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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.)

MARTIN MARIETTA MATERIALS, INC.)

Respondent.)

Docket No. **3746**

CONDITIONAL ORDER FOR ABATEMENT
PER HEALTH AND SAFETY CODE
SECTION 42451(b)

FILED
APR 24 2024
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

This matter concerns an Accusation and Request For Conditional Order For Abatement (Petition) filed by the Air Pollution Control Officer (APCO) of the Bay Area Air Quality Management District (Air District). The Respondent is Martin Marietta Materials, Inc. (hereinafter, "Martin Marietta" or "Respondent"). The APCO's initial Petition was filed on October 3, 2023, seeking an order from this Hearing Board requiring Martin Marietta to cease operations at its sand processing facility at Pier 92 at 480 Amador Street in San Francisco (Facility) unless Martin Marietta satisfies certain conditions. The parties subsequently submitted a Proposed Conditional Order for Abatement on April 2, 2024, along with a stipulation and request for its entry. The Proposed Order was modified post-hearing as reflected below.

The Hearing Board held a hearing on April 16, 2024. The hearing was duly noticed in accordance with applicable legal requirements, including California Health & Safety Code section 40823, and members of the public were afforded an opportunity to comment. The following members of the Hearing Board were present: Valerie Armento, Esq., Chair; Barbara Toole O'Neil, MS, QEP, Ch.E., Vice Chair; Dr. Peter Chiu, M.D., P.E.;

1 Rajiv Dabir, P.E.; and Amelia Timbers.

2 **WRITTEN EXPLANATION OF ACTION**

3 Because the APCO and Martin Marietta have stipulated to the entry of this Conditional Order, the
4 Hearing Board must include a written explanation of its action in this Conditional Order. No finding of
5 violation is required to support the order under Health and Safety Code Section 42451(b), and none is included
6 in this Conditional Order. The Hearing Board explains its action as follows.

7 This matter concerns operations at the Facility that are alleged to no longer qualify for an exemption
8 from the requirement to hold a Permit to Operate. There is no allegation that the Facility does not meet any
9 substantive requirements of the Air District regulations. Air District records indicate that operations at the
10 Facility began in 1982 under prior ownership. In 1994, the APCO evaluated the Facility and determined that
11 it was exempt from permitting requirements under Regulation 2, Rule 1 based on the moisture content of the
12 sand processed at the Facility. The APCO issued a certificate of exemption for the Facility specifying that it
13 was exempt subject to certain conditions, including that the operator maintain the sand being processed at an
14 adequate moisture level. In June 2017, Air District staff inspected the Facility (then owned and operated by
15 Respondent's predecessor Lehigh Hanson, Inc. (hereafter, Lehigh)) and found that the sand's moisture
16 content was too low to qualify for the exemption, meaning the Facility was required to obtain a Permit to
17 Operate. Lehigh submitted a permit application (Application no. 28839) in August 2017 seeking to obtain a
18 Permit to Operate in order to come into compliance with Regulation 2-1-302.

19 Martin Marietta acquired the Facility in October 2021 as part of a large acquisition of companies and
20 assets previously consisting of Lehigh's West Region. At the time that Martin Marietta acquired the Facility, a
21 Permit to Operate based on Lehigh's then-pending permit application had not been issued. After evaluating
22 the status of the permitting process for Application no. 28839 and following extensive discussions with Air
23 District staff, the Port of San Francisco, and various stakeholders, Martin Marietta proposed to replace the
24 existing plant and equipment in order to modernize the Facility (Modernization Project) and agreed to
25 withdraw Application no. 28839, which was submitted by Lehigh to permit the existing operation. Martin
26 Marietta seeks to modernize the Facility with new equipment and improved environmental controls designed
27 to reduce fugitive dust as compared to existing operations. Martin Marietta believes that the improvements
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1 included in the Modernization Project will provide control measures beyond those required under Air District
2 regulations.

