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**SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT
SOUTHERN REGION HEARING BOARD**

184 COMMUNITY ACTION GROUP, an
unincorporated association; COMITÉ
PROGRESO DE LAMONT, an unincorporated
association,

Petitioners,

vs.

SAN JOAQUIN VALLEY UNIFIED AIR
POLLUTION CONTROL DISTRICT,

Respondent,

KERN ENERGY,

Real Party in Interest.

S.R.H.B. Case No.: S-26-11A

**RESPONDENT SAN JOAQUIN VALLEY
UNIFIED AIR POLLUTION CONTROL
DISTRICT'S MOTION TO STRIKE**

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1 **RESPONDENT SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION**
2 **CONTROL DISTRICT** (herein “Respondent” or “District”) moves to strike certain portions of
3 Petitioners’ “Petition For Hearing and Appeal of Authority to Construct Permit” (“Permit
4 Appeal”) in this matter, on the grounds that it seeks relief that is in excess of the Hearing Board’s
5 jurisdiction, or otherwise fails to allege facts upon which relief can be granted. Specifically,
6 Respondent moves to strike the following specific portions of Petitioners’ appeal:

7 1.) Section III.B. of Petitioners’ Permit Appeal, under the heading, “*The District*
8 *Must Conduct Independent CEQA Review*,” p. 14, line 11 through p. 29, line 26; and

9 2.) Section III.C. of Petitioners’ Permit Appeal, under the heading, “*The ATC Permit*
10 *Is Inconsistent with the Arvin/Lamont CERP and Health & Safety Code §44391.2*,” p. 30, line 1
11 through p. 36, line 22.

12 As explained herein, the Hearing Board has not been granted jurisdiction to adjudicate
13 Petitioners’ claim that the District failed to properly satisfy environmental review pursuant to the
14 California Environmental Quality Act (CEQA). In the absence of such jurisdiction, the Hearing
15 Board lacks authority to decide whether the District’s CEQA evaluation and determinations are
16 legally correct.

17 In addition, Petitioners’ claim that the District improperly failed to evaluate whether the
18 Kern Energy permitting project is consistent with emissions-reduction targets and community
19 protections reflected in the Arvin/Lamont Assembly Bill (AB) 617 Community Emission
20 Reduction Program (CERP) entirely lacks merit. A CERP is not an applicable, legally-binding
21 permitting standard with which a permit applicant must demonstrate compliance as a condition
22 to obtaining permit approval. As such, it is not a proper factor pursuant to Health & Safety Code
23 § 42301 for the District to consider in assessing whether a permit applicant can be expected to
24 comply with all applicable legal requirements for permit issuance.

25 **I. INTRODUCTION**

26 Petitioners ask this Hearing Board to determine whether the District complied with the
27 California Environmental Quality Act (“CEQA”) before issuing the Authority to Construct
28

1 (“ATC”). Those allegations challenge the District’s CEQA determination, not whether the ATC
2 complied with the Health and Safety Code or applicable District permitting requirements The
3 Hearing Board possesses only the authority granted by the Health and Safety Code and the
4 District’s rules, while CEQA establishes a separate statutory scheme under which alleged CEQA
5 violations are reviewed through petitions for writ of mandate in superior court. Because
6 Petitioners seek review of the District’s CEQA determination, those claims fall outside the
7 Hearing Board’s limited statutory authority.

8 Petitioners’ AB 617 theory seeks to import inapplicable community planning objectives
9 into an ATC decision that, by statute, turns on expected compliance with applicable, enforceable
10 requirements. Health & Safety Code § 42301(b) constrains the Air Pollution Control Officer’s
11 (APCO’s) permitting inquiry to whether a proposed project “will comply with ... all *applicable*
12 orders, rules, and regulations of the district and of the state board [and] [a]ll applicable
13 provisions of this division.” (Emphasis added.)¹ That standard does not authorize the APCO to
14 impose extra-statutory consistency findings from programmatic CERP targets or to deny a permit
15 that otherwise satisfies applicable rules. The Hearing Board’s role is equally circumscribed: it
16 determines whether “the permit was properly issued,” not whether an ATC should advance
17 broader AB 617 policy preferences.

18 For the reasons set forth herein, the Hearing Board should grant this Motion to Strike.

19 **II. FACTUAL BACKGROUND**

20 Kern Energy is an independent refinery located in rural western Kern County at 7724
21 East Panama Lane, Bakersfield, which produces gasoline and various distillates, including
22 renewable diesel fuel. The facility first became regulated by the Kern County Air Pollution
23 Control District, a predecessor agency of the District, in 1969, and has been continuously
24 regulated by the District since unification of the eight counties in the San Joaquin Valley
25 occurred in 1991. Kern Energy is a Title V stationary source, and recently renewed their Title V

26
27
28 ¹ All statutory references are the Health and Safety Code, unless otherwise specified.

