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SAN JOAQUIN VALLEY AIR DISTRICT HEARING BOARD

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

Petitioners,

v.

SAN JOAQUIN VALLEY AIR POLLUTION
CONTROL DISTRICT,

Respondent.

H.B. Case No.:

**PETITION FOR HEARING AND
APPEAL OF APPROVAL OF
AUTHORITY TO CONSTRUCT
PERMIT FOR KERN ENERGY
REFINERY PROJECT NO. S-1251187**

1 **I. INTRODUCTION**

2 Petitioners 184 Community Action Group (“184 CAG”) and Comité Progreso de Lamont
3 (“CPL,” collectively “Petitioners”) appeal the issuance of the Authority to Construct (“ATC”)
4 Permit for Project #S-1251187 (“Project”), granted to Kern Oil & Refining Company (“Kern
5 Energy”) on April 30, 2026.

6
7 Kern Energy has an extensive history of regulatory violations under various
8 environmental and public health statutes, including the Clean Air Act, the Clean Water Act, the
9 Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the California
10 Accidental Release Prevention Program. At the same time, residents of nearby disadvantaged
11 communities have consistently engaged with the San Joaquin Valley Air Quality Pollution
12 Control District (“District”) in an effort to improve local air quality and reduce cumulative
13 pollution burdens—most notably through development and implementation of the Arvin/Lamont
14 Community Emissions Reduction Plan (“CERP”).¹

15
16 Despite those ongoing community efforts and the District’s obligations under the CERP,
17 the District approved the challenged ATC Permit for a project that authorizes additional
18 refinery-related emissions within the Arvin/Lamont AB 617 community. The District Hearing
19 Board should reverse that decision because the District violated its own rules in its ATC Permit
20 Application Review, improperly failed to conduct adequate environmental review, and failed to
21 meaningfully evaluate whether the Project is consistent with the emissions-reduction objectives
22 and community protections reflected in the Arvin/Lamont CERP.

23
24 To correct these deficiencies, the Hearing Board must revoke the ATC Permit. As
25 succinctly stated by Olivia Muñoz, who has lived in Fuller Acres for 81 years and submitted a
26 declaration in support of this Petition, residents are “concerned that this project will further
27

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¹ See Exhibit A, Arvin/Lamont CERP.

1 increase pollution, industrial activity, safety risks, traffic, noise, and other impacts affecting
2 nearby residents.”² The Hearing Board should be equally concerned about the health and well
3 being of residents who live near the Project, and take decisive action to protect local air quality.

4 **II. FACTUAL BACKGROUND**

5 **A. Description Of Petitioner**

6
7 Petitioner 184 CAG is an unincorporated association of residents of Fuller Acres and the
8 surrounding area. The mission of 184 CAG, as stated in its bylaws, is “to advocate for the overall
9 health and well being of their communities, including equitable energy policy, programs, and
10 investments that protect public health, prevent climate change, and reduce risk of harm to
11 residents.” Members of 184 CAG reside immediately near Kern Energy with some members
12 living within 1,000 feet of Kern Energy’s active refining operations. Petitioner CPL is an
13 unincorporated association that represents residents of Lamont, California. CPL is made up of
14 approximately 100 members. CPL’s mission is to achieve a healthy environment and to improve
15 its community’s quality of life through collective resident and community advocacy. CPL works
16 to hold local polluting industries accountable using collective action strategies and legal and
17 policy tools. CPL members live, travel, and work near the Kern Energy refinery and are
18 concerned about the facility’s history of violations of federal, state, and local laws, the health
19 impacts from its operations on nearby communities, and the lack of emergency planning. CPL
20 also advocates alongside other community groups in the Kern County budget process to increase
21 infrastructure investments in their communities, such as four miles of sidewalks in Lamont to
22 improve pedestrian mobility, a new bike path on DiGiorgio, and improvements to Lamont Park to
23 improve access to green space and increase shaded gathering spaces.
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25
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28 ² Exhibit B. Declaration of Olivia Muñoz, ¶ 41.

Members of Petitioner groups 184 CAG and CPL are active, long-time participants of the Arvin/Lamont AB 617 Community Steering Committee.

B. Description Of Project

Kern Energy is a refinery that produces gasoline and diesel fuels. It has been in continuous operation in Fuller Acres since 1934 and is located within the boundaries of the Arvin/Lamont AB 617 community.³ Residents have identified Kern Energy as a significant source of concern for decades.⁴ The Project seeks to expand Kern Energy's operations to include electricity generation via hydrogen fuel cells. The Project will consist of the installation of seven fuel cells, each roughly the size of a standard shipping container,⁵ and numerous hydrogenation, dehydrogenation, and hydrogen purification equipment including reactors, compressors, heat exchangers, pumps, and miscellaneous vessels.⁶ The Project will also modify the current operations of numerous existing pipes, valves, pumps, and miscellaneous vessels.

To generate electricity, hydrogen gas will be fed into the fuel cells. Kern Energy plans to use hydrogen gas produced in its naphtha reformer as part of its existing refinery operations. Upon production of the hydrogen gas, Kern Energy will transport it through a purification unit. Kern Energy will then either: (1) feed the purified hydrogen gas directly into the fuel cells; or (2) store it as an organic liquid in existing organic liquid storage tanks. In order to store the hydrogen gas as a liquid, the hydrogen gas will be chemically bound to toluene to produce methyl cyclohexane. Kern Energy will then convert the methyl cyclohexane back to hydrogen gas via dehydrogenation and then feed the hydrogen gas into the fuel cells. Electricity produced by the fuel cells will be used to power Kern Energy's refining operations.

The Project fundamentally changes Kern Energy's operations to include electricity

³ Exhibit A.

⁴ Exhibit B; see *also* Community Identified Sources of Air Pollution (July 28, 2021), <https://valleyair.mysocialpinpoint.com/arvinlamont-community-engagement#/>.

⁵ Exhibit C. Authority to Construct Application Review Package, p. 37.

⁶ Exhibit C, p. 8.

1 production using hydrogen. Hydrogen energy as a power source for industrial operations is a new
2 and developing market in California that is largely unregulated. Minimal investigations have been
3 conducted on the impacts of hydrogen energy projects on their immediate environments and the
4 health and safety of surrounding communities.

5 **C. Procedural History**

6
7 On March 13, 2025, Kern Energy submitted an application to the Kern County Planning
8 and Natural Resources Department (“Kern County”) for initial approval of the Project.⁷ In a Site
9 Plan Review application, Kern County requested the issuance of a Notice of Exemption under the
10 California Environmental Quality Act (“CEQA”). On April 24, 2024, Kern County approved the
11 Site Plan Review and sent the Notice of Exemption for the Project to the Kern County Clerk for
12 posting as required by CEQA. On May 2, 2025, the Kern County Clerk posted the Notice of
13 Exemption for public review on its website. Petitioners were not made aware of these actions at
14 the time.⁸ On February 16, 2026, Petitioner CPL, along with LCJA, CRPE, and Committee for a
15 Better Arvin, delivered a comment letter to Kern County indicating concern with the issuance of
16 the Notice of Exemption and disagreement with the categorization of the Project’s activities as
17 permitted by-right in M-3 zoning districts.⁹

18
19 On May 29, 2025, Kern Energy completed its application to the District for the ATC
20 Permit for the Project as required by District Rule 2201. The District completed its Application
21 Review, including an Engineer’s Report, on September 15, 2025. On October 28, 2025, the
22 District posted a public notice on its website soliciting public comment by December 1, 2025 on
23 its preliminary decision to issue the ATC Permit.¹⁰

24
25 ⁷ Exhibit D. Kern Energy’s Site Plan Review Application to the Kern County Planning and Natural Resources
26 Department.

27 ⁸ Exhibit E. Kern County Clerk Environmental Document for Site Plan Review 16, Map 124 Kern Energy.

28 ⁹ Exhibit F. Letter to Kern County Planning and Natural Resources Department Regarding Conditional Use Permit
Required for Proposed Hydrogen Project at Kern Energy (February 16, 2026).

¹⁰ Exhibit G. Notice of Preliminary Decision for the Issuance of Authority to Construct and the Proposed Significant
Modification of Federally Mandated Operating Permit (October 28, 2025).

