

Board of Environmental Safety
Department of Toxic Substances Control
California Environmental Protection Agency

Hazardous Waste Facility Permit Appeal
in the Matter of:

Lighting Resources, LLC.
805 East Francis Street
Ontario, California 91761

EPA ID No. CAR 000 156 125

Docket No. FY22/23 - 01

Initial Order To
Partially Accept Petition For Review
And Set Briefing Schedule

June 15, 2023

Health and Safety Code Section 25125
California Code of Regulations, Title 22,
Section 66271.72

F i n d i n g s

- A. On May 1, 2023, Lighting Resources, LLC. ("Permittee"), a California limited liability company, timely filed a notice of appeal with the Board of Environmental Safety ("Board");
- B. On May 1, 2023, the Permittee timely filed a petition for review (Petition) with the Board to support the appeal;
- C. Pursuant to Section 66271.71 of Title 22, California Code of Regulations, the effect of the Department of Toxic Substances Control's (DTSC) decision on June 30, 2022, to grant the Standardized Hazardous Waste Facility Permit No. 2021/22-HWM-11 (Permit) to the Permittee, is stayed pending resolution of the appeal;
- D. The Board has determined whether to accept or dismiss the Petition, in full or in part, at a public meeting held pursuant to the Bagley-Keene Open Meeting Act.

I n i t i a l O r d e r

(1) Initial Determinations. The Petition submitted with the appeal identified a total of thirty-one (31) issues for review. After considering the issues raised in the Petition correspondence filed with the Board, DTSC's response to comments (RTC) letter dated June 30, 2022, and comments received at the public meeting, the Board hereby determines as follows:

(a) Issues accepted for review. The following issues meet the standard for acceptance under subsection (a) of section 66271.72 of title 22, California Code of Regulations:

Issues #2-5, 16, 19-21

The listed comments relate to matters regarding changes to the air system (baghouse) which merit a similar response. The Board's response follows the recitation of each of the comments.

Issue #2: The Petition states: "The entire baghouse system was replaced at the request of enforcement. It is Permitted by SCAQMD. Phil Blum advised that DTSC treats the AQMD permit as the authority not DTSC."

The Petition further states: "Although we had advised the equipment had been removed and or changed, they had not made any of those changes. (We had even provided documentation that the new equipment was permitted by AQMD along with a complete description of the new emissions system (Baghouse)."

This comment relates to the air system specific to Unit 5. Changes to the air system and system components were raised during the comment period for the draft Permit in RTC #3-1 and #3-21. The Petition also comments on the communication with DTSC staff in relation to air system changes.

Issue #3: The Petition states: "Reference to the filter room - no longer exists."

This comment relates to the filter room component of the air system specific to Unit 5. Changes to the filter room were raised during the comment period in RTC #3-32.

Issue #4: The Petition states: "Two HID glove boxes paragraph is no longer applicable. They were removed when the new system was installed. DTSC was advised."

This comment relates to the description of facility operations specific to the HID glove boxes permitted under Unit 6.

Issue #5: The Petition states: "The new baghouse system is very effective as demonstrated by the Mercury Vapor Readings have only been above .011 about 3 times since it was installed. On average they run .006. We requested a reduction in the readings as the every two hours was based on the old machine. The current readings show that every two hours should not be required as the readings are way below the .025 on a regular basis."

This comment relates to the mercury vapor monitoring requirements of Unit 5 specific conditions.

Issue #16: The Petition states: “Description of the demanufacturing process - changed to new bag house system.”

This comment relates to description of unit specific activities within Unit 5.

Issue #19: The Petition states: “When stack emissions... This is not an accurate method to solve the problem. The machine should be assessed to determine the cause and the appropriate repairs made.”

This comment relates to Unit 5 special condition #1b.

Issue #20: The Petition states: “The unit was removed with the installation of the new baghouse. DTSC notified previously.”

This comment relates to Unit 6 operations and unit specific conditions affected by changes made to the baghouse. Changes to system equipment were raised during the draft Permit comment period in RTC #3-4 and 3-24.

Issue #21: The Petition states: “Delete all reference to Unit 6”

This comment relates to Unit 6 operations and unit specific conditions affected by changes made to the baghouse. Changes to system equipment were raised during the draft Permit comment period in RTC #3-4 and 3-24.

