

**HUNTON ANDREWS KURTH LLP**  
Martin P. Stratte (State Bar No. 290045)  
mstratte@hunton.com  
Elisabeth R. Gunther (State Bar No. 122850)  
egunther@hunton.com  
Abigail Contreras (State Bar No. 352155)  
acontreras@hunton.com  
50 California Street, Suite 1700  
San Francisco, California 94111  
Telephone: 415 • 975 • 3700  
Facsimile: 415 • 975 • 3701

Attorneys for Appellant Argent Materials, Inc.



**BEFORE THE HEARING BOARD OF THE  
BAY AREA AIR DISTRICT  
STATE OF CALIFORNIA**

Argent Materials, Inc.,

Appellant,

v.

Bay Area Air District,

Appellee.

Docket No. 3762

**REPLY BRIEF OF APPELLANT ARGENT  
MATERIALS, INC.**

1       **I.     INTRODUCTION**

2       The District’s Answer focuses on whether Argent’s two locations are one “facility” and whether  
3 Argent’s two applications filed in 2019 are one “project.” Neither of those two issues is relevant to the  
4 Hearing Board’s adjudication of the issues in Argent’s appeal of the denial of Application No. 30122.  
5 The District’s focus on these issues obfuscates the two primary issues in this appeal.

6       The two issues in this appeal are whether the District (i) established that Argent violated  
7 Regulation 1-104 by intentionally seeking to evade application of the District’s permitting regulations,  
8 and (ii) properly applied Regulation 2-5-216 when it analyzed the Toxic Air Contaminants (TACs) for  
9 Argent’s two permit applications.

10       With respect to the first issue, the District’s April 9, 2025 Engineering Evaluation does not  
11 include a shred of evidence that Argent “intended or designed” to violate Regulation 1-104 in order to  
12 evade the application of the District’s permitting regulations. The District needed to cite evidence *in*  
13 *the Engineering Evaluation* to substantiate this assertion. It did not. The District’s unsupported  
14 determination that Argent intentionally attempted to evade regulation was erroneous, and clearly  
15 neither fair nor reasonable.

16       On the second issue, the District asserts it had discretion under Regulation 2-5-216 to  
17 “harmonize” its review of Argent’s two separate applications by treating them as a single permit  
18 application. Answer, at p. 6. That is not what the regulation requires or allows. Regulation 2-5-216  
19 states that a health risk assessment (HRA) should include emissions from all sources in *a single*  
20 *application* and where multiple applications for a “facility” have been filed during a five-year look-  
21 back period, the HRA must include emissions from *permits issued* for that facility during the look-  
22 back period, not other *pending applications*. The District misapplied Regulation 2-5-216 by including  
23 emissions from a separate pending application that had not and never would be issued. Again, the  
24 District’s determination was erroneous, and clearly neither fair nor reasonable.

25       The District tries to prop up its denial of the permit by faulting Argent for filing two separate  
26 applications for its two sites in 2019. But Argent believed, as a result of the District’s “erroneous”  
27 issuance of the permit for 8300 Baldwin (an error it repeated when it reissued the annual permit for  
28 the next three years) that the first application had been approved before the second application was

1 filed. The reason there eventually were two applications still pending in 2025 when the District made  
2 its permit decision was because of the District’s error.

3 Argent did not violate Regulation 1-104 and if Regulation 2-5-216 had been properly applied to  
4 Application No. 30122 Argent’s proposed operations would have been found to meet the District’s  
5 Chronic Hazard permitting standard. What has happened here is that the District manufactured two  
6 grounds as a basis to deny Application No. 30122, which, for reasons unknown to Argent, the District  
7 simply refused to process or approve for the preceding five and a half years. It should not take five  
8 and a half years to review a permit application for an aggregate stockpile.

## 9 II. DISCUSSION

10 The District’s two determinations on which its denial of Application No. 30122 is based, as set  
11 forth in the April 9, 2025 Engineering Evaluation, are erroneous, inconsistent with applicable  
12 regulations, and neither fair nor reasonable. The Hearing Board should remand Argent’s Application  
13 No. 30122 to the District for further evaluation in accordance with applicable laws and regulations.

### 14 A. The District Cannot Establish that Argent “Intended or Designed” to Violate 15 Regulation 1-104 to Evade the District’s Permit Regulations

16 The District has asserted that Argent improperly divided a “project” into two permit  
17 applications in violation of Regulation 1-104. But the District did not cite any evidence in the  
18 Engineering Evaluation to support its determination. The District’s determination was neither fair nor  
19 reasonable. Nor was it consistent with the plain language of Regulation 1-104, which requires evidence  
20 of intentionality.

