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4 **BEFORE THE HEARING BOARD OF THE**
5 **BAY AREA AIR QUALITY MANAGEMENT DISTRICT**
6 **STATE OF CALIFORNIA**

7 AIR POLLUTION CONTROL OFFICER of the)
8 BAY AREA AIR QUALITY MANAGEMENT)
9 DISTRICT)

10 Complainant,)

11 vs.)

12 TESLA MOTORS, INC.)

13 Respondent.)

DOCKET NO. **3751**

ACCUSATION OF VIOLATION OF
REGULATION 2, RULE 1, SECTION 307
AND REGULATION 2, RULE 6,
SECTION 307

FILED

MAY 02 2024

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

14
15 **I. INTRODUCTION**

16 1. Respondent Tesla Motors, Inc. (Respondent or Tesla), operates two paint shops at its
17 electric vehicle manufacturing facility in Fremont. These paint shops emit Precursor Organic Compounds
18 (POCs) and Toxic Air Contaminants (TACs). To protect air quality and public health, Tesla is required to
19 control emissions of these air pollutants using an abatement system that captures and collects the
20 pollutants and then abates them, primarily through incineration using a device called a thermal oxidizer.

21 2. Tesla has been violating, and continues to violate, the requirements in its permit and Air
22 District regulations to abate emissions from its paint shops. Tesla has emitted harmful POCs and Toxic
23 Air Contaminants directly into the atmosphere unabated, for which it received 112 Notices of Violation
24 from the Air District since 2019, each of which included one or more days of violation. Each such
25 violation emits illegal air pollution in varying amounts. These violations are recurring, and they
26 negatively affect public health and the environment.

27 3. Tesla's recurring violations result from a variety of causes: In some cases, Tesla's thermal
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1 oxidizer or related components of the abatement system malfunction, and emissions are vented directly to
2 the atmosphere without proper abatement. In other cases, the abatement equipment is functioning, but
3 Tesla either bypasses the abatement equipment and vents the emissions to the atmosphere without proper
4 abatement or shuts the abatement equipment down and vents the emissions to the atmosphere without
5 proper abatement when other components of the production lines in the paint shops malfunction. These
6 violations occur due to repeated malfunction of the same equipment, or due to actions of Tesla staff or its
7 contractors. Whatever the cause, Tesla needs to take steps immediately to stop these frequent and
8 recurring violations.

9 4. Therefore, pursuant to Health & Safety Code sections 42450 et seq., the Air Pollution
10 Control Officer (APCO) respectfully requests that the Hearing Board issue a Conditional Order for
11 Abatement ordering Tesla to stop operating the North and South Paint Shops unless it develops and
12 implements a plan to address these recurring, intermittent and ongoing violations. The APCO respectfully
13 requests that the Hearing Board do so by first issuing an initial order requiring Tesla to (i) hire an
14 independent third-party engineering firm or firms to conduct an objective study to determine the causes of
15 these recurring problems and make recommendations on the actions Tesla needs to take to stop them; and
16 then (ii) return to the Hearing Board with a proposed plan to implement the recommendations from that
17 study to remediate these problems within a specific timeframe. The APCO requests that the Hearing
18 Board then hold a further hearing on Tesla’s proposed plan and issue an order requiring Tesla to
19 implement the plan and bring an end to these ongoing violations.

20 5. This proposed order is necessary and proper because, even after extensive discussion
21 between the Parties, Tesla’s efforts alone have not been enough to stem the violations and resulting
22 unabated emissions. An objective outside party will have additional skills and resources to properly
23 evaluate the problems and recommend the necessary changes, and then Tesla will have an opportunity to
24 develop a plan to incorporate those objective recommendations within a reasonable timeframe and
25 consistent with Tesla’s knowledge of its business.

1 **II. PARTIES**

2 Complainant: Air Pollution Control Officer

3 6. The Air District is organized under Health and Safety Code sections 40200 et seq. and
4 operates under Health and Safety Code sections 40000 et seq., 40200 et seq., 40700 et seq., and 42300 et
5 seq. The Air District is a governmental agency charged with the primary responsibility for controlling air
6 pollution from nonvehicular sources in all or portions of the nine Bay Area counties, including all of
7 Alameda County, where Tesla’s facility is located. (Health & Saf. Code, §§ 40000, 40200.) To carry out
8 its legal mandate, the Air District is authorized to adopt and enforce rules and regulations to achieve State
9 and federal ambient air quality standards and reduce criteria pollutants, and to enforce all applicable
10 provisions of State and federal law. (Health & Saf. Code, § 40001, subds. (a) & (b).)

