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7 ENVIRONMENTAL DEMOCRACY PROJECT

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

12 ENVIRONMENTAL DEMOCRACY PROJECT,
13 a non-profit corporation,

14 Petitioner,

15 v.

16 BAY AREA AIR QUALITY MANAGEMENT
17 DISTRICT,

18 Respondent.

FILED
San Francisco County Superior Court

FEB 11 2025

CLERK OF THE COURT

BY

J. Valdes

Deputy Clerk

Case No. CPF-24-518629

Assigned For All Purposes To The
Honorable

MICHELLE TONG

~~PROPOSED~~ CONSENT
JUDGMENT

1 **1. INTRODUCTION**

2 **1.1** The parties to this Consent Judgment are Petitioner Environmental Democracy
3 Project (EDP) and Respondent Bay Area Air Quality Management District (BAAQMD). EDP and
4 BAAQMD are at times referred to herein individually as a “Party” and jointly as the “Parties.”

5 **1.2** EDP alleges that BAAQMD fails to comply with its mandatory duties under
6 the Air Toxics “Hot Spots” Information and Assessment Act of 1987, Health & Safety Code
7 sections 44300-44394 (the Hot Spots Act or Act). Specifically, EDP alleges that BAAQMD
8 violates the Hot Spots Act by failing to prepare and publicize annual reports that identify
9 industrial facilities that pose cancer risks and other threats to public health, or hold public
10 hearings on those annual reports, as required by Health & Safety Code § 44363. EDP seeks a
11 peremptory writ and injunction directing and requiring BAAQMD to comply with the annual
12 reporting requirements of the Act, and a declaration that BAAQMD is in violation of its
13 mandatory duties under the Act. BAAQMD disputes and denies EDP’s allegations.

14 **1.3** On March 4, 2024, counsel for Environmental Democracy Project (“EDP”), a
15 California non-profit corporation, contacted counsel for BAAQMD to inform BAAQMD that
16 EDP intended to file suit against BAAQMD based on their alleged Hot Spot Act violations.

17 **1.4** On July 15, 2024, EDP filed the Petition in this action.

18 **1.5** For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
19 Court has jurisdiction over the allegations of Hot Spots Act violations contained in the operative
20 petition and personal jurisdiction over BAAQMD as to the acts alleged in the Petition; (ii) venue
21 is proper in the County of San Francisco; and (iii) this Court has jurisdiction to enter this Consent
22 Judgment.

23 **1.6** Nothing in this Consent Judgment is or shall be construed as an admission by
24 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
25 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
26 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
27 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
28 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and

1 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
2 this action.

3 **2. DEFINITIONS**

4 **2.1** "Annual Report" shall mean a prepared and published report that: (i) is based
5 on the most recent finalized toxic emissions inventory data developed by BAAQMD; and (ii)
6 satisfies each and every requirement set forth in Health & Safety Code § 44363(a). For the
7 avoidance of doubt, the Parties recognize and acknowledge that it can take over twelve (12)
8 months following the end of a calendar year for BAAQMD to finalize toxic emissions inventory
9 data for that calendar year.

10 **2.2** "Distribute" shall mean to disseminate the Annual Report to county boards of
11 supervisors, city councils, and local health officials as set forth in Health & Safety Code §
12 44363(b).

13 **2.3** "Effective Date" means the date on which this Consent Judgment is entered by
14 the Court.

15 **2.4** "Facility Map" shall mean a map on BAAQMD's website that will show each
16 (i) facility name, (ii) facility ID number, (iii) prioritization score, (iv) prioritization rank, and (v)
17 annual emissions rate for each toxic air pollutant emitted, as listed in the toxic emissions
18 inventory data underlying the Annual Report. This information will be readily visible to users
19 simply by hovering their cursor over and/or clicking on a facility location on the Facility Map,
20 which will cause the information for that facility to pop up and become visible and/or cause a
21 menu to pop up from which the user may choose to view the information for that facility.

22 **2.5** "Hearing(s)" shall mean one or more public hearings to present the Annual
23 Report and discuss its content and significance as set forth in Health & Safety Code § 44363(b).

24 **2.6** "Petition" shall mean the petition filed by EDP on July 15, 2024, in this
25 action.

26 **2.7** "Report Date" shall mean October 4, 2024, and July 1 of each year thereafter.
27
28

1 **3. INJUNCTIVE RELIEF**

2 **3.1** No later than the Report Date each year, BAAQMD shall do all of the
3 following:

4 3.1.1 BAAQMD shall prepare and publish an Annual Report;

5 3.1.2 BAAQMD shall Distribute the Annual Report;

6 3.1.3 BAAQMD shall hold one or more Hearing(s) on the Annual Report; and

7 3.1.4 BAAQMD shall publish the toxic emissions inventory data underlying the
8 Annual Report on the Facility Map on BAAQMD's website.