21 Regulation 1-104 prohibits actions “*intended or designed* to evade or circumvent District Rules  
22 or Regulations.” (Emphasis added.) Thus, to establish a violation of Regulation 1-104, the District  
23 must cite to some evidence of intentional conduct by Argent and back up its claim that Argent took  
24 actions “intended or designed” to circumvent District Rules or Regulations. The Engineering  
25 Evaluation is devoid of any evidence that Argent’s decision to file separate applications for its two  
26 sites in 2019 was part of a plan implemented for the purpose of evading District regulations.  
27  
28

1 The District incorrectly paraphrases its own regulation to suggest that an applicant may also  
2 “inadvertently” violate Regulation 1-104. Answer at p. 6.<sup>1</sup> Not so. That is not what the regulation says.  
3 Regulation 1-104 only prohibits as circumvention “practices *intended or designed* to evade or  
4 circumvent” the District’s regulations, not inadvertent actions.

5 What the evidence in the record shows is that the District approved Argent’s Application No.  
6 29851 for its 8300 Baldwin St. location on June 7, 2019, prior to Argent’s filing of Application No.  
7 30122 for its 8501 San Leandro St. location. In other words, Argent filed a second application for its  
8 newly-leased site after its first application for an increase in throughput at its existing permitted site  
9 was already approved. Notably, at no point in time before its April 2025 denial of Application No.  
10 30122 did the District raise the issue of “circumvention.”

11 The District has accused Argent of “weaponiz[ing] the Air District’s administrative error to bypass  
12 ordinary review procedures”. *Id.* at p. 11. Argent is not “weaponizing” the District’s purported “error.”  
13 Argent has appealed what it believes to be an erroneous determination to deny its permit application.  
14 It has pointed to the fact of the District’s error simply to dispute the District’s baseless assertion that  
15 it intentionally divided a project into two applications to evade regulation.

16 **B. The Five-Year Look-Back Provision In Regulation 2-5-216 Does Not Require or Allow**  
17 **the District to Model More Than One Application at a Time**

18 The District asserts that it was authorized or required under Regulation 2-5-216 to model the  
19 sources of TACs associated with Argent’s two separate applications in a single HRA and determined  
20 that Application No. 30122 would exceed the 1.0 Chronic Hazard Index Value. In so doing, the District  
21 misapplied Regulation 2-5-216. Had Regulation 2-5-216 been applied to Application No. 30122 as  
22 written, based on the permitted throughput at 8300 Baldwin and the requested throughput at 8501 San  
23 Leandro, it would have resulted in a Chronic Hazard Index Value below the 1.0 permitting threshold.

24 Regulation 2-5-216 states that, “[a]ll new or modified sources of TACs included in a *single permit*  
25 *application* will be considered a project[.]” (Emphasis added.) Regulation 2-5-216 also includes a five-

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28 <sup>1</sup> “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.” (Emphasis added.)

1 year look-back provision. The look-back provision states that sources of TACs included in a single  
2 permit application are to be modeled in an HRA with sources of TACs that have been “*permitted*  
3 within the five-year period” preceding the filing of the permit application. (Emphasis added.)

4 The District has not disputed that Argent’s two applications were separate applications. *Id.* at p. 2. But  
5 the District asserts that Regulation 2-5-216 authorizes or requires it to treat those two separate  
6 applications as one application for the purpose of modeling TACs. Without pointing to any regulatory  
7 authority, the District asserts the two separate applications are actually one and can be modeled  
8 together, because Argent’s two locations are one “facility” or because Argent’s two applications are  
9 one “project,” or both. The District’s interpretation of Regulation 2-5-216 is not consistent with the  
10 plain, unambiguous language in the regulation.

11 The District asserts that Regulation 2-5-216 requires or allows a “project” to be modeled as if  
12 it is “a single permit application.” *Id.* at p. 12. But it’s the other way around. The District has read its  
13 regulation backwards. What the regulation says is that, “[a]ll new or modified sources of TACs  
14 included in a *single permit application* will be considered a *project*[.]” What this means is that  
15 Argent’s Application No. 30122 was “considered a project.” It does not mean that Argent’s two  
16 separate applications were a single project.<sup>2</sup>

17 In any event, Regulation 2-5-216 also includes the five-year look-back provision that should  
18 have been applied to Application No. 30122. Application No. 30122 should have been modeled with  
19 sources of TACs that have been “*permitted* within the five-year period” preceding the 2019 filing of  
20 the permit application. This means that Application No. 30122 should have been modeled with the  
21 “project’s” or “facility’s” previously *permitted* throughput—i.e., 500,000 tons per year (TPY) at 8300  
22 Baldwin St.

