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

Docket No. 3746

AIR POLLUTION CONTROL OFFICER of the
BAY AREA AIR QUALITY MANAGEMENT
DISTRICT

Complainant,
vs.

MARTIN MARIETTA MATERIALS, INC.

Respondent.

Pursuant to Sections 42451 and 42452 of the California Health & Safety Code, Complainant the Air
Pollution Control Officer (APCO) of the Bay Area Air Quality Management District (Air District) requests that
the Hearing Board issue a CONDITIONAL ORDER FOR ABATEMENT directed to Respondent Martin
Marietta Materials, Inc. (hereinafter “Martin Marietta” or “Respondent”).

In support of this request, and upon information and belief, the APCO alleges as follows:

INTRODUCTION AND SUMMARY

1. Respondent Martin Marietta 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. The Facility receives sand dredged from the San Francisco Bay, washes it, and stores it
in stockpiles for sale to customers.

2. 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.

3. 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.

4. 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. Ongoing operations after that point were, and have been, in violation of Regulation 2-1-302.

5. The Facility’s then-owner, Lehigh Hanson, Inc. (Lehigh Hanson), 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. Air District staff got so far as to develop and issue an initial permit evaluation, including draft permit conditions designed to ensure compliance with applicable air quality requirements. However, Lehigh Hanson and subsequently Martin Marietta have repeatedly changed their plans for the Facility’s operation, which has prevented the Air District from completing the evaluation. Each time changes have been made, Air District staff have had to restart their evaluation because all calculations and analyses must be redone, just as if a new permit application were submitted. This has resulted in significant delays in permit processing, which has now stretched out over several years.

6. 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. But Martin Marietta needs to commit to a final plan for the site and see it through, and it needs to be subject to a final compliance deadline to require it to do so. The APCO respectfully requests that the Hearing Board issue a Conditional Order for...

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1 Further references to regulations shall be to the Air District’s regulations.
Abatement to establish such a deadline. Only a legally enforceable compliance schedule will effectively prevent
Respondent from further changing its plans and causing additional, unnecessary delays.

7. In addition, Martin Marietta should be required to comply with interim operating conditions to
ensure that its operations comply with applicable emissions standards and related requirements to protect public
health while it is coming into compliance with Regulation 2-1-302. Imposing such conditions will ensure that
the Facility’s operations comply with Air District regulations and are protective of public health.

8. In light of the above, the APCO respectfully requests that the Hearing Board issue a
Conditional Order for Abatement prohibiting Respondent from operating the Facility unless Respondent
satisfies the following conditions:

   a. Respondent commits to a final plan of operation for the Facility and diligently pursues
      permitting for that operation to achieve compliance with Regulation 2-1-302 within the
      shortest possible timeframe;

   b. Respondent satisfies appropriate milestones and increments of progress towards achieving
      compliance within that timeframe; and

   c. Respondent complies with interim operating conditions to protect air quality and public
      health while it is coming into compliance.

The APCO respectfully requests that the Conditional Order for Abatement prohibit Respondent from
operating the Facility without a permit in violation of Regulation 2-1-302 beyond the compliance timeframe as
set forth in the Order. If Respondent cannot cease its indecision, commit to a final plan for this site, and
diligently pursue and obtain a permit for it, then the company should be prohibited from any further operation
in violation of Regulation 2-1-302. An order from this Hearing Board establishing such a deadline is necessary
to establish finality with respect to this ongoing noncompliance and set a date certain by which Respondent’s
operation without a permit will come to an end.

9. The APCO respectfully requests that the Hearing Board provide a minimum of 45 days prior
to the hearing on this matter to enable Air District staff adequate time to meet with community members.
THE PARTIES

Complainant

10. The Air District is the governmental agency charged with the primary responsibility for controlling air pollution from stationary sources, for enforcing laws relating to air pollution, and for maintaining healthy air quality in the San Francisco Bay Area. The Air District is organized pursuant to Division 26, Part 3, Chapter 4 of the California Health & Safety (Health & Saf.) Code.

11. The APCO is the Air District’s Executive Officer and is charged (among other things) with enforcing the Air District’s rules and regulations, including its permit system. (Health & Saf. Code, §§ 40750 et seq.) The APCO is authorized to seek an order for abatement from the Air District’s Hearing Board to stop a person from operating equipment that requires, but lacks, a valid Air District permit to operate, which is a violation of Regulation 2-1-302. (Health & Saf. Code, §42451(a); Hearing Board Rules, Bay Area Air Quality Management District, §4.1.)

Respondent

12. Respondent Martin Marietta Materials, Inc. is a corporation subject to the jurisdiction of the Air District. Respondent operates the Facility, a sand transfer operation, located at 480 Amador Street, San Francisco, California.

THE HEARING BOARD HAS JURISDICTION

13. The Air District Hearing Board may, after notice and a hearing, issue an order for abatement against a person when the Hearing Board finds that the person is operating any equipment or other contrivance without a permit to operate in violation of an Air District rule or regulation. (Health & Saf. Code, § 42451(a).) The Hearing Board’s order must require that the person either refrain from a particular act or refrain from a particular act unless certain conditions are met. (Health & Saf. Code, §42452.)

