

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Davina Hurt and Members  
of the Finance and Administration Committee

From: Chairperson Valerie J. Armento, Esq., and  
Members of the Hearing Board

Date: September 18, 2024

Re: Hearing Board Quarterly Report: April – June 2024

RECOMMENDED ACTION

No action requested at this time.

DISCUSSION

This report covers the second calendar quarter (April – June) of 2024.

- Held two hearings (also held two pre-hearing conferences);
- Processed two orders: and
- Collected a total of \$9,256.00 in Hearing Board filing fees

Below is a detail of Hearing Board activity during the same period:

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**Docket: 3746 – Air Pollution Control Officer (APCO) vs. Martin Marietta Materials, Inc. –  
Accusation of Violation of Regulation 2-1-302 and Request for Conditional Order for  
Abatement**

**Location:** San Francisco County; City of San Francisco

**Regulation(s):** Regulation 2 Rule 1, Section 302 (Permits, General Requirements, Permit to Operate)

**Synopsis:** Respondent 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.

From the APCO:

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

*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.*

*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 2-1-302.1 Ongoing operations after that point were, and have been, in violation of Regulation 2-1-302.*

*The Facility's then-owner, Lehigh Hanson, Inc., 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.*

*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.*

The APCO seeks a Conditional Order of Abatement and compliance with interim operating conditions.

**Fees collected this quarter:** N/A

**Status:** Accusation filed by Complainant on October 3, 2023; Accusation Certificate of Service filed by Complainant on October 4 and 5, 2023; on October 4, 2023, Complainant requested pre-hearing conference with both parties and Hearing Board Chair; first pre-hearing conference held on October 17, 2023; on October 16, 2023, Respondent requested that the Hearing Board grant Respondent an additional 90 days (but no later than 20 working days before any scheduled hearing) to file its Notice of Defense (this was granted, with the new due date being March 18, 2024); second pre-hearing conference held on November 28, 2023; on February 8, 2024, parties filed joint status update and request for hearing date; Notice of Hearing (scheduled for April 16, 2024) filed and issued on February 15, 2024; joint status update sent to the Hearing Board on March 5, 2024; on March 15, 2024, Respondent requested that the Hearing Board grant Respondent an additional extension to file Notice of Defense (this was granted, with the new due date being March 25, 2024); on March 18, parties filed joint status update; on March 21, 2024, Respondent requested that the Hearing Board grant Respondent an additional extension to file Notice of Defense (this was granted, with the new due date being March 29, 2024); on March 27, parties filed joint status update; on March 27, 2024, Respondent deferred filing a Notice of Defense in this matter; on April 2, 2024, parties filed Joint Stipulation to Entry of Proposed Conditional Order for Abatement; third pre-hearing conference held on April 3, 2024; abatement hearing held on April 16, 2024; Conditional Order for Abatement issued on April 26, 2024.

