

Memorandum of Understanding (MOU)
Between

The Staff of the California Energy Resources Conservation and Development
Commission (Energy Commission)

and

The California Department of Fish and Wildlife (CDFW)

Regarding

Assembly Bill No. 205 (AB 205), Chapter 6.2, Certification of Nonfossil-Fueled
Powerplants, Energy Storage Facilities, and Related Facilities

I. PURPOSE:

The purpose of this MOU is to establish the plan required by subdivision (a) of Public Resources Code section 25545.5, addressing certification pursuant to Chapter 6.2 of Division 15 of the Public Resources Code. This plan is designed to ensure timely and effective coordination between the Energy Commission and CDFW with respect to any proposed Energy Commission findings and actions to authorize the take of endangered, threatened, and candidate species pursuant to the California Endangered Species Act (Chapter 1.5 (commencing with section 2050) of Division 3 of the Fish and Game Code) (CESA), impacts to fish and wildlife resources pursuant to Chapter 6 (commencing with section 1600) of Division 2 of the Fish and Game Code (section 1600), and other potential impacts to fish, wildlife, and plant species and the habitats upon which they depend. In addition, this plan includes a process to ensure that all such take and impacts are consistent with section 1600, CESA, and other provisions of the Fish and Game Code and Title 14 of the California Code of Regulations, including, but not limited to: the Native Plant Protection Act, Fish and Game Code section 1900 et seq., the statutes governing fully protected species, Fish and Game Code sections 3511, 4700, 5050, and 5515; and statutes governing take of nests, eggs, raptors, and migratory birds, Fish and Game Code sections 3503, 3503.5, and 3513 (collectively, "California Fish and Wildlife Laws").

II. WHEREAS:

- A. Chapter 6.2 of Division 15 of the Public Resources Code establishes a new, opt-in certification process for the following types of facilities (hereinafter referred to as "opt-in facilities" or "projects"):

1. Solar photovoltaic or terrestrial wind electrical generation powerplants with a generating capacity of 50 megawatts or more and appurtenant facilities thereto;
 2. A stationary electrical generating powerplant using any source of thermal energy, with a generating capacity of 50 megawatts or more, excluding any powerplant that burns, uses, or relies on fossil or nuclear fuels;
 3. An energy storage system as defined in Public Utilities Code section 2835 that is capable of storing 200 megawatt-hours or more of electrical energy;
 4. An electric transmission line carrying electric power from a facility described in paragraph (1), (2), or (3), above, that is located in the state to a point of junction with any interconnected electrical transmission system; or
 5. A facility for the manufacture, production, or assembly of energy storage systems or their components, wind systems or their components, solar photovoltaic systems or their components, or specialized products, components, or systems that are integral to renewable energy or energy storage technologies with a capital investment of at least \$250,000,000 over a period of 5 years.
- B. A person proposing to construct opt-in facilities, may, no later than June 30, 2029, file an application for certification with the Energy Commission (opt-in application). The Energy Commission must review the opt-in application and determine whether to issue the certification within 270 days¹ after the opt-in application is deemed complete, or as soon as practicable thereafter. The Energy Commission is the lead agency for opt-in facilities under the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq.
- C. CDFW is responsible for managing California’s fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public. CDFW issues permits and other approvals for take of, and impacts to, fish, wildlife, plants, and the habitats upon which they depend. These CDFW measures and approvals typically contain provisions to avoid, minimize, and mitigate impacts to the aforementioned resources.
- D. CDFW, as a trustee agency under CEQA, is responsible for protecting, preserving, and managing the State’s biological resources, including fish, wildlife, plants, and the habitats upon which they depend. CDFW accomplishes these objectives, in part, through consultation with CEQA lead

¹ All references herein to “days” shall be construed as calendar days.

