

California Board of Environmental Safety Additional Language for Recommended Operating Guidelines

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1. Role of the Board

The California Board of Environmental Safety (“Board”) has responsibility for guiding and directing the operations and responsibilities of the Board and has responsibility for providing guidance to the Department of Toxic Substances Control (DTSC). In its role with DTSC, the Board focuses on the results that the DTSC intends to achieve, not on the day-to-day management of the organization. The Board also has statutory responsibilities.

2. Role of Board Chairperson

The Board Chairperson shall:

- a) Assure the orderly and fair conduct of Board meetings.
- b) Assure the decisions of the Board are carried out by the Executive Officer and by contractors who report to the Board.
- c) Notwithstanding the language above, the Executive Officer determines the duties of staff that report to the Executive Officer.

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3. Strategic Leadership

The Board has the responsibility to determine what results it should achieve and communicate those in writing. Specifically:

- a) The Board works in collaboration with the Executive Officer to develop the mission, goals and measures of success for the Board.
- b) Based on the mission, goals and measures of success, the Executive Officer develops a strategic plan for the Board.
- c) The Board approves the strategic plan.
- d) The Board regularly monitors the mission, goals and measures of success and provides feedback as to whether it is successful in achieving milestones and the intended results.

4. Financial Oversight

The Board has the responsibility to assure the organization's financial resources are aligned with its goals. Specifically:

- a) The Board works in collaboration with the Executive Officer in the preparation of broad budget concepts annually.
- b) The Board reviews and approves its annual budget, within the confines of the California State Budget process.

5. Administration of Responsibilities

The Board has the responsibility to assure it delivers its responsibilities effectively and efficiently. Specifically:

- a) The Board works in collaboration with the Executive Officer to hire staff to perform its responsibilities.
- b) The Board regularly reviews the administration of its responsibilities and makes decisions how to improve, as needed.

6. Unity of Control

The Board as a body directs the Executive Officer and staff members. Members of the Board may not attempt to exercise individual authority over the Board organization except as explicitly set forth in the Board's governance policies.

Only decisions of the Board acting as a body are binding on the Executive Officer. Specifically, in or out of the Board meeting:

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- a) In cases where the Board has provided direction on an issue through a vote, such decisions are binding on the Executive Officer.
- b) Except where specifically authorized by the Board, decisions or instructions of individual members of the Board are not binding on the Executive Officer.
- c) In cases where the Board has provided direction on an issue through consensus or other means, the Chair is empowered to communicate the relevant direction to the Executive Officer. If the chair communicates the consensus outside a public meeting, the Executive Officer may request that such direction be confirmed through a formal vote of the Board.
- d) In the case of individual members of the Board requesting information or assistance, the Executive Officer may refuse such requests that require, in his or her opinion, an inordinate amount of staff time, or funds, or are disruptive.
- e) Individual members of the Board should communicate requests or suggestions for DTSC staff members or contractors via the Executive Officer.
- f) Individual members of the Board cannot give direction to persons who report directly or indirectly to the Executive Officer.
- g) The Board as a body evaluates the Executive Officer.
- h) The Board will refrain from evaluating, either formally or informally, any staff other than the Executive Officer.
- i) Individual members will refrain from evaluating any staff.

7. Board Member Code of Conduct

The Board commits itself and its members to ethical, businesslike, and lawful conduct, including proper use of authority and appropriate decorum when acting as members of the Board.

- a) Members of the Board shall conduct themselves with civility and respect at all times with one another, with staff, and with members of the public.
- b) Members will be properly prepared for Board deliberations.
- c) When serving in a Board capacity, members of the Board shall demonstrate loyalty to the interests of the California Environmental Safety Board. This supersedes any conflicting loyalty such as that to advocacy or interest groups and membership on other Boards or staffs. It also supersedes the personal interest of any Board member acting as a consumer of the organization's activities.
- d) Board members must recognize the lack of authority vested in them as individuals in their interactions with the Executive Officer, with Board staff, and with DTSC staff, except where explicitly authorized by the Board.
- e) As required by law, members will respect the confidentiality appropriate

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to issues regarding personnel, proprietary matters, and attorney-client privileged communications.

