

Board of Environmental Safety
Department of Toxic Substances Control
California Environmental Protection Agency

Standing Order 23-01

The Board of Environmental Safety (“Board”) is authorized to hear and decide appeals of Department of Toxic Substances Control (“DTSC”) decisions to grant, issue, modify or deny hazardous waste facility permits, including temporary authorizations, in accordance with Health and Safety Code section 25125.2 and California Code of Regulations, Title 22, Section 66271.18.

Rules for Administration of Appeals

(1) Administration. The Board Chair and Vice Chair shall direct staff in the orderly administration of the appeal. Public hearings are administered by the Board Chair in accordance with rules for public hearings established by the Board. Motions are decided by the Board Chair and Vice Chair in accordance with these Rules.

(2) Appeal Forms. The Board hereby issues forms to be used to initiate appeals of decisions by DTSC to grant, issue, modify or deny hazardous waste facility permits. A standard appeal form used to provide notice of the appeal of a decision by DTSC’s Permitting Division to grant, issue, modify or deny a hazardous waste facility permit is attached hereto as Exhibit 1 (“Form BES 2301”). A special appeal form used only to provide notice of the appeal of a decision to grant or deny a temporary authorization is attached hereto as Exhibit 2 (“Form BES 2302”).

(3) Notice to DTSC’s Permitting Division and Applicant. The Clerk of the Board shall immediately notify DTSC’s Permitting Division upon the filing of Form BES 2301 or Form BES 2302 and request the administrative record. Upon the filing of Form BES 2302, the Board Clerk will request a brief response from DTSC’s Permitting Division. The Clerk of the Board shall immediately notify the permit applicant of the filing of Form BES 2301 or Form BES 2302.

(4) Certification of the Administrative Record. DTSC’s Permitting Division shall compile, index, and submit the administrative record to the Board in electronic format meeting accessibility standards for website posting within 30 days of request. Any party may file a motion to augment or strike the administrative record within 30 days of DTSC’s Permitting Division’s submission to the Board. The Board Chair and Vice Chair shall direct the Clerk of the Board to certify the administrative record if no motion is timely filed. If a party files a motion to strike or augment the record, the Clerk of the Board shall certify the administrative record upon disposition of the motion by the Board Chair and Vice Chair.

(5) Content and form of briefs.

(a) Content requirements. All briefs filed under this order must contain, under appropriate headings:

(i) A table of contents with page references;

(ii) A table of authorities with page references for citations;

(iii) A table of attachments, if required under subparagraph (b) of paragraph (5) of this order; and

(iv) A statement of compliance with the word limitation.

(b) Attachments. Parts of the administrative record to which the parties wish to direct the Board's attention may be appended to the brief submitted. If the brief includes attachments, a table must be included that provides the title of each appended document and assigns a label identifying where it may be found.

(c) Length. Unless otherwise ordered by the Board, moving, opposition, and amicus briefs may not exceed 12,000 words and reply briefs may not exceed 6,000 words. Filers may rely on the word-processing system used to determine the word count. In lieu of a word limitation, filers may comply with a 25-page limit for moving, opposition, and amicus briefs, or a 12-page limit for reply briefs. Headings, footnotes, and quotations count toward the word limitation. The table of contents, table of authorities, table of attachments (if any), statement of compliance with the word limitation, and any attachments do not count toward the word limitation. As directed by the Board Chair and Vice Chair, the Clerk of the Board may exclude any moving, opposition, amicus, or reply brief that does not meet word limitations. Where a party can demonstrate a compelling and documented need to exceed such limitations, such party must seek advance leave of the Board Chair and Vice Chair to file a longer brief. Such requests are discouraged and will be granted only in unusual circumstances.

(6) Participation by Amicus Curiae. With the written permission of the Board Chair and Vice Chair, any interested person who is not a party to the appeal may file an amicus brief in any hazardous waste facility permit appeal pending before the Board. The deadline for filing such brief is 30 days after the filing of the DTSC Permitting Division's opposition brief. Amicus briefs must comply with all procedural requirements of this order, including service on all parties.

(7) Motions.