11 7. The APCO is appointed by the Air District’s Board of Directors, (Health & Saf. Code, §
12 40750), to “observe and enforce” all District regulations, permit conditions, variances, and enumerated
13 provisions of the Health and Safety Code. (Health & Saf. Code, § 40752.) The APCO may impose
14 conditions in any permit that are “reasonably necessary to ensure compliance with federal or California
15 law or District regulations.” (Dist. Reg. 2, rule 1, § 403.) The APCO is also authorized to seek an order
16 for abatement from the District’s Hearing Board to stop a person from violating “any order, rule, or
17 regulation prohibiting or limiting the discharge of air contaminants into the air.” (Health & Saf. Code
18 § 42451(a); Hearing Board Rules, Bay Area Air Quality Management District Hearing Board, § 4.1 (June
19 2, 2011).)

20 Respondent: Tesla

21 8. Respondent owns and operates an electric vehicle manufacturing and assembly facility at
22 45500 Fremont Boulevard, Fremont, California (Facility). Respondent’s Facility is a major facility,
23 meaning it “has the potential to emit 100 tons per year or more of any regulated air pollutant.” (Dist. Reg.
24 2, rule 6, § 212.1.) At that Facility, Tesla operates two paint shops of relevance—the North Paint Shop
25 and the South Paint Shop (collectively, the Paint Shops)—in which Tesla paints electric vehicles that it
26 produces for sale.

27 9. Respondent has owned and operated the North and South Paint Shops, which are and have
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1 been subject to permits issued by the Air District and other applicable Air District requirements, at all
2 times relevant to this accusation.

3 **III. JURISDICTION**

4 10. The Hearing Board may, on its own motion or upon the motion of the APCO, and after
5 notice and a hearing, issue an order for abatement against a business when the Hearing Board finds that
6 the business is in violation of an Air District rule or regulation prohibiting or limiting the discharge of air
7 contaminants into the air. (Health & Saf. Code, §§ 40808, 42451, subd. (a); *see also* Dist. Hearing Bd.
8 Rules, § 4.1.) The Hearing Board may issue an abatement order without finding that the business is in
9 violation of an Air District rule or regulation prohibiting or limiting the discharge of air contaminants into
10 the air where the APCO and accused business have both stipulated to the order. (Health & Saf. Code, §
11 42451, subd. (b).)

12 11. An abatement order must “be framed in the manner of a writ of injunction requiring the
13 respondent to refrain from a particular act.” (Health & Saf. Code, § 42452.) The order may also “be
14 conditional and require a respondent to refrain from a particular act unless certain conditions are met.”
15 (*Ibid.*) In the case of a conditional abatement order, the Hearing Board may impose in the order any
16 conditions on the respondent that the Hearing Board deems proper and necessary. (Dist. Hearing Bd.
17 Rules, § 4.13.)

18 12. Respondent is and was at all relevant times a Texas corporation owning and operating the
19 Facility, including the North and South Paint Shops, located in Fremont, California, which is within the
20 boundaries subject to the Hearing Board’s jurisdiction. Respondent has committed recurring and ongoing
21 violations of an Air District rule or regulation prohibiting or limiting the discharge of air contaminants
22 into the air. Therefore, the Hearing Board has jurisdiction to issue an abatement order directed to Tesla
23 with respect to the violations.

24 **IV. TESLA’S RECURRING AIR POLLUTION EMISSIONS VIOLATIONS**

25 13. At the Paint Shops, Respondent’s operations include spray-coating car bodies and other car
26 parts in spray booths, and then sending the coated items into curing ovens so that the applied coatings can
27 cure and dry. A graphical representation of the North Paint Shop’s operational flow is attached hereto as
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1 Exhibit A1. A graphical representation of the South Paint Shop’s operational flow is attached hereto as
2 Exhibit A2.