AIR DISTRICT PERMIT REQUIREMENTS IN REGULATION 2

14. The Air District has established a permit system as authorized by state and federal law to ensure that operating certain equipment will neither prevent nor interfere with the attainment or maintenance of any applicable air quality standard or cause unacceptable toxic health risks. (Health & Saf. Code, §42301(a); see generally, Health & Saf. Code, §§42300 et seq.) The Air District’s permitting requirements are set forth in

ACCUSATION AND REQUEST FOR CONDITIONAL ORDER FOR ABATEMENT
15. Pursuant to Regulation 2, Rule 1, the Air District requires owners and operators of sources of air pollution to obtain a permit to operate and comply with permit conditions necessary to minimize emissions and ensure compliance with applicable regulatory limits. The basic requirement to obtain a permit to operate is set forth in Regulation 2-1-302.

16. The requirement to obtain a permit provides the APCO with the ability to review a facility’s operations to ensure that they comply with applicable state, federal, and Air District requirements related to air pollution. Before the APCO issues a permit, the Air District’s permit engineers carefully review the subject of the permit application and the emissions that will be associated with it, and evaluate whether the emissions will be in compliance with all relevant regulations. The permit engineers also draft permit conditions that will apply to the operation to ensure compliance.

17. The Air District’s permitting system also includes a number of exemptions for emissions sources that, by their nature, are not expected to contribute significantly to air quality problems.

18. For example, Regulation 2-1-115.1.4 exempts certain operations at material processing facilities, provided the material, such as sand, contain a moisture content of greater than or equal to five percent by weight. This moisture content requirement reflects the fact that when sand and similar materials are kept adequately wetted, they are unlikely to have significant air emissions. But if they are allowed to dry out, they can cause particulate matter and crystalline silica emissions to become airborne and be carried into the ambient air in significant quantities by wind erosion and during material handling activities.

19. Regulation 2 provides these exemptions to focus the Air District’s permitting requirements on sources and operations that present a risk of significant air quality or public health impacts if not properly controlled. The exemptions mean that Air District staff do not need to spend time conducting extensive review of sources that do not present a significant risk of such impacts, which allows them to devote their time to sources that do present such a risk.

20. It is important that the limitations on such exemptions (e.g., the moisture content requirement)
be scrupulously followed to ensure that the exemptions are not abused. For example, if a materials handling facility is not keeping the materials adequately wetted, then a full permit review is necessary to ensure that it will operate in compliance with all applicable air quality regulations to prevent the potential for significant emissions and harm to air quality and public health.

**IMPORTANCE OF IMPLEMENTING THE AIR DISTRICT'S PERMIT PROGRAM IN THE BAYVIEW HUNTERS POINT COMMUNITY**

21. The Facility is located near the Bayview Hunters Point (BVHP) Community, a historically overburdened and disadvantaged community.

22. The BVHP Community suffers from disproportionate exposure to air pollutants and other environmental hazards. CalEnviroScreen, a mapping tool developed by the California Air Resources Board (CARB) to help identify California communities that are most affected by many sources of pollution and most vulnerable to pollution’s effects, identifies BVHP as having a pollution burden greater than up to 93 percent of the state.

23. There are numerous factors contributing to the disproportionate air pollution exposure in BVHP. These include, but are not limited to, legacy pollution from the Naval Shipyard, industrial operations along the waterfront, dust and asbestos from large-scale redevelopment, and the I-280 and I-101 freeways.

24. In 2023, CARB selected the BVHP Community for participation in the AB 617 Community Air Protection Program following the community’s self-nomination. This selection not only recognized historic and ongoing pollution burdens in BVHP, but it also recognized that the BVHP Community has decades of expertise in community capacity building and leadership on environmental justice issues and has demonstrated capacity to partner with the Air District.

25. Respondent’s sand transfer operations at Pier 92 cause emissions of particulate matter and crystalline silica, which are of particular concern to the BVHP Community.

26. Particulate matter is one of the most serious air pollution problems currently facing the Bay Area. Breathing elevated levels of particulate matter causes serious public health problems. Epidemiological studies have demonstrated that inhalation of particulate matter leads to increased respiratory irritation, decreased lung function, aggravated asthma, the development of bronchitis, irregular heartbeats, and premature death in people with heart or lung disease. In addition, particulate matter has harmful effects on the
environment as well. Studies have shown that particulate matter reduces visibility in the form of haze, and that it can stain and corrode stone and other materials. Furthermore, particulate matter can be carried long distances by wind and settle on ground or in water, leading to acidic lakes and streams that may damage ecosystems.

27. The San Francisco Bay Area is currently designated as being in violation of several health-based state and federal air quality standards for particulate matter. Specifically, for PM$_{10}$ (fine particulate matter smaller than 10 microns across), the Bay Area is in violation of both state air quality standards: (i) the short-term standard for PM$_{10}$ concentrations measured over a 24-hour period; and (ii) the long-term standard for PM$_{10}$ concentrations measured over a one-year period. For PM$_{2.5}$ (fine particulate matter smaller than 2.5 microns across), the Bay Area is in violation of the state standard, which applies to PM$_{2.5}$ concentrations measured over a one-year period, and the federal short-term standard, which applies to PM$_{2.5}$ concentrations measured over a 24-hour period.

28. One constituent of the particulate matter emitted from sand handling operations is respirable crystalline silica. These are very fine sand particles (4 microns or smaller) that can enter the lungs and cause harm. Crystalline silica has been identified by CARB as a toxic air contaminant. Breathing in very small (respirable) crystalline silica particles causes multiple diseases, including silicosis, an incurable lung disease that leads to disability and death. Respirable crystalline silica also causes lung cancer, chronic obstructive pulmonary disease, and kidney disease. Exposure to respirable crystalline silica is related to the development of autoimmune disorders and cardiovascular impairment.

