



BOARD OF DIRECTORS
FINANCE AND ADMINISTRATION COMMITTEE

September 18, 2024

BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

COMMITTEE MEMBERS

DAVINA HURT – CHAIR
MARGARET ABE-KOGA
DAVID HAUBERT
RAY MUELLER
MARK ROSS

LYNDA HOPKINS - VICE CHAIR
JUAN GONZÁLEZ III
TYRONE JUE
KATIE RICE

**MEETING LOCATION(S) FOR IN-PERSON ATTENDANCE BY
COMMITTEE MEMBERS AND MEMBERS OF THE PUBLIC**

**Bay Area Metro Center
1st Floor Board Room
375 Beale Street
San Francisco, CA 94105**

**Office of Contra Costa County
Supervisor John Gioia
Conference Room
11780 San Pablo Ave., Suite D
El Cerrito, CA 94530**

**Santa Rosa Junior College Campus
Doyle Library, Room 148
1501 Mendocino Ave.
Santa Rosa, CA, 95401**

**San Mateo County
Board of Supervisors Offices
500 County Center - 5th Floor
Redwood City, CA 94063**

THE FOLLOWING STREAMING OPTIONS WILL ALSO BE PROVIDED

These streaming options are provided for convenience only. In the event that streaming connections malfunction for any reason, the Finance and Administration Committee reserves the right to conduct the meeting without remote webcast and/or Zoom access.

The public may observe this meeting through the webcast by clicking the link available on the air district's agenda webpage at www.baaqmd.gov/bodagendas.

Members of the public may participate remotely via Zoom at <https://bayareametro.zoom.us/j/87380974561>, or may join Zoom by phone by dialing (669) 900-6833 or (408) 638-0968. The Webinar ID for this meeting is: 873 8097 4561

Public Comment on Agenda Items: The public may comment on each item on the agenda as the item is taken up. Members of the public who wish to speak on a matter on the agenda will have two minutes each to address the Committee on that agenda item, unless a different time limit is established by the Chair. No speaker who has already spoken on an item will be entitled to speak to that item again.

The Committee welcomes comments, including criticism, about the policies, procedures, programs, or services of the District, or of the acts or omissions of the Committee. Speakers shall not use threatening, profane, or abusive language which disrupts, disturbs, or otherwise impedes the orderly conduct of a Committee meeting. The District is committed to maintaining a workplace free of unlawful harassment and is mindful that District staff regularly attend Committee meetings. Discriminatory statements or conduct that would potentially violate the Fair Employment and Housing Act – i.e., statements or conduct that is hostile, intimidating, oppressive, or abusive – is *per se* disruptive to a meeting and will not be tolerated.

FINANCE AND ADMINISTRATION COMMITTEE MEETING AGENDA

WEDNESDAY, SEPTEMBER 18, 2024

10:00 AM

1. **Call to Order - Roll Call**

The Committee Chair shall call the meeting to order and the Clerk of the Boards shall take roll of the Committee members.

2. **Pledge of Allegiance**

CONSENT CALENDAR (Items 3 - 5)

The Consent Calendar consists of routine items that may be approved together as a group by one action of the Committee. Any Committee member or member of the public may request that an item be removed and considered separately.

3. **Approval of the Draft Minutes of the Finance and Administration Committee Meeting of May 15, 2024**

The Committee will consider approving the Draft Minutes of the Finance and Administration Committee Meeting of May 15, 2024.

4. **Financial Update for the Fiscal Year (FY) 2023-2024 Third Quarter Ending March 31, 2024**

The Committee will receive the FY 2023-2024 financial update for the third quarter ending March 31, 2024.

5. **Hearing Board Quarterly Report: April 2024 - June 2024**

The Committee will receive the Hearing Board Quarterly Report for the period of April 2024 through June 2024.

ACTION ITEM(S)

6. Amendment to Staff Attorney Position Classification to Reduce Barriers to Recruiting

The Committee will consider recommending to the Board of Directors that the Board amend the "Staff Attorney" position classification to add a "Staff Attorney Trainee" level for recent law school graduates who want to begin work while awaiting their bar exam results and admission to practice (subject to supervision by a licensed attorney as required by applicable rules on the practice of law in California). This will allow recent graduates such as those selected for the new Environmental Justice Law Fellowship Program to start working immediately, making the program more attractive to potential candidates and allowing those selected to begin working and earning a salary as soon as they take the bar exam. Allowing recent law school graduates to start work in this manner is a standard employment practice for hiring new lawyers, and it will help reduce barriers to entry by allowing new graduates with a financial need to start working right away to consider the new Environmental Justice Law Fellowship Program as a viable employment option. This item will be presented by Alexander Crockett, General Counsel.

OTHER BUSINESS

7. Public Comment on Non-Agenda Matters

Pursuant to Government Code Section 54954.3, members of the public who wish to speak on matters not on the agenda will be given an opportunity to address the Committee. Members of the public will have two minutes each to address the Committee, unless a different time limit is established by the Chair. The Committee welcomes comments, including criticism, about the policies, procedures, programs, or services of the District, or of the acts or omissions of the Committee. Speakers shall not use threatening, profane, or abusive language which disrupts, disturbs, or otherwise impedes the orderly conduct of a Committee meeting. The District is committed to maintaining a workplace free of unlawful harassment and is mindful that District staff regularly attend Committee meetings. Discriminatory statements or conduct that would potentially violate the Fair Employment and Housing Act – i.e., statements or conduct that is hostile, intimidating, oppressive, or abusive – is per se disruptive to a meeting and will not be tolerated.

8. Committee Member Comments

Any member of the Committee, or its staff, on his or her own initiative or in response to questions posed by the public, may: ask a question for clarification, make a brief announcement or report on his or her own activities, provide a reference to staff regarding factual information, request staff to report back at a subsequent meeting concerning any matter or take action to direct staff to place a matter of business on a future agenda. (Gov't Code § 54954.2)

9. Time and Place of Next Meeting

Wednesday, October 16, 2024, at 10:00 a.m. at 375 Beale Street, San Francisco, CA 94105. The meeting will be in-person for the Finance and Administration Committee members and members of the public will be able to either join in-person or via webcast.

10. Adjournment

The Committee meeting shall be adjourned by the Chair.

CONTACT:

MANAGER, EXECUTIVE OPERATIONS
375 BEALE STREET, SAN FRANCISCO, CA 94105
vjohnson@baaqmd.gov

(415) 749-4941
FAX: (415) 928-8560
BAAQMD homepage:
www.baaqmd.gov

- Any writing relating to an open session item on this Agenda that is distributed to all, or a majority of all, members of the body to which this Agenda relates shall be made available at the Air District's offices at 375 Beale Street, Suite 600, San Francisco, CA 94105, at the time such writing is made available to all, or a majority of all, members of that body.

Accessibility and Non-Discrimination Policy

The Bay Area Air Quality Management District (Air District) does not discriminate on the basis of race, national origin, ethnic group identification, ancestry, religion, age, sex, sexual orientation, gender identity, gender expression, color, genetic information, medical condition, or mental or physical disability, or any other attribute or belief protected by law.

It is the Air District's policy to provide fair and equal access to the benefits of a program or activity administered by Air District. The Air District will not tolerate discrimination against any person(s) seeking to participate in, or receive the benefits of, any program or activity offered or conducted by the Air District. Members of the public who believe they or others were unlawfully denied full and equal access to an Air District program or activity may file a discrimination complaint under this policy. This non-discrimination policy also applies to other people or entities affiliated with Air District, including contractors or grantees that the Air District utilizes to provide benefits and services to members of the public.

Auxiliary aids and services including, for example, qualified interpreters and/or listening devices, to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an equal opportunity to participate fully in the benefits, activities, programs and services will be provided by the Air District in a timely manner and in such a way as to protect the privacy and independence of the individual. Please contact the Non-Discrimination Coordinator identified below at least three days in advance of a meeting so that arrangements can be made accordingly.

If you believe discrimination has occurred with respect to an Air District program or activity, you may contact the Non-Discrimination Coordinator identified below or visit our website at www.baaqmd.gov/accessibility to learn how and where to file a complaint of discrimination.