- agencies on biological resource impacts and avoidance, minimization, and mitigation measures, including, but not limited to, those that may be required pursuant to CESA and section 1600.
- E. CDFW enforces the Fish and Game Code, including CESA and section 1600. With respect to certificates issued by the Energy Commission pursuant to Chapter 6.2 of Division 15 of the Public Resources Code, the Energy Commission has the authority to enforce any conditions set forth in the certificate, and CDFW has independent authority to enforce any violations of CESA, section 1600, other provisions of the Fish and Game Code, and provisions of Title 14 of the California Code of Regulations.
 - F. With some exceptions not applicable here, the Energy Commission's licensing authority for opt-in facilities pursuant to Public Resources Code section 25545.1, subdivision (a) shall be in lieu of any permit, certificate, or similar document required by any state, local, or regional agency, or federal agency to the extent permitted by federal law, for the use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law. Therefore, this plan includes a process to ensure that all such take and impacts are consistent with applicable California Fish and Wildlife Laws.
 - G. It is the policy of the state, as expressed through Fish and Game Code section 2055, that all state agencies, boards, and commissions shall seek to conserve endangered species and threatened species and shall utilize their authority in furtherance of the purposes of CESA.
 - H. The staff of the Energy Commission and CDFW wish to coordinate their review of opt-in facilities to identify and analyze project-related impacts to fish, wildlife, and plant species and the habitats upon which they depend and to develop avoidance, minimization, and mitigation measures for inclusion, as appropriate, as conditions of certification for opt-in facilities to ensure compliance with CEQA and applicable California Fish and Wildlife Laws. The staff of the Energy Commission and CDFW are committed to efficiently meeting their respective regulatory responsibilities through the timely exchange of project information and analyses, maintenance of clear lines of communication among the agencies' staffs, and completion of their review and analyses within the time limitations for a final decision on an opt-in application. The staff of the Energy Commission and CDFW will consult as needed after issuance of a certificate regarding an opt-in facility's compliance with applicable California Fish and Wildlife Laws and related conditions of certification.

III. THEREFORE:

A. Regarding duties and responsibilities regarding pre-filing communication, the staff of the Energy Commission and CDFW agree to the following:

1. Energy Commission staff will provide timely notification to the appropriate CDFW regional staff, within the CDFW region where the project will be sited, of pre-filing contacts by potential applicants for opt-in facilities and shall forward any information provided in those contacts by potential applicants as soon as practicable. A map of the CDFW regions is attached hereto as Attachment A. To ensure effective notification, CDFW will provide Energy Commission staff with a list, updated from time to time as necessary, of appropriate regional staff and their contact information. All references herein related to performance of obligations by CDFW will be completed by the appropriate CDFW regional staff identified in the aforementioned list. All references herein related to obligations for coordination or communication by Energy Commission staff with CDFW will be directed to appropriate CDFW regional staff identified in the aforementioned list.
2. Upon receipt of pre-filing project information sent by Energy Commission staff, CDFW will timely respond acknowledging such receipt.
3. Energy Commission staff will invite CDFW to attend the pre-filing consultation meeting and any other relevant meetings with potential project applicants relating to a proposed project to promote early identification of issues, regulatory requirements, and information needed for a complete evaluation by Energy Commission staff and CDFW regarding the proposed project. CDFW may, to the extent feasible and appropriate, participate in such meetings. CDFW will inform CEC staff, in time for the pre-filing consultation meeting, of any additional relevant information to be included in the application pursuant to Title 20 of the California Code of Regulations section 1877(a) and Fish and Game section 1602(a)(1)(F). Energy Commission staff will transmit that information to the applicant in a timely manner.
4. CDFW will notify Energy Commission staff whenever they are contacted by potential opt-in facility applicants seeking information about the nature and scope of studies required for applicable CDFW permit(s) and/or mitigation measures.
5. CDFW will invite Energy Commission staff to attend any meetings held in conjunction with subsection A.4. above to promote early disclosure

of potential projects. Energy Commission staff will, to the extent feasible, participate in such meetings.

B. Regarding duties and responsibilities to expedite regulatory review, the staff of the Energy Commission and CDFW agree:

1. No later than 3 days after receipt of an opt-in application, Energy Commission staff will send an electronic copy of any opt-in application and any other pertinent documents to the appropriate CDFW regional staff, within the CDFW region where the project will be sited, that are identified in the list provided by CDFW under section III.A.1.
2. No later than 3 days following receipt of an opt-in application, Energy Commission staff will send CDFW an electronic copy of the project schedule in effect for that siting case, such as the schedule included in Attachment B. The project schedule shall identify the various events and deadlines where input from or participation by CDFW is requested. CDFW shall endeavor to participate in the applicable events and provide timely comments and documents within the timeframe of the Energy Commission's proceeding.
3. Within 15 days of receipt of an opt-in application, CDFW will review the opt-in application to determine whether it contains all the information required to assess compliance with applicable California Fish and Wildlife Laws; CDFW will identify and notify Energy Commission staff in writing of any data deficiencies and discuss proposed studies or outstanding data necessary to correct such deficiencies. Energy Commission staff will ensure that reasonable additional information requests by CDFW for the purposes of assessing compliance with applicable California Fish and Wildlife Laws are transmitted to the applicant. Energy Commission staff will confer with CDFW as to the sufficiency of information received from the applicant in response to relevant additional information requests prior to Energy Commission acknowledging acceptance of the information.
4. During the Energy Commission's preparation of a draft environmental impact report (Draft EIR) on a proposed project, as soon as possible, but within 30 days of receiving any additional information requested from an applicant pursuant to Public Resources Code section 25545.4(d) or by a date which will be mutually agreed upon by both agencies following Energy Commission staff's transmission of the opt-in application and project schedule, CDFW will provide Energy Commission staff with written recommended avoidance, minimization, and mitigation measures to ensure compliance with applicable

