

San Joaquin Valley Unified Air Pollution Control District

Southern Region Hearing Board

184 Community Action Group, Comité Progreso De Lamont
v.

San Joaquin Valley Unified Air Pollution Control District

Kern Energy, Real Party in Interest

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

District's Motion to Strike

Wednesday, August 12, 2026
10:00 a.m.

1990 E. Gettysburg Avenue
Fresno, CA 93726

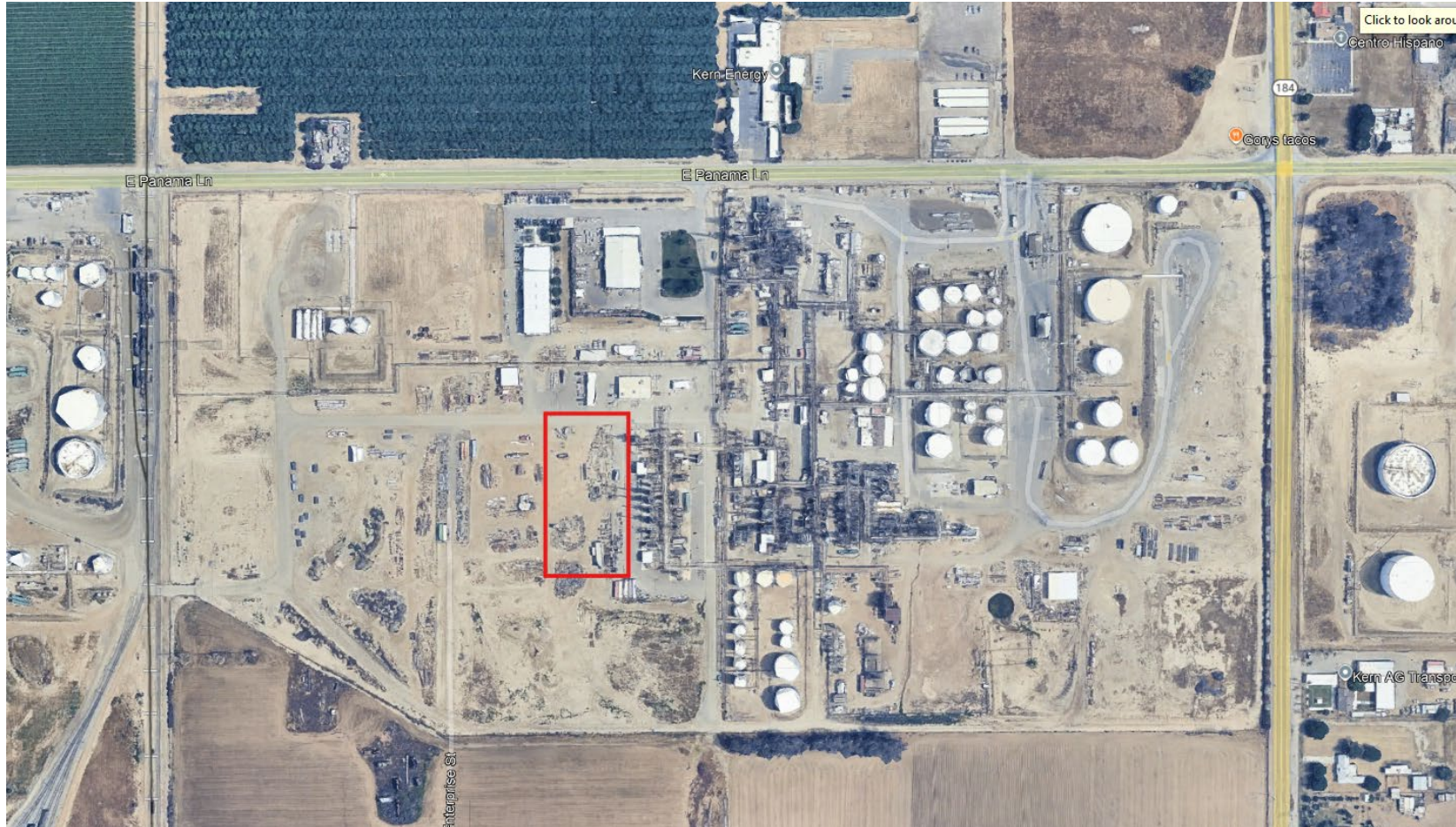
34946 Flyover Court
Bakersfield, CA 93308

Issues Raised By The District's Motion To Strike

- Issue No. 1: Does The Hearing Board Have Jurisdiction To Adjudicate CEQA Claims?
- Issue No. 2: Is A CERP “Applicable” Permitting Criteria For Purposes Of ATC Issuance?