3 14. The coating operations in the Paint Shops are made up of various sources of air pollutants
4 (ovens, booths, et cetera) that generate multiple different types of air pollution, including precursor
5 organic compounds (POC) and toxic air contaminants (TAC). In order to control emissions of these
6 pollutants into the atmosphere from each source, Tesla’s permit conditions require Tesla (i) to conduct the
7 Paint Shops’ spraying, coating, and curing operations in an enclosed system that captures and collects a
8 specific amount of the emissions caused by those activities, and then (ii) to route the captured emissions
9 from each source to abatement systems assigned to destroy a specific amount of the emissions from each
10 source in order to stop them all from being sent to the atmosphere. Each source is required to be abated by
11 a specific abatement system or device, and the Air District assigns each source and each abatement device
12 a number to make this clear. Tesla must further ensure the abatement equipment is on and operating at
13 temperatures high enough to efficiently ignite or destroy pollutants from the Paint Shops’ operations.
14 These requirements are imposed to protect public health and the environment, and to comply with federal
15 and State law. The permit language setting out the abatement requirements for the Paint Shops is attached
16 hereto as Exhibit B.

17 15. Tesla has violated these permit conditions and has emitted harmful air pollutants directly
18 into the atmosphere unabated, for which the Air District has issued Tesla over 112 notices of violation¹
19 since 2019, as shown in Exhibit C. Each such violation of the applicable permit requirements is a
20 violation of Air District Regulation 2, Rule 1, Section 307 (“Failure to Meet Permit Conditions”) and
21 Regulation 2, Rule 6, Section 307 (“Non-Compliance, Major Facility Review”); the specific regulatory
22 language is attached hereto as Exhibit D. The amount of improperly abated emissions from each event
23 may vary, based on the specific circumstances, including the number of vehicles being produced, the
24 amount of emissions still unabated at the time of the event, and the length of the bypass event. For
25 example, Tesla reported that one bypass event released 61.1 pounds of POCs in just two minutes, and
26 another released 94.1 pounds of POCs.²

27 ¹ Each NOV includes one or more violations by Tesla.

28 ² The Air District views Tesla’s emissions calculation methodology as overly conservative, so these numbers could be much

1 16. These permit violations occur in several different manners, with the following three being
2 the most common and most recurrent:

3 a) The abatement equipment suffers a mechanical or other failure that causes the abatement
4 equipment to shut down. When this happens, abatement stops as soon as the abatement equipment shuts
5 down, and Tesla releases the remaining harmful air pollutants from the Paint Shops' operations that are
6 still in the system at that point directly to the atmosphere without proper abatement. This same abatement
7 equipment often suffers failure over and over, such as thermal oxidizer A-30183.

8 b) A mechanical or other failure occurs in a component of the production line, often one that
9 fails over and over, such as an air flow switch, or a process upset or malfunction occurs, such as vehicles
10 crashing into one another when they are not properly overseen by Tesla staff. When this happens, Tesla
11 has programmed its operations to automatically shut down the whole process, including the abatement
12 system, and purge emissions created by the Paint Shops' operations and still in the system directly to the
13 atmosphere without the proper abatement, even if the abatement equipment is still working properly. In
14 these situations, the abatement equipment is still able to function and could still be used to abate the
15 emissions, but Tesla's system design shuts down the entire process and illegally vents all the emissions
16 produced by Tesla's operations and still in the system up to that point directly to the atmosphere.

17 c) One of the thermal oxidizers' operating temperatures drops below 1400 degrees
18 Fahrenheit, which is the required minimum operating temperature of thermal oxidizers under Tesla's
19 permit. When this happens, Tesla has designed its operations to automatically shut down the thermal
20 oxidizer altogether and purge all unabated emissions produced by Tesla's operations up to that point and
21 that are still in the system directly to the atmosphere without the proper abatement. In many of these
22 cases, Tesla could keep the thermal oxidizer online and abating emissions while the temperature comes
23 back above 1400°F, which would provide some abatement, instead of shutting it down completely and
24 emitting large amounts of illegal, improperly abated air pollution.

25 17. Tesla's pattern of repeated and recurring violations will continue unless Respondent takes
26 steps to investigate how to stop the violations and implements a plan for doing so in a timely manner.

27 _____
28 higher.

1 22. Respondent’s failure to abate all emissions from the operation of its Paint Shops thus
2 negatively impacts the environment and public health.

