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BEFORE THE HEARING BOARD OF THE

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

STATE OF CALIFORNIA

In the Matter of the APPEAL of ARGENT MATERIALS, INC., Denial of Permit Application No. 30122, Denied April 10, 2025 RE: ARGENT MATERIALS, INC. FACILITY NO. 8501 SAN LEANDRO STREET, OAKLAND, CA 94621	Docket No. 3762 RESPONDENT AIR POLLUTION CONTROL OFFICER'S ANSWER TO APPELLANT'S PETITION FOR APPEAL

INTRODUCTION

This case is about whether the Air Pollution Control Officer for the Bay Area Air Quality Management District ("Air District") improperly denied Argent Materials, Inc.'s ("Argent") permit application for the Facility's Fulfillment Yard. In 2019, Argent submitted two permit applications to increase the amount of aggregate that it crushes and stockpiles at its recycling Facility from 500,000 tons to 1.6 million tons per year. The Air District jointly denied both permit applications because Argent's proposed expansion of the Facility would expose the public to an unacceptable level of toxic air pollution and health risk in violation of Air District regulations.

First, Argent attempted to circumvent the Air District's permitting regulations when it split its permit request to increase the Facility's total aggregate processing limit into two permit applications. Argent submitted one application in April 2019 for the Facility's Main Yard, and another application in September 2019 for the Facility's Fulfillment Yard. Argent claims these permit applications are unrelated permit requests because the Main Yard and the Fulfillment Yard

are separate and distinct facilities. However, the Air District's review of the permit applications revealed that Argent operates and manages its Main Yard and Fulfillment Yard as one unified aggregate recycling Facility. As a result, the Air District determined Argent's applications are related permit requests for the same Facility. By law, the Air District must consider separately submitted permit applications for the same facility as related permit requests to prevent any evasion or circumvention of the agency's regulations, including those that govern the permit review process.

Next, Argent's proposal to expand the Facility's total aggregate processing capacity does not comply with the Air District's health risk standards. During the permit review process, Argent repeatedly tried to convince the Air District that its permit applications are for separate projects at separate facilities and are entitled to separate Health Risk Assessments ("HRA"). However, the Air District determined that Argent's applications are not only related permit requests for the same Facility, but also a single, coordinated project to triple the Facility's total aggregate processing capacity. As a result, the Air District analyzed the proposed emission sources from both permit applications in one HRA because collectively the permit applications defined the entire project under review for Air District approval. The HRA results show that Argent's project to increase the amount of aggregate crushed and stored at the Facility will generate harmful levels of toxic air emissions in East Oakland, a community that is already struggling with disproportionately high pollution levels and their concomitant health effects. By law, the Air District could not sever its analysis of Argent's expansion project into separate HRAs because increasing operations across both Yards in the amount proposed by Argent would expose East Oakland residents to harmful levels of toxic air pollution.

Argent bears the burden of showing the Air District did not properly apply its regulations and erroneously denied its permit application for the Fulfillment Yard. Argent cannot meet its burden because its appeal rests on flawed interpretations of Air District regulations and uncorroborated claims that fail to show the agency's evaluation of its permit application was not fair, reasonable, or consistent with its review of similar permitting actions. In the absence of any proof that the Air District erred, the Hearing Board must presume the Air District discharged its duties correctly. Therefore, the Hearing Board must affirm the Air District's decision to jointly

deny Argent's permit applications.

FACTUAL BACKGROUND

Argent operates a concrete and asphalt recycling Facility in East Oakland, California. The Facility crushes and grinds broken concrete and asphalt ("raw aggregate") from construction and demolition projects in the San Francisco Bay Area to produce recycled rock and sand products ("finished aggregate") that Argent stockpiles and sells on-site. Argent's Facility consists of two adjacent yards that are diagonally across from each other. Exhibit A ("Exh."). The Air District permitted what is now the Main Yard at 8300 Baldwin Street in December 2017. The Main Yard occupies the west side of the Facility, and it is where Argent processes raw aggregate to produce finished products. The Fulfillment Yard at 8501 San Leandro Street, which is on the east side of the Facility, does not have an Air District permit but Argent has been stockpiling and distributing finished aggregate coming from the Main Yard at this storage yard since April 2019.