3 Martin Marietta has agreed to this Conditional Order to address the allegations identified in the
4 Petition and to move forward with the Modernization Project, subject to required regulatory approvals. Martin
5 Marietta has stipulated to a date by which operations at Pier 92 are reasonably expected to comply with
6 Regulations 2-1-301 and 2-1-302 and has agreed to reasonable increments of progress towards the Facility
7 achieving final compliance as defined in the Conditional Order. The parties have also agreed to interim
8 operating conditions, which are based on the draft permit language that was developed by the Air District for
9 operation of the Facility under Application no. 28839. Martin Marietta has adopted measures to implement
10 interim conditions and will continue to do so until the Air District makes its final determination regarding the
11 permit application for the Modernization Project.

12 In advance of the hearing, on March 29, 2024, Martin Marietta submitted an application to the APCO
13 for the Modernization Project. The Modernization Project will also require execution of a new lease by the
14 Port of San Francisco. On March 29, 2024, Martin Marietta submitted an application to the Port of San
15 Francisco for a new lease for the Modernization Project. As stated at the April 16, 2023 hearing in this matter,
16 nothing in this Order shall be construed to determine the outcome or impact the APCO's independent
17 findings and determination as to the permit application filed by Martin Marietta on March 29, 2024.

18 The Hearing Board recognizes that Martin Marietta does not control when the Port of San Francisco
19 or the APCO will make final determinations regarding permits and other authorizations needed to construct
20 or operate the Modernization Project. The APCO has determined that environmental review under the
21 California Environmental Quality Act (CEQA) must be completed before it can reach a final determination
22 regarding the Modernization Project. It is anticipated that the City and County of San Francisco (City) will
23 serve as the lead agency for the project and that the Air District will serve as a responsible agency. The CEQA
24 review process is reasonably anticipated to take at least eighteen (18) months from the date the Port initiates
25 the environmental review process with the City. The APCO agrees to work cooperatively and expeditiously
26 with Martin Marietta to provide the City information as appropriate to support the CEQA review process and
27 to support processing all other approvals needed from the City or other agencies. The APCO has further
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1 agreed to diligently review the application for the Modernization Project in due course under Regulation 2,
2 Rule 1.

3 The course of action described above will provide for the long-term corrective solution that has been
4 proposed by Martin Marietta to address the Facility's lack of a Permit to Operate and will ensure
5 implementation of interim operating conditions that provide the same health and environmental protections
6 as if the existing Facility were permitted.

7 The Hearing Board therefore finds that the parties' agreed-upon course of action is in the public
8 interest and that for good cause shown entry of the ~~Proposed~~ Order is appropriate under the circumstances.

9 **CONDITIONAL ORDER FOR ABATEMENT**

10 **Cause being found therefore, pursuant to Sections 42451(b) and 42452 of the California Health**
11 **and Safety Code, THE HEARING BOARD of the BAY AREA AIR QUALITY MANAGEMENT**
12 **DISTRICT hereby ORDERS:**

13 1. That the parties' request for this Conditional Order for Abatement shall be and hereby is
14 GRANTED as follows: Respondent and its agents, employees, successors, and assigns are hereby ordered to
15 cease operation of the Facility unless Respondent complies with the following requirements by the stated
16 deadline:

17 a. **Final Compliance.** Respondent shall achieve final compliance by no later than October 31,
18 2025, which date is based on the projected interim milestones below. Achieving final
19 compliance means that Respondent has obtained either an Authority to Construct or Permit
20 to Operate for each source at the Facility that requires a permit under Air District Regulation
21 2, Rule 1.

22 i. **Environmental Review Process.** The City will have initiated environmental review by
23 no later than September 30, 2024.

24 ii. **Completion of Environmental Review.** The City will have completed environmental
25 review of the Modernization Project by no later than September 30, 2025.

26 iii. **APCO Approvals.** No later than October 31, 2025, the APCO will have issued, in
27 compliance with all legal requirements, an Authority to Construct or Permit to Operate
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1 for each source at the Facility that requires a permit under Air District Regulation 2, Rule
2 1.