29. Hospitalization rates for asthma, hypertension, diabetes, and congestive heart failure are higher in the BVHP Community than other parts of San Francisco. The BVHP Community also experiences higher incidences of cancer than other areas of San Francisco.

30. Given this setting, it is especially important that facilities in BVHP comply with the Air District’s permitting requirements. If facilities subject to the permitting requirements do not go through the permit review process and obtain operating permits as required by Air District Regulation 2-1-302, the District will not have the ability to evaluate the facilities’ emissions and ensure compliance with applicable regulatory requirements to

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3 Silica is the common name for silicon dioxide (SiO$_2$). Silica is one of the most abundant minerals and is the largest constituent in sand. Silicon dioxide has several structural forms, which are divided into two categories: crystalline and non-crystalline (amorphous). The crystalline forms of silica are toxic. Respirable crystalline silica refers to the size of the particles (4 microns or smaller) as well as the crystalline forms.
protect public health. Moreover, without enforceable permit conditions in place to ensure compliance, facilities
may cause emissions that exceed applicable standards without any effective way to detect or prevent those
exceedances. Compliance with these requirements is important throughout the entire Bay Area. But given the
heavy cumulative air pollution burden that already exists in the BVHP area, it is especially important in this
community.

31. In light of the BVHP Community’s history of advocacy and the Air District’s partnership with
the BVHP Community, the APCO intends to conduct outreach to the community before a hearing on this
matter occurs. It is vitally important that this abatement order process incorporate the expertise of and input
from affected community members regarding impacts from operations at the Pier 92 Facility, a reasonable
timeframe to come into compliance, reasonable increments of progress, and potential interim operation
conditions for the requested abatement order. The APCO anticipates a minimum of 45 days is needed prior to
the hearing to allow the Air District necessary time to conduct this outreach.

ACCUSATION OF VIOLATION OF REGULATION 2-1-302

I. Pier 92 Was Initially Determined to be Exempt from Regulation 2 Permitting Requirements
   But Was Subsequently Found to be Ineligible For An Exemption and to Require A Permit.

32. The Facility processes sand mined from a State Land Commission lease in the San Francisco
Bay. Sand is barged to Pier 92, where it is offloaded, washed with fresh water, and then distributed to customers.

33. When the sand arrives by barge, conveyors move it to an “off-loaded pile.” A water spray system
is used to keep the sand wet during transfer to the off-loaded pile. Mobile equipment, such as loaders or forklifts,
then transfer the sand to a feed hopper to start the washing process. The feed hopper drops the sand through
a chute onto another conveyor, which takes it to the wash plant, where it is washed with fresh water. After the
sand is washed, it is stockpiled in a “finished product pile” and ultimately loaded into customers’ trucks for off-
site distribution. A water truck is used to spray water onto the finished product pile to keep it wetted. A process
flow diagram of the Facility’s sand wash and handling operations is shown below in Figure 1.

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4 The Air District’s regulatory jurisdiction is limited to stationary sources. It does not have jurisdiction over mobile sources
such as the barges that bring the sand to the Facility, the mobile sand handling equipment used at the Facility, such as
loaders and forklifts, and the trucks that take the sand away from the Facility.
34. The Facility’s sand processing operations cause emissions of fine particulate matter and crystalline silica, the health effects of which are discussed above. Fine particulate matter and crystalline silica can become airborne when the sand is processed and stored at the Facility and can be blown offsite by prevailing winds. Fine particulate matter and crystalline silica can also become airborne and be blown offsite by vehicles driving back and forth within the Facility, especially in the many unpaved areas of the Facility. To minimize the potential for operations at the Facility to generate these emissions, it is important that the operator keep the sand adequately wetted at all times and limit the amount of truck traffic driving within the Facility, among other measures.

35. The Facility was initially operated by Tidewater Sand & Gravel. In 1994, the APCO evaluated the Facility and determined that it was exempt from permitting requirements under Regulation 2 based on the moisture content of the sand. The APCO issued a certificate of exemption for the Facility specifying that it was exempt subject to certain conditions, including that the operator maintain the sand being processed at an adequate moisture level.

36. Air District staff conducted an inspection of the Facility in June of 2017. At that time, the Facility was owned and operated by Respondent’s predecessor Leigh Hansen. As part of their inspection efforts, Air District staff checked the moisture content levels of the sand at the Facility to confirm that it was meeting...
the requirements for the exemption. Analysis of the sand determined that the sand’s moisture content was not high enough to qualify for the exemption. Since the Facility no longer qualified for an exemption, at that point it was required to have an operating permit, and its operations since that time have been in violation of Regulation 2-1-302—and will be until Martin Marietta obtains a permit.

37. The Air District also conducted inspections around this time at a nearby, related materials handling facility, located at Pier 94 at Cargo Way and Jennings Street (the Pier 94 Facility). The Pier 94 Facility handles sand as well as ½ to 1 inch construction aggregates. It receives these materials by ship, unloads them into storage piles where they are stored for distribution to customers, and then loads them into customers’ trucks using front-end loaders. The Pier 94 Facility uses a water spray system and water trucks to spray water onto the material to keep it wetted to reduce emissions. Like Pier 92, the Pier 94 Facility was owned at the time by Lehigh Hansen and was acquired by Martin Marietta in 2021. Like Pier 92, the Pier 94 Facility initially operated as an exempt facility.