*THE HEARING BOARD ORDERED:*

1. *That the parties' request for this Conditional Order for Abatement shall be and hereby is GRANTED as follows: Respondent and its agents, employees, successors, and assigns are hereby ordered to cease operation of the Facility unless Respondent complies with the following requirements by the stated deadline:*
  - a. ***Final Compliance.*** *Respondent shall achieve final compliance by no later than October 31, 2025, which date is based on the projected interim milestones below. Achieving final compliance means that Respondent has obtained either an Authority to Construct or Permit to Operate for each source at the Facility that requires a permit under Air District Regulation 2, Rule 1.*
    - i. ***Environmental Review Process.*** *The City will have initiated environmental review by no later than September 30, 2024.*
    - ii. ***Completion of Environmental Review.*** *The City will have completed environmental review of the Modernization Project by no later than September 30, 2025.*
    - iii. ***APCO Approvals.*** *No later than October 31, 2025, the APCO will have issued, in compliance with all legal requirements, an Authority to Construct or Permit to Operate for each source at the Facility that requires a permit under Air District Regulation 2, Rule 1.*
  - b. ***Extension of Compliance Deadline.*** *The compliance deadline in paragraph (a) may be extended by the Hearing Board for good cause shown, which may include factors outside of Respondent's direct control. Good cause may include a failure of any government agency or entity to meet the interim milestones upon which the final compliance date is based.*
  - c. ***Interim Operating Conditions.*** *Pending issuance of either an Authority to Construct or Permit to Operate for each source at the Facility that requires a permit under Air District Regulation 2, Rule 1, Respondent shall implement the Interim Operating Conditions provided in the Appendix to this Conditional Order for Abatement.*
  - d. ***Reporting.*** *Respondent shall submit written reports to the Hearing Board and APCO as follows:*
    - i. *Respondent shall provide a written report demonstrating compliance with the October 31, 2025 deadline contained in paragraph (a) above within 10 calendar days of the compliance date.*
    - ii. *Respondent shall provide semi-annual reports on October 16 and April 16 of each year demonstrating compliance with the Interim Operating Conditions.*
2. *That this Conditional Order for Abatement shall become effective immediately (Effective Date) upon entry.*
3. *That the Hearing Board shall retain jurisdiction over this matter until such time as (i) Martin Marietta obtains either an Authority to Construct or Permit to Operate for each source at the facility that requires a permit under Air District Regulation 2, Rule 1, or (ii) Martin Marietta permanently shuts down and abandons its operations at Pier 92. The*

*parties may move to alter or terminate this order in accordance with the rules of the Hearing Board while the matter remains under the Hearing Board's jurisdiction.*

4. *That this Conditional Order does not act as a variance.*

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**Docket: 3751 – APCO vs. Tesla Motors, Inc. – Accusation of Violation of Regulation 2-1-307 and Regulation 2-6-307 and Request for Conditional Order for Abatement**

**Location:** Alameda County; City of Fremont

**Regulation(s):** Regulation 2 Rule 1, Section 307 (Permits, General Requirements, Failure to Meet Permit Conditions); and Regulation 2, Rule 6, Section 307 (Permits, Major Facility Review, Non-compliance, Major Facility Review)

**Synopsis:** Respondent operates two paint shops at its electric vehicle manufacturing facility in Fremont. Because these paint shops emit Precursor Organic Compounds (POCs) and Toxic Air Contaminants (TACs), Respondent is required to control emissions of these air pollutants using an abatement system that captures and collects the pollutants and then abates them, primarily through incineration using a device called a thermal oxidizer.

From the APCO:

*Respondent has been violating, and continues to violate, the requirements in its permit and Air District regulations to abate emissions from its paint shops. Tesla has emitted harmful POCs and Toxic Air Contaminants directly into the atmosphere unabated, for which it received 112 Notices of Violation from the Air District since 2019, each of which included one or more days of violation. Each such violation emits illegal air pollution in varying amounts. These violations are recurring, and they negatively affect public health and the environment.*

*Respondent's recurring violations result from a variety of causes: In some cases, the thermal oxidizer or related components of the abatement system malfunction, and emissions are vented directly to the atmosphere without proper abatement. In other cases, the abatement equipment is functioning, but Respondent either bypasses the abatement equipment and vents the emissions to the atmosphere without proper abatement or shuts the abatement equipment down and vents the emissions to the atmosphere without proper abatement when other components of the production lines in the paint shops malfunction. These violations occur due to repeated malfunction of the same equipment, or due to actions of Respondent's staff or its contractors. Whatever the cause, Respondent needs to take steps immediately to stop these frequent and recurring violations.*

*The APCO seeks a Conditional Order for Abatement ordering Respondent to stop operating the North and South Paint Shops unless it develops and implements a plan to address these recurring, intermittent and ongoing violations. The APCO respectfully requests that the Hearing Board do so by first issuing an initial order requiring Respondent to (i) hire an independent third-party engineering firm or firms to conduct an objective study to determine the causes of these recurring problems and make recommendations on the actions Respondent needs to take to stop them; and then (ii) return to the Hearing Board with a proposed plan to implement the recommendations from that study to remediate these problems within a specific timeframe. The APCO requests that*