California Fish and Wildlife Laws and with CEQA. CDFW shall use its best efforts to meet a time schedule that will allow Energy Commission staff to include CDFW's recommended conditions within the Draft EIR. Energy Commission staff and CDFW will meet and confer as necessary during the development of the Draft EIR in furtherance of the goals of this subsection.

5. During the development of the Draft EIR, CDFW may need additional information from the applicant to develop appropriate avoidance, minimization, and mitigation measures. Energy Commission staff will ensure that all reasonable additional information requests by CDFW are transmitted to the applicant in a timely manner.
6. During the public comment period on a proposed project's Draft EIR, Energy Commission staff will electronically transmit to CDFW, for its review and input, any public comments related to potential impacts to fish, wildlife, and plant species and the habitats upon which they depend as well as lakes, streams, and their hydrology. Energy Commission staff will invite CDFW to attend and participate in any Public Meetings on a proposed project's Draft EIR. CDFW may, to the extent feasible and appropriate, participate in any such meetings, via written comments or providing staff participation.
7. Energy Commission staff will notify CDFW in a timely manner of the completion and circulation of the Draft EIR for public comment.
8. Energy Commission staff will notify CDFW in a timely manner of its completion of the Final EIR on a proposed project. Energy Commission staff will also notify CDFW of when a proposed project will be scheduled for review and decision at an Energy Commission Business Meeting. If the Energy Commission approves a proposed project, Energy Commission staff will notify CDFW and electronically transmit a copy of the final certificate within 3 days of the project's approval.
9. Energy Commission staff will require compliance with applicable California Fish and Wildlife Laws that are incorporated as conditions of certification for opt-in facilities. Energy Commission staff will consider CDFW's recommended avoidance, minimization, and mitigation measures and make good faith efforts to incorporate those into the appropriate sections of the Draft and Final EIRs and the project certification.

C. Regarding duties and responsibilities related to disagreement resolution, the staff of the Energy Commission and CDFW agree:


1. Where the staff of the Energy Commission and CDFW disagree on any proposed conditions of certification, Energy Commission staff will coordinate meetings to discuss divergent positions regarding issues in dispute and encourage meaningful resolution.
2. If resolution is not achieved within 14 days after the initial meeting convened to resolve a dispute in accordance with subsection 1 of this section, the Director for the Energy Commission's Siting, Transmission, and Environmental Protection (STEP) Division and CDFW's Deputy Director of Ecosystem Conservation Division will, along with their respective technical staff and legal counsel, meet and confer to resolve the disagreement.
3. In the event resolution is not achieved by the process in subsection 2, above, the Energy Commission Executive Director and CDFW Director will, along with their respective technical staff and legal counsel, meet and confer to resolve the disagreement.

IV. AMENDMENTS

This MOU may be amended by mutual agreement of the staffs of the Energy Commission and CDFW. The MOU shall remain in effect until any party provides notice to the other that they are withdrawing from the MOU.

By: 
Charlton H. Bonham, Director
California Department of Fish and Wildlife

Date: 9/27/2022

By: 
Drew Bohan, Executive Director
California Energy Commission

Date: September 30, 2022

California Energy Resources Conservation and Development Commission (Energy
Commission)

Public Resources Code section 25545.5 Coordination Plan Developed in Consultation
with

The California State Water Resources Control Board and the California Regional Water
Quality Control Boards

Regarding

Assembly Bill No. 205 (AB 205), Chapter 6.2, Certification of Nonfossil-Fueled
Powerplants, Energy Storage Facilities, and Related Facilities

I. PURPOSE:

The purpose of this plan is to set forth the consultation process between the Energy Commission and the California State Water Resources Control Board and the California Regional Water Quality Control Boards (collectively, the Water Boards) as required by subdivision (b) of Public Resources Code section 25545.5, addressing certification pursuant to Chapter 6.2 of Division 15 of the Public Resources Code. This plan is designed to ensure timely and effective coordination between the Energy Commission, the State Water Board, and the applicable Regional Water Board with respect to any proposed Energy Commission findings and actions related to discharges of waste that could affect the quality of waters of the state and ensures that all discharges are consistent with all applicable provisions of Division 7 of the Water Code.

