

THE BOARD OF ENVIRONMENTAL SAFETY
CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Ecobat Resources California Inc.,
(f/k/a Quemetco Inc.)

Appeal of Temporary Authorization

720 S. Seventh Avenue
City of Industry, California 91746
EPA ID No. CAD066233966
Permit No. 05-GLN-08

BES Docket No: FY22/23-02

**DTSC PERMITTING DIVISION'S
OPPOSITION TO APPELLANT'S
MOTION TO COMPLETE THE
RECORD, MEMORANDUM OF
POINTS AND AUTHORITIES, AND
DECLARATION OF ALEXANDER
MAYER**

Appeal Filed: JUNE 30, 2023

OPPOSITION TO MOTION TO COMPLETE THE ADMINISTRATIVE RECORD

Pursuant to Standing Order 23-01, the Permitting Division of Department of Toxic Substances Control (DTSC) hereby opposes the Clean Air Coalition of North Whittier and Avocado Heights' (CAC) motion to "complete" the administrative record for CAC's appeal of the DTSC's July 22, 2022, approval of a Temporary Authorization Request made by Ecobat, Inc. (formerly Quemetco, Inc.) to authorize the operation of hazardous waste handling equipment at its facility. The DTSC Permitting Division's opposition to CAC's Motion to Complete the Permit Record is based upon this opposition; the attached Memorandum of Points and Authorities; all pleadings, records, and files herein; those matters of which the Board of Environmental Safety may take notice; and such oral argument this Board may permit.

08/14/2023

Date

William Heung
Unit Chief
Permitting Division
Department of Toxic Substances Control

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Exhibit A: July 8, 2021, Email from DTSC Permit Appeals Officer's Advisor Requesting
from Permitting the Administrative Record for April 19, 2021, Temporary
Authorization

Exhibit B: July 23, 2021, Permitting's Transmittal Letter to the DTSC Permit Appeals
Officer Submitting the Administrative Record for April 19, 2021, Temporary
Authorization

Exhibit C: June 1, 2023, Email Correspondence Between Appellant's Attorney Byron Chan
and DTSC Attorney Sangwon Ryan Choi

CERTIFICATE OF COMPLIANCE

I hereby certify that pursuant to Standing Order 23-01(5)(c) of the California Department of Toxic Substances Control, Board of Environmental Safety, the enclosed opposition, memorandum of points and authorities, and declaration contains 4,385 words, excluding the caption pages, tables, certificate of compliance, and attachments. This is relied on by the word count of the computer program used to prepare the above documents.

Dated: 8/14/23

Signed: _____

Christina Darling
Legal Secretary
Office of Legal Counsel
Department of Toxic Substances Control

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Ecobat Resources California, Inc. (Ecobat) operates a facility to reclaim lead from spent lead acid batteries and other lead-bearing materials. DTSC Permitting Division prepared and submitted the Administrative Record at the request of the Board of Environmental Safety (Board) for Appellant Earthjustice's (Appellant) appeal of the temporary authorization granted to Ecobat on July 22, 2022. Pursuant to the Board's Standing Order 23-01, Appellant has improperly filed a motion to complete the Administrative Record. However, the Administrative Record is complete and enables the Board to adequately review the underlying decision. DTSC is entitled to a presumption of correctness from the Board. On the grounds below, DTSC asks that the Board reject Appellant's motion, which, if granted, would cause additional unnecessary delay to Ecobat's compliance with DTSC enforcement directives associated with this decision that protect surrounding communities and the environment.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

On February 11, 2021, DTSC received Ecobat's first formal temporary authorization request to install two hazardous waste management units - Compression Auger and Centrifuge (Units). (AR 3-4.) On April 19, 2021, DTSC approved a 180-day Temporary Authorization (TA 1) for Ecobat. (AR 24.) On July 5, 2021, DTSC received an email notice of Appellant's appeal of TA 1 from the designated Permit Appeals Officer and was requested in writing to provide the administrative record for TA 1. (DTSC Ex. A to Mayer Declar.) Thereafter, DTSC compiled and submitted to the Permit Appeals Officer all the relevant records pertaining to Ecobat's TA 1. (DTSC Ex. B to Mayer Declar.) The Permit Appeals Officer accepted the submitted administrative record for TA 1 and distributed it to Appellant. The Permit Appeals Officer issued a final Order granting Appellant's Appeal in part and vacating TA 1. (See AR 28.)

1 On June 8, 2022, Ecobat submitted the second Temporary Authorization Request for the
2 same Units. (AR 29-30.) Responding to the Permit Appeals Officer's Order on TA 1, the second
3 Temporary Authorization Request was a revised version of Ecobat's first Temporary
4 Authorization Request. (AR 30 at 7-8.) On July 22, 2022, DTSC approved a 180-day Temporary
5 Authorization (TA 2). (AR 44.) In TA 2, DTSC found that the Units will address Ecobat's
6 compliance with DTSC enforcement directives and will further DTSC's mission of protecting
7 surrounding communities from toxic substances. (*Id.* at pp. 2-3.) On August 4, 2022, Appellant
8 filed with the Board its appeal of DTSC's July 22, 2022, approval of Ecobat's TA 2.
9
10 (Appellant's June 30, 2023, Notice of Appeal – Temporary Authorization.)

