

# California Board of Environmental Safety

Public Hearing on Ecobat Resources California, Inc. (formerly Quemetco, Inc.)  
Temporary Authorization Appeal  
Hacienda Heights Community Center  
1234 Valencia Ave, Hacienda Heights, CA 91745

## DRAFT MEETING SUMMARY

November 29, 2023

Members Present	BES Staff Present	DTSC Staff Present
Jeanne Rizzo, Chair	Swati Sharma, Executive Officer	Wayne Lorentzen, Permitting Division Chief
Alexis Strauss-Hacker, Vice Chair	Sheena Brooks, Board Clerk	Leah White, Senior Counsel
Sushma Bhatia, Member	Gregory Forest, Attorney Advisor	
Georgette Gomez, Member	Evelyn Nuno, Board Clerk	
Lizette Ruiz, Member	Linda Ocampo, Senior Staff Engineer	

**YouTube video link:** English <https://www.youtube.com/watch?v=uzvhfinlSro> and Spanish <https://www.youtube.com/watch?v=Cdgh13hPDZU>

**Note: All Public Comments will be posted in a separate document.**

### 1 Hearing Convening and Call to Order

00:01:39

The meeting was called to order at 1:13 p.m. The Board Clerk called the roll. All Board members were present, and a quorum was established.

### 2 Welcome, Chair Opening Remarks

00:17:40

Chair Rizzo welcomed and acknowledged all parties and participants present for the Board's first appeal hearing. She provided a brief overview of the Board's authority based on legislative mandates (SB 158) and expressed gratitude to those who were involved in the process. Chair Rizzo summarized the reason for the appeal, outlined the agenda items, and explained the process for participating in the hearing.

Vice Chair Strauss-Hacker addressed an emergency motion that Earthjustice filed on behalf of Clean Air Coalition (CAC) less than 24 hours before the hearing. The motion aimed to exclude certain photos from the Department of Toxic Substances Control (DTSC) and Ecobat's presentations. Despite these materials not being part of the formal administrative record, they were included for demonstration purposes. Vice Chair Strauss-Hacker explained the procedural differences in appeals, highlighted the inapplicability of the Rules of Evidence, and emphasized the availability of the administrative record to the Board and the public.

Chair Rizzo and Vice Chair Strauss-Hacker denied the emergency motion and each party proceeded as planned, with the opportunity to address the presented materials.

### **3 Board Staff Introduction of Appeal**

00:32:40

Senior Staff Engineer, Linda Ocampo presented an overview of the DTSC appeals process, which the Board has undertaken under SB 158. This overview included the regulations governing the granting and appealing of Temporary Authorizations (TA), key events and developments that led to this TA appeal, and the Board's appeal review process and decision to be included in the Final Order. Senior Staff Engineer Ocampo outlined dates of importance that led to this hearing [June 2022: Ecobat requested a TA for dewatering project; July 2022: DTSC's Permitting granted the TA; August 2022: Earthjustice on behalf of Clean Air Coalition of North Whittier and Avocado Heights (CAC; also known as the "Appellant") appealed DTSC'S decision; June 2023: Earthjustice refiled petition]. Ocampo explained what constitutes a permit modification and a TA, including the Public Participation requirements for each. Ocampo detailed the Board's appeal review process, which consisted of the Board's review of: written statements provided by the Appellant, DTSC Permitting, and Ecobat; of the administrative record, which was assembled by DTSC Permitting, and augmented by request from Appellant; and information presented by the appeal parties and the public at the hearing. The information reviewed by the Board allowed members to complete a thorough evaluation of the appeal and decide whether to grant or deny the appeal. The decision to grant the appeal would result in the July 2022 TA approval to be reversed, effective November 29, 2023. Alternatively, by denying the appeal, the July 2022 TA would become effective for a period of 180 days, effective November 29, 2023. The rationale of the Board's decision would be formally incorporated into the Final Order.

### **4 Earthjustice Presentation**

00:48:05

The Appellant, represented by Angela Johnson Meszaros of Earthjustice, on behalf of Clean Air Coalition of North Whittier and Avocado Heights (CAC) presented their arguments to appeal DTSC's Permitting July 2022 decision to approve Ecobat's TA Approval. The Appellant asserts that DTSC's Permitting decision was unlawfully flawed: (1) it does not align with the plain language of the regulation, and that Permitting's interpretation of the TA process is not supported by the text of the regulation. On its application, Quemetco asserts that "only a TA would allow Quemetco to facilitate

these proposed changes to protect human health in the environment [...] indeed, the delays caused by these appeals, or alternatively, the attendant delay in any processing of a modification have led to circumstances where implementation of the dewatering project has become a matter of urgency".;

(2) Permitting's determination that a TA was "necessary before action was likely to be taken on a modification request" is not supported by evidence on the record. Instead, the record shows that Permitting took action on the modification request for the exact equipment at issue here before this TA request was submitted, and;

(3) DTSC's Permit Appeals Officer has previously rejected Permitting's earlier effort to approve the same exact activities proposed in this TA. When Permitting approved Quemetco's first TA request in 2021, the Appeals Officer found that "a TA should not replace a timely permit modification request, since the facility has been placing hazardous waste containing free liquids on the floor of the containment building since at least 2001".