*the Hearing Board then hold a further hearing on Respondent's proposed plan and issue an order requiring Respondent to implement the plan and bring an end to these ongoing violations.*

**Fees collected this quarter:** N/A

**Status:** Accusation filed by Complainant on May 2, 2024; Accusation Certificate of Service filed by Complainant on May 6, 2024; Complainant filed Notice of Defense on May 21, 2024; Notice of Hearing (scheduled for June 25, 2024) filed and issued on May 22, 2024; due to Hearing Board Chair's request, pre-hearing conference with both parties and Hearing Board Chair held on June 3, 2024; Order Resulting from Pre-Hearing Conference filed and issued on June 6, 2024; Respondent's Opening Brief filed and issued on June 18, 2024; Joint Motion to Enter Proposed Findings and Decision and Stipulated Conditional Order for Abatement filed and issued on June 20, 2024; [Proposed] Findings and Decision and Stipulated Conditional Order for Abatement filed and issued on June 20, 2024; on June 20, 2024, Counsel for the APCO requested that the Chair vacate or suspend her order entitled "Order Resulting from Pre-Hearing Conference" (filed and issued on June 6, 2024) until the Hearing Board determines whether to enter the proposed findings, decision, and order as stipulated, or direct the Parties otherwise (Chair agreed and "Order Resulting from Pre-Hearing Conference" was vacated); Order Suspending Order from June 6 filed and issued on June 21, 2024; abatement hearing held on June 25, 2024; Findings and Decision for Stipulated Conditional Order for Abatement issued on June 26, 2024.

**THE HEARING BOARD ORDERED:**

*Tesla to comply with all of the following conditions, or in the alternative, cease any operation of the North and South Paint Shops in violation of Kegs. 2- 1-307 and 2-6-307:*

1. *Engineering Evaluation and Recommendations for Addressing Unabated VOC Emissions:* *Tesla shall hire and pay one or more engineering firms, in accordance with this Order, to evaluate and make recommendations on potential options for Tesla to eliminate the emission of unabated VOC emissions from its North and South Paint Shops, as detailed in the scope of work developed under Paragraph 2.a.ii of this Order, in violation of Tesla's permit conditions and other regulatory requirements.*
2. *Selection of Engineering Firm(s) and Development of Scope of Work:* *To comply with Paragraph I of this Order, Tesla shall do the following:*
  - a. *Within 30 calendar days of the Hearing Board issuing this Order, Tesla shall submit to the APCO for approval the following items, in writing:*
    - i. *The names of three to five engineering firms that each have expertise in either evaluating equipment like that at Tesla's North and South Paint Shops, or in evaluating reliability and preventive maintenance programs, particularly vehicle production facility preventive maintenance, with summaries of applicable past projects and the kind of expertise provided by each of the firms; and*
    - ii. *A written scope of work consistent with this Order that Tesla proposes to provide to the selected engineering firm(s).*
  - b. *Within 60 calendar days of receiving the scope of work from Tesla under Paragraph 2.a.ii of this Order, the APCO shall review the proposed engineering firms and proposed scope of work submitted by Tesla under Paragraph 2.a and (i) strike from Tesla's list of proposed firms any firm that does not meet the*

*requirements of Paragraph 2.a.i. and (ii) provide any proposed revisions to the proposed scope of work necessary to ensure that the requirements of this Order are fulfilled. If the APCO strikes any firm proposed by Tesla or provides any revisions to the proposed scope of work, the APCO shall provide Tesla with an explanation as to the basis of such decision for the purpose of assisting Tesla in selecting another firm or to make revisions to the scope of work, but this decision is not appeal able. The APCO may require Tesla to furnish additional names of firms should the APCO determine that two or more of the originally proposed firms are not suitable, in which case Tesla shall have 15 calendar days from the date on which the APCO notifies Tesla that two or more of the originally proposed firms are not suitable to provide an additional two or more engineering firm names that meet the requirements of this Order. If there is any disagreement between Tesla and the APCO regarding the scope of work, they shall meet and confer about the revisions provided by the APCO. In the event an agreement cannot be reached between Tesla and the APCO regarding the scope of work, the disagreement shall be presented to the Hearing Board for resolution.*