Questions regarding this Policy should be directed to the Air District's Non-Discrimination Coordinator, Suma Peesapati, at (415) 749-4967 or by email at speesapati@baaqmd.gov.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

375 BEALE STREET, SAN FRANCISCO, CA 94105

FOR QUESTIONS PLEASE CALL (415) 749-4941

EXECUTIVE OFFICE:

MONTHLY CALENDAR OF AIR DISTRICT MEETINGS

SEPTEMBER 2024

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Finance and Administration Committee	Wednesday	18	10:00 a.m.	1 st Floor Board Room
Board of Directors Policy, Grants and Technology Committee	Wednesday	18	1:00 p.m.	1 st Floor Board Room
Advisory Council Meeting	Thursday	19	9:30 a.m.	1 st Floor Board Room
Board of Directors Community Advisory Council Meeting	Thursday	19	6:00 p.m.	California State University East Bay Oakland Professional & Conference Center Trans Pacific Center 1000 Broadway, Suite 109 Oakland, CA 94607

OCTOBER 2024

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Meeting	Wednesday	2	10:00 a.m.	1 st Floor Board Room
Board of Directors Stationary Source Committee	Wednesday	9	10:00 a.m.	1 st Floor, Yerba Buena Room
Board of Directors Community Equity, Health and Justice Committee	Wednesday	9	1:00 p.m.	1 st Floor, Yerba Buena Room
Board of Directors Finance and Administration Committee	Wednesday	16	10:00 a.m.	1 st Floor Board Room
Board of Directors Policy, Grants and Technology Committee	Wednesday	16	1:00 p.m.	1 st Floor Board Room
Advisory Council Meeting	Wednesday	30	9:30 a.m.	1 st Floor Board Room

MV 9/9/2024 – 6:28 a.m.

G/Board/Executive Office/Moncal

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Davina Hurt and Members
of the Finance and Administration Committee

From: Philip M. Fine
Executive Officer/APCO

Date: September 18, 2024

Re: Approval of the Draft Minutes of the Finance and Administration Committee
Meeting of May 15, 2024

RECOMMENDED ACTION

Approve the Draft Minutes of the Finance and Administration Committee Meeting of May 15, 2024.

BACKGROUND

None.

DISCUSSION

Attached for your review and approval are the Draft Minutes of the Finance and Administration Committee Meeting of May 15, 2024.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Draft Minutes of the Finance and Administration Committee Meeting of May 15, 2024

Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
(415) 749-5073

Finance and Administration Committee
Wednesday, May 15, 2024

DRAFT MINUTES

This meeting was webcast, and a video recording is available on the website of the Bay Area Air Quality Management District at www.baaqmd.gov/bodagendas

CALL TO ORDER

1. **Opening Comments:** Finance and Administration Committee (Committee) Chairperson, Davina Hurt, called the meeting to order at 10:03 a.m.

Roll Call:

Present, In-Person (Bay Area Metro Center (375 Beale Street, 1st Floor Board Room, San Francisco, California, 94105): Committee Chairperson Davina Hurt; and Directors Juan González III, David Haubert, and Katie Rice.

Present, In-Person Satellite Location (Mountain View City Hall, 500 Castro Street, City Clerk Conference Room, 3rd Floor, Mountain View, CA 94041): Director Margaret Abe-Koga.

Present, In-Person Satellite Location (Santa Rosa Junior College Campus, Doyle Library, Room 148, 1501 Mendocino Ave, Santa Rosa, California, 95401): Vice Chairperson Lynda Hopkins.

Present, In-Person Satellite Location (Office of Contra Costa County Supervisor John Gioia, 11780 San Pablo Ave., Suite D, Conference Room, El Cerrito, California, 94530): Director Mark Ross.

Present, In-Person Satellite Location (Hall of Justice, Criminal Justice Training Room, 400 County Center, 1st Floor, Redwood City, California, 94063): Director Ray Mueller.

Absent: Director Tyrone Jue.

2. **PLEDGE OF ALLEGIANCE**

CONSENT CALENDAR

3. APPROVAL OF THE DRAFT MINUTES OF THE FINANCE AND ADMINISTRATION COMMITTEE MEETING OF APRIL 17, 2024

The Committee approved the Draft Minutes of the Finance and Administration Committee Meeting of April 17, 2024.

4. HEARING BOARD QUARTERLY REPORT: JANUARY 2024 - MARCH 2024

Public Comments

No requests received.

Committee Comments

None.

Committee Action

Director González made a motion, seconded by Director Haubert to **approve** the Draft Minutes of the Finance and Administration Committee Meeting of April 17, 2024, inclusive; and the motion **carried** by the following vote of the Committee:

AYES: Abe-Koga, González, Haubert, Hurt, Mueller, Rice, Ross.
NOES: None.
ABSTAIN: Hopkins.
ABSENT: Jue.

Director González made a motion, seconded by Director Haubert to **accept** the Hearing Board Quarterly Report: January 2024 - March 2024; and the motion **carried** by the following vote of the Committee:

AYES: Abe-Koga, González, Haubert, Hopkins, Hurt, Mueller, Rice, Ross.
NOES: None.
ABSTAIN: None.
ABSENT: Jue.

INFORMATIONAL ITEM

5. UPDATE ON THE AIR DISTRICT’S MANAGEMENT AUDIT RESPONSES

John Chiladakis, Chief Technology Officer, and Hyacinth Hinojosa, Deputy Executive Officer of Finance and Administration, gave the staff presentation *Update on the Air District’s Management Audit Responses*, including: management audit status agenda; Human Resources Corrective Action Plan status and estimated timeline; My Air Online recap; audit recommendation status; celebrating the decommissioning of both legacy systems; cost savings from decommissioning; completed audits; and recommended action.

Public Comments

No requests received.

Committee Comments

The Committee and staff discussed concerns about staff’s proposal to pause external management audits to allow time for internal assessments and Strategic Plan implementation planning, and the suggestion of establishing a time certain for resuming the management audits; whether the Air District offers a permitting portal for transparency with stakeholders and the public, and whether such a portal is an audit recommendation; the suggestions that invoices for permit renewals and applications list details about actions that have been taken, for transparency and improved communication between the Air District and the regulated community; the request that the Air District tracks (in writing) internal changes to the My Air Online system and makes work plans transparent for the public; and the request that the Air District measures customer satisfaction, level of required maintenance of the My Air Online replacement system.

Committee Action

No action taken.

ACTION ITEMS

6. PERMITTING AND COMPLIANCE SYSTEM (MY AIR ONLINE) STATUS UPDATE AND AUTHORIZATION TO EXECUTE CONTRACT AMENDMENTS

Mr. Chiladakis gave the staff presentation *My Air Online Status Update and Authorization to Execute Contract Amendments*, including: outline; My Air Online recap; past and projected costs for maintenance and development; cost savings from Legacy System decommissioning; past and projected costs with decommissioning savings; My Air Online – Enterprise Technology Solutions Fiscal Year Ending (FYE) 25; examples of features in My Air Online (applying for a permit, automated calculations, checking permit application status); and recommended action.

Public Comments

No requests received.

Committee Comments

The Committee and staff discussed whether the My Air Online screenshots within the presentation reflect the current system, or future features of the system; whether status reporting for Engineering, Legal, and Compliance and Enforcement workflows need to be expanded, and are already built out; the request for a My Air Online product roadmap that shows the projected activity over the next six months (Legacy decommissioning, transition and performance enhancements, and Legal Department integration); the manner in which the Air District prioritizes decisions about the My Air Online system and how that affects the customer’s experience (are funds being spending money correctly, how much artificial intelligence is being utilized); whether permit applicants can view the amount of time remaining in the process, and who their assigned Air District permit engineer is; whether the Air District

currently offers a “pre-application” process for those who might want or need an Air District permit in the future and want to know how the process would work, and whether potential permitted facilities may view the history of an existing permit to see what it entails (or the public in general); the way in which the Air District plans to measure the success of the My Air Online system; the suggestion of reaching out to entities who have already launched successful similar infrastructure for lessons learned; the manner in which new Air District regulations may affect the current software, and whether that would delay implementation; and whether the Air District maintains conversation logs that can be shared with applicants, if so, whether those are kept in the My Air Online system, and the suggestion of providing legal language for staff regarding risk management.

Committee Action

Director Haubert made a motion, seconded by Director González, to do the following:

Recommend the Board of Directors **authorize** the Executive Officer/Air Pollution Control Officer (ACPO) to amend current vendor contracts to extend the term of each contract through July 1, 2025, and increase the contracted amounts by the amounts listed in the staff report and totaling \$1.4M for projected expenditures during the first half of Fiscal Year Ending 2025. These expenditures will be contingent upon the Board of Directors’ approval of the proposed FYE 2025 budget which includes these funds.