1 On November 14, 2025, Leadership Counsel for Justice and Accountability (“LCJA”)
2 requested a public hearing regarding the proposed issuance of the ATC Permit.¹¹ Petitioner CPL,
3 along with LCJA, Center on Race, Poverty and the Environment (“CRPE”), Central Valley Air
4 Quality Coalition, Central California Environmental Justice Network, and Committee for a Better
5 Arvin, submitted a public comment letter to the District on December 1, 2025.¹² On December 11,
6 2025, the District provided notice of a public hearing on January 12, 2026 in Lamont, California¹³
7 and extended the deadline for public comment to January 27, 2026.¹⁴
8

9 On January 12, 2026, residents of Fuller Acres, Lamont, and communities surrounding the
10 refinery, including members of Petitioners, attended the District’s public hearing. Commenters
11 expressed concerns and opposition to the Project. Petitioner CPL, along with LCJA and CRPE,
12 submitted a supplemental public comment letter to the District on January 27, 2026.¹⁵ On April
13 30, 2026, the District posted a public notice of issuance of the ATC Permit, an updated Engineer’s
14 Report, and its responses to public comments associated with the Project.¹⁶
15

16 Concurrent to the District’s evaluation of the Project’s application, Arvin/Lamont AB 617
17 Community Steering Committee (“CSC”) meetings took place on July 23, 2025; August 27,
18 2025; September 24, 2025; October 22, 2025; December 4, 2025; January 28, 2026; February 25,
19 2026; March 25, 2026; and April 22, 2026.¹⁷ The Project was not discussed at any CSC meetings
20 until the December 4, 2025 meeting, at which it was not agendized but rather discussed during
21

22 ¹¹ Exhibit H. Letter to District Regarding Notice of Preliminary Decision for the Issuance of Authority to Construct
23 Project No. S-1251187 (November 14, 2025).

24 ¹² Exhibit I. Letter to District Regarding Comments on Notice of Preliminary Decision for the Issuance of Authority
25 to Construct Project No. S-1251187 (December 1, 2025).

26 ¹³ Exhibit J. Notice of Public Hearing on Proposed Preliminary Decision to Issue Authority to Construct Permit to
27 Kern Energy for Hydrogen Fuel Cell Power Generation Project. (December 11, 2025).

28 ¹⁴ Exhibit K. Notice of Preliminary Decision for the Issuance of Authority to Construct and the Proposed Significant
Modification of Federally Mandated Operating Permit (December 11, 2025).

¹⁵ Exhibit L. Letter to District Regarding Supplemental Comments on Notice of Preliminary Decision for the Issuance
of Authority to Construct Project No. S-1251187 (January 27, 2026).

¹⁶ Exhibit C.

¹⁷ The Arvin/Lamont Community Steering Committee meetings are documented on the District website at
<https://community.valleyair.org/selected-communities/arvin-lamont/steering-committee-meetings/>.

1 public comment.¹⁸ CSC meetings were not used as a forum to discuss nor update community
2 members on the Project evaluation after that.

3 **III. DISCUSSION**

4 The District is a public agency tasked with the authority and responsibility to implement
5 and enforce federal Clean Air Act requirements for stationary sources of air pollution within its
6 jurisdiction. Health & Saf. Code § 40000. The District is also required to implement and enforce
7 California state laws as applicable. The District has adopted District Rules and Policies to carry
8 out these mandates. Health & Saf. Code § 40001. Major stationary sources of air pollution,
9 including the Kern Energy refinery, are subject to the federal Title V permit program, which
10 requires the District to deploy heightened regulatory requirements to ensure compliance with
11 federal requirements.¹⁹ Kern Energy is a major stationary source of air pollution within the
12 District's jurisdiction and is thus subject to District Rules and Title V permit program
13 requirements.
14

15
16 After a hearing at which Petitioners present their arguments before the Hearing Board, the
17 Hearing Board may revoke the ATC Permit if it finds that the District violated any part of the
18 Health and Safety Code, order, rule, or regulation of the District. Health & Saf. Code § 42309.

19 **A. The District Violated District Rule 2201 In Issuing The ATC Permit.**

20 A permit cannot be granted for a major modification of a Title V permitted facility unless
21 the proposed modification complies with District Rule 2201. Health & Saf. Code § 42300;
22 District Rule 2201 part 1. In its issuance of the ATC Permit to Kern Energy, the District violated
23 District Rule 2201 in at least four ways. First, the District erroneously determined compliance
24 with federal offset requirements as required by Rule 2201 part 4.8 because it incorrectly
25

26 ¹⁸ December 2025 Arvin/Lamont CSC Meeting Recording, <https://www.youtube.com/watch?v=LggVbpGiWtA>,
starting at 1:39:00 (accessed on May 29, 2026).

27 ¹⁹ Environmental Protection Agency Basic Information about Operating Permits,
28 <https://www.epa.gov/title-v-operating-permits/basic-information-about-operating-permits> (accessed on May 29,
2026).

1 calculated the post-project Potential to Emit (“PE2”) for Volatile Organic Compounds (“VOCs”).
2 Second, the District improperly banked Emission Reduction Credits (“ERCs”) in alleged
3 satisfaction of federal offset requirements because the banked ERCs are not surplus. Third, the
4 District’s ATC Permit evaluation did not consider all equipment units whose permit conditions
5 would be modified by the Project. Fourth, the District failed to comply with federal Best
6 Available Control Technology (“BACT”) requirements because its cost-effectiveness analysis did
7 not consider all applicable equipment units nor an accurate post-project PE2 quantity for VOCs.
8 The following sections discuss each violation in turn.

10 **1. The District Incorrectly Calculated VOC Emissions.**

11 The PE2 calculation serves as a foundational input for multiple permitting determinations
12 under Rule 2201, including offset requirements and risk evaluations.²⁰ Because those
13 determinations rely on the PE2 value, an understated PE2 calculation may materially affect the
14 District’s conclusions regarding the Project’s regulatory compliance and environmental impacts.
15 The District is required to calculate a project’s PE2 on a pollutant-by-pollutant basis. Rule 2201
16 part 4. The San Joaquin Valley basin is designated Extreme nonattainment for federal ozone
17 standards, and VOCs are a precursor to ozone formation.²¹ The District’s calculation of PE2 for
18 VOCs thus has direct implications for ozone attainment goals. Because the District erroneously
19 calculated the PE2 value for the Project, it did not comply with Rule 2201.

22 **a. The District Violated The CAPCOA Guidelines, Its Controlling** 23 **Authority For Calculation Of PE2 Emissions.**

24 ²⁰ District Rule 2201 part 4.13. “Actual Emission Reductions shall be calculated, on a pollutant-by-pollutant basis, as
25 follows: $AER = HAE - PE2$ [.] Where HAE = Historic Actual Emission [and] PE2 = Post-project Potential to Emit.”
26 See also District Policy APR 1905 part VIII.C. “For the purpose of determining compliance with [requirements to
control emissions of hazardous air pollutants], the Increase in Permitted Emissions of a hazardous air pollutant is to
be determined as the difference between the baseline and proposed Potential to Emit for the pollutant.” Here, VOC
emissions from toluene contain hazardous air pollutants.

27 ²¹ Ambient Air Quality Standards & Attainment Status, San Joaquin Valley Air Pollution Control District,
28 <https://ww2.valleyair.org/air-quality-information/ambient-air-quality-standards-valley-attainmnet-status/> (accessed on
May 28, 2026).

1 District Policy SSP 2015 establishes the District’s methodology for calculating the PE2
2 value of VOC emissions at petroleum and synthetic organic chemical manufacturing facilities for
3 purposes of Rule 2201 permitting analyses. District Policy SSP 2015 part II. The District adopted
4 SSP 2015 to implement Rule 2201. *Id.* Pursuant to SSP 2015, the “approved methods for
5 calculating fugitive emissions are those contained in EPA’s ‘Protocol for Equipment Leak
6 Emission Estimate’ dated 11/95 (EPA-453/R-94-017) and ‘California Implementation Guidelines
7 for Estimating Mass Emissions of Fugitive Hydrocarbon Leaks at Petroleum Facilities’ dated
8 2/99 (CAPCOA document).” SSP 2015 part III. SSP 2015 further provides that “[e]mission
9 factors in the CAPCOA document or emission factors in the EPA document shall be used for new
10 or modified units. However, the emission factors in the CAPCOA document will take precedent
11 [*sic*] over emission factors in the EPA document.” SSP 2015 part IV. Having adopted SSP 2015 to
12 implement Rule 2201, the District’s permitting analysis was required to be consistent with the
13 methodologies incorporated through SSP 2015, including the California Implementation
14 Guidelines for Estimating Mass Emissions of Fugitive Hydrocarbon Leaks at Petroleum Facilities
15 (“CAPCOA Guidelines”) governing fugitive VOC emissions calculations for new or modified
16 units. Instead, the District applied a different method in which it adopted several proposed
17 methods from Kern Energy without providing sufficient justification for its departure from the
18 CAPCOA Guidelines.²²

21 **b. The District Relied On Method 3, But The CAPCOA Guidelines**
22 **Required Method 1.**
23

24 The District’s calculation of the Project’s PE2 value for VOC emissions did not conform
25 with the CAPCOA Guidelines because the District relied on the Correlation Equation Emission
26

27 ²² The District’s discussion of its calculation methodology references adoption of Kern Energy’s propositions in
28 several sections. *See* Exhibit C. p. 8, “Applicant is proposing use of the correlation equation emissions factors.” *See*
also p. 9, “Kern [Energy] has proposed the number of [piping] components that are at each level.”

