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Title 22@ Social Security

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Division 4.5@ Environmental Health Standards for the Management of Hazardous Waste

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Chapter 21@ Procedures for Hazardous Waste Permit Decisions

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Article 4@ 4. Board of Environmental Safety

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Section 66271.72@ Appeal of Decisions to Grant, Issue, Modify, or Deny Permits

## **66271.72 Appeal of Decisions to Grant, Issue, Modify, or Deny Permits**

### **(a)**

Petitioning for review of a final hazardous waste facility permit decision. (1)

Matters Subject to Appeal. The Board of Environmental Safety ("Board") hears and decides appeals from decisions to grant, issue, modify or deny hazardous waste facility permits, except that class 1 permit modification decisions are not subject to appeal. Appeals are limited to decisions made by the Department's Permitting Division pursuant to chapter 6.5 of division 20 of the Health and Safety Code, and do not encompass decisions made by the Department's Permitting Division pursuant to other statutes, including but not limited to the California

Environmental Quality Act at division 13 of the Public Resources Code. (2) Appeals of Temporary Authorization Decisions -- Expedited Process. Any person may appeal the decision to approve or deny a temporary authorization, by filing a notice of appeal using Special Appeal Form BES 2302 no later than 30 calendar days after notice of the decision pursuant to paragraph (1) of subsection (f) of section 66270.42. The notice of appeal shall include a brief statement explaining why the appellant's appeal should be granted. Upon receipt of Special Appeal Form BES 2302, the Board Clerk shall request that the Department's Permitting Division file a brief statement responding to the notice of appeal no later than 30 days after receipt of the request. The appeal shall be decided by the Board at a

hearing held pursuant to subsection (c) of this section without issuing an initial order pursuant to subsection (b) of this section. Paragraphs (3), (4), (5), and (6) of subsection (a) of this section are not applicable to appeals filed pursuant to this paragraph.

(3) Initiating an Appeal; Timing. Except as provided in paragraph (2) of subsection (a) of this section, an appeal from a decision to grant, issue, modify or deny a hazardous waste facility permit shall be initiated by the filing of both of the following: (i) Standard Appeal Form BES 2301 no later than 30 calendar days after notice of the final permit decision pursuant to either subsection (a) of section 66271.14 or paragraph (1) of subsection (f) of section 66270.42; and (ii) a petition meeting the requirements of paragraph (4) of subsection (a) of this section no later than 60 calendar days after notice of the final permit decision pursuant to either subsection (a) of section 66271.14 or paragraph (1) of subsection (f) of section 66270.42.

(4) Petition; Statement of Reasons. The petition filed pursuant to subparagraph (ii) of paragraph (3) of subsection (a) of this section shall contain a statement of reasons raising one or more issues with the decision to grant, issue, modify or deny the permit, or with the inclusion or omission of any condition(s) in the permit. Except as provided in paragraphs (6) and (7) of subsection (a) of this section, the petition shall demonstrate that all issues raised in the statement of reasons relate to matters that appeared for the first time in the final permit, or were previously raised in comments or testimony provided to DTSC during public review of the draft permit or modification, which shall be supported by citations to the final permit record described in section 66271.17, including the document name and page number.

(5) Standing to File. After filing a timely notice of appeal, and subject to paragraphs (6) and (7) of subsection (a) of this section, only a person who filed comments on the draft permit or participated in the public hearing (if any) on the draft permit, may file a

petition pursuant to subparagraph (ii) of paragraph (3) of subsection (a) of this section. (6) Failure to Participate. Any person who failed to file comments with the Department's Permitting Division, or failed to participate in the public hearing (if any) on the draft permit, may file a petition with the Board, which must contain a statement of reasons raising one or more of the issues listed in paragraph (3), but the petition shall be limited to matters that appeared for the first time in the final permit or issues that could not have been raised during public review of the draft permit. (7) Board Discretion to Accept Petitions. By majority vote at a public meeting and upon a showing of good cause, the Board in its discretion may waive the application of paragraphs (5) and (6) of subsection (a) of this section.

**(1)**

Matters Subject to Appeal. The Board of Environmental Safety ("Board") hears and decides appeals from decisions to grant, issue, modify or deny hazardous waste facility permits, except that class 1 permit modification decisions are not subject to appeal. Appeals are limited to decisions made by the Department's Permitting Division pursuant to chapter 6.5 of division 20 of the Health and Safety Code, and do not encompass decisions made by the Department's Permitting Division pursuant to other statutes, including but not limited to the California Environmental Quality Act at division 13 of the Public Resources Code.

**(2)**

Appeals of Temporary Authorization Decisions -- Expedited Process. Any person may appeal the decision to approve or deny a temporary authorization, by filing a notice of appeal using Special Appeal Form BES 2302 no later than 30 calendar days after notice of the decision pursuant to paragraph (1) of subsection (f) of section 66270.42. The notice of appeal shall include a brief statement explaining why the appellant's appeal should be granted. Upon receipt of Special Appeal Form BES 2302, the Board Clerk

shall request that the Department's Permitting Division file a brief statement responding to the notice of appeal no later than 30 days after receipt of the request. The appeal shall be decided by the Board at a hearing held pursuant to subsection (c) of this section without issuing an initial order pursuant to subsection (b) of this section. Paragraphs (3), (4), (5), and (6) of subsection (a) of this section are not applicable to appeals filed pursuant to this paragraph.

