



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

March 3, 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 of this letter, we write to provide comments to the draft proposed rulemaking released on February 10, 2023 and to express our appreciation for the work the Board of Environmental Safety (Board) has put into creating the rules governing the Board's handling of permit appeals – work that has included extensive outreach to the public over much of the past year. Signatories to this letter represent members of the regulated community, including owners and operator of hazardous waste facilities permitted by the Department of Toxic Substances Control (DTSC), that will be subject to the appeal processes you ultimately adopt.

Through this public engagement, and the obvious hard work the Board has put into the development of these rules, we believe that the Board has accomplished its goal of creating an improved appeals process and otherwise meeting the statutory mandates established by the legislature in Senate Bill (SB) 158 (Chapter 73, Statutes of 2021).

And while we fully support the adoption of the Board's current proposed draft emergency regulations, we do offer a handful of suggested improvements for the Board's consideration. For ease of reference, we have numbered these comments below to match with the corresponding numerical topics listed in the Board's "[Draft] Notice of Emergency Rulemaking Hazardous Waste Facility Permit Appeals Process."

Comments:

2. Specify Length and Effect of Automatic Stay and Provide for Extensions

We generally agree with the Board's proposals related to stays and greatly appreciate the steps the Board has taken to ensure that permit changes, and particularly changes that represent an environmental benefit, are not unnecessarily delayed by the appeal process. That said, we urge the Board to further modify these stay provisions to ensure that stays are not unnecessarily delaying the implementation of projects that improve the operations of permitted facilities.

A. Retain Stay Provision in section 66271.15(a)(2)

We do not understand the Board's logic behind eliminating this provision. If this language were eliminated, a petition that challenged a single condition in a permit (for example, an appeal specific to the use of a specific treatment method at a facility) would result in the entire permit being stayed. Because new permits always contain new conditions meant to improve a facility's handling of hazardous waste, this would, unnecessarily, result in the delay of these environmental improvements, even where such conditions were not subject to the appeal.

Similarly, the elimination of this provision is not necessary to address a situation where an appeal challenges the entire permit. In such a situation, all of the conditions in the permit would be challenged, meaning all of the conditions in the permit (e.g., the entire permit) would be subject to the stay.

To ensure that stays are narrowly tailored to apply only to those conditions that are subject to appeal, we urge the Board to retain the language in section 66271.15(a)(2).

B. Eliminate Automatic Stay of Temporary Authorizations

We urge the Board to carve out temporary authorizations from the automatic 180-day stay provisions found in section 66271.15. Temporary authorizations, which only authorize changes for a 180-day period of time, were developed by EPA to allow facilities to quickly respond to changed conditions (e.g., to prevent disruption of ongoing waste management activities, to facilitate changes to protect human health and the environment, etc.). This important function is completely undercut when an automatic 180-day stay occurs upon the filing of an appeal (particularly since the length of the stay exceeds the length of time it will take the Board to process appeals of temporary authorizations).

Rather, we urge the Board to only impose a stay on a temporary authorization upon a showing by the petitioner that such a stay is in the public interest (identical to the showing required by a petitioner to extend a stay in the current proposed rules). This would ensure that when temporary authorizations are required to quickly respond to changed conditions at a facility, the filing of an appeal would not unnecessarily delay the implementation of such changes.

5. Shorten Appeals of Certain Minor Permitting Decisions

We fully support the Board's creation of an expedited appeals process applying to Class 2 Modifications and Temporary Authorizations, which we believe will significantly help the Board

accomplish the mandate set out in SB 158 to “improve the efficiency of the permitting process.” (See Health and Safety Code section 25125.2(b)(7)(A).) The Board’s “[Draft] Notice of Emergency Rulemaking” lays out compelling justifications for this process change, which we agree with fully.

To ensure that this appeals process remains expedited, we urge the Board to specify in the rules the time in which the Board must hold (and complete) a hearing to decide these appeals. We would suggest 30 days from the receipt of DTSC’s (and, if applicable, the permittee’s) response, meaning that this appeal process would be completed within 90 days of DTSC’s notice of the permit decision.

In closing, we look forward to the Board’s upcoming meeting, scheduled for March 23, 2023, where we urge the Board, for all of the reasons previously discussed in our prior written comments letter, dated February 6, 2023, to take action to approve the regulation in its final form for the purpose of then submitting this proposed emergency action to the Office of Administrative Law on March 24, 2023. Thank you.

Sincerely,

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