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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,

v.

SAN JOAQUIN VALLEY UNIFIED AIR
POLLUTION CONTROL DISTRICT,

Respondent,

KERN ENERGY,

Real Party in Interest.

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

**PETITIONERS' OPPOSITION TO
RESPONDENT'S MOTION TO
STRIKE**

Hearing Date: August 12, 2026
Hearing Time: 10:00 a.m.

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3 **I. INTRODUCTION**

4 Respondent seeks to improperly deny Petitioners a hearing on the merits and constrain the
5 jurisdiction of the Southern Region Hearing Board (“Hearing Board”) to adjudicate two critical
6 issues bearing on the propriety of issuance of an Authority to Construct (“ATC”) permit that will
7 have a significant impact on residents’ health and welfare. Petitioners 184 Community Action
8 Group (“184 CAG”) and Comité Progreso de Lamont (“CPL,”) (collectively, “Petitioners”) are
9 unincorporated associations of residents living close to the Kern Energy refinery. Permitting
10 decisions made by the San Joaquin Valley Air Pollution Control District (“District” or
11 “Respondent”) affect Petitioners’ health and well-being every day. To date, the District’s
12 permitting decisions have detrimentally affected Petitioners and have contributed to the
13 cumulative environmental burdens borne by a community already among the most
14 pollution-burdened in California. The community’s selection for the Assembly Bill 617
15 Community Air Protection Program reflects that disproportionate burden. The California
16 Legislature has enacted laws intended to address environmental burdens on highly impacted
17 communities such as those along the fenceline of the Kern Energy refinery, including the
18 California Environmental Quality Act (“CEQA”) and AB 617.
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21 The District is required to comply with CEQA and AB 617, its own policies require
22 CEQA compliance as a prerequisite to ATC issuance, and it has itself adopted findings pursuant
23 to AB 617. Yet the District now asks the Hearing Board (the “Board”) to strike Petitioners’
24 CEQA and CERP-related allegations, even though those allegations bear on whether the District
25 properly issued the challenged ATC permit, an issue squarely within the Hearing Board’s
26 jurisdiction. Because Health and Safety Code section 42302.1 authorizes the Board to determine
27 whether the permit “was properly issued,” and because the CEQA and AB 617-related
28 contentions in the Petition are relevant to whether the permit was properly issued, the Motion

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3 must be denied so that Petitioners can proceed to the merits of the CEQA and CERP-related
4 arguments.¹

5 **II. STANDARD OF REVIEW**

6 Respondent moves to strike on the ground that the Board lacks jurisdiction to hear the
7 portions of this Petition that relate to CEQA and the AB 617 CERP. Resolution of this Motion
8 thus requires the Board to determine whether those portions fall within its statutory jurisdiction.
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10 To this end, “it lies within the power of the administrative agency to determine in the first
11 instance, and before judicial relief may be obtained, whether a given controversy falls within the
12 statutory grant of jurisdiction.” (*United States v. Superior Court of Los Angeles County* (1941) 19
13 Cal.2d 189, 195.) Similarly, “[w]hen the jurisdiction depends on the existence of certain facts, the
14 agency may determine whether or not those facts exist.” (*SN Sands Corp. v. City and County of*
15 *San Francisco* (2008) 167 Cal.App.4th 185, 192.)²

17 **III. THE DISTRICT’S MOTION MISCHARACTERIZES PETITIONERS’ APPEAL** 18 **AND THE HEARING BOARD’S AUTHORITY TO EVALUATE CEQA-RELATED** 19 **ALLEGATIONS**

20 **A. Health And Safety Code Section 42302.1 Authorizes The Board To Determine** 21 **Whether The ATC Was Properly Issued**

22 Respondent's Motion rests on a flawed premise. Because the Petition alleges violations of
23 CEQA, Respondent assumes that Petitioners invoke the Hearing Board’s authority under CEQA
24 itself. From that premise, Respondent concludes that the Board lacks authority to consider any
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26 ¹ Petitioners deeply disagree with the factual contentions proffered by Kern Energy in its Joinder regarding the merits
27 and impacts of its project, and look forward to reaching the merits following resolution of Respondent’s Motion to
Strike.

