



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

In the Matter of the Appeal of

Tesla, Inc.

From Denial of Permit Application #31706

Docket No.: 3742

ORDER DENYING APPEAL

The above-entitled matter, being an Appeal from the denial of Permit Application #31706, was filed on June 20, 2023, after initial contact by telephone on June 1, 2023. The application pertained to the Tesla facility in Fremont, CA, specifically the South Paint Shop Body Line.

The Hearing Board conducted a full day of hearing on October 3, 2023. Tesla was represented by attorneys Patricia O'Toole and Josh Gubkin and the District was represented by Senior Assistant Counsel Alexandra Kamel. There was a joint statement of facts and each side presented opening and reply briefs as well as four witnesses and numerous exhibits, all of which were considered by the Hearing Board.

THE HEARING BOARD STATES as the reasons for its decision and makes the following findings:

A. Existing permit conditions require "abatement at all times of operation" and although the two sides dispute whether the body line is in operation when there is an automatic interlock shutdown, there still is the potential of an increase of more than ten pounds per day of precursor organic compounds (POC) and non-precursor organic compounds (NPOC) escaping

1 into the atmosphere.

2 B. The sole issue before the Hearing Board was whether the Air Pollution Control  
3 Officer (APCO) correctly denied the application.

4 C. The Hearing Board may not substitute its judgment for that of the District's  
5 expertise; its role is to determine whether the APCO's interpretation of the facts and applicable  
6 law is fair and reasonable and consistent with other actions of the APCO and whether the APCO  
7 followed proper and appropriate procedures and guidelines.


8 D. Tesla made some compelling arguments but had the burden of proof and was  
9 unable to overcome the presumption that the APCO properly denied the permit or that the denial  
10 was inconsistent with prior APCO decisions.

11 E. Unforeseeable shutdowns of equipment that meet the definition of "breakdown"  
12 may qualify for enforcement relief, thereby providing an existing remedy to Tesla.

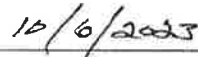
13 F. Although the Hearing Board would have preferred to see better communication  
14 and collaboration between the District and Tesla, it cannot conclude the APCO's denial was  
15 erroneous.  
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17  
18 THEREFORE, THE HEARING BOARD ORDERS:

19 The Appeal from denial of Permit Application #31706 is hereby denied and the existing  
20 permit provisions remain unchanged.  
21

22  
23 

24 Valerie J. Armento, Esq.  
25 Hearing Board Chairperson  
26 Bay Area Air Quality Management District  
27  
28



Date



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

In the Matter of the APPEAL of  
TESLA, INC.

From Denial of Permit Application 31706,  
Issued May 17, 2023

Re: Tesla, Inc. Fremont Facility, No. 20459  
(South Paint Body Shop Line)

) Docket No. 3742

) CERTIFICATE OF SERVICE

STATE OF CALIFORNIA )

) ss.

City and County of San Francisco )

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 eighteen years and not a party to  
the above-entitled action; that I served a true copy of the attached Order Denying Appeal on:

**Patricia O'Toole, Esq.**

[otoolelaw@earthlink.net](mailto:otoolelaw@earthlink.net)

**Josh Gubkin, Esq.**

[jgubkin@tesla.com](mailto:jgubkin@tesla.com)

by depositing same via e-mail, on October 10, 2023; and on

**Alexandra Kamel, Esq.**

[akamel@baaqmd.gov](mailto:akamel@baaqmd.gov)

via e-mail, on October 10, 2023.

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

\_\_\_\_\_  
Date