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 [PROPOSED] FINDINGS AND DECISION AND STIPULATED CONDITIONAL ABATEMENT ORDER BAY AREA AIR QUALITY MANAGEMENT DISTRICT REGULATIONS 2-1-307 AND 2-6-307

FINDINGS AND DECISION OF THE HEARING BOARD

In accordance with Health and Safety (Health & Saf.) Code sections 42450 and 42451, a hearing on the Accusation and Motion to Enter a Stipulated Conditional Order for Abatement was heard on June 25, 2024, pursuant to notice and in accordance with the applicable provisions of Health and Saf. Code sections 40800 et seq. The following members of the Bay Area Air Quality Management District Hearing Board ("Hearing Board") were present: Valerie Armento, Chair; ____,Vice Chair; _____,_____,_____. Complainant Air Pollution Control Officer ("APCO") of the Bay Area Air Quality Management District ("Air District" or "Complainant") was represented by Alexandra Kamel, Senior Assistant Counsel. Respondent Tesla Motors, Inc. ("Tesla") was represented by Rick Rothman.

At the aforementioned hearing, the public was given an opportunity to testify, evidence was received and the matter was submitted. The parties have stipulated to issuance of this Order. The Hearing Board

finds and decides that good cause exists to issue the Stipulated Order for Abatement ("Stipulated Order" or "Order"). This finding of good cause is based on the following:

1. The Air District is a body corporate and politic established and existing pursuant to Health & Saf. Code sections 40000 et seq., 40200 et seq., 40700 et seq., and 42300 et seq., and is charged with the primary responsibility for controlling air pollution from nonvehicular sources, including the sources at issue in this proceeding, in all or portions of the nine Bay Area counties, including all of Alameda County, where Tesla's North and South Paint Shops are located. (Health & Saf. Code, §§ 40000, 40200.) Complainant is authorized by law to adopt and enforce rules and regulations related to air quality in all nine of the Bay Area Counties, including Alameda County. (Health & Saf. Code, §§ 40001, subds. (a) & (b).) Complainant APCO is appointed by the Air District's Board of Directors, (Health & Saf. Code, § 40750), to "observe and enforce" all District regulations, permit conditions, variances, and enumerated provisions of the Health and Safety Code. (Health & Saf. Code, § 40752.) The APCO may impose conditions in any permit that are "reasonably necessary to ensure compliance with federal or California law or District regulations." (Dist. Reg. 2, rule 1, § 403.) The APCO is also authorized to seek an order for abatement from the District's Hearing Board to stop a person from violating "any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air." (Health & Saf. Code § 42451(a); Hearing Board Rules § 4.1 (June 2, 2011).)

2. Respondent is owns and operates an electric vehicle manufacturing and assembly facility at 45500 Fremont Boulevard, Fremont, California ("Facility"), at which it operates the North Paint Shop and the South Paint Shop (collectively, "the Paint Shops"), where Tesla paints electric vehicles that it produces for sale. The Paint Shops are located and operate within the Air District's jurisdiction, and Tesla is required to obtain a permit(s) for the Paint Shops from the Air District, and to operate the Paint Shops in accordance with the permit(s) issued by the Air District. The Paint Shops emit Precursor Organic Compounds ("POCs") and Toxic Air Contaminants ("TACs"). To protect air quality and public health, Tesla's permits require it to control emissions of these air pollutants using an abatement system that captures and collects the pollutants and then abates them, primarily through incineration using a device called a thermal oxidizer.

3. Regs. 2-1-307 and 2-6-307 require Tesla to operate the Facility, including the Paint Shops, in accordance with all its permit conditions.

4. Complainant alleges that Tesla violated, and continues to violate, Regs. 2-1-307 and 2-6-307 by failing to operate the Paint Shops in accordance with conditions of the Paint Shops' permits; specifically, by failing to properly abate emissions from the operation of the Paint Shops, and by failing to properly maintain and operate its abatement equipment. In particular, the APCO alleges Tesla bypasses the abatement equipment at the Paint Shops, venting the emissions to the atmosphere without proper abatement or shutting the abatement equipment down and venting the emissions to the atmosphere without proper abatement when other components of the production lines in its paint shops malfunction Tesla filed a notice of defense in which it denied all of the allegations.

5. Complainant and Respondent have agreed to stipulate to the issuance of this Conditional Order for Abatement pursuant to Health & Saf. Code section 42451(b). The Hearing Board may issue a stipulated order without finding that Tesla violated any Air District order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air. (Health & Saf. Code § 42451, subd. (b).)