The motion **carried** by the following vote of the Committee:

AYES: Abe-Koga, González, Haubert, Hopkins, Hurt, Mueller, Rice, Ross.
NOES: None.
ABSTAIN: None.
ABSENT: Jue.

7. MODERNIZATION OF INFORMATION TECHNOLOGY INFRASTRUCTURE

Mr. Chiladakis gave the staff presentation *Modernization of Information Technology Infrastructure*, including: outline; requested action; background; current infrastructure connectivity; proposed infrastructure connectivity; cost; and recommended action.

Public Comments

No requests received.

Committee Comments

The Committee and staff discussed whether Microsoft would provide cloud infrastructure and management, and whether they, or Dell, will be held accountable to the Air District; and the Air District’s definition of “competitively qualified vendors.”

Committee Action

Director González made a motion, seconded by Director Rice, to do the following:

Recommend the Board of Directors approve reallocating and expending Capital Expenditure funds to modernize the Air District's information technology infrastructure, which is at the end of its useful life. Specifically:

- Authorize the Executive Officer/APCO to execute contracts with qualified Information Technology fulfillment partners ePlus Technologies, Inc., CDWG Inc., SSP Data, Inc., and/or SHI, Inc. for information technology equipment and installation services in a total amount not to exceed \$1.5M; and
- Authorize the transfer of funds not to exceed \$650,000 for this effort from multiple program budgets where actual expenditures are below projected expenditures in their Fiscal Year Ending 2024 services, supply and capital budgets; and
- Authorize the Executive Officer/APCO to amend the competitively bid Contract with Dell, Inc to increase the annual expenditure on Microsoft Cloud services by \$250,000 per year.

The motion **carried** by the following vote of the Committee:

AYES: Abe-Koga, González, Haubert, Hopkins, Hurt, Jue, Mueller, Rice, Ross.
NOES: None.
ABSTAIN: None.
ABSENT: Jue.

OTHER BUSINESS

8. PUBLIC COMMENT ON NON-AGENDA MATTERS

No requests received.

9. COMMITTEE MEMBER COMMENTS

None.

10. TIME AND PLACE OF NEXT MEETING

At the end of the meeting, the next meeting of the Finance and Administration Committee was to be June 26, 2024. After the meeting concluded, the next meeting was scheduled for Wednesday, July 10, 2024, but due to a lack of quorum, that meeting had to be cancelled. As a result, the next meeting of the Finance and Administration Committee was scheduled for Wednesday, September 18, 2024, at 10:00 a.m., at 375 Beale Street, San Francisco, CA 94105. The meeting will be in-person for the Finance and Administration Committee members and members of the public will be able to either join in-person or via webcast.

11. **ADJOURNMENT**

The meeting was adjourned at 11:10 a.m.

Marcy Hiratzka
Clerk of the Boards

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Davina Hurt and Members
of the Finance and Administration Committee

From: Philip M. Fine
Executive Officer/APCO

Date: September 18, 2024

Re: Financial Update for the Fiscal Year (FY) 2023-2024 Third Quarter Ending March
31, 2024

RECOMMENDED ACTION

No action requested at this time.

BACKGROUND

None.

DISCUSSION

Staff provides an update on the Air District's General Fund financial activities quarterly. The financial update includes a report on revenues recognized and expenditures incurred during the reporting period. It also includes a summary of cash and investments and the procurement report required for certain procurement for the second quarter ending March 31, 2024, as shown in Attachment A.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Jun Pan
Reviewed by: Stephanie Osaze

ATTACHMENTS:

1. Attachment A -FYE 2024 Third Quarter Financial Report 2024-09-10

Attachment A: Financial Summary for the Third Quarter (FYE 2024)

The finance staff will present an update on the Air District's financial results for the Third quarter of the 2023-2024 fiscal year. The following information summarizes those results.

GENERAL FUND: STATEMENT OF REVENUES – Comparison of Prior Year Quarter Actual and Current Year Budget to Actual

REVENUE TYPE	3rd QTR FY 2023	3rd QTR FY 2024	FY 2024 - % of BUDGETED REVENUES
Property Tax	\$26,106,149	\$27,170,119	61%
Permit Fees*	\$53,186,982	\$54,692,651	87%
Grants (includes AB617)	\$5,547,336	\$4,656,952	29%
Other Revenues	\$5,528,246	\$6,097,427	86%
Total Revenues (exclude transfers)	\$90,368,712	\$92,617,149	71%

GENERAL FUND: STATEMENT OF EXPENDITURES - Comparison of Prior Year Quarter Actual and Current Year Budget to Actual

EXPENDITURE TYPE	3rd QTR FY 2023	3rd QTR FY 2024	FY 2024 - % of BUDGETED EXPENDITURES
Personnel - Salaries	\$40,150,796	\$42,462,029	71%
Personnel - Benefits	\$22,944,256	\$19,861,219	69%
Operational Services and Supplies	\$18,414,911	\$18,652,846	32%
Capital Outlay	\$2,442,254	\$2,952,861	30%
Total Expenditures (General Fund)	\$83,952,216	\$83,928,956	54%

CASH INVESTMENTS IN COUNTY TREASURY – Account Balances as of the Third Quarter

CASH/INVESTMENTS	3rd QTR FY 2023	3rd QTR FY 2024
General Fund	\$108,844,331	\$131,505,380
TFCA	\$121,004,847	\$145,149,185
MSIF	\$63,023,808	\$75,448,681
Carl Moyer	\$85,959,387	\$105,271,952
CA Goods Movement	\$23,541,686	\$22,249,914
AQ Projects	\$2,702,247	\$1,671,455
Vehicles Mitigation	\$26,076,911	\$34,054,996
Total	\$431,153,217	\$515,351,564

VENDOR PAYMENTS

In November 2023, the Board of Directors approved a new interim Procurement Policy in conjunction with adopting the new Administrative Code effective January 1.

Pursuant to Section 2 of the Procurement Policy, quarterly reporting in lieu of Board Authorization is permissible for renewal of contracts that exceed \$200,000. For all such contracts, recurring payments under these contracts shall be presented in the quarterly financial report.

The quarterly reporting of payments is limited to only the following categories of goods or services:

- 1) Utilities
- 2) Software Licenses
- 3) Software as a Service
- 4) OEM Equipment Warranties
- 5) OEM Equipment Maintenance/Service
- 6) Legal Services
- 7) Equipment Leases
- 8) Bay Area Headquarters Authority common area and shared services agreements
- 9) Employee Benefits (CalPERS, Life Insurance, FSA, etc.)
- 10) Fuel (e.g., WEX card)

Below is a list of eligible categories of goods and services payments made in the 36-month period as noted above for the reporting requirement of over \$100,000.

In addition, recurring benefit payments made by the Air District on behalf of its employees are included in the quarterly report to ensure transparency. These benefit payments include pension, health, dental and vision expenditures incurred in the second quarter of the 2023-2024 fiscal year and have been appropriately budgeted as a part of the overall Air District budget.

Thirty-Six Month Payment by Categories

Payment Categories	AMOUNT PAID (April 2021 - March 2024)
UTILITIES	
AT & T CALNET	164,293
COGENT COMMUNICATIONS, INC.	179,491
COMCAST CABLE COMMUNICATIONS	546,535
FASTRAK	113,185
PACIFIC GAS & ELECTRIC COMPANY	707,066
VERIZON WIRELESS	721,250
WEX FLEET UNIVERSAL-ENTERPRISE	486,978
SOFTWARE LICENSES	
EPLUS TECHNOLOGY, INC.	164,565
ORACLE AMERICA, INC.	143,078
SOFTWARE AS A SERVICE	
LIGHTHOUSE	117,262
MICROSOFT CORPORATION	458,364
DOCUSIGN	113,041
OEM EQUIPMENT MAINTENANCE/SERVICE	
AGILENT TECHNOLOGIES	106,449
CDW GOVERNMENT	747,232
LEGAL SERVICES	
SLOAN SAKAI YEUNG & WONG LLP	500,607
EQUIPMENT LEASES	
CANON FINANCIAL SERVICES, INC.	173,537
ENTERPRISE FLEET SERVICES	1,387,239
ENTERPRISE HOLDINGS, INC	111,315
OTHER	
CAL-CARD PROGRAM	445,661

The Third Quarter of FYE 2024 Health and Benefits Payments

Payment Categories	AMOUNT PAID (JULY 2023 - MAR 2024)
HEALTH & BENEFITS	
BENEFIT COORDINATORS CORPORATION	1,619,179
CA PUBLIC EMP RET SYSTEM- HEALTH	7,622,052
CA PUBLIC EMP RET SYSTEM- PENSION	8,749,231
P & A ADMINISTRATIVE SERVICES	333,653

CONTRACTS:

In November 2023, the Board of Directors approved a new interim Procurement Policy in conjunction with adopting the new Administrative Code effective January 1.