- f) Members of the Board shall comply with all provisions regarding incompatible activities. Namely, they:
- g) Shall not use the prestige or influence of the state or the appointing authority for his/her private gain or advantage or the private gain or advantage of another.
- h) Shall not use their employment at the Board for private gain or advantage.
- i) Shall not solicit business from persons who own or partially own interest in a facility permitted by DTSC to manage, store, treat, dispose or transport hazardous waste.
- j) Shall not use state time, facilities, property, vehicles, equipment, or supplies for personal business, private gain or advantage.
- k) Shall devote his/her full time, attention, and efforts to her/her state office or employment during his/her hours of duty.
- l) Shall not disclose confidential information available by virtue of state employment for private gain or advantage or provide confidential information to persons to whom issuance has not been authorized.
- m) Shall not request or accept money, or other consideration, from anyone other than the state for the performance of his/her duties as a state employee. State of California financial responsibility and conflict of interest requirements apply to all board members.
- n) Shall not receive or accept, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or seeking to do business of any kind with the California Board of Environmental Safety Board, or whose activities are regulated or controlled by the California Board of Environmental Safety Board, under circumstances from which it could reasonably be substantiated that the gift was intended to influence the officer or employee in his or her official duties, or was intended as a reward for any official action performed by the officer or employee.
- o) Shall not perform any act in other than his/her capacity as a state officer or employee knowing that the act may later be subject, directly or indirectly to the control, inspection, review, audit, or enforcement by the officer or employee.

8. Telework

Board members may telework in accordance with CalEPA guidelines.

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9. Communications with Media

The Board chair and Executive Officer are delegated authority by the Board to speak on behalf of the Board to the media. Specifically:

- a) When Board members, members of the staff, or contractors are asked by the media to comment on behalf of the Board, they must funnel those requests to the Board Chair and Executive Officer.
- b) Board members shall be notified as soon as possible of all media contacts and the content of all interviews.
- c) In their communications with the media about the organization, the Board chair and Executive Officer must clearly state the decisions made by the Board.

10. Communications with The Public

Individual Board members and the Executive Officer are delegated authority by the Board to speak on behalf of the Board to public groups and individual members of the public. The term “public groups” is intended to include all groups and associations external to the organization, including the Legislature and individual legislators. The term “individual members of the public” is intended to include individuals who do not officially represent an outside group or association. Specifically:

- a) Individual Board members may speak on behalf of the Board to public groups and individual members of the public.
- b) When representing decisions of the Board, individual Board members must clearly state the decisions of the Board.
- c) Individual Board members are free to provide their individual opinions to the public. However, they must make it clear that they are speaking as individuals, not in their capacity as Board members.
- d) When Board members, acting in their official capacity, are contacted by public groups, they must inform the Board chair and Executive Officer of the context of the communication.

11. Permit Appeals; Ex Parte Communications

The Board shall conduct permit appeals in accordance with a process to be developed by the Board. As may be specified in more detail in that process, while any permit appeal is pending before the Board, there shall be no communication, direct or indirect:

- a) To any Board Member from any party, party representative, or interested third party about the specific issues pending in the

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permit appeal without notice and opportunity for all parties in connection with the permit appeal to participate in the communication.

- b) To any party, party representative, or interested third party from any Board Member about the specific issues pending in the permit appeal, without notice and opportunity for all parties in connection with the permit appeal to participate in the communication.

This prohibition applies to all communications with Board Members about the specific issues pending in the permit appeal, including, but not limited to, communications at Board meetings, unless such communications occur during a noticed hearing on the permit appeal.

12. General Delegations to the Executive Officer

The Board delegates certain responsibilities to its Executive Officer. The Board may authorize the Executive Officer to enter into contracts on behalf of the Board or conduct any business necessary for the efficient operation of the Board. Specifically:

- a) The Board communicates in writing its delegations to the Executive Officer.
- b) At any time, the Board may decide to change its delegations to the Executive Officer, either by expanding or narrowing those delegations. When it does so, the Board must communicate those changes in writing.
- c) Although the Board may delegate authority for its Executive Officer to enter into contract, all contracts will be executed by the DTSC under its statutory authority.
- d) Neither the Executive Officer nor any Board member shall be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.