- c. Within seven (7) calendar days of receiving the APCO's approval of the firms and scope of work under Paragraph 2.b, Tesla shall send the approved firm(s) selected the scope of work produced by the process in Paragraph 2.b.ii, which shall include requiring the firm(s) to:
    - i. Meet with Air District staff and Tesla before the firm(s) begins its study regarding implementing this Order and its scope of work, and then, every two weeks thereafter, give the APCO an update on its work under this Order; and*
    - ii. Give the APCO, upon request, a copy of any information it obtained, from Tesla or otherwise. If any such information is trade secret or otherwise confidential under California law, Tesla and the APCO shall follow the Air District rules and, where appropriate, any other applicable California laws for handling such information.**
  - d. Within twenty (20) calendar days of sending the firm(s) the scope of work under Paragraph 2.c., Tesla shall attempt to hire one or two of the approved firms, as necessary to fulfill the requirements of this Order. In the event Tesla is unable to hire any of the firms approved by the APCO under Paragraph 2.b due to scheduling unavailability, Tesla shall provide the APCO three more additional engineering firm names that meet the requirements of this Order, in accordance with Paragraph 2.n.i, and the APCO shall review them in accordance with Paragraph 2b. Tesla must hire a firm with expertise in evaluating equipment like that at Tesla's North and South Paint Shops, and the same or no more than one different firm with expertise in evaluating reliability and preventive maintenance programs, particularly automotive vehicle production facility preventive maintenance.*
- 3. Engineering Firm Access and Independence: Tesla shall do the following with respect to the engineering firm(s) it hires under this Order:*
- a. Include Air District staff in all written communications it has with the selected firm(s);*
  - b. Permit the firm(s) to talk freely and confidentially with Air District staff at any time, with or without Tesla present or knowing about the conversation or its contents; and*



- (v) *any other area that could potentially reduce the recurrence of situations necessitating the shutdown and/or bypassing of the abatement system; and*
  - i. *For each recommendation provided in the Report, an estimate of the minimum time needed to implement the recommendation.*
- 5. *APCO Review of Engineering Report:* *Within 45 calendar days of receiving the firm(s)'s report under Paragraph 4, the APCO may identify any concerns with the report by notifying Tesla and the firm(s). If there is any disagreement between Tesla and the APCO, they shall meet and confer about the firm(s)'s report, and the APCO shall inform Tesla and the firm(s) of any changes to its list of concerns. In the event an agreement cannot be reached between Tesla and the APCO regarding the list of concerns, they shall provide the firm(s) with the APCO's final list of concerns and Tesla's response, if any. Within thirty (30) calendar days of receiving the APCO's final list of concerns and Tesla's response, the firm(s) shall go back and address the issues identified by the APCO and issue a revised report consistent with Paragraph 4 that addresses the APCO's concerns and Tesla's response, with consideration and notation of Tesla's response, if consistent with this Order and the firm's professional responsibilities.*
- 6. *Submission of and Hearing On Proposed Plan to Address Unabated VOC Emissions:*
  - a. *Within sixty ( 60) calendar days of the firm(s) issuing a report or revised report, under Paragraphs 4 or 5, as applicable, Tesla shall file with the Hearing Board and serve on the APCO a proposed plan and timeline, not to exceed six months, for implementing all of the firm's recommendations, or, if there are any recommendations that Tesla contends it cannot feasibly implement or will require more than six months to implement, a response, with supporting documentation from an outside entity such as a vendor, demonstrating why it cannot feasibly implement those recommendations or why it will need more than six months to implement those recommendations. Tesla shall not claim it cannot feasibly implement a recommendation based solely on cost or production effects, and any claim of infeasibility must also be based on technical infeasibility. Tesla shall attach to its filing an unaltered version of the firm(s)'s report under Paragraph 4 or 5, as applicable. Tesla's filing required under this Paragraph 6.a. shall be signed, under penalty of perjury, by a Tesla Vice President-level executive with responsibility for, and control over, the filing.*
  - b. *Within sixty (60) calendar days after service of Tesla's proposed plan and timeline, the APCO shall file its response, if any, with the Hearing Board.*
  - c. *Within fifteen (15) calendar days after the APCO files its response (or within 15 calendar days after the deadline for the response, if the APCO does not file a response), the Hearing Board shall hold a hearing to determine an appropriate further order to require Tesla to implement the proposed plan and timeline for implementing all of the firm's recommendations.*
- 7. *Extensions of Time:* *Tesla or the APCO may request, and the Hearing Board may grant, reasonable extensions of time for any deadline established in this Order upon a showing of good cause or if the other party does not object. Any such extension shall be subject to the APCOs written consent, which consent shall not be unreasonably withheld. Any such extension shall be issued after a hearing in the form of a further Order, unless Tesla and*