Pursuant to Section 9.4(a) of the Administrative Code, the APCO may execute contracts in an amount that does not exceed two hundred thousand dollars (\$200,000).

As mandated in Sections 9.4(b), 9.4(c), and 9.4(d) of the Administrative Code, and Section 2 of the Procurement Policy, quarterly reporting is required of all APCO authorized contracts (including amendments to contracts) with a contract value that exceeds \$100,000. For purposes of applying the \$100,000 Board of Directors reporting threshold, the value of a contract shall be determined by adding the amount of the procurement to the sum of all previous procurements from the same vendor in excess of \$30,000 (under a single purchase order) for the preceding 36-month period.

Below is a list of eligible contracts executed during the FY24 Third Quarter reporting period.

Vendor	Synopsis	Total Contract Value	Date Executed
New Contracts - 9.4 (b)			
CipherEx Inc.	Network infrastructure maintenance and support	\$105,000.00	13-Mar-24
Enterprise Fleet Management, Inc.	Open-end lease for three (3) vehicles for 60 months	\$131,136.60	18-Jan-24
The Regents of the University of California - Irvine	Develop methods for estimating Biogenic Emissions in the Bay Area	\$145,000.00	06-Mar-24
Amendments - 9.4 (c)			
Deborah Jordan	Strategic Planning Consulting Services	\$145,000.00	08-Feb-24
Marie Harrison Community Foundation Inc.	Development and administration of the District's Marie Harrison Environmental Justice Scholarship	\$145,000.00	10-Feb-24
Nancy Feldman	Legal Office Consulting Services	\$195,000.00	16-Feb-24
Emergency - 9.4 (d)			
Digital Mountain	Information Services Outage	\$150,000.00	29-Jan-24
Microsoft Licensing, GP	Information Services Outage	\$120,000.00	01-Feb-24

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Davina Hurt and Members
of the Finance and Administration Committee

From: Chairperson Valerie J. Armento, Esq., and
Members of the Hearing Board

Date: September 18, 2024

Re: Hearing Board Quarterly Report: April – June 2024

RECOMMENDED ACTION

No action requested at this time.

DISCUSSION

This report covers the second calendar quarter (April – June) of 2024.

- Held two hearings (also held two pre-hearing conferences);
- Processed two orders: and
- Collected a total of \$9,256.00 in Hearing Board filing fees

Below is a detail of Hearing Board activity during the same period:

**Docket: 3746 – Air Pollution Control Officer (APCO) vs. Martin Marietta Materials, Inc. –
Accusation of Violation of Regulation 2-1-302 and Request for Conditional Order for
Abatement**

Location: San Francisco County; City of San Francisco

Regulation(s): Regulation 2 Rule 1, Section 302 (Permits, General Requirements, Permit to Operate)

Synopsis: Respondent operates an unpermitted sand yard located at Pier 92 at 480 Amador Street in San Francisco (hereinafter “Facility” or “Pier 92”), on land owned by and leased from the Port of San Francisco.

From the APCO:

The Facility receives sand dredged from the San Francisco Bay, washes it, and stores it in stockpiles for sale to customers. The Facility’s operations result in emissions of air pollutants, including particulate matter and respirable crystalline silica. These are constituents of the sand that the Facility handles, and they can pose a threat to public health if they become airborne and

are emitted into the air and the surrounding community in quantities exceeding applicable regulatory limits.

Until 2017, the Facility operated subject to an exemption from the Air District's permitting requirements. This exemption provides that certain sand transfer operations do not need an Air District permit if the sand maintains a sufficient moisture level. Keeping the sand adequately wetted prevents particulate matter and crystalline silica from being emitted in quantities that would cause significant public health impacts. The Air District does not require a permit for the exempt operations, as long as they maintain a sufficient moisture content, given the low potential for significant air quality and public health impacts.

In June 2017, the Air District discovered that the sand was not being kept sufficiently wetted to satisfy the requirements for an exemption. At that point, the Facility required an operating permit under Air District Regulation 2-1-302.1 Ongoing operations after that point were, and have been, in violation of Regulation 2-1-302.

The Facility's then-owner, Lehigh Hanson, Inc., applied for a permit in August 2017, and Air District staff have been evaluating the application since that time—initially with Lehigh Hanson, and more recently with Martin Marietta, which acquired the Facility in October of 2021.

Most recently, in July 2023, Martin Marietta proposed reconstructing the Facility completely and replacing the existing operation with a new, state-of-the-art facility. Replacing the current Facility with an upgraded facility will provide better protections for the community, a laudable goal.

The APCO seeks a Conditional Order of Abatement and compliance with interim operating conditions.

Fees collected this quarter: N/A

Status: Accusation filed by Complainant on October 3, 2023; Accusation Certificate of Service filed by Complainant on October 4 and 5, 2023; on October 4, 2023, Complainant requested pre-hearing conference with both parties and Hearing Board Chair; first pre-hearing conference held on October 17, 2023; on October 16, 2023, Respondent requested that the Hearing Board grant Respondent an additional 90 days (but no later than 20 working days before any scheduled hearing) to file its Notice of Defense (this was granted, with the new due date being March 18, 2024); second pre-hearing conference held on November 28, 2023; on February 8, 2024, parties filed joint status update and request for hearing date; Notice of Hearing (scheduled for April 16, 2024) filed and issued on February 15, 2024; joint status update sent to the Hearing Board on March 5, 2024; on March 15, 2024, Respondent requested that the Hearing Board grant Respondent an additional extension to file Notice of Defense (this was granted, with the new due date being March 25, 2024); on March 18, parties filed joint status update; on March 21, 2024, Respondent requested that the Hearing Board grant Respondent an additional extension to file Notice of Defense (this was granted, with the new due date being March 29, 2024); on March 27, parties filed joint status update; on March 27, 2024, Respondent deferred filing a Notice of Defense in this matter; on April 2, 2024, parties filed Joint Stipulation to Entry of Proposed Conditional Order for Abatement; third pre-hearing conference held on April 3, 2024; abatement hearing held on April 16, 2024; Conditional Order for Abatement issued on April 26, 2024.

THE HEARING BOARD ORDERED:

1. *That the parties' request for this Conditional Order for Abatement shall be and hereby is GRANTED as follows: Respondent and its agents, employees, successors, and assigns are hereby ordered to cease operation of the Facility unless Respondent complies with the following requirements by the stated deadline:*
 - a. **Final Compliance.** *Respondent shall achieve final compliance by no later than October 31, 2025, which date is based on the projected interim milestones below. Achieving final compliance means that Respondent has obtained either an Authority to Construct or Permit to Operate for each source at the Facility that requires a permit under Air District Regulation 2, Rule 1.*
 - i. **Environmental Review Process.** *The City will have initiated environmental review by no later than September 30, 2024.*
 - ii. **Completion of Environmental Review.** *The City will have completed environmental review of the Modernization Project by no later than September 30, 2025.*
 - iii. **APCO Approvals.** *No later than October 31, 2025, the APCO will have issued, in compliance with all legal requirements, an Authority to Construct or Permit to Operate for each source at the Facility that requires a permit under Air District Regulation 2, Rule 1.*
 - b. **Extension of Compliance Deadline.** *The compliance deadline in paragraph (a) may be extended by the Hearing Board for good cause shown, which may include factors outside of Respondent's direct control. Good cause may include a failure of any government agency or entity to meet the interim milestones upon which the final compliance date is based.*
 - c. **Interim Operating Conditions.** *Pending issuance of either an Authority to Construct or Permit to Operate for each source at the Facility that requires a permit under Air District Regulation 2, Rule 1, Respondent shall implement the Interim Operating Conditions provided in the Appendix to this Conditional Order for Abatement.*
 - d. **Reporting.** *Respondent shall submit written reports to the Hearing Board and APCO as follows:*
 - i. *Respondent shall provide a written report demonstrating compliance with the October 31, 2025 deadline contained in paragraph (a) above within 10 calendar days of the compliance date.*
 - ii. *Respondent shall provide semi-annual reports on October 16 and April 16 of each year demonstrating compliance with the Interim Operating Conditions.*
2. *That this Conditional Order for Abatement shall become effective immediately (Effective Date) upon entry.*
3. *That the Hearing Board shall retain jurisdiction over this matter until such time as (i) Martin Marietta obtains either an Authority to Construct or Permit to Operate for each source at the facility that requires a permit under Air District Regulation 2, Rule 1, or (ii) Martin Marietta permanently shuts down and abandons its operations at Pier 92. The*

parties may move to alter or terminate this order in accordance with the rules of the Hearing Board while the matter remains under the Hearing Board's jurisdiction.