1 Permit on June 13, 2023. Currently, there are over 100 active permits issued by the District to
2 Kern Energy.

3 On March 12, 2025, Kern Energy submitted an Authority to Construct Application,
4 designated as Project No. S-1251187, to install a hydrogen recovery process unit to utilize
5 existing hydrogen already being produced at the refinery for use in the production of clean
6 electricity to support the refinery power needs (“the Project”). The facility will generate the
7 onsite power, reducing reliance on grid power, by employing zero-emission hydrogen fuel cells.

8 The project triggered a 30-day period to receive public comments. The facility also
9 requested that this modification be processed with an EPA Certificate of Conformity which
10 requires a 45-day period to receive EPA comments. These noticing periods were conducted
11 concurrently. No comments were received by either the EPA or CARB during the commenting
12 period.

13 In addition, the Project underwent an extended public commenting process. On October
14 28, 2025, the District opened the project up to a mandatory 30-day public comment period which
15 expired on December 1, 2025. (*See Petition Exh. G, PEXH00288-00289.*) In addition, on January
16 12, 2026, in response to community request, the District voluntarily held an in-person public
17 meeting, and extended the public comment period through January 27, 2026. (*See Petition Exh.*
18 *J, PEXH00311-00312.*) The District accepted any and all comments received from October 28,
19 2025 through January 27, 2026. In total, the project was available for public review for 91 days.

20 Following the public comment process, on April 30, 2026, having determined that the
21 Project satisfied all applicable District, state, and federal regulations, and was categorically
22 exempt from CEQA on multiple grounds, the District issued Authority to Construct S-37-178-0
23 to Kern Energy, authorizing it to construct the proposed hydrogen recovery unit.

24 **III. ISSUES**

25 This Motion presents two issues for the Hearing Board to decide:

26 1.) Whether the Hearing Board has jurisdiction to decide whether the District
27 properly complied with CEQA; and
28

2.) Whether a Community Emission Reduction Program (CERP) developed pursuant to § 44391.2, is “applicable” permitting criteria that must be evaluated by the District for expected compliance in determining whether or not to approve a proposed project.

IV. REGULATORY BACKGROUND

A. Overview of District’s Permitting Program

Pursuant to § 42300 *et seq.*, an air district is authorized to establish an air permit system by regulations. Such a permit system must, *inter alia*, “prohibit the issuance of a permit unless the [APCO] is satisfied, on the basis of criteria adopted by the district board, that the . . . (project) . . . will comply with . . . all . . . applicable orders, rules, and regulations of the district and of the state board [and] [a]ll applicable provisions of this division.” (§ 42301(b).)

As applied, a district’s permitting focus is limited to its determination that a proposed project is expected to comply with all “applicable” orders, rules, regulations and provisions of Division 26 of the Health and Safety Code. If the applicant *is not* able to demonstrate that the proposed project will comply with all applicable rules and regulations, the APCO must deny the issuance of the permit. (§ 42301(b); *District Rule 2070*, § 4.0.) If the applicant *is* able to demonstrate “on the basis of criteria adopted by the district board, that the article, machine, equipment, or contrivance will comply with” all applicable requirements, then both state law and District rules provide no discretion to deny the permit, and the APCO must therefore approve it. (*Ibid.*) The test that an APCO must apply pursuant to § 42301(b) can be understood simply as an objective determination of “expected compliance” or “not expected compliance.” If it is the former, the applicant is entitled to approval. If the latter, issuance of the permit is prohibited.

B. Overview of Hearing Board Permit Appeal Authority

The administrative remedy available to challenge an APCO’s permitting decision is also part of the comprehensive scheme outlined under state law for issuing and administering ATC’s and Permits to Operate for air pollution-emitting equipment. The permit decisions of the APCO are “appealable” to the Hearing Board, a quasi-adjudicatory body comprised of five members appointed by the District’s Governing Board, consisting of an attorney, a professional engineer, a

1 medical professional, and two members of the public. (§ 40800 et seq.) The Hearing Board has
2 jurisdiction to hear and decide three types of permit disputes brought before it: (1) petitions from
3 permit applicants challenging the APCO's decision to deny or suspend a permit (§§ 42302,
4 42306); (2) petitions from the APCO seeking to revoke a permit that has been issued, where the
5 permit holder is in violation of any applicable District rule or regulation (§ 42307); and (3)
6 petitions from "any aggrieved person" who previously participated in some way in the district's
7 permitting action to appeal "any decision or action pertaining to the issuance of a permit by a
8 district." (§ 42302.1.) A member of the public who wishes to challenge a District's permitting
9 decision is required to (1) have participated in the permitting action by "written testimony, or
10 otherwise," and (2) within 30 days of the district's "decision or action pertaining to the issuance
11 of a permit" by the district, "request the hearing board of the district to hold a public hearing to
12 determine whether the permit was properly issued."² *Ibid.*

13 Following a public hearing on a petition from a member of the public pursuant to
14 § 42302.1, a hearing board can order that a permit be revoked if the hearing board finds, *inter*
15 *alia*, "any violation of this part, or of any order, rule, or regulation of the district." (§ 42309.)