In 2019, Argent submitted two permit applications five months apart to increase the total amount of aggregate that it crushes and stockpiles at the Facility from 500,000 tons to 1.6 million tons per year. Argent submitted its first permit application (App. No. 29851) on April 5, 2019 to double the aggregate processing capacity for raw and finished aggregate at the Main Yard from 500,000 tons to 1,000,000 tons per year. Exh. B. That same month, Argent expanded into the Fulfillment Yard, without a permit from the Air District, and began stockpiling finished aggregate from the Main Yard there. Exhs. C and D. Five months later, on September 9, 2019, Argent submitted a second permit application (App. No. 30122) for the Fulfillment Yard. Exh. E. This permit application describes the Fulfillment Yard as "a storage/overflow yard of finished product from our primary site at 8300 Baldwin St" and requests approval to stockpile 600,000 tons per year of finished aggregate. *Ibid.*

In September 2023, the Air District discovered an error in Argent's 2023 Permit to Operate for the Facility, which was set to expire in July 2024. Argent's 2023 Permit to Operate listed the Facility's total processing capacity for both raw and finished aggregate at 1,000,000 tons per year. Exh. F. This error occurred when Air District staff updated the status of the permit application for the Main Yard to reflect the agency's completeness determination. On September 19, 2023, the Air

District sent a letter notifying Argent of the error in its 2023 Permit to Operate and re-issued that permit with the Facility's correct aggregate processing limit of 500,000 tons per year. Exhs. G and H.

On April 9, 2025, the Air District jointly denied Argent's permit applications. The Air District determined that Argent attempted to circumvent the agency's permitting regulations by submitting two permit applications for one expansion project at the same aggregate recycling Facility in violation of Regulations 1-104 and 2-5-216. Exh. I. The Air District also determined Argent's proposal to expand the Facility's total aggregate processing capacity would generate toxic air emissions that do not comply with the agency's health risk standards in violation of Regulation 2-5-302. *Ibid.* The Air District prepared an Engineering Evaluation Report that provides a detailed analysis of Argent's expansion project and the agency's reasons for denying Argent's permit applications. Exh. J. On May 8, 2025, Argent filed a Petition for Appeal ("Pet.") regarding the Air District's denial of the permit application for the Fulfillment Yard (App. No. 30122), but Argent did not appeal the Air District's denial of the permit application for the Main Yard (App. No. 29851), and the statute of limitations to appeal the decision for that permit application has expired.

ISSUES

1. Whether the Air District improperly determined Argent's Main Yard and Fulfillment Yard constitute a single facility.

2. Whether the Air District improperly determined Argent's request to increase the total amount of aggregate processed at the Facility's Main Yard and Fulfillment Yard constitutes a single "project" for purposes of evaluating the associated health risk.

3. Whether the Air District's denial of the permit application for the Fulfillment Yard because of the unacceptable health risk from operations at both Yards was improper.

STANDARD OF REVIEW

An applicant for a permit that has been denied may file a petition for appeal and request the Hearing Board hold a hearing on whether the permit was properly denied. Health & Saf. Code, § 42302; Hearing Board Rules, § 8.1(e). The petition for appeal must set forth all the issues raised by the appeal and the main facts in support of the appeal. Hearing Board Rules, § 8.3(b). As the

appellant, Argent has the burden of proof, which means Argent must show the Air District's denial of its permit applications was "erroneous." Hearing Board Rules, § 8.4.