**(3)**

Initiating an Appeal; Timing. Except as provided in paragraph (2) of subsection (a) of this section, an appeal from a decision to grant, issue, modify or deny a hazardous waste facility permit shall be initiated by the filing of both of the following: (i) Standard Appeal Form BES 2301 no later than 30 calendar days after notice of the final permit decision pursuant to either subsection (a) of section 66271.14 or paragraph (1) of subsection (f) of section 66270.42; and (ii) a petition meeting the requirements of paragraph (4) of subsection (a) of this section no later than 60 calendar days after notice of the final permit decision pursuant to either subsection (a) of section 66271.14 or paragraph (1) of subsection (f) of section 66270.42.

**(i)**

Standard Appeal Form BES 2301 no later than 30 calendar days after notice of the final permit decision pursuant to either subsection (a) of section 66271.14 or paragraph (1) of subsection (f) of section 66270.42; and

**(ii)**

a petition meeting the requirements of paragraph (4) of subsection (a) of this section no later than 60 calendar days after notice of the final permit decision pursuant to either subsection (a) of section 66271.14 or paragraph (1) of subsection (f) of section 66270.42.

**(4)**

Petition; Statement of Reasons. The petition filed pursuant to subparagraph (ii) of

paragraph (3) of subsection (a) of this section shall contain a statement of reasons raising one or more issues with the decision to grant, issue, modify or deny the permit, or with the inclusion or omission of any condition(s) in the permit. Except as provided in paragraphs (6) and (7) of subsection (a) of this section, the petition shall demonstrate that all issues raised in the statement of reasons relate to matters that appeared for the first time in the final permit, or were previously raised in comments or testimony provided to DTSC during public review of the draft permit or modification, which shall be supported by citations to the final permit record described in section 66271.17, including the document name and page number.

**(5)**

Standing to File. After filing a timely notice of appeal, and subject to paragraphs (6) and (7) of subsection (a) of this section, only a person who filed comments on the draft permit or participated in the public hearing (if any) on the draft permit, may file a petition pursuant to subparagraph (ii) of paragraph (3) of subsection (a) of this section.

**(6)**

Failure to Participate. Any person who failed to file comments with the Department's Permitting Division, or failed to participate in the public hearing (if any) on the draft permit, may file a petition with the Board, which must contain a statement of reasons raising one or more of the issues listed in paragraph (3), but the petition shall be limited to matters that appeared for the first time in the final permit or issues that could not have been raised during public review of the draft permit.

**(7)**

Board Discretion to Accept Petitions. By majority vote at a public meeting and upon a showing of good cause, the Board in its discretion may waive the application of paragraphs (5) and (6) of subsection (a) of this section.

**(b)**

Initial Order. At a noticed public meeting held no less than 30 calendar days following the filing of a petition pursuant to subparagraph (ii) of paragraph (3) of subsection (a) of this section, the Board shall determine whether the petition is supported by a statement of reasons meeting the requirements of either paragraphs (4) and (5) of subsection (a) of this section or paragraph (6) of subsection (a) of this section. Except as provided in paragraph (7) of subsection (a), the Board shall dismiss any petition that does not meet either of these requirements. The Board shall issue an initial order addressing the following: (1) either accepting or dismissing the petition in full or in part. (2) setting forth a briefing schedule if any portion of the petition is accepted for review. (3) consolidating proceedings if multiple appeals are filed.

**(1)**

either accepting or dismissing the petition in full or in part.

**(2)**

setting forth a briefing schedule if any portion of the petition is accepted for review.

**(3)**

consolidating proceedings if multiple appeals are filed.

**(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.

**(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.

**(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.

**(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.

**(e)**

Judicial Review. Following a decision to grant, issue, modify or deny a hazardous waste facility permit by the Department, the filing of an appeal with the Board pursuant to subsection (a), and either the dismissal of a petition in full pursuant to subsection (b), or the issuance of a final order pursuant to subsection (d), is a prerequisite to seeking judicial review of the Department's final permit decision. Decisions of the Department's Permitting Division that are not subject to appeal to the Board pursuant to paragraph (1) of subsection (a) of this section shall be final for purposes of judicial review when decided by the Department's Permitting Division.

**(f)**

Existing Appeals. Any appeal that was filed with the Board before May 1, 2023 shall be deemed dismissed by the Board unless a notice of appeal is filed with the Board pursuant to paragraph (2) of subsection (a) of this section, or subparagraph



(i) of paragraph (3) of subsection (a) of this section on or before May 31, 2023.

**(g)**

Notice of Appeal Forms. Standard Appeal Form BES 2301 (issued March 23, 2023) is the standard appeal form used to provide notice of an appeal pursuant to subparagraph (i) of paragraph (3) of subsection (a) of this section. Special Appeal Form BES 2302 (issued March 23, 2023) is the special appeal form used to provide notice of an appeal pursuant to paragraph (2) of subsection (a) of this section. Standard Appeal Form BES 2301 (3/23/23) and Special Appeal Form BES 2302 (3/23/23) are hereby incorporated by reference.