

1 Board of Environmental Safety

2 Department of Toxic Substances Control

3 California Environmental Protection Agency

4 In the Matter of:

Docket No. FY24-25- 01/ FY24-25- 02

5 Phibro-Tech, Inc.

INITIAL ORDER **DRAFT**

6 8851 Dice Road

April 27, 2026

7 Santa Fe Springs, CA 90670

Health and Safety Code Section 25125

8 Permit No. 2024/25-HWM-05

California Code of Regulations, Title 22,

EPA ID NO. CAD 008 488 025

Section 66271.72

9 **I. INTRODUCTION**

10 On February 28, 2025, the Permitting Division (Permitting) of the Department of
11 Toxic Substances Control (DTSC or Department) issued the RCRA Equivalent
12 Hazardous Waste Facility Permit No. 2024/25-HWM-05 (Permit) to Phibro-Tech, Inc., a
13 Delaware corporation (Permittee) located at 8851 Dice Road, Santa Fe Springs,
14 California (Facility).

15 Petitions for review (Petitions) of the Department's decision were timely filed by
16 Earthjustice on behalf of Neighbors Against Phibro-Tech (NAPT) and by the SSL Law
17 Firm LLP on behalf of Permittee, respectively. Permittee and NAPT are each an
18 "Appellant" and collectively refer as the "Appellants" for the appeals. Pursuant to
19 California Code of Regulations (CCR), title 22, section 66271.71, the effect of the permit
20 decision has been stayed pending this Initial Order.

21 **II. JURISDICTION**

22 On July 23, 1992, the State of California received final authorization under
23 section 3006(b) of the Resource Conservation and Recovery Act of 1976, as amended,
24 (RCRA), 42 U.S.C. section 6926(b), to administer its hazardous waste program in lieu of

1 the federal RCRA program. (57 Fed. Reg. 32,726 (July 23, 1992).) This authorization
2 became effective on August 1, 1992. (*Id.* at 32,727.) As a RCRA-authorized state,
3 California has the authority to issue and enforce RCRA-equivalent permits.

4 DTSC is authorized pursuant to the California Health and Safety Code (HSC)
5 sections 25200 et seq. and 22 CCR section 66270.1 et seq. to review and renew
6 hazardous waste management facility permits and impose conditions on such permits.

7 The Board is authorized to hear appeals of decisions by DTSC to grant, issue,
8 modify, or deny hazardous waste facility permits pursuant to HSC section 25125.2,
9 subdivision (b)(2). Appeals of DTSC permit decisions are considered under the
10 procedures of CCR, title 22, sections 66271.71 and 66271.72.

11 **III. INITIATING THE APPEALS**

12 Pursuant to 22 CCR section 66271.72, subdivision (a), an appeal from a decision
13 to grant, issue, modify or deny a hazardous waste facility permit shall be initiated by the
14 filing of both:

- 15 (i) Standard Appeal Form BES 2301 to issue notice of appeal no later than
16 30 calendar days after notice of the final permit decision; and
- 17 (ii) a petition meeting the requirements of paragraph (4) of subsection (a) of
18 this section no later than 60 calendar days after notice of the final permit
19 decision.

20 The last day to file the Standard Appeal Form BES 2301 was March 31, 2025.
21 NAPT timely filed a notice of appeal with the Board on March 26, 2025. Permittee timely
22 filed a notice of appeal with the Board on March 27, 2025. Both Appellants timely filed
23 their respective Petitions with the Board to support their respective appeals on April 29,
24 2025.

1 **IV. STANDING TO FILE**

2 Under the Board’s appeal procedures, at 22 CCR section 66271.72, subsection
3 (a), only a person who has “standing” to file an appeal may participate in the appeal
4 process. A person has standing if they filed comments or participated in the public
5 hearing on a draft permit decision during the public comment period for the draft permit.

6 22 CCR section 66271.72, subsection (a) also provides that the petition shall
7 include a statement of reasons raising one or more issues with the decision to grant,
8 issue, modify or deny the permit, or with the inclusion or omission of any condition(s) in
9 the permit. The petition shall demonstrate that all issues raised in the statement of
10 reasons relate to matters that appeared for the first time in the final permit, or were
11 previously raised in comments or testimony provided to Permitting during public review
12 of the draft permit or modification, which shall be supported by citations to the final
13 permit record described in section 66271.17, including the document name and page
14 number.

