

Alexander Crocket (SBN #193910)  
Omonigho Oiyemhonlan (SBN #331053)  
Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA 94105  
Telephone: (415) 749-4901  
E-mail: OOiyemhonlan@baaqmd.gov  
Attorneys for Respondent, Air Pollution Control Officer



**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 RESPONSE TO  
APPELLANT'S REPLY BRIEF

**INTRODUCTION**

The Air District's conclusions that Argent's Main Yard and Fulfillment Yard constitute a single aggregate recycling Facility and Argent's permit applications constitute a single, coordinated project to expand the Facility's total aggregate processing capacity are central to the question on appeal: Did the Air District err in denying Argent's permit application for the Fulfillment Yard?

Under section 8.6 of the Hearing Board Rules, the Hearing Board's "role is to determine whether the [Air District's] interpretation of the applicable legal requirements is fair and reasonable and consistent" with its other actions. To properly adjudicate that question and produce an order that "identifies the evidence it relied on and the Hearing Board's reasoning in making its decision," Hearing Board Rule, § 8.7, the Board "must trace and examine the agency's mode of analysis." *Topanga Assn. for Scenic Community v. County of Los Angeles* 11 Cal.3d 506, 516. That means the Hearing Board must understand the analytic route the Air District traveled during the permit review process and examine the factual data the agency considered in reaching its decision on Argent's

1 permit applications. *Id.* at 515. The Air District's determinations that Argent's two Yards comprise  
2 one aggregate recycling Facility in East Oakland and the permit applications constitute one  
3 expansion project for that Facility are "legally relevant sub-conclusions" that support the Air  
4 District's ultimate decision to deny Argent's permit applications. *Id.* at 516. That is why these  
5 issues were discussed in the Engineering Evaluation Report that accompanied the permit denial.  
6 See Exh. J at 1, 5-7, 7-9, 13.

7 Argent would have this Hearing Board believe that Argent's beliefs and opinions about the  
8 Air District actions are factors to be considered. They are not. In this proceeding, the Hearing  
9 Board may neither substitute its judgment nor the judgment, beliefs, and opinions of the opposing  
10 party for that of the Air District. Hearing Board Rule, § 8.6. In this proceeding, the inquiry begins  
11 and ends with a meaningful review of the Air District's evidence and decision to deny the permit  
12 application.

13 **I. ARGENT'S EVIDENCE SO FAR DOES NOT SHOW THAT THE AIR DISTRICT**  
14 **ERRED WHEN IT CONCLUDED THAT ARGENT'S TWO YARDS CONSTITUTE**  
15 **ONE AGGREGATE RECYCLING FACILITY AND IT'S PERMIT APPLICATIONS**  
16 **CONSTITUTE ONE PROJECT TO EXPAND THAT FACILITY.**

17 Argent claims it submitted two permit applications for wholly unrelated projects to stockpile  
18 aggregate at the Main Yard and Fulfillment Yard, which it alleges are "two separate and distinct  
19 facilities." Pet. at 5. The evidence says otherwise. Argent's Main Yard and Fulfillment Yard are  
20 not two separate facilities as Argent claims. The two Yards form one aggregate recycling facility in  
21 East Oakland that is owned, operated, and managed by Argent. Exhs. C, E, J, K, L, M, T. The  
22 evidence also shows that Argent's permit applications are not for unrelated projects as Argent  
23 claims. Argent's two permit applications constitute a single, coordinated project to triple the total  
24 aggregate processing capacity at Argent's aggregate recycling Facility in East Oakland. Exhs. B, E,  
25 R. The Air District did not manufacture these conclusions from thin air. Argent supplied the  
26 information in its permit applications, its correspondence with the Air District about the permit  
27 applications, and in its operation and management of the two Yards. Exhs. C, E, K, L, M, R, T.

28 Conversely, Argent's evidence so far does not show that the Air District was wrong to  
conclude that the Yards are one aggregate recycling facility. The Main Yard and Fulfillment Yard  
share common ownership and control under Argent, a point Argent has not denied; they are a

1 stone's throw away from each other, another point that Argent has not denied; and Argent conducts  
2 the same business activity and operations at both Yards—stockpiling and selling aggregate  
3 materials. Likewise, Argent's evidence so far does not show that it was improper for the Air  
4 District to conclude that its permit applications are related and form one expansion project. The  
5 Main Yard is where Argent crushes broken concrete and asphalt, and the Fulfillment Yard is where  
6 Argent stockpiles and distributes finished aggregate that cannot be stored at the Main Yard. Exhs.  
7 E, R.