38. Air District staff conducted inspections of the Pier 94 Facility in 2016 and 2018 and found that the materials there were not sufficiently wetted to qualify for the exemption. This meant that Lehigh Hansen (the owner at the time) was required to obtain a permit for the Facility under Regulation 2-1-302, and that continued operation was in violation of that regulation—the same situation as at Pier 92. (The Pier 94 Facility is not a subject of this Accusation and Request for Conditional Order for Abatement because the Pier 94 operation is about to shut down, as explained in more detail below.)

II. Pier 92's Owner/Operators Have Applied for a Permit, But They Have Been Constantly Changing Plans, Which Has Prevented the Air District From Completing its Review of the Permit Application.

39. After Air District staff discovered that the Facility was no longer exempt from the Air District’s permitting requirements, the Facility’s then-owner, Lehigh Hansen, submitted a permit application (application no. 28839) in August 2017 seeking to obtain a permit in order to come into compliance with Regulation 2-1-302. Lehigh Hansen also submitted a similar application for the Pier 94 Facility (application no. 27982), which the Air District has been processing concurrently with the Pier 92 application.

40. In the Pier 92 permit application, Lehigh Hansen sought authorization to process and sell more sand per year than the Pier 92 plant was handling at the time—presumably to provide flexibility to ramp up
operations in the future. In regulatory jargon, the application sought authorization for an increased level of “throughput,” compared to historical operations. “Throughput” refers to the amount of material that can be handled or processed in a given time period.

41. When Air District staff began evaluating the permit application, they informed Lehigh Hansen that approval to process and sell more sand (i.e., to operate at a higher level of “throughput”) would require additional regulatory analyses under the Air District’s permitting regulations, and would likely require the Facility to implement additional measures to control emissions, referred to as “Best Available Control Technology” for controlling toxic air contaminants, or “TBACT,” under Air District Regulation 2, Rule 5.

42. To avoid becoming subject to these additional regulatory requirements, Lehigh Hansen repeatedly changed its plans and reduced the level of throughput it was seeking in its permit application. Lehigh Hansen revised its plans in February of 2019 and March of 2019, and then again February of 2021. It ultimately sought approval for a throughput of 800,000 tons per year of sand.

43. Based on this understanding of Lehigh Hansen’s plans for operating the Facility, the Air District undertook its analysis of whether the Facility would comply with Air District regulations at this level of throughput. The Air District’s analysis determined that the Facility would, subject to certain operating conditions to ensure that air emissions from the sand handling operations would remain within applicable limits (referred to herein as the “2021 Draft Permit Conditions”). The 2021 Draft Permit Conditions, which are attached hereto as Attachment A, required the owner/operator of the Facility to: (i) limit throughput to 800,000 tons of sand processed per year; (ii) take steps to limit visible dust emissions from the sand processing equipment and storage piles; (iii) use water sprays on the sand processing equipment, storage piles, and unpaved roadways, and use sweeping, flushing, or similar measures to limit dust from roadways; (iv) ensure that the entire surface of the sand stockpiles remains wet at all times; (v) implement the Facility’s Dust Control Plan; (vi) limit the amount of traffic by trucks and other mobile equipment within the Facility; and (vii) other requirements to help implement these conditions, including testing, monitoring, and recordkeeping requirements. The Air District’s analysis found that, with these conditions, the Facility’s operations would comply with all applicable Air District regulations.

44. In particular, the Air District’s analysis concluded that, operating in accordance with the 2021 Draft Permit Conditions, the health risk from the crystalline silica that would be emitted from the Facility’s
operations would be a Hazard Index of 0.0903 for nearby off-site workers and 0.0018 for nearby residents. A Hazard Index of 1 corresponds to the level below which no observable health effects are expected, based on scientific studies, with an adequate margin of safety. These Hazard Index values were well below that level. This analysis supported the conclusion that the 2021 Draft Permit Conditions should be implemented to ensure that the Facility’s particulate matter and crystalline silica emissions would not cause any significant adverse health impacts to workers or residents in the surrounding community.

45. The Air District published the 2021 Draft Permit Conditions for public review and comment in March of 2021, and received comments from multiple members of the public. The Air District also held a virtual public meeting in June of 2021. Some of the public comments received during this process pointed out that the issuance of a permit for the sand handling equipment and stockpiles is a discretionary permitting decision subject to the California Environmental Quality Act (CEQA). The APCO concluded based on these comments that issuance of the permit to operate would be subject to CEQA, so Air District staff began evaluating the applicable CEQA requirements and how to ensure they are complied with.

46. In October of 2021, Respondent Martin Marietta took over ownership of the Facility from Lehigh Hansen. Air District staff therefore engaged with Martin Marietta representatives regarding the permitting process, and in particular regarding CEQA compliance.

47. Under CEQA, the Air District is a “responsible agency” with respect to the Facility. The “lead agency” is the Port of San Francisco, which issued the lease for the sand handling operations at the Facility. As the CEQA lead agency, the Port of San Francisco conducted an environmental impacts analysis for the sand plant’s operations, which is documented in the 2001 Supplemental Environmental Impact Report (2001 SEIR) for the Port’s Southern Waterfront area. The Air District is a responsible agency with respect to the Facility because it has to issue a discretionary approval (the permit to operate) subsequent to the lead agency’s primary approval of the operation.

48. As a responsible agency, the Air District has an obligation to evaluate the 2001 SEIR and determine whether there have been any substantial changes to the operation or to the circumstances under which the operation is being undertaken, or any new information about the operation that was not previously available, since the time the 2001 SEIR was prepared. If there are any such changes or new information showing that there will be any new or substantially more severe significant environmental impacts that were not evaluated
in the 2001 SEIR, then the APCO is required to prepare a subsequent or supplemental environmental impact report before issuing the permit.\(^5\) If there have been no such changes, then no subsequent or supplemental environmental impact report is required or allowed. (Pub. Res. Code, § 21166; CEQA Guidelines, § 15162.)

