BAY AREA AIR DISTRICT
Memorandum

To: Chairperson Lynda Hopkins and Members of the Finance and Administration Committee

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

Date: July 16, 2025

RECOMMENDED ACTION

No action requested.

DISCUSSION

This report covers the second calendar quarter (April – June) of 2025.

- Held one hearing;
- Processed two orders; and
- Collected a total of $13,301.00 in Hearing Board filing fees

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

Docket: 3751 – Air Pollution Control Officer (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, and 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 the 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 Per-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; parties filed Joint Petition for Modification of Stipulated Order of Conditional Abatement (originally filed on June 26, 2024) on May 16, 2025; Notice of Hearing (May 27, 2025) filed and issued on May 20, 2025; hearing held on May 27, 2025; and Modification of Stipulated Order of Conditional Abatement (originally filed on June 26, 2024) filed and issued on May 28, 2025.

THE HEARING BOARD ORDERED:

Paragraph 4 of the 2024 Order revised to increase the time within which the independent engineering firm must produce its report from 90 days to 180 days. The introductory language of condition 4 of the June 26, 2024 Order is revised to read as follows:

4. Report and Recommendations for Addressing Unabated Volatile Organic Compounds VOC Emissions: Within one hundred eighty (180) calendar days of being hired, the firm(s) shall provide one report to both Tesla and the APCO that (i) is not edited or changed in any way by Tesla, (ii) is signed under penalty of perjury by a licensed electrical Professional Engineer, and a licensed mechanical Professional Engineer; and (iii) includes, at a minimum, all of the following: [requirements A. through I. unchanged].

Docket: 3760 – APCO vs. Olam West Coast, Inc. – Accusation of Violation of Permit Conditions #26683 & #26684 and Request for Conditional Order for Abatement

Location: Santa Clara County; City of Gilroy

Regulation(s): Permit Conditions #26683 & #26684

Synopsis: Respondent operates an agricultural processing facility (hereinafter "Facility") and operates six food dryers at the Facility on a seasonal basis from approximately April until November each year. The food dryers emit air pollutants, including nitrogen oxides (NOx) and carbon monoxide (CO), that the Air District regulates in order to protect air quality and public health.

From the APCO:

The Air District authorized Respondent to install and start operating the food dryers in 2018 and imposed permit conditions limiting emissions from the food dryers to 22.8 tons per year of NOx and 53.5 tons per year of CO through rate-based concentration limitations and a facility-wide NOx emission limitation. After Respondent began operating the food dryers, emissions testing indicated that the estimates on which these permit conditions were based were significantly inaccurate. The testing indicated that the food dryers could not meet the specified permit limits, and that they have the potential to emit up to 56.7 tons per year of NOx and 182.6 tons per year of CO. Respondent initially disputed the appropriate test methodology, which has significantly delayed resolution of this issue. As

such, Respondent has operated and is continuing to operate its food dryers in violation of its NOx and CO permit conditions. Respondent has now agreed to use the correct source test methodology and has committed to seeking and obtaining revised permit conditions that will ensure that it operates in compliance with all applicable air quality regulations. The APCO believes that increased NOx and CO limits may be allowable, although it will need to evaluate Respondent's request for an increase in detail before approving any revised emissions limits.

The APCO seeks an Order to ensure that the Respondent will follow through on its commitment to obtain a revised permit as expeditiously as possible to bring the food dryers into compliance. Specifically, the APCO seeks an order establishing an appropriate deadline for the Respondent to obtain revised permit limits, along with interim milestones to ensure that Respondent makes diligent progress towards final compliance – and that Respondent may not operate the food dryers in violation of its current permit limits unless it complies with these requirements. The Complainant requests that the Respondent ceases and desists from operating its food dryers in violation of its permit conditions, and of Regulation 2-1-307 (prohibiting operation in violation of permit conditions),1 unless Respondent complies with the terms and conditions contained in a Proposed Order that the APCO will submit prior to the scheduled hearing.

Fees collected this Quarter: N/A

Status: Accusation filed by Complainant on April 30, 2025; pre-hearing conference held on May 28, 2025; Notice of Hearing (July 15, 2025) filed and issued June 2, 2025.

Docket: 3761 – Valero Refining Company – California – Request for Emergency Variance

Location: Solano County; City of Benicia

Regulation(s): Regulation 2, Rule 1, Section 320; Regulation 2, Rule 1, Section 307; Regulation 2, Rule 6, Section 307; Regulation 6, Rule 1, Section 301 through Regulation 6, Rule 1, Section 303.