(a) In general. A request for a procedural order or other relief must be made by written motion unless these rules prescribe another form.

(b) Contents of a motion. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support the motion. In advance of filing a motion, parties must attempt to ascertain whether the other party(ies) concur(s) or object(s) to the motion and must indicate in the motion the attempt made and the response obtained.

(c) Response to motion. Any party may file a response to a motion. Responses must state with particularity the grounds for opposition and the legal argument necessary to support the motion. The response must be filed within 15 days after service of the motion unless the Board shortens or extends the time for response.

(d) Reply. Any reply to a response filed under subparagraph (c) of paragraph (7) of this order must be filed within 10 days after service of the response. A reply must not introduce any new issues or arguments and may respond only to matters presented in the response.

- (e) Length. Unless otherwise ordered by the Board, motions and any responses or replies may not exceed 6000 words. Filers may rely on the word-processing system used to determine the word count. In lieu of a word limitation, filers may comply with a 12-page limit. Headings, footnotes, and quotations count toward the word or page-length limitation. As directed by the Board Chair and Vice Chair, the Clerk of the Board may exclude any motion that does not meet word limitations. Where a party can demonstrate a compelling and documented need to exceed such limitations, such party must seek advance leave of the Board Chair and Vice Chair. Such requests are discouraged and will be granted only in unusual circumstances.
- (f) Disposition of a motion for a procedural order. The Board Chair and Vice Chair may act on a motion for a procedural order at any time without awaiting a response.

(8) Timing of motions for extension of time. Parties must file motions for extensions of time sufficiently in advance of the due date to allow other parties to have a reasonable opportunity to respond to the request for more time and to provide the Board Chair and Vice Chair with a reasonable opportunity to determine the merits of the motion.

(9) Dismissal by Appellant. By motion, Appellant may request to have the Board dismiss its appeal. The motion must briefly state the reason for its request.

(10) Filing requirements. Documents filed under this order, including the petition for review, must be filed with the Clerk of the Board by no later than 5:00 pm on the last day to file. A document is filed when it is received by the Clerk of the Board at the address specified for the appropriate method of delivery as provided in subparagraph (b) of paragraph (10) of this order.

- (a) Caption and other filing requirements. Every document filed with the Board must specifically identify in the caption the permit applicant, the permitted facility, and the permit number. All documents that are filed must be signed by the person filing the documents or the representative of the person filing the documents. Each filing must also indicate the signer's name, address, telephone number, and email address.
- (b) Method of filing. Unless otherwise permitted under these rules, documents must be filed either by using the portal on the Board's website, by email, by U.S. mail, or by hand delivery or courier (including delivery by U.S. Express Mail or by a commercial delivery service). The Board may by order require filing by email, subject to any appropriate conditions and limitations.
 - (i) Electronic filing. Documents that are filed electronically must be uploaded to the portal on the Board's website or submitted to the Board's email address (appeals@bes.dtsc.ca.gov), subject to any appropriate conditions and limitations imposed by order of the Board. All documents filed electronically must include the full name of the person filing below the signature line. Compliance with Board electronic filing requirements constitutes compliance with applicable signature requirements.
 - (ii) Filing by U.S. Mail. Documents that are sent by U.S. Postal Service (except by U.S. Express Mail) must be sent to the official mailing address of the

Clerk of the Board at 1001 I Street, 25th Floor, PO Box 806, Sacramento, CA 95914-0806. The original and two copies of each document must be filed. The person filing the documents must include a cover letter to the Clerk of the Board clearly identifying the documents that are being submitted, the name of the party on whose behalf the documents are being submitted, as well as the name of the person filing the documents, his or her address, telephone number and, if available, email address.

(iii) Filing by hand delivery or courier. Documents delivered by hand or courier (including deliveries by U.S. Express Mail or by a commercial delivery service) must be delivered to the Clerk of the Board at: 1001 I Street, 25th Floor, PO Box 806, Sacramento, CA 95914-0806.

(11) Service Requirements. A proof of service must be appended to each document filed stating the names of persons served, the date and manner of service, as well as the electronic, mailing, or hand delivery address as appropriate. Service of a document between parties to an appeal or by the Board on a party is complete upon transmission by email or 3 days after mailing by U.S. mail.