11 On May 3, 2023, DTSC received a request from the Board to provide any records for TA
12 2 that are necessary to complete the administrative record for the appeal. (Greg Forest's May 3,
13 2023, Letter Request to Permitting.) DTSC viewed the Board's May 3 letter as a formal request
14 pursuant to the Standing Order 23-01(3) to start preparing the full administrative record for the
15 appeal. On May 12, 2023, DTSC received the Board's second letter urging DTSC to submit "as
16 soon as possible" any additional records other than the ones the Board had assumed DTSC
17 would include. (Greg Forest's May 12, 2023, Second Letter Request to Permitting.) DTSC
18 responded to the Board's letter by confirming that DTSC was compiling the full administrative
19 record with the anticipated completion date of May 31, 2023. (Permitting's May 12, 2023,
20 Response Letter to the Board.) On May 30, 2023, DTSC submitted the administrative record for
21 TA 2 (AR or Administrative Record). The Administrative Record includes all categories of
22 documents relevant to and considered by DTSC, including documents generated after Ecobat's
23 TA 2 request, the entire record for TA 1, and the DTSC Permit Appeals Officer's final Order
24 from the TA 1 appeal.
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1 On May 17, 2023, Appellant filed a broad Public Records Act (PRA) request seeking
2 documents similar to the ones listed in Appellant's motion. (Appellant's July 28, 2023
3 Memorandum of Points and Authorities, Ex. N.) In response to the PRA request, DTSC and
4 Appellant met and agreed upon a rolling production timeline as requested by Appellant's PRA
5 request. (DTSC Ex. C to Mayer Declar.)

6 On June 22, 2023, notwithstanding Standing Order 23-01, which clearly specifies the
7 procedure for challenging administrative records submitted to the Board, Appellant sent a letter
8 to the Board requesting that the Board independently "augment the record with the ten
9 documents" that Appellant unilaterally decided were relevant. (Appellant's June 22, 2023, Letter
10 Request to the Board to Augment the Record.) On June 27, 2023, the Board denied Appellant's
11 request and granted 29 additional days for Appellant to submit a proper motion. (Board's June
12 27, 2023, Letter to Appellant.) Pursuant to Standing Order 23-01, the Board also set the filing
13 deadline for DTSC to submit any opposition to Appellant's motion by August 25, 2023. (*Id.*)
14

15 On June 30, 2023, Appellant filed an appeal of TA 2. On July 28, 2023, Appellant filed a
16 motion to complete the record seeking to now add an *unspecified* number of documents
17 presumed to be in DTSC's possession in addition to the documents that Appellant mistakenly
18 attempted to add into the record without a motion. On July 31, 2023, the Board issued a notice
19 indicating that Appellant had filed a "motion to augment the administrative record" and
20 superseded the Board's June 28, 2023, letter by shortening DTSC's filing deadline for opposition
21 to August 14, 2023. (The Board's July 31, 2023, Notice of Appellant's Motion.) DTSC now files
22 this opposition and memorandum of points and authorities to oppose Appellant's motion to
23 complete the record.
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III. STANDARD OF REVIEW

Under 22 CCR § 66271.72(c), the Board’s authority and standard of review is clearly articulated to cover only clearly erroneous finding of facts, abuse of DTSC’s discretion or a significant procedural error. Consistent with this deferential standard of review is the notion that compilation of the administrative record is an official agency action. Agency actions come before reviewing bodies with a presumption of correctness and regularity. (*Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317, 330 (presumption is that official duty was regularly performed and that “the agency applied the proper standard or test in reaching its decision”); *Schechter v. Los Angeles County*, (1968) 258 Cal.App.2d 391, 397-398 (government official’s exercise of discretion entitled to presumption of regularity); See also Evid. Code § 664 (presumption that official duty has been regularly performed).) For administrative record cases, the “whole record” is ordinarily “the record the agency presents.” (*Fla. Power & Light Co. v Lorion* (1985) 470 U.S. 729, 743-44.) Courts must “presume that [the] agency properly designated the Administrative Record absent clear evidence to the contrary.” (*Goffney v. Becerra* (9th Cir. 2021) 995 F.3d 737, 748.)

IV. QUESTION PRESENTED

Has appellant demonstrated that the presumption of correctness applicable to DTSC’s compilation of the Administrative Record should be disturbed and that the Administrative Record should be augmented or completed?