4. *That this Conditional Order does not act as a variance.*

Docket: 3751 – APCO vs. Tesla Motors, Inc. – Accusation of Violation of Regulation 2-1-307 and Regulation 2-6-307 and Request for Conditional Order for Abatement

Location: Alameda County; City of Fremont

Regulation(s): Regulation 2 Rule 1, Section 307 (Permits, General Requirements, Failure to Meet Permit Conditions); and Regulation 2, Rule 6, Section 307 (Permits, Major Facility Review, Non-compliance, Major Facility Review)

Synopsis: Respondent operates two paint shops at its electric vehicle manufacturing facility in Fremont. Because these paint shops emit Precursor Organic Compounds (POCs) and Toxic Air Contaminants (TACs), Respondent is required to control emissions of these air pollutants using an abatement system that captures and collects the pollutants and then abates them, primarily through incineration using a device called a thermal oxidizer.

From the APCO:

Respondent has been violating, and continues to violate, the requirements in its permit and Air District regulations to abate emissions from its paint shops. Tesla has emitted harmful POCs and Toxic Air Contaminants directly into the atmosphere unabated, for which it received 112 Notices of Violation from the Air District since 2019, each of which included one or more days of violation. Each such violation emits illegal air pollution in varying amounts. These violations are recurring, and they negatively affect public health and the environment.

Respondent's recurring violations result from a variety of causes: In some cases, the thermal oxidizer or related components of the abatement system malfunction, and emissions are vented directly to the atmosphere without proper abatement. In other cases, the abatement equipment is functioning, but Respondent either bypasses the abatement equipment and vents the emissions to the atmosphere without proper abatement or shuts the abatement equipment down and vents the emissions to the atmosphere without proper abatement when other components of the production lines in the paint shops malfunction. These violations occur due to repeated malfunction of the same equipment, or due to actions of Respondent's staff or its contractors. Whatever the cause, Respondent needs to take steps immediately to stop these frequent and recurring violations.

The APCO seeks a Conditional Order for Abatement ordering Respondent to stop operating the North and South Paint Shops unless it develops and implements a plan to address these recurring, intermittent and ongoing violations. The APCO respectfully requests that the Hearing Board do so by first issuing an initial order requiring Respondent to (i) hire an independent third-party engineering firm or firms to conduct an objective study to determine the causes of these recurring problems and make recommendations on the actions Respondent needs to take to stop them; and then (ii) return to the Hearing Board with a proposed plan to implement the recommendations from that study to remediate these problems within a specific timeframe. The APCO requests that

the Hearing Board then hold a further hearing on Respondent's proposed plan and issue an order requiring Respondent to implement the plan and bring an end to these ongoing violations.

Fees collected this quarter: N/A

Status: Accusation filed by Complainant on May 2, 2024; Accusation Certificate of Service filed by Complainant on May 6, 2024; Complainant filed Notice of Defense on May 21, 2024; Notice of Hearing (scheduled for June 25, 2024) filed and issued on May 22, 2024; due to Hearing Board Chair's request, pre-hearing conference with both parties and Hearing Board Chair held on June 3, 2024; Order Resulting from Pre-Hearing Conference filed and issued on June 6, 2024; Respondent's Opening Brief filed and issued on June 18, 2024; Joint Motion to Enter Proposed Findings and Decision and Stipulated Conditional Order for Abatement filed and issued on June 20, 2024; [Proposed] Findings and Decision and Stipulated Conditional Order for Abatement filed and issued on June 20, 2024; on June 20, 2024, Counsel for the APCO requested that the Chair vacate or suspend her order entitled "Order Resulting from Pre-Hearing Conference" (filed and issued on June 6, 2024) until the Hearing Board determines whether to enter the proposed findings, decision, and order as stipulated, or direct the Parties otherwise (Chair agreed and "Order Resulting from Pre-Hearing Conference" was vacated); Order Suspending Order from June 6 filed and issued on June 21, 2024; abatement hearing held on June 25, 2024; Findings and Decision for Stipulated Conditional Order for Abatement issued on June 26, 2024.

THE HEARING BOARD ORDERED:

Tesla to comply with all of the following conditions, or in the alternative, cease any operation of the North and South Paint Shops in violation of Kegs. 2- 1-307 and 2-6-307:

1. *Engineering Evaluation and Recommendations for Addressing Unabated VOC Emissions:* *Tesla shall hire and pay one or more engineering firms, in accordance with this Order, to evaluate and make recommendations on potential options for Tesla to eliminate the emission of unabated VOC emissions from its North and South Paint Shops, as detailed in the scope of work developed under Paragraph 2.a.ii of this Order, in violation of Tesla's permit conditions and other regulatory requirements.*
2. *Selection of Engineering Firm(s) and Development of Scope of Work:* *To comply with Paragraph I of this Order, Tesla shall do the following:*
 - a. *Within 30 calendar days of the Hearing Board issuing this Order, Tesla shall submit to the APCO for approval the following items, in writing:*
 - i. *The names of three to five engineering firms that each have expertise in either evaluating equipment like that at Tesla's North and South Paint Shops, or in evaluating reliability and preventive maintenance programs, particularly vehicle production facility preventive maintenance, with summaries of applicable past projects and the kind of expertise provided by each of the firms; and*
 - ii. *A written scope of work consistent with this Order that Tesla proposes to provide to the selected engineering firm(s).*
 - b. *Within 60 calendar days of receiving the scope of work from Tesla under Paragraph 2.a.ii of this Order, the APCO shall review the proposed engineering firms and proposed scope of work submitted by Tesla under Paragraph 2.a and (i) strike from Tesla's list of proposed firms any firm that does not meet the*

requirements of Paragraph 2.a.i. and (ii) provide any proposed revisions to the proposed scope of work necessary to ensure that the requirements of this Order are fulfilled. If the APCO strikes any firm proposed by Tesla or provides any revisions to the proposed scope of work, the APCO shall provide Tesla with an explanation as to the basis of such decision for the purpose of assisting Tesla in selecting another firm or to make revisions to the scope of work, but this decision is not appeal able. The APCO may require Tesla to furnish additional names of firms should the APCO determine that two or more of the originally proposed firms are not suitable, in which case Tesla shall have 15 calendar days from the date on which the APCO notifies Tesla that two or more of the originally proposed firms are not suitable to provide an additional two or more engineering firm names that meet the requirements of this Order. If there is any disagreement between Tesla and the APCO regarding the scope of work, they shall meet and confer about the revisions provided by the APCO. In the event an agreement cannot be reached between Tesla and the APCO regarding the scope of work, the disagreement shall be presented to the Hearing Board for resolution.