49. In July of 2022, the Air District engaged an environmental consultant with specialized expertise in CEQA analyses to evaluate whether there have been any changes or new information since the 2001 SEIR that would require a subsequent or supplemental analysis. When it did so, Air District staff confirmed with Martin Marietta that the company would continue to pursue the permit application, and invoiced Martin Marietta for the costs of the environmental consultant to perform the evaluation of the 2001 SEIR. After Air District staff received confirmation and payment for the CEQA consultant, they directed the consultant to begin evaluating whether the Facility’s operations—as identified by the most recent 2021 permit application submission—result in any changes or new information since the Port’s initial environmental analysis that would require further CEQA review.

50. In April of 2023, after Air District staff and the environmental consultant had spent extensive time on the project, Respondent again changed plans for how it wanted to operate the Facility. Respondent indicated that it wanted to be able to have a significantly higher amount of transfer truck and front loader traffic than contemplated by the 2021 Draft Permit Conditions.

51. These further changes were highly problematic because changing plans requires starting the permit analyses and CEQA evaluation over from scratch. These analyses must be based on accurate information about how the Facility will operate, and if the proposed operations change, any analyses that have been completed have to be redone to ensure they correctly address the potential impacts from the operations. Furthermore, such changes usually require re-drafting of the appropriate permit conditions necessary to ensure that the operations will comply with applicable air quality regulations. These repeated changes are detrimental because they have required Air District staff to re-do much of the work that they had put into the permit application for the Facility and have significantly delayed the processing of the application.\(^6\)

\(^5\) Pursuant to CEQA Guidelines, § 15052(a)(2), the Air District would assume the “lead agency” role if a subsequent or supplemental environmental impact report is required.

\(^6\) Due to the problem of applicants continually modifying their permit applications, the Air District updated its Regulations in 2021 to require permit applicants to submit new application if any substantive change is made to an active application. (See Regulation 2-1-408.5.) Pursuant to Regulation 2-1-408.5, which became effective July 1, 2022, a new permit application must be submitted if any substantive changes are made to an active application.
Recently, Respondent informed Air District staff that it is changing plans yet again. With respect to the Pier 94 Facility, Respondent stated that it is shutting down that operation completely. With respect to Pier 92, Respondent proposed a completely new, state-of-the-art operation to replace the current Facility.

53. If Respondent goes forward with this new plan, it would be an improvement in terms of emissions and air quality impacts. The Pier 94 Facility will no longer have any emissions, as all materials handling activities there will cease, and Pier 92 will have lower emissions because it will be rebuilt with modern equipment. But in order to undertake these improvements, Respondent will have to start the permitting process over again from scratch, which will prolong the resolution of Pier 92’s noncompliance even further.7

54. These repeated changes need to stop. While the Air District supports improvements that will benefit air quality, this new proposal cannot result in an indefinite continuation of Respondent’s failure to obtain a permit for its operations at Pier 92. There needs to be a conclusion to the ongoing violation of Regulation 2-1-302 at this Facility.

III. A Conditional Order For Abatement Is Necessary to Stop Respondent From Continuing to Change Its Plans And to Bring Finality to Respondent's Ongoing Failure to Obtain A Permit.

55. An order from the Hearing Board is needed to provide a guaranteed end date for Respondent’s continued operation in violation of Regulation 2-1-302. Respondent needs to be given a deadline by which it must either obtain a permit and come into compliance with Regulation 2-1-302 or stop its indecision and shut down. The APCO is seeking an order from the Hearing Board to impose such a deadline in order to bring certainty and finality to this situation. The APCO is also seeking an order from the Hearing Board to impose interim operating conditions in the meantime.

A. The Hearing Board Should Issue an Order Requiring Compliance Within the Shortest Possible Timeframe.

56. The Hearing Board should issue an order that will force Respondent to commit to a specific plan for operations at Pier 92 that will allow for a stable and unchanging permit application that the Air District can process and make a determination on. To do so, the Hearing Board should establish an appropriate deadline application would be required to either change the number of truck trips or to construct and operate a new, updated facility.

7 The noncompliance at Pier 94 will end as soon as Martin Marietta shuts down the materials handling operations there. For this reason, Pier 94 is not included in this Request for Conditional Order for Abatement.
by which Respondent must obtain a permit and come into compliance with Regulation 2-1-302. This deadline should be established based on the minimum amount of time it will reasonably take for Respondent to diligently pursue its permit application through to a final determination, to be established based upon the evidence presented at the hearing. Such an order will provide a reasonable opportunity for Respondent to obtain the permit that it requires as a result of the Facility losing the exemption it originally enjoyed. But with an enforceable time limit on doing so, it will prevent Respondent from continuing the historic practice at this Facility of indecision, unreliability, and constantly changing plans.

57. Such an order is necessary because of the continued inability of the Facility’s operators to commit to a specific plan and permit application for this site. Martin Marietta and its predecessor Lehigh Hansen have engaged in a constant series of changes and revisions, which has prevented the APCO from completing its permit evaluation for the Facility. This history of changes and revisions includes:

- In February 2019, a request to lower the Facility’s permitted throughput to keep emissions below the level at which a health risk assessment would be required.
- In March 2019, a further request to reduce the Facility’s permitted throughputs.
- In February 2021, another request to reduce the permitted throughput, this time to keep emissions below the level at which the TBACT abatement requirement would become applicable (see ¶ 41 above).
- In April 2023, a request to change the 2021 Draft Permit Conditions to allow increased truck traffic within the Facility, which would necessitate a change to the assumptions and emissions calculations the Air District and its CEQA consultant had been using in their evaluations.
- In July 2023, a proposal to undertake a complete reconstruction of the Facility to install a state-of-the-art facility.