3 **VI. CONCLUSION AND REQUEST FOR CONDITIONAL ORDER FOR ABATEMENT**

4 23. Thus, the Air District alleges that Tesla is committing recurring and ongoing violations of
5 Air District Regulations 2-1-307 and 2-6-307 by violating its permit conditions by failing to properly
6 operate its abatement equipment and abate all the emissions associated with the operations of the Paint
7 Shops, and instead emitting POCs and toxic air contaminants into the atmosphere without the proper
8 abatement.

9 24. Therefore, Petitioner seeks a Conditional Order for Abatement.

10 25. It is not unreasonable to require Respondent to comply with Air District rules and its
11 permit.

12 26. The issuance of the requested Conditional Order for Abatement is not expected to result in
13 the closing or elimination of an otherwise lawful endeavor, but if it does result in such closure or
14 elimination, it would not be without a corresponding benefit in reducing air contaminants.

15 27. The requested Conditional Order for Abatement is not intended to be, nor will it act as, a
16 variance.

17 28. The issuance of the requested Conditional Order for Abatement, upon a fully noticed
18 hearing, will not constitute a taking of property without due process of law.

19 29. The requested conditions are proper and necessary.

20 WHEREFORE, the APCO respectfully requests the following:

21 i) That the Hearing Board issue a Conditional Order for Abatement directing Respondent to
22 cease operation of the North Paint Shop and the South Paint Shop unless Respondent takes the following
23 specific steps to address its ongoing and recurring violations of its permit requirements to abate emissions
24 from the North Paint Shop and South Paint Shop:

25 a. Hire an independent third-party engineering firm or firms to conduct a study to
26 determine the causes of Respondent’s recurring violations and make recommendations for how to
27 eliminate or minimize such violations, and
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PETITIONER-EXHIBIT A1

CBI
REMOVED

PETITIONER-EXHIBIT A2

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REMOVED

PETITIONER-EXHIBIT B

North Paint Shop – Permit Condition 26027

C. Conditions for

S-4005 E-Coat System

S-4006 Oven #1 (E-Coat); Maximum Hourly Firing Rate: 15.19 MMBTU/hour

S-4011 Oven #6 (E-Coat); Maximum Hourly Firing Rate: 15.19 MMBTU/hour

4. The owner/operator shall ensure POC emissions from the Ovens #1 and #6 (S-4006 and S-4011) are abated at all times of operation by the properly installed and properly maintained regenerative thermal oxidizers A-3008 (abating S-4006) and A-1008 (abating S-4011).

(Basis: Regulation 2-1-403)

5. The mass emission calculations for the Ovens #1 and #6 (S-4006 and S-4011) are based on an overall efficiency of the emission control system of 80.75% (oven capture efficiency of 85% x regenerative thermal oxidizer destruction efficiency of 95% by wt.)

(Basis: Cumulative Increase, Regulation 2-1-403)

E. Conditions for

S-3008 Spray Booth #1 (Primer)

S-3009 Oven #2 (Primer); Maximum Hourly Firing Rate: 15.09 MMBTU/hour

S-1008 Spray Booth #4 (Primer)

S-1009 Oven #7 (Primer); Maximum Hourly Firing Rate: 15.09 MMBTU/hour

4. The owner/operator shall ensure POC emissions from the Spray Booths #1 and #4 (S-3008 and S-1008) and the Ovens #2 and #7 (S-3009 and S-1009) are abated at all times of operation by the properly installed and properly maintained regenerative thermal oxidizers A-3008 (abating S-3008 & S-3009) and A-1008 (abating S-1008 & S-1009).

(Basis: Regulation 2-1-403)

5. The mass emission calculations for the Spray Booths #1 and #4 (S-3008 and S-1008) and the Ovens #2 and #7 (S-3009 and S-1009) are based on an overall efficiency of the emission control system of 66.5% (booth & oven capture efficiency of 70% x regenerative thermal oxidizer destruction efficiency of 95% by wt.) The calculations also assume emissions from the sealant operations that are unabated are emitted in the Primer Ovens.