V. ARGUMENT

A. The Board Should Dismiss This Improperly Filed Motion to Complete

As a preliminary matter, the Board should dismiss Appellant’s motion because motions to complete the record are not authorized by Standing Order 23-01. Paragraph 4 of Standing Order 23-01 indicates “any party may file a motion to augment or strike the administrative

1 record within 30 days of DTSC’s Permitting Division’s submission to the Board.” Standing
2 Order 23-01 does not allow a party to file a motion to complete the administrative record, which
3 is the type of motion that Appellant filed.

4 A motion to complete is a distinct type of motion when compared to a motion to
5 augment. A motion to complete seeks to add materials which were considered by the agency, yet
6 omitted from the record, while a motion to augment seeks to add materials which were not
7 considered by the agency, but which are necessary for the appellate body to conduct a substantial
8 inquiry. (*Center for Native Ecosystems v. Salazar* (D. Colo. 2010) 711 F.Supp.2d 1267, 1274.)
9 Appellant’s motion acknowledges the difference between a motion to complete and a motion to
10 augment, but without further explanation improperly concludes that “a motion to complete is
11 proper here”. (See Appellant’s July 28, 2023, Memorandum of Points and Authorities, at p. 1, fn.
12 3.)
13

14 In summary, despite the language of Standing Order 23-01, which allows for the filing of
15 a “motion to augment or strike the administrative record,” and despite its knowledge of the
16 distinction between the two types of motions, Appellant filed a motion to complete the
17 administrative record. The Board should dismiss this motion because it was filed outside the
18 specific authorization provided by Standing Order 23-01.
19

20 **B. The Administrative Record Is Complete and Correct**

21 Again, the Board should dismiss this improperly filed motion to complete pursuant to
22 Standing Order 23-01. However, even if the Board were to consider the motion, it fails because
23 the Administrative Record is complete and requires no augmentation. DTSC’s compilation of the
24 Administrative Record is entitled to a presumption of correctness and appellate bodies should
25 defer to the agency’s discretionary decisions made in assembling the record. (22 CCR 66271.72,
26 subd. (c); *Faulkner v. California Toll Bridge Authority*, *supra*, 40 Cal.2d at p. 317; *Goffney v.*
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28

Becerra, supra, 995 F.3d at p. 748.) As described below, DTSC completely and correctly assembled the record for TA 2.

First, while DTSC's regulations do not require preparation of an administrative record before making temporary authorization decisions,¹ Permitting was guided by DTSC's administrative record regulations, and added comparable documents when applicable. Below is a table showing the DTSC administrative record regulations and corresponding documents DTSC included in the record.

Regulation	Type of Document	Comparable TA Document	AR No.
22 CCR § 66271.8(b)(1)	Application and Supporting Data	TA Request ² and Supporting Data	AR 29-35
22 CCR § 66271.17(b)(1)	Comments Received	Earthjustice Comment Letter	37
22 CCR § 66271.17(b)(5)	Documents in the Supporting File for the Final Permit	Documents in the Supporting File for the TA 2 Approval	Passim
22 CCR § 66271.17(b)(6)	Final Permit	Final TA 2 approval and related docs	AR 38-44

In addition to following the comparable regulations, DTSC added all documents from the TA 1 record and added the Permit Appeals Officer's final Order from the TA 1 appeal. (AR 1 through AR 27.) The TA 1 documents were added because they were relevant and were considered by DTSC, as the TA 2 request evolved from TA 1 and provided useful background information for the Board's consideration. For a similar reason, the Permit Appeals Officer's final Order on the TA 1 appeal was deemed relevant and considered by DTSC because DTSC's TA 2 was informed by the order.

¹ The Board Counsel's May 19, 2023, email to Alex Mayer correctly notes that DTSC's temporary authorization decisions are not subject to the DTSC's administrative record regulations found at 22 CCR § 66271.17.

² Appellant seeks to add Ecobat's June 9, 2022, temporary authorization request. DTSC opposes that request because the administrative record already includes Ecobat's June 8, 2022, request (AR 30) which is identical to the June 9 request except that AR 30 includes additional information regarding DTSC's public notice regulations. (Compare AR 30, at p. 11 to Johnson Meszaros Declaration, Exhibit 7, at p. 11.) Appellant has not shown that this document is "necessary to adequately review the underlying decision." (*Blue Mountains Biodiversity Project v. Jeffries, supra*, 62 F.4th at p. 997.)

1 In summary, DTSC’s administrative record is complete, was compiled consistent with
2 comparable DTSC regulations, and is entitled to a presumption of correctness.

3 **C. Earthjustice Has Not Established That Any Exceptions to The Record Rule**
4 **Apply to the Categories of Documents it Seeks to Add to the Record**

5 The Board should dismiss this improperly filed motion to complete (see Section V.A
6 above). However, even if the Board were to consider the motion, it fails because Appellant has
7 not established any exceptions allowed for motions to augment or complete the administrative
8 record.