15 The Board finds that the Appellants submitted comments on the draft permit
16 decision during the public comment period and therefore have standing to petition for
17 review of any issues raised during the public comment period for the draft permit
18 decision or any issues that pertain to matters that appeared for the first time in the final
19 permit.

20 **V. STANDARD OF REVIEW**

21 Pursuant to 22 CCR section 66271.72, the Board shall review issues raised in
22 the Petition to determine whether the permit decision:

- 23 1. Is based on a finding of fact or conclusion of law that is clearly erroneous;
24

1 **NAPT Issue #2:** Whether DTSC failed to conduct a complete review of
2 Permittee's compliance history before issuing the final permit.

3 The title 22 regulations require DTSC to perform a compliance history review as
4 part of its decision to renew a hazardous waste facility permit. (22 CCR section
5 66271.55.) NAPT asserts that DTSC committed a clear error or, alternatively, a
6 significant procedural error in violation of 22 CCR section 66271.55 by limiting its review
7 of PTI's compliance history to the Facility's Violation Scoring Procedure (VSP) score,
8 and disregarding other regulatory requirements.

9 **Board Response to NAPT Issue #2:** Concerns about the adequacy of DTSC's
10 review of PTI's compliance history were raised during public review of the draft permit
11 and are reflected in RTC Comment 18.6.

12 The Board accepts this issue for review pursuant to 22 CCR section 66271.72(a).

13 **NAPT Issue #3:** Whether DTSC should have denied Permittee's permit renewal
14 based on the Facility's history of violations.

15 According to the Petition, HSC section 25186 grants DTSC discretion to deny a
16 permit under certain circumstances, including noncompliance with hazardous waste
17 laws and regulations that show a repeating or recurring pattern or that may pose a
18 threat to public health or safety or the environment. (HSC section 25186.) NAPT asserts
19 that DTSC abused its discretion by relying on the Facility's VSP score and failing to
20 adequately consider the Permittee's compliance history, as authorized by HSC section
21 25186 and title 22, CCR section 66270.43.

22 **Board Response to NAPT Issue #3:** This issue was previously raised during
23 the draft permit comment period, as documented in RTC Comments 18.6-18.8, 19.5,
24 20.3.

1 The Board accepts this issue for review pursuant to 22 CCR section 66271.72(a).

2 **NAPT Issue #4:** Whether DTSC failed to evaluate cumulative impacts and
3 community vulnerability prior to renewing the permit.

4 NAPT asserts that DTSC committed a procedural error or abused its discretion
5 by failing to evaluate cumulative impacts and community vulnerability before renewing
6 the permit, as required under HSC section 25200.21.

7 **Board Response to NAPT Issue #4:** The issue for review is whether DTSC
8 committed a procedural error or abused its discretion by failing to properly evaluate
9 cumulative impacts prior to renewing the permit.

10 NAPT alleges that DTSC was required to evaluate cumulative impacts by a 2015
11 law, SB 673, which enacted HSC section 25200.21 and raised this issue in comments
12 on the draft permit. HSC section 25200.21 required DTSC to adopt regulations for
13 permitting decisions that provide for the consideration of cumulative impacts and
14 community vulnerability in permitting decisions, which DTSC has referred to as the SB
15 673 Track 2 Regulations. HSC section 25200.21 contained no separate requirement
16 applicable to DTSC's permit decisions. At the time that DTSC made its draft permit
17 decision, the SB 673 Track 2 regulations were still being considered only as a
18 framework for possible future rulemaking. As of the date of this initial order, those
19 regulations have not taken effect.

20 Yet, DTSC found that its then-existing regulatory authority allowed it to evaluate
21 cumulative impacts. (See RTC 18.3.) On that basis, DTSC evaluated cumulative
22 impacts using CalEnviroScreen. Therefore, to the extent that NAPT's appeal alleges
23 that DTSC abused its discretion in its consideration of cumulative impacts, the Board
24

1 can review the evaluation that DTSC actually performed, but not in the context under
2 SB 673 Track 2.