Project Location

- The proposed project will be located within the existing Kern Energy facility at 7724 East Panama Lane



Project Description

- On March 12, 2025, Kern Energy submitted an ATC Application to install a hydrogen recovery process unit to use existing hydrogen already being produced at the refinery to produce clean electricity for the refinery's power needs.
- The Project is designed to generate onsite power, reducing reliance on grid power, by employing zero-emission hydrogen fuel cells.
- The Project underwent a concurrent 30-day period to receive public comments, as well as a 45-day period to receive EPA comments for an EPA Certificate of Conformity. No comments were received by either EPA or CARB.
- On January 12, 2026, the community requested, and the District voluntarily held, an in-person public meeting, and extended the public comment period through January 27, 2026. In total, the project was available for public review for 91 days.
- Following the public comment process, on April 30, 2026, having determined that the Project satisfied all applicable District, state and federal regulations, and was categorically exempt from CEQA on multiple grounds, the District issued ATC S-37-178-0 to Kern Energy, authorizing it to construct the hydrogen recovery unit.

Issue No. 1: Does The Hearing Board Have Jurisdiction To Adjudicate CEQA Claims?

Petitioners allege that the District:

- Improperly relied upon various CEQA exemptions;
- Failed to assume the proper CEQA role (lead v. responsible agency); and
- Issued the ATC without the environmental review allegedly required by CEQA

Those are CEQA claims.

Petitioners' CEQA Claims Exceed The Hearing Board's Jurisdiction

1. CEQA has its own comprehensive framework for challenging an agency's alleged CEQA violations:
 - a) Specialized judicial review procedures.
 - b) Administrative appeals to “elected” decision-making bodies.
2. Hearing Board's determine whether a permit was “properly issued” is limited to applicable requirements of the Health & Safety Code, and does not extend to claims for CEQA violations.

CEQA Has Its Own Comprehensive Framework

CEQA established a separate statutory framework for challenging an agency's CEQA determination.

Public Resources Code § 21167 governs actions “to attack, review, set aside, void, or annul” an agency's CEQA determination, including claims challenging exemption determinations or alleging that an agency failed to conduct the environmental review required by CEQA.

- § 21167.1(a): “...courts shall give the action or proceeding preference over all other civil actions...”
- § 21167.1(b): “... the superior courts... shall designate one or more judges to develop expertise in this division and related land use and environmental laws, so that those judges will be available to hear, quickly resolve actions or proceedings...”

CEQA Has Its Own Comprehensive Framework

CEQA applies to many different public agencies, from general land use permitting agencies such as counties or cities, special district agencies, such as water boards, port authorities, and the like.

Nothing in CEQA assigns any role to an air district hearing board to determine whether a public agency, like an air district, properly complied with CEQA.

The Legislature's creation of this specialized judicial review process demonstrates that CEQA disputes are intended to be resolved in superior court, not before appointed administrative bodies with limited statutory authority.

Administrative Appeals are to “Elected” Decision-Making Bodies; Hearing Board Members Are Not Elected

In limited circumstances, CEQA authorizes an administrative appeal, but only to a lead agency’s “elected” decision-making body, not to an appointed administrative tribunal that lacks CEQA appeal procedures. (Public Resources Code § 21151(c); Cal. Code Regs., tit. 14 § 15185(a).)

Administrative appeals lie only to an elected body that actually exercises project approval authority. *No Wetlands Landfill Expansion v. County of Marin* (2012) 204 Cal.App.4th 573.

The Health & Safety Code Does Not Extend to Claims for CEQA violations.

The Hearing Board is authorized to hear specified categories of matters, including permit appeals, permit suspensions and revocations, variances, and related proceedings. (§§ 40800-40865, 42302, 42306-42309, 42350-43364)

In regard to permits, §§ 42302 and 42309 define the Hearing Board's authority by authorizing hearings concerning permit issuance and prescribing the actions the Hearing Board may take.

