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Public Comment â€” CEC Opt-In Emergency Rulemaking (BESS)
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I am a resident of Santa Cruz County and a former analytical scientist who spent 12 years
in mining-industry R&D laboratories. I have been mapping the proposed Seahawk BESS
(docket 26-OPT -02) and the sampling record from the January 2025 Moss Landing fire. I
support the Commission's addition of BESS-specific information requirements to Appendix B. These comments ask that those requirements be tied to measured data, cover the receptors and pathways that the Moss Landing record shows matter , and not be
weakened by the def ault timelines elsewhere in the express terms.
In summary , I ask the Commission to:
1. Require pre-construction baseline sampling and a post-incident sampling plan with named standard methods.
2. Require thermal-runaway modeling to cover deposition of metals to soil and water , not
only acute inhalation, and to be checked against measured fire data.
3. Expand setback maps to schools, water bodies, recharge areas and f armland.
4. Expand the incident-history disclosure beyond a single f acility and five years.
5. Remove the 90-day "deemed inspected" path to operation in Â§ 1881.5.
6. Let local fire agencies recover the cost of independent technical review .
7. Follow this emergency action with a regular rulemaking with full public comment.
Why measured data matters here
The Moss Landing record shows how f ar fire products traveled. All figures below are measured, not modeled:

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Hester Marsh, Elkhorn Slough (about 1â€“3 km from the plant): nickel about 10 times and cobalt about 5 times pre-fire levels in surf ace sediment, with a nickel-to-cobalt ratio matching the plant's NMC cells (San JosÃ© State University Moss Landing Marine Labs and Elkhorn Slough Reserve, Scientific Reports, Nov 2025).
Elkhorn Slough Visitor Center pond (about 2.9 mi): cobalt 0.327 mg/L and nickel 0.382 mg/L in unfiltered water (D TSC sampling report, Feb 24, 2025).
Fire debris north of the plant: nickel 27,000 mg/kg, manganese 14,000 mg/kg and cobalt 11,000 mg/kg in one bulk sample (ALS Environmental for CTEH, reported Jan 24, 2025, obtained through a public records request).
The Hester Marsh finding was only possible because researchers happened to have pre-
fire sediment data. No regulatory baseline existed. The WECC Moss Landing BESS

Fire
Report (Dec 2025) also notes the fire re-ignited in February 2025, so a single-event model
understates the exposure period.
Specific comments on the express terms
1. Public Health, Appendix B (9)(F): thermal-runaway modeling. The new worst-case dispersion requirement is welcome. But comparing results only to AEGL and ERPG thresholds covers acute inhalation. It does not cover the pathway Moss Landing actually demonstrated: deposition of nickel, cobalt and manganese onto soil, sediment, surf ace water and crops. Please require:
Deposition modeling for battery metals, plus hydrogen fluoride, out to the distance where predicted deposition f alls below residential and agricultural screening levels.
A worst case that assumes propagation across the whole f acility and re-ignition, unless the applicant shows large-scale UL 9540A test data proving otherwise for the exact product.
Model inputs and files made publicly available in usable form. Proposed Â§ 1880.5 says GIS and modeling files that are incompatible with the docketing system "may not be available in the docket" but are part of the record, and certification is based on that record. If the Commission relies on a file, the public should be able to get it: please require these files to be posted on the project page or provided on request within a set number of days, while the comment period is open.
Results labeled as modeled, and compared against measured data from real BESS fires where available.

2. Baseline and post-incident sampling (new requirement). Require each BESS applicant
to collect pre-construction baseline samples of soil, sediment and surf ace water at receptors within the modeled deposition area, using named EP A methods and reporting
limits. Require an incident sampling plan that names the methods, detection limits and screening levels in advance, with results posted publicly . Without a baseline, contamination after a fire cannot be distinguished from background, and "non-detect" statements cannot be checked.
3. Setbacks, Appendix B (b)(1)(E). Setback maps are required only for residential receptors and roadways or passenger rail. Please add schools, child care, senior housing,
hospitals, lakes and streams, groundwater recharge areas, and Important F armland. At the
proposed Seahawk site, for example, my measurements from county GIS put the nearest
residential parcel at about 295 ft, College Lake at about 514 ft, an 88-unit affordable housing complex at about 756 ft, and Amesti Elementary (404 students) at about 0.58 mi.
There are 759 residential parcels within 1 mile. A map limited to residences and roads would leave most of that out.