16 In evaluating whether a permit was properly issued, a hearing board exercises its own
17 independent judgment in deciding upon the correctness of the agency official's regulatory
18 interpretations, while giving deference to the official's determinations. (*Valero Refining Co.—*
19 *California v. Bay Area Air Quality Management Dist. Hearing Bd.* (2020) 49 Cal.App.5th 618
20 638-639.) The burden of proof in an appeal is on the Petitioners. (*Id.* at p. 630.)

21 However, a hearing board's standard of review does not require nor empower it to
22 consider broader, subjective concepts, such as fairness in the abstract, but is limited to
23 determining if the APCO's interpretation of the applicable regulations was correct. (*Id.* at pp.
24 640, 641.) The District is entitled to a legal presumption that the APCO's regulatory action was

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26 ² Notably, Petitioner 184 Community Action Group (CAG) *did not* participate, by written testimony or
27 otherwise, in the permitting action prior to the District's issuance of the ATC's. Petitioner Comité Progreso de
28 Lamont, however, did submit written public comments. The District therefore waives any objection to 184 CAG's
involvement in this matter.

1 correct, and the Hearing Board “should not substitute its judgment in permit cases for that of the
2 expert, full-time staff of the” District. (*Id.* at p. 642; *Evid. Code* § 664.)

3 **V. LEGAL ARGUMENTS**

4 **A. The District’s Hearing Board Lacks Jurisdiction To Adjudicate Petitioners’**
5 **CEQA Claims.**

6 CEQA, Public Resources Code § 21000 et seq., is California’s comprehensive
7 environmental review statute. CEQA requires public agencies to consider the environmental
8 consequences of discretionary projects before approving them and to inform the public of those
9 potential environmental effects. (Pub. Resources Code, §§ 21000, 21001, 21002, 21061.) To
10 accomplish those purposes, CEQA establishes a detailed procedural framework under which
11 agencies determine whether a project is exempt from CEQA, warrants a negative declaration or
12 mitigated negative declaration, or requires preparation of an environmental impact report. (Pub.
13 Resources Code, §§ 21080, 21080.1, 21082.2, 21100; Cal. Code Regs., tit. 14, § 15002.)

14 CEQA regulates how various public agencies conduct environmental review depending
15 on their specific permitting roles and establishes the procedures by which those determinations
16 may be challenged. It does not confer independent adjudicatory authority upon every
17 administrative tribunal that may later review some aspect of an agency decision. Here,
18 Petitioners do not merely contend that the ATC violates the Health and Safety Code or District
19 permitting requirements. They also allege that the District improperly relied upon various CEQA
20 exemptions, failed to assume the proper CEQA role, and issued the permit without the
21 environmental review allegedly required by CEQA. Those are CEQA claims, and here CEQA
22 directs that such claims be resolved through judicial review in superior court, not before the
23 District’s Hearing Board.

24 It is a fundamental principle of California administrative law that administrative agencies
25 possess only those powers expressly conferred upon them by statute, together with those powers
26 necessarily implied to carry out their statutory duties. (*California Drive-in Restaurant Assn. v.*
27 *Clark* (1943) 22 Cal.2d 287, 302.) Nothing in the Health and Safety Code independently grants
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1 hearing boards authority to adjudicate CEQA disputes, nor is such authority necessary to perform
2 their statutory permit-review function.

3
4 **1. CEQA Dictates That Challenges to CEQA Determinations Be Resolved in Superior Court**

5 CEQA supplies its own comprehensive framework for reviewing alleged violations of the
6 statute. Public Resources Code § 21167 governs actions “to attack, review, set aside, void, or
7 annul” an agency’s CEQA determination, including claims challenging exemption
8 determinations or alleging that an agency failed to conduct the environmental review required by
9 CEQA. (Pub. Resources Code, § 21167.) Public Resources Code §§ 21168 and 21168.5 further
10 provide that judicial review of CEQA determinations is obtained through petitions for writ of
11 mandate. (Pub. Resources Code, §§ 21168, 21168.5.)