8       When confronted with this evidence, Argent's only rebuttal has been that it "reasonably  
9 believed" the permit application for the Main Yard "had been approved several months earlier."  
10 Pet. at 5. Argent's belief is irrelevant. That is not the proof Argent is tasked with producing under  
11 section 8.4 of the Hearing Board Rules. Argent must show the Air District's conclusions about its  
12 two Yards forming one aggregate recycling Facility and its permit applications constituting one  
13 project to expand that Facility are erroneous. So far, Argent has not provided that proof to the  
14 Hearing Board despite filing a Petition and a Reply Brief. In the absence of any proof that the  
15 agency acted improperly, the Hearing Board must presume the Air District properly discharged its  
16 permitting duties and that the permit denial was correct under the law.

17       **II. REGULATION 2-5-216 REQUIRES THE AIR DISTRICT TO ANALYZE ALL  
18 RELATED PERMIT APPLICATIONS IN A SINGLE HRA.**

19       Argent would like this Hearing Board to believe its two permit applications for a single,  
20 coordinated project to expand one aggregate recycling facility in East Oakland should be analyzed  
21 in two separate HRAs simply because the applications were submitted separately. But HRAs are  
22 not restricted to what is proposed in a "single permit application" as Argent claims. Reply Br. at 3-  
23 4. HRAs are a tool to estimate the potential increased likelihood that a project's toxic air emissions  
24 will have on the surrounding communities. Therefore, the scope of an HRA is defined by the  
25 project that is subject to permit review—whether that project is presented in one permit application  
26 or across multiple applications. Air District regulation defines a "project" as:

27       Any source, or group of sources, at a facility that: (a) is part of a proposed  
28 construction or modification, (b) is subject to the requirements of Regulation 2-1-301  
or 302, and (c) emits one or more toxic air contaminants. All new or modified  
sources of TACs included in a single in a permit application will be considered as a  
project, . . . In addition, in order to discourage circumvention that might be achieved

1 by breaking a project into smaller pieces and submitting more than one permit  
2 application over a period of time, a project shall include those new or modified  
3 sources of TACs at the facility that have been permitted within the five-year period  
immediately preceding the date a complete application is received . . .”

4 Regulation 2-5-216; see Exh. Y.

5 Argent submitted two permit applications to expand the physical and operational footprint of  
6 its aggregate recycling Facility in East Oakland. It does not matter that Argent submitted the permit  
7 applications separately. All that matters is whether the permit applications are related and form one  
8 project. And if they are, Regulation 2-5-16 requires the Air District to analyze the permit  
9 applications together in a single HRA because the applications collectively define the entire project  
10 under permit review.

11 Argent accuses the Air District of “reading words out” Regulation 2-5-216. Reply Br. at 5.  
12 Argent is wrong. The Air District has long recognized that Rule 2-5’s explicit objectives are not  
13 served by excluding related emission sources in “submitted” permit applications. See Exh. AA  
14 (explaining the objective of Regulation 2-5-216 are “to further prevent circumvention of the  
15 requirements of Rule 2-5” and “ensure that the cumulative impacts of multiple projects at a facility  
16 are fully considered in the health risk assessment”). If related emission sources from recently  
17 “permitted” applications must be “fully considered” in HRAs for a pending application, then so too  
18 should the related emission sources in recently “submitted” applications because the pending and  
19 submitted application could be permitted simultaneously without any analysis of their cumulative  
20 toxic air emissions and health risk impact. This is precisely the scenario Regulation 2-5-216 seeks  
21 to prevent, which is why the agency has interpreted and applied the regulation to allow HRAs to  
22 include related emission sources from “permitted” and “submitted” applications.