Factor Method (“Method 3”) rather than the Average Emission Factor Method (“Method 1”).²³ The CAPCOA Guidelines permits four methodologies for calculating fugitive VOC emissions, but Method 3 relies on site-specific screening values obtained from operating equipment components.²⁴ Under the CAPCOA Guidelines incorporated through SSP 2015, Method 1—not Method 3—was the appropriate methodology for calculating fugitive VOC emissions for the Project.²⁵

The District’s use of Method 3 materially understated the Project’s VOC emissions. The Engineer’s Report estimated project VOC emissions at approximately 483 pounds annually. Expert Declarant, however, concludes that application of Method 1 under the CAPCOA Guidelines would yield substantially higher fugitive VOC emissions estimates, including approximately 145,955 pounds annually.²⁶

By failing to follow the CAPCOA Guidelines, the District greatly underestimated the emissions associated with the Project. A greater PE2 value for VOCs would result in different conclusions for all analyses that incorporate the PE2 value, including offset requirements and health-risk evaluations, and would violate the District’s obligation to ensure that permitted sources do not interfere with the attainment of applicable air quality standards. *See* Health & Saf. Code § 42301.

c. Even Assuming The District Had Discretion To Use Method 3, The Record Does Not Adequately Support That Choice.

Even assuming *arguendo* that the District has the discretion to choose Method 3 over Method 1 (though Petitioners contend it does not) the District’s reliance on Method 3 is not adequately supported under these circumstances. Method 3 calculations materially understate the

²³ Exhibit M. California Implementation Guidelines for Estimating Mass Emissions of Fugitive Hydrocarbon Leaks at Petroleum Facilities (February 1999).

²⁴ Exhibit N. Declaration of Christian Bisher at ¶ 12.

²⁵ *Id.*

²⁶ *Id.* at ¶ 20.

1 Project's fugitive VOC emissions as compared to the emissions estimates produced under Method
2 1.²⁷ The record further reflects that the District chose to use Method 3 to calculate the Project's
3 PE2 value for VOCs at the project applicant's request, despite the absence of site-specific
4 screening values for the new or modified equipment units. Under these circumstances, and
5 particularly given the District's current extreme nonattainment ozone designation and its adoption
6 of the CERP, the District is required to provide a more substantial explanation for relying on a
7 methodology that produced materially lower emissions estimates for purposes of Rule 2201
8 permitting analyses. Accurate emissions calculations are particularly important in an extreme
9 ozone nonattainment area and within an AB 617 community, where Rule 2201 permitting
10 determinations directly affect the District's broader air quality and emissions-reduction
11 obligations.
12

13 **d. The District Failed to Implement Method 3 Consistent with the**
14 **CAPCOA Guidelines.**
15

16 Compounding the issue, the District failed to implement Method 3 consistent with the
17 CAPCOA Guidelines itself. Christian Bisher, who provides an expert declaration in support of
18 this petition, explains that Method 3 requires the use of organic vapor analyzer-measured
19 concentrations ("screening values") for individual equipment components.²⁸ Because the Project
20 involves new or modified equipment units, however, site-specific screening values were not
21 available.²⁹ Bisher further explains that the District's implementation of Method 3 departed from
22 the CAPCOA Guidelines in multiple respects. Specifically, he concludes that the District
23 improperly grouped components together rather than calculating emissions for individual
24 components, failed to apply the pegged-factor methodology contemplated by the CAPCOA
25

26
27 ²⁷ Exhibit N at ¶ 20.

28 ²⁸ Exhibit N at ¶¶ 14-17.

²⁹ *Id.* at ¶¶ 12, 16.

Guidelines, and instead relied on assumed screening values tied to regulatory leak limits rather than actual measured leak data.³⁰ According to the Bisher, those assumptions materially understated the Project's fugitive VOC emissions.³¹ Under these circumstances, the District did not calculate PE2 value for VOC emissions consistently with the methodology incorporated through SSP 2015 and the CAPCOA Guidelines. Those methodological deficiencies independently undermine the District's emissions calculations and the permitting analyses that rely upon them.

2. The Emission Reduction Credits Banked Are Invalid.

District Rule 2201 requires the banking of Emission Reduction Credits ("ERCs") to offset emission increases associated with a major modification to a Title V permitted facility. Rule 2201 part 4.8.1.1. The ERCs must be "real, enforceable, quantifiable, surplus, and permanent" at the time of ATC permit issuance. Rule 2201 parts 3.2.1, 4.8.1.1. The District erroneously allowed for the banking of ERC certificate C-1579-1 to offset the increased VOC emissions associated with the Project. ERC certificate C-1579-1 is not valid because the 1992 banking action in which it was created did not comply with the permanence requirement.³² In its response to public comments on this issue, the District states that the 1992 banking action did not fail the permanence requirement "merely because similar work could theoretically occur elsewhere."³³ This response is flawed because the District has the burden of proving that the banked emissions cannot, and have not, shifted to another source in the District's jurisdiction. The District has failed to meet this burden and thus the banked ERCs are invalid.

3. Numerous Modified Equipment Units Are Improperly Excluded From The

³⁰ *Id.* at ¶¶ 17-19.

³¹ *Id.* at ¶¶ 18-20.

³² "ERC Certificate C-1579-1 is a certificate that was split out from parent ERC Certificate C-3-1. Original ERC Certificate C-3-1 was issued to Fruehauf Trailer Corporation (subsequently Fruehauf Trailer Services Inc., Facility C-2268; now defunct) on November 5, 1992 under Project C-92003. The ERCs were generated from the shutdown of a truck trailer coating operation." Exhibit C, p. 64.

³³ Exhibit C, p. 84.

1 **Engineer's Report.**

2 According to District Rule 2201, a project is a “single permitting action involving the
3 modification, addition or shutdown of one or more emissions units.” Rule 2201 part 3.44. The
4 definition of modification includes “[a]ny change in hours of operation, production rate, or
5 method of operation of an existing emissions unit, which would necessitate a change in permit
6 conditions” and “[a]ny structural change or addition to an existing emissions unit which would
7 necessitate a change in permit conditions.” Rule 2201 parts 3.29.1.1, 3.29.1.2.
8

9 Here, the Project consists of the addition of new emissions units and the modification of
10 existing emissions units. The District interpretation of “modification” within the context of
11 “project” is inaccurate and thus excludes numerous emissions units that should have been
12 evaluated for compliance with District Rule 2201. Further, the District does not provide a
13 sufficiently detailed schematic to support its position that additional emissions units will not be
14 modified by the Project. The schematic and Project description provided in the Engineer's Report
15 exclude relevant details regarding the location and connections to the platformer (S-37-4),
16 chloride scrubber (S-37-4), reformer (S-37-119), and organic liquid storage tanks (S-37-173,
17 S-37-44). This information is necessary to determine operational changes to existing equipment.
18 Changes may include the reversal of transportation pathways, a change in the substance
19 transported through existing piping, and changes in connections.
20

21 The exclusion of modified emissions units has far-reaching implications for the District's
22 conclusions because the resulting probable emissions increases from said emissions units are
23 excluded from overall calculations and from the District's BACT analysis, as explained below.
24

25 **4. The District's Best Available Control Technology Analysis Improperly**
26 **Excludes Modified Equipment Units, Relies On Inaccurate Emission**
27 **Calculations, And Does Not Employ The Most Stringent Techniques.**
28

1 Pursuant to District Rule 2201, the District must comply with federal Best Available
2 Control Technology (BACT) requirements. Rule 2201 part 4.1. A BACT analysis must be
3 conducted on a pollutant-by-pollutant basis and on an equipment unit-by-equipment unit basis. *Id.*
4 BACT requires the adoption of the most stringent limitation or control technique of the following:

- 5 (1) Achieved in practice for such class or category of source;
- 6 (2) Contained in any State Implementation Plan approved by the Environmental
7 Protection Agency for such class or category of source. A specific limitation or
8 control technique shall not apply if the owner of the proposed emissions unit
9 demonstrates to the satisfaction of the APCO that such a limitation or control
10 technique is not presently achievable; or
- 11 (3) Contained in an applicable federal New Source Performance Standard; or
- 12 (4) Any other emission limitation or control technique, including process and
13 equipment changes of basic or control equipment, found by the APCO to be cost
14 effective and technologically feasible for such class or category of sources or for a
15 specific source.
16
17

18 Rule 2201 part 3.10. District Policy APR 1305 provides the District with additional guidance
19 when conducting a BACT analysis. Notably, it requires the District to take a proactive approach
20 to updating the BACT Clearinghouse and to take into consideration new control technologies or
21 emission limitations that are found to be technologically feasible for a class or category of
22 sources. District Policy 1305 part VI.A.4.