3 Accordingly, the Board accepts this issue only where it alleges an abuse of
4 discretion concerning DTSC's evaluation of cumulative impacts, and finds insufficient
5 basis to review for procedural error pursuant to 22 CCR section 66271.72(a).

6 **NAPT Issue #5**: Whether DTSC abused its discretion by relying upon the health
7 risk assessment provided by Permittee.

8 The required contents of a hazardous waste facility permit application are set
9 forth in the title 22 regulations. In particular, 22 CCR section 66270.14 lists required
10 general contents of Part B of the application, and includes a requirement to include a
11 hazardous waste facility permit health risk assessment. (22 CCR section 66270.14(e).)
12 NAPT asserts that DTSC abused its discretion by approving a health risk assessment
13 that inadequately evaluated offsite exposures from hazardous waste and chemical
14 releases, contrary to 22 CCR section 66270.14(e).

15 **Board Response to NAPT Issue #5**: This issue was previously raised during
16 public review, as documented in RTC Comments 19.9-19.10 and 19.13.

17 The Board accepts this issue for review pursuant to 22 CCR section 66271.72(a).

18 **B. Issues Presented by Permittee**

19 The Petition filed by the Permittee presents five (5) issues for review:

20 **Permittee Issue #1**: Whether DTSC erred by setting the permit term at five
21 years.

22 Permittee asserts that HSC section 25200(c)(1)(A) provides a default term of ten
23 years for a hazardous waste facility permit, and DTSC may set a permit term of less
24 than this default full allowable term if it finds that a shorter term is "necessary to protect

1 human health and safety or the environment,” as provided in the title 22 regulations. (22
2 CCR section 66270.50(c).) Permittee asserts DTSC committed a clear error of fact and
3 law, or abused its discretion, by setting the permit term at five years.

4 **Board Response to Permittee Issue #1:** This issue was previously raised
5 during the draft permit comment period, as documented in RTC Comment 7.1.

6 The Board accepts this issue for review pursuant to 22 CCR section 66271.72(a).

7 **Permittee Issue #2:** Whether DTSC clearly erred or abused its discretion by
8 imposing a three-year tank certification requirement under Permit Condition 47(c).

9 Permittee asserts that DTSC committed a clear error of fact, a clear error of law,
10 and abused its discretion by imposing Condition 47(c) without a valid basis for reducing
11 the tank assessment interval to three years instead of the five years required by 22
12 CCR section 66264.192(i)(1).

13 **Board Response to Permittee Issue #2:** This issue was previously raised
14 during public review, as documented in RTC Comment 7.39.

15 The Board accepts this issue for review pursuant to 22 CCR section 66271.72(a).

16 **Permittee Issue #3:** Whether DTSC clearly erred by imposing VOC-related
17 requirements in Permit Conditions 65–67.

18 Permittee asserts that DTSC’s inclusion of Conditions 65–67 is a clear error of
19 law because the Facility does not manage VOC-bearing waste and the final permit
20 otherwise prohibits acceptance of such waste. Permittee cites 22 CCR section
21 66264.1082(c)(1), which governs VOC-related design and exemption requirements, as
22 the legal authority relevant to these conditions.

23 **Board Response to Permittee Issue #3:** This issue was previously raised
24 during public review, as documented in RTC Comments 7.2, 7.20, 7.46, 7.47, and 7.48.

1 The Board accepts this issue for review pursuant to 22 CCR section 66271.72(a).

2 **Permittee Issue #4:** Whether DTSC clearly erred or abused its discretion by
3 imposing Permit Condition 71 requiring development of a Community Air Monitoring
4 Plan and installation of air monitoring equipment outside the Facility boundaries.

5 Permittee asserts that DTSC committed a clear error of fact, clear error of law,
6 and abused its discretion by adding Condition 71 because DTSC lacks authority to
7 require installation of air monitoring equipment on non-contiguous property outside the
8 Facility and because DTSC lacks proper justification for imposing the condition.
9 Permittee cites HSC sections 25117.1, 25117.2, and 25200(a) as governing the scope
10 of permissible permit conditions.