9 **4. ENFORCEMENT**

10 **4.1** Any Party may, by motion or application for an order to show cause before the
11 Superior Court of the County of San Francisco, enforce the terms and conditions contained in this
12 Consent Judgment. The prevailing party shall be entitled to its reasonable attorneys' fees and
13 costs incurred as a result of such motion or application. The terms of this Consent Judgment shall
14 be enforced exclusively by the Parties hereto. The Parties' sole remedy to enforce alleged
15 violations of this Consent Judgment shall be an action to enforce the terms of this Consent
16 Judgment pursuant to this section.

17 **4.2** A Party intending to bring a motion or application to enforce the terms of this
18 Consent Judgment must provide notice of such intent to the alleged offending Party, pursuant to
19 Section 8 below, no later than fourteen (14) days prior to filing and serving the motion or
20 application. Said notice must contain information to alert the alleged offending Party to the
21 nature of the alleged violation. The non-moving Party may, within seven (7) days of receipt of
22 the moving Party's notice, propose in writing a reasonable period of time, not to exceed sixty (60)
23 days, in which to cure the alleged violation. In that event, the Parties shall meet and confer in
24 good faith to discuss and agree to a reasonable period of time for the non-moving Party to cure
25 the alleged violation. If the Parties agree in writing to a reasonable period of time in which the
26 non-moving party can cure the alleged violation, the moving Party shall not file any motion or
27 application if the non-moving party cures the alleged violation within that period of time.
28

1 **5. PAYMENT**

2 **5.1** BAAQMD shall make a total payment of \$35,754.00 to Lexington Law Group,
3 LLP, on behalf of EDP, within fourteen (14) days of the Effective Date to reimburse EDP and its
4 attorneys for a portion of their reasonable investigation fees and costs, attorneys' fees, and any
5 other costs incurred as a result of investigating, bringing this matter to BAAQMD' attention,
6 litigating, and negotiating a settlement, and securing entry of this Consent Judgment.

7 **5.2** BAAQMD shall also make a total payment of \$435 to Lexington Law Group,
8 LLP within fourteen (14) days of the Effective Date to reimburse Lexington Law Group, LLP for
9 BAAQMD' appearance fees in this matter.

10 **5.3** BAAQMD shall wire the payments to Lexington Law Group pursuant to the
11 wire instructions provided to BAAQMD by counsel for EDP. EDP shall notify BAAQMD promptly
12 upon Lexington Law Group's receipt of the payments pursuant to Section 8 below, which notice
13 shall specify the date the payments were received.

14 **5.4** Any failure by BAAQMD to comply with the payment terms above shall be
15 subject to a stipulated late fee in the amount of \$100 for each day after the due date that
16 BAAQMD has not complied, which amount shall be recoverable by EDP, together with its
17 reasonable attorneys' fees and costs, in an enforcement proceeding brought pursuant to Section 4.

18 **5.5** BAAQMD's payment of fees and costs pursuant to this Section 5 is not, and shall
19 not be construed as, an admission that EDP is entitled to such fees and costs. Payment of such
20 fees and costs shall be in full satisfaction of any and all claims EDP or its attorneys may have
21 against BAAQMD for payment of fees and costs associated with this matter under Chapter 6 of
22 Title 14 of Part 2 of the California Code of Civil Procedure (commencing with Section 1021),
23 Division 17 of Title 3 of the California Rules of Court (commencing with Section 3.1700), or any
24 other provision of law, except to the extent applicable in the event of enforcement of this Consent
25 Judgment as explicitly provided for under Section 4.

1 **6. MODIFICATION**

2 **6.1** This Consent Judgment may be modified by written agreement of all Parties
3 without approval of the Court or upon motion of a Party as provided by law.

4 **6.2** Any Party seeking to modify this Consent Judgment shall attempt in good faith
5 to meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

6 **7. CLAIMS COVERED AND RELEASED**

7 **7.1** This Consent Judgment is a full, final, and binding resolution between EDP and
8 BAAQMD of any and all claims that EDP could bring with respect to BAAQMD's Hot Spots Act
9 violations, including without limitation (1) any alleged violations of Health & Safety Code § 44363;
10 and (2) any of EDP's allegations made in the Petition. In consideration of the promises and
11 agreements contained herein, EDP, on behalf of itself and its past, current, and future officers,
12 directors, agents, attorneys, representatives, successors, and/or assignees, hereby (i) waives all
13 rights to institute or participate in, directly or indirectly, any form of legal action, and (ii) releases
14 all claims of any nature whatsoever that were brought or could have been brought, against
15 BAAQMD and/or its officers, directors, and agents (collectively "Releasees") with regard to or
16 concerning alleged violation(s) of Health & Safety Code § 44363 and each of the Releasees' alleged
17 violation(s) of Health & Safety Code § 44363, to the extent such violation occurred prior to the
18 Effective Date.