28 ² While Respondent properly concludes that the Board exercises independent judgment on the merits of the Petition,
this Motion does not reach the merits. (*See* Motion at p. 7.) Further, while Respondent cites to standards of deference,
which may come into play in resolving the merits of the Petition, those standards do not resolve the threshold
question of the Board’s statutory jurisdiction. (*See Id.*) Rather, under the standards discussed above, the Board must
determine in the first instance whether it has jurisdiction to hear the challenged portions of the Petition.

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3 CEQA-related allegations. The Motion thus conflates the source of the Board's authority with the
4 legal grounds on which Petitioners contend the ATC permit was improperly issued.

5 In contrast to Respondent's false premise, this appeal arises under Health and Safety Code
6 section 42302.1. Petitioners invoke the Hearing Board's authority under that statute to review the
7 District's decision to issue the challenged ATC permit and determine whether it "was properly
8 issued." (Health & Saf. Code, § 42302.1.) The source of the Board's authority is therefore section
9 42302.1, not CEQA. The District's own policies and procedures make CEQA compliance a
10 required part of the process to issue an ATC permit, as discussed more thoroughly in Section B,
11 *infra*. As such, CEQA compliance is expressly relevant to a determination of whether the ATC
12 permit "was properly issued," and thus squarely within the Board's statutory jurisdiction.³ The
13 mere fact that one of the improprieties in the issuance of the ATC permit to Kern Energy was the
14 District's failure to comply with its own CEQA implementation policies does not change the
15 nature of this proceeding or convert this statutory permit appeal into a judicial CEQA action.
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19 Respondent is correct that the Hearing Board is a tribunal of limited statutory authority.
20 But that principle does not support this Motion; the parties disagree about what authority the
21 Legislature conferred in section 42302.1. The statute expressly directs the Board to determine
22 whether the ATC was "properly issued." (Health & Saf. Code, § 42302.1.) The question is
23 therefore not whether the Board may adjudicate freestanding CEQA claims, but whether it may
24 consider alleged failures to satisfy CEQA-related requirements governing ATC issuance in
25 performing the review the Legislature expressly assigned to it. The Board must answer this latter
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³ Note that Petitioners seek only the relief available under section 42302.1: a determination of whether the ATC was properly issued and any relief authorized in a permit appeal. They do not ask the Board to adjudicate freestanding CEQA claims, issue a writ of mandate, or otherwise exercise judicial authority reserved to the superior court.

question in the affirmative, as nothing in section 42302.1 allows the Board to categorically disregard such alleged legal errors when determining whether the ATC was properly issued.

B. The District's Own Procedures Make Satisfaction Of Its CEQA Responsibilities Part Of ATC Issuance

Health and Safety Code section 42302.1 grants the Hearing Board's authority, and the District's permitting procedures demonstrate that Petitioners' CEQA-related allegations fall within that authority. Respondent's Motion treats the District's CEQA responsibilities as entirely separate from the ATC approval process, but the District's own procedures demonstrate otherwise. They make satisfaction of the District's CEQA responsibilities part of—and a prerequisite to—the decision to issue an ATC. Petitioners therefore do not ask the Board to exercise freestanding jurisdiction under CEQA; they challenge the District's compliance with requirements governing the permit-issuance process the Board is charged with reviewing.

Specifically, Public Resources Code section 21082 requires public agencies to adopt objectives, criteria, and specific procedures for evaluating projects and preparing environmental documents under CEQA. Consistent with that requirement, the District adopted its Environmental Review Guidelines ("ERG"), which state that the document "fulfills" CEQA's requirement that agencies adopt procedures for implementing the statute.⁴ The ERG further states that the District adopted the State CEQA Guidelines by reference and establishes procedures tailored to the District's own operations and approvals.⁵

The ERG does more than acknowledge that the District has obligations under CEQA; it ties those obligations directly to the ATC approval decision. Specifically, it provides that the

⁴ San Joaquin Valley Unified Air Pollution Control District, *Environmental Review Guidelines*, page 1-1, available at https://ww2.valleyair.org/media/k2yhjmuk/erg-adopted-_august-2000_.pdf (last visited July 29, 2026); see Pub. Resources Code, § 21082.

⁵ ERG, p. 2-1.

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3 District must fulfill its CEQA responsibilities “[p]rior to approving the Authority to Construct.”
4 (ERG, pp. 3-3–3-4.)