Synopsis: *(*From Petitioner*) Valero Refining Company-California ("Valero") operates a petroleum refinery ("the Facility") in Benicia, California, which processes feedstocks into gasoline, diesel, jet fuel and asphalt.*

Valero seeks emergency variance relief related to an unforeseen fire near a furnace inside the Fluid Catalytic Cracking Unit ("FCCU") complex. At approximately 8:45am on May 5, 2025, an unexpected fire occurred at the Facility (the "fire") near FCCU. As soon as the fire was discovered, Valero took immediate steps to ensure employee safety, notify first responders, and begin assessing the cause and steps for resolution. These steps included notifying the Bay Area Air District, mobilizing the Valero Emergency Response Team, notifying the City of Benicia, Solano County, and other relevant agencies activating the Emergency Alarm, and isolating the fuel source of the fire. Fire suppression began at approximately 9:05 am and the "all-clear" was sounded on the refinery alarm at 10:38am.

Valero's incident investigation is ongoing, however it appears that a portion of the stack (P-36) of the FCCU furnace, source (S-25) F-701, unexpectedly fell from elevation, impacting process equipment and causing a loss of containment and resulting in a fire. The failure of the stack was not the result of operator error nor lack of maintenance in accordance with industry standards. As a result of this unforeseeable fire, there were visible emissions, intermittent flaring, and potential emissions exceedances. Valero is in the process of investigating the damage caused to surrounding units and evaluate what repairs are necessary to restart and commence operation of the Facility. Activities associated with restarting the affected equipment could result in visible emissions or other emissions exceedances on an intermittent basis. Accordingly, Valero requests an emergency variance for potential violations associated with the fire for the period May 5, 2025, through June 4, 2025.

This emergency variance is being sought for the FCCU and associated units. The FCCU is a critical unit in the refinery process whereby heavy oils are converted into gasoline and diesel. Without the FCCU, gasoline production would be shut down, and downstream units which make blending components would be severely limited preventing the production of finished gasoline and diesel.

In addition, because the refinery is an integrated refinery, the curtailment or outage of one unit can impact the operation or outage of other units. As a result, in restarting the affected unit(s), other non-affected units could be impacted from both a production and emissions perspective.

Pursuant to California Energy Commission ("CEC") requirements, in any refinery outage or slow down, especially one involving an FCCU, Valero is required to notify the CEC that the refinery has exhausted every option to maintain production. This includes notification of an estimated duration of the outage and an estimate of production lost. The CEC expects refineries to ensure all options to maintain production are exhausted.

If the variance is not granted, Valero will not be able to produce gasoline or the components necessary to blend finished gasoline. At this time, Valero estimates there could be significant impacts on gasoline supply, reducing the availability of fuel to the State of California. Due to recent legislation surrounding gasoline supply and gasoline prices, the CEC has heightened its involvement with refinery outages seeking to ensure any outages are minimized to ensure minimal impacts on consumers by way of reduced supply or increased prices.

Valero will follow its Flare Minimization Plan and make every effort to comply with all other relevant permit conditions and regulations. Valero will continue to use complex-specific monitoring trends and notify the District of any relevant Title V deviations. In addition, Valero will use existing continuous emission monitoring systems (CEMS), fence line monitoring and ground level air monitoring (GLM) data, and engineering calculations to quantify emissions and will report any excess emissions through Title V deviations. Valero continues to investigate the cause and consequences of this unexpected fire. It is too early to determine the necessary equipment repairs, modifications, or process changes

required to return to operation. Valero will work closely with the District as the investigation continues and any further activities are required.

Requested Period of Variance: May 5, 2025 to June 4, 2025

Estimated Excess Emissions: Provided by Petitioner (see below):

There is potential for intermittent excess opacity emissions while Valero works to bring the affected units back into operation. At this time, Valero cannot determine the likely type or amount of these emissions, nor the likely duration. Valero will monitor and mitigate emissions to the extent feasible, and will provide this information, once known, to the Hearing Board and the district upon request.