12 This statutory scheme reflects the Legislature's determination that disputes concerning
13 CEQA compliance are to be resolved by the courts. As Professor Kenneth Manaster explains:

14 [B]y its own detailed procedural and remedial provisions, CEQA makes clear that
15 review of agency action subject to the Act is to be sought in court. Similarly, there
16 is nothing in the Health and Safety Code to indicate a specific legislative intention
to vest in hearing boards any jurisdiction whatsoever to hear CEQA claims.

17 (Manaster, *Fairness in the Air: California's Air Pollution Hearing Boards* (2006) 24 UCLA J.
18 Env'tl. L. & Pol'y 1, 85, *cited on other grounds in Valero Refining Co.—California v. Bay Area*
19 *Air Quality Management Dist. Hearing Board* (2020) 49 Cal.App.5th 618, 642.)

20 Furthermore, it is significant that CEQA is not an air district specific piece of legislation,
21 but may be applied by many different public agencies, from general land use permitting agencies
22 such as counties or cities, to special district agencies such as water boards, port authorities, and
23 the like. The Court of Appeal recognized in *Citizens for the Restoration of L St. v. City of Fresno*
24 (2014) 229 Cal.App.4th 340, 354-355 that responsibility for environmental review is inseparable
25 from the governmental entity authorized to approve or disapprove the project. CEQA therefore
26 assigns environmental review responsibilities to the public agencies designated by the statute and
27 provides specific administrative and judicial procedures for reviewing those determinations

1 depending on the role of the agency. Nothing in CEQA specifically assigns any role to an air
2 district hearing board to independently determine whether another public agency, or even the air
3 district itself acting as a lead or responsible agency pursuant to CEQA, properly complied with
4 CEQA. The Hearing Board's authority derives solely from the Health and Safety Code and
5 District rules governing permit appeals. CEQA contains no provision authorizing the Hearing
6 Board, which has not established CEQA appeal procedures, to conduct collateral review of
7 alleged CEQA violations or to determine whether the District's environmental review complied
8 with CEQA.

9 This conclusion is reinforced by CEQA's specialized judicial review procedures. Public
10 Resources Code § 21167.1 directs the Judicial Council to adopt rules ensuring that CEQA
11 actions are heard and decided expeditiously and specifically contemplates assignment of CEQA
12 matters to judges who develop expertise in CEQA. (Pub. Resources Code, § 21167.1.) The
13 California Rules of Court implement these directives through specialized case management
14 procedures applicable only to CEQA litigation. (Cal. Rules of Court, rules 3.2200-3.2226.) The
15 Legislature's creation of this specialized judicial review process further demonstrates that CEQA
16 disputes are intended to be resolved in superior court, not before appointed administrative bodies
17 exercising limited statutory authority.

18 **2. CEQA Does Not Provide an Administrative Appeal to An Unelected Decision** 19 **Making Body.**

20 Even in the limited circumstances where CEQA authorizes an administrative appeal, that
21 appeal lies only to a lead agency's "elected" decision-making body, not to an appointed
22 administrative tribunal such as the Hearing Board that lacks any CEQA appeal procedures (Cal.
23 Code Regs., tit. 14, § 15185 (a).).

24 Public Resources Code § 21151, subdivision (c), provides, that where a nonelected
25 decision-making body of a local lead agency, determines that a project is categorically exempt,
26 that determination may be appealed only to the agency's elected decision-making body, if one
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1 exists. CEQA similarly defines a “decision-making body” as the governmental body authorized
2 by law to approve or disapprove the project. (Cal. Code Regs., tit. 14, § 15356.)

3 In *No Wetlands Landfill Expansion v. County of Marin* (2012) 204 Cal.App.4th 573, the
4 court explained that such appeals lie only to an elected body that actually exercises project
5 approval authority. The Hearing Board is neither an elected decision-making body, nor the entity
6 authorized to approve or disapprove the CEQA determination by the District’s APCO.
7 Accordingly, CEQA does not authorize this permit appeal to serve as an administrative appeal of
8 the APCO’s determination that the Project is exempt from CEQA.

9 **3. The Hearing Board’s Jurisdiction is Limited by the Health and Safety Code.**

10 The Hearing Board derives its authority exclusively from the Health and Safety Code and
11 the District’s hearing board rules. Those statutes authorize the Hearing Board to hear specified
12 categories of matters, including permit appeals, permit suspensions and revocations, variances,
13 and related proceedings. (§§ 40800-40865, 42302, 42306-42309, 42350-42364.) In the permit
14 context, §§ 42302 and 42309 define the Hearing Board’s authority by authorizing hearings
15 concerning permit issuance and prescribing the actions the Hearing Board may take.