In an appeal of a permit denial, the Hearing Board's decision is limited to determining whether the Air District had reasonable grounds to deny the permit. See Hearing Board Rules, § 8.6.[1] The Hearing Board must presume that the Air District properly discharged its permitting duties and that its denial was correct under the law. Argent has the burden of proving that the Air District did not properly apply the law, acted arbitrarily, and that the denial was incorrect. Hearing Board Rules, § 8.4; Evid. Code, § 664; *see e.g.*, *In re Stobie's Estate. Lipsey v. Shackford* (1939) 30 Cal.App.2d 525, 530-531. The presumption that the Air District properly discharged its duties is itself evidence of the correctness of the Air District's decision, and the Hearing Board may rule in the Air District's favor even if Argent presents some evidence against the presumption. *National City v. Dunlop* (1948) 86 Cal.App.2d 380, 384.

Additionally, when determining whether a permit denial was correct or not, the Hearing Board may not substitute its judgment for that of the Air District. Hearing Board Rules, § 8.6; Evid. Code, § 664. Instead, the Hearing Board's task is "to determine whether the [Air District's] interpretation of the applicable legal requirements is fair and reasonable and consistent with other actions of the [Air District]." Hearing Board Rules, § 8.6. If the Air District reasonably interpreted the legal requirements, applied them consistently, and followed the appropriate procedures and guidelines, the Air District's denial must be upheld. The Hearing Board must defer to the Air District's determination, unless the appellant can show the Air District's action was erroneous. Hearing Board Rules, §§ 8.4; 8.7 ("In all cases, the Hearing Board will issue a written Order which identifies the evidence it relied on and the Hearing Board's reasoning in making its decision."). This is true even if there were other reasonable ways of evaluating the permit application or interpreting the regulations.

If the Hearing Board determines that the agency incorrectly denied the permit application, it must then determine the appropriate remedy, including reversing, allowing, or modifying the Air

[1] If the permit was denied because the applicant has a history of emissions violations, the Hearing Board is required to consider additional factors in section 8.4(e) of the Hearing Board Rules, but that is not the case here.

District's decision on the permit application. Hearing Board Rules, § 8.7. Where the Hearing Board finds the agency acted in error, the Hearing Board may allow the decision to stand if the Board finds the error to be harmless. *Ibid.* If necessary, the Hearing Board may hold further hearings to consider the remedy. *Ibid.*

ARGUMENTS

Argent's claims that the Air District improperly denied its permit applications to expand the Facility rests on faulty interpretations of the agency's regulations and uncorroborated assertions. Argent alleges that it did not circumvent or evade the Air District's permitting regulations because its permit applications are unrelated permit requests for separate and distinct facilities. Argent also alleges it did not circumvent or evade the agency's regulations because the Air District "approved" the permit application for the Main Yard before it submitted the permit application for the Fulfillment Yard. Finally, Argent alleges its permit applications are separate projects that the Air District should have analyzed in separate HRAs. Argent is wrong on all three counts.

There was nothing improper or unreasonable about the Air District's review of Argent's permit applications. In fact, the Air District was well within its authority to harmonize Argent's permit applications because the applications are for the same Facility and were submitted within a short period of time, making them related permit requests under Regulation 2-5-216. The agency's handling of Argent's permit applications was also authorized under Regulation 1-104, which prohibits permit applicants from intentionally or inadvertently circumventing or evading the Air District's permitting regulations. The Air District cannot treat Argent's permit applications as unrelated permit requests solely because Argent submitted its applications separately; that would violate Regulations 1-104 and 2-5-216.

The regulations also authorized the Air District to evaluate Argent's proposal to expand the Facility's total aggregate processing capacity in one HRA. Like most environmental pollution control laws, the Air District's regulations prohibit permit applicants from piecemealing—submitting separate permit applications for individual elements of the same project. This tactic is forbidden because it obscures the adverse impacts associated with permitting the whole project by focusing instead on the minimal impacts associated with permitting individual elements of the

project.

Here, the Air District is prohibited from analyzing Argent's permit applications in separate HRAs because both applications define the entire project under permit review, and the HRA results show the expansion from processing 500,000 tons per year of raw and finished aggregate to 1.6 million tons per year would generate unacceptable levels of toxic air pollution. Artificially severing the expansion project, as Argent argues, in an unlawful attempt to separately approve increases at each Yard would expose East Oakland residents to high concentrations of toxic air pollution and cause unacceptable health risks in violation of Regulations 1-104, 2-5-216, and 2-5-302.