9 For motions to augment, courts have established four narrow exceptions to the record
10 rule, which creates a presumption that the record compiled by the agency is correct. In *Lands*
11 *Council v. Powell*, (9th Cir. 2005) 395 F.3d 1019, the court summarized the four exceptions as
12 follows: “(1) If admission [of the additional documents] is necessary to determine whether the
13 agency has considered all relevant factors and has explained its decision[;] (2) if the agency has
14 relied on documents not in the record [;] (3) when supplementing the record is necessary to
15 explain technical terms or complex subject matter[;] or (4) when plaintiffs make a showing of
16 agency bad faith.” (*Lands Council v. Powell*, (9th Cir. 2005) 395 F.3d 1019, 1030 (citing
17 *Southwest Ctr. For Biological Diversity v. U.S. Forest Serv.* (9th Cir. 1996) 100 F.3d 1443,
18 1450.) Appellant’s motion fails to address any of these exceptions because they do not apply.

19 For motions to complete, the court will “presume that an agency properly designated the
20 Administrative Record” barring “clear evidence to the contrary.” (*Blue Mountains Biodiversity*
21 *Project v. Jeffries* (9th Cir. 2023) 72 F.4th 991, 997.) Movants will not overcome the presumption
22 of regularity unless it meets “a heavy burden to show that the additional materials sought are
23 necessary to adequately review the underlying decision.” (*Id.* at 998). Documents should be
24 identified with “sufficient specificity, *as opposed to merely proffering broad categories of*
25 *documents and data that are likely to exist*” and provide “‘clear evidence’ that documents it
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1 seeks to add were considered by agency decisionmakers.” (*Clinch Coalition v. U.S. Forest Serv.*
2 (W.D. Vir.) 597 F.Supp.3d 916, 921-922 [emphasis added].)

3 *1. Documents Related to DTSC’s Class 2 Permit Modification Decision are*
4 *Not Part of the Administrative Record*

5 Appellant improperly seeks to augment the record with six specified documents³ and
6 additional unspecified documents related to DTSC’s February 23, 2022, approval of Ecobat’s
7 Permit Modification request,⁴ a request which was later withdrawn by Ecobat, prompting the
8 Board to dismiss the Appellant’s appeal challenging the approval. The approval was a separate
9 action taken by Permitting and is not the subject of this appeal. Documents relating to that
10 appeal, which were included in a separate administrative record submitted to the Board,⁵ do not
11 belong in the administrative record for DTSC’s July 22, 2022, TA 2 decision.
12

13 Appellant claims that these documents must be added in the record so the administrative
14 record “reflect[s] the Class 2 Permit Modification Request submission, decision, and subsequent
15 withdrawal.” At the outset, the Board should dismiss the request for unspecified records, since
16 motions to complete must identify documents with sufficient specificity as opposed to proffering
17 broad categories of documents. (*Clinch Coalition, supra*, at 597. F.Supp.3d at pp. 921-922.)
18 Further, DTSC maintains that the Class 2 Permit Modification documents are not relevant to the
19 appeal of TA 2 since they pertain to a separate decision which the Board has already dismissed
20 as moot. For that reason, those documents were not considered by DTSC when making the TA 2
21 decision. To the extent any of the activities described in the documents are relevant to this
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26 ³ See Exhibits 2, 4, 5, 6, 8, and 11 to Johnson Meszaros July 28, 2023, declaration.

27 ⁴ On p. 1 of the motion, Appellant asks the Board to instruct Permitting to add all documents “regarding” the Class 2
28 Permit Modification.

⁵ DTSC has previously submitted a 38-document administrative record to the Board in response to the now
withdrawn appeal. Appellant is seeking to add all 38 documents to the administrative record, along with additional
unspecified records.

1 appeal, they are already reflected in the Administrative Record submitted to the Board. (See, e.g.
2 AR 44 at pp. 1-2; AR 30 at pp. 115-118.)

3 In *Blue Mountains Biodiversity Project v. Jeffries* (9th Cir. 2023) 72 F.4th 991, a federal
4 court similarly considered a motion to complete that sought to add documents from an
5 administrative record prepared for a project that was withdrawn four years earlier. The movant
6 had argued that the earlier record was relevant as a continuation of the withdrawn project, but the
7 agency disagreed and asserted it did not consider those documents in making the decision on the
8 project. (*Id.* at p. 998.) In denying the request, the court found that the movant “has not met its
9 heavy burden to show that the additional materials sought are necessary to adequately review the
10 [underlying] decision.” (*Ibid.*) The Board should likewise deny Appellant’s request, as it did not
11 demonstrate (1) the additional records sought are “necessary to adequately review the underlying
12 decision;” and (2) overturning the presumption of correctness of DTSC’s Administrative Record
13 is warranted.
14