13. Executive Officer's Reports to the Board

It is the responsibility of the Executive Officer to provide regular reports to the Board on the following matters (and frequency):

- a) Strategic plan updates (quarterly)
- b) Financial updates (quarterly)
- c) Board statutory responsibilities implementation updates (monthly)
- d) Reports on statutory responsibilities' risk factors (quarterly)
- e) Reports regarding new contracts or changes in contracts (monthly)

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- f) Reports from major contractors (monthly)
- g) Communications to the media or to stakeholder groups (monthly)
- h) Reports from auditor (annually)

14. Evaluating the Executive Officer

The Executive Officer's job performance shall be evaluated by comparing the organization's results, operations and the Executive Officer's performance to the goals and policies established by the Board. Specifically:

- a) The Board shall evaluate the Executive Officer's performance on an annual basis.
- b) The evaluation will be primarily based on an evaluation of the organization's performance against the goals established by the Board, as well as based on the Executive Officer's performance as a leader.
- c) In advance of the evaluation, the Executive Officer shall propose performance criteria that represent his or her reasonable interpretation of achieving the results defined by the Board and the Board shall decide whether to use those as the basis for the evaluation.
- d) The Board will use data to determine the degree to which its expectations are being met.
- e) The chair has the responsibility and authority to collect and assemble data needed to perform the evaluation of the Executive Officer.

15. Delegations to the Executive Officer with Respect to Purchases and Contracts

The Executive Officer is delegated the authority to initiate and decide on purchases and contracts up to \$50,000 in value. In making purchasing and contracting decisions, the Executive Officer shall use prudent judgment. The Executive Officer shall coordinate with DTSC's Office of Contracting Services, which will execute said purchases and contracts under its statutory authorities.

Under this delegation, the Executive Officer is authorized to:

- a) Work with DTSC's Office of Contracting Services to award and execute all contracts and written change orders or amendments thereto, of \$50,000 or less, where the concepts or allocations therefore have been approved by the Board.
- b) Work with DTSC's Office of Contracting Services to award and execute all contracts and written change orders or amendments thereto, of \$50,000 or less, where such contracts and written change

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orders or amendments thereto are for the administration of the functions of the Board as identified by the Executive Officer or are related to direct legislative mandates as identified by the Board.

- c) Approve all interagency agreements, agreements with other governmental entities, and written changes orders or amendments thereto, where such interagency agreements and written change orders or amendments thereto are for the administration of the functions of the Board, as identified by the Executive Officer, or are related to direct legislative mandates as identified by the Board.
- d) Prepare, conduct and evaluate all solicitations, bids, requests for proposals for procurement of goods and services for review and execution by DTSC's Office of Contracting Services, where the concepts/allocation thereof have been approved by the Board consistent with the approvals required above.
- e) Work with DTSC's Office of Contracting Services to execute contracts and amendments thereto, related to Board's programs, following procedures and guidelines that have been approved by the Board.
- f) Work with DTSC's Contracting Services to make other purchases related to the Board's programs, such as for supplies, equipment, travel, training and related services.
- g) Confirm fulfillment of contracts for the purposes of concluding the contract and making final payment; where the contract requires a report with policy recommendations, staff will use these recommendations, among other things, in preparing an agenda item to be presented to the Board for consideration.
- h) The Executive Officer must notify the Board about all contracts executed on behalf of the Board.

16. Delegations to the Executive Officer with Respect to the BES Attorney

According to allocation guidelines provided by the California Department of Human Resources, Attorney III and IV positions must report to a constitutional officer, an exempt appointee of the Governor, or a department's Chief or Assistant Chief Counsel, or their designees.

The Board will designate the Executive Officer for purposes of supervising and managing the day-to-day work of the Board's attorney. The Board's attorney will provide legal guidance and support to the Board upon request made through the Executive Officer.