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HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

MARY ROMAIDIS
CLERK
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

**BEFORE THE HEARING BAORD
OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Appeal of
OWENS CORNING (Santa Clara)
From the Denial of Emission Reduction Credits:
Application Number 18028

No. 3276

**ORDER SETTING ASIDE AND
VACATING MAY 11, 2000 ORDER
DENYING APPEAL AND SCHEDULING
FURTHER PROCEEDINGS**

The above-entitled matter is an appeal from the Denial of Emission Reduction Credits:
Application Number 18028.

This matter was originally heard on September 2, 1999, November 2, 1999, December 2, 1999,
December 16, 1999, February 10, 2000, March 2, 2000, and March 8, 2000. After taking evidence and
hearing argument on behalf of the Appellant, Owens Corning, and the Air Pollution Control Officer
("APCO") of the Bay Area Air Quality Management District (the "District"), and giving members of the
public the opportunity to testify, on May 11, 2000, the Hearing Board rendered its decision and filed its
Order Denying Appeal.

In the Order Denying Appeal, the Hearing Board found that the Appellant had not sustained its
burden of proving that the APCO's action in refusing the application was not proper and thus denied the
appeal. The basis of the Hearing Board's finding was that Owens Corning had eliminated the use of
niter that caused NOx emissions in order to eliminate odors from Appellant's Santa Clara facility. The
hearing Board further found that the elimination of niter was thus an action taken to comply with
applicable regulatory requirements limiting or prohibiting odorous emissions or emissions which are a
public nuisance. The District had denied Application Number 18028 on three grounds. Having reached

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1 its decision on the first of these grounds, the Hearing Board determined that the Appeal was moot as to
2 the other two grounds for denial and did not consider or render a decision on those grounds for denial.

3 Appellant Owens Corning subsequently filed a Petition for Writ of Mandate in the Superior
4 Court of the State of California in and for the County of Santa Clara seeking a peremptory writ of
5 mandate compelling reversal of the Order Denying Appeal and further compelling the Hearing Board to
6 consider the remaining grounds on which Application Number 18028 was denied by the District.
7 Owens Corning v. Bay Area Air Quality Management District, et al., Santa Clara County Superior
8 Court, Case No. CV790379. Following briefing and a trial on the Petition, on October 19, 2003, the
9 Honorable Leslie C. Nichols, Judge of the Santa Clara County Superior Court, issued a Peremptory Writ
10 of Mandate finding that the question whether Petitioner Owens Corning's NOx emission reduction was
11 necessary to comply with applicable regulatory requirements is decided in Petitioner's favor and
12 commanding Respondent hearing Board immediately upon receipt of the Writ to set aside and vacate the
13 Hearing Board's Order Denying Appeal in Docket No. 3276. The Peremptory Writ of Mandate further
14 ordered that Respondent Hearing Board shall consider the two remaining issues, which were not decided
15 on a full record in light of the Hearing Board's determination that those issues were moot.

16 A Pro Forma Hearing was held in this matter on November 13, 2003. Toby Sherwood, Assistant
17 Counsel appeared on behalf of the District and the APCO, and David R. Farabee of Pillsbury Winthrop
18 appeared on behalf of Appellant, Owens Corning. The District informed the Hearing Board that it has
19 reconsidered the two remaining issues and will propose and public notice issuance of the banking credits
20 in the near future. In light of this development, the Hearing Board set a further evidentiary hearing in
21 this matter for March 4, 2004, with the final date to resolve the two remaining issues to be June 1, 2004.

22 THEREFORE, in accordance with the October 19, 2003, Peremptory Writ of Mandate, THE
23 HEARING BOARD ORDERS THAT ITS Order Denying Appeal IS HEREBY SET ASIDE AND
24 VACATED. THE HEARING BOARD FURTHER ORDERS that in light of the District's
25 representations regarding the process for issuance of credits, a further evidentiary hearing will be held in


1 this matter on March 4, 2004, and that the two remaining issues will be finally resolved by no later than
2 June 1, 2004.

3 Moved by: Allan R. Saxe, Esq.

4 Seconded by: Terry A. Trumbull, Esq.

5 AYES: Christian Colline, P.E., Julio Magalhães, Ph.D., Allan R. Saxe, Esq.,
6 Terry A. Trumbull, Esq., Thomas M. Dailey, M.D.

7 NOES: none

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10 Thomas M. Dailey, M.D., Chair

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Dated