15 2. *Prior CAC Appeal Briefs Are Not Part of the Administrative Record*

16 Appellant seeks to augment the record with four appeal briefs⁶ filed by CAC challenging
17 TA1, TA 2, and the withdrawn Class 2 Permit modification. When compiling the administrative
18 record for the TA 2 approval, DTSC chose not to include any appeal briefs, including any briefs
19 filed by Ecobat or DTSC as they were not considered for the TA 2 approval. This decision was
20 correct because: (1) the withdrawn Class 2 Permit Modification request is not relevant (see
21 section V.C.1 above), nor is the appeal brief challenging the approval; (2) the TA 1 appeal briefs
22 were not filed in conformance with the Board’s three-page limit for expedited appeals and
23 contain legal arguments and factual assertions that the DTSC Appeals Officer may not have
24 accepted in its final Order, which is included in the Administrative Record; and (3) the TA 2
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28 ⁶ See Exhibits 1, 3, 6, and 11 to Angela Johnson Meszaros July 28, 2023, declaration.

1 appeal brief post-dated DTSC's decision⁷ and was not filed in conformance with the Board's
2 three-page limit.

3 Appellant has not shown why the presumption of correctness furnished to agencies
4 should not apply to the Administrative Record provided by DTSC. It has not explained to the
5 Board why Appellant's prior appeal briefs should be included the Administrative Record, but
6 Ecobat's and DTSC's appeal briefs should not. Further, it has not pointed to any of the four
7 *Lands Council* exceptions that would allow for augmentation of the record prepared by DTSC.
8 (*Lands Council, supra*, 395 F.3d at p. 1030.) Because Appellant has not met its heavy burden to
9 show that the additional materials sought are necessary to adequately review the underlying
10 decision (*Blue Mountains Biodiversity Project, supra*, 72 F.4th at p. 998), the Board should not
11 disturb the presumption of correctness applicable to DTSC's decision to exclude appeal briefs.
12

13 3. *Not All Documents Under Public Records Act (PRA) Review Are Part of*
14 *the Administrative Record*

15 Appellant's attempt to introduce documents being examined under Appellant's May 12,
16 2023, PRA request is flawed. DTSC's TA 2 Administrative Record includes all the documents,
17 including emails, that were considered when the decision was made. As laid out in *Fla. Power &*
18 *Light Co. v. Lorion, supra*, 470 U.S. 729, 743–44, “the whole record... [is] the record the agency
19 presents.” Therefore, any relevant and necessary documents that may be responsive from the
20 PRA are already part of the Administrative Record. This is further supported by the fact that any
21 deliberative or privileged documents captured in a PRA request cannot be considered as part of
22 the administrative record without a “showing of bad faith or improper behavior”. (*Blue*
23 *Mountains Biodiversity Project, supra*, 72 F.4th at p. 997.) Neither of these exceptions have been
24 alleged by Appellant, nor are they applicable here.
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27 ⁷ See *Alliance for the Wild Rockies v. Zinke* (D. Mont. 2017) 265 F.Supp.3d 1161, 1175 (finding that
28 supplementation to determine whether the agency considered all relevant factors is not available for post-decisional
information.)

1 Instead, Appellant is incorrectly claiming that its overbroad and unconnected PRA
2 request, which asks without any date restrictions for all internal and external records related to
3 TA 1 and TA 2, should dictate when the Administrative Record is certified by the Board. If this
4 were true, that would mean no case could go forward and no administrative record could be
5 finalized until allegedly relevant PRA documents were fully produced, no matter when the PRA
6 was sent to an agency. This would grind the administrative process to a halt, allow for
7 gamesmanship on all sides, and let the PRA to be misused as a vehicle to conduct unauthorized
8 discovery in these proceedings.
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10 Appellant's citation to *Protect Our Water v. County of Merced* (2005) 130 Cal.App.4th
11 488, 494 is also very troublesome. Appellant takes the court's dicta out of context and uses it to
12 support its unfounded argument that "whole record" by definition means an "adequate and
13 complete administrative record." (Appellant's July 28, 2023, Memorandum of Points and
14 Authorities, at p. 4, ln. 14-15.) The court's ruling mentions the adequateness and completeness of
15 an administrative record in urging respondent County of Merced to ensure that the administrative
16 record before the court is "properly organized, indexed and presented in a form that is easy to
17 follow." (*Protect Our Water, supra*, 130 Cal.App.4th at p. 377.) The court did not entertain the
18 kind of adequacy or completeness that Appellant attempted to project in its motion. Further, this
19 court was ruling on the adequacy and completion of an administrative record for CEQA, which is
20 much different from the record at issue here. Here, DTSC organized each record chronologically,
21 drafted an index, and submitted to the Board in the electronic form that is easy to follow.
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24 Appellant again wrongly alleges, based on DTSC's estimated rolling production timeline
25 of September 1, 2023, that there must be "a significant number of documents" that are relevant,
26 disclosable and were considered by DTSC. (Appellant July 28, 2023, Memorandum of Points
27 and Authorities, at p. 10.) Processing documents for PRA requests requires DTSC to run key
28

1 word searches throughout its database in attempt to gather all records that are responsive to the
2 request. For narrow PRA requests, key words can be used to run accurate searches, and collect a
3 limited amount of responsive records. However, for broad requests like Appellant's, searches
4 may result in many records that are responsive but completely irrelevant and, in many cases,
5 exempt under the law. This, however, is not indicative of the existence of a large number of
6 relevant, disclosable and relied-upon documents as Appellant alleges.