II. AUTHORITIES:

- A. Chapter 6.2 of Division 15 of the Public Resources Code establishes a new certification process for solar photovoltaic, terrestrial wind electrical generation powerplants, or thermal powerplants that do not use fossil or nuclear fuels, with a generating capacity of 50 megawatts or more; an energy storage system capable of storing 200 megawatt-hours or more of electricity; an electric transmission line from those generating or storage facilities to a point of junction with an interconnected electrical transmission system; or a facility for the manufacture, production, or assembly of energy storage systems or their components, wind systems or their components, solar photovoltaic systems or their components, or specialized products, components, or systems that are integral to renewable energy or energy storage technologies with a capital

investment of at least \$250,000,000 over a period of 5 years. These facilities are hereinafter referred to as "opt-in facilities" or "projects."

- B. A person proposing to construct opt-in facilities, may, no later than June 30, 2029, file an application for certification with the Energy Commission. The Energy Commission must review the application and determine whether to issue the certification within 270 days after the application is deemed complete, or as soon as practicable thereafter. The Energy Commission is the lead agency for opt-in facilities under the California Environmental Quality Act (CEQA).
- C. The Water Boards are responsible for protecting the quality of the state's waters through the control of waste discharges to land or water. The Water Boards accomplish these objectives, in part, through implementation of the Federal Clean Water Act (33 United States Code section 1251 et seq.) and the Porter-Cologne Water Quality Control Act (California Water Code section 13000 et seq.).
- D. The Energy Commission's licensing authority for opt-in facilities pursuant to Public Resources Code section 25545.1, subdivision (a) does not supersede the authority of the Water Boards. Public Resources Code section 25545.5, subdivision (b) directs the Energy Commission to develop a plan in coordination with the State Water Board that ensures timely and effective consultation between the staffs of the Energy Commission, the State Water Board, and the applicable Regional Water Board with respect to any proposed Energy Commission findings and actions related to discharges of waste that could affect the quality of waters of the state and to ensure that all discharges are consistent with all applicable provisions of Division 7 of the Water Code.
- E. The staffs of the Energy Commission and the Water Boards agree to use their best efforts to coordinate their review of opt-in facilities to identify and analyze project-related impacts and mitigation measures related to the discharge of waste that may affect the waters of the state. While the terms set forth in this plan are non-binding, the staffs of the Energy Commission and the Water Boards are committed to the timely exchange of project information and analyses, maintenance of clear lines of communication among the agencies' staffs, and best efforts to complete review and analyses within the applicable time limitations for final decisions on an application for certification.

III. IMPLEMENTATION:

A. Regarding duties and responsibilities related to pre-filing communication, the staffs of the Energy Commission and the Water Boards agree to the following:

1. The Energy Commission staff will timely notify the appropriate Water Boards' managers, identified in Attachment A, of pre-filing contacts by potential applicants for opt-in facilities and shall forward any information provided in those contacts by potential applicants as soon as practicable. Energy Commission managers shall also identify in writing the Energy Commission staff assigned to work on each opt-in facility as soon as practicable.
2. Upon receipt of pre-filing project information sent by the Energy Commission staff, the Water Boards' managers will timely respond acknowledging such receipt. The Water Boards' managers will also inform the Energy Commission in writing as to which staff will be assigned to review and comment on the project.
3. The Energy Commission staff will invite the Water Boards' staff to attend any meetings with potential project applicants relating to the proposed project to promote early identification of issues, regulatory requirements and information needed for a complete evaluation of the proposed project application by the Energy Commission and the Water Boards. The Water Boards' staff may, to the extent feasible and appropriate, participate in such meetings.
4. The Water Boards' staff will notify Energy Commission managers, identified in Attachment A, whenever they are contacted by potential opt-in facility applicants seeking information about the nature and scope of studies required for National Pollutant Discharge Elimination System (NPDES) Permits, Waste Discharge Requirements, Section 401 Certification or Waiver, or site remediation activities.
5. The Water Boards' staff will invite Energy Commission staff to attend any meetings held in conjunction with Section A.4. above to promote early disclosure of potential projects. Energy Commission staff will, to the extent feasible and appropriate, participate in such meetings.
6. Attachment A contains a list of the managers at the Energy Commission, State Water Board, and Regional Water Boards who will assign staff to process project applications from opt-in facilities. Any listed agency may update Attachment A via email to the contacts listed for each of the other agencies. Staff assigned to work on specific

projects will be identified in accordance with subsections 1 and 2 of this section.