3 b. **Extension of Compliance Deadline.** The compliance deadline in paragraph (a) may be
4 extended by the Hearing Board for good cause shown, which may include factors outside of
5 Respondent's direct control. Good cause may include a failure of any government agency or
6 entity to meet the interim milestones upon which the final compliance date is based.

7 c. **Interim Operating Conditions.** Pending issuance of either an Authority to Construct or
8 Permit to Operate for each source at the Facility that requires a permit under Air District
9 Regulation 2, Rule 1, Respondent shall implement the Interim Operating Conditions provided
10 in the Appendix to this Conditional Order for Abatement.

11 d. **Reporting.** Respondent shall submit written reports to the Hearing Board and APCO as
12 follows:

13 i. Respondent shall provide a written report demonstrating compliance with the October
14 31, 2025 deadline contained in paragraph (a) above within 10 calendar days of the
15 compliance date.

16 ii. Respondent shall provide semi-annual reports on October 16 and April 16 of each year
17 demonstrating compliance with the Interim Operating Conditions.

18 2. That this Conditional Order for Abatement shall become effective immediately (Effective
19 Date) upon entry.

20 3. That the Hearing Board shall retain jurisdiction over this matter until such time as (i) Martin
21 Marietta obtains either an Authority to Construct or Permit to Operate for each source at the Facility that
22 requires a permit under Air District Regulation 2, Rule 1, or (ii) Martin Marietta permanently shuts down and
23 abandons its operations at Pier 92. The parties may move to alter or terminate this order in accordance with
24 the Rules of the Hearing Board while the matter remains under the Hearing Board's jurisdiction.

25 4. That this Conditional Order does not act as a variance.

1 Moved by: Vice Chair Toole O'Neil

2 Seconded by: Dr. Peter Chiu

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4 AYES: Valerie J. Armento, Esq., Chair; Barbara Toole O'Neil, MS, QEP, Ch.E., Vice Chair; Dr. Peter
5 Chiu, M.D., P.E.; and Rajiv Dabir, P.E.

6 NOES: Amelia Timbers.

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9 Valerie J. Armento, Chair



Date

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APPENDIX

INTERIM OPERATING CONDITIONS

These interim operating conditions apply until such time as (i) Martin Marietta obtains either an Authority to Construct or Permit to Operate for each source at the Facility that requires a permit under Air District Regulation 2, Rule 1 or (ii) Martin Marietta permanently shuts down and abandons its operations at Pier 92. These interim operating conditions include limitations and requirements agreed to by the parties to ensure that the Facility meets or exceeds the health and environmental protections that would be required if it were permitted. Permit conditions for the Modernization Project will be based off of the application for the Modernization Project and the Air District's applicable regulations and may differ from these agreed upon conditions.

1. Respondent shall only receive and process sand at this facility. Sand shall only be received from barges pulled by tugboats. Other types of ocean-going vessels shall not deliver sand to this site. The total number of barge deliveries shall not exceed 260 during any consecutive 12-month period.
2. Respondent shall not receive or process more than following quantities of sand at S-1:
 - a. 6,000 tons during any calendar day.
 - b. 800,000 tons during any consecutive 12-month period.
3. Visible dust emissions from S-1 and S-2 shall not exceed Ringelmann 1 or result in fallout on adjacent properties in such quantities as to cause a public nuisance per Regulation 1-301. To ensure compliance with this Part and with Regulation 6-1-301 and 6-1-305, Respondent shall visually observe all material handling operations associated with S-1 and S-2 and shall immediately initiate corrective actions, if any visible dust emissions are detected that persist for longer than 3 minutes in any hour.
4. Respondent shall abate emissions from S-1, S-2, and unpaved roads with A-1 Water Spray System, and shall utilize sweeping, flushing or other appropriate measures to abate emissions from roadways, as necessary to maintain compliance with Part 3 of this condition, Regulations 6-1-305, 6-1-311, 6-6-301 and 6-6-302. Respondent shall ensure water sprays are at each drop point at the conveyor for S-1. For the stockpile area, S-2, Respondent shall ensure the water spray reaches the entire surface area of the stockpile and the entire surface area remains wet at all times. Respondent is required to maintain compliance with the facility's Dust Compliance Plan at all times.
5. To verify compliance with Regulation 2, Rule 5, Respondent shall conduct the following testing:
 - a. By May 31, 2024, Respondent shall collect three (3) representative samples of the sand handled at this facility.
 - b. Respondent shall have these representative samples of sand analyzed for quartz, cristobalite, and tridymite (crystalline silica) using NIOSH Method 7500.
 - c. Sampling Procedures:

- 1 i. Respondent shall take the three (3) samples from the following: the fill sand stockpile, the
2 coarse marine sand stockpile, and the product sand stockpile.
3 ii. At each stockpile, plant personnel will obtain four samples each consisting of at least five
4 pounds of sand removed from the pile at an elevation of approximately 3 to 6 feet above grade
5 and at four different locations around the pile. The depths must range from 6 to 10 inches
6 below the surface. Each sample must be obtained from a different quadrant of the stockpile.
7 iii. The four samples from each pile will be placed on a clean tarp and mixed together in
8 accordance with the sample handling procedures stated in U.S. EPA AP42 Appendix C2, page
9 C2-5. Based on AP42, Appendix C2, these samples will be combined into one "cone-like" pile
10 and split into four quadrants. The sand material in the quadrants in the 0-90 degree position
11 and the 180-270 degree positions shall be discarded. The material in the 90 to 180 degree
12 position and the 270 to 0 degree positions shall be mixed together, formed into a "cone-like"
13 pile, and split again into four quadrants.
14 iv. A 500 gram sample of sand shall be taken from one of the four quadrants. The samples shall
15 be assigned a unique sample ID number and shall be placed into plastic bags and sealed. There
16 shall be one 500 gram sample from each of the three stockpiles. The sample bag labels shall
17 include the following information.
18 i. Sample ID number
19 ii. Sand stockpile sampled
20 iii. Date of sampling
21 iv. Plant name and address
22 v. Name of the person or persons performing the sampling
23 v. Respondent shall send the samples to an analytical laboratory for NIOSH Method 7500
24 analyses of (1) quartz, (2) cristobalite, and (3) tridymite. Respondent shall send the samples
25 with a completed copy of the attached chain of custody form.
26 d. Respondent shall submit the results of the crystalline silica analyses to the Engineering Division of the
27 Air District within 30 calendar days of receiving the results.

[Basis: Regulation 2-5]

- 19 6. In the event the District's Compliance and Enforcement staff issues the facility two or more Notices of
20 Violation citing "Regulation 1-301: Public Nuisance" related to dust in any consecutive, rolling, 12-month
21 period, Respondent shall implement one or more of following control measures (as applicable), or shall
22 ~~implement any other measures that the District deems necessary and appropriate, within a time period~~
23 mutually agreeable to the facility and the District:
24 a. Initiate use of dust suppressants on unpaved roadways.
25 b. Initiate high power water flushing on roadways.
26 c. Pave or otherwise stabilize the most frequently used unpaved areas.
27 d. Reduce the permitted sand throughput at S-1 and S-2 in Part 2 of this Permit Condition.

28 Within 30 calendar days of receiving the second Notice of Violation, Respondent shall submit a Permit
Application to the District to modify these Permit Conditions in order to memorialize the applicable
control measures.