This pattern and practice of unending changes and revisions was evident with the Pier 94 permit application as well. The requested throughput levels for that facility were changed in February of 2019 and March of 2023; in February 2021, changes were made to the daily and hourly throughputs for ship offloading; in April 2023, Respondent requested changes to the operating assumptions incorporated into draft permit conditions that the Air District was using in its permitting and CEQA analyses; and finally, Respondent disclosed that it plans to shut down the Pier 94 Facility entirely.

58. These repeated changes have caused significant delays and have impeded the APCO’s ability to
process the Pier 92 permit application. Under Air District Regulation 2, Rule 2, permit applications such as this must undergo a rigorous engineering review and approval process. This includes the Air District’s New Source Review (NSR) permitting process to ensure that the operation does not jeopardize compliance with applicable ambient air quality standards, as well as the relevant evaluations required by CEQA. These analyses are expensive and time consuming. Further, they must be based on accurate information. This means if the permit applicant changes plans after the analyses have been completed, the analyses must be repeated to ensure that all risks and impacts are adequately accounted for. The many changes to the permit application to date have required repeated reworking of multiple analyses associated with the application, and any further changes will require even more reworking of those analyses and even more delay.

59. An order from this Hearing Board setting a deadline for final compliance is necessary to prevent Respondent from continuing to make changes. With a deadline in place, Respondent will have to commit to a final set of plans for its operation at Pier 92 and a final permit application to approve that operation. If it changes its plans further, or if it fails to diligently pursue its application based on those plans, it will miss its deadline and be forced to cease operating. Such an order will also force Respondent to cease operating if the final permit analysis shows that the Facility’s operations do not comply with applicable regulations for any reason and cannot be permitted. Either way, the order will bring Respondent’s ongoing noncompliance to an end.

B. The Hearing Board Should Impose Interim Operating Conditions to Protect Public Health.

60. The Hearing Board’s order should also impose enforceable interim operating conditions to protect public health if the Facility is allowed to continue operating in violation of Regulation 2-1-302.

61. At minimum, Respondent must be required to comply with the 2021 Draft Permit Conditions as specified in Attachment A or their functional equivalent. As outlined above, these conditions include a limit on the Facility’s throughput (the amount of sand it can handle each year), requirements for the Facility to use water sprays and other measures to limit emissions from the sand processing equipment and stockpiles and

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8 For example, 2021 Draft Permit Condition no. 5 has obligations based off of the date an Authority to Construct and Permit to Operate are issued. To be functionally equivalent, the interim condition should be based off the date that the Order is issued.
unpaved roadways, implementation of a Dust Control Plan, and a limitation on truck and other mobile
equipment traffic within the site (among other requirements). Additional measures may be warranted based on
community expertise and to account for the Facility’s extensive period of noncompliance, as may be
demonstrated by evidence presented at the hearing in this matter.

62. Imposing such conditions of operation in the order, in a legally binding and enforceable manner,
is important and necessary to ensure that Respondent’s operations at Pier 92 will comply with air quality
regulations and will not exceed public health risk thresholds. The 2021 Draft Permit Conditions were based on
operational levels that Air District staff determined would be in compliance with applicable regulations and
would ensure crystalline silica emissions would not endanger public health. Respondent should be prohibited
from operating unless it complies with all of those conditions, plus any additional conditions that the Hearing
Board may determine are necessary according to evidence presented at the hearing.9

GOOD CAUSE FOR CONDITIONAL ORDER OF ABATEMENT

63. The APCO respectfully submits that the requirements for issuance of a Conditional Order For
Abatement under Health & Safety Code sections 42451(a) and 42452 are satisfied and that such an Order is
appropriate under the circumstances. These requirements are satisfied for the following reasons.

64. Respondent is operating the Facility without a permit to operate in violation of Regulation 2-1-
302.

65. Respondent has been and will continue to be in violation of Regulation 2-1-302 as long as it
continues to operate the Facility without an operating permit. To address this noncompliance, the APCO is
seeking a Conditional Order For Abatement directing Respondent to cease operation of the Facility unless and
until Respondent diligently pursues and obtains a permit within the shortest possible timeframe and complies
with and implements interim operation conditions to minimize emissions and protect public health while
compliance is being achieved.

66. It would not be unreasonable to require Respondent to implement such measures. Respondent
obtains a significant economic benefit by operating the Facility. Companies with similar operations throughout
the Air District subject to the Air District’s permitting regulations obtain permits and operate subject to permit

9 Note Respondent is currently complying with many of the 2021 Draft Permit Conditions. However, an order from the
Hearing Board is necessary to make Respondent’s compliance with all conditions mandatory and enforceable.
conditions aimed at reducing particulate matter and respirable crystalline silica emissions and impacts. It is not unreasonable to expect Respondent to do the same.

67. The issuance of a Conditional Order for Abatement will not constitute a taking of property without due process of law.

68. If the issuance of a Conditional Order for Abatement results in the closing or elimination of an otherwise lawful business, such closing would not be without a corresponding benefit in reducing air contaminants.