Response to Issues #2-5, 16, 19-21: The comments are related to the replacement of the air system (baghouse) and dependent system components specific to Unit 5 and Unit 6. Many government agencies may be involved in the process of reviewing and approving various types of permits or authorizations that may be necessary to operate process systems. The issue to be decided on appeal is whether modifications to the permit are required for conversion of the filter room to a new baghouse system as permitted by South Coast Air Quality Management District (SCAQMD).

Issue #6: “The Permit states that the respirators are required in the lamp room, but OSHA regulations state that respirators are only required above the .025. Again our job is to protect our employees and follow the CAL OSHA rules.”

Response to Issue #6: This comment relates to Unit 5 special condition #1a. This comment was raised during the comment period for the draft Permit in RTC #3-4. The requirement for the use of a respirator was a change from the draft to final Permit. Pursuant to subsection (a) of section 66271.72 of title 22, California Code of Regulations, the Board is granting review of the issue raised in this comment.

Issue #8: The Petition states: “The aisles are spaced 30 inches apart and provide access all the way to the lot lines. The additional requirement for the four feet only applies to the egress of the building (805).”

Response to Issue #8: This comment relates to Unit 2 special condition #2. The added language to special condition #2 regarding the four-foot spacing requirement first appeared in the final Permit as a response to RTC #3-12. Pursuant to subsection (a) of section 66271.72 of title 22, California Code of Regulations, the Board is granting review of the issue raised in this comment.

Issues #9, 11, 12, and 31

The listed comments relate to DTSC’s policy for managing intact spent fluorescent lamps as hazardous waste. The Board’s response follows the recitation of each of the comments.

Issue #9: The Petition states: “Spent fluorescent lamps are universal waste and may be store either in the trailers or outside the trailers on the asphalt. Trailers are not fixed locations; they come and go.”

This comment relates to Unit 2 Special Condition #3. The added language to special condition #3 regarding storage requirement for universal waste first appeared in the final Permit as a response to RTC #3-14.

Issue #11: The Petition states: “No hazardous waste other than spent fluorescent lamps, etc. Again, intact fluorescent lamps are not hazardous and are universal waste.”

This comment relates to Unit 2 Special Condition #5. The appeal comment responds to DTSC’s RTC #3-15 and added Permit condition. The Permit condition first appeared in the final permit.

Issue #12: The Petition states: “This reference is for closure 66264.178. Intact Lamps are universal waste and as such decontamination is not required.”

This comment relates to Unit 2 special condition #6. The comment responds to DTSC’s RTC #3-16.

Issue #31: The Petition states: “An important policy consideration is that the new Lighting Resources is now subject to the requirements of 66261.9(a) and (b);, “Unless specified otherwise in section 66273.60, universal wastes shall be managed as hazardous wastes pursuant to chapters 10 through 16, 18, and 20

through 22 of this division upon arrival at a destination facility.” Why this additional requirement now applies to Universal Waste spent lamps is not clear. A review of our competitor’s Permit shows that they are not subject to this requirement. There needs to be clarification on this point determine the policy going forward. Lighting Resources should not be held to a different standard than our competitors.”

Response to Issues #9, 11, 12, 31: Comment relates to DTSC’s policy on requiring spent fluorescent lamps to be treated as hazardous waste pursuant to subsection (b) of 66261.9. This comment also raises the issue of inconsistent application of this policy across similar facilities.

The issues to be decided on appeal are first, whether the DTSC’s policy is applicable to the Permittee, and second, whether DTSC applies this policy uniformly to similar facilities. The Board accepts the review of the issues raised in comments #9, 11, 12, and 31.

Issue #24: The Petition states: “Again this statement is overreaching. Make any changes to the existing building?? Does this include plumbing, roofing, etc. What modification would it be labeled and would be the cost. We prefer to modify this permit to reflect what is happening today not 5 years ago.”

Response to Issue #24: This comment is related to Part V Special Condition #1. This condition first appeared in the final Permit. Pursuant to subsection (a) of section 66271.72 of title 22, California Code of Regulations, the Board is granting review of the issue raised in this comment.

Issue #27: The Petition states: “The Permittee shall collect ALL rainwater within the units. This is an impossible request. The stormwater permit provides all rules and regulations with regard to collection methods and testing.”

Response to Issue #27: This comment relates to Part V Special Condition #16. The appeal comment responds to DTSC’s RTC #3-30. The Permittee alleges compliance towards the Permit condition is infeasible. The Board is granting review of the issue raised in this comment.

