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# Ecobat Dewatering Project Permit Appeal

Board of Environmental Safety  
November 29, 2023

- Ecobat provides a vital service to California as the only lead-acid battery recycler west of the Rockies.
- Without Ecobat, most of the millions of spent lead-acid batteries generated in California would be:
  - Illegally disposed of in landfills, or
  - Exported to countries (e.g. Mexico) with significantly lower environmental standards.

“I think at a gut level, everybody feels as though every state should be handling its own toxic waste and not sending it across borders to other states and countries with less stringent environmental standards.”

- **State Senator Ben Allen (D—Redondo Beach)**<sup>1</sup>

- Since 2008, Ecobat has invested \$50M in state-of-the-art emissions controls and continues to invest today.
  - Ecobat’s annual lead emissions total only *five pounds*—less than *a single car battery*—after recycling *240,000,000 pounds* of lead.<sup>1</sup>
  - Ecobat’s lead emissions are *80% below* AQMD’s stringent legal limit.<sup>2</sup>
- The Dewatering Project is the most recent example of Ecobat’s commitment to investment in the environmental improvement of its operations.

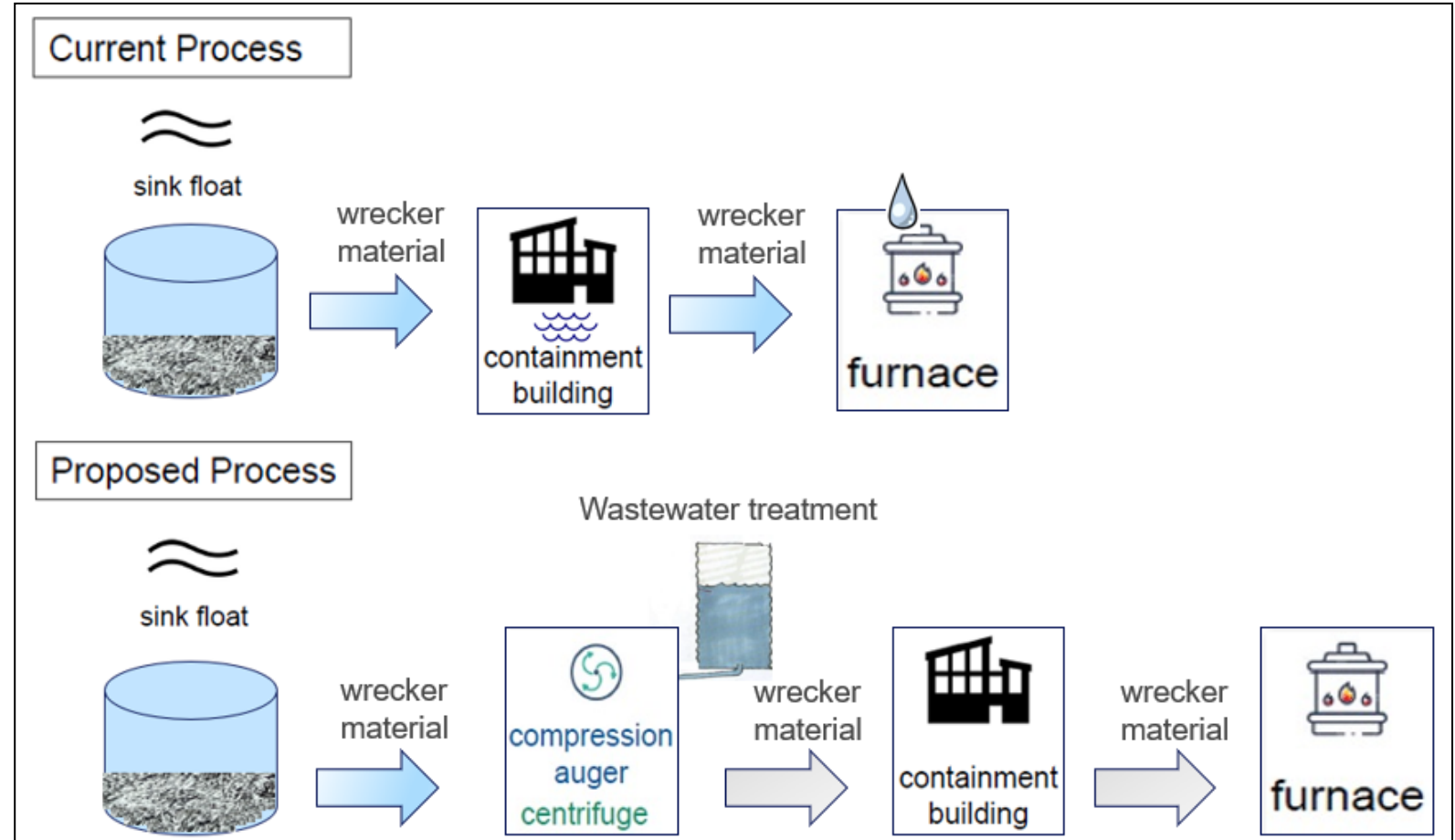
## Ecobat's current process (without dewatering):

- Lead-bearing material is transferred to batch house (pictured) with significant volume of liquids
- Liquid drains from lead-bearing material onto the batch house floor.
- Liquid flows from the floor into a sump for treatment.



# Dewatering Project Overview

- Dewatering equipment will **eliminate** lead bearing liquid on batch house floor.
- Dewatering is **enclosed system** that routes liquid directly to treatment system **before its gets to batch house**.



The dewatering project provides environmental, health, and safety benefits to the community:

1. **Protects Soil and Groundwater:** Removing liquids from batch house floor via enclosed system significantly reducing the risk of a release to soil/groundwater from batch house.
2. **Reduces SO<sub>2</sub>** – Reduces sulfur dioxide (SO<sub>2</sub>) emissions from furnaces.
3. **Reduces Greenhouse Gases** – Reduction in energy usage in furnaces (and thereby a reduction in energy-related GHG emissions)

The Clean Air Coalition **does not dispute** these benefits

If CAC concedes the Project will benefit the environment and human health, then why are we here?



CAC's appeal of this environmental improvement project boils down to a narrow, procedural issue.