*the APCO stipulate to the extension, in which case a hearing need not be held, but a further Order will still be issued.*

8. *Reporting of Bypass and Temperature Excursions: Immediately upon the effective date of this Order, Tesla shall report to the APCO each and every bypass valve opening and thermal oxidizer temperature excursion ( where the thermal oxidizer falls below 1400 degrees Fahrenheit for any period of time) at the North and South Paint Shop, whether Tesla believes the event is a deviation or not, within 10 calendar days of the bypass event or any thermal oxidizer temperature excursion occurring; in each such report, Tesla shall include all information required by Standard Condition F of Tesla's Title V permit, as well as emissions and supporting calculation(s). This reporting shall be in addition to Tesla's reporting of bypass valve opening and thermal oxidizer temperature excursions that Tesla identifies and reports as deviations in accordance with Standard Condition F of Tesla's Title V permit. Failing to report a deviation in connection with Tesla's Title V obligations may result in enforcement action.*
9. *Notices: Where any notice, submission, or communication is required by or related to this Order, it shall be submitted in writing via email to the representative of record in the Hearing Board proceeding which gave rise to this Order. Any Party may change its designated notice recipient or notice method provided above in accordance with Hearing Board rules. Notices submitted pursuant to this section shall be deemed received upon emailing.*

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**Docket: 3752 – California Statue University at San Jose – Request for Regular Variance**

**Location:** Santa Clara County; City of San Jose

**Regulation(s):** Regulation 9, Rule 9, Section 301.2 (Inorganic Gaseous Pollutants, Nitrogen Oxides From Stationary Gas Turbines, Emissions Limits); and Permit Condition 12140.3

**Synopsis:** San Jose State University (SJSU) is a public university in the California State University system. The campus operates a Cogeneration Plant to provide electricity and steam for heating campus buildings. Additionally, SJSU operates three auxiliary boilers that are operated as backup to the Cogeneration Plant for steam to heat buildings and serve process loads. This application is regarding the facility's cogeneration plant (6MW output, S1), the associated duct burner (44.44 MMBTU/hr, S2), and auxiliary boiler #3 rated at 37.5 MMBTU/hr (S7).