B. Regarding duties and responsibilities to expedite regulatory review, the staffs of the Energy Commission and the Water Boards will make best efforts to apply the following protocols:

1. No later than 3 days after receipt of an application, the Energy Commission staff will send an electronic copy of any application for certification for an opt-in facility and any other pertinent documents to the appropriate Water Boards' staff.
2. As soon as practicable, but no later than 3 days following the receipt of the application for certification, the Energy Commission staff will send Water Boards' staff the project schedule in effect for that siting case, such as the schedule included in Attachment B. The project schedule shall identify the various events and deadlines where input from or participation by the Water Boards is requested. Water Boards' staff shall endeavor to participate in the applicable events and meetings and provide timely comments and documents within the timeframe of the Energy Commission's proceeding.
3. Within 15 days of receipt of the application for certification, Water Boards' staff will review the application for certification to determine whether it contains all the information required to apply for the following permits, if applicable: Waste Discharge Requirements, NPDES Permits, and/or a Section 401 Certification or Waiver from the Regional Board; and Water Boards' staff will identify and notify Energy Commission staff of any data deficiencies.
4. During the Energy Commission's preparation of a draft environmental impact report (Draft EIR) on a proposed project, Water Boards' staff will consult with Energy Commission staff regarding potential impacts to waters of the state and will provide Energy Commission staff with their projected conditions for the applicable NPDES Permits, Waste Discharge Requirements, and/or Section 401 Certification or Waiver according to the project schedule. The Water Boards' staff shall use their best efforts to meet a time schedule that will allow the Energy Commission staff to include the Water Boards' recommended conditions for the applicable NPDES Permit(s), Waste Discharge Requirements, and/or Section 401 Certification or Waiver within the Draft EIR.
5. During the public comment period on a proposed project's Draft EIR, Energy Commission staff will transmit public comments related to

discharges of waste that could affect the quality of waters of the state to the Water Boards for further review and response as necessary. Energy Commission staff will invite Water Boards' staff to attend and participate in any Public Meetings on a proposed project's Draft EIR. Water Boards' staff may, to the extent feasible and appropriate, participate in any such meetings.

6. Water Boards' staff will prepare a draft NPDES Permit (or permits), Waste Discharge Requirements, and/or Section 401 Certification or Waiver according to a time schedule that will be provided to the Energy Commission staff. The Water Boards' staff shall use its best efforts to meet a time schedule that will allow the Energy Commission staff to include the draft permit, discharge requirements, and/or certification or waiver within the Draft EIR.
7. Energy Commission staff will inform the Water Boards' staff of its completion of the final environmental impact report (Final EIR) on a proposed project. Energy Commission staff will also inform Water Boards' staff of when the proposed project will be scheduled for review and decision at an Energy Commission Business Meeting. If the Energy Commission approves a proposed project, Energy Commission staff will inform Water Boards' staff within 3 days of the project's approval.
8. Energy Commission staff will recommend that compliance with the permit(s) and/or waste discharge requirements be made a condition of certification by the Energy Commission.
9. The Water Boards recognize that they are required by Public Resources Code section 25545.5, subdivision (d)(2), to take final action on the opt-in facility within 90 days after the certification by the Energy Commission of the environmental impact report, provided that the applicant has filed a complete application with the applicable Water Board prior to certification of the Final EIR.

C. Regarding duties and responsibilities related to disagreement resolution, the staffs of the Energy Commission and the Water Boards agree:

1. Where the staffs of the Energy Commission and Water Boards disagree on any proposed conditions of certification, Energy Commission staff will coordinate meetings to discuss issues in dispute and encourage meaningful resolution.
2. If resolution is not achieved within 14 days after the initial meeting convened to resolve a dispute in accordance with subsection 1 of this section, the Director for the Energy Commission's Siting, Transmission, and Environmental Protection (STEP) Division and the Water Boards'

Deputy Director or Assistant Executive Officer, as applicable, will, along with their respective technical staff and legal counsel, meet and confer to resolve the disagreement.

3. In the event resolution is not achieved by the process in subsection 2, above, the Energy Commission Executive Director and Water Boards' Executive Director or Executive Officer will, along with their respective technical staff and legal counsel, meet and confer to resolve the disagreement.

IV. AMENDMENTS

This plan may be amended at any time when new information develops or as requested by the Energy Commission or Water Boards. The plan shall otherwise remain in effect.