## Issue on Appeal

Was it ***clearly erroneous*** for DTSC to conclude that the Dewatering Project is necessary to “facilitate the protection of human health and the environment ***before action is likely to be taken*** on a [permit] modification request” when DTSC approved Ecobat’s temporary authorization request on July 22, 2022?

## Cal. Code of Regs § 66271.72(c)

(c) Decision on the Merits. The Board shall decide the issues raised in the petition and accepted for review pursuant to subsection (b) of this section at a public hearing conducted pursuant to article 10 of chapter 4.5 of division 3 of title 2 of the Government Code. The appellant shall bear the burden at the hearing to establish that the Department's final permit decision is based upon one or more of the following:

- (1) a finding of fact or conclusion of law which is clearly erroneous; or
- (2) an abuse of discretion concerning an exercise of discretion or an important policy consideration within the Board's jurisdiction, which the Board should, in its discretion, review; or
- (3) a significant procedural error, including but not limited to a failure to proceed in a manner that is required by law or regulation.



**BOARD OF Environmental Safety**  
P.O. Box 806 • 1001 "I" Street, Sacramento, California 95812-0806

**Yana Garcia**  
Secretary for Environmental Protection

**Garin Newsom**  
Governor

**Jeanne Rizzo** Board Chair  
**Alexis Strauss-Hacker** Vice Chair  
**Sushma Bhatia** Member  
**Georgette Gomez** Member  
**Lizette Ruiz** Member

**NOTICE OF PROPOSED EMERGENCY ACTION  
HAZARDOUS WASTE FACILITY PERMIT APPEAL PROCESS**  
22 CCR §§ 66271.14, 66271.15 & 66271.18

NOTICE IS HEREBY GIVEN that the Board of Environmental Safety (Board) proposes to adopt the emergency regulations described below to amend the procedures for appeals of decisions by the Department of Toxic Substances Control (DTSC) to grant, issue, modify, or deny hazardous waste facility permits and associated procedures.

**COMMENT PERIOD**

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the Board provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action. After submission of the proposed emergency action to OAL, OAL must allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

The Board intends to submit this proposed emergency action to OAL on April 17, 2023. The submitted action will appear on the list of "Emergency Regulations Under Review" on OAL's website at: [https://oal.ca.gov/emergency\\_regulations/Emergency\\_Regulations\\_Under\\_Review/](https://oal.ca.gov/emergency_regulations/Emergency_Regulations_Under_Review/).

Comments must be submitted in writing directly to OAL:

OAL Reference Attorney  
300 Capitol Mall, Suite 1250  
Sacramento, California 95814  
Fax Number: (916) 323-6826  
[staff@oal.ca.gov](mailto:staff@oal.ca.gov)

A copy of the comment must also be submitted in writing to the Board at:

Board of Environmental Safety  
P.O. Box 806  
Sacramento, California 95812-0806  
Fax Number: (916) 324-1808  
[info@bes.dtsc.ca.gov](mailto:info@bes.dtsc.ca.gov)

In adopting its rules, this Board expressly recognized the importance of deferring to DTSC's permitting decisions.

Granting deference to the DTSC Permitting Division and placing the burden on the appellant to demonstrate that a finding of fact or conclusion of law is clearly erroneous is consistent with the manner in which courts typically review permit decisions. Under state law, official acts are presumed to have been carried out correctly, pursuant to Evidence Code section 664. Therefore, when courts are called upon to review agency decisions, courts begin with the presumption that the decision is correct, and place the burden on the challenger to demonstrate clear error. Also, courts have long recognized that agencies have a highly specialized focus on particular laws, and deserve to have the decisions they make interpreting their own statutes afforded deference.

## Answer

DTSC's conclusion was not clearly erroneous, and CAC's appeal must therefore be denied.

- DTSC identified the method in which the dewatering project protects human health and the environment.
- DTSC identified the reasons why those benefits would arise before they would likely take action on Ecobat's permit modification (a decision which still has not been made).

## Cal. Code § 66270.42(e)<sup>1</sup>

(3) The Department shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the Department shall find:



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(C) the temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

1. to facilitate timely implementation of closure or corrective action activities;
2. to allow treatment or storage in tanks, containers, or in containment buildings in accordance with chapter 18 of this division;
3. to prevent disruption of ongoing waste management activities;
4. to enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or
5. to facilitate other changes to protect human health and the environment.

DTSC explained how dewatering “facilitate[s] ... changes to **protect human health and the environment.**”

- Cal. Code § 66270.42(e)(3)(C)(5)



Department of Toxic Substances Control

Jared Blumenfeld  
Secretary for  
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Director  
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Gavin Newsom  
Governor

July 22, 2022

Certified Mail #: 7018 2290 0001 8895 4204

Mr. Carl Raycroft  
Vice President, Environmental, Health & Safety Compliance  
RSR Corporation  
2777 Stemmons Freeway, Suite 180p  
Dallas, Texas 75207

**APPROVAL OF TEMPORARY AUTHORIZATION FOR DEWATERING PROJECT,**  
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As stated in the Temporary Authorization request, the purpose of the Miscellaneous Units is to eliminate free liquids from the hazardous waste that is stored on the floor of the Containment Building. The presence of free liquids requires the Containment Building to operate with containment and leak detection systems that if failed could potentially result in hazardous liquids coming into contact with groundwater beneath the facility. The compression auger will compress waste received from the sink float tank (WSF-1) before sending it to the centrifuge. The centrifuge will then spin the waste to remove any residual liquids before the waste is placed in the Containment Building. Residual liquids collected by the centrifuge will drain to a reactor tank (DR-3) or to the battery wrecker sump (WS-1).

The Miscellaneous Units will allow the facility to improve the removal of liquids from wrecker material via a controlled process in an enclosed transfer system, such that all free liquids will be removed from the wrecker material prior to storage in the Containment Building. The removal of free liquids from the Containment Building results in a significant environmental improvement to the storage and treatment of the wrecker material, minimizing the risk of a release from the Containment Building, and resulting in a clear benefit to human health and environment. The Miscellaneous Units will also help address violations related to the Containment Building’s leak detection system.