11 **Board Response to Permittee Issue #4:** This issue relates to a condition that
12 appeared for the first time in the final Permit.

13 The Board accepts this issue for review pursuant to 22 CCR section 66271.72(a).

14 **Permittee Issue #5:** Whether DTSC clearly erred or abused its discretion by
15 imposing Permit Condition 74 addressing surface water runoff.

16 In its Petition, Permittee asserts that a substance is classified as a hazardous
17 waste pursuant to HSC sections 25140 through 25145.4, and the title 22 regulations
18 include a specific definition of hazardous waste at section 66261.3. Permittee further
19 asserts that DTSC abused its discretion by imposing Condition 74, as the Facility does
20 not discharge stormwater offsite and is already regulated under the State Water
21 Resources Control Board's Industrial General Permit, and the Hazardous Waste Control
22 Laws, which do not permit DTSC to determine that surface water is hazardous.

23 **Board Response to Permittee Issue #5:** This issue relates to a condition that
24 appeared for the first time in the final Permit.

1 The Board accepts this issue for review pursuant to 22 CCR section 66271.72(a).

2 **VII. AUTOMATIC STAY**

3 22 CCR section 66271.71, subdivision (a) provides that if notice of an appeal is
4 filed with the Board pursuant to paragraph (3) of subsection (a) of section 66271.72, the
5 effect of the final permit decision shall be stayed until the later of either (1) the dismissal
6 of a petition in full pursuant to subsection (b) of section 66271.72 or (2) the denial of a
7 petition on the merits pursuant to subsection (d) of section 66271.72. Section 66271.71
8 also authorizes the Board to determine the effect of the stay and establishes standards
9 for the Board to apply to make that determination as follows:

10 “(b) Effect of Stay. The effect of the stay imposed under subsection
11 (a) of this section shall be limited to the issues that are accepted by
12 the Board pursuant to subsection (b) of section 66271.72.
13 Uncontested conditions which are not severable from those
14 contested shall be stayed together with the contested conditions.
Stayed provisions of permits for existing facilities shall be identified
by the Board in the initial order issued pursuant to subsection (b) of
section 66271.72. All other provisions of the permit for the existing
facility shall remain fully effective and enforceable.”

15 This subsection (b) of section 66271.71 requires the Board to make three
16 individual considerations regarding the stay. First, the Board must limit the effect of the
17 stay according to the issues that are accepted by the Board in the initial order. Second,
18 for existing facilities, the Board must identify the provisions of the challenged permit that
19 will be stayed, with all other provisions of the challenged permit remaining fully effective
20 and enforceable. Third, the Board must determine if any uncontested conditions are not
21 severable from the contested conditions and include those uncontested conditions with
22 the stay. The requirement to address “conditions” in this way is further addressed in
23 paragraph (2) of subsection (d), which applies to a facility operating under an existing
24 permit. That paragraph requires the operator to “comply with the conditions of the

1 existing permit which correspond to the stayed conditions, unless compliance with the
2 existing conditions would be technologically incompatible with compliance with other
3 conditions of the new permit which have not been stayed.”

4 **A. Regulatory Background**

5 The regulations do not define the terms “issues,” “provisions,” or “conditions.”
6 However, the ordinary meaning of those terms supports an interpretation of “conditions”
7 to mean the conditions imposed by the Department in the permit that appear under the
8 heading “Conditions” or are clearly labeled as conditions. The “provisions” of the permit
9 encompass conditions but include other terms, such as the permit length and other
10 requirements that are not contained within conditions. The term “issues” refers to the
11 issues raised in the statement of reasons in the petition that an appellant files with the
12 Board pursuant to paragraph (4) of subsection (a) of section 66271.72. The Board
13 interprets the term “issue” broadly to encompass any claim of error or abuse of
14 discretion related to the matters subject to appeal as defined in paragraph (1) of
15 subsection (a) of section 66271.72, which can include “conditions” and “provisions” of
16 the permit, as well as a challenge to the decision to grant, issue, modify or deny the
17 permit itself.

