

June 14, 2023

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RE: Lighting Resources, LLC – Response to Draft Initial Order

Dear Linda and Greg:

I represent Lighting Resources, LLC. and am writing in response to the Draft Initial Order issued in response to Lighting Resources' May 1, 2023 Petition for Review. As a preliminary matter, Lighting Resources continues to believe that each of the issues raised in the Petition for Review met the regulatory requirements found in 22 CCR 66271.72 (most notably, on the basis that DTSC's permitting decision on each issue was based on a finding of fact or conclusion of law that was clearly erroneous). Lighting resources does not, however, intend during the upcoming hearing to further dispute the Board's decision to deny certain issues as detailed in the Draft Initial Order.¹

Rather, Lighting Resources intends to focus its comments on one issue—the scope of the stay in place as a result of the issues accepted by the Board in this appeal. The Draft Initial Order contains the following proposed stay provision:

(2) Effect of Stay. During the pendency of this permit appeal, the following contested permit conditions are stayed pursuant to California Code of Regulations, title 22, sections 66271.14 (b)(2) and 66271.71.

- Part IV. Unit 2 – Special Condition #2-3 and 5-6
- Part IV. Unit 5 – Special Condition #1,1a, 1b
- Part IV. Unit 6 – Special Condition #1-6
- Part V. Special Conditions – Condition #1, 16, and 29

Any conditions that relate to matters that were not accepted for review become fully effective and enforceable as of June 15, 2023.

¹ The Draft Initial Order denies review of Issues 1, 7, 10, 13, 14, 15, 17, 18, 22, 23, 25, 26, 28, and 29

June 14, 2023

Page 2

This proposed stay does not include all permit conditions related to issues that the Board has accepted for review and must be expanded to include all challenged provisions as required by 22 CCR 66271.71(b).

Specifically, this list of stayed provisions fails to account for the numerous permit conditions that are based on the error raised by Lighting Resources (and accepted in the Draft Initial Order) in Issue #31 (which challenges DTSC's decision to require certain universal waste to be handled as hazardous waste). This decision significantly impacts Lighting Resources permit, and permeates numerous conditions in Lighting Resources Permit, each of which must be stayed pending resolution of this appeal.

For example, Part IV. Unit 2 – Special Condition #4 is related to the significant expansion of Unit #2, an expansion directly driven by DTSC's re-classification of universal waste as hazardous waste. This issue was raised in Lighting Resources Petition for Review as Issue #10, which the Draft Initial Order is dismissing, meaning this condition is not included in the proposed stay. This condition (and numerous others) must be added to the stay provision as part of the Board's acceptance for review of Issue #31.

As discussed with Board Staff this week, I was engaged to represent Lighting Resources yesterday (June 14, 2023), and am still working to review the permit, the appeal documents and other relevant portions of the administrative record. Given this, I am still working with my client to identify all conditions in the permit that are based on the mistake identified in Issue #31. We believe we can have this review completed over this upcoming weekend.

To ensure that the Board issues a stay that meets the requirements of 22 CCR 66271.71(b), we request that the Board leave the current stay of the entire permit in place until Lighting Resources has submitted its supplemental list of additional permit conditions related to Issue #31 that should be included in the stay order. Lighting Resources can commit to having this supplemental list (identifying the conditions and a brief description of how the condition relates to Issue #31) submitted to the Board no later than next Tuesday, June 20, 2023. If appropriate, Lighting Resources would be happy to make itself available for further discussions with Board Staff or the Board to further discuss following its supplemental submission.

As a final comment, although not directly related to the Draft Initial Order, or the Board's hearing, we believe that many of the issues accepted in the Draft Initial Order are issues that have arisen as a result of a break-down of communication between Lighting Resources and DTSC Permitting Staff. We raise this not to point fingers, but instead with the goal of re-engaging with DTSC Permitting Staff to work towards resolution of as many of these issues as possible. The Manatt team working on this matter brings many years of DTSC permitting experience to the table, and are committed to bringing this experience (and a fresh set of eyes) to the table, and working with DTSC to resolve these issues through permit modifications or otherwise. We are optimistic that such efforts will successfully eliminate many (if not all) of the



June 14, 2023

Page 3

issues raised in this appeal, minimizing the scope of issues the Board is presented if this matter reaches a full merits hearing later this year.

We look forward to discussing further during the upcoming Board Meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Williamson", written over a light gray rectangular background.

Matthew Williamson