23 Since Argent’s permit applications were no different from the thousands of permit  
24 applications the agency receives each year, the Air District followed its standard permit review  
25 process. The agency examined whether the permit applications were for two separate, unrelated  
26 projects as Argent claimed or formed one project to expand the Facility’s total aggregate processing  
27 limit from 500,000 tons to 1.6 million tons per year. The evidence supports the Air District’s  
28 conclusion that Argent’s permit applications constitute one project to expand Argent’s aggregate

1 recycling Facility in East Oakland. Exhs. E, J. The evidence shows that the Facility's Fulfillment  
2 Yard is necessary and integral to the operation of the Facility's Main Yard. Exhs. E (Argent stating  
3 "[t]his application is for a storage/overflow yard of finished product from out primary site at 8300  
4 Baldwin St."); R ("This site will be used to store material. Our primary facility on Baldwin Street  
5 has limited area for stockpiles."). Accordingly, the Air District analyzed the permit applications  
6 together in one HRA, and the results show that the proposed expansion—increasing Argent's total  
7 aggregate processing capacity from 500,000 tons to 1.6 million tons—has a Chronic Hazard Index  
8 value of 1.2, which exceeds the project risk standards in Regulation 2-5-302:

9       The [Air Pollution Control Officer] shall deny an Authority to Construct or Permit to  
10       Operate for any new or modified sources of TACs if the project risk exceeds any of  
11       the following project risk limits: a cancer risk of 10 in one million; a chronic hazard  
12       index of 1.0; an acute hazard index of 1.0.  
13 Since Argent's expansion project, which was proposed in two permit applications, would expose  
14 East Oakland residents to an unacceptable level of toxic air pollution and health risk, the Air  
15 District jointly denied both permit applications. Based on the information presented in Argent's  
16 permit applications, the factual data gathered and processed by agency staff during the permit  
17 review process, and the dictates of the agency's regulations, the Air District had reasonable grounds  
18 to deny the permit application for the Fulfillment Yard.

### 19 **CONCLUSION**

20       Given the foregoing, the Hearing Board should find that the Air District did not err in its  
21 denial of Permit Application No. 30122 for Argent's Fulfillment Yard. The permit denial was  
22 proper and warranted under the regulations. So far, Argent's evidence has not shown an error in the  
23 Air District's conclusions that: 1) the Main Yard and Fulfillment Yard constitute one aggregate  
24 recycling Facility in East Oakland; 2) Argent's two permit applications constitute one project to  
25 expand the physical and operational footprint of Argent's aggregate recycling Facility in East  
26 Oakland; and 3) Argent's permit applications, which are related and formed one project to expand  
27 the same aggregate facility, must be analyzed together in a single HRA. The Air District acted  
28 properly and in accordance with its regulations; therefore, the Hearing Board must uphold the Air  
District's permit denial and dismiss Argent's appeal.

1 Dated: August 5, 2025

Alexander Crockett, Esq.  
General Counsel  
Omonigho Oiyemhonlan, Esq.  
Assistant Counsel

4 By: /s/ Omonigho Oiyemhonlan  
Omonigho Oiyemhonlan, Esq.

6 Attorneys for Respondent  
Air Pollution Control Officer

1 **CERTIFICATE OF SERVICE**

2 I, Omonigho Oiyemhonlan, certify and declare as follows:

3 I am over the age of 18 years, and I am not a party to this action. My business address is  
4 375 Beale Street, Suite 600, San Francisco, CA 94105, which is in the county where the mailing  
5 described below took place.

6 On August 5, 2025, I served the foregoing documents, described as:

7 **RESPONDENT AIR POLLUTION CONTROL OFFICER'S [PROPOSED]  
8 RESPONSE TO APPELLANT'S REPLY BRIEF**

9 ☒ **By electronic mail:** by transmitting a true copy thereof by electronic mail transmission from my  
10 email, [OOiyemhonlan@baaqmd.gov](mailto:OOiyemhonlan@baaqmd.gov), to the interested parties to said action at the email address  
11 shown below:

12 Martin Stratte  
13 Elisabeth Gunther  
14 Abigail Contreras  
15 Hunton Andrews Kurth LLP  
16 50 California Street, Suite 1700  
17 San Francisco, CA 94111  
18 Telephone: (415) 975-3716  
19 Email: [MStratte@hunton.com](mailto:MStratte@hunton.com)  
20 [EGunther@hunton.com](mailto:EGunther@hunton.com)  
21 [ACcontreras@hunton.com](mailto:ACcontreras@hunton.com)

22 Attorneys for Appellant Argent Materials, Inc.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing  
24 is true and correct. Executed on August 5, 2025, at Antioch, California.

25 /s/ Omonigho Oiyemhonlan

26 Omonigho Oiyemhonlan