Issue #30: The Petition states: “This shall be a sign posted at the receiving door showing approved truck route and anyone calling for directions will be advised to use Grove to Francis.”

Response to Issue #30: This comment relates to Part V Special Condition #29. The appeal comment responds to DTSC’s RTC #4-1 and added Permit condition

to the final Permit. Pursuant to subsection (a) of section 66271.72 of title 22, California Code of Regulations, the Board is granting review of the issue raised in this comment.

- (b) **Issues dismissed for review.** The remaining issues identified matters for which modifications to the permit are needed. The Board does not issue permit modifications, and the appeal process is not available as a substitute for a permit modification application. The following issues do not meet the standard for acceptance under subsection (a) of section 66271.72 of title 22, California Code of Regulations:

Issue #1: The Petition states: “The address of 1919 Williams Street for owner and operator have been changed in RCRAInfo to 805 East Francis St. effective 2021.”

Response to Issue #1: The language contained in the final Permit is verbatim from the draft permit. Further comments were not raised during the comment period. The Petition fails to meet the set criteria set forth of subsection (a) of section 66271.72 of title 22, California Code of Regulations; therefore, the Board denies review of the issue raised in this comment.

Issue #7: The Petition states: “A new fence has been added to the property that is from the sidewalk to the building on the east and the fence on the west. This means that the entire lot including sorting areas, parking spaces and unloading space is now available and secure 24/7.”

Response to Issue #7: The Petition fails to meet the set criteria set forth of subsection (a) of section 66271.72 of title 22, California Code of Regulations; therefore, the Board denies review of the issue raised in this comment.

Issue #10: The Petition states: “With in 30 days - this has substantially increased the Unit 2 area that was not part of the original application. It has also added the burden of requiring a modification to the Permit for building which should not be part of the Permit process. It appears that this increase in Unit 2 was to placate the Ontario-Montclair School District.”

Response to Issue #10: This comment relates to Unit 2 Special Condition #4. The appeal comment responds to DTSC’s RTC #3-15 and the changes to the storage area from the draft to final permit. However, the change in area is consistent with the information provided by the Permittee on the intended use of additional storage areas within Unit 2. The Petition also refers to Permit modification requirement for

building. This comment is outside the scope of the Unit 2 Special Condition #4. For the above reasons, the Board denies review of the issues raised in this comment.

Issue #13: The Petition states: “DOT 17C and 17 H drums are no long approved for shipping hazardous materials. This coding has been replaced with much more specific labeling system. Packing Groups include I, II, III depending on the type of material shipped. For example, both PCB lighting ballasts and mercury containing phosphor powder are Misc. Hazards (hazardous waste) and are, therefore, D009 and Packing Group III (Minor Danger). The container marking may be X, Y, Z as all three Cover Packing Group III. In additional, buckets are often used for PCB ballasts. The same markings apply.”

Response to Issue #13: This comment relates to the physical description of Unit 3. The language contained in the final Permit is verbatim from the draft permit. This comment was not raised during the comment period. The Petition fails to meet the set criteria set forth of subsection (a) of section 66271.72 of title 22, California Code of Regulations; therefore, the Board denies review of the issue raised in this comment.

Issue #14: The Petition states: “Over the 10 years since the original application was provided, PCB ballasts have reduced by approximately 80%. Therefore, the total Containers of 20 is unrealistic and should be reduced to 8.”

Response to Issue #14: This comment relates to the maximum capacity description of Unit 3. This comment was raised during the comment period for the draft Permit in RTC #3-17. The quantity of drums (20) listed in the draft and final Permit is consistent with the Permit application submitted by the Permittee in 2020. This comment does not allege any error from DTSC and has acknowledged that a modification is needed. For those reasons, the Board denies review of the issue raised in this comment.

Issue #15: The Petition states: “The facility no longer processes mercury devices but transships them to out Indiana facility.”

Response to Issue #15: This comment relates to the waste types processed in Unit 3. This comment was raised during the comment period for the draft Permit in RTC #3-18. The list of waste types appearing in the draft and final Permit is consistent with the Permit application submitted by the Permittee in 2020. This comment does not allege any error from DTSC. Rather, the applicant had opportunities to update this information prior to public review of the draft Permit

and has acknowledged that a modification is needed. For those reasons, the Board denies review of the issue raised in this comment.

Issue #17: The Petition states: “Maximum Capacity of the machine based on the current system is set by SCAQMD at 2,496,000 lamps per month.”