- c. Within seven (7) calendar days of receiving the APCO's approval of the firms and scope of work under Paragraph 2.b, Tesla shall send the approved firm(s) selected the scope of work produced by the process in Paragraph 2.b.ii, which shall include requiring the firm(s) to:
 - i. Meet with Air District staff and Tesla before the firm(s) begins its study regarding implementing this Order and its scope of work, and then, every two weeks thereafter, give the APCO an update on its work under this Order; and*
 - ii. Give the APCO, upon request, a copy of any information it obtained, from Tesla or otherwise. If any such information is trade secret or otherwise confidential under California law, Tesla and the APCO shall follow the Air District rules and, where appropriate, any other applicable California laws for handling such information.**
 - d. Within twenty (20) calendar days of sending the firm(s) the scope of work under Paragraph 2.c., Tesla shall attempt to hire one or two of the approved firms, as necessary to fulfill the requirements of this Order. In the event Tesla is unable to hire any of the firms approved by the APCO under Paragraph 2.b due to scheduling unavailability, Tesla shall provide the APCO three more additional engineering firm names that meet the requirements of this Order, in accordance with Paragraph 2.n.i, and the APCO shall review them in accordance with Paragraph 2b. Tesla must hire a firm with expertise in evaluating equipment like that at Tesla's North and South Paint Shops, and the same or no more than one different firm with expertise in evaluating reliability and preventive maintenance programs, particularly automotive vehicle production facility preventive maintenance.*
- 3. Engineering Firm Access and Independence: Tesla shall do the following with respect to the engineering firm(s) it hires under this Order:*
- a. Include Air District staff in all written communications it has with the selected firm(s);*
 - b. Permit the firm(s) to talk freely and confidentially with Air District staff at any time, with or without Tesla present or knowing about the conversation or its contents; and*

- c. *Give the firm(s) all access to equipment, control systems, employees, documents, and anything else that the firm(s) determines it reasonably needs to carry out its responsibilities and ensure compliance with this Order. If any such information is trade: secret or otherwise confidential under California law, Tesla and the APCO shall follow the Air District rules and, where appropriate, any other applicable California laws for handling such information.*
4. *Report and Recommendations for Addressing Unabated VOC Emissions: Within ninety (90) calendar days of being hired, the firm(s) shall provide one report to both Tesla and the APCO that (i) is not edited or changed in any way by Tesla, (ii) is signed under penalty of perjury by a licensed electrical Professional Engineer, and a licensed mechanical Professional Engineer; and (iii) includes, at a minimum, all of the following:*
- a. *a description of the firm and its qualifications to fulfill paragraph 1 of this Order;*
 - b. *a summary of how such reviews are generally conducted;*
 - c. *A description of the requirements of this Order;*
 - d. *A summary of all the steps the firm took, the information it reviewed, and a description of the information and access requested from Tesla and, if Tesla denied any of the firm's requests for information and/or access, a summary of the information requested and Tesla's response;*
 - e. *A summary of Tesla's maintenance and reliability plan and its adequacy, as well as any recommendations to improve it or bring it up to automotive vehicle industry standards;*
 - f. *Identification and a brief explanation of any unavoidable emergency and/or safety hazards that would result in any emission of unabated VOCs from its North and/or South Paint Shops in violation of Tesla's permit conditions and other regulatory requirements, or a statement that none exist, as applicable;*
 - g. *An evaluation and recommendations on ways to eliminate the shutdown and/or bypassing of the North Paint Shop and South Paint Shop abatement systems while there are any emissions in the North Paint Shop and South Paint Shop production lines, except in situations where doing so is absolutely unavoidable for emergency and/or safety reasons. This analysis shall include, for example, and without limitation, ways for Tesla to keep the bypass vents closed and the abatement systems operating when there is a production line upset in the North Paint Shop or South Paint Shop, until all controlled emissions have been exhausted through the abatement system;*
 - h. *With respect to situations where shutting down and/or bypassing the North Paint Shop or South Paint Shop abatement systems is absolutely unavoidable for reasons of emergency and/or serious risk to the health and physical safety of persons, the engineering firm(s) shall evaluate and make recommendations on how to minimize the recurrence of the root causes and contributing factors that have given rise to such situations, to the maximum extent feasible. This analysis: shall include, for example and without limitation, evaluation of and recommendations regarding (i) improved preventative maintenance of the North Paint Shop and South Paint Shop's thermal oxidizers and other components of the abatement systems, (ii) improved operator training, (iii) replacement of or upgrades to the thermal oxidizers and related components of the abatement systems, (iv) challenges to the control logic and/or design of the operations of the North Paint Shop and South Paint Shop, and*

- (v) any other area that could potentially reduce the recurrence of situations necessitating the shutdown and/or bypassing of the abatement system; and
 - i. For each recommendation provided in the Report, an estimate of the minimum time needed to implement the recommendation.
- 5. APCO Review of Engineering Report: Within 45 calendar days of receiving the firm(s)'s report under Paragraph 4, the APCO may identify any concerns with the report by notifying Tesla and the firm(s). If there is any disagreement between Tesla and the APCO, they shall meet and confer about the firm(s)'s report, and the APCO shall inform Tesla and the firm(s) of any changes to its list of concerns. In the event an agreement cannot be reached between Tesla and the APCO regarding the list of concerns, they shall provide the firm(s) with the APCO's final list of concerns and Tesla's response, if any. Within thirty (30) calendar days of receiving the APCO's final list of concerns and Tesla's response, the firm(s) shall go back and address the issues identified by the APCO and issue a revised report consistent with Paragraph 4 that addresses the APCO's concerns and Tesla's response, with consideration and notation of Tesla's response, if consistent with this Order and the firm's professional responsibilities.
- 6. Submission of and Hearing On Proposed Plan to Address Unabated VOC Emissions:
 - a. Within sixty (60) calendar days of the firm(s) issuing a report or revised report, under Paragraphs 4 or 5, as applicable, Tesla shall file with the Hearing Board and serve on the APCO a proposed plan and timeline, not to exceed six months, for implementing all of the firm's recommendations, or, if there are any recommendations that Tesla contends it cannot feasibly implement or will require more than six months to implement, a response, with supporting documentation from an outside entity such as a vendor, demonstrating why it cannot feasibly implement those recommendations or why it will need more than six months to implement those recommendations. Tesla shall not claim it cannot feasibly implement a recommendation based solely on cost or production effects, and any claim of infeasibility must also be based on technical infeasibility. Tesla shall attach to its filing an unaltered version of the firm(s)'s report under Paragraph 4 or 5, as applicable. Tesla's filing required under this Paragraph 6.a. shall be signed, under penalty of perjury, by a Tesla Vice President-level executive with responsibility for, and control over, the filing.
 - b. Within sixty (60) calendar days after service of Tesla's proposed plan and timeline, the APCO shall file its response, if any, with the Hearing Board.
 - c. Within fifteen (15) calendar days after the APCO files its response (or within 15 calendar days after the deadline for the response, if the APCO does not file a response), the Hearing Board shall hold a hearing to determine an appropriate further order to require Tesla to implement the proposed plan and timeline for implementing all of the firm's recommendations.
- 7. Extensions of Time: Tesla or the APCO may request, and the Hearing Board may grant, reasonable extensions of time for any deadline established in this Order upon a showing of good cause or if the other party does not object. Any such extension shall be subject to the APCO's written consent, which consent shall not be unreasonably withheld. Any such extension shall be issued after a hearing in the form of a further Order, unless Tesla and

the APCO stipulate to the extension, in which case a hearing need not be held, but a further Order will still be issued.

8. *Reporting of Bypass and Temperature Excursions: Immediately upon the effective date of this Order, Tesla shall report to the APCO each and every bypass valve opening and thermal oxidizer temperature excursion (where the thermal oxidizer falls below 1400 degrees Fahrenheit for any period of time) at the North and South Paint Shop, whether Tesla believes the event is a deviation or not, within 10 calendar days of the bypass event or any thermal oxidizer temperature excursion occurring; in each such report, Tesla shall include all information required by Standard Condition F of Tesla's Title V permit, as well as emissions and supporting calculation(s). This reporting shall be in addition to Tesla's reporting of bypass valve opening and thermal oxidizer temperature excursions that Tesla identifies and reports as deviations in accordance with Standard Condition F of Tesla's Title V permit. Failing to report a deviation in connection with Tesla's Title V obligations may result in enforcement action.*
9. *Notices: Where any notice, submission, or communication is required by or related to this Order, it shall be submitted in writing via email to the representative of record in the Hearing Board proceeding which gave rise to this Order. Any Party may change its designated notice recipient or notice method provided above in accordance with Hearing Board rules. Notices submitted pursuant to this section shall be deemed received upon emailing.*

Docket: 3752 – California Statue University at San Jose – Request for Regular Variance

Location: Santa Clara County; City of San Jose

Regulation(s): Regulation 9, Rule 9, Section 301.2 (Inorganic Gaseous Pollutants, Nitrogen Oxides From Stationary Gas Turbines, Emissions Limits); and Permit Condition 12140.3

Synopsis: San Jose State University (SJSU) is a public university in the California State University system. The campus operates a Cogeneration Plant to provide electricity and steam for heating campus buildings. Additionally, SJSU operates three auxiliary boilers that are operated as backup to the Cogeneration Plant for steam to heat buildings and serve process loads. This application is regarding the facility's cogeneration plant (6MW output, S1), the associated duct burner (44.44 MMBTU/hr, S2), and auxiliary boiler #3 rated at 37.5 MMBTU/hr (S7).