# DTSC's Approval Supports Its Finding of Necessity

DTSC explained why the “temporary authorization is necessary [to protect human health and the environment] **before action is likely to be taken on a modification request.**”

- Cal. Code § 66270.42(e)(3)(C)(5)



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## Department of Toxic Substances Control

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### APPROVAL OF TEMPORARY AUTHORIZATION FOR DEWATERING PROJECT,

\*\*\*

To address this specific issue, DTSC concludes that approving Quemetco's Temporary Authorization request is necessary before action is likely to be taken on a modification request because the environmental improvements to be authorized allow DTSC to continue its mission of protecting California's people, communities, and environment from toxic substances, enhancing economic vitality by restoring contaminated land, and compelling manufacturers to make safer consumer products.<sup>1</sup> At any time during the operating life of a facility, new technologies or methods may become available that allow a hazardous waste facility to operate in a more protective manner. Facilities have the option of requesting such changes via a Temporary Authorization before a Permit Modification is requested and processed. The addition of the Miscellaneous Units above will allow Quemetco to better and more safely manage its wastes without the delay associated with a permit modification request, public comment period, and final decision, which could take between 6 months and a year from start to finish. Thus, to support DTSC's mission, the Miscellaneous Units are necessary to be installed and operated at least temporarily before action is likely taken on a modification request.

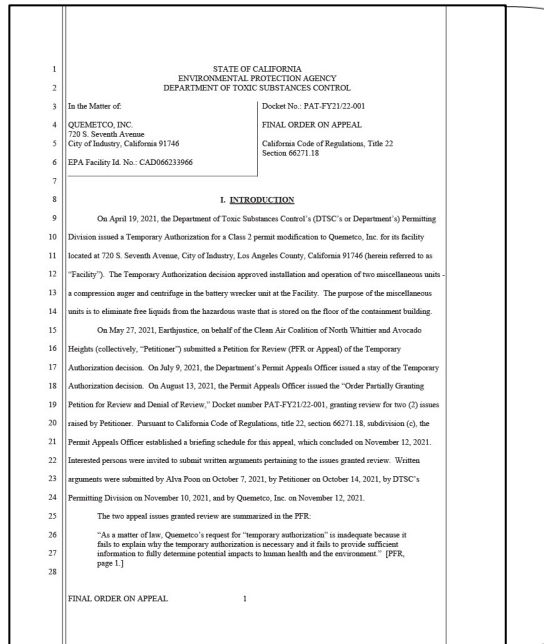
# DTSC's Approval Supports Its Finding of Necessity

- DTSC's conclusion was not "clearly erroneous."
- DTSC's conclusion has proved 100% correct.
  - DTSC still has not issued a decision on Ecobat's requested permit modification (and won't until 2024).
  - This is precisely the scenario temporary authorizations are intended to address:

TA allows the community to benefit from environmental and safety improvements pending formal permit modification.

# CAC Mischaracterizes the Prior Final Order

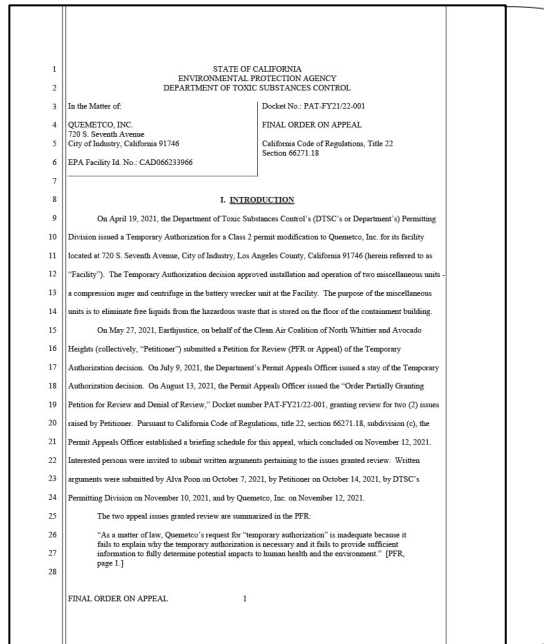
- **CAC's Argument:** The prior dewatering appeal concluded that the dewatering project is never appropriate for temporary authorization.
- **Ecobat Response:** The Permit Appeals Officer held DTSC's approval was technically deficient because it lacked the "required explanation" of its rationale.



changes will facilitate the protection of human health and the environment.” California Code of Regulations, title 22, section 66270.42, subdivision (e)(3) also requires DTSC to find that, “temporary authorization is necessary to achieve one of the following objectives **before action is likely to be taken on a modification request:**” (emphasis added.) DTSC does not explicitly identify this requirement in its decision letter. As identified by Petitioner, this explanation of why a temporary authorization is needed, is what is lacking in both the temporary authorization request and DTSC’s decision.

# CAC Mischaracterizes the Prior Final Order

- **CAC's Argument:** The prior dewatering appeal concluded that the dewatering project is never appropriate for temporary authorization.
- **Ecobat Response:** The Permit Appeals Officer held DTSC's approval was technically deficient because it lacked the "required explanation" of its rationale.



Both DTSC Permitting Division and Quemetco objected to Petitioner's criteria for review of the appeal. DTSC Permitting Division helpfully provided an explanation of the "clearly erroneous" standard [DPDB page 8] It is clearly erroneous for DTSC to grant Quemetco's temporary authorization request, as DTSC did so without the required explanation of why the temporary authorization was necessary and furthermore it is clearly erroneous for DTSC to find that installation of the proposed units was necessary before action is likely to be taken on a modification request, without any basis.



# CAC Mischaracterizes the Prior Class 2 Approval

- **CAC Claim:** DTSC’s prior Class 2 modification approval, which Ecobat voluntarily withdrew, demonstrates that this temporary authorization is not necessary.
- **Ecobat Response:** The prior Class 2 modification is irrelevant to the pending appeal.
  - CAC alleged the Class 2 modification was defective → Ecobat and DTSC withdrew that modification to address those alleged deficiencies in a new application.
    - This restarted the permit modification process.
    - Ecobat’s responsiveness to CAC’s public comments should be *encouraged*—not made the basis of an appeal.
  - This Board ***already has held*** that “records from the approval of the class 2 permit modification in February 2022” are not relevant to this appeal.<sup>1</sup>
  - This Board ***already has stated*** that the Class 2 approval “never took effect”<sup>2</sup>

<sup>1</sup> Letter from Board of Environmental Safety to Angela Johnson Meszaros, re Board of Environmental Safety Appeal No. 23-02, dated October 5, 2023