Memorandum of Understanding (MOU)
Between

The Staff of the California Energy Resources Conservation and Development
Commission (Energy Commission)

and

The Staff of the Department of Toxic Substances Control (DTSC)

Regarding

Assembly Bill No. 205 (AB 205), Chapter 6.2, Certification of Nonfossil-Fueled
Powerplants, Energy Storage Facilities, and Related Facilities

I. PURPOSE:

The purpose of this MOU is to establish the plan required by subdivision (c) of Public Resources Code section 25545.5, addressing certification pursuant to Chapter 6.2 of Division 15 of the Public Resources Code. This plan ensures timely and effective coordination between the Energy Commission and DTSC with respect to any proposed Energy Commission findings and actions related to hazardous waste control laws.

II. WHEREAS:

- A. Chapter 6.2 of Division 15 of the Public Resources Code establishes a new certification process for solar photovoltaic, terrestrial wind electrical generation powerplants, or thermal powerplants that do not use fossil or nuclear fuels, with a generating capacity of 50 megawatts or more; an energy storage system capable of storing 200 megawatt-hours or more of electricity; an electric transmission line from those generating or storage facilities to a point of junction with an interconnected electrical transmission system; or a facility for the manufacture, production, or assembly of energy storage systems or their components, wind systems or their components, solar photovoltaic systems or their components, or specialized products, components, or systems that are integral to renewable energy or energy storage technologies with a capital investment of at least \$250,000,000 over a period of 5 years. These facilities are hereinafter referred to as "opt-in facilities" or "projects."
- B. A person proposing to construct opt-in facilities, may, no later than June 30, 2029, file an application for certification with the Energy Commission. The Energy Commission must review the application and determine whether to issue the certification within 270 days after the application is deemed

complete, or as soon as practicable thereafter. The Energy Commission is the lead agency for opt-in facilities under the California Environmental Quality Act (CEQA).

- C. The DTSC is responsible for the protection and enhancement of public health and the environment by regulating all aspects of the generation and management of hazardous substances, remediation of contaminated sites, and promoting reduction of such substances from industrial activities. DTSC accomplishes these objectives through implementation of the State Hazardous Waste Control Law (Health and Safety Code, Division 20, Chapter 6.5, section 25100 et seq.), the Hazardous Substances Account Act (Health and Safety Code, Division 20, Chapter 6.8, section 25300 et seq.), DTSC regulations (see, e.g., California Code of Regulations, Title 22, Division 4.5, sections 66250 et seq., 66262.10-66262.89, 66263.10-66263.50, 66270.1-66270.73), and other state and federal laws and regulations.
- D. The Energy Commission's licensing authority for opt-in facilities pursuant to Public Resources Code section 25545.1, subdivision (a) does not supersede the authority of the DTSC with respect to facilities identified in section 25545, subdivision (b)(4) (hereinafter referred to as Opt-in Manufacturing Facilities).
- E. Pursuant to Public Resources Code, section 25545.1, subdivision (a), the Energy Commission's licensing authority for opt-in facilities under section 25545, subdivisions (b)(1)-(3) and (5) (hereinafter referred to as Opt-in Generation and Storage Facilities) shall be in lieu of any permit, certificate, or similar document required by any state, local, or regional agency, or federal agency to the extent permitted by federal law, for the use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law.
- F. Public Resources Code section 25545.5, subdivision (c) directs the Energy Commission to develop a plan in coordination with the DTSC that ensures timely and effective consultation between the commission and the DTSC with respect to any proposed Energy Commission or DTSC findings and actions related to hazardous waste control laws.
- G. The staffs of the Energy Commission and the DTSC wish to coordinate their review of opt-in facilities to identify and analyze project-related impacts and mitigation measures related to the generation and management of hazardous substances, remediation of contaminated sites, and promoting reduction of such substances from industrial activities. The staffs of the Energy Commission and the DTSC are committed to the timely exchange of project information and analyses, maintenance of clear lines of communication among the agencies' staffs, and completion of their review and analyses

within the time limitations for a final decision on an application for certification.