5 District Policy APR 2010 (“APR 2010”), titled the “CEQA Implementation Policy,” is in
6 accord. It begins by recognizing that “[t]he District has a statutory obligation to comply with the
7 provisions of [CEQA] prior to issuing an Authority to Construct (ATC) permit.” (District Policy
8 APR 2010, p. 1.) It then establishes a “process for satisfying the requirements of CEQA under the
9 District’s ATC permitting process.” (Ibid.) Among other things, APR 2010 directs staff to
10 determine the District’s CEQA role, identify the required environmental documentation, and
11 determine whether the project is “CEQA Complete” before permit issuance. APR 2010 therefore
12 does not treat CEQA review as a collateral obligation divorced from permitting; it expressly
13 makes that review part of the process that is required to properly issue an ATC.
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16 The District’s publicly available permitting guidance confirms the same understanding. Its
17 description of the application process states that the ATC evaluation includes “ensuring that the
18 proposed project complies with CEQA requirements.” (San Joaquin Valley Air Pollution Control
19 District, *The Application Process* available at [as of July 27, 2026]⁶.) It further identifies
20 “[s]atisfying CEQA requirements” as one of the criteria that must be met before the District may
21 issue an ATC and states that an application will be denied if the proposed equipment or operation
22 fails to satisfy any listed criterion. (Ibid.) Further, the District explains that it must act on an
23 application within 180 days after the application is deemed complete “or when CEQA has been
24 satisfied, whichever is later.” (Ibid.) By the District’s own description, therefore, CEQA
25 compliance is a prerequisite to ATC issuance, not a separate process divorced from permitting.
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⁶ Available at <https://ww2.valleyair.org/permitting/the-permitting-process/the-application-process/>.

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3 The law review article cited by Respondent in support of this Motion recognizes the
4 significance of incorporating CEQA requirements into a district's permitting process. Professor
5 Manaster explains that "if an APCD has incorporated CEQA requirements into its own permitting
6 rules, then the hearing board's basic authority to hear appeals of alleged violations of those rules
7 would seem to encompass CEQA issues covered by the district's own requirements." (Manaster,
8 *Fairness in the Air: California's Air Pollution Hearing Boards* (2006) 24 UCLA J. Envtl. L. &
9 Pol'y 1, 87.) That reasoning is consistent with the Health & Safety Code section 42302.1 and
10 supports Petitioners' position here. The District's Environmental Review Guidelines, APR 2010,
11 and public permitting guidance are consistent with the District's statutory obligations under
12 CEQA and collectively demonstrate that satisfaction of the District's CEQA responsibilities is a
13 mandatory part of the process governing ATC issuance. Regardless of whether the Board
14 concludes that the ERG, APR 2010, and public permitting guidance rise to the level of rule
15 incorporation as explained by Professor Manaster, Health & Safety Code section 42302.1 clearly
16 requires evaluation of the District's implementation of its permitting rules and provides a
17 statutory basis for the Board's dismissal of this Motion.
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22 The Petition challenges whether the District followed those procedures in compliance with
23 the District's own rules and policies. Petitioners allege, among other things, that the District
24 improperly relied on CEQA exemptions, segmented the project, and failed to conduct the
25 environmental review required before issuing the ATC. Because the District treats completion of
26 its CEQA responsibilities as part of the ATC-issuance process, allegations that it failed to satisfy
27 those responsibilities bear directly on whether the ATC "was properly issued" within the meaning
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3 of Health and Safety Code section 42302.1. Petitioners must be permitted to reach the merits on
4 this issue.

5 **C. The Statutory Review Process Contemplates Hearing Board Review Before**
6 **Judicial Review**

7 The statutory review process further undermines Respondent's position. When drafting
8 CEQA and its implementing guidelines, the Legislature and the Natural Resources Agency
9 foresaw public agencies' need to adopt specific, tailored guidance for the implementation of
10 CEQA—like the District's Environmental Review Guidelines, APR 2010, and permitting
11 guidance—that would inevitably result in the consideration of CEQA determinations in
12 administrative appeals. (*see* Pub. Res. Code § 21082; CEQA Guidelines § 15022.) California
13 courts have recognized that challenges concerning the legality of permit issuance are properly
14 presented through the administrative permit appeal process before judicial review. In two related
15 decisions, *Friends of Outlet Creek v. Mendocino County Air Quality Management District* (2017)
16 11 Cal.App.5th 1235 and *Grist Creek Aggregates, LLC v. Superior Court* (2017) 12 Cal.App.5th
17 979, an environmental organization challenged the issuance of an ATC by an air district on the
18 grounds that the district violated CEQA and its own CEQA-implementing requirements. In each
19 proceeding, the challenger first appealed the ATC to the district's hearing board before seeking
20 judicial review.