Thus, the Air District was simply doing its job and complying with its regulations when it determined Argent's permit applications are related permit requests that constitute a single project to expand the Facility's total aggregate processing capacity and analyzed the expansion project's toxic air emissions and health risks in a single HRA. For these reasons, the Hearing Board should uphold the Air District's decision to deny Argent's permit application for the Fulfillment Yard.

I. THE AIR DISTRICT PROPERLY DETERMINED THAT ARGENT'S MAIN YARD AND FULFILLMENT YARD CONSTITUTE ONE FACILITY.

Argent claims, without any supporting evidence, that it did not circumvent or evade the Air District's permitting regulations because the permit applications are for "two facilities [that] are separate and distinct operations." Pet. at p. 5. Argent's view that the Main Yard and Fulfillment Yard are separate facilities with separate operations is not only unsubstantiated, but also inconsistent with Air District regulation, which defines a facility in two ways. A facility is any "installation that emits or may emit any air pollutant" or "any aggregation of sources, buildings, structures or installations that are (i) located on one or more contiguous or adjacent properties; (ii) are under common ownership or control; and (iii) are considered to be the same industrial grouping, as identified by the first two digits of the applicable SIC code." Regulation 2-1-213 (simplified).

Argent's operations at the Main Yard and the Fulfillment Yard satisfy both definitions. See Exh. J at pp. 5-7. Argent holds itself out as one business. Argent has one website for the Facility and depicts the Yards as a single, interconnected operation that crushes raw aggregate at the Main Yard and stores and distributes finished aggregate from the Fulfillment Yard. See Exhs. A and K. Argent has one management team for the Facility that oversees operations across both Yards, and it

does not distinguish or treat the two Yards as separate businesses or operations. Exh. L. As such, the Main Yard and the Fulfillment Yard constitute one "installation" that emits air pollutants under Air District Regulation 2-1-213.

Moreover, if Argent's Yards were separate installations, they would still constitute a single facility under Regulation 2-1-213 because: the Yards are under Argent's ownership and management; they are adjacent and located kitty-corner from each other with entrances that are roughly 100 yards apart; and the Yards share the same industrial grouping designation—code 5211 (Lumber and Other Building Materials Dealers), which applies to businesses that are "engaged in selling cement, sand, gravel, and other building materials" to construction contractors and the public.[2] Exh. J at pp. 5-7. The Air District reasonably interpreted and applied its regulations, and Argent has failed to submit any evidence that shows the agency erred. Accordingly, the Hearing Board must defer to the Air District's determination that the Main Yard and Fulfillment Yard are one facility. See Hearing Board Rules, § 8.6.

II. THE AIR DISTRICT PROPERLY DETERMINED THAT OPERATIONS AT ARGENT'S MAIN YARD AND FULFILLMENT YARD CONSTITUTE A SINGLE PROJECT.

Instead of submitting one comprehensive permit application with all the proposed modifications to triple the Facility's total aggregate processing capacity, Argent submitted two claiming the applications are for separate projects. Pet. at p. 5. Again, Argent's view that its permit applications are for separate and unrelated operations or projects is unsubstantiated and inconsistent with Air District regulation. Air District regulation defines a "project" as "[a]ny source, or group of sources at a facility that is part of a proposed construction or modification, is subject to the Air District permitting requirements in Regulation 2-1-301 or 302 and emits one or more toxic air contaminants," including any emission of toxic air contaminants from related permit applications submitted within the last five years.[3] Regulation 2-5-216 (simplified). Regulation 2-5-216 broadly

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[2] U.S. Department of Labor, Occupational Safety and Health Administration, SIC Manual, https://www.osha.gov/sic-manual/5211.

