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8 BOARD OF ENVIRONMENTAL SAFETY
9 DEPARTMENT OF TOXIC SUBSTANCES CONTROL
10 CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
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12 Hazardous Waste Facility Permit Appeal
in the Matter of:

13 Permit Applicant: Lighting Resources, LLC

14 Permitted Facility: Lighting Resources, LLC
15 805 East Francis Street
Ontario, California 91761

16 Permit Number: 2021/22-HWM-11

17 EPA ID No. CAR 000 156 125
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Docket No. FY22/23-01

**APPELLANT LIGHTING RESOURCES
LLC'S MOTION FOR CONTINUANCE
OF HEARING**

1 **I. INTRODUCTION**

2 Appellant Lighting Resources, LLC (“LRL”) hereby moves to continue the public hearing
3 in this matter from October 26, 2023 to the Board of Environmental Safety’s (the “Board”) next
4 regularly scheduled meeting on November 29 or 30, 2023, the Board’s next subsequently
5 scheduled meeting, or to such later date convenient for the Board and the parties in this matter.
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7 As discussed further below, LRL’s counsel in this matter, Ira J. Klein, is not available on October
8 26, 2023. As a result, this continuance is necessary and supported by good cause. Counsel for
9 LRL has inquired multiple times with counsel for the Department of Toxic Substances Control
10 (the “Department”) to ascertain the Department’s position on this motion for continuance. As of
11 the date of this motion, the Department has not yet conveyed its final position.

12 **II. ARGUMENT**

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14 The Board’s Standing Order 23-02, Rules for the Conduct of Public Hearings, permits a
15 continuance where there is a “compelling legal reason why the hearing must be continued.”
16 Standing Order 23-02 at § 8(a).¹ Such circumstances exist here.

17 Good cause exists for a continuance because LRL’s counsel, Ira J. Klein, is unavailable on
18 October 26, 2023. Mr. Klein is scheduled to begin a trial in a complex environmental matter on
19 behalf of the Successor Agency to the Former Emeryville Redevelopment Agency and the City of
20 Emeryville (collectively, “Emeryville”) in the United States District Court, Northern District of
21 California on October 10, 2023. That action is styled as *The Successor Agency to the Former*
22 *Emeryville Redevelopment Agency and the City of Emeryville v. Swagelok Company, et al.*, Case
23 No, 3:17-cv-00308-WHO (“Emeryville Matter”). The complaint in the Emeryville Matter was
24 filed in 2017. The trial date in the Emeryville Matter was continued to October 10, 2023 by order
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28 ¹ A request for continuance is timely when it is made more than 30 days prior to the scheduled
 hearing date. Standing Order 23-02 at § 8(a).

1 of the court on April 5, 2023.

2 Initially, counsel anticipated that the Emeryville Matter might settle, thereby obviating the
3 need for a continuance in this matter and rendering any request for a continuance premature. The
4 parties in the Emeryville Matter expended significant effort towards settlement, including the use
5 of a private mediator, independent settlement discussions, and, over the summer, a referral to and
6 work with a magistrate judge. Despite these significant efforts, no resolution has been obtained
7 or appears to be forthcoming. The Emeryville Matter is therefore proceeding to trial.

8
9 The trial in the Emeryville Matter is expected to last for four weeks and will involve over
10 two dozen witnesses. The litigation is of vital importance to Emeryville. Recovery of response
11 costs from responsible parties could exceed \$50 million. As a result, LRL's counsel will be
12 unable to participate in the hearing scheduled for this matter on October 26, 2023, nor will he be
13 in a position to prepare LRL's presentation to the Board for that date. Proceeding without LRL's
14 counsel would cause irreparable harm to LRL because Mr. Klein is the primary attorney working
15 on the permit appeal. Continuing to hold the public hearing on a date when Mr. Klein is
16 unavailable would deprive LRL of its legal representation at the hearing, thereby creating serious
17 due process and fairness concerns. *Cohen v. Herbert*, 186 Cal. App. 2d 488, 494 (1960) ("The
18 denial of a continuance which has the practical effect of denying the applicant a fair hearing is
19 often held reversible error"); *see also Cotton v. StarCare Medical Group, Inc.*, 183 Cal. App. 4th
20 437, 443-44 (finding good cause to continue trial where counsel's unavailability was due to
21 vacation).

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24 Further, no prejudice would result from a continuance. A continuance will not impede or
25 otherwise affect the Department's ability to present its arguments at a later scheduled hearing. A
26 continuance will also provide LRL and the Department additional time to discuss the issues that
27 are currently before the Board on appeal. LRL anticipates that further discussions with the
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1 Department may narrow the issues which the Board must consider, thereby conserving the
2 Board's resources.

3 **V. CONCLUSION**

4 For the reasons stated above, LRL respectfully requests a continuance of the hearing for
5 this matter to coincide with the Board's next regularly scheduled meeting on November 29 or 30,
6 the Board's next subsequently scheduled meeting, or such later date as may be convenient for the
7 Board and the parties in this matter.
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10 Respectfully submitted,
11 DATED: September 12, 2023 COX, CASTLE & NICHOLSON LLP
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13 By: /s/ Ira J. Klein
14 Ira J. Klein
15 Attorneys for Permit Applicant
16 Lighting Resources, LLC
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PROOF OF SERVICE AND CERTIFICATION

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2029 Century Park East, Suite 2100, Los Angeles, California 90067-3284. My email address is mwalroth@coxcastle.com.

☐ (FOR MESSENGER) My business address is _____.

On September 12, 2023, I served the foregoing document(s) described as **APPELLANT LIGHTING RESOURCES LLC'S MOTION FOR CONTINUANCE OF HEARING** on ALL INTERESTED PARTIES in this action by placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope (except when served via fax or e-mail) addressed as follows:

Please see attached Service List.

On the above date:

☐ (BY ☐ U.S. MAIL/BY ☐ EXPRESS MAIL) The sealed envelope with postage thereon fully prepaid was placed for collection and mailing following ordinary business practices. I am aware that on motion of the party served, service is presumed invalid if the postage cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing set forth in this declaration. I am readily familiar with Cox, Castle & Nicholson LLP's practice for collection and processing of documents for mailing with the United States Postal Service and that the documents are deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business.

☐ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

☐ (BY FACSIMILE TRANSMISSION) On September 12, 2023, at Los Angeles, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2.306 of the California Rules of Court. The telephone number of the sending facsimile machine was (____) ____-____, and the telephone number of the receiving facsimile number was (____) ____-____. A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

☒ (BY E-MAIL OR ELECTRONIC TRANSMISSION) - On September 12, 2023, at Los Angeles, California, I served the above-referenced document by electronic mail to the e-mail address of the addressee(s) pursuant to Rule 2.251 of the California Rules of Court. The transmission was complete and without error and I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.


☐ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

☐ (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

I hereby certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 12, 2023, at Los Angeles, California.



MyKieu Walroth

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