69. This issuance of a Conditional Order for Abatement is not intended to be, nor would it have the effect of permitting, a variance. In particular, Respondent will remain liable for monetary penalties for its noncompliance, which the Air District will pursue separately as this Hearing Board does not have jurisdiction to impose penalties. A variance would provide Respondent with protection to escape any liability for penalties; the requested Conditional Order for Abatement would not have that effect.

**REQUEST FOR CONDITIONAL ORDER OF ABATEMENT**

WHEREFORE, the APCO respectfully requests as follows:

1. That the Hearing Board issue a Conditional Order for Abatement (Order) prohibiting Respondent from engaging in operations at the Facility unless and until:
   a. Respondent diligently pursues efforts to obtain a permit to operate for the operations pursuant to Air District Regulation 2-1-302 within the shortest possible timeframe, with the duration of that timeframe (the “Compliance Period”) to be determined according to evidence presented at the hearing on this matter.
   b. Respondent satisfies reasonable increments of progress towards obtaining the permit to operate, with the increments of progress to be established according to evidence presented at the hearing on this matter.
   c. Respondent complies with interim operating conditions during the Compliance Period to minimize emissions and protect public health. The APCO respectfully requests that these interim operation conditions include, at a minimum, the 2021 Draft Permit Conditions or their functional equivalent, as well as any other appropriate conditions as determined according to evidence presented at the hearing on this matter.
2. That the Order prohibit Respondent from engaging in any operations at the Facility after the end of the Compliance Period unless Respondent has obtained a valid permit to operate for such operations.

3. That the Order require Respondent to provide periodic written status updates to the Hearing Board and to appear at status hearings as requested by either the APCO or the Hearing Board.

4. That the Hearing Board retain jurisdiction over this matter for three years after the end of the Compliance Period, pursuant to Hearing Board Rule 4.12, during which period the parties may apply to modify or terminate the Order in accordance with the Rules of the Hearing Board.

5. For such other and further relief as the Hearing Board deems just and proper.

Dated: October 3, 2023

ALEXANDER G. CROCKETT, ESQ.
District Counsel

ANNE BAPTISTE, ESQ.
Assistant Counsel

Attorneys for
PHILIP M. FINE
Executive Officer/APCO
BAY AREA AIR QUALITY MANAGEMENT DISTRICT

By: ____________________________
    Anne Baptiste, Esq.
ATTACHMENT A

2021 DRAFT PERMIT CONDITIONS
Permit Conditions for Martin Marietta Pier 92 Plant #13407 Sand Yard [Condition# 27368]

1. The owner/operator shall only receive and process sand at this facility. Sand shall only be received from barges pulled by tugboats. Other types of ocean-going vessels shall not deliver sand to this site. The total number of barge deliveries shall not exceed 260 during any consecutive 12-month period. [Basis: Cumulative Increase and Avoidance of 2-2-302.2]

2. The owner/operator shall not receive or process more than following quantities of sand at S-1:
   a. 6,000 tons during any day.
   b. 800,000 tons during any consecutive 12-month period.
   [Basis: Regulation 2-1-403, Cumulative Increase]

3. Visible dust emission from S-1 and S-2 shall not exceed Ringelmann 1.0 or result in fallout on adjacent properties in such quantities as to cause a public nuisance per Regulation 1-301. To ensure compliance with this Part and with Regulation 6-1-301 and 6-1-305, the owner/operator shall visually observe all material handling operations associated with S-1 and S-2 and shall immediately initiate corrective actions, if any visible dust emissions are detected that persist for longer than 3 minutes in any hour.
   [Basis: Regulation 1-301, 6-1-301, and 6-1-305]

4. The owner/operator shall abate emissions from S-1, S-2, and unpaved roads with A-1 Water Spray System, and shall utilize sweeping, flushing or other appropriate measures to abate emissions from roadways, as necessary to maintain compliance with Part 3 of this condition, Regulations 6-1-305, 6-1-311, 6-6-301 and 6-6-302. The owner/operator shall ensure water sprays are at each drop point at the conveyor for S-1. For the stockpile area, S-2, the owner/operator shall ensure the water spray reaches the entire surface area of the stockpile and the entire surface area remains wet at all times. The owner/operator is required to maintain compliance with the facility’s Dust Control Plan at all times.
   [Basis: Cumulative Increase, Regulations 1-301, 6-1-305, 6-1-311, 6-6-301, 6-6-302 and Dust Control Plan]

5. To verify compliance with Regulation 2, Rule 5, the owner/operator shall conduct the following testing:
   a. Within 60 days of issuance of this Authority to Construct and at least once every 3 years after issuance of the Permit to Operate, the owner/operator shall collect three (3) representative samples of the sand handled at this facility.
   b. The owner/operator shall have these representative samples of sand analyzed for crystalline silica using NIOSH Method 7500 or other District-approved methods. The owner/operator shall consult with the Engineering Division of the Air District prior to conducting the testing to obtain approval of all collection and analysis methods used.
   c. The owner/operator shall submit the results of the crystalline silica analyses to the Engineering Division of the Air District within 30 days of receiving the results.
   [Basis: Regulation 2-5]

6. In the event the District’s Compliance and Enforcement staff issues the facility two or more Notices of Violation citing "Regulation 1-301: Public Nuisance" related to dust in any consecutive, rolling, 12-month period, the owner/operator shall implement one or more of following control measures (as applicable), or
shall implement any other measures that the District deems necessary and appropriate, within a time period mutually agreeable to the facility and the District:

1. Initiate use of dust suppressants on unpaved roadways.
2. Initiate high power water flushing on roadways.
3. Pave or otherwise stabilize the most frequently used unpaved areas.
4. Reduce the permitted sand throughput at S-1 and S-2 in Part 2 of this Permit Condition.
5. Enclose dust nuisance operations in a warehouse-like building.