(Basis: Cumulative Increase, Regulation 2-1-403)

F. Conditions for

S-3014 Spray Booth #2 (Basecoat)

S-3015 Oven #4 (Basecoat); Maximum Hourly Firing Rate: 2.95 MMBTU/hour

S-1014 Spray Booth #5 (Basecoat)

S-3017 Oven #9 (Basecoat); Maximum Hourly Firing Rate: 2.95 MMBTU/hour

4. The owner/operator shall ensure POC emissions from the Basecoat Booths and Basecoat Ovens are abated at all times of operation by the properly installed and properly maintained regenerative thermal oxidizers A-3008 (abating S-3014 & S-3015) and A-1008 (abating S-1014 & S-3017).

(Basis: Regulation 2-1-403)

5. The mass emission calculations for the Spray Booths #2 and #5 (S-3014 and S-1014) and Ovens #4 and #9 (S-3015 and S-3017) are based on an overall efficiency of the emission control system

of 66.5% (booth & oven capture efficiency of 70% x regenerative thermal oxidizer destruction efficiency of 95% by wt.).

(Basis: Cumulative Increase, Regulation 2-1-403)

G. Conditions for

S-3016 Spray Booth #3 (Clearcoat)

S-4010 Oven #5 (Clearcoat); Maximum Hourly Firing Rate: 16.9 MMBTU/hour

S-4014 Spray Booth #6 (Clearcoat)

S-1015 Oven #10 (Clearcoat); Maximum Hourly Firing Rate: 16.9 MMBTU/hour

4. The owner/operator shall ensure POC emissions from the Spray Booths #3 and #6 (S-3016 and 4014) and Ovens #5 and #10 (S-4010 and S-1015) are abated at all times of operation by the properly installed and properly maintained regenerative thermal oxidizers A-1008 (abating S-3016 & S-4010) and A-3008 (abating 4014 & S-1015).

(Basis: Regulation 2-1-403)

5. The mass emission calculations for the Spray Booths #3 and #6 (S-3016 and 4014) and Ovens #5 and #10 (S-4010 and S-1015) Ovens are based on an overall efficiency of the emission control system of 66.5% (booth & oven capture efficiency of 70% x regenerative thermal oxidizer destruction efficiency of 95% by wt.).

(Basis: Cumulative Increase, Regulation 2-1-403)

South Paint Shop – Permit Condition 27161

15. *The owner/operator of A-30192, A-1007, A-30180, A-30181, A-30182, and A-30183 shall ensure that the POC/NPOC emissions from S-1002, S-1007, S-4036, S-4037, S-4038, S-4039, and S-4041 are abated at all times of operation by the properly installed, properly operated, and properly maintained Thermal Oxidizers A-1002, A-1007, A-30180, A-30181, A-30182, and A-30183, respectively.*

(Basis: Cumulative Increase, Regulation 2-1-403)

PETITIONER-EXHIBIT C

NOV #	Issue Date
A57016	1/16/2019
A55799	1/30/2020
A55802	5/9/2019
A59578	1/30/2020
A59579	1/30/2020
A59580	1/30/2020
A59586	2/7/2020
A58769	6/16/2020
A58770	8/31/2020
A58771	10/5/2020
A58777	2/25/2021
A60205	4/13/2021
A60213	7/28/2021
A60215	9/14/2021
A60216	10/7/2021
A60217	10/12/2021
A60223	12/7/2021
A60224	12/21/2021
A61154	2/24/2022
A61155	4/25/2022
A61156	4/25/2022
A61157	4/28/2022
A61158	4/28/2022
A61159	4/28/2022
A61160	5/12/2022
A61161	6/1/2022
A61162	6/1/2022
A61163	6/16/2022
A61164	6/16/2022
A61165	6/16/2022
A61166	6/27/2022
A61167	7/12/2022
A61168	7/12/2022
A61169	7/12/2022
A61170	7/12/2022
A61174	9/12/2022
A61175	9/12/2022
A61177	9/22/2022
A61604	5/2/2022
A61753	10/11/2022
A61754	10/17/2022
A61756	11/14/2022