23
24 In its Engineer's Review, the District recognized that "BACT is triggered for VOC for all
25 emissions units in the project for which there is an emissions increase."³⁴ Thus, it conducted a
26 BACT analysis pursuant to its BACT Guideline 7.2.2 and 7.2.3.³⁵ However, this analysis was

27 ³⁴ Exhibit C, p. 16.

28 ³⁵ *Id.* at pp. 44-45.

deficient because it was not conducted on an emissions unit-by-emissions unit basis and it relied on inaccurate VOC emissions calculations, as explained above. Further, it did consider that a more stringent technologically feasible method has been identified for this category of sources by the Bay Area Air Quality Management District (“BAAQMD”).³⁶ The BAAQMD has adopted guidelines that identify 100 ppm as a technologically feasible and cost effective emissions limitation for VOC leakage from pumps and compressors at petroleum refineries. The District’s BACT analysis only considered a fugitive VOC leakage limitation of 500 ppm. The District’s BACT analysis did not consider the cost-effectiveness of a 100 ppm limitation and thus violated District Rule 2201 and District Policy APR 1305.

B. The District Must Conduct Independent CEQA Review.

1. The District Must Assume the Role of Lead Agency for Environmental Review of the ATC Permit.

CEQA requires the District to assume the role of lead agency and engage in environmental review of the ATC Permit. CEQA clearly describes the circumstances under which a lead agency designation must shift to a responsible agency: (1) when “[t]he lead agency did not prepare any environmental documents for the project, and the statute of limitations has expired for a challenge to the action of the appropriate lead agency”; or (2) when “[t]he lead agency prepared inadequate environmental documents without consulting with the responsible agency as required by Sections 15072 or 15082, and the statute of limitations has expired for a challenge to the action of the appropriate lead agency.” CEQA Guidelines §§ 15051(a)(1), (3). We raise both circumstances, in the alternative.

³⁶ See Bay Area Air Quality Management District Best Available Control Technology (BACT) Guideline Petroleum Refinery Fugitive Emissions–Pumps, https://www.baaqmd.gov/~media/files/engineering/bact-tbact-workshop/petroleum-industry/137-1.pdf?rev=2eec58773dd3439d92319242ecd30243&sc_lang=en (accessed May 29, 2026); and Compressors, https://www.baaqmd.gov/~media/files/engineering/bact-tbact-workshop/petroleum-industry/48b-1.pdf?rev=aa537aa3fb3641d4b3727f6cc9331d17&sc_lang=en (accessed May 29, 2026).

1 Kern County incorrectly claimed a CEQA exemption and as a result issued a notice of
2 exemption (“NOE”) instead of preparing environmental documents. The statute of limitation has
3 run to challenge that NOE. Therefore, Section 15051(a)(1) applies.

4 Alternatively, though the District notes that Kern County “acted as CEQA Lead Agency
5 for the Project,” the fact that Kern County issued a NOE for the Project Site Plan Review is
6 entirely consistent with the District assuming the role as lead agency for the ATC Permit.
7 Pursuant to CEQA Guidelines Section 15052(a)(3), an agency “shall assume the role of the lead
8 agency” where “[t]he lead agency prepared inadequate environmental documents without
9 consulting with the responsible agency as required by Sections 15072 or 15082, and the statute of
10 limitations has expired for a challenge to the action of the appropriate lead agency.” Here, Kern
11 County prepared an inadequate NOE, as discussed in more detail below, there is no evidence that
12 Kern County consulted the District in issuing the NOE, and the statute of limitations to challenge
13 the issuance of the NOE has passed. As such, the District was required to assume the role of lead
14 agency for purposes of the ATC Permit.
15
16

17 Furthermore, the District appears to concede that it is the lead agency for purposes of
18 environmental review under CEQA. Specifically, in the ATC Permit Application Review, the
19 District notes that it “has conducted a Preliminary Review pursuant to CEQA Guidelines
20 §15060...” Pursuant to Section 15060 of the CEQA Guidelines, a “lead agency” has certain
21 preliminary review obligations, including evaluation of permit applications for completeness,
22 determinations of whether an activity is subject to CEQA, and preparation of an initial study. In
23 conducting a preliminary review, the District thus acted as the lead agency.
24

25 The District’s own CEQA implementation policy is in accord. Specifically, under District
26 Policy APR 2010, “[t]he District may become the Lead Agency for projects requiring air quality
27 permits when the project does not require any discretionary action from another public agency.”
28

1 Here, as the District correctly notes, Kern County has taken the position that the Site Plan Review
2 for the Project was ministerial. As such, according to both the County and the District,³⁷ the Site
3 Plan Review and associated NOE did not require any discretionary action by the County and the
4 District became the lead agency.

5
6 **2. The District Did Not Satisfy Its Obligations As Lead Or Responsible**
7 **Agency.**

8 CEQA requires that lead agencies follow a three-step process when determining whether
9 to prepare a CEQA document for a project or activity that may fall within its scope. CEQA
10 Guidelines § 15002(k). The first step is to identify whether the project is subject to CEQA or
11 exempt from its provisions. § 15002(k)(1). The second step is to conduct an initial study pursuant
12 to Section 15063 to “determine whether the project may have a significant effect on the
13 environment.” § 15002(k)(2). If the initial study shows that the project may have a significant
14 impact, the lead agency must prepare an Environmental Impact Report (“EIR”). § 15002(k)(3).

15
16 Here, it is undisputed that the Air District’s approval of the ATC Permit is a discretionary
17 project to which CEQA applies.³⁸ However, the Air District has improperly determined that the
18 ATC Permit is exempt from CEQA, as discussed in further detail below. In doing so, it has
19 violated CEQA and its obligations as a lead and responsible agency for purposes of
20 Environmental Review of the ATC Permit.

21
22 The District also has additional obligations as a responsible agency, which it did not meet
23 here. A responsible agency is “a public agency, other than the lead agency, which has
24 responsibility for carrying out or approving a project.” CEQA Guidelines § 15381. Even where an
25 entity acts as a responsible agency, it must still adhere to CEQA’s environmental review

26 ³⁷ Petitioners disagree that the Site Plan Review was ministerial, as they contend that the project requires a
27 conditional use permit. *See* Exhibit F. However, the County has indicated that it disagrees, and thus did not exercise
any discretion in issuing the Site Plan Review approval.

28 ³⁸ Pub. Resources Code, § 21065; *see also* Exhibit C, p. 23. The District “has determined that the Project is a
discretionary project as defined under CEQA Guidelines §15357.

1 requirements, which include an independent review of the adequacy of any existing
2 environmental reviews and adopting feasible alternatives and mitigation measures. CEQA
3 Guidelines § 15096(a)(g). A responsible agency has “its own independent authority to enforce or
4 administer an environmental law,” and can exercise that authority by drawing its own conclusions
5 on whether and how to approve a project or otherwise carry out its responsibilities under relevant
6 environmental statutes. See *Santa Clara Valley Water Dist. v. San Francisco Bay Reg'l Water*
7 *Quality Control Bd.*, 59 Cal. App. 5th 199, 213 (2020); see also *Central Delta Water Agency v.*
8 *State Water Resources Control Bd.*, (2004) 124 Cal.App.4th 245, 274.

9
10 Though the District purports to have “independently reviewed the County’s NOE,” it
11 improperly determined that there was “no basis for additional CEQA review for the District’s
12 discretionary ATC action.”³⁹ As discussed below, this conclusion is not supported by the law or
13 the evidence. As a result, the District did not meet its obligations as a lead or responsible agency.

14 **3. The Project is not Exempt from CEQA Review.**

15
16 The Natural Resources Agency and the Office of Land Use Climate Innovation have
17 established CEQA exemptions for classes of projects because they “do not have a significant
18 effect on the environment.” Pub. Res. Code § 21084. Categorical exemptions must be construed
19 narrowly to avoid improperly excusing CEQA compliance and putting health and the
20 environment at risk. See *Save Our Carmel River v. Monterey Peninsula Water Management Dist.*
21 141 Cal.App.4th 677, 697 (2006).

22
23 The District relies on several categorical and statutory exemptions to claim that the project
24 does not need to undergo CEQA review. Not only does the District improperly apply these
25 exemptions, but the project also satisfies the unusual circumstances exception to CEQA
26 exemptions.

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³⁹ See Exhibit C, p. 24.

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1 for this proposal.⁴⁰ A chloride scrubber is mainly used in hydrogen facilities to assist with
2 hydrogen power generation. The installation of the chloride scrubber indicates that the refinery
3 intended to expand its operations into hydrogen-generated electricity.