Appellant contends that Permitting's approval of this TA is based on a clearly erroneous interpretation of law and finding of fact and asserts that Permitting has exceeded the reasonable bounds of its discretion in approving this TA request. Appellant requests that the Board grant CAC's appeal and vacate and set aside for meetings decision and direct the Permitting Division to deny Quemetco's second TA request.

## **5 DTSC Presentation**

01:27:05

DTSC's Permitting Department was represented by Senior Counsel Leah White and Permitting Division Manager Wayne Lorentzen, as they present the Permitting Division's arguments of why DTSC's issuance of the July 2022 TA was proper and should be upheld, ultimately denying this appeal. Their presentation included explanation of the Standard of Review, how Quemetco's two pieces of equipment falls under a TA, what a TA is, the historical permit appeal and compliance issue, and the facts which support DTSC's July 2022 decision when it issued this TA and why this appeal should be denied. Based on the BES permit appeal regulations, the Standard of Review [22 CCR § 66271.72(c)(1)], states that only when there is a clearly erroneous finding of fact or conclusion of law can the Board find that DTSC's decision was an error and that the appeal can be upheld. Leah White contends that DTSC's decision to approve this TA was reasonable, was supported by evidence, and it was not clearly erroneous, and therefore, the Appellant has not been able to find fault with the presented key issues, so based on the applicable laws and facts, their appeal is unsupported.

Wayne Lorentzen discussed the TA and equipment. He stated that TA's were developed by the United States Environmental Protection Agency (US EPA) as a tool for issuing authorizations quickly for changes to improve the management of hazardous wastes and that "TA's are intended to allow facilities to respond rapidly to changing conditions and to enhance the environmental protection at the site". In response to allegations made in this appeal that DTSC approved the TA in an attempt to circumvent the public comment process, Wayne Lorentzen cited the Federal Register from September 1988 when US EPA took public comments before adopting the TA rule.

US EPA states that one commenter was generally opposed because of a lack of public comment and hearings. US EPA disagreed because "the use of TAs is allowed only for specified purposes which are intended to improve the management of hazardous waste or respond to a critical situation". Lorentzen asserted that DTSC used this tool as it was intended to be used – to approve equipment that addressed Enforcement actions within Ecobat that were designed to protect people and the environment and is clearly not erroneous. Meeting TA requirements in Title 22, 66270.42(e)(3)(C)(5), Lorentzen asserted that the Permitting Division found the TA necessary to facilitate other changes to protect human health and the environment, because authorizing the two pieces of equipment most certainly protect human health and the environment by removing the liquids from the shredded battery contents before they are even placed on the floor.

## **6 Ecobat Presentation**

02:14:16

Matthew Williamson of Manatt, Phelps & Phillips, LLP, presented on behalf of Ecobat. Matthew Williamson stated that Ecobat "does not intend to change its commitment to replace the entire Batch House floor with a new floor system and leak detection system, regardless of what happens with the dewatering system". Williamson introduced Ecobat as the "sole lead acid battery recycler west of the Rocky Mountains," which the vast majority of what Ecobat recycles are used car batteries. Ecobat's TA request provided a "clear environmental benefit, and it is indicative of Ecobat's commitment to ensuring that its operations not only meet but exceed its environmental regulatory requirements." Williamson provided an overview of the current and proposed Dewatering Project overview process. With the containment building being a subject to enforcement, Williamson states that Ecobat has reached an agreement with DTSC to "entirely replace the entire floor with an entirely new leak detection system and an entirely new secondary containment system, which will be part of their permit renewal." The environmental benefits of removing the liquid from the containment building floor is (1) it eliminates any risk of liquid leaking out of the building into the ground, impacting soil, and potentially impacting groundwater, (2) removing more liquid from the record material, will in turn reduce the amount of sulfuric acid in Ecobat's furnaces, resulting in a fairly significant reduction in sulfur dioxide, and (3) the reduction of liquid content reduces furnace energy usage.