[3] Bay Area Air Quality Management District, Frequently Asked Questions for 2022 Permit Reform and Implementation of Regulation 2-1 and 2-5 Amendments at Section B, https://www.baaqmd.gov/~/media/dotgov/files/rules/reg-2-permits/2021-amendments/documents/20220815_2022permitreform_faqs-pdf.pdf?rev=1e1980d4dd8440cda890f76c62c57c1b&sc_lang=en.

defines projects to prohibit permit applicants from piecemealing: "breaking a project into smaller pieces and submitting more than one permit application over time" to avoid a comprehensive analysis of all potential impacts associated with permitting the entire project. *Ibid.*; see also *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 175 (the California Supreme Court explaining "it is well settled" that CEQA must be broadly construed "so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language").

The Air District cannot automatically treat separately submitted permit applications for the same facility as separate projects for permit review. See, e.g., *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1228 (seeking separate government approvals does not create separate projects under CEQA]) ("*Tuolumne CCRG*").[4] To do so, would sanction piecemealing in violation Regulations 2-5-216 and 1-104, which prohibits the agency from "undertaking or authorizing any practice intended or designed to evade or circumvent Air District Rules or Regulations." Instead, Regulation 2-5-216 requires the Air District to determine whether separate permit applications submitted in a short period of time for the same facility are related and form one project. See e.g., *County of Ventura v. City of Moorpark* (2018) 24 Cal.App.5th 377, 385 ("Thus, where two activities are part of a coordinated endeavor . . . , or otherwise related to each other, they constitute a single project for purposes of CEQA.") (internal quotations and citations omitted).

The Air District has followed this approach with countless permit applications, and Argent's applications were no exception. Argent submitted its permit applications five months apart, which makes the applications related because they are within the five-year look back period described in Regulation 2-5-216. Even more, Argent's permit applications constitute a single, coordinated plan to increase the Facility's total aggregate processing limit from 500,000 tons to 1.6 million tons per year. Exh. J at pp. 7-9. Argent applied to double the amount of raw aggregate is crushes and

[4] CEQA refers to the California Environmental Quality Act, a state law that requires public agencies to evaluate and disclose the environmental impacts of a proposed project before committing to a course of action. The Air District cites several cases in its Answer to illustrate how California courts have interpreted and applied concepts and principles from CEQA that are analogous to the Air District's permitting regulations.

stockpiles at the Main Yard from 500,000 tons to 1,000,000 tons per year in April 2019. Exh. B. That same month Argent illegally expanded its recycling operation into the Fulfillment Yard where it began stockpiling finished aggregate from the Main Yard. See Exhs. C and D. When Argent finally submitted a permit application for the Fulfillment Yard, it described it as a "storage and overflow site of finished product from our primary site at 8300 Baldwin Street [Main Yard]." Exh. E.[5] According to Argent, approximately 88% of the aggregate material stockpiled at the Fulfillment Yard comes from the Main Yard. Exh. M (referring to concrete products and Class II base rock). The information provided by Argent in its permit applications along with Argent's operation of the Yards indicates these applications are integrally related and form one project to triple the Facility's total aggregate processing capacity. See, e.g., *Tuolumne CCRG*, 155 Cal.App.4th at p. 1229 ("Courts have considered separate activities as one CEQA project and required them to be reviewed together where . . . both activities are integral parts of the same project.").

Argent does not refute these facts or the circumstances that underpin the Air District's determination that its permit applications are related and constitute a single project. Instead, Argent argues its permit applications are not related and do not form one project to expand its aggregate recycling Facility because the Air District "had already approved" the permit application for the Main Yard by the time it submitted the permit application for the Fulfillment Yard. Pet. at p. 4. That is not true. The Air District never approved Argent's permit application for the Main Yard, let alone within 48 hours after issuing a completeness determination. See Pet.'s Exhs. 3 and 6. The misprinted aggregate processing limit in Argent's Permits to Operate was an administrative error that occurred when Air District staff updated the status of that permit application after determining the application was complete and could move to the next stage in the permit review process. Any

[5] The Hearing Board's Rules require Argent to submit a copy of the permit application that was denied. See Hearing Board Rule, § 8.3(b)(1). Argent submitted Exhibit 6, but that is not the permit application that was submitted to the Air District because it is incomplete. The application Argent provided omits basic information such as the plant number and equipment/project description; does not respond to questions 5 and 10; and most importantly, it is neither signed nor dated. A true and correct copy of the denied permit application at issue in this appeal is provided in Exhibit E. This permit application provides complete responses; it is signed and dated; and it bears the agency's stamps noting the date of receipt (Sept. 9, 2019), the assigned application number (30122), and that the application is the "original" copy.

permits Argent received with a total aggregate processing limit greater than 500,000 tons per year were issued in error and were not the result of an Air District approval because Argent's permit application for the Main Yard was still under review at that time. Exh. N.