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22 In *Friends of Outlet Creek*, the Court of Appeal held that the petitioner could pursue a
23 CEQA challenge to the air district's approval of the ATC after the hearing board denied its
24 administrative appeal. (*Friends of Outlet Creek*, *supra*, 11 Cal.App.5th at pp. 1242–1245.) The
25 court explained that, even when brought under CEQA, the challenge proceeded through
26 administrative mandate and the available relief was limited to overturning the hearing board's
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3 decision and invalidating the ATC. (*Id.* at pp. 1243–1244.) The court also observed that the
4 statutory scheme governing air districts “expressly provides for administrative appeals to a
5 district’s hearing board” and that the petitioner had properly exhausted that remedy before
6 seeking judicial review. (*Id.* at p. 1245, fn. 6.)
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8 *Grist Creek* likewise recognizes the Hearing Board’s role in the review process. There, the
9 court held that the hearing board’s tie vote constituted a denial of the administrative appeal that
10 was subject to judicial review. (*Grist Creek*, supra, 12 Cal.App.5th at pp. 989–991.) In discussing
11 exhaustion, the court explained that Friends had “exhausted its administrative remedies by doing
12 everything it could do to challenge the District’s approval” and that “the relevant administrative
13 tribunal (the Hearing Board) was given an opportunity to decide a matter within its area of
14 expertise before Friends sought judicial review.” (*Id.* at pp. 991–992.) The court further rejected
15 the suggestion that the hearing board proceedings were necessarily irrelevant to the subsequent
16 judicial challenge. (*Id.* at p. 992.)
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19 Together, these decisions recognize a statutory sequence in which CEQA-related
20 objections to an ATC are first presented through the permit appeal authorized by section 42302.1,
21 followed by judicial review of the Hearing Board’s decision. In both cases, the hearing-board
22 proceeding formed part of the administrative process subject to later judicial review.
23 Respondent’s interpretation would undermine that framework. It would require Petitioners to
24 exhaust the Hearing Board appeal before seeking judicial review while categorically prohibiting
25 the Board from considering the CEQA-related grounds on which Petitioners contend the ATC was
26 improperly issued. Nothing in section 42302.1 or the broader statutory scheme suggests that the
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3 Legislature intended to require exhaustion while simultaneously depriving the Hearing Board of
4 authority to consider alleged legal errors bearing directly on the permit decision before it.

5 Notably, in *Cmtys. for a Better Env't v. San Joaquin Valley Unified Air Pollution Control*
6 *Dist.* the San Joaquin Valley Air District took a position diametrically opposed to the position it
7 now takes in the instant motion. (June 23, 2017, No. F073517) __Cal.App.5th__ [2017 Cal. App.
8 Unpub. LEXIS 4323, at *2].) Specifically, in that case, the District contended in the context to a
9 challenge to an ATC permit on CEQA grounds that the plaintiffs were required to exhaust
10 remedies by first filing an appeal to the Hearing Board. While the court did not reach the issue of
11 hearing board jurisdiction to hear CEQA-related claims, it is striking that the same Air District is
12 now contradicting its prior position on Hearing Board jurisdiction in an attempt to deny
13 Petitioners' request for a hearing on the merits.
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17 **D. Respondent's Authorities Do Not Require The Board To Strike Petitioners'
CEQA Allegations**

