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16  
17 **BEFORE THE HEARING BOARD OF THE**  
18 **SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**  
19

20 **In The Matter Of**

21 SOUTH COAST AIR QUALITY  
22 MANAGEMENT DISTRICT,

23 Petitioner,

24 v.

25 BAKER COMMODITIES INC.,

26 [Facility ID No. 800016]

27 Respondent.

Case No. 6223-1

**REPLY BRIEF IN SUPPORT OF  
BAKER COMMODITIES, INC.'S  
REQUEST TO MODIFY  
THE ORDER FOR ABATEMENT**

Date: December 13, 2022

Time: 9:00 a.m.

Place: Hearing Board  
South Coast Air Quality  
Management District  
21865 Copley Drive  
Diamond Bar, CA 91765

1 **I. INTRODUCTION**

2 Baker Commodities, Inc. ("Baker") submits this reply in support of its request that the  
3 Hearing Board modify the Order for Abatement dated September 30, 2022 (the "Order"). The  
4 South Coast Air Quality Management District's (the "District") opposition to Baker's request to  
5 reopen its trap grease operations is not based on well-established law or accurate facts. Rule  
6 415 (l)(1)(C) unambiguously states that "[f]acilities that process trap grease but do not conduct  
7 inedible animal rendering operations" are "not subject to Rule 415." The Rule does not state, as  
8 asserted by the District, that the exemption does not apply "where the sole reason Baker is not  
9 rendering is because of the Order for Abatement." Even though the District opposes Baker's  
10 request for modification, the District still asks the Board to adopt the modification for the sole  
11 purpose of imposing a series of onerous conditions upon Baker's wastewater treatment process.

12 Proposed Condition 9 is a perfect example. It requires Baker submit permit applications  
13 to either fully enclose or to put in a closed system alleged wastewater equipment and operations  
14 by January 12, 2023 before Baker processes trap grease. However, the District is opposed to  
15 Baker's modification allowing trap grease operations to resume because it claims it is not  
16 exempt. Therefore, even if Baker complied with the District's proposed condition, Baker would  
17 still not be able to process trap grease.

18 It is also notable, that almost every "fact" the District asserts is not supported by any  
19 evidence, let alone admissible evidence. Moreover, as explained below, the District  
20 misrepresented the decisions of the rulemaking team regarding trap grease operations.

21 The Hearing Board's Order, as currently constituted, prohibits Baker from operating its  
22 trap grease processing operation, even if it does not conduct inedible rendering operations.  
23 Therefore, the Order operates to regulate Baker in a way that Rule 415 expressly prohibits.

24 **II. BAKER IS NOT CONDUCTING OR ENGAGING IN RENDERING**  
25 **OPERATIONS, REGARDLESS OF ITS RENDERING PERMIT**

26 As of October 7, 2022, Baker shut down its rendering operations entirely.<sup>1</sup> Per the Order,

27 <sup>1</sup> The District's proposed modifications to the Order inexplicably include a change to Conditions  
28 1, 2, 3, 4, and 6 altering the operative date that Baker had to shut down its operations to October

1 Baker cannot restart these operations without the District and the Hearing Board formally  
2 approving such a restart. (Order, Attachment A, at Condition 7).

3 The District adopts a tortured reading of Rule 415 in an attempt to obscure that the text of  
4 Rule 415 is abundantly clear. The first step of interpreting a rule is to examine the language of the  
5 text first. (*MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th  
6 1076, 1082.) The *MacIsaac* Court aptly stated:

7 In the first step of the interpretive process we look to the words of the statute  
8 themselves. The Legislature's chosen language is the most reliable indicator of its  
9 intent because "it is the language of the statute itself that has successfully braved the  
10 legislative gauntlet." We give the words of the statute a "plain and commonsense  
11 meaning" unless the statute specifically defines the words to give them a special  
12 meaning. If the statutory language is clear and unambiguous, our task is at an end, for  
13 there is no need for judicial construction. In such a case, there is nothing for the court  
14 to interpret or construe.

15 (*Id.* [citations omitted] [emphasis added].) Likewise, this rule is applicable to agencies.  
16 An agency cannot disregard a regulation's plain language. (*Motion Picture Studio Teachers &*  
17 *Welfare Workers v. Millan* (1996) 51 Cal.App.4th 1190, 1195-96 [finding that the agency "must  
18 enforce the regulation as written".])

19 This case is no exception: Rule 415 is clear and it must be enforced as written. Under Rule  
20 415, a "rendering facility" is defined as "a facility *engaging* in rendering operations." (Rule 415,  
21 subd. (c)(20), (emphasis added)). Similarly, under the exemption set forth under Rule 415  
22 (l)(1)(C), rule 415 does not apply to "facilities that process trap grease, but do not *conduct*  
23 inedible animal rendering operations." (Rule 415, subd. (l)(1)(C), (emphasis added)).

24 Accordingly, Baker is no longer a "rendering facility," and if Baker restarted its trap grease  
25 operations, it would be a facility falling under the exemption set forth in Rule 415(l)(1)(C). In  
26 other words, it cannot be plausible to consider Baker as a "rendering facility" if it cannot by any  
27 means conduct or engage itself as such.

28 \_\_\_\_\_  
6, 2022. The Order as adopted by the Board required that Baker cease its operations "seven (7)  
days after the order is entered." (Order, Attachment A, at 2). The Order was entered on September  
20, 2022, and Baker shut down its operations on October 7, 2022 in full compliance with the  
Order.