III. THEREFORE:

A. Regarding duties and responsibilities related to pre-filing communication, the staffs of the Energy Commission and DTSC agree to the following:

1. The Energy Commission staff will timely notify appropriate DTSC staff of pre-filing contacts by potential applicants for Opt-in Generation and Storage Facilities and shall forward any information provided in those contacts by potential applicants as soon as practicable.
2. Upon receipt of pre-filing project information sent by the Energy Commission staff, the DTSC staff will timely respond acknowledging such receipt. The DTSC staff will also inform the Energy Commission as to which staff will be assigned to review and comment on the project.
3. The Energy Commission staff will invite DTSC staff to attend any meetings with potential project applicants relating to the proposed project to promote early disclosure of the potential need for studies related to the proposed project and associated waste generation and storage standards, site remediation activities, and waste reduction requirements. The DTSC staff may, to the extent feasible and appropriate, participate in such meetings.
4. The DTSC staff will notify Energy Commission staff whenever they are contacted by potential Opt-in Manufacturing Facilities applicants seeking information about the nature and scope of studies or workplans potentially required for waste generation and storage standards, site remediation activities, and waste reduction requirements associated with proposed opt-in facilities. In the case where DTSC already has remediation actions underway at a proposed project site, DTSC Site Mitigation and Restoration Program staff will work with Energy Commission staff to provide the necessary information on the remediation activities so any potential environmental impact can be characterized and analyzed in the EIR.
5. The DTSC staff will invite Energy Commission staff to attend any meetings held in conjunction with section A.4 above to promote early disclosure of potential projects. Energy Commission staff will, to the extent feasible, participate in such meetings.

B. Regarding duties and responsibilities to expedite regulatory review of Opt-in Generation and Storage Facilities, the staffs of the Energy Commission and DTSC agree:

1. No later than 3 days after receipt of an application, the Energy Commission staff will send electronic copies of any application for certification for an Opt-in Generation and Storage Facility and any other pertinent documents to the staff of the DTSC. If site remediation is required, Energy Commission staff will request the applicant send all related documents simultaneously to both agencies.
2. As soon as practicable, but no later than 3 days following the receipt of the application for certification, the Energy Commission staff will send to the appropriate DTSC staff the project schedule in effect for that siting case, such as the schedule included in Attachment A. The project schedule shall identify the various events and deadlines where input from or participation by DTSC staff is requested. DTSC staff shall endeavor to participate in the applicable events and provide timely comments and documents within the timeframe of the Energy Commission's proceeding.
3. DTSC staff will make best efforts to review the application of certification within 15 to 25 days to determine whether it contains all the information required for an assessment of the following and whether applicable: waste generation and storage standards, site remediation, and waste reduction requirements; DTSC staff will identify and notify Energy Commission staff of any data deficiencies.
4. During the Energy Commission's preparation of a draft environmental impact report (Draft EIR) on a proposed project, DTSC staff will provide Energy Commission staff with any applicable waste generation and storage standards, conditions for site remediation activities, and waste reduction requirements according to the project schedule. The DTSC staff shall use its best efforts to meet a time schedule that will allow the Energy Commission staff to include an assessment of the DTSC's waste generation and storage standards, conditions for site remediation activities, and waste reduction requirements within the Draft EIR.
5. Energy Commission staff will prepare draft conditions of certification containing any applicable waste generation and storage standards, conditions for site remediation activities, and waste reduction requirements for Opt-in Generation and Storage Facilities according to a time schedule that they will provide to DTSC staff. The Energy Commission staff shall use its best efforts to meet a time schedule that

will allow the DTSC staff to include their recommendations regarding the draft conditions of certification for waste generation and storage standards, conditions for site remediation activities, and waste reduction requirements within the Draft EIR. The Energy Commission staff will share the draft conditions of certification containing any applicable waste generation and storage standards, site remediation activities, and waste reduction requirements with DTSC prior to the public comment period of a proposed project's Draft EIR.

6. During the public comment period on a proposed project's Draft EIR, Energy Commission staff will transmit any public comments related to hazardous waste generation and storage, potential site remediation activities, and waste reduction requirements to DTSC for further review and response as necessary. Energy Commission staff will invite DTSC staff to attend and participate in any Public Meetings on a proposed project's Draft EIR. DTSC staff may, to the extent feasible and appropriate, participate in any such meetings.
7. Energy Commission staff will inform DTSC staff of its completion of the final environmental impact report (Final EIR) on a proposed project and final conditions of certification incorporating any applicable waste generation and storage standards, conditions for site remediation activities, and waste reduction requirements. Energy Commission staff will also inform DTSC staff of when a proposed project will be scheduled for review and decision at an Energy Commission Business Meeting. If the Energy Commission approves a proposed project, Energy Commission staff will inform DTSC staff within 3 days of the project's approval.
8. Energy Commission staff may require compliance with applicable waste generation and storage standards, site remediation Cleanup Decision Document requirements, and waste reduction requirements as conditions of certification for Opt-in Generation and Storage Facilities.