18 Respondent asks the Hearing Board to adopt a categorical rule that any allegation
19 involving CEQA falls outside the Board's statutory review under Health and Safety Code section
20 42302.1. (Motion, p. 8.) None of Respondent's authorities interprets section 42302.1 to impose
21 that limitation. *No Wetlands* concerned a different administrative-appeal provision, *Valero*
22 addressed the standard of review applicable to matters already before a hearing board, and
23 Respondent's remaining authorities state only the general principle that administrative agencies
24 possess powers conferred by statute. None addresses whether CEQA-related noncompliance may
25 bear on whether an ATC was "properly issued" where, as here, the District's own procedures
26 make satisfaction of CEQA requirements part of the ATC-issuance process. Instead, each
27 addresses materially different statutes or issues.
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3 Respondent's reliance on *No Wetlands* extends the decision beyond its holding. The Court
4 of Appeal characterized the question before it as a "narrow one": whether a local enforcement
5 agency's certification of an EIR for issuance of a solid waste facilities permit was appealable to
6 the county board of supervisors under Public Resources Code section 21151, subdivision (c). (*No*
7 *Wetlands Landfill Expansion v. County of Marin* (2012) 204 Cal.App.4th 573, 580.) The court
8 held that no such appeal was available because the board of supervisors possessed no authority
9 over the underlying permit or project: it did not evaluate the permit application, impose permit
10 conditions, recommend issuance or denial, or have the power to approve or disapprove the
11 project. (*Id.* at pp. 582, 583–586.) The board therefore was not a decisionmaking body authorized
12 to hear the appeal contemplated by section 21151, subdivision (c). (*Id.* at pp. 584–586.) Here, by
13 contrast, Health and Safety Code section 42302.1 expressly authorizes the Hearing Board to
14 review the District's issuance of the ATC and determine whether it was properly issued. *No*
15 *Wetlands* did not interpret Health and Safety Code section 42302.1 or consider whether
16 noncompliance with CEQA-related requirements incorporated into an air district's permitting
17 process may bear on that determination. It therefore does not support Respondent's categorical
18 exclusion of Petitioners' CEQA allegations.

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23 Respondent also overreads *Valero*. The Court of Appeal emphasized that "[t]he sole legal
24 question" before it was whether the hearing board had applied the proper standard of review in
25 deciding an appeal from the denial of emission-reduction banking credits. "That is all." (*Valero*
26 *Refining Co.–California v. Bay Area Air Quality Management Dist. Hearing Bd.* (2020) 49
27 Cal.App.5th 618, 637.) The court did not interpret Health and Safety Code section 42302.1,
28 address the issuance of an ATC, or consider whether CEQA-related requirements may bear on

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3 whether an ATC was properly issued. Instead, *Valero* held that the hearing board must exercise its
4 independent judgment to determine whether the APCO correctly interpreted and applied the legal
5 requirements, but may not disregard those requirements based on an amorphous sense of fairness.
6 (*Id.* at pp. 638–640.) That holding does not limit the Board's authority to consider legal
7 requirements applicable to ATC issuance. To the contrary, it confirms that a hearing board's
8 quasi-judicial function is to determine whether district staff properly followed the governing law.
9 (*Id.* at pp. 639–641.) Petitioners ask the Board to perform precisely that function here.

11
12 Respondent's remaining authorities fare no better. *PaintCare v. Mortensen* (2015) 233
13 Cal.App.4th 1292, 1305; *California Drive-In Restaurant Assn. v. Clark* (1943) 22 Cal.2d 287,
14 302; *Industrial Indemnity Co. v. City and County of San Francisco* (1990) 218 Cal.App.3d 999;
15 1009; and *Terhune v. Superior Court* (1998) 65 Cal.App.4th 864, 872 state the general principle
16 that an administrative agency possesses only those powers conferred on it by statute. Petitioners
17 do not dispute that principle or ask the Hearing Board to exercise authority it does not possess.
18 Section 42302.1 expressly authorizes the Board to determine whether the ATC was properly
19 issued; the question is whether the Board may consider the legal requirements governing that
20 issuance. None of Respondent's remaining authorities interprets section 42302.1 or holds that a
21 hearing board must disregard noncompliance with requirements the permitting agency itself treats
22 as prerequisites to permit issuance. Those decisions therefore provide no basis for striking
23 Petitioners' CEQA-related allegations.