Within 30-days of receiving the second Notice of Violation, the owner/ operator shall submit a Permit Application to the District to modify these Permit Conditions in order to memorialize the applicable control measures.

[Basis: Regulation 1-301]

7. To demonstrate compliance with this Permit Condition, the owner/operator shall maintain dated records of the following:

   a. Record the date and the total number of barge deliveries per month.
   b. Record the amount of sand processed at S-1 on a daily and monthly basis.
   c. The owner/operator shall use the monthly records to calculate and record the sand deliveries and throughput at S-1 on a consecutive, rolling 12-month basis.
   d. Maintain written procedures describing events or observations of emissions that shall trigger the use of A-1 Water Sprays at S-1, S-2, and unpaved roads and that trigger sweeping, flushing, or other control measures on paved roads. These procedures shall include descriptions of when, where, at what frequency, and what amount water shall be applied to S-1, S-2, and unpaved roads and frequency of sweeping and flushing of paved roads. Maintain checklists or other records to demonstrate that these emission control procedures are followed.

[Basis: Cumulative Increase, Recordkeeping]

8. The owner/operator of this facility shall:

   a. Monitor the extent of the trackout at each active exit from the site onto a paved public road at least twice during each workday, at times when vehicle traffic exiting the site is most likely to create an accumulation of trackout, or as otherwise specified by the APCO;
   b. Document the active exit locations monitored each workday;
   c. Document each occasion when the trackout exceeds cumulative 25 linear feet and all trackout control and cleanup actions initiated as a result of monitoring Part a of this condition; and
   d. Maintain the records required by Part b and Part c of this condition for two years, in electronic, paper hard copy or log book format, and make them available to the APCO upon request.

[Basis: Regulation 6-6-501]
The owner/operator shall maintain these records and any related correspondence with any division of the District in a District-approved log and shall retain the records on-site for at least two years from the date of entry and shall make the records available to District staff for review upon request.
[Basis: Cumulative increase, Regulation 2-1-403]

9. The owner/operator of this facility shall limit the trips of front loader on unpaved road to:
   a. 546 trips during any day and
   b. 72,727 trips during any consecutive 12-month period.

   The owner/operator of the facility shall limit the trips of transfer trucks on unpaved road to:
   a. 188 trips during any day and
   b. 25,000 trips during any consecutive 12-month period.

   The owner/operator of this facility shall limit the trips of transfer trucks on paved road to:
   a. 188 trips during any day and
   b. 25,000 trips during any consecutive 12-month period.

   To demonstrate compliance with this permit condition, the owner/operator shall maintain records in a District-approved log of vehicle trips per day, per month and per rolling 12-month period for each type of vehicle traveling on roadways at this facility. All records shall be retained on site for at least two years from the date of entry and be made available for inspection by District staff on request.
   [Basis: Cumulative Increase, Regulation 2-5, Recordkeeping]
BEFORE THE HEARING BOARD OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
STATE OF CALIFORNIA

AIR POLLUTION CONTROL OFFICER of the BAY
AREA AIR QUALITY MANAGEMENT DISTRICT

Complainant,

vs.

MARTIN MARIETTA MATERIALS, INC.

Respondent.

DOCKET NO. 3746
CERTIFICATE OF SERVICE

I, Magnolia Vinluan-Chan, declare as follows:

I am over the age of 18, not a party to this action and am employed in the City and County of San Francisco at 375 Beale Street, San Francisco, CA 94105.

I served the following documents to the addressees listed below at the addresses specified:

- ACCUSATION OF VIOLATION OF REGULATION 2, RULE 1, SECTION 302, AND REQUEST FOR ORDER FOR ABATEMENT
- STATEMENT TO RESPONDENT
- NOTICE OF DEFENSE
- CALIFORNIA GOVERNMENT CODE SECTIONS 11507.5 – 11507.7

☐ By placing the document(s) listed above in a sealed envelope to be sent by Certified, Return Receipt mail with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed to the person(s) at the address(es) set forth below.

☐ By causing personal delivery of the above documents at the address(es) set forth below.
By causing the above documents to be sent to the persons at the electronic notification addresses(es) set forth below.

On October 4, 2023, I served the above-listed documents to the addressees at the addresses listed below:

Martin Stratte  
Assistant General Counsel  
Martin Marietta  
4123 Parklake Avenue  
Raleigh, NC 27612  
Tel.: (919) 783-4682  
Cell: (919) 208-7065  
Email: martin.stratte@martinmarietta.com

I am readily familiar with the Bay Area Air Quality Management District’s practice of collection and processing of the mail. Under that practice, the mail would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 4, 2023, at San Francisco, California.

[Signature]

MAGNOLIA VINLUAN-CHAN

CERTIFICATE OF SERVICE
BEFORE THE HEARING BOARD OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
STATE OF CALIFORNIA

AIR POLLUTION CONTROL OFFICER of the BAY
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Martin Stratte                      Shannon Broome
Assistant General Counsel          Partner
Martin Marietta                    Hunton Andrews Kurth LLP
4123 Parklake Avenue               575 Market Street
Raleigh, NC 27612                   Suite 3700
Tel.: (919) 783-4682                 San Francisco, CA 94105
Cell: (919) 208-7065                 (415) 975-3718
Email: martin.stratte@martinmarietta.com  sbroome@huntonak.com

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[Signature]

Magnolia Vinluan-Chan