18 To understand sections 66271.71 and 66271.72, it is helpful to consider the 2023
19 rulemaking process that enacted those sections and repealed the former sections
20 66271.15 and 66271.18. Prior to the Board’s rulemaking, DTSC’s permit appeals were
21 limited to conditions within the permit. (See former 22 CCR 66271.18.) Through the
22 rulemaking, the Board enlarged the scope of appeals to include challenges to the permit
23 decision that were not limited to conditions of the permit. This change is reflected in
24

1 paragraph (4) of subsection (a) of Section 66271.72, which requires a petition for review
2 to include a statement of reasons raising one or more issues with the permit decision.

3 Having expanded the basis of an appeal to include “issues” related to the permit
4 decision, the Board adopted a new standard for determining the effect of the stay
5 according to the issues accepted by the Board in the initial order. However, the Board
6 also retained the language from former section 66271.15, which provided for the stay to
7 be determined in accordance with the contested conditions, and allowed for provisions
8 of the permit that were not contested to take effect.

9 **B. Supplemental Briefing**

10 To assist the Board in its application of section 66271.71 to the instant appeals,
11 the Board requested the Appellants and DTSC to submit briefs regarding the effect of
12 the stay. On June 20, 2025, the Board sent a letter to counsel for Permittee, NAPT, and
13 DTSC requesting the submittal of briefs in response to the following questions:

14 *Assuming that the Board accepts all issues raised in the petitions,*
15 *which, if any, provisions of the Renewal Permit should remain subject*
16 *to the Stay under Section 66271.71 during pendency of the Appeals?*
17 *In particular, which conditions of the Renewal Permit are contested*
18 *in the Appeals, which conditions in the Renewal Permit are not*
19 *severable from those contested conditions, and consequently, which*
20 *conditions in the 1991 permit should remain in effect during*
21 *pendency of the Appeals?*

22 In response to the Board’s request, NAPT relied on a broad interpretation of the
23 term “issues” and advocated for the Renewal Permit to remain stayed in its entirety.
24 “Because the issues in NAPT’s appeal challenge the fundamental basis for the Renewal
Permit itself, Section 66271.71 requires the Board to stay the entire permit.” (NAPT
Brief on Effect of Stay at 3.) NAPT argued that the Board’s decision to expand the
scope of appeals supported staying the entire permit. Staying the entire permit was also
necessary, NAPT argued, to preserve NAPT’s right to an appeal: “Staying the entire

1 Renewal Permit prevents the potentially invalid permit from taking effect before the
2 Board makes a final determination.” (*Id.* at 5.) NAPT also argued that it was necessary
3 to maintain the stay of the entire permit to prevent PTI from undertaking new
4 construction activities authorized by the new permit, since “the Board may ultimately
5 find that the Renewal Permit is invalid.” (*Id.* at 5.) Similarly, DTSC argued that the Board
6 should stay the entire permit decision as a whole: “Here, assuming all issues are
7 accepted for appeal, DTSC is of the opinion that the entire permit would remain stayed
8 for the duration of the appeal.” (DTSC Brief on Effect of Stay at 2.)

9 In its brief to the Board, Permittee discussed the rulemaking history and the
10 meanings of the terms “issues,” “conditions,” and “provisions” as used in section
11 66271.71. Permittee also provided legal analysis which identified the purposes of the
12 stay generally: “A stay preserves the status quo pending an appeal. [Citations.] Courts
13 grant stays of administrative decisions to maintain existing conditions so that the
14 appealing party is not prejudiced while the appeal is under consideration.” (PTI Brief on
15 Effect of Stay at 3.) Permittee also argued that the public interest favors a limited stay in
16 this case because of the differences between the 1991 permit and the 2025 Renewal
17 Permit. “A stay that would require PTI to operate the Facility in accordance with an
18 outdated permit without the benefit of DTSC’s nearly 30 years of institutional experience
19 in hazardous waste management since it was issued would simply be against the public
20 interest.” (*Id.* at 3-4.)