16 Nothing within that statutory framework authorizes the Hearing Board to determine
17 whether the District complied with CEQA, to invalidate the District’s CEQA determination, or to
18 require additional environmental review. Rather, the Hearing Board’s role is limited to
19 determining whether a permit was properly issued under the Health and Safety Code and
20 applicable federal, State and District rules and regulations.

21 The Court of Appeal emphasized this limited role in *Valero Refining Co. v. Bay Area Air*
22 *Quality Management District Hearing Board* (2020) 49 Cal.App.5th 618. There, the court
23 explained that hearing boards “do not enact substantive regulations and are not charged to
24 enforce them” and are “charged with deciding only whether the APCO ‘properly’ enforced the
25 district’s orders, regulations and rules. Nothing more.” (*Id.* at pp. 640, 643.) No statute authorizes
26 an air district to expand a hearing board’s authority beyond the jurisdiction conferred by the
27 Legislature. (See *PaintCare v. Mortensen* (2015) 233 Cal.App.4th 1292, 1305.) Because an
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1 administrative agency possesses only the rulemaking authority granted by statute, the Hearing
2 Board's role is limited to the authority assigned by the Health and Safety Code. (*Friends of the*
3 *Kings River v. County of Fresno* (2014) 232 Cal.App.4th 105, 117.) The Legislature has
4 specifically directed the APCO to implement and enforce the District's orders, rules, and
5 regulations, and the Hearing Board's function is correspondingly limited to determining whether
6 the APCO properly exercised that statutory permitting authority. (See *Industrial Indemnity Co. v.*
7 *Coty and County of San Francisco* (1990) 218 Cal.App.3d 999, 1009 ["An agency's own
8 interpretation of its regulation is entitled great weight, it if is consistent with its enabling
9 statute."].) The Hearing Board is not authorized to undertake broader or undefined inquiries
10 beyond those assigned to it by statute. Although *Valero* did not involve CEQA, it confirms that
11 hearing boards exercise only the authority expressly granted by statute.

12 The broader statutory scheme of the Health and Safety Code likewise reflects that limited
13 role. Hearing Board decisions are themselves reviewable by petition for writ of mandate to
14 Superior Court. (§ 40864.) The Legislature thus established hearing boards as administrative
15 tribunals with carefully circumscribed authority, not as forums for adjudicating independent
16 statutory causes of action such as alleged CEQA violations.

17 **4. Petitioners' Allegations Challenge the CEQA Determination, Not Merely the**
18 **Authority to Construct Under District Permitting Rules.**

19 Petitioners do not merely contend that the ATC violates a specific permitting requirement
20 or District rule (although they do that as well). Instead, they ask the Hearing Board to determine
21 whether the District "violated CEQA" by alleging the District improperly concluded the project
22 was exempt from CEQA, by failing to assume the role of lead agency, and that the District
23 should have conducted additional environmental review before issuing the ATC.

24 These allegations attack the legality of the District's environmental review determination
25 itself. The questions Petitioners ask the Hearing Board to decide, whether CEQA applies,
26 whether an exemption was properly applied, whether the District assumed the proper CEQA
27 role, and whether additional CEQA review was required, are quintessential CEQA questions
28

1 governed by CEQA and the CEQA Guidelines. (Pub. Resources Code, §§ 21067, 21069, 21080;
2 Cal. Code Regs., tit. 14, §§ 15051, 15061, 15096.)

3 Petitioners cannot transform a CEQA challenge into a permit appeal simply by
4 characterizing alleged CEQA noncompliance as a defect in the permit. Properly understood, their
5 claims seek review of the District's CEQA determination and therefore fall outside the Hearing
6 Board's limited statutory jurisdiction under the Health and Safety Code regarding the propriety of
7 the permit issuance.

8 **5. The Hearing Board May Consider Permit Issues Within Its Statutory**
9 **Authority, But Not Petitioners' CEQA Claims.**

10 None of the foregoing prevents the Hearing Board from deciding issues that genuinely
11 concern whether the ATC was properly issued under the Health and Safety Code or applicable
12 District rules. Those matters fall squarely within the Hearing Board's statutory permit-review
13 authority.

14 Petitioners' CEQA allegations, however, are fundamentally different. They challenge the
15 District's environmental review determination and seek relief that CEQA generally reserves for
16 judicial review through a petition for writ of mandate in this circumstance. Accordingly,
17 Petitioners' CEQA claims fall outside the Hearing Board's jurisdiction.

18 As Professor Manaster concluded, recognizing CEQA jurisdiction in hearing boards
19 would "disregard, and override, CEQA's finely wrought provisions for expert and expeditious
20 judicial review." (Manaster, *Fairness in the Air: California's Air Pollution Hearing Boards*
21 (2006) 24 UCLA J. Env'tl. L. & Pol'y 1, 85-86.) This Hearing Board should therefore consider
22 any permit issues properly within its authority while declining to adjudicate Petitioners' CEQA
23 claims.