25 **IV. THE ARVIN/LAMONT CERP CONTAINS RELEVANT, DISTRICT-ADOPTED**
26 **FINDINGS THAT AIR PERMIT DECISIONS MUST ADDRESS IN PERMITTING**

27 The District mischaracterizes Petitioners' position regarding the District's obligation to
28 consider the AB 617 Community Emissions Reduction Program ("CERP"). Petitioners do not
claim that AB 617 expands the District's authority, but rather that, as a program formally adopted

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3 by the District, the CERP is relevant to the District's exercise of its existing permitting authority.
4 This position is supported by a plain reading of Health and Safety Code section 43201, which
5 requires a district that implements an air permitting system to "[p]rohibit the issuance of a permit
6 unless the air pollution control officer is satisfied, *on the basis of criteria adopted by the district*
7 *board*, that the article, machine, equipment, or contrivance will comply with ... [a]ll applicable
8 orders, rules, and regulations of the district and of the state board [and] [a]ll applicable provisions
9 of this division." (Health & Saf. Code, § 43201(b), emphasis added.) Respondent's contrary
10 reading would treat the CERP as irrelevant to permitting and exclude consideration of the
11 District-adopted findings and emission reduction mandates.
12

13 **A. The ATC Permit Process Is A Proper Forum To Raise CERP Findings**

14 As described in Petitioners' appeal, Health and Safety Code Section 44391.2 requires air
15 districts to "adopt...a community emissions reduction program to achieve emissions reductions
16 for the location selected [by CARB] using cost-effective measures...." (Health & Saf. Code, §
17 44391.2(c)(2)(A).) The statute is unambiguous: an adopted CERP "shall result in emissions
18 reductions in the community." (Health & Saf. Code, § 44391.2(c)(5).) In order to carry out an
19 adopted CERP, the District⁷ "shall be responsible for measures consistent with [its] respective
20 authorities." (Health & Saf. Code, § 44391.2(c)(6).)
21

22 Respondent inaccurately interprets Section 44391.2 in concluding that disagreements
23 about CERP consistency belong "in the CERP implementation forum, not in an ATC appeal."
24 (District's Motion, p. 18.) The CERP implementation forum is one and the same as the District's
25 permitting forum. While CERPs must be adopted "in consultation with the state board,
26 individuals, community-based organizations, affected sources, and local governmental bodies in
27 the affected community," the District retains the explicit statutory obligation to adopt and
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⁷ We acknowledge that CARB also has obligations under the Health and Safety Code to implement adopted CERPs, but the Air District at a minimum has the same obligations, if not more.

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3 implement the program. (Health & Saf. Code, § 44391.2(c)(2)(A).)⁸ The role of the CSC is not to
4 serve as a forum to dispute the District’s consistency with CERP objectives, but rather to “support
5 active community involvement and collaboration in the development of AB 617 activities and
6 processes by providing a forum for *identifying air pollution issues in the community and potential*
7 *solutions.*” (Arvin/Lamont CSC Charter, emphasis added.) The CERP itself similarly states that
8 under AB 617 the “San Joaquin Valley Air Pollution Control District (District), working in
9 partnership with the Arvin/Lamont AB 617 Community Steering Committee (CSC),... expand[ed]
10 regional programs for community protection and develop[ed] a robust plan for reducing local
11 exposure to various forms of air pollution including fine particulate matter and toxic air
12 contaminants in the Arvin/Lamont AB 617 Community.” (Arvin/Lamont CERP, p. 4)⁹ Nowhere
13 in the CERP or CSC Charter is the CSC granted the authority to independently implement the
14 CERP or directly take actions that would result in the emission reductions required by AB 617.
15

16 Therefore, District staff and its governing board are responsible for considering the
17 findings contained in the adopted CERP in their relevant forums. This would naturally include air
18 permitting decisions to implement rules such as District Rules 2201, 4623, and 4455. Notably, if
19 the District did believe the CSC meetings were the appropriate forum to determine whether the
20 Kern Energy hydrogen project Authority to Construct were consistent to reduce emissions
21 pursuant to the adopted Arvin/Lamont CERP, it would have brought the project to the CSC in the
22 first instance. It failed to do so, as described in Petitioners’ appeal.
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24 **B. The Arvin/Lamont CERP Contains Findings That The District Is Required** 25 **To Consider**

26 The question before the Hearing Board is whether the District properly issued the
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28 ⁸ This is supported by the Arvin/Lamont AB 617 Community Steering Committee (CSC) Charter, which reads: “AB 617 requires local air districts to take specific actions to monitor air quality and to reduce air pollution emission from commercial, industrial, and mobile sources that cause or significantly contribute to air quality issues in selected communities.” https://community.valleyair.org/media/jm4jhydx/appendix-b_charter.pdf

⁹ https://community.valleyair.org/media/4014/6-final_arvinlamont-cerp_610.pdf p. 4