NOV #	Issue Date
A61758	12/7/2022
A61759	12/14/2022
A61763	2/8/2023
A61769	4/3/2023
A61770	4/3/2023
A61771	4/3/2023
A61774	4/26/2023
A61775	4/26/2023
A61777	5/16/2023
A62128	5/23/2023
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A62143	7/19/2023
A62145	8/4/2023
A62146	8/4/2023
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A62150	8/21/2023
A62151	8/21/2023
A62152	8/21/2023
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A62830	8/21/2023
A62841	9/21/2023
A62842	9/21/2023
A62843	9/21/2023
A62845	9/29/2023
A62846	9/29/2023
A62847	9/29/2023
A62848	9/29/2023
A62849	9/29/2023
A62850	9/29/2023
A62851	10/17/2023
A62852	10/17/2023

NOV #	Issue Date
A63012	11/22/2023
A63013	11/22/2023
A63014	11/22/2023
A63015	11/22/2023
A63016	11/22/2023
A63017	11/22/2023
A63018	11/29/2023
A63019	11/29/2023
A63020	11/29/2023
A63025	12/18/2023
A63027	12/28/2023
A63028	12/28/2023
A63029	12/28/2023
A63030	12/28/2023
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A63032	12/28/2023
A63033	1/3/2024
A63041	3/7/2024
A63042	3/7/2024
A63043	3/7/2024
A63044	3/7/2024
A63045	3/14/2024
A63053	4/11/2024
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A63056	4/17/2024
A63057	4/17/2024
A63058	4/17/2024

PETITIONER-EXHIBIT D

2-1-307 Failure to Meet Permit Conditions: A person shall not operate any article, machine, equipment or other contrivance, for which an authority to construct or permit to operate has been issued, in violation of any permit condition imposed pursuant to Section 2-1- 403.

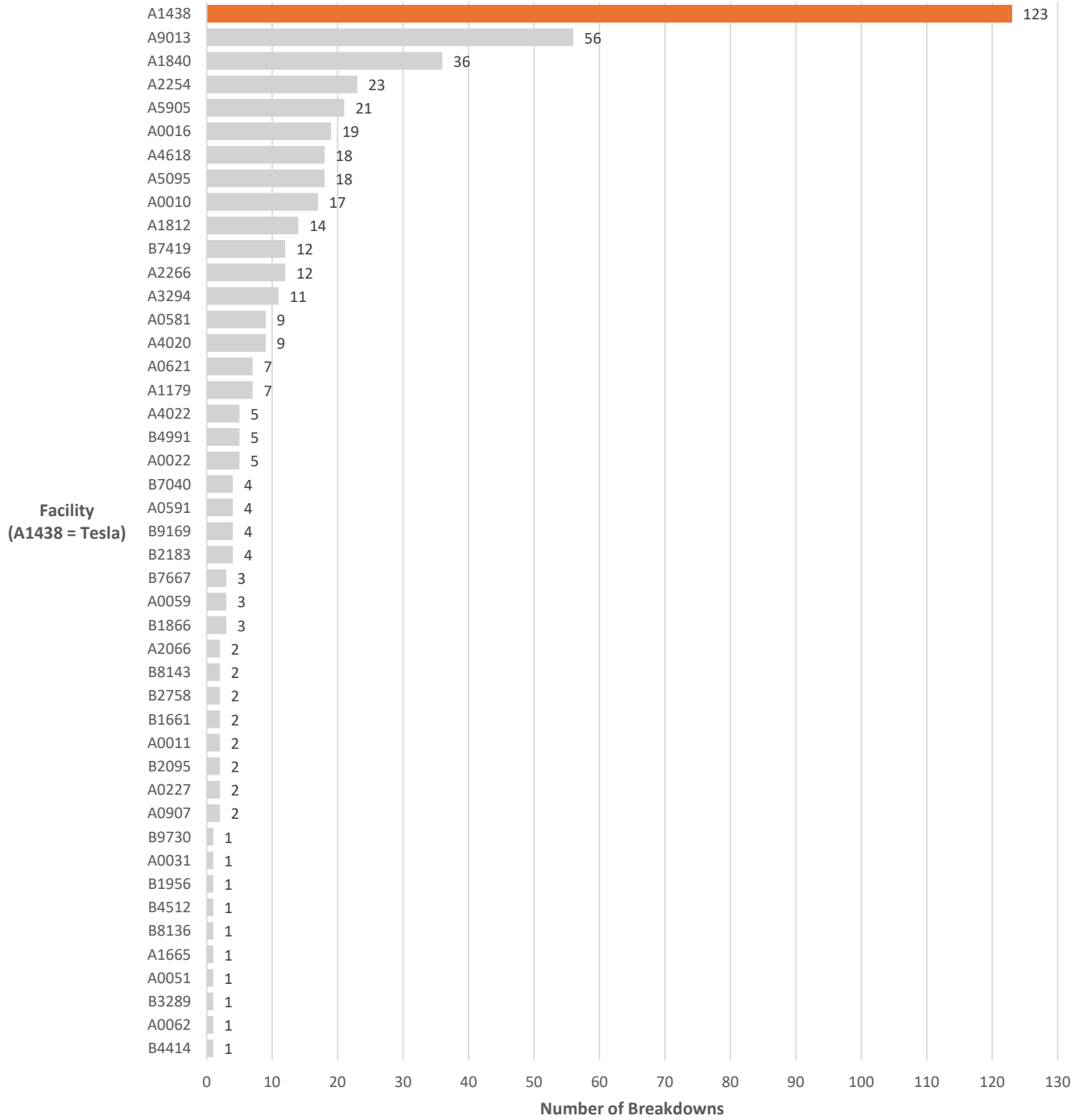
(Adopted 3/17/82; Amended 7/17/91)