Pursuant to § 42302.1, the Hearing Board's role is limited to whether a permit was "properly issued."

Section 42301 Defines the Permitting Inquiry

Health & Safety Code § 42301 prohibits:

“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... (1) All applicable orders, rules and regulations of the district and of the state board” and “(2) All applicable provisions of [Division 26]” of the Health and Safety Code.

“Properly Issued” is Not an Unlimited Grant of Jurisdiction

§ 42302.1 does not define “properly issued.” The phrase must be interpreted in the context of the air-permitting statutory scheme, where § 42302.1 appears.

Specifically, within Division 26 (Air Resources), specifically Part 4 (Nonvehicular Air Pollution Control), Chapter 4 (Enforcement), Article 1 (Permits).

Organizational placement of a statute within a code is an authoritative interpretive aid. The Legislature’s intent can be discerned by reading together all the provisions contained in the chapter in which the statute resides. (*People v. Hull* (1991) 1 Cal.4th 266.)

The Hearing Board Should Strike Petitioners' CEQA Claims

1. CEQA prescribes its own framework for challenging an agency's alleged CEQA violations: (1) Petitions for writ of mandate to superior court with specialized judicial review procedures; and (2) administrative review, if any, to elected decision-making bodies.
1. The Hearing Board's mandate to review whether a permit was "properly issued," construed within its statutory structure, is limited to compliance with the factors within §42301(b); it does not extend to claims for CEQA violations.

Issue No. 2: Is A CERP “Applicable” Permitting Criteria For Purposes of ATC Issuance?

Petitioners allege that the District was required to analyze whether the Kern Energy Project was consistent with the emission reduction targets and stationary source strategies of the Community Emission Reduction Program (CERP) adopted pursuant to § 44391.2.

CERP Provisions Are Not Applicable Permitting Criteria

1. § 42301(b) governs ATC issuance, confining permitting criteria to all applicable orders, rules, regulations, and provisions of Division 26 of the Health & Safety Code.
2. A CERP does not expand upon or supersede the District's existing permitting authority.

WHAT IS A CERP?

- July 2017: Assembly Bill 617 was enacted.
- Statewide effort to monitor and reduce toxic and criteria air pollution in communities which experience a disproportionate burdens from exposure to air pollution.
- Focus on community engagement and community-driven actions.
- Initiated by CARB, which has developed a statewide “Community Air Protection Program Blueprint”.

THE ARVIN/LAMONT CERP

- In 2021, Arvin/Lamont selected as an AB 617 community.
- June 16, 2022, the CERP was approved by the Governing Board.
- The CERP references existing stationary source rules, including those applicable to oil and gas operations, enhanced regulatory strategies to be implemented in the community, analysis of additional rulemaking opportunities, and expedited review of AB 2588 Air Toxic “Hot Spots” assessments.

The Hearing Board Should Strike the AB 617/CERP Claims

- Permitting standard test of § 42301 is whether the APCO is “satisfied, on the basis of criteria adopted by the district board,” that the Project will comply with all applicable rules, regulations and provisions of Division 26.
- Petitioners concede that the CERP is “not a permit standard.” (*Ptrs’ Opp.*, 18:10.)
- CERP quantitative “targets” are emissions reductions to be achieved through existing District authorities, not per-project issuance thresholds.

The Challenged Portions of the Petition Should Be Stricken As Framed In The Motion

- Petitioners' CEQA claim and CERP claim are legal positions. As framed, this Motion seeks to strike these legal claims.
- Petitioners' are not precluded from presenting evidence related to factual allegations that may be relevant to their other claims.
- Therefore, granting leave to amend their petition is improper.

The Hearing Board Should Grant the District's Motion to Strike In Its Entirety

The Hearing Board should strike:

1. Section III.B. of Permit Appeal, “*The District Must Conduct Independent CEQA Review*,” p. 14, line 11 through p. 29, line 26.
2. Section III.C. of Permit Appeal, “*The ATC Permit Is Inconsistent with the Arvin/Lamont CERP and Health & Safety Code § 44391.2*,” p. 30, line 1 through p. 36, line 22.