Argent also goes on to claim—again without any supporting evidence—that it "reasonably believed" the permit application for the Main Yard had been "approved." Pet. at p. 5. But Argent was still communicating with the Air District about the Main Yard's permit application four years after it was purportedly approved. In April 2023, the Air District informed Argent that increasing the Facility's total aggregate processing capacity from 500,000 tons to 1.6 million tons per year could not be permitted because the expansion would cause an unacceptable level of public health risk in violation of the standards prescribed in Regulation 2-5-302. Exh. O. The following month, Argent requested the Air District's emission calculations and modeling files to review the health risks the agency had identified in its analysis of the expansion project. Exhs. P and Q. Argent continued to engage with the agency about the Main Yard's permit application and never once raised this allegation about an "approved" permit application until *after* the Air District identified and corrected the error in Argent's 2023 Permit to Operate. Finally, Argent never relied or acted on its belief that the Air District had "approved" the Main Yard's permit application. Agency staff inspected the Facility multiple times between June 2019 and September 2023, and each time it found Argent was operating the Facility consistent with its aggregate processing limit of 500,000 tons per year.

Argent's arguments seek to weaponize the Air District's administrative error to bypass ordinary review procedures that apply to all permit applications the agency receives. This error, resulting in a vastly increased aggregate processing capacity that the Air District corrected in September 2023, occurred two months after Argent split its request to expand the Facility into separate permit applications. Thus, it cannot explain or rationalize Argent's prior decision to submit two permit applications instead of one comprehensive application to expand the Facility's total aggregate processing capacity. Further, the error does not supersede the Air District's obligation to comply with its regulations, which compel the agency to conclude that Argent's permit applications was one project. See Regulations 1-104; 2-5-216. Therefore, the Air District had

proper grounds for determining Argent's permit applications constitute a single project to expand the Facility's aggregate recycling operation.

III. THE AIR DISTRICT PROPERLY DENIED THE FULFILLMENT YARD'S PERMIT APPLICATION BECAUSE INCREASED EMISSIONS FROM OPERATION AT BOTH YARDS PRESENT AN UNACCEPTABLE HEALTH RISK.

The Air District evaluated Argent's permit applications together in a single HRA because collectively the applications define the entire project under permit review. Argent wrongly argues that the Air District should have evaluated its permit applications in separate HRAs because Argent submitted the applications separately. Pet. at p. 6.

Under Regulation 2-5-216, projects are broadly defined to "ensure that all potentially related projects are included in the health risk assessment to further prevent circumvention of the requirements of Rule 2-5."[6] Accordingly, Regulation 2-5-216 prohibits permit applicants from circumventing the agency's permitting regulations by severing one project into discrete elements and submitting separate permit applications so that each element is analyzed and decided on separately instead of in one comprehensive analysis of the whole project. This tactic, commonly known as piecemealing, is forbidden because environmental considerations "become submerged by chopping a large project into many little one—each with a minimal potential impact on the environment" but "cumulatively may have disastrous consequences." *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-284; see, e.g., *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396 (holding a university wrongly piecemealed the environmental review for relocating its pharmacy school when it failed to analyze the impacts of moving into 100,000 square feet of a building and an additional 254,000 square feet within the same building when it became available).