6. This Stipulated Order represents a compromise between the Parties and does not serve as an admission of liability or guilt as to any of the violations alleged in the Accusation.

7. Respondent stated during the hearing that it can comply with the conditions of the Stipulated Conditional Order for Abatement, which are set forth below.

CONCLUSIONS

8. The Parties have stipulated to issuance of this Stipulated Order pursuant to Health & Saf., Code section 42451, subdivision (b).

9. It is not unreasonable to require Tesla to comply with District rules and regulations,

10. The issuance of this Stipulated Order after a fully noticed hearing would not constitute a taking of property without due process of law. The issuance of this Stipulated Order is not expected to result in the closing or elimination of an otherwise lawful business, but if it does result in such closure or elimination, it would not be without a corresponding benefit in reducing air contaminants.

11. This Stipulated Order is not intended to be, nor does it act as, a variance, and Respondent remains subject to all rules and regulations of the Air District, Air District permits, and with all other applicable provisions of federal and California law. Further, nothing herein shall be deemed or construed to limit the authority of the Air District to issue Notices of Violation; seek civil penalties, criminal penalties, or injunctive relief; or to seek further orders for abatement or other legal relief, as allowed by law.

ORDER

THEREFORE, based on the foregoing and good cause appearing, the Hearing Board hereby orders Tesla to comply with all of the following conditions, or in the alternative, cease any operation of the North and South Paint Shops in violation of Regs. 2-1-307 and 2-6-307:

1. Engineering Evaluation and Recommendations for Addressing Unabated VOC Emissions: Tesla shall hire and pay one or more engineering firms, in accordance with this Order, to evaluate and make recommendations on potential options for Tesla to eliminate the emission of unabated VOC emissions from its North and South Paint Shops, as detailed in the scope of work developed under Paragraph 2.a.ii. of this Order, in violation of Tesla's permit conditions and other regulatory requirements.

2. Selection of Engineering Firm(s) and Development of Scope of Work: To comply with Paragraph 1 of this Order, Tesla shall do the following:

a. Within thirty (30) calendar days of the Hearing Board issuing this order, Tesla shall submit to the APCO for approval the following items, in writing:

i. The names of three to five engineering firms that each have expertise in either evaluating equipment like that at Tesla's North and South Paint Shops, or in evaluating reliability and preventive maintenance programs, particularly vehicle production facility preventive maintenance, with summaries of applicable past projects and the kind of expertise provided by each of the firms; and

ii. A written scope of work consistent with this Order that Tesla proposes to provide to the selected engineering firm(s).

b. Within sixty (60) calendar days of receiving the scope of work from Tesla under Paragraph 2.a.ii. of this Order, the APCO shall review the proposed engineering firms and proposed scope

of work submitted by Tesla under Paragraph 2.a and (i) strike from Tesla's list of proposed firms any firm that does not meet the requirements of Paragraph 2.a.i. and (ii) provide any proposed revisions to the proposed scope of work necessary to ensure that the requirements of this Order are fulfilled. If the APCO strikes any firm proposed by Tesla or provides any revisions to the proposed scope of work, the APCO shall provide Tesla with an explanation as to the basis of such decision for the purpose of assisting Tesla in selecting another firm or to make revisions to the scope of work, but this decision is not appealable. The APCO may require Tesla to furnish additional names of firms should the APCO determine that two or more of the originally proposed firms are not suitable, in which case Tesla shall have 15 calendar days from the date on which the APCO notifies Tesla that two or more of the originally proposed firms are not suitable to provide an additional two or more engineering firm names that meet the requirements of this Order. If there is any disagreement between Tesla and the APCO regarding the scope of work, they shall meet and confer about the revisions provided by the APCO. In the event an agreement cannot be reached between Tesla and the APCO regarding the scope of work, the disagreement shall be presented to the Hearing Board for resolution.

c. Within seven (7) calendar days of receiving the APCO's approval of the firms and scope of work under Paragraph 2.b, Tesla shall send the approved firm(s) selected the scope of work produced by the process in Paragraph 2.b.ii, which shall include requiring the firm(s) to:

i. Meet with Air District staff and Tesla before the firm(s) begins its study regarding implementing this Order and its scope of work, and then, every two weeks thereafter, give the APCO an update on its work under this Order; and

ii. Give the APCO, upon request, a copy of any information it obtained, from Tesla or otherwise. If any such information is trade secret or otherwise confidential under California law, Tesla and the APCO shall follow the Air District rules and, where appropriate, any other applicable California laws for handling such information.