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3 challenged permit under the applicable District rules and requirements. In resolving that question,
4 the Hearing Board may consider relevant findings, analyses, and factual determinations reflected
5 in the administrative record, including those contained in the CERP. (*See SN Sands Corp.*, 167
6 Cal.App.4th at 192 [“[w]hen the jurisdiction depends on the existence of certain facts, the agency
7 may determine whether or not those facts exist.”].) The findings in the CERP are relevant
8 evidence bearing on whether the Hearing Board has jurisdiction to decide whether the District
9 appropriately granted Kern Energy’s ATC. Because the CERP contains the District’s own findings
10 regarding refinery emissions, toxic air contaminants, cumulative pollution burdens in the
11 Arvin/Lamont community, and compliance with BACT requirements, those findings are relevant
12 evidence.
13

14 For example, the permit authorizes additional refinery-related VOC emissions within an
15 AB 617 community that the District itself has identified as experiencing disproportionate
16 cumulative pollution burdens. The CERP finds that “many areas in the Arvin/Lamont community
17 are above the 95 percentile or top 5% for both health indicators. The Arvin/Lamont community is
18 ranked in the top 15% statewide for overall CalEnviroScreen score, weighted for PM2.5 and
19 ozone impacts, which represents a number of health and socioeconomic factors (asthma,
20 cardiovascular disease, low birth weight, educational attainment, housing burdened low income
21 households, linguistic isolation, poverty, and unemployment).”¹⁰ The CERP also acknowledges
22 that the Kern Energy refinery is a major source of NOx emissions—of the 55.1 ton per year (tpy)
23 that made up the community emission inventory for Arvin/Lamont in 2019, Kern Energy
24 contributed 50.59 tpy, or 91%.¹¹ Yet the administrative record contains no analysis of whether
25 additional emissions from this project are consistent with the District’s own community-level
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¹⁰ CERP, Appendix F, F-17, https://community.valleyair.org/media/qoglbbsc/appendix-f_health-information.pdf

¹¹ CERP, p. 29, https://community.valleyair.org/media/4014/6-final_arvinlamont-cerp_610.pdf; CERP, Appendix C, C-3.

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3 emissions reduction objectives. Failure to include such an analysis contradicts criteria adopted by
4 the Board pursuant to Section 43201.

5 Additionally, the CERP contains relevant findings with regard to BACT compliance. In
6 describing the District’s permitting process under Rule 2201, the CERP explains that “[t]he
7 District [] conducts an analysis to determine if, based on specific criteria, cleaner technologies
8 that are not commonly used for these type of equipment could be used to further reduce emissions
9 from the proposed equipment. This very stringent requirement ensures that the most effective air
10 pollution control technique is utilized resulting in reduced public exposure to air pollutants and
11 toxic air contaminants.” (CERP, p. 41.) Petitioners’ briefing on the merits will expand on how the
12 District failed to identify the appropriate technology to reduce emissions from this project, but for
13 the purposes of this Motion, the findings in the CERP regarding BACT are, at a minimum,
14 relevant to the District’s permit determination.
15

16 Respondent mischaracterizes Petitioners’ claim regarding Rule 4455 to improperly
17 conclude that CERP-related issues should be dismissed. (Motion, p. 16-17.) Petitioners do not
18 claim that the current version of District Rule 4455 fails to apply until it is strengthened as
19 described in the CERP, but that in ignoring its CERP commitments, the District prepared an
20 emissions analysis that determined that air quality obligations related to fugitive refinery
21 emissions could be met with the current version of District Rule 4455. In contrast, within the
22 CERP, the Air District found that those thresholds required strengthening in order to meet
23 emission reduction mandates in Arvin/Lamont as required by AB 617.
24

25 Although Rule 4455 was amended in 2023, the rulemaking record fails to describe or
26 analyze how the emission reductions associated with the final rule language would “contribute to
27 reduced exposure to air pollution in the [Arvin/Lamont] community.” (Arvin/Lamont CERP, p.
28

104.)¹² The staff report estimates a reduction of only 0.135 tons per year from the Rule 4455 amendment, but does not discuss whether or how those reductions would reduce VOC emissions from the Kern Energy refinery.¹³ Without an evaluation of the Rule 4455 amendments' contribution to air quality in the Arvin/Lamont AB 617 community, the District cannot rely solely on Rule 4455 to demonstrate that the ATC permit at issue advances the CERP's community-specific emission and exposure-reduction objectives.