4 Lastly, the use of installed organic storage tanks in support of hydrogen electricity
5 generation would also be an expanded use past the point of a simple minor alteration. The ATC
6 Permit would permit the organic storage tanks to aid in the processing and use of hydrogen by
7 facilitating the chemical reactions required for electricity generation.
8

9 Courts have rejected similar applications of the Class 1 exemption. For example, in
10 *County of Amador v. El Dorado County Water Agency*, the court struck down an agency's attempt
11 to apply a Class 1 15301 exemption to the acquisition of an irrigation district's nonconsumptive
12 hydroelectric facility and a change in operation to a consumptive-use facility. 76 Cal.App.4th 931,
13 967 (1999). Similarly, in *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster*,
14 the court rejected a Class 1 exemption for a landfill project, reasoning that "a 'minor' alteration
15 cannot be an activity that creates a reasonable possibility of a significant environmental effect."
16 52 Cal.App.4th at 1194 (1997). And in *Los Angeles Dept. of Water & Power v. County of Inyo*,
17 the court narrowly construed the Class 1 exemption, concluding that landfills could not be
18 exempted as a class due to the risks they pose to groundwater, air quality, and public health. 67
19 Cal.App.5th 1018, 1040 (2021).
20

21 Here, the reasoning applied by the courts in *County of Amador*, *Azusa Land Reclamation*,
22 *and Los Angeles Dept. of Water & Power* supports the conclusion that the Project is not
23 categorically exempt. Specifically, as discussed throughout this Petition, there is a reasonable
24 possibility of significant environmental impacts associated with the Project, including but not
25 limited to the undisputed increase in VOC emissions, the risk of leaks of organic liquids, and the
26

27
28 ⁴⁰ Exhibit N, ¶ 34.

1 risk of hydrogen leaks and explosion. Notably, hydrogen leaks can significantly contribute to
2 global warming, with “current assessments of hydrogen’s global warming potential suggest that
3 H₂ can cause around ~12 times more warming than carbon dioxide (CO₂) over a 100-year period
4 following emissions of equal mass, and ~37 times more warming over a 20-year period.”⁴¹ This
5 risk was not discussed in the District’s assessment of the ATC Permit. As such, the Project cannot
6 be said to be a mere “negligible” expansion or a “minor” alteration.
7

8 Because the changes significantly alter the project’s purpose and could lead to significant
9 environmental impacts, the District must review the ATC Permit application and revisit these
10 exemptions.
11

12 **b. Categorical Exemption 15302 (Replacement or Reconstruction**
13 **of Existing Structures or Facilities)**

14 The Class 2 categorical exemption applies where the project only entails the “replacement
15 or reconstruction of existing structures and facilities where the new structure will be located on
16 the same site as the structure replaced and will have substantially the same purpose and capacity
17 as the structure replaced.” CEQA Guidelines § 15302. The District has failed to provide
18 substantial evidence that this categorical exemption applies. *See Save Our Carmel River v.*
19 *Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 698 (discussing the
20 inapplicability of the Class 2 exemption due to lack of substantial evidence on a replacement
21 structure).
22

23 The Class 2 categorical exemption does not apply because the ATC Permit does not
24 include the replacement or reconstruction of existing structures. Instead, the ATC Permit
25 authorizes the addition of four new pieces of equipment: the Hydrogen Purification Unit, the
26 hydrogenation system, the dehydrogenation system, and hydrogen fuel cells.⁴² Further, the record
27

28 ⁴¹ Exhibit P. Martin et. al, “A review of challenges with using the natural gas system for hydrogen” (April 24, 2024).

⁴² See Exhibit C, p. 8.

1 does not state that the two pieces of existing equipment (the toluene and MCH tanks) would be
2 replaced or reconstructed. Rather, the ATC Permit involves the installation of entirely new
3 equipment.

4 Further, even if the Hearing Board accepts that the project involves the replacement or
5 reconstruction of existing structures, though it should not, the record does not contain substantial
6 evidence that the new and existing equipment is used for the same purpose and capacity. Though
7 the District asserts that the Project “occurs entirely within the existing refinery boundary with no
8 site expansion,”⁴³ it makes no reference to the purpose or capacity of the Project. The fact that the
9 Project will be built within the refinery’s footprint is not sufficient on its own for this exemption
10 to apply. In fact, the ATC Permit approval involves a substantially different purpose (hydrogen
11 electricity generation) than the existing structures and equipment, which are focused on the
12 production of gasoline and other petroleum products.⁴⁴

13 Because the Project is not limited to replacement or reconstruction of existing structures
14 for substantially the same purpose and capacity, the Class 2 categorical exemption does not apply.

15
16
17 **c. Categorical Exemption 15303 (New Construction or Conversion**
18 **of Small Structures)**

19 The Class 3 exemption applies to “construction and location of limited numbers of new,
20 small facilities or structures; installation of small new equipment and facilities in small structures;
21 and the conversion of existing small structures from one use to another where only minor
22 modifications are made in the exterior of the structure.” CEQA Guidelines § 15303. The CEQA
23 Guidelines indicate that this exemption does not apply to projects that will have hazardous impact
24 on health or the environment. *See Id.* § 15303(c) (describing an example exempt project as one
25 that does “not involv[e] the use of significant amounts of hazardous substances” and “the
26

27 ⁴³ *Id.* at p. 24.

28 ⁴⁴ Exhibit C at p. 2.

1 surrounding area is not environmentally sensitive.”).

2 The ATC Permit approval does not permit the construction or minor modification of a
3 small structure or equipment, but rather the installation of extensive new equipment related to an
4 entirely different system of harnessing, storing and using hydrogen. This is distinct from other
5 cases where the Class 3 exemption has been applied, such as the installation of parking fee
6 collection devices (*Surfrider Foundation v. California Coastal Com.* 26 Cal.App.4th 151, 156
7 (1994)); or of wireless telecommunication devices on existing utility poles (*Robinson v. City and*
8 *County of San Francisco* 208 Cal.App.4th 950, 956 (2012)). This is particularly true here, given
9 that hydrogen production and storage involves hazardous risk, including risk of leaks and
10 explosion, and that it is undisputed that the Project will increase air pollution in nearby
11 disadvantaged communities. There is nothing in the CEQA Guidelines or associated case law that
12 indicates that the Class 3 categorical exemption applies in these circumstances.
13

14
15 **d. Categorical Exemptions Do Not Apply Because the Project Will**
16 **Have a Significant Effect Pursuant to the Unusual**
17 **Circumstances and Cumulative Impacts Exceptions**

18 Agencies must evaluate and weigh any evidence that a project will have potentially
19 significant impacts on the environment and health in its determination of whether categorical
20 exemptions apply. *Berkeley Hillside Preservation v. City of Berkeley* 60 Cal.4th 1086, 1103
21 (2015). Even assuming any of the aforementioned exemptions apply, the District has not
22 adequately evaluated these potentially significant impacts and failed to apply two exceptions to
23 the categorical exemptions: the unusual circumstances and the cumulative impacts exceptions.
24

25 **(1) Unusual Circumstances Exception**

26 If there is a “reasonable possibility” that an activity will have a significant effect on the
27 environment due to “unusual circumstances” an agency may not find the activity to be
28

1 categorically exempt from CEQA. CEQA Guidelines § 15300.2(c). This exception applies when:
2 (1) the project presents a feature different from others in the exempt class that presents a
3 reasonable possibility of significant effect due to that unusual circumstance; or (2) there is
4 evidence of a reasonable possibility that a significant impact will result from those unusual
5 circumstances. *Id.*; *see also Berkeley Hillside*, 60 Cal.4th at 1105.
6

7 In *Berkeley Hillside*, the California Supreme Court established these alternative forms of
8 demonstrating unusual circumstances and explained that convincing proof of either a feature of
9 the project as an unusual circumstance or the significant effect on the environment itself satisfies
10 the test. *See also Walters v. City of Redondo Beach* 1 Cal.App.5th 809, 819–826 (2016), citing
11 *Berkeley Hillside*, 60 Cal.4th at 1105. The court in *Walters* further explained that “evidence that
12 the project will have a significant effect does tend to prove that some circumstance of the project
13 is unusual.” *Id.* at 823. Unusual circumstances exist when “(1) the project will actually have an
14 effect on the environment and (2) that effect will be significant.” *Id.*, citing *Citizens for*
15 *Environmental Responsibility v. State ex rel.* 242 Cal.App.4th 555, 589 (2015). A significant
16 effect on the environment is a “substantial adverse change in the physical conditions which exist
17 in the area affected by the proposed project.” CEQA Guidelines § 15002(g).
18

19 **(A) This Project Includes Features Distinct From Other Class 1-3 Exempt**
20 **Projects That Presents Unusual Circumstances.**

21 To determine whether a project presents unusual circumstances, there must be a factual
22 inquiry under which the agency weighs the relevant evidence to determine if those circumstances
23 are unusual in comparison with other projects in the exempt class, including with respect to size,
24 location, or operational characteristics. *Berkeley Hillside*, 60 Cal.4th at 1105. The question here is
25 whether the installation of the new mechanical, storage, and processing equipment “distinguishes
26 [the Project] from others in the exempt class.” *Walters*, 1 Cal.App.5th at 821.
27
28

