the Board's website and commenting on the document is challenging without the document. In addition, the Board has not made previous comments submitted available to members of the public nor has it released responses to comments. In a commitment to improving transparency, the Board should make information available to the public on its website.

However, the Board asked for comments on proposed changes, including proposed changes to standing. The proposed changes discussed inappropriately continue to limit who can appeal permit decisions. The time period between when a draft permit is released and when DTSC makes a final permit decision is too long and DTSC does not regularly update members of the public with DTSC's status in the review process. It could be decades between when a draft permit is released for comment and when DTSC makes a final permit decision. Instead of relying on existing regulations to define who can appeal, the Board should consider broader language. In the meeting it was also discussed staff reviewed US EPA's EAB regulations; however, staff should look at other state agencies and other regulations and statutes including those used by South Coast Air Quality District Hearing Board and State Water Resources Control Board. Those agencies do not similarly limit who can appeal permit decisions. The Board should look to ensure it is addressing concerns and issues with current appeal process and not repeating past mistakes.

The Board's proposal also discussed requiring DTSC to prepare an electronic administrative record. The Board should make sure any records submitted comply with state and federal law, including Government Code 7405 and 11135 and 40 CFR Part 3.

Finally, the Board should adopt a policy regarding conflict of interest. In exercising its duties and responsibilities, the Board must have the ability to do all acts and take all measures necessary for the efficient, fair, and impartial adjudication of DTSC permit decisions. When the Board functions in an adjudicatory capacity, it must be neutral and unbiased (meaning it must have no conflict of interest, has not prejudged the specific facts of the case, and is free of prejudice against or in favor of any party). Board members should 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. Board staff also provide an important role in advising the Board, and the same rules apply to them. The Board should make sure it avoids the appearance of unfairness and bias, including social media posts made by Board members and staff.

Thank you for the opportunity to submit comments