1 **B. CERP Developed Pursuant To Health And Safety Code Section 44391.2 Is Not**
2 **“Applicable” Permitting Criteria That Must Be Evaluated By The District For**
3 **Expected Compliance In Determining Whether Or Not To Approve A Proposed**
4 **Project.**

5 **1. Background of Assembly Bill 617.**

6 AB 617, signed into law in July 2017, initiated a statewide effort to monitor and reduce
7 toxic and criteria air pollution in communities that experience disproportionate burdens from
8 exposure to air pollutants through new, community-focused and community-driven actions. AB
9 617 is initiated at the state level by the California Air Resources Board (CARB), which is
10 required to develop a statewide strategy known as the “Community Air Protection Program
11 Blueprint,” as guidance for communities as they develop and implement strategies such as
12 additional emissions reporting, monitoring, and measures to reduce exposures and emissions.
13 (§ 44391.2(b).)³ AB 617 requires CARB to select specific locations around the state for
14 preparation of community emission reduction programs (CERPs). (§ 44391.2(c)(1).) Upon
15 selection, each location convenes a “Community Steering Committee” comprised of residents,
16 members of community-based organizations, and other stakeholders, to work in consultation
17 with air districts and CARB to adopt a CERP. (§ 44391.2(c).) Generally, a CERP contains
18 strategies for reducing air pollution impacts from sources that are of particular concern to
19 community members. Each CERP must include “emissions reduction targets, specific reduction
20 measures, a schedule for the implementation of measures, and an enforcement plan.”
21 (§ 44391.4(c)(3).)

22 In 2021, CARB selected the Arvin/Lamont community as one of the designated AB 617
23 communities in the state. A Community Steering Committee was convened, and a CERP was
24 developed through an extensive community engagement process with the Committee. On June
25 16, 2022, the CERP was approved by the District’s Governing Board. (*See Petition, Exh. A,*
26 *PEXH 000001-000149.*)

27 ³ See “*Final Community Air Protection Program Blueprint 2.0*” at
28 https://ww2.arb.ca.gov/sites/default/files/2024-04/BP2.0_FULL_FINAL_ENG_2024_04_09.pdf.

1 CERPs are not rules, in and of themselves, nor do they expand upon the existing
2 authority of an air district to implement and enforce rules and regulations. Rather, the AB 617
3 statute outlines that, “In implementing the program, the air district and the state board shall be
4 responsible for measures *consistent with their respective authorities*,” and that “[c]ompliance
5 with the community emissions reduction program prepared pursuant to this section, including its
6 implementation, shall be enforceable by the air district and state board, as applicable.”
7 (§ 443912(c)(6)(8). *Emphasis added. See, also* CARB’s Blueprint, which “calls on both CARB
8 and air districts to use existing authorities in implementing” measures for achieving emissions
9 reductions.)⁴

10 Accordingly, it is common for a CERP to incorporate the rules and regulations of a
11 District which the District enforces upon stationary sources. For example, the Arvin/Lamont
12 CERP identifies the specific District rules applicable to oil and gas operations such as Kern
13 Energy. The CERP then identifies enhanced regulatory strategies to be implemented in the
14 community, such as enhanced inspection frequency at permitted facilities, analysis of additional
15 emission reduction opportunities through rulemaking, and expedited review of AB 2588 Air
16 Toxics “Hot Spots” assessments. All of the measures in a CERP are designed to achieve
17 “emissions reduction *targets*.” (§ 44391.2(c)(3). *Emphasis added.*)

18 **2. Health and Safety Code Section 42301(b) Governs ATC Issuance and**
19 **Provides the Statutory-Construction Foundation. A CERP Is Not Additional**
20 **ATC Issuance Criteria.**

21 Petitioners allege that the District “failed to meaningfully evaluate whether the Project is
22 consistent with the emissions-reduction objectives and community protections reflected in the
23 Arvin/Lamont CERP.” (Petition, 1:20-22.) Specifically, Petitioners assert that “the
24 administrative record does not analyze whether the project is consistent with the CERP’s
25 emission-reduction commitments or broader objectives of reducing cumulative exposure burdens
26 within the community. Nor does the engineering evaluation reconcile the authorized emissions

27 ⁴ See “*Final Community Air Protection Program Blueprint 2.0*,” p. 14 at
28 https://ww2.arb.ca.gov/sites/default/files/2024-04/BP2.0_FULL_FINAL_ENG_2024_04_09.pdf.

1 increase with the District’s obligations under the CERP or its identified stationary-source
2 reduction strategies.” (*Petition*, 30:19-25.)