d. Within twenty (20) calendar days of sending the firm(s) the scope of work under Paragraph 2.c., Tesla shall attempt to hire one or two of the approved firms, as necessary to fulfill the requirements of this Order. In the event Tesla is unable to hire any of the firms approved by the APCO

under Paragraph 2.b due to scheduling unavailability, Tesla shall provide the APCO three more additional engineering firm names that meet the requirements of this Order, in accordance with Paragraph 2.a.i, and the APCO shall review them in accordance with Paragraph 2b. Tesla must hire a firm with expertise in evaluating equipment like that at Tesla's North and South Paint Shops, and the same or no more than one different firm with expertise in evaluating reliability and preventive maintenance programs, particularly automotive vehicle production facility preventive maintenance.

3. Engineering Firm Access and Independence: Tesla shall do the following with respect to the engineering firm(s) it hires under this Order:

a. Include Air District staff in all written communications it has with the selected firm(s);

b. Permit the firm(s) to talk freely and confidentially with Air District staff at any time, with or without Tesla present or knowing about the conversation or its contents; and

c. Give the firm(s) all access to equipment, control systems, employees, documents, and anything else that the firm(s) determines it reasonably needs to carry out its responsibilities and ensure compliance with this Order. If any such information is trade secret or otherwise confidential under California law, Tesla and the APCO shall follow the Air District rules and, where appropriate, any other applicable California laws for handling such information.

4. Report and Recommendations for Addressing Unabated VOC Emissions: Within ninety (90) calendar days of being hired, the firm(s) shall provide one report to both Tesla and the APCO that (i) is not edited or changed in any way by Tesla, (ii) is signed under penalty of perjury by a licensed electrical Professional Engineer, and a licensed mechanical Professional Engineer; and (iii) includes, at a minimum, all of the following:

a. A description of the firm and its qualifications to fulfill Paragraph 1 of this Order;

b. A summary of how such reviews are generally conducted;

c. A description of the requirements of this Order;

d. A summary of all the steps the firm took, the information it reviewed, and a description of the information and access requested from Tesla and, if Tesla denied any of the firm's requests for information and/or access, a summary of the information requested and Tesla's response;

e. A summary of Tesla's maintenance and reliability plan and its adequacy, as well as any recommendations to improve it or bring it up to automotive vehicle industry standards;

f. Identification and a brief explanation of any unavoidable emergency and/or safety hazards that would result in any emission of unabated VOCs from its North and/or South Paint Shops in violation of Tesla's permit conditions and other regulatory requirements, or a statement that none exist, as applicable;

g. An evaluation and recommendations on ways to eliminate the shutdown and/or bypassing of the North Paint Shop and South Paint Shop abatement systems while there are any emissions in the North Paint Shop and South Paint Shop production lines, except in situations where doing so is absolutely unavoidable for emergency and/or safety reasons. This analysis shall include, for example, and without limitation, ways for Tesla to keep the bypass vents closed and the abatement systems operating when there is a production line upset in the North Paint Shop or South Paint Shop, until all controlled emissions have been exhausted through the abatement system;

h. With respect to situations where shutting down and/or bypassing the North Paint Shop or South Paint Shop abatement systems is absolutely unavoidable for reasons of emergency and/or serious risk to the health and physical safety of persons, the engineering firm(s) shall evaluate and make recommendations on how to minimize the recurrence of the root causes and contributing factors that have given rise to such situations, to the maximum extent feasible. This analysis shall include, for example and without limitation, evaluation of and recommendations regarding (i) improved preventative maintenance of the North Paint Shop and South Paint Shop's thermal oxidizers and other components of the abatement systems, (ii) improved operator training, (iii) replacement of or upgrades to the thermal oxidizers and related components of the abatement systems, (iv) changes to the control logic and/or design of the operations of the North Paint Shop and South Paint Shop, and (v) any other area that could potentially

reduce the recurrence of situations necessitating the shutdown and/or bypassing of the abatement system; and

i. For each recommendation provided in the Report, an estimate of the minimum time needed to implement the recommendation.