1 Here, the District relies on three categorical exemptions: minor alterations to existing
2 facilities with negligible or no expansion of use (Class 1); replacement or construction of existing
3 structures (Class 2); and construction or conversion of small non-hazardous structures (Class 3).
4 There is substantial evidence that the equipment at issue is distinct from the types of projects
5 ordinarily falling within those equipment that make up these three classes of projects.⁴⁵ Kern
6 Energy plans to add new equipment that would permit the refinery to produce and store hydrogen,
7 and generate electricity using hydrogen for the first time. That proposed use is materially distinct
8 from the types of projects ordinarily encompassed within the Class 1, 2, and 3 exemptions, which
9 generally involve negligible expansions of existing use, replacement of existing structures, or
10 small non-hazardous conversions.
11

12 Furthermore, while modern refineries do utilize hydrogen recovery, typically the purpose
13 of installing hydrogen recovery units is to assist with petroleum production by breaking down or
14 building up hydrocarbon chains. Here, however, the Engineering Report expressly states that the
15 proposed equipment is intended to deploy hydrogen to generate electricity.⁴⁶ Currently, the use of
16 hydrogen at the refinery is for petroleum production, and the equipment needed to produce
17 electricity via hydrogen with the specified new equipment is entirely different from equipment
18 used at refineries.
19

20 These activities differ substantially from the ordinary refinery maintenance, replacement,
21 or minor-equipment projects that might properly be addressed through categorical exemptions.
22 The Project therefore presents unusual circumstances that the District was required to evaluate
23 before relying on categorical exemptions.
24

25 **(B) This Project Will Have Significant Effects on the Environment.**

26 Evidence that a project will have a significant effect on the environment and/or health
27

28 ⁴⁵ See Exhibit N, ¶¶ 6-7, 29; see also Exhibit C, p. 2.

⁴⁶ See Exhibit C, p. 3.

1 “does tend to prove that some circumstance of the project is unusual.” *Berkeley Hillside*, 60
2 Cal.4th at 1105. Approving the ATC Permit will have significant environmental and public health
3 impacts.

4 The addition of on-site hydrogen energy generation by Kern Energy creates a reasonable
5 possibility of increased air pollution, hydrogen leaks, fire or explosion hazards, and additional
6 climate impacts that may interfere with regional air quality attainment efforts.⁴⁷ There are also
7 risks associated with toluene and methyl cyclohexane, including the potential for vapor releases
8 and associated exposure impacts.⁴⁸ Heavy-duty traffic may also increase if hydrogen is
9 transported off-site in the future.

11 Given the heavily industrialized nature of the area, and the proximity of homes, schools,
12 and sensitive receptors, the District was required to consider the Project’s potentially significant
13 impacts, including increased air pollution, leak risks, transportation emissions, increased traffic
14 from hydrogen transport, and public health impacts from exposure to hazardous substances such
15 as hydrogen, toluene, and methyl cyclohexane.

17 **(2) Cumulative Impacts Exception**

18 Categorical exemptions do not apply “when the cumulative impact of successive projects
19 of the same type in the same place, over time is significant.” CEQA Guidelines § 15300.2(b). To
20 establish the cumulative impacts exception, there must be evidence of other projects occurring in
21 the same area as well as evidence that the cumulative effect of those impacts is significant.

23 ⁴⁷ Sasan Saadat and Sara Gersen, *Reclaiming Hydrogen for a Renewable Future: Distinguishing Oil & Gas Industry
24 Spin from Zero-Emission Solutions* (2021), available at
https://earthjustice.org/wp-content/uploads/hydrogen_earthjustice_2021.pdf (accessed May 29, 2026).

25 ⁴⁸ Toluene affects the central nervous system, eyes, skin, respiratory system, liver, kidneys. Breathing high levels of
26 toluene during pregnancy has been shown to result in children with birth defects and to retard mental abilities and
27 growth. There is evidence that exposure to toluene at work is associated with spontaneous abortion. Toluene - Health
28 Hazards and Protective Measures, United States Occupational Safety and Health Administration,
<https://www.osha.gov/toluene/hazards-protective-measures>. Types of exposure to MCH include inhalation, ingestion,
and/or skin or eye contact, with the potential of risk to target organs such as the eyes, skin, respiratory system, central
nervous system. *See* Methylcyclohexane, National Institute for Occupational Safety and Health, United States Center
for Disease Control, <https://www.cdc.gov/niosh/npg/npgd0406.html>.

1 *Arcadians for Environmental Preservation v. City of Arcadia* 88 Cal.App.5th 418, 439 (2023).
2 “Cumulative impacts can result from individually minor but collectively significant projects
3 taking place over a period of time.” *Arcadians*, 88 Cal.App.5th at 439, *citing* CEQA Guidelines §
4 15355. This exception applies where the impacts at issue affect the environment generally, rather
5 than only particular individuals. *Santa Monica Chamber of Commerce v City of Santa Monica*
6 101 Cal.4th 786, 799 (2002).
7

8 Here, the challenged ATC Permit must be evaluated in the context of the substantial
9 existing pollution burdens already affecting Lamont, Fuller Acres, and the surrounding
10 Arvin/Lamont AB 617 community. Kern Energy currently operates as a petroleum refinery that
11 handles fuel and chemical storage on site and engages in heavy-duty transportation activities, all
12 of which contribute emissions affecting local and regional air quality. As discussed above, the
13 challenged ATC Permit would approve new equipment allowing the refinery to generate
14 electricity using hydrogen, which will result in additional air quality, climate, transportation, and
15 public health impacts affecting the surrounding community. Given the already significant
16 pollution burdens in the area, these additional impacts are cumulatively significant.⁴⁹
17

18 Further, Kern Energy is not the sole industrial source contributing to pollution in the area.
19 Numerous oil and gas facilities operate nearby and contribute to cumulative impacts on air quality
20 and public health. There are also two natural gas pipelines operating in the immediate vicinity and
21 running through Lamont and Fuller Acres.⁵⁰ Extensive oil and gas fields in the surrounding area
22 contribute significantly to air emissions alongside Kern Energy.⁵¹ Oil and gas operations overall
23

24 ⁴⁹ The census tract on which the Kern Energy refinery sits is in the 91% percentile in the state for disproportionate
25 pollution burden and in the 88% percentile for ozone exposure. CalEnviroScreen 5.0, available at
<https://oehha.ca.gov/calenviroscreen> (accessed May 29, 2026).

26 ⁵⁰ FracTracker,
https://experience.arcgis.com/experience/b5608246b8ef4b1fa3463eede0b54ed9/#data_s=id%3AdataSource_6-19277008531-layer-20%3A23717 (accessed May 29, 2026).

27 ⁵¹ California Oil and Gas Rulemaking Scientific Advisory Panel, Public Health Dimensions of Upstream Oil and Gas
28 Development in California: Scientific Analysis and Synthesis to Inform Science-Policy Decision Making (2024),
https://www.conservation.ca.gov/calgem/Documents/Public%20Health%20Panel%20Final%20Report_20240621.pdf

1 are associated with respiratory, cardiac, neurologic, reproductive, pulmonary, and mental health
2 impacts.⁵² The extensive oil and gas operations in the area cumulatively impact public health
3 conditions in the surrounding community, including respiratory and pulmonary issues.⁵³ This
4 Project would further contribute to those cumulative impacts by increasing VOC emissions and
5 facilitating continued refinery-related operations within the community.

6
7 Additionally, there are other industrial and agricultural operations in the area that
8 contribute to pollution and health burdens. For example, an asphalt supply company that handles
9 heavy-duty traffic already operates nearby further increasing the volume of heavy-duty vehicles
10 in the area.⁵⁴ Significant agricultural operations also contribute to regional pollution burdens,
11 including fields, nurseries, and packing houses.⁵⁵

12
13 Lastly, Kern Energy will not be the only facility pursuing hydrogen-related energy
14 generation and production in the region. Other hydrogen-related industrial projects, including the
15 Chevron Solar Hydrogen Energy Project in Lost Hills, further demonstrate that hydrogen
16 production and energy-generation infrastructure may contribute to broader cumulative
17 environmental impacts warranting CEQA review.⁵⁶

18 **e. Common Sense Exemption**

19 A lead agency may find a project exempt from CEQA if “it can be seen with certainty that
20 there is no possibility that the activity in question may have a significant effect on the
21 environment.” The burden is on the lead agency to demonstrate that the exemption applies. *Muzzy*

22
23
24 ; California Department of Conservation, California Geologic Energy Management Division, Well Finder,
<https://maps.conservation.ca.gov/calgem/FindWells/>; FracTracker, Oil and Gas Wells in California (2025),
<https://ft.maps.arcgis.com/apps/instant/sidebar/index.html?appid=04d78fd9433c4ca6b71eca1282e8c583>;

25 ⁵² FracTracker, Environmental Justice Analysis of Oil Extraction in Los Angeles Communities (2024),
<https://www.fractracker.org/2025/03/environmental-justice-analysis-of-oil-extraction-in-los-angeles-communities/>

26 ⁵³ See Exhibit B, ¶¶ 59-60.