From Applicant:

*The Cogen Plant is used for cost-effective electricity and steam generation. It is essential to the SJSU campus operations because it provides resilient power and heating energy at a cost savings of approximately \$2M/year compared to PG&E purchases of electricity. The auxiliary boilers are used for backup when the cogeneration system is not available. They are essential to the SJSU campus operations because cogeneration systems have planned and unplanned outages and steam service to campus must be maintained continuously to support campus operations.*

*Cogen Plant:*

*The District has recently informed SJSU that it cannot retest S1 and S2 until the stack is reconfigured to comply with EPA Method 1. SJSU cannot complete this work, including the necessary permitting to do so, by the deadline to complete the re-test set forth in NOV-A63328 of May 23, 2024. This is the first time this issue has been raised with respect to source testing S1 and S2 and SJSU did not have any prior notice that the existing stack could not be tested in its current configuration. SJSU became aware that S1 and S2 were not in compliance with the NOx emission limit of Rule 9-9-301 when it received NOV-A63328 from the District on April 8, 2024. SJSU has conducted portable testing of NOx emissions from S1 and S2 since the NOV was issued, and all sample results indicated the stack is in compliance with Rule 9-9-301. To comply with the requirements of the NOV, SJSU has diligently worked with two source testing companies to understand the District's requirements related to EPA Method 1. SJSU is in the process of hiring a contractor to construct the necessary scaffolding to reach testing ports that comply with Method 1, and will complete the source re-test promptly thereafter (or, in the alternative, the re-test can be completed more quickly if the District approves the limited use of ST-18 in lieu of Method 1 for this one retest). Due to the significantly higher price of purchased power from PG&E, shutting down the Cogen Plant in lieu of obtaining a variance would cost SJSU approximately \$220,000 per month during the summer, and approximately \$150,000 per month in the winter, for an average added cost of approximately \$2 million per year. SJSU does not have the operating budget to absorb these costs. SJSU intends to comply with NOV-A63328 by constructing the necessary scaffolding so that the source re-test can be completed consistent with EPA Method 1, as required by District staff (or, in the alternative, conducting the re-test consistent with ST-18 if approved by the District). Assuming the re-test indicates S1 and S2 meet the emission limits of Rule 9-9-301, the sources will be in compliance. If the re-test does not indicate compliance with the emission limits, SJSU will pursue installation of steam enhancement technology.*

*Boiler 3 (S7):*

*SJSU submitted an application for a PTO on May 16, 2022 (A/N 31697). The PTO has not been issued by the District, and it is outside SJSU's reasonable control to obtain this permit. Once issued, SJSU will not need to limit this boiler to less than 10% of its annual maximum heat capacity, as required by Permit Condition 12140.3. SJSU requests that the District issue the PTO or in the alternative grant a variance from Permit Condition 12140.3. SJSU became aware that it was not in compliance with Rules 2-1-301 and 2-1-302 on or about April 15, 2022, and promptly submitted an application for an updated PTO on May 16, 2022. SJSU submitted an application for a PTO on May 16, 2022. Based on available source tests, to SJSU's knowledge Boiler 3 (S7) is in compliance with the applicable NOx emission limits of Rule 9-7-307, and is merely awaiting issuance of the PTO for which it applied on May 16, 2022.*

**Requested Period of Variance:** May 23, 2024 to December 31, 2024.

**Estimated Excess Emissions:** None estimated by the Applicant.

**Fees collected this quarter:** \$9,256.00 in filing fees.

**Status:** Application for Regular Variance filed by Applicant on May 22, 2023. Hearing date to be determined. On July 9, 2024, SJSU contacted the Air District's Source Test Division to notify of

possible retest dates for the Cogen Plant's gas turbine (S-1) and duct burner (S-2). SJSU will perform the retests of S-1 and S-2 on October 29, 2024, in accordance with test methods that were approved by Air District staff. SJSU will notify the Air District's Source Test Division of the planned retest date prior to the test. The parties would like to continue to hold the variance application and wait on setting a hearing date. SJSU and BAAQMD technical staff are continuing to address the underlying issues and it is our hope that we can negotiate a settlement agreement that will enable us then to withdraw the variance application.

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Respectfully submitted,

*/s/ Valerie J. Armento*

Valerie J. Armento, Esq.  
Chair, Hearing Board

Prepared by: Marcy Hiratzka  
Reviewed by: Vanessa Johnson