21 To further assist the Board in its determination of the effect of the stay, on March
22 13, 2026, the Board invited NAPT, Permittee and DTSC to submit a second round of
23 briefing on the effect of the stay. Specifically, the Board asked the parties to answer the
24 following questions:

- 1 (1) Identify and explain each uncontested condition in the Renewal Permit that is not severable from the contested conditions;
- 2 (2) Identify and explain each uncontested and contested condition in the Renewal Permit that corresponds to each issue raised by PTI and NAPT in their Petitions, including, but not limited to, the relationship between each uncontested condition and each issue raised by PTI and NAPT in their Petitions;
- 3 (3) Provide the reason and justification to maintain the Stay for each uncontested condition in the Renewal Permit, including, but not limited to, the anticipated harm that could result if those uncontested conditions in the Renewal Permit do not remain stayed; and
- 4 (4) Explain whether it is necessary or appropriate for the Board to limit the effect of the Stay to allow those uncontested Renewal Permit conditions to take effect.

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9 In response to these questions, the Board received additional briefing from NAPT
10 and Permittee. NAPT again argued for a full stay, arguing that the issues that it raised
11 each contest Permitting Division's decision to grant the Renewal Permit. Maintaining the
12 full stay would preserve the status quo by preventing the Renewal Permit from taking
13 effect. Conversely, "limiting the stay would upset the status quo by allowing conditions
14 in the Renewal Permit to take effect before the Board determines whether Permitting
15 improperly granted the permit." (NAPT Additional Brief at 2.) NAPT also argued that
16 limiting the stay would undermine the Board's appeal process. (*Ibid.*) NAPT noted that
17 the Renewal Permit authorizes Permittee to build new storage areas and treatment
18 tanks. (*Id.* at 3.) By continuing the full stay, Permittee is prevented from making these
19 physical changes to its Facility, which NAPT characterized as "prejudice and harms ...
20 on NAPT and public health and safety." (*Ibid.*)

21 In response to the Board's request for supplemental briefing on the effect of the
22 stay, Permittee advocated for a limited stay, analyzing both the issues raised in the
23 Permittee's appeal and the issues raised in the NAPT appeal. Regarding the issues
24 raised in Permittee's appeal, Permittee argued that only six conditions were contested,

1 with no additional conditions implicated. Therefore, Permittee did not identify any
2 uncontested conditions that could not be severed from the contested conditions.

3 Regarding the NAPT appeal, Permittee argued that none of the conditions in the
4 Renewal Permit are implicated because NAPT did not challenge any of the conditions.
5 Permittee also disagreed with the contention advanced by NAPT that a limited stay
6 would undermine its right to appeal the permitting decision. “If NAPT persuades the
7 Board that the Permitting Division’s decision was invalid, the Board may overturn the
8 permitting decision. NAPT’s right to appeal is simply not in dispute.” (PTI Reply Brief at
9 10.) The Permittee also disputes NAPT’s other contentions, including the assertion that
10 a limited stay would result in prejudice to NAPT and harm to public health and safety.

11 In response to the request for additional briefing, DTSC stated that it defers to
12 the Board regarding the effect of the stay. This was a change from its earlier position,
13 which assumed that a full stay should result if all issues were accepted.

14 **C. Board’s Determination of the Effect of the Stay**

15 After careful consideration of the briefs from DTSC and the Parties, the Board
16 has determined, under the record presented, to stay all conditions. On this record, the
17 Board interprets the term “issues” in a broad sense, encompassing the relief sought in
18 the appeal. While the Board acknowledges that the Renewal Permit provides
19 environmental protections not found in the 1991 Permit, that public interest must be
20 considered in the context of the Board’s appeal process and the purposes served by the
21 automatic stay.

22 The automatic stay protects the administrative review process by preventing
23 DTSC from taking actions in its oversight of the Facility that could undermine the
24 Board’s ability to provide meaningful relief. Determining whether those oversight actions

1 may conflict with the appeal requires the Board to consider the issues raised in light of
2 the objectives of the Appellants and the potential outcome of each issue that is
3 presented for decision. Permittee characterizes NAPT's objective as "overturning the
4 Permitting Division's decision to grant the permit and shutting down the Facility." (PTI
5 Reply at 3.) Since the Facility would continue operating regardless of the outcome,
6 Permittee reasons that the stay is unnecessary and serves "only [to] prevent a permit
7 that is more protective than the 1991 Permit from going into effect." (*Ibid.*) However, this
8 argument fails to consider how the conditions in the Renewal Permit are related to the
9 issues raised in the appeal and to fully contend with the practical effect of an outcome
10 that is adverse to Permittee. In fact, NAPT seeks an order from the Board that would
11 render the Renewal Permit invalid, and the relief it seeks is for the Renewal Permit
12 decision to be set aside. Permittee does not explain how that result can be reconciled
13 with a decision to lift the stay, and DTSC has not provided analysis that would support a
14 limited stay while preserving the Board's ability to grant relief.