7
8 Furthermore, DTSC reviews all responsive documents for any applicable privileges and
9 exemptions under the Evidence Code and Public Records Act. Public Resources Code section
10 21167.6(e), which is cited on page 20 of Appellant's Motion, explicitly excludes "any material
11 that is subject to privileges contained in the Evidence Code, *or exemptions contained in the*
12 *California Public Records Act*" from the administrative record. Here, again, all relevant and
13 necessary records are already in the Administrative Record, and any other relevant records that
14 may come up during the PRA process may be privileged or otherwise exempt from disclosure
15 under the PRA. Therefore, Appellant's allegation based on its PRA request and DTSC's review
16 process is unfounded.

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18 In summary, Appellant has attempted to add broad categories of documents subject to a
19 pending PRA request without the sufficient specificity required by law. (*Clinch Coalition v. U. S.*
20 *Forest Serv., supra*, 597 F.Supp.3d at p. 922.) The record is complete. There are no documents,
21 including those which may be responsive to the PRA request, that are needed to complete the
22 record. Therefore, Appellant's motion should be denied.

23
24 *4. Federal Register Documents Are Not Part of the Administrative Record*

25 Appellant seeks to augment the record with two Federal Register documents.⁸ DTSC was
26 well within its discretion not to include those documents in the Administrative Record. In its
27

28 ⁸ See Exhibits 9 and 10 to Johnson Meszaros July 28, 2023, declaration.

1 briefs or motions, Appellant or any party in this proceeding is free to cite and quote documents
2 published in the Federal Register without that document being in the administrative record.
3 (California Style Manual (4th Ed.), § 2:44.) Appellant has not established any exceptions to the
4 record rule that would disturb the presumption of correctness regarding the Federal Register
5 documents.

6 **VI. CONCLUSION**

7 Appellant has asked the Board to add possibly hundreds of unspecified documents to the
8 Administrative Record, a record that has already been compiled, is complete, and is entitled to a
9 presumption of correctness. Appellant has not met its heavy burden to overturn this presumption.
10 DTSC Permitting respectfully requests the Board to deny Appellant's motion to complete,
11 pursuant to its standing order and applicable law.
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16 08/14/2023

17 _____
Date

17 _____
William Heung
Unit Chief
Permitting Division
Department of Toxic Substances Control
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THE BOARD OF ENVIRONMENTAL SAFETY
CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Ecobat Resources California Inc.,
(f/k/a Quemetco Inc.)

Appeal of Temporary Authorization

720 S. Seventh Avenue
City of Industry, California 91746
EPA ID No. CAD066233966
Permit No. 05-GLN-08

BES Docket No: FY22/23-02

**DECLARATION OF ALEXANDER
MAYER IN SUPPORT OF DTSC
PERMITTING DIVISION'S
OPPOSITION TO APPELLANT'S
MOTION TO COMPLETE THE
RECORD**

Appeal Filed: June 30, 2023

DECLARATION OF ALEXANDER MAYER

I, Alexander Mayer, declare the following:

1. I am a senior staff counsel at the Office of Legal Counsel of the California Department of Toxic Substances Control. I make this declaration in support of DTSC Permitting Division's Opposition to Appellant Clean Air Coalition of North Whittier and Avocado Heights' (CAC) Motion to Complete the Permit Record. This declaration is based on my own personal knowledge, and if called upon to testify, I could and would do so completely.
2. Attached hereto as Exhibit A is a true and correct copy of the email notice that DTSC Permit Appeals Officer's advisor Paul Ruffin sent on July 8, 2021, to Permitting Division Project Manager Sam Coe, notifying of Appellant's appeal and requesting the administrative record.
3. Attached hereto as Exhibit B is a true and correct copy of the Permitting Division's transmittal letter accompanying the administrative record, which was compiled upon the July 8, 2021, email notice from the Permit Appeals Officer's advisor Paul Ruffin and submitted on July 23, 2023.

4. Attached hereto as Exhibit C is a true and correct copy of the email correspondence between Appellant's Attorney, Byron Chan, and DTSC Staff Counsel Sangwon Ryan Choi memorializing the meeting that took place on June 1, 2023, in response to Appellant's May 2023 Public Records Act request.

I, Alexander Mayer, make the above declaration under penalty of perjury, executed on August 14, 2023, in Sacramento, California.