Location	Pollutant	Citation
CO Blind Opacity	VEE	Condition #24198.17 Reg 6-1-302
FGS Opacity	VEE	Reg 6-1-302
FGS	PM (dP)	Condition #24245.19 Condition #20820 Part 63, 68
FGS	SO2, NOx, CO, NMOC	Condition #20820 Part 63, 66, 67, 68.
Fuel Gas	TRS	Condition #25342 Part 2
Flare Gas Recovery	Throughput	Condition #26960.1

Acronyms

VEE – Visible Emissions Evaluation
FGS – Flue Gas Scrubber
PM – Particulate Matter
SO2 – Sulfur Dioxide
NOx – Nitrogen Oxide
NMOC – Non-Methane Organic Compound
TRS – Total Reduced Sulfur

Fees collected this quarter: $2,657.00 (Hearing Board filing fee)

Status: Application for Emergency Variance filed by Petitioner on May 6, 2025; application sent to Air District Compliance & Enforcement staff for review on May 7, 2025; staff response filed with Clerk on May 9, 2025; Hearing Board member assigned to docket on May 10, 2025 (Clerk had difficulty finding available Board member); Hearing Board

member response filed with the Clerk on May 12, 2025; Order Denying Emergency Variance filed and issued on May 13, 2025.

HEARING BOARD ORDERED:

The Applicant does not meet the good cause standard for issuance of an electric vehicle (EV) under either the Hearing Board Rules or the applicable provisions of the Health and Safety Code. There is no clear evidence that non-compliance was unforeseeable. There is no clear evidence that violations are beyond the Applicant's reasonable control. Several violation notices were issued prior to the filing for the EV and are not eligible for variance relief pursuant to Rule 7.11(a) and/or Health and Safety Code Section 41700. Therefore, the Application for Emergency Variance from Air District Permit Regulation 6-1-302 and Condition #24198.17, Condition #24245.19, Condition #20820 Parts 63 & 68, Condition #20820 Parts 63, 66, 67, & 68, Condition #25342 Part 2, and Condition #26960, is hereby denied.

Docket: 3762 – Argent Materials, Inc. – Petition for Appeal of Denial of Permit Application No. 30122 (issued April 9, 2025)

Location: Alameda County; City of Oakland

Synopsis: *(*From Petitioner*) Argent Materials, Inc. (Argent) hereby appeals the denial of Permit Application No. 30122 by the Bay Area Air District (BAAD or District) based on an Engineering Evaluation dated April 9, 2025, and delivered via email on April 10, 2025. The facility is a concrete and asphalt recycling facility located at 8501 San Leandro Street, Oakland, California 94621 ("8501 Site").*

The District asserted the following two grounds as its basis for denial of Application No. 30122:

(1) Argent improperly divided a "project" into two permit applications in violation of Regulation 1-104; and
(2) The Health Risk Assessment for Permit Application No. 30122 exceeds the 1.0 chronic Hazard Index value, prohibiting approval of the application under Regulations 2-5-302 and 5-2-216.

Argent disputes both of the District's two grounds for denial and asserts as a basis for this appeal that:

(1) Argent did not improperly divide a "project" into two permit applications or otherwise attempt to circumvent the District's permit regulations in violation of Regulation 1-104; and
(2) The Health Risk Assessment does not prohibit approval of Application No. 30122 under Regulations 5-2-302 or 5-2-216.

On September 9, 2019, Argent filed Permit Application No. 30122 (at issue in this appeal) seeking a permit to operate stockpiles at the 8501 Site.6 Application No. 30122 was not deemed complete or processed by the District for more than five years after the

application was filed. At one point, the District attributed its delay to its lack of staff resources stating "the main issue is engineering time and resources, sorry."

On April 9, 2025, the District denied Application No. 30122 for the two reasons listed above on page 1, as discussed in the Engineering Evaluation attached as Exhibit 1. Argent now is appealing the District's denial of Application No. 30122.

The Site is not currently operating pending issuance of a permit. In July 2023, the District alleged that Argent had operated a stockpile of aggregate materials without a permit to operate in violation of Regulation 2-1-301 and 2-1-302. Argent denies any wrongdoing. The matter is subject to ongoing discussion between the District and Argent and is not relevant to the Hearing Board's adjudication of the two issues on which the District based its denial of Application No. 30122.

The petitioner has the burden of proof to demonstrate that the District's "action was erroneous." Hearing Board Rule 8.4. The Hearing Board will determine whether the District's interpretation of the applicable legal requirements is "is fair and reasonable and consistent with other actions of the [District]." Hearing Board Rule 8.6.

Fees collected this Quarter: $10,644.00 in filing fees.

Status: Petition for Appeal for Denial of Permit Application No. 30122 filed by Petitioner on May 8, 2025; Notice of Hearing (June 24, 2025) filed and issued on May 20, 2025; on June 11, 2025, Petitioner requested to continue the Hearing until July 15, 2025 (Hearing Board Chair agreed); Notice of Continued Hearing (July 15, 2025) filed and issued on June 12, 2025.

Respectfully submitted,

/S/ Valerie J. Armento
Valerie J. Armento, Esq.
Chair, Hearing Board

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