15 The Board is concerned that limiting the stay and allowing the Renewal Permit to
16 take effect during this appeal would signal to DTSC that its oversight activity must
17 correspond to the new requirements in the Renewal Permit. Such oversight activity may
18 conflict with or undermine the appeal if that activity and a possible outcome of the
19 appeal are irreconcilable. (*Varian Medical Systems v. Delfino* (2005) 35 Cal.4th 180,
20 188-190.) Absent analysis to the contrary, a full stay is necessary to preserve the status
21 quo, and limiting the stay could have the opposite effect.

22 Preserving the automatic stay in its entirety aligns with the relief sought by NAPT
23 to vacate and set aside the decision in its entirety. Were the stay to be retained only for
24 the six conditions contested by Permittee, with all other conditions released from the

1 stay, the Board would signal to DTSC's enforcement officers that the Facility's
2 operations are now subject to compliance with the Renewal Permit. That change in
3 oversight would then require the Facility to alter its operations to conform to the
4 Renewal Permit, resulting in new construction and operational changes with practical
5 consequences that are irreconcilable with the appeal. For these reasons, and in light of
6 the issues that the Board is accepting for review, it would be improper for the Board to
7 terminate the automatic stay while the appeal proceeds. Instead on this record, the stay
8 must be maintained to avoid the possibility of an outcome that would be severely
9 undermined or altogether lost if the stay is not preserved.

10 This decision is limited to this appeal and is without prejudice to future appeals.
11 The Board requested, but did not receive, analysis showing how the Board's resolution
12 of the issues presented in the appeal could be reconciled with a limited stay. The Board
13 will provide opportunities to consider the effect of the stay as it relates to the issues
14 presented in future appeals based on the unique facts of those appeals.

15 **VIII. Order**

16 (a) Decision to Accept or Dismiss Petition. After considering (1) issues raised
17 in the Petitions, (2) DTSC's response to comments letter dated February 28, 2025, (3)
18 Final Permit dated February 28, 2025, and (4) comments received at the public
19 meeting, the Board hereby determines the issues raised in the Petitions are accepted
20 for review, but NAPT Issue 4 is dismissed insofar as it alleges a significant procedural
21 error based upon DTSC's failure to consider SB 673 Track 2 Regulations in its
22 evaluation of cumulative impacts.

23 (b) Effect of Stay. During the pendency of this permit appeal, the permit
24 decision remains stayed pursuant to 22 CCR section 66271.71. In the interim,

1 Permitee continues to be authorized to operate the Facility under the terms and
2 conditions of the continued permit, effective March 28, 2019, with an original effective
3 date of July 29, 1991. The effective date of the permit issued February 28, 2025 will be
4 tolled for the duration of the appeal.

5 (c) Written Briefing Schedule.

6 (1) Each Appellant shall file and serve its moving brief supporting the
7 issues accepted for review no later than 60 days after issuance of this order.

8 (2) DTSC's Permitting Division and each Appellant shall file and serve
9 its opposition brief no later than 45 days after the moving brief is filed.

10 (3) Each Appellant may file and serve its reply brief no later than 15
11 days after the opposition briefs are filed.

12 (d) Hearing. A public hearing in this matter is tentatively set for October 21-
13 22, 2026, at a location and time to be determined. Representatives of NAPT, PTI and
14 DTSC's Permitting Division are directed to provide presentations to the Clerk of the
15 Board in advance of the public hearing in accordance with Rules for the Conduct of
16 Public Hearings in Standing Order 24-02.

17
18 IT IS SO ORDERED.

19 Adopted at a public meeting of the Board held on April 27, 2026.

20
21 Clerk of the Board: _____
22 Sheena Q. Brooks

23 Approved as to Form: _____
24 Gregory A. Forest