

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

Standing Order 23-02

The Board of Environmental Safety (“Board”) is authorized to hold public hearings on individual permitted and remediation sites, in accordance with Health and Safety Code section 25125.2 and California Code of Regulations, Title 22, Section 66271.18.

Rules for the Conduct of Public Hearings

(1) Presentations by speakers in an appeal hearing. After a brief introduction of the appeal by the Board staff, the appellant(s) in an appeal shall have the right to speak first. The DTSC Permitting Division will be called next, followed by the permittee if not the appellant. The Board Chair will determine the length of time allowed for these presentations. Speakers are required to provide their slides in an electronic format to the Board Clerk 10 days prior to the public hearing. Presentations must comply with the accessibility requirements of the Americans with Disabilities Act at Section 508 of the federal Rehabilitation Act of 1973, as amended (29 U.S.C. section 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.

(2) Evidence. All evidence presented to the Board at the hearing, including testimony, presentations, and exhibits, shall be limited to material appearing in the administrative record that is certified for the appeal, or in the final permit record, if an administrative record has not been certified. The Board conducts informal hearings pursuant to article 10 of chapter 4.5 of division 3 of title 2 of the Government Code. Formal rules of evidence do not apply.

(3) Irrelevant testimony. The Board Chair may temporarily suspend any testimony that is not relevant to the subject of the hearing and advise the speaker to that effect. The Board Chair may stop taking further testimony from and vacate any remaining time allocated to a speaker who, after being so advised, continues to offer irrelevant testimony. This paragraph applies to presentations by speakers pursuant to paragraph (1) and public comments pursuant to paragraph (5) of this order.

(4) Questions from Board members. After being recognized by the Board Chair, any Board member present may briefly question any speaker. Board members will not express their opinions during the public hearing portion of the meeting except to ask pertinent questions of the speaker or Board staff. Statements or remarks by Board members are not appropriate until after the close of the public hearing. Board members should refrain from arguing or debating with speakers during the public hearing and shall always show respect for different points of view.

(5) Public Comment. Members of the public wishing to comment will be allowed to follow presentations from the DTSC Permitting Division or the permittee, if the permittee is not the appellant. The Board Chair will determine how much time will be allowed for each public speaker, with three to five minutes the standard time granted. Any clarification or rebuttal

offered by the DTSC Permitting Division may be allowed at the discretion of the Board Chair. The appellant(s) will be allowed to make closing comments at the end of the public hearing on an appeal.

(6) Board decision and action on appeals. After the close of the public hearing, the Board Chair will ask for deliberations and motions on appeal petitions. No speakers are allowed to comment after the close of the public hearing unless clarification is requested by the Board Chair. Following a motion and a second, the Board may decide by majority vote to:

- (a) deny the petition, if no issues in the petition are sustained, resulting in the final permit decision taking effect upon adoption of the final order pursuant to paragraph (7); or
- (b) grant the petition, if any issues in the petition are sustained, resulting in the final permit decision being vacated and set aside.

(7) Preparation of final order. In reaching a decision to grant or deny an appeal petition, the Board will identify the issues that are sustained, if any, and either adopt a final order at the same meeting, or direct Board staff to prepare a draft order for adoption by the Board at a subsequent meeting. If the petition is granted, the final order shall remand the matter to the DTSC Permitting Division to either deny the permit or modification in its entirety or revise the permit conditions to conform to the Board's instructions. If the Board decides to revise the conditions in the permit, the final order shall include specific directions to that effect. Following the adoption of the final order with instructions, the revised permit shall be considered by the Board at a subsequent meeting.

(8) Continuances of appeals. The appellant, DTSC Permitting Division, permittee, or designated representative may request a continuance of a public hearing on an appeal from the Board as provided in this paragraph.

- (a) Any person scheduled for a presentation at a public hearing before the Board may request a continuance for a period not to exceed the second regular meeting after the originally scheduled hearing date, provided that a written motion for the continuance shall be filed with the Board Chair and Vice Chair and served on all parties to the appeal no sooner than 30 days prior to the scheduled public hearing. The Board Chair and Vice Chair shall deny a motion for a continuance unless there is a compelling legal reason why the hearing must be continued.
- (b) Any person who has not filed a motion for a continuance as provided in subparagraph (a), may obtain a continuance only by appearing before the Board at the time the original hearing is scheduled and requesting a continuance in person. This continuance will not be granted unless the Board is satisfied that good cause exists for the continuance.
- (c) Any person who has once obtained a continuance of a hearing either by motion under subparagraph (a) or by personal appearance under subparagraph (b) may obtain a further continuance only by appearing before the Board at the scheduled hearing and satisfying the Board that a miscarriage of justice would result from the refusal of the Board to grant a continuance.

IT IS SO ORDERED that public hearings held by the Board shall be administered in accordance with this order.

Member	Aye	Nye	Abstain	Absent	Recusal
Chair Rizzo	X				
Vice Chair Strauss-Hacker	X				
Member Bhatia	X				
Member Gomez	X				
Member Ruiz	X				

Adopted at a public meeting of the Board held on March 23, 2023.

Clerk of the Board: _____
/s/
Sheena Q. Brooks

Approved as to Form: _____
/s/
Gregory A. Forest