<sup>2</sup> Letter from Jeanne Rizzo to Matt Williamson and Angela Johnson Meszaros, re Appeal of Quemetco Modified Permit – Recent Letters, dated June 16, 2022

# The Dewatering Project Has Been Subject to Extensive Public Engagement

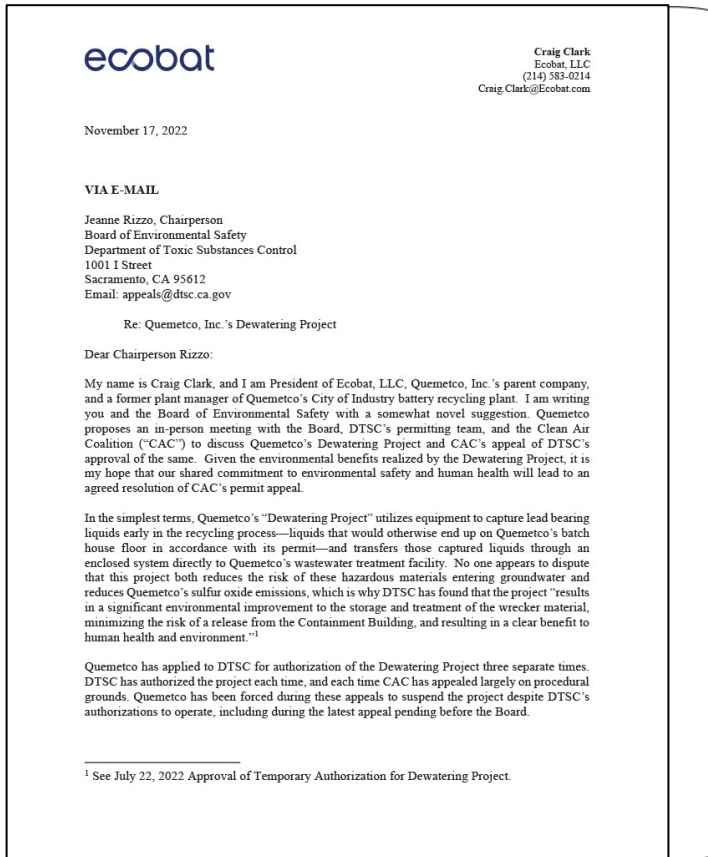
**CAC Clam:** This temporary authorization is an attempt to “circumvent public engagement” in the dewatering project permitting process.

**Ecobat Response:** This ignores the years of extensive public engagement, including:

- Four public notices requesting public engagement
- Two 60-day public comment periods
- Three public comment letters from CAC
- Two public meetings
- Three CAC appeals of DTSC permitting approvals (including 70 pages of briefing)

# The Dewatering Project Has Been Subject to Extensive Public Engagement

Craig Clark, President of Ecobat, personally invited the Board and CAC to discuss the dewatering project.



I understand there are technical areas of regulatory procedure on which CAC disagrees with DTSC and Quemetco. But Quemetco believes, in light of the Dewatering Project's demonstrated environmental benefits, that in-person discussions between the parties can lead to an agreement that would allow for the operation of this equipment and the realization of these environmental benefits. Given the unique situation we are in—with the Board unable to process appeals pending the adoption of permit appeals rulemaking—and given the numerous benefits offered by the dewatering project, we believe that discussions between the parties, with the assistance of the Board, could help the parties resolve their differences and agree to a path forward for the Dewatering Project. I am happy to meet at a time and location convenient for the rest of the group. To get the ball rolling, I suggest targeting the first two weeks of December.

- CAC has identified no error in DTSC’s approval—much less a “clearly erroneous” finding by DTSC necessary to grant this appeal.
- We ask the Board to affirm DTSC’s decision and deny CAC’s appeal. This would:
  - Allow Ecobat to temporarily operate this environmental improvement project for 180 days.
  - Leave untouched CAC’s right to participate in DTSC’s decision on Ecobat’s pending Class 3 permit modification request for the dewatering project.

# If Appeal Granted, The Board Should Retain Jurisdiction to Address Issues

## Cal. Code of Regs § 66271.72(c):

(d) Final Order. If the Board concludes that the appellant has not satisfied its burden as set forth in subsection (c) of this section, it shall deny the petition and terminate the stay imposed under section 66271.71. If the Board concludes that the appellant has satisfied its burden as set forth in subsection (c) of this section, it shall grant the petition, and enter an order vacating and setting aside the final permit decision in full or in part and

(1) directing the Department's Permitting Division to deny the permit; or

(2) retaining jurisdiction over the matter and directing the Department's Permitting Division to address the issues sustained by the Board, which shall be reviewed and considered by the Board at a subsequent public meeting; or

(3) directing the Department's Permitting Division to prepare a new draft permit in accordance with applicable laws and regulations, in which case the Department's subsequent final permit decision shall be subject to review by the Board upon the timely filing of an appeal in accordance with paragraph (3) of subsection (a) of this section.

- Ecobat has been seeking permitting approval to operate this environmentally beneficial equipment for nearly 3 years.
- If the Board concludes that there are issues that must be addressed, the Board should retain jurisdiction and direct DTSC to cure any defect in a timely manner, without the need to re-start the entire permitting process again.

# APPENDIX

- Whether the permit expired pursuant to its own terms is not at issue on this appeal
  - No party raised this argument as a basis for appeal
  - The Board has already twice rejected DTSC's passing assertion that CAC's appeal is moot
  - It would be arbitrary and capricious, an abuse of discretion, and an unconstitutional deprivation of due process, were the Board to hold that the permit expired
  - DTSC's position only serves to delay this environmental improvement project with no corresponding benefit.
  - Indeed, this is one area where CAC and Ecobat are in agreement!

# The Board's Stay Tolls the Expiration Date


- DTSC attempts to narrow the scope of the Board's "stay" (actually referred to by the Board as a suspension), claiming that it only applies to "challenged conditions" in the appeal.