Response to Issue #17: This comment relates to the maximum capacity of Unit 5. The language contained in the final Permit is verbatim from the draft permit. This comment was not raised during the comment period. The Petition fails to meet the set criteria set forth of subsection (a) of section 66271.72 of title 22, California Code of Regulations; therefore, the Board denies review of the issue raised in this comment.

Issue #18: The Petition states: “This equates to 32,000 lamps per shift or 4,000 per hour.”

Response to Issue #18: This comment relates to the maximum capacity of Unit 5. The language contained in the final Permit is verbatim from the draft permit. This comment was not raised during the comment period. The Petition fails to meet the set criteria set forth of subsection (a) of section 66271.72 of title 22, California Code of Regulations; therefore, the Board denies review of the issue raised in this comment.

Issue #22: The Petition states: “Unit 8 is the new building that may still be built but on a lesser scale and will not include a new Balcan machine. Currently the main purpose will be to provide a roof and a/c for the workers for receiving and sorting.”

Response to Issue #22: This comment relates to the physical description of Unit 8. The language contained in the final Permit is verbatim from the draft permit. This comment was not raised during the comment period. The Petition fails to meet the set criteria set forth of subsection (a) of section 66271.72 of title 22, California Code of Regulations; therefore, the Board denies review of the issue raised in this comment.

Issue #23: The Petition states: “Unit 9 will no longer be installed in Ontario. The number of years to get to this point has made it no longer feasible.”

Response to Issue #23: This comment relates to the installation of Unit 9 at the Facility. The language contained in the final Permit is verbatim from the draft permit. Comments related to the feasibility of Unit 9 were not raised during the

comment period. The Petition fails to meet the set criteria set forth of subsection (a) of section 66271.72 of title 22, California Code of Regulations; therefore, the Board denies review of the issue raised in this comment.

Issue #25: The Petition states: “The only hazardous waste at the facility is mercury containing phosphor powder and PCB ballasts or transformers. These items will continue to be stored in the Hazardous Waste area of the original building.”

Response to Issue #25: This comment relates to Part V Special Condition #2. The language contained in the final Permit is verbatim from the draft permit. This comment was not raised during the comment period. The Petition fails to meet the set criteria set forth of subsection (a) of section 66271.72 of title 22, California Code of Regulations; therefore, the Board denies review of the issue raised in this comment.

Issue #26: The Petition states: “Any new structure will not change the old operations methods and storage.”

Response to Issue #26: This comment relates to Part V Special Condition #3. The special condition was renumbered from #2 to #3, however, the language contained in the final Permit is verbatim from the draft permit. This comment was not raised during the comment period. The Petition fails to meet the set criteria set forth of subsection (a) of section 66271.72 of title 22, California Code of Regulations; therefore, the Board denies review of the issue raised in this comment.

Issue #28: The Petition states: “A drum is nearly 36 inches high x 2 = 72 plus pallets (7 feet at least).”

Response to Issue #28: This comment relates to Part V Special Condition #20. The language contained in the final Permit is verbatim from the draft permit. This comment was not raised during the comment period. The Petition fails to meet the set criteria set forth of subsection (a) of section 66271.72 of title 22, California Code of Regulations; therefore, the Board denies review of the issue raised in this comment.

Issue #29: The Petition states: “Is this report not automatically available to any agency?”

Response to Issue #29: The Petition fails to meet the set criteria set forth of subsection (a) of section 66271.72 of title 22, California Code of Regulations; therefore, the Board denies review of the issue raised in this comment.

(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.

(3) Written Briefing Schedule.

- (a) Appellant shall file and serve its moving brief supporting the issues accepted for review no later than 45 days after issuance of this order.
- (b) DTSC's Permitting Division shall file and serve its opposition brief no later than 30 days after the moving brief is filed.
- (c) Appellant may file and serve its reply brief no later than 15 days after the opposition brief(s) is/are filed.

(4) Hearing. A public hearing in this matter is tentatively set for October 26, 2023 at a location and time to be determined (TBD). The parties are directed to provide presentations to the Clerk of the Board in advance of the public hearing in accordance with Rules for the Conduct of Public Hearings in Standing Order 23-02.

IT IS SO ORDERED.

Adopted at a public meeting of the Board held on June 15, 2023.

Clerk of the Board: Sheena Q. Brooks
Sheena Q. Brooks

Approved as to Form: Gregory Forest
Gregory A. Forest