4. Incident history, Appendix B (b)(1)(E). The disclosure covers f ailure incidents within five years at a single f acility . Please require disclosure of all known fires, thermal runaway
events and safety-system f ailures involving the same cell model, module, enclosure product or integrator , at any f acility worldwide, with no five-year limit. Incident patterns show up across fleets, not within one site.
5. Approval to operate, Â§ 1881.5. Under subdivision (a)(2), the CPM may authorize testing
or operation if the fire authority "does not complete the inspection within 90 days" after the owner's notice. An understaffed fire district's silence should not count as approval. Please (a) start the 90-day clock only when the owner has given the fire authority a complete Hazard Mitigation Analysis, UL 9540A reports and the emergency response plan; (b) let the fire authority extend the period for cause; (c) require that changes the fire authority recommends under subdivision (e) be made before operation, unless the CPM finds in writing that a change is infeasible; (d) post inspection results to the docket; and (e) require a new inspection before augmented or replacement enclosures go into service.
6. Local agency reimbursement, Â§ 1878.1. Agencies are told to rely on existing knowledge
and not retain experts. Most local fire districts do not have in-house staff to review a Hazard Mitigation Analysis or UL 9540A reports. Please make independent technical review of BESS fire and hazard documents a reimbursable cost, and give agencies more
than 30 days to submit a budget.

7. Net economic benefit presumption, Â§Â§ 1877(f) and 1879(a)(7). Net economic benefit
cannot be assumed across a whole class of projects. It depends on each site: what is nearby , what a f ailure would cost, and who would pay . Moss Landing shows how f ar one
f acility's costs can reach. The cleanup required a federal removal action under CERCLA,
the Superfund law , overseen by U.S. EP A under a July 2025 settlement order with Vistra.
EP A has called it the largest lithium-ion battery cleanup in its history . Local agencies also
carried evacuation, emergency response and months of sampling. None of that would have appeared in a presumption made before the project was built.
The presumption comes from statute, but these regulations decide whether it can actually be rebutted. As drafted, staff only confirm that no evidence "sufficient to overcome" it has been filed. That puts the burden on the public without giving the public the information needed to meet it. Please require:
The applicant's full economic analysis, with assumptions and spreadsheets, filed unredacted in the docket when the application is filed.
Costs counted alongside benefits: emergency response, evacuation, post-incident

sampling and cleanup, decommissioning, lost agricultural or business use, and the risk that public funds will be needed if the owner cannot pay .
A stated standard for what evidence rebuts the presumption, and a comment period long enough for local agencies and the public to submit it.
A written staff response to every rebuttal submitted, project by project, in the Staff Assessment.
8. Change of ownership, Â§ 1882(f). Please require the new owner to disclose its BESS safety and incident record, confirm financial assurance for decommissioning and incident
cleanup, and notify the fire authority and the public.
9. Decommissioning, Appendix B (e)(2)(A). Require a bond or other financial assurance sized to remove and dispose of the batteries and to remediate the site after a fire, not just
a description of "financial responsibility .
"
10. Noise. The augmentation item lists noise among construction impacts. Operational noise models should also assume cooling f ans at full speed and inverters as specified, since those conditions drive night-time levels. My rerun of the Seahawk noise analysis (modeled, not measured) found that changing only those assumptions moved the number
of receivers over the 45 dBA night limit from 1 to 7.
11. Drafting. Â§ 1879.5 newly sets the storage community-benefit minimum at "$550 per MWh of nameplate capacity .
" Please confirm that it is calculated on rated energy capacity
(MWh), not power capacity (MW).

12. T echnology choice and who pays, Â§ 1879.5 and Appendix B. Communities and the
emergency responders who will handle a f ailure have no transparent way to weigh one battery technology against another . The choice is made in procurement before the application reaches the Commission, and procurement terms are usually confidential. Please require each BESS application to (a) compare the safety profile of the chosen chemistry with available alternatives, such as lithium iron phosphate, sodium-ion, iron-air
and flow batteries, using UL 9540A data where it exists; (b) identify the offtaker and the solicitation the project was selected under; and (c) explain why lower-hazard alternatives
were rejected. Local fire agencies should be invited to comment on that comparison. These projects are paid for by ratepayers and, through federal investment tax credits and,
for solar-paired storage, California's property tax exclusion (Rev . & T ax. Code Â§ 73), by
taxpayers, yet the contracts that decide what gets built and at what price are kept from the public. The communities that carry the fire risk, and the emergency responders who will deal with any f ailure, are shut out of that decision. Community benefit payments are

a
project cost that can be recovered through those same confidential contract prices. The Commission should require applicants to disclose the contract terms that bear on public cost and safety , including whether and how community benefit payments are recovered from ratepayers.

Process

These changes are substantive and will govern pending BESS applications. An emergency
rulemaking gives the public little time to review 23 pages of new text. I ask the Commission to (a) state which pending opt-in applications, including Seahawk (26-OPT -
02), the new Appendix B BESS requirements will apply to, and (b) open a regular rulemaking under the Administrative Procedure Act, with a 45-day comment period and a
public hearing, before these rules are readopted or made permanent.

Thank you for considering these comments.

Respectfully submitted,

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