Thus, the Air District cannot artificially constrain the scope of an HRA to what is presented in a single permit application if the application does not reflect the entire project that will be implemented if approved. Indeed, HRAs must fully examine all aspects of a project in one analysis

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[6] Bay Area Air Quality Management District, Final Staff Report: Proposed Amendments to Regulation 2, Rule 1 and Regulation 2, Rule 5 at pp. 31-32, https://www.baaqmd.gov/~/media/dotgov/files/rules/reg-2-permits/2021-amendments/documents/20211209_17_fsr_rg0201andrg0205-pdf.pdf?rev=e68bcabbbfbe454cb05774b0898ae42f&sc_lang=en.

to ensure the Air District does not approve permit applications for projects that do not comply with its health risk standards. See Regulation 2-5-302 (delineating health risk limits for projects); see e.g., *Association for Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 639 (to effectuate CEQA's purpose of protecting the environment, the closure and removal of a shooting range, cleanup activity, and transfer of the shooting range activities and classes to another location comprised one project for environmental review). HRAs that do not evaluate an entire project in one analysis underestimate the toxic air emissions and adverse health impactts associated with the project, which is detrimental for overburdened communities like East Oakland where the localized impacts of toxic air emissions are already more severe.

As explained in the preceding section, the Air District determined Argent's permit applications are related and constitute a single project to expand the Facility's total aggregate processing capacity. Therefore, the agency analyzed the toxic air emissions associated with permitting the entire expansion project (i.e., increasing the amount of raw and finished aggregate processed and stockpiled at the Facility from 500,000 tons to 1.6 million tons per year) in one HRA to determine whether the proposed expansion complies with the health risk standards prescribed in Regulation 2-5-302. The HRA results show Argent's proposed expansion has a Chronic Hazard Index value of 1.2, which exceeds the regulatory threshold of 1.0 and indicates the expansion will generate toxic air emissions that have the potential to cause serious, adverse health effects. Exh. J at pp. 13-17. Since Argent's proposed expansion of its aggregate recycling Facility would expose people to a level of public health risk that exceeds regulatory standards, the Air District had no choice but to deny Argent's permit applications. See Regulations 2-5-302 (directing the Air District to deny projects with a cancer risk greater than 10 in a million or greater than 1 for the Acute and Chronic Hazard Indices); 2-1-304 (directing the Air District to deny projects that do not comply with emission limits or other Air District regulations).

Contrary to Argent's assertions, the Air District did not misinterpret or misapply its own regulations to "bootstrap" the denial of Argent's permit applications. Pet. at p. 6. Regulation 2-5-216 provides firm support for the Air District's handling of Argent's permit applications. It is Argent that has misconstrued the agency's regulations by arguing separate analyses of related

permit applications for the same project at the same facility are permissible. Argent says the Air District should have processed each permit application in isolation as if the Main Yard and the Fulfillment Yard do not constitute a single facility engaged in a single project to increase the Facility's total aggregate processing capacity. *Ibid.* Argent also says the Air District should have prepared a standalone HRA for the Fulfillment Yard's permit application as if the emissions from the Fulfillment Yard are not associated with the emissions from the Main Yard. *Id.* at p. 7. Argent is proposing piecemeal review of its permit applications, and Regulation 2-5-216 specifically prohibits the Air District from evaluating permit applications in that manner, with Regulation 1-104 serving as a backstop. *See, e.g., Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 166 ["The danger of filing separate environmental documents for the same project is that consideration of the cumulative impact on the environment of the two halves of the project may not occur. This danger was here realized."]

Even if the Hearing Board accepted Argent's erroneous interpretation of the Air District's regulations, the decision still would not culminate in a separate HRA for the Fulfillment Yard's permit application. According to Argent, the Air District "approved" the permit application for the Main Yard in June 2019. Pet. at p. 4. And Argent argues the look back provision in Regulation 2-5-216 narrowly applies to "sources of TAC that ***have been permitted*** in the five years preceding the complete application." *Id.* at p. 7 (emphasis in original). Following Argent's logic, the HRA for the Fulfillment Yard must include the "approved" increase at the Main Yard because it was "permitted" within the five-year period immediately preceding Argent's submission of the permit application for the Fulfillment Yard.