Signature: _____

EXHIBIT A

From: APPEALS@DTSC
To: Coe, Sam@DTSC
Cc: Palmer, Karl@DTSC; Kane, Christopher@DTSC
Subject: Quemetco, Inc. Temporary Authorization Appeal
Date: Thursday, July 8, 2021 5:28:05 PM

I am assisting the Permit Appeals Officer, Mr. Karl Palmer, with the appeal of the temporary authorization decision issued on April 19, 2021, for the Quemetco, Inc. facility in City of Industry, California, Facility Identification Number CAD066233966.

I am requesting the administrative record for DTSC's temporary authorization decision. The most convenient way to send the administrative record to me is to e-mail it to Appeals@dtsc.ca.gov. If the administrative record is too large to e-mail, place it in a folder on the LAN U: drive and send me the location. If the administrative record is large, please also prepare three (3) copies on flash drives. Please have the documents in chronological order and include a table of contents or index of the documents. If any of the administrative record documents are not provided or are missing, please identify the documents and describe why they were not provided.

We need the administrative record documents for our analysis. If you could have them ready by July 23rd, that would be helpful. If there is some reason you cannot have them prepared within this time frame, please let us know as soon as possible and provide a date when the administrative record will be provided.

Also, please send to me the project contact list for the owner/operator and attorney, responsible agencies, and DTSC staff with titles, addresses, phone numbers, and e-mail addresses.

Thank you for your time and efforts.

Paul Ruffin
Hazardous Substances Engineer
Site Mitigation and Environmental Restoration Program
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200
appeals@dtsc.ca.gov
916-255-6677 (office)
916-835-7190 (cell)

EXHIBIT B



Jared Blumenfeld
Secretary for
Environmental Protection



Department of Toxic Substances Control

Meredith Williams, Ph.D.
Director
8800 Cal Center Drive
Sacramento, California 95826-3200



Gavin Newsom
Governor

July 23, 2021

Mr. Karl Palmer
Deputy Director, Safer Products and Workplaces
Permit Appeals Officer
California Department of Toxic Substances Control
1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806

TRANSMITTAL OF ADMINISTRATIVE RECORD FOR APPEAL OF TEMPORARY
AUTHORIZATION, QUEMETCO, INC., 720 S. 7TH AVENUE, CITY OF INDUSTRY,
CALIFORNIA 91746, (EPA ID NO. CAD066233966)

Mr. Palmer:

In response to Mr. Paul Ruffin's written request from July 8, 2021, as confirmed by your July 9, 2021 letter, the Department of Toxic Substances Control (DTSC) Permitting Division hereby provides the Administrative Record supporting its decision to issue a Temporary Authorization to Quemetco, Inc. (Quemetco).

The DTSC Permitting Division has placed the Administrative Record, along with an index, in a folder on a DTSC shared network drive per the instructions in Mr. Ruffin's request. The DTSC Permitting Division will provide the exact location separately to Mr. Ruffin.

Please be advised that Quemetco has requested confidentiality on some of its business documents that were submitted as part of the request for temporary authorization. The documents requesting confidentiality are as follows:

1. (#4) 2021-02-11 Quemetco's Request for Temporary Authorization – Attachment #1 (Compression Auger Schematic), Attachment #2 (Centrifuge Schematic), and Attachment #3 (Battery Wrecker Process Flow Diagram);
2. (#9) 2021-02-26 Quemetco's COI BW Process Flow (Dewatering Schematic);

Mr. Karl Palmer

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3. (#10) 2021-02-26 Quemetco's Response to DTSC's request for information regarding compression auger – attachment (Dewatering Process Flow), Attachment #1 (Compression Auger Schematic), Attachment #2 (Centrifuge Schematic), and Attachment #3 (Battery Wrecker Process Flow Diagram);
4. (#11) 2021-02-26 Quemetco's Response to DTSC's request for information regarding wrecker dewatering – Exhibit B (Dewatering Process Flow); and
5. (#12) 2021-02-26 Quemetco's Revised Request for Temporary Authorization – Attachment #1 (Compression Auger Schematic), Attachment #2 (Centrifuge Schematic), and Attachment #3 (Battery Wrecker Process Flow Diagram).

Mr. Ruffin's July 8, 2021, email requested three flash drives containing the Administrative Record in addition to the network upload of the Administrative Record. Three flash drives containing the Administrative Record will be mailed next week per those instructions.