2-6-307 Non-compliance, Major Facility Review: Any facility subject to the requirements of this regulation that is not in compliance with any federally enforceable permit condition, any federally enforceable applicable requirement set forth in its major facility review permit, or the requirement to apply for a major facility review permit is in violation of the Clean Air Act and shall be subject to enforcement action, permit termination, permit revocation and reissuance, and/or denial of a permit renewal. Moreover, a facility subject to major facility review which has not submitted a timely and complete permit application by the deadlines set forth in Section 2-6-404 shall not operate.

(Amended 2/1/95, 10/20/99)

PETITIONER-EXHIBIT E

Breakdowns Filed by Title V Facilities
(January 1, 2019 to April 10, 2024)



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**BEFORE THE HEARING BOARD OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
STATE OF CALIFORNIA**

AIR POLLUTION CONTROL OFFICER of the BAY
AREA AIR QUALITY MANAGEMENT DISTRICT

Complainant,

vs.

TESLA MOTORS, INC.

Respondent.

) DOCKET NO. 3751

) PROOF OF SERVICE



I, Magnolia Vinluan-Chan, declare as follows:

I am over the age of 18, not a party to this action and am employed in the City and County of San Francisco at 375 Beale Street, San Francisco, CA 94105.

I served the following documents to the addressees listed below at the addresses specified:

- **ACCUSATION AND REQUEST FOR ORDER FOR ABATEMENT**
- **STATEMENT TO RESPONDENT**
- **NOTICE OF DEFENSE FORM**
- **COPIES OF CALIFORNIA GOVERNMENT CODE SECTIONS 11507.5, 11507.6, AND 11507.7**

By placing the document(s) listed above in a sealed envelope to be sent by Registered Mail, with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed to the person(s) at the address(es) set forth below.

By causing personal delivery of the above documents at the address(es) set forth below.

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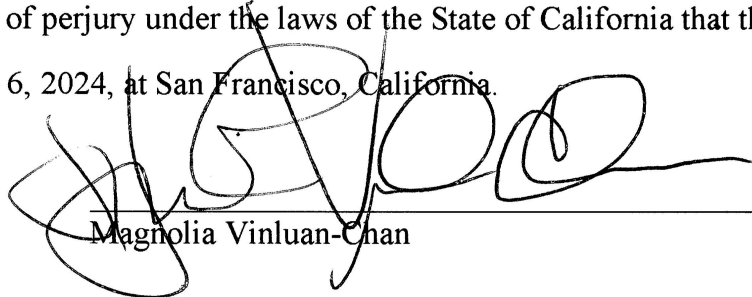
On May 6, 2024, I served the above-listed documents to the addressees at the addresses listed below:

Yamini Narasimhan
Director, EHS
Tesla, Inc.
45500 Fremont Blvd.
Fremont, CA 94538-6326

Tesla Motors, Inc. (aka Tesla, Inc.)
1 Tesla Road
Austin, TX 78725

I am readily familiar with the Bay Area Air Quality Management District's practice of collection and processing of the mail. Under that practice, the mail would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 6, 2024, at San Francisco, California.



Magnolia Vinluan-Chan