Argent's argument that standalone HRAs are appropriate for related permit applications that form one project at the same facility simply because the applications are submitted separately is invalid. There is no reason Argent's related permit applications for an expansion project at its aggregate recycling Facility should be analyzed in separate HRAs, unless the permit applicant's purpose is to circumvent or evade the Air District's permitting rules.

CONCLUSION

Argent has not met its burden of showing the Air District misinterpreted or misapplied its

regulations. Indeed, the Air District complied with its regulations and denied Argent's permit applications because: 1) Argent artificially severed its proposal to expand the total aggregate processing capacity at its recycling Facility into two permit applications to avoid complying with mandatory permitting standards in violation of Regulations 1-104 and 2-5-216; and 2) Argent's proposed expansion does not comply with mandatory health risk standards in violation of Regulation 2-5-302. Since there is no basis to support Argent's request to remand its permit application for the Fulfillment Yard, the Hearing Board must uphold the Air District's permit denial and dismiss this appeal.

Dated: July 29, 2025

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Assistant Counsel

By: Omonigho Oiyemhonlan
Omonigho Oiyemhonlan, Esq.

Attorneys for Respondent
Air Pollution Control Officer

EXHIBIT LIST

Exhibit A	Argent's Map of the Facility (Main Yard and Fulfillment Yard)
Exhibit B	Argent's Permit Application No. 29851 for the Facility's Main Yard
Exhibit C	Argent's June 19, 2023 Email Regarding the Fulfillment Yard's Start Date
Exhibit D	BAAQMD's Notice of Violation No. A61930 to Argent Regarding Operation of Unpermitted Aggregate Stockpiles
Exhibit E	Argent's Permit Application No. 30122 for Facility's Fulfillment Yard
Exhibit F	Argent's Misprinted 2023 Permit to Operate
Exhibit G	BAAQMD's September 19, 2023 Permit Correction Letter Regarding Argent's 2023 Permit to Operate
Exhibit H	Argent's Corrected 2023 Permit to Operate
Exhibit I	BAAQMD's April 9, 2025 Denial Letter Regarding Permit Application Nos. 29851 and 30122
Exhibit J	BAAQMD's Evaluation Report for Permit Application Nos. 29851 and 30122
Exhibit K	Argent's Website for the Facility (Main Yard and Fulfillment Yard)
Exhibit L	Argent's Facility Team
Exhibit M	Argent's September 15, 2023 Email Regarding the Fulfillment Yard's 2022 Aggregate Throughput
Exhibit N	Emails between BAAQMD and Argent from May 2019 to August 2019 Regarding Status of Permit Application No. 29851 for the Facility's Main Yard
Exhibit O	BAAQMD's April 13, 2023 Email to Argent Regarding the Expansion Project's Health Risk Exceedance
Exhibit P	Argent's May 17, 2023 Email to BAAQMD Requesting HRA Data for the Expansion Project's Health Risk Exceedance
Exhibit Q	BAAQMD's May 23, 2023 Email to Argent Providing HRA Data for the Expansion Project's Health Risk Exceedance

WITNESS LIST

1. Ryan Atterbury, Senior Air Quality Engineer for Bay Area Air Quality Management District
2. Pamela Leong, Director of Engineering for Bay Area Air Quality Management District

CERTIFICATE OF SERVICE

I, Magnolia Vinluan-Chan, certify and declare as follows:

I am over the age of 18 years, and I am not a party to this action. My business address is 375 Beale Street, Suite 600, San Francisco, CA 94105, which is in the county where the mailing described below took place.

On July 29, 2025, I served the foregoing documents, described as:

RESPONDENT AIR POLLUTION CONTROL OFFICER'S ANSWER TO APPELLANT'S PETITION FOR APPEAL

☒ **By electronic mail**: by transmitting a true copy thereof by electronic mail transmission from my email, mvinluanchan@baaqmd.gov, to the interested parties to said action at the email address shown below:

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Attorneys for Appellant Argent Materials, Inc.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 29, 2025, at San Francisco, California.

Magnolia Vinluan-Chan