3 The permitting standard test required by § 42301 is an on/off inquiry which requires
4 approval if the APCO determines that the equipment “will comply” with all applicable orders,
5 rules, regulations, and applicable provisions of Division 26. AB 617’s CERP provision
6 (§ 44391.2) directs the adoption and implementation of community emission reduction
7 programs, but it does not amend § 42301(b) or create a separate consistency prerequisite within
8 the District’s permitting project evaluation process. CERP measures operate through the
9 District’s and CARB’s *existing* authorities—rulemakings, inspections, enforcement, and program
10 administration—not by converting program targets into per-project permitting vetoes.

11 The distinction between inapplicable CERP measures and applicable permitting standards
12 is most aptly demonstrated by Petitioners’ reference to Rule 4455. (*Petition*, 33:19-34:24.)
13 Petitioners argue it was improper for the District to rely on existing Rule 4455 compliance
14 because the CERP commits to evaluate whether that rule should be strengthened. In doing so,
15 Petitioners confuse a prospective CERP commitment with current enforceable standards. The
16 APCO must evaluate ATC applications against rules in effect at the time of decision. A
17 commitment to study potential amendments through the AB 617 process does not disable the
18 District from applying the existing rule—much less require a permit denial. The District is not
19 precluded from approving the project in reliance upon existing Rule 4455, notwithstanding the
20 CERP’s commitment to evaluate potential strengthening. The District is only authorized to apply
21 the *existing* applicable authority to stationary source permitting evaluations.

22 Notably, the premise of Petitioners’ argument is also inaccurate, as District Rule 4455
23 *was* strengthened by an amendment to the rule on June 15, 2023, consistent with the commitment
24 in the CERP, and thus the Project was evaluated in the context of a more stringent rule than was
25 in effect at the time the ATC was approved.⁵

26
27 ⁵ (See *Petition*, *Exh. C* at PEXH 000191 and District Rule 4455 found at
28 <https://www.valleyair.org/media/nyohlxxi/rule-4455.pdf> .)

1 Similarly, Petitioners also invoke cumulative exposure themes and § 44391.2(b)'s
2 references to risk-reduction audits/plans. (*Petition*, 34:25-36:4.) But Toxic Air Contaminant
3 (TAC) risk for permitting decisions is governed by the District's adopted Health Risk
4 Assessment (HRA) framework and T-BACT/BACT requirements. The District did, in fact,
5 perform both a BACT analysis and a Health Risk Assessment for the Project, as required by
6 applicable rules. (*See Petition, Exh. C at PEXH 000203-PEXH 000212.*) Section 44391.2(b), in
7 contrast, describes program tools and evaluations that districts may undertake to advance CERP
8 implementation; it does not independently expand the APCO's ATC obligations beyond
9 applying existing enforceable risk thresholds and control requirements, absent a duly-triggered
10 and applicable rule or order requiring additional measures for the specific permit action.

11 Petitioners themselves appear to understand the distinction, as they acknowledge that the
12 District was not required to actually amend Rule 4455 before acting on the ATC Application
13 (apparently not recognizing that the District actually *did* amend the rule), and that a CERP does
14 not independently replace Rule 2201 or other applicable permitting requirements. (*Petition*,
15 32:16-18, 34:14-16.) Yet they ask the Hearing Board to vacate the ATC based on alleged
16 inconsistency with program targets and objectives. That is a nonjusticiable policy disagreement
17 about how to pursue community-wide reductions under AB 617, not a cognizable claim that the
18 APCO misapplied enforceable issuance criteria.

19 "Administrative agencies have only the powers conferred on them, either expressly or
20 impliedly, by the Constitution or by statute, and administrative actions exceeding those powers
21 are void." (*Terhune v. Superior Ct.* (1988) 65 Cal.App.4th 864, 872.) Hearing boards have power
22 to decide "whether the permit was properly issued," (§ 42302.1) but do not have broad
23 substantive authority to disregard regulations, or to otherwise make amorphous decisions about
24 whether a permit furthers general policy objectives. *Valero Refining Co., supra*, 49 Cal.App.5th
25 at 641.

26 Petitioners' contention that the APCO must determine "CERP consistency" at ATC
27 issuance inverts the statutory structures surrounding permitting standards. If the Legislature
28

1 intended CERPs to alter the ATC standard, it would have said so in § 42301(b) or by making
2 CERP targets enforceable as rules of general applicability governing permit issuance. It did not.
3 The permitting question remains whether the project is expected to comply with all applicable,
4 enforceable requirements.

