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**Phibro-Tech, Inc. Facility Permit Appeal
(Docket No. FY24-25- 01/ FY24-25- 02)
Draft Initial Order
Issue-Response Summary**

On February 28, 2025, the Department of Toxic Substances Control’s Permitting Division issued the RCRA-equivalent hazardous waste facility permit to Phibro-Tech, Inc. Neighbors Against Phibro-Tech (NAPT) and Phibro-Tech, Inc. (the Permittee) each filed a notice of appeal and petitions with the Board pursuant to Title 22, section 66271.72, subdivision (a). Under the same regulations, each Appellant must demonstrate that the issues they raise are within the scope of matters subject to appeal, and either first appeared in the final permit or were previously raised in comments or testimony during DTSC’s public review of the draft permit.

Presented here is a summary of the issues raised by the Appellants in respective petitions and the Board’s corresponding responses, as reflected in the *draft* Initial Order. These determinations remain subject to change at the direction of the Board prior to adoption of the Initial Order.

Copies of the petitions and draft initial order may be found in the BES website at bes.dtsc.ca.gov/pending-facility-permit-appeals/.

Summary of Issues and BES Response

Issue #	Petition Issue	Response
NAPT - Issue #1	Whether DTSC failed to base its permitting decision on a complete administrative record.	This comment pertains to procedural issues with the administrative record prepared for the draft permit and final permit. a) The portion alleging deficiencies in the draft permit administrative record was previously raised during

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		<p>public review, as documented in RTC Comment 19.3.</p> <p>b) The alleged deficiencies with the final permit administrative record first arose with issuance of the final permit.</p> <p>The Board accepts this issue for review pursuant to 22 CCR § 66271.72(a).</p>
<p>NAPT - Issue #2</p>	<p>Whether DTSC failed to conduct a complete review of Permittee’s compliance history before issuing the final permit.</p>	<p>Concerns about the adequacy of DTSC’s review of PTI’s compliance history were raised during public review of the draft permit and are reflected in RTC Comment 18.6.</p> <p>The Board accepts this issue for review pursuant to 22 CCR § 66271.72(a).</p>
<p>NAPT - Issue #3</p>	<p>Whether DTSC should have denied Permittee’s permit renewal based on the facility’s history of violations.</p>	<p>This issue was previously raised during public review of the draft permit, as documented in RTC Comments 18.6-18.8, and 20.3.</p> <p>The Board accepts this issue for review pursuant to 22 CCR § 66271.72(a).</p>
<p>NAPT - Issue #4</p>	<p>Whether DTSC committed a procedural error or abused its discretion by failing to properly evaluate cumulative impacts prior to renewing the permit.</p>	<p>This issue was raised during the public review, as documented in RTC Comment 18.3. Specifically, NAPT asserted that SB 673 (HSC 25200.21) required DTSC to perform an evaluation of cumulative impacts and community vulnerability.</p>

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		<p>Although the implementing regulations required by Health and Safety Code section 25200.21 were not in effect, DTSC explained in RTC 18.3 that it had the authority to consider cumulative impacts and applied CalEnviroScreen for that purpose. DTSC was authorized to consider cumulative impacts because Section 66270.32(b)(2) requires DTSC to include in each permit “terms and conditions as the Department determines necessary to protect human health and the environment.” The Board finds that the Petition adequately raises a question of whether DTSC abused its discretion in the manner it approached the evaluation of cumulative impacts and community vulnerability. However, because the only basis for the allegation of a procedural error is the assertion that DTSC failed to apply the standards required by SB 673, and because those standards were not applicable, that basis for appeal on this issue is unavailable.</p> <p>Accordingly, the Board accepts the abuse of discretion basis for this issue for review and dismisses the procedural error allegation.</p>
<p>NAPT - Issue #5</p>	<p>Whether DTSC abused its discretion by relying upon the health risk assessment provided by Permittee.</p>	<p>This issue was previously raised during public review, as documented in RTC Comments 19.9, 19.10 and 19.13.</p>

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		<p>The Board accepts this issue for review pursuant to 22 CCR § 66271.72(a).</p>
<p>Permittee - Issue #1</p>	<p>Whether DTSC erred by setting the permit term at five years.</p>	<p>This issue was previously raised during public review of the draft permit, as documented in RTC Comment 7.1.</p> <p>The Board accepts this issue for review pursuant to 22 CCR § 66271.72(a).</p>
<p>Permittee - Issue #2</p>	<p>Whether DTSC clearly erred and abused its discretion by imposing a three-year tank certification requirement under Permit Condition 47(c).</p>	<p>This issue was previously raised during public review, as documented in RTC Comment 7.39.</p> <p>The Board accepts this issue for review pursuant to 22 CCR § 66271.72(a).</p>
<p>Permittee - Issue #3</p>	<p>Whether DTSC clearly erred by imposing VOC-related requirements in Permit Conditions 65–67.</p>	<p>This issue was previously raised during public review, as documented in RTC Comments 7.2, 7.20 7.46, 7.47, and 7.48.</p> <p>The Board accepts this issue for review pursuant to 22 CCR § 66271.72(a).</p>
<p>Permittee - Issue #4</p>	<p>Whether DTSC clearly erred or abused its discretion by imposing Permit Condition 71 requiring development of a Community Air Monitoring Plan and installation of air monitoring equipment outside the facility boundaries.</p>	<p>This issue relates to a condition that appeared for the first time in the final Permit.</p> <p>The Board accepts this issue for review pursuant to 22 CCR § 66271.72(a).</p>

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<p>Permittee – Issue #5</p>	<p>Whether DTSC clearly erred and abused its discretion by imposing Permit Condition 74 addressing surface water runoff.</p>	<p>This issue relates to a condition that appeared for the first time in the final Permit.</p> <p>The Board accepts this issue for review pursuant to 22 CCR § 66271.72(a).</p>