27 ⁵⁴ Exhibit B at ¶¶ 46-50.

28 ⁵⁵ *Id.* at ¶¶ 32, 51.

⁵⁶ CEQA Summary of Chevron Lost Hills Solar to Hydrogen Project by Chevron New Energies, a division of Chevron U.S.A. Inc., <http://ceqanet.lci.ca.gov/2025061336> (accessed May 29, 2026).

1 *Ranch Co. v. Solano County Airport Land Use Com.*, 41 Cal.4th 372, 386 (2008); *Davidon*
2 *Holmes v. City of San Jose*, 54 Cal.App.4th 106, 114 (1997). This duty ““is all the more important
3 where the record shows...that opponents of the project have raised arguments regarding possible
4 significant environmental impacts.”” *Muzzy Ranch*, 41 Cal. 4th at p. 386.

5 Here, the District fails to meet the high burden to demonstrate that the common sense
6 exemption applies. It contends that “the Project is entirely within the existing industrial footprint,
7 does not expand the refinery's footprint or introduce a new industrial use, and, based on the
8 record, will not result in significant environmental effects.” However, the ATC Permit does
9 introduce a new industrial use that would have significant environmental impacts. The Project
10 would use that hydrogen to generate electricity, which is not a current use of the Kern Energy site.
11 Further, organic storage tanks are now anticipated to store organic liquids, toluene and methyl
12 cyclohexane, for the purpose of energy and electricity power generation.⁵⁷ No environmental
13 review was conducted to analyze the potentially significant impacts from leakage of these organic
14 liquids from this type of storage. Such leakage could have detrimental effects on the environment
15 and surrounding communities, particularly irreversible health detriments due to exposure of
16 toluene and metho cyclohexane vapors. Additionally, it is undisputed that the Project would
17 increase air pollution and, as discussed above, the District’s evaluation of air quality impacts
18 significantly understates VOC emissions from the Project.

19 Given these gaps in information and the potential for significant environmental impacts of
20 such a project, the Common Sense Exemption does not apply.

21 **f. Ministerial Exemption**

22 The CEQA Guidelines state that a project is ministerial if local ordinances or other laws
23 do not require application of discretionary standards. CEQA Guidelines § 15268. A public agency
24

25 ⁵⁷ The site would require toluene in very large quantities of on-site storage capacity in order to facilitate the reactions
26 needed to sustain this use. Exhibit N at ¶¶ 31.
27
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1 action is discretionary if it requires judgment or deliberation in approving the action. CEQA
2 Guidelines § 15357.

3 The approval of the ATC Permit involves discretion. The District adopted Rule 2201 and
4 its ATC Permit process as part of the required New Source Review program obligations under the
5 Clean Air Act. As a result, the District operates a permit system to ensure facilities do not prevent
6 or interfere with the attainment or maintenance of air quality standards under the Clean Air Act.
7 Health & Saf. Code §§ 42300, 42301. The District under state law may consider compliance
8 history in its determination and apply emission limits, standards or other requirements. Health &
9 Saf. Code §§ 42301.10, 42331. As a result, it is clear that the issuance of an ATC Permit is not a
10 ministerial decision. Furthermore, The District has also determined that this project is
11 discretionary, stating that it has “conducted a Preliminary Review pursuant to CEQA Guidelines
12 §15060, and has determined that the Project is a discretionary project as defined under CEQA
13 Guidelines §15357.”⁵⁸ As such, the Project is not ministerial and CEQA applies.

14 **4. The District is Required to Undergo Environmental Review for the ATC Permit.**

15 As described above, the District must assume the role of a lead and/or responsible agency
16 and engage in a comprehensive environmental review ahead of its ATC Permit determination as
17 required by CEQA. The District may not issue an ATC permit until a CEQA review evaluating
18 and addressing the impacts, mitigation measures, and alternatives is completed by Kern County or
19 the District. Its environmental review must include an adequate project description that includes
20 all equipment and activities associated with the hydrogen project, including the organic liquid
21 storage tanks. See *Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm’rs*, 91
22 Cal.App.4th 1344, 1358 (2001) (“...CEQA forbids ‘piecemeal’ review of the significant
23 environmental impacts of a project.”).

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28 ⁵⁸ See Exhibit C, p. 23.

1 **C. The ATC Permit Is Inconsistent with the Arvin/Lamont CERP and Health &**
2 **Safety Code § 44391.2.**

3 Health and Safety Code Section 44391.2 requires the District to develop, implement, and
4 enforce a CERP that “shall result in emissions reductions in the community” for communities
5 selected under the Community Air Protection Program, such as the Arvin/Lamont community.
6 Health & Saf. Code § 44391.2(c)(5). The Arvin/Lamont CERP, adopted June 16, 2022 and
7 approved by CARB pursuant to section 44391.2(c)(4), establishes quantitative
8 emissions-reduction targets, identifies specific regulatory and enforcement measures, and
9 includes implementation timelines and enforcement mechanisms.⁵⁹ Throughout the CERP
10 development and implementation process, community members have consistently urged the
11 District to utilize the CERP as a mechanism to reduce emissions from the refinery.⁶⁰

12 The District’s evaluation of the challenged ATC Permit, however, treated the project
13 primarily as a conventional Rule 2201 permitting matter, without addressing the separate
14 community-level emissions-reduction objectives and cumulative exposure concerns reflected in
15 the Arvin/Lamont CERP and Section 44391.2. Although the project authorizes additional
16 refinery-related VOC and toxic air contaminant emissions within an AB 617 community
17 specifically selected due to cumulative pollution burdens and persistent air quality concerns, the
18 administrative record does not analyze whether the project is consistent with the CERP’s
19 emissions-reduction commitments or broader objectives of reducing cumulative exposure burdens
20 within the community. Nor does the engineering evaluation reconcile the authorized emissions
21 increase with the District’s obligations under the CERP or its identified stationary-source
22 reduction strategies.

23 As discussed below, Bisher has identified substantial flaws in the District’s VOC
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27 ⁵⁹ Health & Saf. Code § 44391.2(c)(3); see *also* Exhibit A, pp. 3, 143.

28 ⁶⁰ See Exhibit O. Letter to the District Regarding the Arvin/Lamont Emissions Reduction Program (June 6, 2022).

1 emissions calculations for the proposed hydrogen recovery unit.⁶¹ Those errors bear directly on
2 the CERP analysis because they materially affect the scale of the project’s proposed emissions
3 increase and the extent to which the project undermines the CERP’s emissions-reduction
4 objectives.

5 The procedural history further demonstrates the disconnect between the District’s
6 permitting process and the community-based planning process established under AB 617. While
7 the District was actively evaluating Kerin Energy’s permit application between May 2025 and
8 April 2026, the Arvin/Lamont Community Steering Committee continued meeting regularly as
9 part of ongoing CERP implementation. Yet the Project was not discussed at any Steering
10 Committee meeting until December 4, 2025, when it arose during public comment rather than as
11 an agendized item. Community members therefore had little meaningful opportunity to evaluate
12 or discuss how the proposed emissions increase related to the emissions-reduction commitments
13 and priorities reflected in the Arvin/Lamont CERP before the District advanced the permitting
14 process. These circumstances further support the conclusion that the District failed to
15 meaningfully evaluate the relationship between the Project and the emissions-reduction objectives
16 embodied in the Arvin/Lamont CERP.

19 **1. Statutory and Regulatory Framework**

20 Health and Safety Code Section 44391.2 imposes mandatory obligations on air districts in
21 communities selected under the AB 617 Community Air Protection Program. The statute provides
22 that the District “shall adopt” a CERP that includes emissions-reduction targets, specific
23 reduction measures, implementation schedules, and enforcement provisions. Health & Saf. Code
24 § 44391.2(c)(2)–(3). The statute further provides that the program “shall result in emissions
25 reductions in the community.” § 44391.2(c)(5). Compliance with a CERP, “including its
26

27 ⁶¹ See Exhibit N at ¶¶ 7-21.
28

1 implementation,” is enforceable by the District and CARB. § 44391.2(c)(8).