C. Regarding duties and responsibilities to expedite regulatory review of Opt-in Manufacturing Facilities, the staffs of the Energy Commission and DTSC agree:

1. No later than 3 days after receipt of an application, the Energy Commission staff will send electronic copies of any application for certification for an Opt-in Manufacturing Facility and any other pertinent documents to the staff of the DTSC. If site remediation is required, Energy Commission staff will request the applicant to send all related documents simultaneously to both agencies.

2. As soon as practicable, but no later than 3 days following the receipt of the application for certification, the Energy Commission staff will send to the appropriate DTSC staff the project schedule in effect for that siting case, such as the schedule included in Attachment A. The project schedule shall identify the various events and deadlines where input from or participation by DTSC staff is requested. DTSC staff shall endeavor to participate in the applicable events and provide timely comments and documents within the timeframe of the Energy Commission's proceeding.
3. DTSC staff will make best efforts to review the application for certification within 15 to 25 days to determine whether it contains all the information required for an assessment of the following and whether applicable: waste generation and storage standards, site remediation activities, and waste reduction requirements; DTSC staff will identify and notify Energy Commission staff of any data deficiencies.
4. During the Energy Commission's preparation of a draft environmental impact report (Draft EIR) on an Opt-in Manufacturing Facility, DTSC staff will prepare any applicable draft waste generation and storage standards, conditions for site remediation activities, and waste reduction requirements for Opt-in Manufacturing Facilities according to a time schedule that DTSC staff will provide to the Energy Commission staff. The DTSC staff shall use its best efforts to meet a time schedule that will allow the Energy Commission staff to include an analysis of the draft standards, activities, and requirements and any required conditions of certification for Opt-in Manufacturing Facilities within the Draft EIR.
5. During the public comment period on a proposed project's Draft EIR, Energy Commission staff will transmit any public comments related to hazardous waste generation and storage, potential site remediation activities, and waste reduction requirements to DTSC for further review and response as necessary. Energy Commission staff will invite DTSC staff to attend and participate in any Public Meetings on a proposed project's Draft EIR. DTSC staff may, to the extent feasible and appropriate, participate in any such meetings.
6. Energy Commission staff will inform DTSC staff of its completion of the final environmental impact report (Final EIR) on a proposed project. Energy Commission staff will also inform DTSC staff of when a proposed project will be scheduled for review and decision at an Energy Commission Business Meeting. If the Energy Commission

approves a proposed project, Energy Commission staff will inform DTSC staff within 3 days of the project's approval.


7. If applicable, DTSC staff will take final action on Opt-in Manufacturing Facilities within 90 days after the Energy Commission's certification of the environmental impact report, provided the applicant has filed a complete application with the DTSC prior to certification of the Final EIR. DTSC will send a copy of its final action to Energy Commission staff within 5 days of the final action.
8. Energy Commission staff will require compliance with applicable waste generation and storage standards, site remediation plan requirements, and waste reduction requirements as conditions of certification for Opt-in Manufacturing Facilities.

D. Regarding duties and responsibilities related to disagreement resolution, the staffs of the Energy Commission and DTSC agree:

1. Where the staffs of the Energy Commission and DTSC disagree on any proposed conditions of certification or terms of an amendment approval, Energy Commission staff will coordinate meetings to discuss divergent positions regarding issues in dispute and encourage meaningful resolution.
2. If resolution is not achieved within 14 days after the initial meeting convened to resolve a dispute in accordance with subsection 1 of this section, the Director for the Energy Commission's Siting, Transmission, and Environmental Protection (STEP) Division and the DTSC's Deputy Director for Site Mitigation and Restoration Program (SMRP) for cleanup related disputes or Deputy Director for Hazardous Waste Management Program (HWMP) for permitting disputes will, along with their respective technical staff and legal counsel, meet and confer to resolve the disagreement.
3. In the event resolution is not achieved by the process in subsection 2, above, the DTSC Director and Energy Commission Executive Director will, along with their respective technical staff and legal counsel, meet and confer to resolve the disagreement.

IV. AMENDMENTS

This MOU may be amended by mutual agreement of the staffs of the Energy Commission and DTSC. The MOU shall remain in effect until any party provides notice to the other that they are withdrawing from the MOU.

By:  _____ for

Meredith Williams
Director
Department of Toxic Substances Control

Date: September 27, 2022

By:  _____

Drew Bohan
Executive Director
California Energy Commission

Date: September 30, 2022