**3. DTSC's Temporary Authorization Will Immediately Be Moot After the Stay Ends:** In addition to DTSC's actions being reasonable and not clearly erroneous, DTSC believes this appeal is moot because TA 2 will expire by its own terms upon the stay being lifted. (AR 44.) When DTSC issued TA 2, the authorization was intended to run immediately and constantly for 180 days until its January 18, 2023, expiration date. (*Id.* at 3.) DTSC believes that stays issued by the Board during the pendency of an appeal suspend enforcement of the challenged conditions without modifying the conditions, including expiration dates. (See 9 Witkin, Cal. Proc. 6th (2023) Appeal, § 240 ["A stay, obtained by any method, prevents any further proceedings to enforce the judgment or order."].) Likewise, the DTSC regulations in place when the Board issued the stay did not indicate that expiration dates in challenged conditions are tolled or otherwise modified. Therefore, TA 2 will be moot after the stay concludes.




# The Board's Stay Tolls the Expiration Date (cont'd)

- But CAC's appeal challenges the entire approval of the dewatering project, not any specific conditions, so DTSC's argument makes no sense.




Jared Blumenfeld  
Secretary for  
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Department of Toxic Substances Control

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Gavin Newsom  
Governor

BOARD OF  
Environmental  
Safety

Jeanne Rizzo  
Chairperson  
Board of Environmental Safety

**VIA EMAIL**

August 17, 2022

Mr. Carl Raycroft  
Vice President of EHS Compliance  
Quemetco, Inc.  
2777 N. Stemmons Freeway, Suite 1800  
Dallas, Texas 75207  
Carl.Raycroft@ecobat.com

RECEIPT OF PETITION FOR REVIEW OF TEMPORARY AUTHORIZATION FOR THE  
QUEMETCO, INC. HAZARDOUS WASTE FACILITY,  
720 SOUTH 7TH AVENUE, CITY OF INDUSTRY, EPA ID NO.: CAD066233966

Dear Mr. Raycroft:

On August 4, 2022, the Board of Environmental Safety (Board) of the Department of Toxic Substances Control (DTSC) received a Petition for Review (Petition) for the Temporary Authorization issued by DTSC's Permitting Division on July 22, 2022, for the Quemetco, Inc. hazardous waste facility located in City of Industry, California. The Petition, dated August 4, 2022, was filed by Earthjustice on behalf of the Clean Air Coalition of North Whittier and Avocado Heights (Petitioner). A copy of the Petition is enclosed with this letter.

This letter confirms that the granting of a temporary authorization is a decision that is subject to appeal. California Code of Regulations (CCR), title 22, section 66270.42, subsection (f)(2). Upon the filing of a timely appeal petition, as in this case, the temporary authorization does not take effect. 22 CCR § 66271.14(b)(2). This letter confirms that the temporary authorization will remain suspended while the Board resolves the appeal.

**This letter confirms that the granting of a temporary authorization is a decision that is subject to appeal. California Code of Regulations (CCR), title 22, section 66270.42, subsection (f)(2). Upon the filing of a timely appeal petition, as in this case, the temporary authorization does not take effect. 22 CCR § 66271.14(b)(2). This letter confirms that the temporary authorization will remain suspended while the Board resolves the appeal.**

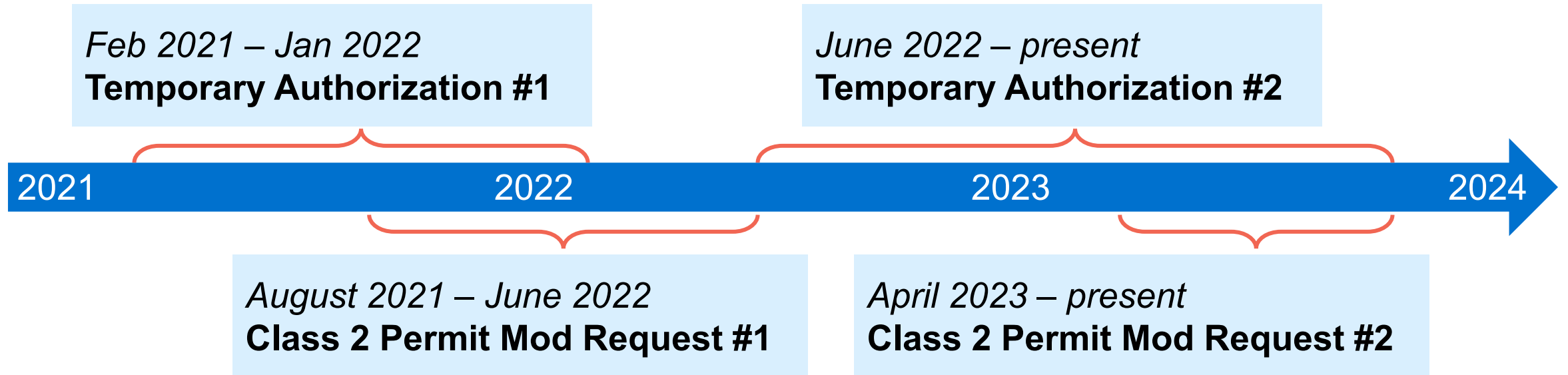
# DTSC's Eleventh Hour Expiration Claim

- Between 1/18/23 and 5/12/23, DTSC never alleged the TA was expired despite multiple opportunities to take that position:
  - Regular (at least monthly) discussions between DTSC Permitting/Legal and Ecobat concerning permit-related matters
  - Board's 1/26/23 Meeting: BES Permit Appeal Process and Regulation Presentation and Discussion
  - Board's 3/23/23 Meeting: BES Permit Appeal Process Presentation and Discussion (Board approves new regulations for permit appeals)
  - Ecobat's 4/5/23 Class 2 Permit Mod Request notes TA approval is stayed
  - Board's 4/27/23 Meeting: DTSC presentation on pending permit decisions (including Ecobat)
  - [DTSC's 5/30/23 Letter](#) recognizes current stay:

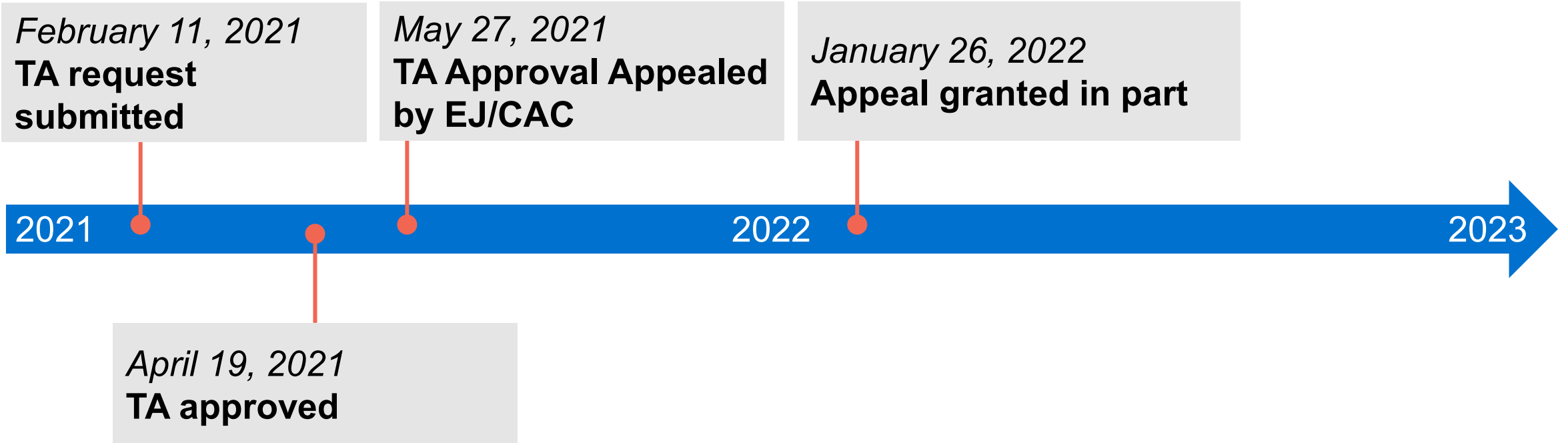
The Modification Request also included a request to reissue the July 22, 2022 temporary authorization. DTSC notes that the temporary authorization issued by DTSC is currently stayed by the Board of Environmental Safety (BES) as a result of the filing of a petition for appeal and the adoption of BES's emergency regulations. BES's actions on the stay and the appeal are necessary before DTSC can consider any subsequent actions on the July 22, 2022 temporary authorization. Consequently, DTSC will consider your request to reissue the authorization after the BES actions are completed.

# Dewatering Project Permitting Timeline

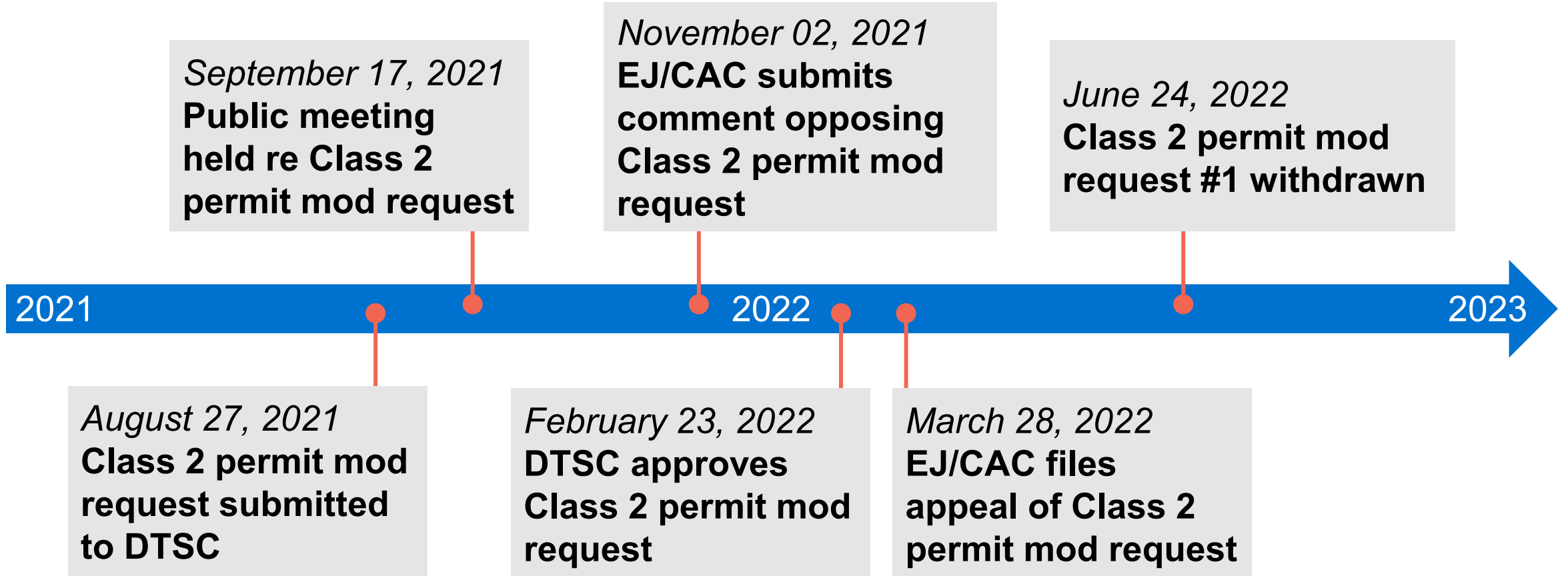
- Ecobat has been seeking approval for this environmental improvement project for nearly **three years**, with the temporary authorization at issue in this appeal now stayed for over **one year**.