2 The Arvin/Lamont CERP was developed pursuant to those statutory directives and
3 approved by CARB. The CERP identifies specific measures intended to reduce emissions and
4 exposure burdens within the community, including regulatory and enforcement measures directed
5 at stationary sources, refinery-related emissions, and toxic air contaminants. The District
6 therefore could not reasonably ignore the CERP and its community-level emissions-reduction
7 objectives when evaluating additional refinery-related emissions within the community.
8

9 CARB’s Community Air Protection Blueprint 2.0 (“Blueprint 2.0”) likewise contemplates
10 that permitting decisions within AB 617 communities will account for community-specific
11 emissions-reduction objectives.⁶² Among other things, Blueprint 2.0 states that air districts should
12 use the Technology Clearinghouse in developing BACT and T-BACT determinations for new or
13 modified sources within or surrounding selected communities, and further directs districts to
14 evaluate potential disparate impacts in permitting decisions affecting those communities.
15

16 In response to public comments, the District asserted that the CERP “does not establish a
17 separate permitting standard.”⁶³ Petitioners do not contend that the CERP independently replaces
18 Rule 2201 or other applicable permitting requirements. The issue, rather, is that the District
19 approved a project authorizing additional VOC emissions within an AB 617 community without
20 meaningfully evaluating how the project’s additional VOC emissions relate to the District’s
21 CERP and its stated community-level emissions-reduction objectives.
22

23 **2. The District Did Not Analyze the Project’s Consistency with the** 24 **CERP’s VOC Reduction Commitments.**

25 The Arvin/Lamont CERP projects approximately 161 tons of VOC reductions through
26

27 ⁶² Community Air Protection Program Blueprint 2.0,
<https://ww2.arb.ca.gov/capp/mdc/bp2/community-air-protection-program-blueprint-20> (accessed May 29, 2026).

28 ⁶³ See Exhibit C, p. 85.

1 implementation of the program's identified measures.⁶⁴ Those reductions form part of the
2 District's broader obligation under Section 44391.2(c)(5) to achieve emissions reductions within
3 the community.

4 The challenged ATC Permit, however, authorizes a significant increase in VOC emissions
5 from refinery operations within the AB 617 community. Although the District calculated Project
6 emissions at approximately 483 pounds annually, Bisher's declaration establishes that the Project
7 may emit approximately 145,955 pounds of VOCs annually when calculated using Method 1.⁶⁵
8

9 Yet the administrative record does not contain any meaningful analysis explaining how
10 authorizing VOC emissions at that scale from refinery operations within the AB 617 community
11 is consistent with the District's obligations under the CERP to achieve community-level
12 emissions reductions. Nor does the record address how additional refinery-related VOC emissions
13 align with the CERP's stated emissions-reduction objectives and identified concerns regarding
14 stationary-source emissions. Those omissions are significant given the central role VOC
15 reductions play in the CERP's emissions-reduction framework and the community's documented
16 cumulative exposure burdens associated with refinery operations, industrial sources, toxic air
17 contaminants, and regional pollution impacts.⁶⁶
18

19 **3. The District Relied on Existing Rule 4455 Thresholds While Committing**
20 **Under the CERP To Evaluate Whether Rule 4455 Requires Strengthening.**
21

22 The tension between the ATC Permit approval and the CERP is particularly apparent with
23 respect to Rule 4455. The District's emissions analysis relies heavily on compliance with existing
24 Rule 4455 leak thresholds and associated assumptions regarding fugitive emissions. At the same
25 time, however, the Arvin/Lamont CERP specifically identifies Rule 4455 as one of the
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27 ⁶⁴ See Exhibit A, p. 3.

28 ⁶⁵ See Exhibit N, ¶ 20.

⁶⁶ See Exhibit A, pp. 5-8, 63.

1 stationary-source rules the District committed to evaluate for potential strengthening in order to
2 achieve further reductions within the community.⁶⁷

3 That commitment is significant. It reflects the District's own recognition, through the AB
4 617 process, that existing refinery leak-detection and control requirements may warrant further
5 review in light of community-specific air quality concerns in Arvin/Lamont. That commitment is
6 particularly relevant here because the District's permitting analysis for the challenged ATC Permit
7 relies heavily on existing Rule 4455 assumptions regarding fugitive refinery emissions. Yet the
8 engineering evaluation for this project treated compliance with existing Rule 4455 thresholds as
9 sufficient without addressing the District's parallel commitment under the CERP to evaluate
10 whether those same standards are sufficient to meet the Air District's air quality obligations in AB
11 617 communities to reduce refinery-related emissions. The record contains no discussion
12 reconciling those two positions.
13

14
15 Petitioners do not contend that the District was required to complete a Rule 4455
16 amendment before acting on the ATC Permit. However, where the District has expressly
17 committed under a CARB-approved and District-adopted CERP to evaluate whether existing
18 refinery leak standards are adequate for the affected community, the District was at minimum
19 required to meaningfully address that issue when authorizing a new refinery-related emissions
20 source within that same community. Under these circumstances, the District's failure to evaluate
21 the project's consistency with the Arvin/Lamont CERP, Section 44391.2, and the CERP's
22 identified stationary-source reduction strategies renders the permitting analysis incomplete and
23 inadequately supported by the record.
24

25 **4. The Record Does Not Reflect the Facility-Specific Risk Evaluation**
26 **Contemplated by Health and Safety Code Section 44391.2(b).**
27

28

⁶⁷ *Id.* at p. 104.

1 The Arvin/Lamont CERP identifies petroleum refinery operations and oil and gas
2 activities as significant sources of concern within the community and specifically identifies
3 benzene and toluene as priority toxic air contaminants.⁶⁸ The District's Health Risk Assessment
4 for the challenged project likewise identifies toluene and benzene among the toxic air
5 contaminants associated with fugitive emissions from the proposed unit.⁶⁹ The record further
6 reflects that the facility's cumulative acute hazard index already approaches the District's
7 significance threshold.⁷⁰

9 The CERP itself recognizes the health significance of toxic air contaminant exposure
10 within the Arvin/Lamont community and notes guidance from the Office of Environmental
11 Health and Hazard Assessment ("OEHHA") that carcinogenic toxic air contaminants do not have
12 safe exposure thresholds.⁷¹ Those concerns are particularly relevant in an AB 617 community
13 designated based on cumulative exposure burdens and persistent air quality impacts.

15 Health and Safety Code section 44391.2(b)(3) contemplates assessment of whether a
16 facility's emissions may "cause or significantly contribute to a material impact on a sensitive
17 receptor location or disadvantaged community," including whether a risk reduction audit and plan
18 may be warranted. Section 44391.2(b)(4) further contemplates evaluation of "existing and
19 available measures for reducing emissions," including consideration of BACT and T-BACT
20 measures.

22 The record for the challenged ATC Permit does not contain any meaningful discussion of
23 how the Project's additional toxic air contaminant emissions fit within the broader cumulative
24 exposure concerns identified through the AB 617 process for the Arvin/Lamont community. Nor
25 does the record meaningfully address how additional refinery-related toxic emissions fit within

26 ⁶⁸ See Exhibit A, pp. 8, 97.

27 ⁶⁹ See Exhibit C., p. 47.

28 ⁷⁰ *Id.*

⁷¹ See Exhibit A., p. 8.

1 the District's stated community-level emissions-reduction objectives and concerns regarding
2 refinery and oil-and-gas emissions in Arvin/Lamont. Those omissions are significant given the
3 facility's location within a designated AB 617 community and the District's acknowledgement of
4 existing cumulative toxic burdens.

5 Taken together, the record reflects that the District evaluated the challenged ATC Permit
6 primarily as a conventional Rule 2201 permitting matter, without meaningfully addressing the
7 considerations and emissions-reduction objectives reflected in the Arvin/Lamont CERP. The
8 engineering evaluation does not analyze whether the Project's authorized VOC emissions are
9 consistent with the CERP's emissions-reduction commitments, does not reconcile the District's
10 reliance on existing Rule 4455 thresholds with the CERP's commitment to evaluate that rule for
11 further strengthening, and does not evaluate whether the Project's additional benzene and toluene
12 emissions warrant further facility-specific assessment under section 44391.2(b).
13

14 In an AB 617 community specifically selected due to cumulative exposure burdens and
15 persistent air quality concerns, these omissions are significant. The record does not reflect that the
16 District meaningfully considered the relationship between the challenged ATC Permit, the
17 Arvin/Lamont CERP, and the community-level emissions-reduction objectives and
18 stationary-source concerns identified through the AB 617 process. Given the urgent need to
19 improve air quality and health outcomes in the communities at the fenceline of the Kern Energy
20 refinery, as acknowledged by the Arvin/Lamont CERP, the District must reject the ATC Permit as
21 inconsistent with CERP implementation.
22

23 **VI. CONCLUSION**

24 For the foregoing reasons, the Hearing Board must revoke the ATC Permit for the Project.
25 The administrative record demonstrates multiple legal and technical deficiencies, including
26 violations of District Rule 2201, CEQA, and the District's obligations under Health and Safety
27
28