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2 7. To demonstrate compliance with this Permit Condition, Respondent shall maintain dated records of the following:

- 3 a. Record the date and the total number of barge deliveries per month.
4 b. Record the amount of sand processed at S-1 on a daily and monthly basis.
5 c. Respondent shall use the monthly records to calculate and record the sand deliveries and throughput at S-1 on a consecutive, rolling 12-month basis.
6 d. Maintain written procedures describing events or observations of emissions that shall trigger the use
7 of A-1 Water Sprays at S-1, S-2, and unpaved roads and that trigger sweeping, flushing, or other
8 control measures on paved roads. These procedures shall include descriptions of when, where, at
9 what frequency, and what amount water shall be applied to S-1, S-2, and unpaved roads and frequency
10 of sweeping and flushing of paved roads. Maintain checklists or other records to demonstrate that
11 these emission control procedures are followed.

12 8. Respondent shall:

- 13 a. Monitor the extent of the trackout at each active exit from the site onto a paved public road at least
14 twice during each workday, at times when vehicle traffic exiting the site is most likely to create an
15 accumulation of trackout, or as otherwise specified by the APCO;
16 b. Document the active exit locations monitored each workday;
17 c. Document each occasion when the trackout exceeds cumulative 25 linear feet and all trackout control
18 and cleanup actions initiated as a result of monitoring Part a of this condition; and
19 d. Maintain the records required by Part b and Part c of this condition for two years, in electronic, paper
20 hard copy or log book format, and make them available to the APCO upon request.

21 Respondent shall maintain these records and any related correspondence with any division of the District
22 in a District-approved log and shall retain the records on-site for at least two years from the date of entry
23 and shall make the records available to District staff for review upon request.

24 9. Respondent shall limit the trips of front loader on unpaved road to:

- 25 a. 546 trips during any calendar day and
26 b. 72,727 trips during any consecutive 12-month period.

27 Respondent shall limit the trips of transfer trucks on unpaved road to:

- 28 a. 188 trips during any calendar day and
b. 25,000 trips during any consecutive 12-month period.

~~Respondent shall limit the trips of transfer trucks on paved road to:~~

- a. 188 trips during any calendar day and
b. 25,000 trips during any consecutive 12-month period.

To demonstrate compliance with this permit condition, Respondent shall maintain records in a District-approved log of vehicle trips per day, per month and per rolling 12-month period for each type of vehicle

traveling on roadways at this facility. All records shall be retained on site for at least two years from the date of entry and be made available for inspection by District staff on request.

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1 BEFORE THE HEARING BOARD
2 OF THE
3 BAY AREA AIR QUALITY MANAGEMENT DISTRICT

4 AIR POLLUTION CONTROL OFFICER of)
5 the BAY AREA AIR QUALITY)
6 MANAGEMENT DISTRICT)

7 Complainant,

8 vs.

9 MARTIN MARIETTA MATERIALS, INC.)

10 Respondent.)

Docket No.: 3746

CERTIFICATE OF SERVICE

FILED

APR 26 2024

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

11 STATE OF CALIFORNIA)

12 City and County of San Francisco)

ss.

13 I, Marcy Hiratzka, do hereby certify under penalty of perjury as follows:

14 That I am a citizen of the United States, over the age of eighteen years and not a party to the
15 above-entitled action; that I served a true copy of the attached **Conditional Order for
Abatement** on:

16 Shannon Broome, Esq. Hunton Andrews Kurth LLP 575 Market Street, Ste. 3700 San Francisco, CA 94105 SBroome@hunton.com	17 Martin Stratte, Esq. Martin Marietta Materials, Inc. 4123 Parklake Avenue Raleigh, NC 27612 Martin.Stratte@martinmarietta.com
18 David Beaupre david.beaupre@sfport.com	19 Elizabeth Gunther EGunther@huntonak.com
20 Annette Mathai Jackson Annette.MathaiJackson@sfcityatty.org	21 Justin Bigelow justin.bigelow@sfcityatty.org

22 by depositing same via email and in the United States certified mail, return receipt requested,
23 on April 26, 2024 and on:

24 Anne Baptiste, Esq., Assistant Counsel
Bay Area Air Quality Management District
abaptiste@baaqmd.gov

25 via email April 26, 2024

26 DATED: April 26, 2024



27 _____
28 Marcy Hiratzka
Clerk of the Boards