From Applicant:

The Cogen Plant is used for cost-effective electricity and steam generation. It is essential to the SJSU campus operations because it provides resilient power and heating energy at a cost savings of approximately \$2M/year compared to PG&E purchases of electricity. The auxiliary boilers are used for backup when the cogeneration system is not available. They are essential to the SJSU campus operations because cogeneration systems have planned and unplanned outages and steam service to campus must be maintained continuously to support campus operations.

Cogen Plant:

The District has recently informed SJSU that it cannot retest S1 and S2 until the stack is reconfigured to comply with EPA Method 1. SJSU cannot complete this work, including the necessary permitting to do so, by the deadline to complete the re-test set forth in NOV-A63328 of May 23, 2024. This is the first time this issue has been raised with respect to source testing S1 and S2 and SJSU did not have any prior notice that the existing stack could not be tested in its current configuration. SJSU became aware that S1 and S2 were not in compliance with the NOx emission limit of Rule 9-9-301 when it received NOV-A63328 from the District on April 8, 2024. SJSU has conducted portable testing of NOx emissions from S1 and S2 since the NOV was issued, and all sample results indicated the stack is in compliance with Rule 9-9-301. To comply with the requirements of the NOV, SJSU has diligently worked with two source testing companies to understand the District's requirements related to EPA Method 1. SJSU is in the process of hiring a contractor to construct the necessary scaffolding to reach testing ports that comply with Method 1, and will complete the source re-test promptly thereafter (or, in the alternative, the re-test can be completed more quickly if the District approves the limited use of ST-18 in lieu of Method 1 for this one retest). Due to the significantly higher price of purchased power from PG&E, shutting down the Cogen Plant in lieu of obtaining a variance would cost SJSU approximately \$220,000 per month during the summer, and approximately \$150,000 per month in the winter, for an average added cost of approximately \$2 million per year. SJSU does not have the operating budget to absorb these costs. SJSU intends to comply with NOV-A63328 by constructing the necessary scaffolding so that the source re-test can be completed consistent with EPA Method 1, as required by District staff (or, in the alternative, conducting the re-test consistent with ST-18 if approved by the District). Assuming the re-test indicates S1 and S2 meet the emission limits of Rule 9-9-301, the sources will be in compliance. If the re-test does not indicate compliance with the emission limits, SJSU will pursue installation of steam enhancement technology.

Boiler 3 (S7):

SJSU submitted an application for a PTO on May 16, 2022 (A/N 31697). The PTO has not been issued by the District, and it is outside SJSU's reasonable control to obtain this permit. Once issued, SJSU will not need to limit this boiler to less than 10% of its annual maximum heat capacity, as required by Permit Condition 12140.3. SJSU requests that the District issue the PTO or in the alternative grant a variance from Permit Condition 12140.3. SJSU became aware that it was not in compliance with Rules 2-1-301 and 2-1-302 on or about April 15, 2022, and promptly submitted an application for an updated PTO on May 16, 2022. SJSU submitted an application for a PTO on May 16, 2022. Based on available source tests, to SJSU's knowledge Boiler 3 (S7) is in compliance with the applicable NOx emission limits of Rule 9-7-307, and is merely awaiting issuance of the PTO for which it applied on May 16, 2022.

Requested Period of Variance: May 23, 2024 to December 31, 2024.

Estimated Excess Emissions: None estimated by the Applicant.

Fees collected this quarter: \$9,256.00 in filing fees.

Status: Application for Regular Variance filed by Applicant on May 22, 2023. Hearing date to be determined. On July 9, 2024, SJSU contacted the Air District's Source Test Division to notify of

possible retest dates for the Cogen Plant's gas turbine (S-1) and duct burner (S-2). SJSU will perform the retests of S-1 and S-2 on October 29, 2024, in accordance with test methods that were approved by Air District staff. SJSU will notify the Air District's Source Test Division of the planned retest date prior to the test. The parties would like to continue to hold the variance application and wait on setting a hearing date. SJSU and BAAQMD technical staff are continuing to address the underlying issues and it is our hope that we can negotiate a settlement agreement that will enable us then to withdraw the variance application.

Respectfully submitted,

/s/ Valerie J. Armento

Valerie J. Armento, Esq.
Chair, Hearing Board

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Davina Hurt and Members
of the Finance and Administration Committee

From: Philip M. Fine
Executive Officer/APCO

Date: September 18, 2024

Re: Amendment to Staff Attorney Position Classification to Reduce Barriers to
Recruiting

RECOMMENDED ACTION

Recommend to the Board of Directors that the Board authorize the attached amendment to the "Staff Attorney" position classification to add a "Staff Attorney Trainee" level for recent law school graduates who want to begin work while awaiting their bar exam results and admission to practice (subject to supervision by a licensed attorney as required by applicable rules on the practice of law in California).

BACKGROUND

The General Counsel's office has developed an Environmental Justice (EJ) Law Fellowship Program. The Fellowship is a two-year program for newly minted attorneys with a passion for Environmental Justice and a background of lived experience with Environmental Justice issues to work in the Air District's legal office focusing on equity and EJ-related legal issues. The Air District would provide a competitive salary, close mentorship, and an opportunity for the fellow to gain experience working on EJ issues in one of the premiere air quality regulatory agencies in California. At the end of the two-year Fellowship program, the Fellow could be hired for a permanent position in the Air District's Legal Division if one is available, or they could go on to a career working to foster Environmental Justice in another employment context.

DISCUSSION

In 2023, the Board of Directors created the "Staff Attorney" classification, for attorneys with 0-2 years of experience, to accommodate this new Fellowship program. The current classification requires admission to practice law, however. This means that any new Fellow hired into the Fellowship program would have to wait to receive their bar exam results and be formally admitted to the California bar before they could start work, which can take as long as five or six months after graduation.

For some potential candidates, waiting this long before being able to start work and start receiving a paycheck could create significant financial hardship. Moreover, even for those in a more comfortable financial position, having to wait to start work would make applying to the Fellowship less attractive than other potential employment options, as it is standard practice for hiring new law graduates in other contexts to allow them to begin work while waiting to be admitted. And the Air District would be deprived of the Fellow's work during this time if they were forced to wait to begin their employment.

For all of these reasons, staff are seeking to amend the current Staff Attorney position classification to create a "Staff Attorney Trainee" level for recent graduates who are waiting to be admitted. Employees in the Staff Attorney Trainee position would work under the close supervision of a licensed attorney and would not engage in the practice of law themselves, consistent with applicable rules for practicing law in California. Once they have passed the bar exam and are admitted to practice law, they would be able to promote to the Staff Attorney level. Again, this process is typical of how new law school graduates are hired in other settings.

The proposed salary range for the new Staff Attorney Trainee level is \$102,720.40-\$124,857.30 per year. This compares with the current Board-established salary range for the Staff Attorney level of \$153,562.00-\$186,655.57 per year. This lower proposed salary range for the Staff Attorney Trainee level aligns with the more limited autonomy and responsibility given to a Fellow not yet licensed to practice law.

By modifying the existing classification specification for the Staff Attorney to add a Staff Attorney Trainee level, the Air District would eliminate a barrier to employment by improving an employment pipeline into our organization.

BUDGET CONSIDERATION/FINANCIAL IMPACT

There is no direct financial impact of this proposed change to the Staff Attorney classification, as it does not authorize any new positions. Approval by the Board of Directors will be required to fund the Fellowship Program, which staff will request in the Fiscal Year Ending 2026 budget.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Lisa Baker and Carrie Schilling
Reviewed by: Alexander Crockett

ATTACHMENTS:

1. Staff Attorney - Class Specification Bulletin
2. Presentation - Staff Attorney Classification Revision - September 18, 2024

**Bay Area Air Quality Management District
STAFF ATTORNEY/STAFF ATTORNEY TRAINEE**

CLASS CODE	SALARY Attorney: \$73.83 - \$89.74 Hourly
	\$2,953.12 - \$3,589.53 Weekly
	\$12,796.83 - \$15,554.63 Monthly
	\$153,562.00 - \$186,655.57
	Annually
	Trainee
	\$49.39 - \$60.03 Hourly
	\$1,975.39 - \$2,401.10 Weekly
	\$8,560.03 - \$10,404.78 Monthly
	\$102,720.40 - \$124,857.30 Annually

REVISION DATE September 9, 2024

Distinguishing Characteristics

DEFINITION

Under direct supervision, performs legal work at a new attorney level representing the Air District and providing advice and counsel to Air District management, staff and committees; and performs related work as assigned. For the Staff Attorney Trainee level, provides supervised assistance to Air District attorneys in performing such work without engaging in the practice of law themselves.