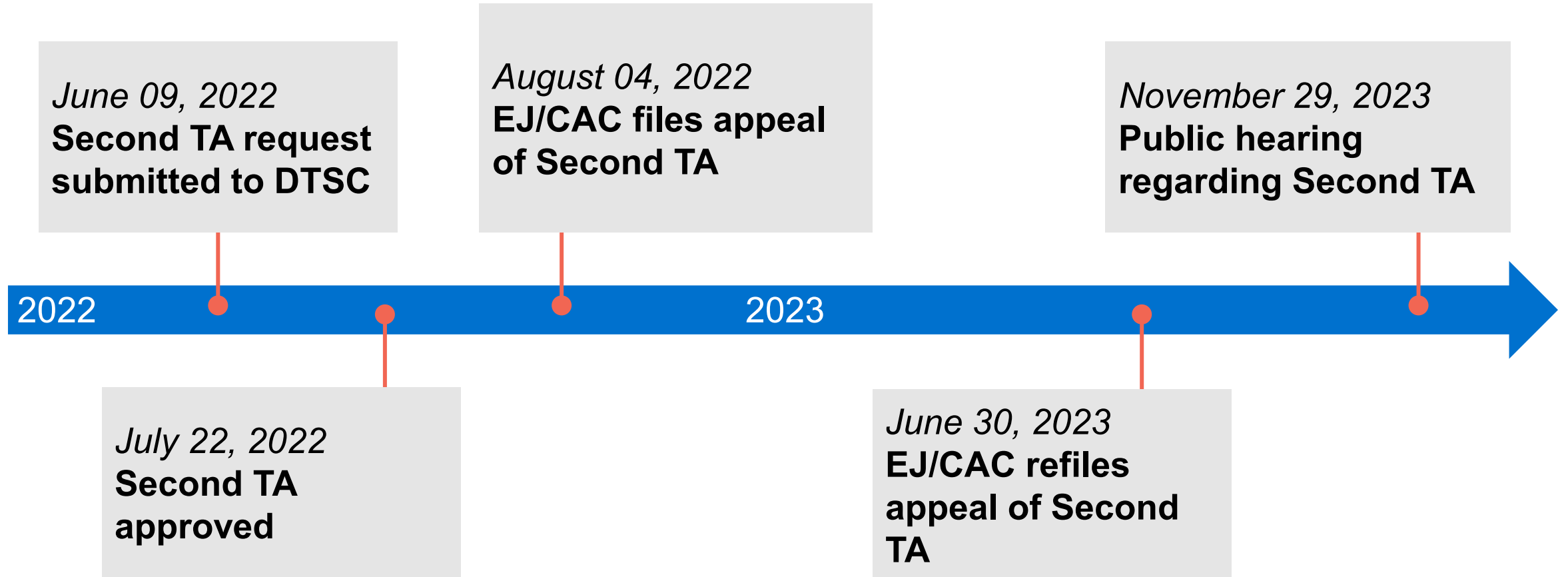
# Temporary Authorization # 1 (Feb 2021 – Jan 2022)



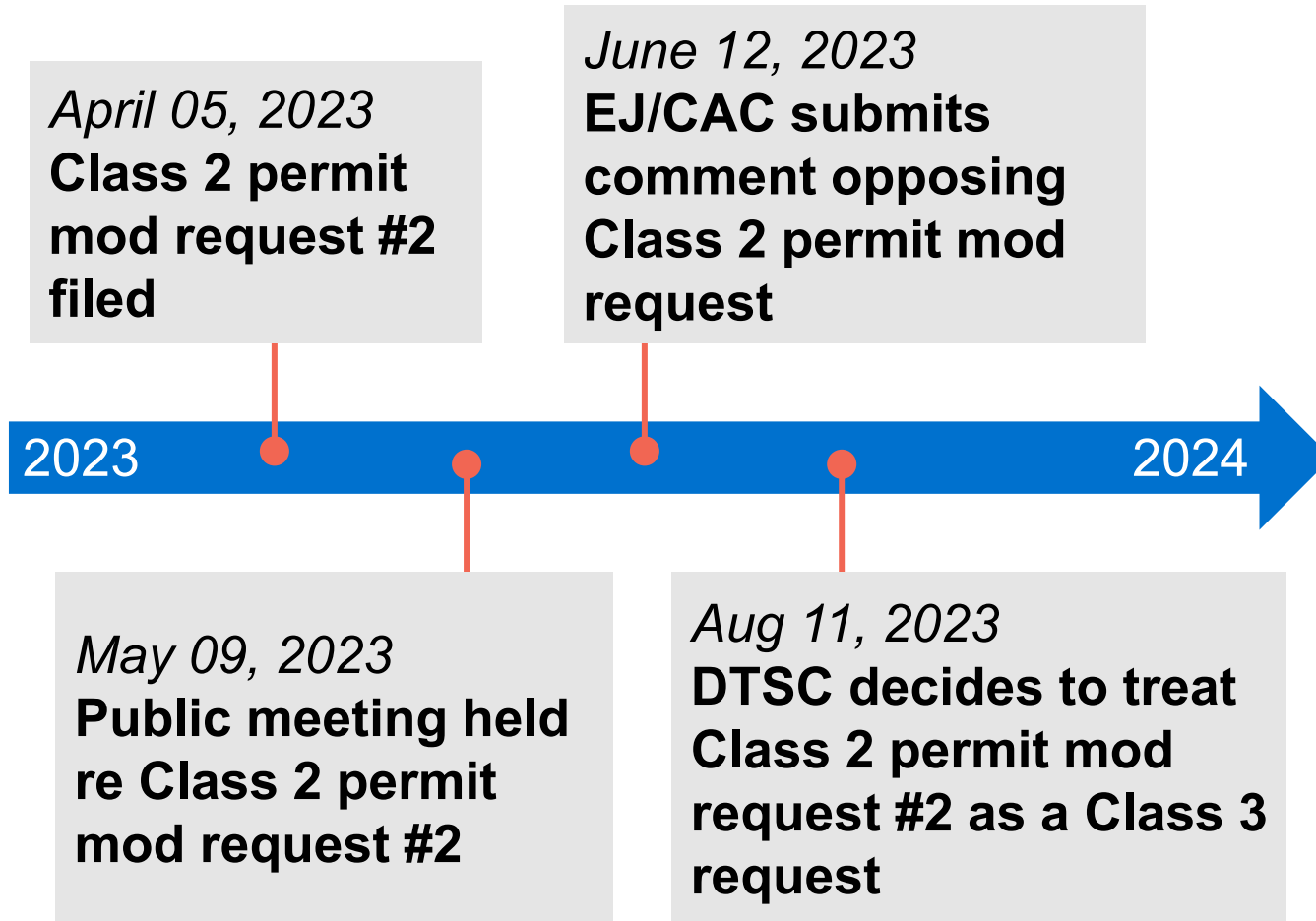
# Class 2 Permit Mod Request # 1 (Feb 2021 – Jan 2022)