5. APCO Review of Engineering Report: Within forty-five (45) calendar days of receiving the firm(s)'s report under Paragraph 4, the APCO may identify any concerns with the report by notifying Tesla and the firm(s). If there is any disagreement between Tesla and the APCO, they shall meet and confer about the firm(s)'s report, and the APCO shall inform Tesla and the firm(s) of any changes to its list of concerns. In the event an agreement cannot be reached between Tesla and the APCO regarding the list of concerns, they shall provide the firm(s) with the APCO's final list of concerns and Tesla's response, if any. Within thirty (30) calendar days of receiving the APCO's final list of concerns and Tesla's response, the firm(s) shall go back and address the issues identified by the APCO and issue a revised report consistent with Paragraph 4 that addresses the APCO's concerns and Tesla's response, with consideration and notation of Tesla's response, if consistent with this Order and the firm's professional responsibilities.

6. Submission of and Hearing On Proposed Plan to Address Unabated VOC Emissions:

a. Within sixty (60) calendar days of the firm(s) issuing a report or revised report, under Paragraphs 4 or 5, as applicable, Tesla shall file with the Hearing Board and serve on the APCO a proposed plan and timeline, not to exceed six months, for implementing all of the firm's recommendations, or, if there are any recommendations that Tesla contends it cannot feasibly implement or will require more than six months to implement, a response, with supporting documentation from an outside entity such as a vendor, demonstrating why it cannot feasibly implement those recommendations or why it will need more than six months to implement those recommendations. Tesla shall not claim it cannot feasibly implement a recommendation based solely on cost or production effects, and any claim of infeasibility must also be based on technical infeasibility. Tesla shall attach to its filing an unaltered version of the firm(s)'s report under Paragraph 4 or 5, as applicable. Tesla's filing required under this

Paragraph 6.a. shall be signed, under penalty of perjury, by a Tesla Vice President-level executive with responsibility for, and control over, the filing.

b. Within sixty (60) calendar days after service of Tesla's proposed plan and timeline, the APCO shall file its response, if any, with the Hearing Board.

c. Within fifteen (15) calendar days after the APCO files its response (or within 15 calendar days after the deadline for the response, if the APCO does not file a response), the Hearing Board shall hold a hearing to determine an appropriate further order to require Tesla to implement the proposed plan and timeline for implementing all of the firm's recommendations.

7. Extensions of Time: Tesla or the APCO may request, and the Hearing Board may grant, reasonable extensions of time for any deadline established in this Order upon a showing of good cause or if the other party does not object. Any such extension shall be subject to the APCOs written consent, which consent shall not be unreasonably withheld. Any such extension shall be issued after a hearing in the form of a further Order, unless Tesla and the APCO stipulate to the extension, in which case a hearing need not be held, but a further Order will still be issued.

8. Reporting of Bypasses and Temperature Excursions: Immediately upon the effective date of this Order, Tesla shall report to the APCO each and every bypass valve opening and thermal oxidizer temperature excursion (where the thermal oxidizer falls below 1400 degrees Fahrenheit for any period of time) at the North and South Paint Shop, whether Tesla believes the event is a deviation or not, within 10 calendar days of the bypass event or any thermal oxidizer temperature excursion occurring; in each such report, Tesla shall include all information required by Standard Condition F of Tesla's Title V permit, as well as emissions and supporting calculation(s). This reporting shall be in addition to Tesla's reporting of bypass valve opening and thermal oxidizer temperature excursions that Tesla identifies and reports as deviations in accordance with Standard Condition F of Tesla's Title V permit. Failing to report a deviation in connection with Tesla's Title V obligations may result in enforcement action.

9. Notices: Where any notice, submission, or communication is required by or related to this Order, it shall be submitted in writing via email to the representative of record in the Hearing Board proceeding which gave rise to this Order. Any Party may change its designated notice recipient or notice

method provided above in accordance with Hearing Board rules. Notices submitted pursuant to this section shall be deemed received upon emailing.

The Hearing Board shall retain jurisdiction over this matter and this Order shall remain in effect until the Hearing Board has entered a further order in accordance with Paragraph 6.c, above.

SO STIPULATED:

Dated: June 18, 2024

By: Alexandra Kamel
ALEXANDRA KAMEL, ESQ.
Senior Assistant Counsel
ALEXANDER G. CROCKETT, ESQ.
General Counsel
Counsel for
PHILIP M. FINE
Executive Officer/APCO
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

Dated: June 18, 2024

By: Rick Rothman
RICK ROTHMAN, ESQ.
DAVID K. BROWN, ESQ.
Counsel for
TESLA MOTORS, INC.

SO ORDERED:

Dated:

By: _____
Valerie J. Armento, Esq.
Hearing Board Chair
Bay Area Air Quality Management District