23 Instead, the District modeled Application No. 30122 in a single HRA with the *proposed* 1  
24 million TPY requested in Application No. 29851 for 8300 Baldwin St., rather than its *permitted*  
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26 <sup>2</sup> An issue in this appeal is not whether the District properly considered the two Argent yards a single  
27 “facility”. Although Argent does not agree with the District’s characterization of Argent’s two  
28 locations as a single “facility, Argent has not raised that issue in this appeal. Notably, in 2019 even  
the District viewed the two locations as separate facilities and assigned the locations separate plant  
numbers. It only “combined” the sites in 2023, four years into its permit review.

1 500,000 TPY throughput. That was an error. In fact, but for this error, Application No. 30122 satisfied  
2 all other health risk and other permitting requirements.

3 Argent is not contesting whether Application No. 29851 for the proposed increase of  
4 throughput at 8300 Baldwin St. from 500,000 TPY to 1 million TPY was properly denied. Pet. at p. 2.  
5 As the District stated in its Answer, that determination was made by District Engineering staff back in  
6 April 2023. Answer at p. 4. Instead of reviewing Application 30122 for the 8501 San Leandro location  
7 on its own merits under the express language of the five-year look-back provision, the District deviated  
8 from the language of Regulation 2-5-216 by including a requested increase in throughput at the 8300  
9 Baldwin St. location that the District never approved or “permitted.”

10 Regulation 2-5-216 does not allow the District to include sources of TACs *that have been*  
11 *requested* by an applicant but are not yet *permitted*. The District cannot read the words “permitted”  
12 and “issued” out of its regulation. Nor can it use the language of Regulation 2-5-216 to support a  
13 unilateral decision to treat two applications as a single application. Notably, at no point in time before  
14 its April 2025 denial of Application No. 30122 did the District characterize the two applications as a  
15 single application.

16 Argent’s two separate applications should have been modeled in two separate HRAs. The HRA  
17 for 8300 Baldwin was completed in 2023. A separate HRA for 8501 Baldwin should have been  
18 conducted using the five-year look-back provision to include the *permitted* emissions at 8300 Baldwin.  
19 Argent’s two applications did not simply “become one” under Regulation 2-5-216.

20 **C. CONCLUSION**

21 Based on the foregoing, Argent’s Application No. 30122 should be remanded to the District for  
22 further evaluation in accordance with applicable laws and regulations. Because the application has  
23 been pending since 2019, Argent requests that the District be instructed to take final action on the  
24 application within 30 days of remand.

25  
26 DATED: San Francisco, California, August 1, 2025.

27 By: 

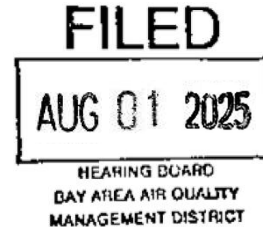
28 Martin Stratte  
Attorney for Argent Materials, Inc.

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, )  
Issued April 10, 2025 )  
Re: Argent Materials, Inc. Facility No. 8501 )  
\_\_\_\_\_ )

Docket No.: 3762

CERTIFICATE OF SERVICE



STATE OF CALIFORNIA )  
City and County of San Francisco ) SS.

I, Marcy Hiratzka, do hereby certify under penalty of perjury as follows:  
That I am a citizen of the United States, over the age of 18 years and not a party to the above-entitled action; that I served a true copy of the attached **REPLY BRIEF OF APPELLANT ARGENT MATERIALS, INC.** on:

Martin P. Stratte, Esq. Hunton Andrews Kurth LLP <a href="mailto:mstratte@hunton.com">mstratte@hunton.com</a>	Elisabeth Gunther, Esq. Hunton Andrews Kurth LLP <a href="mailto:egunther@hunton.com">egunther@hunton.com</a>
	Abigail Contreras, Esq. Hunton Andrews Kurth LLP <a href="mailto:acontreras@hunton.com">acontreras@hunton.com</a>

via email on August 1, 2025, and on:

Omonigho Oiyemhonlan, Esq., Assistant Counsel  
Bay Area Air Quality Management District  
[ooiyemhonlan@baaqmd.gov](mailto:ooiyemhonlan@baaqmd.gov)

via email on August 1, 2025

DATED: August 1, 2025

A handwritten signature in black ink, appearing to be "MH" or similar, written over a horizontal line.

\_\_\_\_\_  
Marcy Hiratzka  
Clerk of the Boards