While the adopted CERP is not a permit standard covered by District rules, it does contain the Air District's own findings, which are relevant to air standard attainment and its permitting decisions. Health and Safety Code section 43201(b) requires applicants to demonstrate compliance with requirements "on the *basis of criteria adopted by the district board.*" (emphasis added.) The CERP provides important context for evaluating whether the District adequately explained and supported its permitting decision, including its analysis of community health demographics, cumulative environmental burdens, pertinent refinery-related VOC and toxic air contaminant emissions, and applicable BACT and/or BARCT.

C. Petitioners' CERP Claim Is A Legal Position, Not Policy Advocacy

As discussed above, Petitioners raise legal arguments based on the Air District statutory obligations under statutes that govern air permits and community emission reduction programs. If Petitioners were relying on fairness or policy arguments, they would challenge a host of considerations that, based on Petitioners' interests and priorities, the Hearing Board should consider. These could include Kern Energy's history of air quality violations, the inappropriate nature of an industrial land use in such close proximity to residences, and the application of the precautionary principles in permit decisions, among others. Notably, these issues are not raised in

¹² Available at https://community.valleyair.org/media/4014/6-final_arvinlamont-cerp_610.pdf

¹³ See June 15, 2023 Staff Report for Adoption of Rule Amendments, Emission Reduction Analysis, B-7, <https://ww2.valleyair.org/media/2mq1qbgn/12.pdf>.

Petitioners' appeal, though they are important background facts that the Board should consider in resolving the merits of the Petition.

V. The District's Motion Is Overbroad

Even if the Hearing Board concludes that it lacks authority to adjudicate CEQA or CERP-related claims with regard to the proper issuance of an ATC permit, Respondent's requested relief sweeps too broadly. The Motion seeks to strike Sections III.B and III.C of the Petition in their entirety, without distinguishing between legal theories that the Board may decline to decide and factual allegations that may bear on whether the ATC was "properly issued" under Health and Safety Code section 42302.1.

The challenged sections contain allegations concerning the Project, the District's permitting process and emissions analyses, the asserted CEQA exemptions and segmentation of the Project, the Project's environmental and public-health impacts, the cumulative pollution burden affecting nearby communities such as Fuller Acres and Lamont, the District's evaluation of the Project's consistency with the Arvin/Lamont Community Emissions Reduction Program, and the community-participation process preceding issuance of the ATC. Petitioners rely on those allegations not only in support of their CEQA- and CERP-related positions, but also in support of their contention that the District failed to satisfy requirements governing ATC issuance and therefore did not properly issue the challenged permit.

Respondent does not analyze the challenged allegations individually or demonstrate that they could have no bearing on the Hearing Board's statutory determination. Instead, it asks the Board to strike entire sections because they contain CEQA- and CERP-related positions. The Board need not possess authority to issue a writ of mandate, grant judicial relief under CEQA, or

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2
3 enforce the CERP as an independent permitting standard to consider factual allegations bearing
4 on whether the ATC was properly issued under section 42302.1. Accordingly, even if the Board
5 declines to adjudicate certain legal issues, Respondent has not established that the factual
6 allegations underlying those theories should be categorically stricken. At a minimum, the Motion
7 should be denied to the extent it seeks to strike allegations that may bear on the Board's
8 determination whether the ATC was properly issued.
9

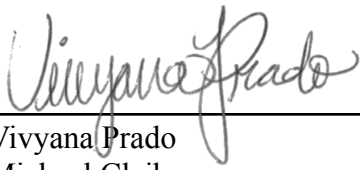
10 Alternatively, if the Board concludes that any challenged allegations exceed its
11 jurisdiction, Petitioners respectfully request an opportunity to amend the Petition to clarify or
12 narrow those allegations before they are stricken.
13

14 **VI. CONCLUSION**

15 For the foregoing reasons, Petitioners respectfully request that the Board deny
16 Respondent's Motion to Strike and permit the Petition to proceed on the merits or, in the
17 alternative, if the Board grants any portion of the Motion, allow Petitioners an opportunity to
18 amend.
19

20
21 Dated: July 29, 2026

LEADERSHIP COUNSEL FOR
JUSTICE AND ACCOUNTABILITY

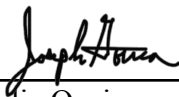
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