Matthew Williamson asserts that DTSC's decision to approve the TA was not clearly erroneous as (1) DTSC identified that the method in which the dewatering project protects human health and the environment is a very clear environmental benefit and (2) DTSC identified the reasons why those benefits would arise before they would likely take action on Ecobat's permit modification (which is still pending a decision). Matthew Williamson references an excerpt from a DTSC correspondence dated July 2022 concluding that "approving Quemetco's TA request is necessary before action is likely to be taken on a modification request because the environment improvement to be authorized allows DTSC to continue its mission of protecting California's people, communities, and environment from toxic substances, etc. The addition of the miscellaneous units above will allow Quemetco to better and more safely manage its waste without the delay associated with a permit modification request, public

comment period, and final decision which could be between six months and a year from start to finish”.

*Lunch break was taken from 4:05 p.m.- 4:41 p.m. A quorum was reestablished with ALL Members returning from Lunch.*

## **7 Public Comment**

02:55:45

The Board heard forty-one (41) public comments. See separate public comment document.

## **8 Closing Comments of All Parties**

04:32:27

All three parties gave their closing remarks and rebuttals in response to public comments and presentations.

### Ecobat

Matthew Williamson of Manatt, Phelps & Phillips, LLP representing Ecobat provided the specific focus of the discussion on whether DTSC made a clearly erroneous conclusion of law regarding the dewatering project. He argued that there is no evidence presented to dispute the conclusion that the project is necessary for environmental benefit. He highlighted the potential benefits of the dewatering project in minimizing or eliminating risks to soil and groundwater. Additionally, he stressed the extensive public engagement process that has taken place, involving multiple public notices, comment periods, and meetings.

Williamson encouraged the denial of the appeal, asserting that it would allow Ecobat to operate the equipment for 180 days while pending permitting actions provide further opportunities for public engagement.

### DTSC

Leah White, Chief Counsel with DTSC emphasized that the key issue is whether DTSC's decision on the temporary authorization for the Ecobat facility was clearly erroneous. She defined "clearly erroneous" as meaning a clear mistake was made, and if there is no clear affirmative evidence of such an error, the standard of review suggests denying the appeal. White noted that the assessment should focus on the facts existing at the time of DTSC's decision in July 2022, and external issues raised about Ecobat and DTSC are not directly relevant to the temporary authorization under discussion. She asserted that DTSC's decision was reasonable, supported by facts, and not clearly erroneous. White also clarified that a temporary authorization doesn't require an emergency and can precede other permit decisions.

In conclusion, DTSC requested that the Board deny the appeal, stating that Earthjustice, the Appellant, has not demonstrated that DTSC's decision was clearly erroneous.

## Earthjustice

Angela Johnson Meszaros of Earthjustice on behalf of Clean Air Coalition, emphasized the importance of ensuring integrity in the permit modification process and preventing other communities from undergoing a similar process due to erroneous interpretations of temporary authorization modification requirements. She argued that the significance of a project alone does not justify relying on the temporary authorization process. Meszaros asserted that DTSC made a permitting decision on the equipment in question and challenged DTSC's assertion that they couldn't decide before issuing the temporary authorization. She contended that DTSC's decision was clearly erroneous and that Ecobat should have submitted a Class 3 permit modification request in February 2021.

Meszaros urged the Board to analyze the information in the record and make a determination based on its role as a facilitator for DTSC's transition to a careful and deliberate agency that respects the communities hosting the facilities it regulates.

### **9 Q&A From Board Members**

04:52:40

Member Ruiz questioned Earthjustice about the installation of equipment mentioned in the appeal. Angela clarified that the equipment was installed after the temporary authorization was granted but before the appeal was filed. Angela expressed uncertainty about the exact timing, but noted Earthjustice was unaware of the installation in April 2021 and therefore, did not contest it.

Member Bhatia inquired about the legal elements required for DTSC to issue a temporary authorization. She focused on the necessity element, seeking clarification on the level of urgency or exigency needed for its issuance. The discussion emphasized the timing element and the comparison of federal and state regulations. Member Bhatia also questioned the urgency of the dewatering unit installation, referencing the permitted containment building. Gregory Forest, Attorney Advisor responded by outlining the elements needed for DTSC to grant a temporary authorization and discussed the finding made during the permit appeals officer's initial appeal. The justification for the temporary authorization included environmental improvements, responsiveness to new technologies, and the ability to manage waste more safely. Member Bhatia sought clarity on the timeline of the new technology's availability and Linda Ocampo, Senior Staff Engineer clarified that there were no documents in the administrative record indicating the availability of the equipment beyond the request.

Member Bhatia sought clarification from Wayne Lorentzen of DTSC. She summarized that there was no renewed urgency beyond addressing corrective actions from 2016, and it was not necessary to treat the dewatering unit separately. Member Bhatia asked if DTSC believed that bypassing community engagement for the temporary authorization outweighed the risks, to which Chief Lorentzen explained that the determination was made in 2022. He emphasized the upcoming draft permit decision for comprehensive community engagement and clarified that separating the dewatering unit was more appropriate now. Member Bhatia further inquired about the collaboration between operators and DTSC in deciding on mechanisms, and Chief

Lorentzen stated it depended on the operator's knowledge. Member Bhatia then asked about the unit's expedited installation during a planned shutdown, and Lorentzen denied any rush, noting that it didn't coincide with DTSC's approval.