5 **3. Petitioners' Quantitative Narrative Misconstrues the Nature of CERP**
6 **Targets.**

7 Petitioners juxtapose a CERP-wide VOC reduction goal (about 161 tons) against the
8 asserted project-level VOC increase.⁶ However, CERP targets are community-wide,
9 programmatic, and time-phased; they are not per-project caps or issuance thresholds. The
10 APCO's duty is to apply enforceable standards—e.g., Rule 2201, BACT, offsets, and applicable
11 prohibitory rules—not to allocate community reduction targets across individual permits or deny
12 projects that otherwise comply.

13 CERP targets are not the equivalent of ATC criteria. The permitting analysis applies the
14 District's rules, policies, and methodologies adopted to implement Rule 2201. A policy
15 disagreement about how a community-wide target should be advanced belongs in the CERP
16 implementation forum, not in an ATC appeal. The fact that "an agency has been granted *some*
17 authority to act within a given area does not mean that it enjoys *plenary* authority to act in that
18 area." (*Friends of Kings River v. County of Fresno* (2014) 232 Cal.App.4th 105, 117.) An APCO
19 cannot vest itself with authority beyond that expressly granted to it, and an APCO has not been
20 granted authority over whether a permitting project must be separately evaluated for whether a
21 project's emissions "fit" within the emissions reduction targets of the CERP. In short, there is
22 nothing within AB 617 which indicates that an adopted CERP expands upon a District's existing
23 authority to reach an objective determination of whether an ATC project is "expected" or "not
24 expected" to comply with existing *applicable* laws.

25
26
27 ⁶ Petitioners further dispute the District's VOC calculation methodology, an issue which will be addressed
28 in detail at a subsequent hearing on the merits.

1 **4. Pending Legislation Demonstrates The Absence Of A Consistency**
2 **Requirement In AB 617 As It Presently Exists.**

3 The absence of any requirement to consider the CERP before an air district can approve a
4 permit application is made apparent by the recent introduction of SB 1075 (Reyes), a piece of
5 pending legislation that included an amendment of the AB 617 program by requiring, *inter alia*,
6 cities or counties in which an approved AB 617 community is located to consider the CERP
7 before approving new commercial or industrial developments of five acres or more.⁷

8 SB 1075 (Reyes), as originally proposed, would have required a city or county for which
9 an approved CERP or local community emissions reduction plan has been prepared, before
10 approving a commercial or industrial development project located on a site of 5 acres or more, to
11 actually consider the CERP or plan or both before approval of a such a project. Notably, the
12 legislation does not extend a mandate to “consider” the CERP before approving a project to air
13 district permitting processes.

14 Though this proposal to require land use agencies to “consider” the CERP before
15 approving a commercial or industrial development project has since been removed from the
16 pending legislation, such provision would have been entirely redundant if Petitioners’
17 contentions were valid generally, and reveals the extent to which Petitioners’ claims are legally
18 erroneous.

19 **VI. CONCLUSION**

20 Allowing CEQA challenges to be litigated before hearing boards, which are unelected
21 bodies whose authority is limited by statute, would undermine the Legislature's carefully crafted
22 CEQA review process and create the potential for inconsistent and duplicative adjudication.
23 CEQA assigns responsibility for environmental review to lead agencies and provides for judicial
24 review of those decisions in the superior courts. Nothing in CEQA or the Health and Safety Code
25 authorizes hearing boards to revisit those determinations. Respecting these jurisdictional
26 boundaries preserves the integrity of CEQA’s review process while ensuring hearing boards

27
28 ⁷ See <https://legiscan.com/CA/text/SB1075/id/3425477>.

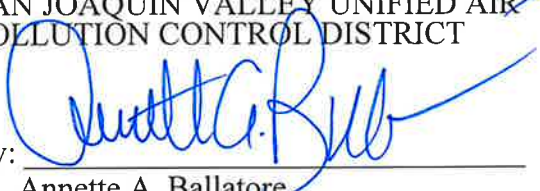
1 remain focused on the important responsibilities the Legislature specifically assigned to them.
2 Accordingly, the Board should decline to consider Petitioners' CEQA claims and limit its review
3 to the issues within its statutory jurisdiction.

4 With respect to Petitioners' AB 617 arguments, the Hearing Board reviews whether the
5 APCO correctly applied the permitting laws and rules that govern ATC issuance; it does not
6 superimpose new criteria rooted in policy judgments about community-level emission reduction
7 goals. The Legislature established a comprehensive, objective "expected compliance" standard in
8 section 42301(b). Within that framework, Petitioners bear the burden to show legal error; the
9 Hearing Board does not substitute broader notions of fairness or policy preferences for the
10 APCO's rule-bound determination.

11 For the foregoing reasons, the District's Motion to Strike should be granted.

12
13 Dated: July 15, 2026

SAN JOAQUIN VALLEY UNIFIED AIR
POLLUTION CONTROL DISTRICT

14
15
16 By: 

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