# Temporary Authorization # 2 (Jun 2021 – Present)



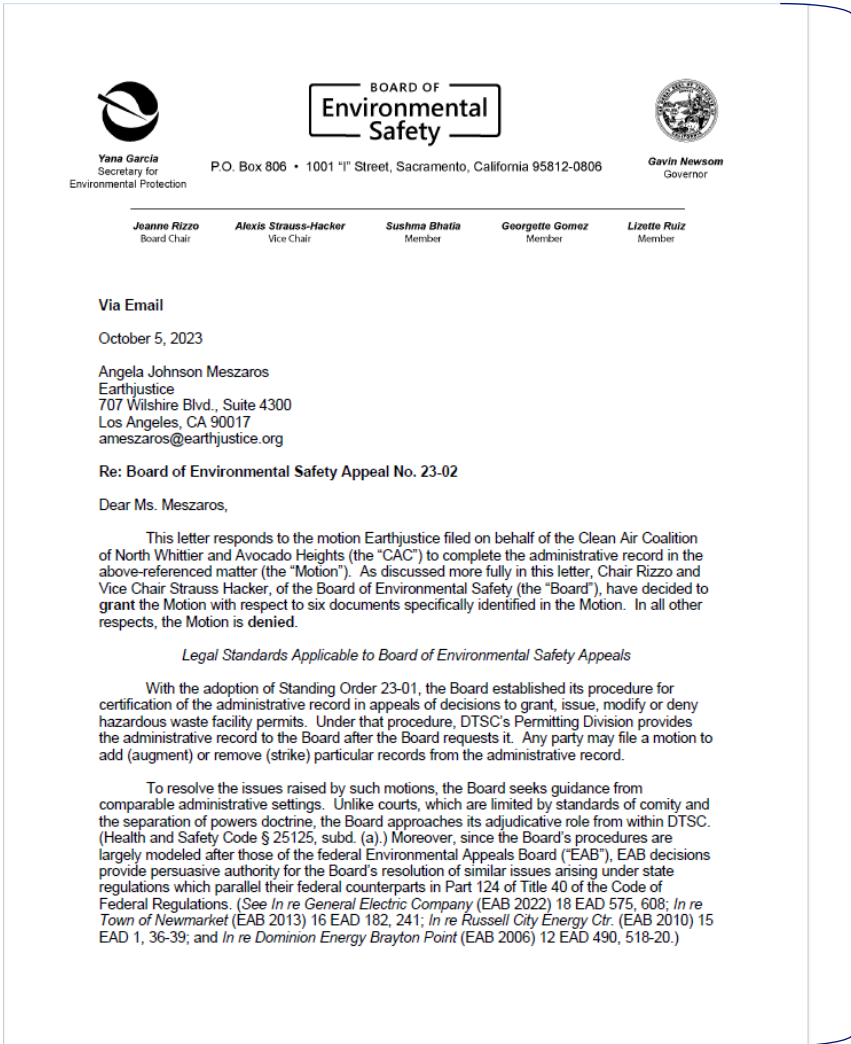
# Class 2 Permit Mod Request # 2 (Apr 2023 – Present)



## 2024 – Process Continues:

- Confirmation of completion of Class 3 materials
- 60-day public comment period
- Additional 45-day public comment period after public notice of preparation of draft permit (total of 105 days of public comment)
- Public hearing
- If permit is issued, won't go into effect for 30 more days to allow for appeals to be filed (total of 135 days)
- Potential appeal process...waiting at least 30 days to hold public hearing (total of 165 days)

# CAC Mischaracterizes the Prior Class 2 Approval



Regarding the remaining four records identified in the Motion, the Board Chair and Vice Chair have denied the Motion. Three of these are records from the approval of the class 2 permit modification in February 2022 and the CAC appeal of that decision in March 2022. Given that this modification was later withdrawn by the permittee, which the Board then determined to have rendered that appeal moot, the Board finds it that these records were not before Permitting Division at the time the July 2022 decision was made. (*General Electric*, 18 E.A.D. at 608 [refusing to “consider materials that were not actually before the decisionmaker at the time of the decision that is under review.”].) The Board also finds that including these records in the administrative record for this appeal would be confusing, since the effect of the February 2022 approval and March 2022 appeal were later determined to be moot. (*Dominion*, 12 E.A.D. at 525.)



# CAC Mischaracterizes the Prior Class 2 Approval



Jared Blumenfeld  
Secretary for  
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Gavin Newsom  
Governor

### VIA U.S. MAIL AND EMAIL

June 16, 2022

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AMeszaros@earthjustice.org

### APPEAL OF QUEMETCO MODIFIED PERMIT – RECENT LETTERS

Dear Mr. Williamson and Ms. Meszaros:

I received letters from Mr. Williamson (on behalf of Quemetco) dated May 11 and May 31, 2022. I also received a letter from Ms. Meszaros dated June 3, 2022, from Earth Justice on behalf of the Clean Air Coalition of North Whittier and Avocado Heights (Petitioner). The letters relate to Petitioner's petition for review (Petition) of the Department of Toxic Substances Control's (DTSC) decision approving Quemetco's Class 2 permit modification request (Modified Permit). The above letters appear to have been prompted, at least in part, by my May 9, 2022, letter.

I look forward to a productive and cooperative relationship with all stakeholders, including members of the communities and hazardous waste facility permittees, as the Board of Environmental Safety (Board) conducts its affairs.

A second purpose of my May 9 letter was to inform all parties of the status of the effectiveness of the Modified Permit – i.e., that it **never took effect** by its own terms and/or by operation of law because of the Petition filing, not by virtue of my May 9 letter. If Quemetco believes otherwise and operates its facility in question as if the Modified Permit were effective, Quemetco does so at its own risk.

DTSC anticipates reaching a draft decision on Ecobat's permit renewal before the end of this year. This decision is not relevant to this appeal.

- US EPA's rulemaking for the temporary authorization regulations show that it is the final and not draft permit decision that should be considered in evaluating the need for temporary authorizations.
  - E.g., rulemaking discuss need for TAs to cover period of time from issuance of draft permit to issuance of final permit for Class 3 modifications.
- The draft renewal decision does not make this temporary authorization any less “necessary”
  - DTSC's TA approval deemed temporary authorization necessary because it would “allow [Ecobat] to better and more safely manage its wastes without the delay associated with a permit modification request, public comment period, and final decision, which could take between 6 months and a year from start to finish”.
  - A final decision on the permit renewal is not expected until at least July 2024, more than 7 months from now → DTSC's same necessity finding applies here.
- The draft renewal decision was not raised in the appeal briefing → consideration of the draft decision now raises significant due process and fairness concerns.