Sincerely,



Sam Coe
Senior Environmental Scientist
Permitting Division
e-mail: Sam.Coe@dtsc.ca.gov

Mr. Karl Palmer

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cc (via email only):

Ryan Dominguez, P.E.
Unit Chief
Department of Toxic Substances Control
Permitting Division
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Acting Division Chief
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Office of Legal Counsel
Department of Toxic Substances Control
e-mail: Alexander.Mayer@dtsc.ca.gov

Sangwon "Ryan" Choi
Staff Attorney
Office of Legal Counsel
Department of Toxic Substances Control
e-mail: SangwonRyan.Choi@dtsc.ca.gov

Angela Johnson Meszaros
Managing Attorney
Community Partnerships Program
Earthjustice
Ameszaros@earthjustice.org

Mr. Karl Palmer

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Byron Chan
Attorney
Community Partnerships Program
Earthjustice
BChan@earthjustice.org

Carl Raycroft
Vice President of Health and Safety Compliance
RSR Corporation
Carl.Raycroft@ecobat.com

Johnny Hwang
Plant Manager
Quemetco, Inc.
jhwang@rsrna.com

EXHIBIT C

Choi, Sangwon Ryan@DTSC

From: Byron Chan <bchan@earthjustice.org>
Sent: Friday, June 2, 2023 12:56 PM
To: Choi, Sangwon Ryan@DTSC
Cc: Khosraviani, Parisa@DTSC; Mayer, Alexander@DTSC; White, Leah@DTSC; Lupe Ruelas
Subject: RE: PR8-051723-02

This Message Is From an External Sender

This message came from outside your organization.

Hi Ryan,

Thank you for the helpful recap. Nothing has been left out. I hope you have a great weekend.

Best,
Byron

From: Choi, Sangwon Ryan@DTSC <SangwonRyan.Choi@dtsc.ca.gov>
Sent: Friday, June 2, 2023 11:31 AM
To: Byron Chan <bchan@earthjustice.org>
Cc: Khosraviani, Parisa@DTSC <Parisa.Khosraviani@dtsc.ca.gov>; Mayer, Alexander@DTSC <Alexander.Mayer@dtsc.ca.gov>; White, Leah@DTSC <Leah.White@dtsc.ca.gov>; Lupe Ruelas <lruelas@earthjustice.org>
Subject: RE: PR8-051723-02

External Sender

Mr. Chan: It was a pleasure talking with you yesterday. I'd like to recap our conversation yesterday to make sure that we're all on the same page. It was indicated to DTSC that you'd like the Board of Environmental Safety's records and the 2021 Permit Appeals Office's records, and you'd like DTSC Permitting Division to forward your Public Records Act request to the Board and the Appeals Office. DTSC indicated that the Permitting Division will forward the PRA requests. DTSC also indicated that the Board and the Permit Appeals Officers for the 2021 Temporary Authorization will be handling their own PRA reviews. You indicated that you'd like a rolling production, and DTSC will accommodate that. Please let me know if there is anything that needs to be added in the recap. Thank you.

Sincerely,
Ryan

--

Sangwon "Ryan" Choi
Staff Counsel

Office of Legal Counsel
(714) 655-0780 (Direct) (Call & SMS)
SangwonRyan.Choi@dtsc.ca.gov
Department of Toxic Substances Control
5796 Corporate Ave.
Cypress, CA 90630-4700
California Environmental Protection Agency



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From: Byron Chan <bchan@earthjustice.org>
Sent: Wednesday, May 31, 2023 2:46 PM
To: Choi, Sangwon Ryan@DTSC <SangwonRyan.Choi@dtsc.ca.gov>
Cc: Khosraviani, Parisa@DTSC <Parisa.Khosraviani@dtsc.ca.gov>; Mayer, Alexander@DTSC <Alexander.Mayer@dtsc.ca.gov>; White, Leah@DTSC <Leah.White@dtsc.ca.gov>
Subject: RE: PR8-051723-02

Thank you, Ryan. I forgot to ask earlier, but can you please include Lupe Ruelas (lruelas@earthjustice.org) in this meeting? Thank you.

Best,
Byron

From: Choi, Sangwon Ryan@DTSC <SangwonRyan.Choi@dtsc.ca.gov>
Sent: Wednesday, May 31, 2023 1:49 PM
To: Byron Chan <bchan@earthjustice.org>
Cc: Khosraviani, Parisa@DTSC <Parisa.Khosraviani@dtsc.ca.gov>; Mayer, Alexander@DTSC <Alexander.Mayer@dtsc.ca.gov>; White, Leah@DTSC <Leah.White@dtsc.ca.gov>
Subject: PR8-051723-02

External Sender

Hello Mr. Chan: this is a separate request for meeting. DTSC is seeking clarification on your PRA request. Are you available for a quick meeting tomorrow? Please advise. Thank you.

Sincerely,
Ryan

PRIVILEGED & CONFIDENTIAL

Attorney-Client Communication
Attorney Work Product
Deliberative Process

--

Sangwon “Ryan” Choi

Staff Counsel

Office of Legal Counsel

(714) 655-0780 (Direct) (Call & SMS)

SangwonRyan.Choi@dtsc.ca.gov

Department of Toxic Substances Control

5796 Corporate Ave.

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