Chair Rizzo, Member Gomez, and Executive Officer Sharma questioned the urgency of the temporary authorization process considering ongoing concerns and a pending permit renewal for Ecobat. Chair Rizzo sought clarification on why a temporary authorization was pursued when a permit modification or renewal process could provide a more comprehensive exploration with public involvement. Chief Lorentzen responded, explaining that urgency wasn't a requirement for temporary authorization, emphasizing the regulatory discretion allowing for a quicker approval route. Member Gomez inquired if defining the authorization as an emergency was within DTSC's discretion, and Lorentzen confirmed this flexibility.

Chair Rizzo further questioned why the temporary authorization wasn't integrated into the broader permit renewal process, considering ongoing public concerns. Matt Williamson, representing Ecobat, shared the urgency in the temporary authorization tied to an opportunity for an environmentally beneficial addition to operations while awaiting the full permit decision while considering public concerns and enforcement issues. Angela Johnson, representing CAC, highlighted the regulation's specific context for temporary authorization within modification requests and criticized the use of the tool while transitioning to a full permit renewal.

Vice Chair Strauss-Hacker expressed concerns about the challenges faced when the Board is involved in hearing permit appeals that traditionally fell under DTSC's jurisdiction. She noted the difficulty in making the temporary authorization process work efficiently for facilities with significant community engagement, emphasizing the intention of temporary authorizations to be nimble and yield positive outcomes. Vice Chair Strauss-Hacker suggested a more judicious use of temporary authorizations, especially in cases with active community engagement, to prevent delays and ensure a smoother regulatory process. She acknowledged the complexities and emphasized the need to consider alternatives like Class 2 or Class 3 permit modifications or full permit renewals for better community understanding.

*Break from 7:25 p.m. - 7:44 p.m. A quorum was reestablished with all members present.*

## **10 Board Deliberation and Vote**

05:41:20

Board Member Bhatia moved to grant the appeal from Earthjustice on behalf of CAC. Her rationale for this motion was based on DTSC's decision to grant the TA to Ecobat in 2022, a decision she argued was clearly erroneous because there was not enough evidence to establish the necessity for a rapid response.

Member Ruiz seconded Member Bhatia's motion. Her rationale was based on her belief, experience, and perspective as a resident from a frontline community that there was not enough of a meaningful community engagement process – a crucial step

when issuing a TA. The community engagement process needs scrutiny from a wide range community members and stakeholders to be heard and included when any permit is issued, especially at a site as contentious as Ecobat. She argued that was misleading that ample public comment opportunities were given as these opportunities happened after DTSC had already issued the TA.

Member Gomez also supported Member Bhatia's motion, as she found the arguments from DTSC and Ecobat inadequate in justifying the timing for the TA process. Member Gomez emphasized the need to protect and respect the permitting process, highlighting the Board's responsibility for community health and safety. She stressed the importance of establishing a clear, defined public process to avoid risks associated with subjective interpretations and called on DTSC to enhance understanding and provide clear definitions for their permitting decisions.

Vice Chair Strauss-Hacker acknowledged the narrow issue on appeal—whether the 2022 TA decision was appropriate based on the record at that time. She expressed agreement with DTSC's approach; however, she did not agree there was a clearly erroneous use of TA. Vice Chair Strauss-Hacker emphasized the importance of equipment to manage liquids in the operation but expressed hope that the forthcoming draft permit decision would provide a suitable path forward, taking community engagement into account. Despite respecting her colleagues' considerations, she did not support Member Bhatia's motion.

Chair Rizzo supported the motion to grant the appeal.

**Member Bhatia motioned to grant the appeal from Earthjustice on behalf of Clean Air Coalition.**

**Member Ruiz seconded the motion.**

**Motion passed 4 Ayes and 1 Nay.**

<b>Member</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Recusal</b>
Chair Rizzo	X				
Member Bhatia	X				
Member Gomez	X				
Member Ruiz	X				
Vice Chair Strauss-Hacker		X			

## **11 Hearing Adjourned**

05:52:40

The Chair directed Board staff to complete the final order – which takes immediate effect – within 30 days, incorporating their rationale discussed during the hearing. Chair Rizzo emphasized the importance of continued participation and engagement. Appreciation was expressed to all attendees, including DTSC, Clean Air Coalition, Earthjustice, interpreters, and community center staff.

**Hearing adjourned at 8:01 pm.**