



BOARD OF SUPERVISORS COUNTY OF LOS ANGELES

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HILDA L. SOLIS
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Board of Environmental Safety

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

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

Honorable Board Members:

I again 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 appreciate that the Board has held a series of public "appeal process workshops," at which it discussed its goals and sought input on the development of regulations, made its proposed draft regulations available to the public, and frequently solicited input from the public both orally at meetings and in writing. All are hallmarks of thoughtful agency decision making.

The proposed regulations clearly reflect much of the varied input received and will represent a significant improvement over the Department's current appeal procedures, both in terms of due process and greater transparency in the appeal decision making process. The Board's development of the "notice of appeal" form, extended briefing times, and commitment to permit decision making at public meetings, to name a few, are important steps to improve access and transparency in the hazardous waste facility permit appeal process. These are all welcome proposals that should enhance the Department's credibility at a time when additional credibility is needed.

As you finalize your proposed regulations, I encourage you to review them with an eye toward maximizing public notice of and access to the decision-making process. By way of example, proposed Section 66271.18(a)(4) requires that an appeal petition demonstrate that issues subject to appeal "were previously raised in comments or testimony provided to DTSC [staff] during public review of the draft permit or modification." This presupposes that members of the public were adequately informed of the underlying staff review of the permit and had an opportunity to appear and raise issues to preserve them for appeal. Similarly, sections 66271.18(a)(5) & (6) preclude a person who did not testify or file comments on the underlying draft permit from filing an appeal and availing themselves of this Board's enhanced appeal procedures. This also presumes notice and an opportunity to appear at the staff level. Unfortunately, the proposed

appeal regulations provide no such notification safeguards at the staff level. Accordingly, I wonder whether such access limitations are warranted given that many in the community may not be aware of the permit until it is granted or otherwise determined by Department staff. To them, the new regulations will be largely out of reach.

At the appellate level, while the proposed regulations provide for public hearings on permit decisions (where members of the public can comment) and permit the filing of amicus briefs by interested third-parties to the appeal process (welcome enhancements) – the proposed regulations say nothing about the Board’s notice obligations to the public about pending appeals, public hearings, briefing opportunities, and the like, so interested members of the community, including those who reside in close proximity to a permitted facility and who may have much at stake in the permit appeal decision, can exercise their rights under the Board’s regulations.

In my last comment letter I attempted to touch on the many issues the Board sought feedback on, while in this letter I want focus on notice, which of course leads to access and transparency. Without adequate notice requirements, the Board’s enhanced procedures will benefit permit holders, District staff, and an interested few, to the exclusion of the general public, including those whose lives may be most impacted by the permit decisions. At a time when the Department is being criticized in the media and communities for its communication failures, I hope the Board will take a careful look at notice and public access, both at the staff level and at the appellate level, as it finalizes its proposed regulations.

Again, your consideration of these further comments is greatly appreciated. As always, I stand ready to work with you to protect the communities of Los Angeles County that I represent..

Sincerely,



HILDA L. SOLIS

Supervisor, First District