19 **7.2** It is the Parties' understanding and intent that the injunctive relief of Section 3 of
20 this Consent Judgment satisfies the requirements of Health and Safety Code § 44363. As such,
21 EDP shall not bring any judicial or administrative action against Releasees, or any of them, for
22 violation of § 44363 as it is drafted as of the Effective Date, provided that the Air District is in
23 material compliance with this Consent Judgment. EDP shall bring any claim that the Air District is
24 not in material compliance with this Consent Judgment as provided for under Section 4.

25 **7.3** Within five (5) business days of receipt of BAAQMD's settlement payments
26 in compliance with Section 5 above, EDP shall dismiss the Petition with prejudice and with each
27 Party to bear its own costs except as provided in this Consent Judgment.

28 **7.4** Nothing in this Section affects EDP's right to commence or prosecute an

1 action under the Hot Spots Act against any person other than BAAQMD or the other Releasees.

2 **8. NOTICE**

3 **8.1** When EDP is entitled to receive any notice under this Consent Judgment, the
4 notice shall be sent by first class and electronic mail to:

5 Lucas Williams
6 Lexington Law Group, LLP
7 503 Divisadero Street
8 San Francisco, CA 94117
lwilliams@lexlawgroup.com

9 **8.2** When BAAQMD is entitled to receive any notice under this Consent
10 Judgment, the notice shall be sent by first class and electronic mail to:

11 Philip M. Fine
12 Executive Officer/APCO
13 Bay Area Air Quality Management District
14 San Francisco, CA 94105
gnudd@baaqmd.gov

15 and

16 Alexander Crockett, Esq.
17 General Counsel
18 Bay Area Air Quality Management District
19 San Francisco, CA 94105
acrockett@baaqmd.gov

20 **8.3** Any Party may change the person and address to whom the notice is to be sent
21 by sending the other Party notice of such change by first class and electronic mail.

22 **9. COURT APPROVAL**

23 **9.1** The Parties agree to seek Court approval of this Consent Judgment.

24 **9.2** This Consent Judgment shall become effective upon entry by the Court. If this
25 Consent Judgment is not entered by the Court, it shall be of no force or effect and shall never be
26 introduced into evidence or otherwise used in any proceeding for any purpose.

27 **10. SEVERABILITY**

28 **10.1** In the event that any of the provisions of this Consent Judgment are held by a
court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

1 **11. GOVERNING LAW**

2 **11.1** The terms of this Consent Judgment shall be governed by the laws of the State
3 of California.

4 **12. ENTIRE AGREEMENT**

5 **12.1** This Consent Judgment contains the sole and entire agreement and
6 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
7 discussions, negotiations, commitments or understandings related thereto, if any, are hereby
8 merged herein. There are no warranties, representations or other agreements between the Parties
9 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
10 other than those specifically referred to in this Consent Judgment, have been made by any Party
11 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
12 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
13 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
14 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
15 modification, waiver or termination of this Consent Judgment shall be binding unless executed in
16 writing by the Party to be bound thereby or entered by the Court. No waiver of any of the
17 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
18 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
19 waiver.

20 **13. SUCCESSORS AND ASSIGNS**

21 **13.1** This Consent Judgment shall apply to and be binding upon EDP and BAAQMD and
22 the successors or assigns of any of them.

23 **14. RETENTION OF JURISDICTION**

24 **14.1** This Court shall retain jurisdiction of this matter to implement or modify the
25 Consent Judgment.

26 **15. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

27 **15.1** Each signatory to this Consent Judgment certifies that he or she is fully
28 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into

1 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
2 Party. The undersigned have read, understand, and agree to all of the terms and conditions of this
3 Consent Judgment.


4 **16. NO EFFECT ON OTHER SETTLEMENTS**

5 **16.1** Nothing in this Consent Judgment shall preclude EDP from resolving any
6 claim against an entity other than BAAQMD on terms that are different than those contained in
7 this Consent Judgment.

8 **IT IS SO STIPULATED:**

9 Dated: July 12, 2024

**ENVIRONMENTAL DEMOCRACY
PROJECT**

11 

12
13 Tanya Boyce
Chief Executive Officer

14 Dated: July 12, 2024

**BAY AREA AIR QUALITY
MANAGEMENT DISTRICT**

16 

18 Philip M. Fine
Executive Officer/APCO

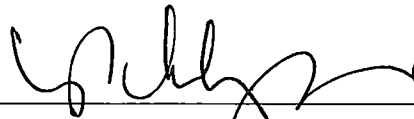
20 APPROVED AS TO FORM BY:

21 

23 Alexander Crockett
General Counsel

24 **IT IS SO ORDERED:**

25
26 Dated: 2/11/25, ~~2024~~

27 

28 Judge of the Superior Court
MICHELLE TONG