- (a) Service information. The first document filed by any person shall contain the name, mailing address, telephone number, and email address of an individual authorized to receive service relating to the proceeding. Parties shall promptly file any changes in this information with the Clerk of the Board, and serve copies on all parties to the proceeding. If a party fails to furnish such information and any changes thereto, service to the party's last known address shall satisfy the requirements of paragraph (11) of this order.
- (b) Service requirements for parties. Appellant must file the petition for review with the Clerk of the Board and serve the petition for review on the Division Chief for the DTSC Permitting Division and the permit applicant (if the applicant is not the appellant). Once an appeal is filed, every document filed with the Board must be served on all other parties. Service by email is preferred, or may be by first class U.S. mail, or any reliable commercial delivery service.
- (c) Service of rulings, orders, and decisions. The Clerk of the Board must serve copies of rulings, orders, and decisions on all parties. Service may be made by U.S. mail (including by certified mail or return receipt requested, Overnight Express and Priority Mail), any reliable commercial delivery service, or electronic means (including email) at the discretion of the Board.

EXHIBIT 1

FORM BES 2301

STANDARD APPEAL FORM

NOTICE OF APPEAL – STANDARD

Standard Appeal Form BES 2301 (3/23/23)

Directions: Any person wishing to dispute the Department of Toxic Substances Control's decision to grant, issue, modify, or deny a hazardous waste facility permit may appeal the Department's written decision by completing this form and seeking review of the decision by the Board of Environmental Safety in accordance with 22 CCR 66271.18.

Notice is given that the party below hereby appeals the hazardous waste facility permit decision of the Department as authorized by Health and Safety Code section 25125.2.

Appellant Name: _____

Email: _____

Address: _____

Represented by Legal Counsel (if any): _____

DTSC Case Number of Permit Decision Being Appealed (if known): _____

Date of Mailed Notice of Permit Decision Being Appealed: _____

Facility Name and Address: _____

This Appeal is filed by (select one of the following boxes):

- The facility owner or operator
- A member of the public

IMPORTANT NOTE – PLEASE READ CAREFULLY

This notice must be filed with the Board of Environmental Safety at 1001 I Street, 25th Floor, P.O. Box 806, Sacramento, CA, 95814-0806 or via email to appeals@bes.dtsc.ca.gov or using the website portal at bes.dtsc.ca.gov **no later than 30 days** after the date of the mailed notice of the final hazardous waste facility permit decision being appealed.

DO NOT USE THIS FORM if you are appealing the decision to grant or deny a temporary authorization. Instead, please use Special Appeal Form BES 2302.

EXHIBIT 2

FORM BES 2302

SPECIAL APPEAL FORM

NOTICE OF APPEAL – TEMPORARY AUTHORIZATIONSpecial Appeal Form BES 2302 (3/23/23)

Directions: Any person wishing to dispute the Department of Toxic Substances Control's decision to grant or deny a temporary authorization may appeal the Department's written decision by completing this form and seeking review of the decision by the Board of Environmental Safety in accordance with 22 CCR 66271.18.

Notice is given that the party below hereby appeals the decision by the Department to grant or deny a temporary authorization, as authorized by Health and Safety Code section 25125.2.

Appellant Name: _____

Email: _____

Address: _____

Represented by Legal Counsel (if any): _____

DTSC Case Number of Permit Decision Being Appealed (if known): _____

Date of Mailed Notice of Permit Decision Being Appealed: _____

Facility Name and Address: _____
_____**IMPORTANT NOTE – PLEASE READ CAREFULLY**

This notice must be filed with the Board of Environmental Safety at 1001 I Street, 25th Floor, P.O. Box 806, Sacramento, CA, 95814-0806 or via email to appeals@bes.dtsc.ca.gov or using the website portal at bes.dtsc.ca.gov **no later than 30 days** after the date of the mailed notice of the decision by DTSC to grant the class 2 modification and/or temporary authorization being appealed.

ONLY use this form if you are appealing the decision to grant or deny a temporary authorization. To appeal any other permit decision, please use Standard Appeal Form BES 2301.