DISTINGUISHING CHARACTERISTICS

Staff Attorney:

Staff Attorney is the entry-level attorney position in the legal division. It is designed to allow a new attorney to gain specific environmental law experience. Incumbents receive direct guidance and supervision in the performance of their duties. Assignments at this level require the ability to handle routine problems under general supervision. This class is distinguished from Assistant Counsel I/II in that the latter oversees cases more complex in nature.

Staff Attorney Trainee:

Positions in this class provide supervised assistance to Air District attorneys with work on routine legal assignments while learning the Air District policies and procedures and specialized legal knowledge relating to air quality. Positions follow existing guidelines and procedures. Works under supervision of an attorney and does not engage in the practice of law.

EXAMPLES OF DUTIES (Illustrative only)

Staff Attorney:

- Prepares and tries routine legal cases, often involving a specialized body of law.
- Researches legal problems and prepares and reviews legal documents, including opinions, briefs,

ordinances, resolutions, and contracts.

- Advises Air District departmental management regarding District authority, jurisdiction, functions and operational procedures.
- Represents the Air District in court and in administrative hearings before boards and commissions and state and federal agencies.
- Attends Air District departmental, board and committee meetings and provides legal advice on a variety of matters.
- Investigates and prepares reports regarding claims by and against the Air District and recommends actions to be taken.
- Reviews ordinances, resolutions, contracts and other documents for legal sufficiency; recommends modifications as required.
- Maintains accurate records and files and compiles reports of work performed.
- Monitors legal developments, including proposed legislation and court decisions; evaluates their impact on Air District operations.
- Performs other duties as assigned.

Staff Attorney Trainee:

- Conducts legal research and prepares legal memoranda for review by attorneys.
- Assists attorneys in the preparation of routine cases, often involving a specialized body of law.
- Assists attorneys in reviewing air quality regulations and policies.
- Monitors legal developments, including proposed legislation and court decisions, considers their impacts on the Air District operations, and reports to supervising attorneys.
- Participates in Air District departmental, Board, and committee meetings.
- Maintains, organizes, and tracks accurate records and compiles reports of work performed.
- Supports special projects as needed.
- Performs related duties as assigned.

MINIMUM QUALIFICATIONS

Education & Experience:

A typical way to obtain the knowledge and skills is:

Staff Attorney:

Equivalent to a bachelor's degree from an accredited college or university and a law degree from an accredited law school. Must be a member in good standing of the State Bar of California.

Staff Attorney Trainee:

Equivalent to a bachelor's degree from an accredited college or university and a law degree from an accredited law school; and in the process of gaining admission to the California bar (including studying for, taking, and passing the bar exam and fulfilling all related requirements for admission). The exam must be successfully completed, and bar admission obtained within twelve months of hire.

KNOWLEDGE, SKILLS, AND ABILITIES

NOTE: The level and scope of the knowledge and skills required are related to job duties as described under Distinguishing Characteristics.

Knowledge of:

- Principles and procedures of civil law, with a basic knowledge of environmental law principles helpful

but not required.

- Procedures and practices and effective techniques in the presentation of cases. Judicial procedures and rules of evidence.
- Principles, methods and techniques of legal research, analysis and investigation. Air District rules and regulations and state and federal laws.
- Responsibilities and obligations of public officials and administrative agencies. Rules of procedure governing the conduct of hearings before administrative bodies. Skill in:
- Defining issues, performing legal research, analyzing problems, evaluating alternatives and making appropriate recommendations.
- Presenting statements of fact, law and argument clearly and logically.
- Exercising sound, independent judgment within general policy guidelines and legal parameters. Interpreting state and federal laws affecting Air District operations.
- Representing the Air District effectively in hearings, courts of law and meetings with others.
- Preparing clear, concise and legally sufficient resolutions, ordinances, contracts, leases, permits, reports, correspondence and other written materials.
- Establishing and maintaining effective working relationships with those contacted during the attorney's work.

PHYSICAL DEMANDS AND WORKING CONDITIONS

Physical Demands:

Must possess mobility to work in a standard office setting and use standard office equipment, including a computer; vision to read printed materials and a computer screen; and hearing and speech to communicate in person and over the telephone. This is primarily a sedentary office classification although standing in work areas and walking between work areas may be required. Finger dexterity is needed to access, enter, and retrieve data using a computer keyboard or calculator and to operate standard office equipment. Positions in this classification occasionally bend, stoop, kneel, reach, push, and pull drawers open and closed to retrieve and file information.

Employees must possess the ability to lift, carry, push, and pull materials and objects up to 25 pounds.

Working Conditions:

Incumbents perform work in an office setting with moderate noise levels, controlled temperature conditions, and no direct exposure to hazardous physical substances.



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AGENDA: 6

Amendment to Staff Attorney Position Classification to Reduce Barriers to Recruiting

**Finance and Administration Committee Meeting
September 18, 2024**

**Alexander Crockett
General Counsel
acrockett@baamd.gov**



Presentation Outcome

- Overview of Environmental Justice (EJ) Law Fellowship Program
- Identify Need for Revision to Staff Attorney Class Specification
 - Create “Staff Attorney Trainee” specification to allow new graduates to start work while awaiting bar admission
- Request Committee Recommend Revision to Board of Directors

Requested Action

- Recommend to the Board of Directors an amendment to the “Staff Attorney” position classification to add a “Staff Attorney Trainee” level for recent law school graduates who want to begin work while awaiting their bar exam results and admission to practice

Fellowship Program Overview

- Two-year program for a new law graduate to work in the Air District's legal office focusing on equity and EJ-related issues
- **Benefits for Fellow:**
 - Experience working on EJ issues in a leading air quality regulatory agency
 - Competitive pay and benefits
 - Close mentorship
 - Potential for hire into permanent position if available
- **Benefits for Air District:**
 - Help with Legal Division's increasing Environmental Justice work
 - Bring new perspectives into the agency and the Legal Division
 - Develop next generation of EJ leaders
 - Valuable recruiting tool

Content of EJ Fellowship Program

- Examples of types of work Fellow may be assigned:
 - Support Assembly Bill (AB) 617 Community Emission Reduction Plan development
 - Legal work supporting Community Advisory Council (CAC)
 - Impact litigation in overburdened communities to enforce regulations against chronic violators
 - Implement initiatives to address cumulative impacts, disparate impact analyses, and other elements of civil rights compliance in the Air District permitting program
 - Draft California Environmental Quality Act (CEQA) comments on projects proposed in overburdened communities
- Mentorship and Support:
 - Assignment of experienced attorney as a mentor
 - Individualized Development Plan (learning objectives and training plan)
 - Informal opportunities to build relationships with Air District staff and leadership

Program Timeline

Sept. - Nov. 2024	Publicize program and recruit applicants
Dec. 2, 2024	Application deadline
Dec. 2024	Screen applications
Jan. - Feb. 2025	Interviews and selections
Summer/Fall 2025	Fellow begins work
2025 - 2027	Two-year Fellowship term

Need for Staff Attorney Class Specification Revision

- Entry Level Classification is “Staff Attorney” (0-2 Years Experience)
- Current Staff Attorney Classification Requires Bar Admission
- Potential Applicants May Want To Start Work Before Admission
- Important to Support Candidates With Limited Financial Resources
- Standard Practice for Employers Hiring New Law Graduates
- Permissible As Long As New Hire Does Not Engage In Practice Of Law Until Admitted to Practice

Solution: Create “Staff Attorney Trainee” Specification

- Candidates Apply For Fellowship Program In 3rd Year of Law School
- Fellow Hired As Staff Attorney Trainee While Awaiting Bar Admission
- Fellow Works As Trainee, Gaining Knowledge Through Work Experience and Mentorship
- Fellow Promoted To Staff Attorney Upon Bar Admission And Successful Performance Of Duties As Trainee
- Must Obtain Bar Admission Within One Year Of Hire
- Creates pipeline of employment into Air District
 - Summer Legal Intern → Staff Attorney Trainee → Staff Attorney

Recommended Action

Staff Recommends the Committee:

- Recommend to the Board of Directors that the Board adopt the proposed amendments to the “Staff Attorney” position classification to add a “Staff Attorney Trainee” level for recent law school graduates who want to begin work while awaiting admission to practice