1 Application of the plain language of Rule 415 to Baker's operation is not an absurd  
2 outcome, as the District argues. "Absurd' means when a statute is obviously not construed in a  
3 reasonable or commonsense manner." (*People v. Kalnoki* (1992) 7 Cal.App.4th Supp. 8, 17.)  
4 "Absurdity" is reserved for the "extreme cases" where the absurdity is patent; and finding  
5 "absurdity" must be exercised with caution. (*California School Employees Ass'n. v. Governing*  
6 *Bd. of South Orange County Community College Distr.* (2004) 124 Cal.App.4th 574, 588.)

7 Here, the plain reading of Rule 415 is exactly how the Rule was intended to operate. The  
8 District misleadingly cites a portion of the Final Staff Report containing Staff's early responses to  
9 Baker comments submitted in 2015. (District Opening Brief at p. 6: 15-22). As Baker already  
10 discussed in its opening brief, the initial 2015 draft of Rule 415 applied the Rule to trap grease,  
11 but the Final November 3, 2017 Rule 415 "removed trap grease from PR 415 eligibility."  
12 (Baker's Opening Brief In Support of Baker Commodities, Inc.'s Request to Modify the Order for  
13 Abatement at fn 2; Exhibit 2). When the Final Staff Report cited by the District is read in its full  
14 context, Staff clearly states under the "Summary of Proposed Rule 415" the rule includes an  
15 exemption for "Facilities that process trap grease – odors from these facilities will be addressed in  
16 a separate rulemaking." (2017 Final Staff Report, attached hereto as **Exhibit 1**, (emphasis  
17 added)). Exemption of Baker's stand-alone trap grease processing from Rule 415 is not an  
18 "absurd" outcome – it is the exact outcome the Rule intended.

19 Contrary to the District's claims, Baker's maintenance of a permit to engage in rendering  
20 activities has no bearing on whether it should be classified as a "rendering facility," or whether  
21 the exemption under Rule 415 (l)(C) should apply. Rule 415 is clear: it only regulates facilities  
22 that actively engage in or conduct rendering operations, not those that simply maintain a permit  
23 allowing them to do so. Furthermore, the District blatantly misstates the circumstances of Baker's  
24 shut down of rendering operations. The District worries that the text of the Rule will lead to  
25 "absurd situations where a facility stops operating its rendering facility for a day, or even a few  
26 hours, so it can operate its trap grease operations without complying with Rule 415." (District  
27 Opening Brief at p. 5: 7-9). That is clearly not the case here. Baker is not temporarily shut down;



1 **IV. IMPOSING ANY CONDITIONS ON BAKER'S TRAP GREASE PROCESSING**  
2 **EXCEEDS THE HEARING BOARD'S JURISDICTION AND IS ARBITRARY**  
3 **AND CAPRICIOUS**

4 Insisting on any conditions limiting Baker's trap grease processing operation exceeds the  
5 authority granted to the Hearing Board under the Health and Safety Code. "An administrative  
6 agency has only that authority conferred upon it by statute and any action not authorized is void."  
7 (*City of Lodi v. Randtron* (2004) 118 Cal.App.4th 337, 359.). In order for the Hearing Board to  
8 have any legal authority to impose conditions on any of Baker's operations, there must first be a  
9 finding that Baker has violated a District Rule. (Health and Safety Code section 42451). Here,  
10 Rule 415 is clear that grease trap operations in the absence of a rendering operation, simply  
11 cannot violate Rule 415, as such operations are explicitly exempt from the Rule. (Rule 415, subd.  
12 (l)(1)(C)). The District has identified no other rule in its Petition or these proceedings under  
13 which it could regulate Baker's trap grease operations, and has repeatedly stated that the singular  
14 basis for the proceeding is Rule 415. (*See* September 28, 2022 Transcript of Hearing before the  
15 Hearing Board, attached hereto as **Exhibit 2**). Also, under Health and Safety Code, section  
16 42452, conditions cannot be imposed if the requested modification is denied. For these reasons,,  
17 the Hearing Board has no legal authority to impose the Order's existing conditions, or the  
18 District's proposed conditions on Baker's trap grease operations.

19 Further, the impositions of these conditions by the Hearing Board would be arbitrary and  
20 capricious, because both the existing Order and the District's proposed conditions impose burdens  
21 upon Baker's trap grease processing operations that are not imposed on any similarly situated  
22 businesses. The existing Order has entirely shuttered Baker's trap grease processing operations  
23 under the purported authority of Rule 415. However, the District does not regulate any other  
24 standalone trap grease hauling or processing facilities under Rule 415. (*See* September 28, 2022  
25 Transcript of Hearing before the Hearing Board, attached hereto as **Exhibit 3**). Similarly, the  
26 District's proposed Condition 9 would require Baker to "fully enclose" a series of processes,  
27 equipment and areas associated solely with trap grease operations, including the Open-Air pit  
28 used for trash disposal, and the process by which solid waste is removed from the centrifuge and

1 placed in the Open-Air Pit. (District Opening Brief, Exhibit 24, at 9(a)). The District does not  
2 currently require any other grease trap hauling or processing operation's solid waste disposal to  
3 comply with Rule 415's enclosure requirements, as no rule allows them to. (*See* September 28,  
4 2022 Transcript of Hearing before the Hearing Board, attached hereto as **Exhibit 3**). Again, the  
5 District has not identified any other District Rule that would allow it to impose these strenuous  
6 conditions on a stand-alone trap grease processing operation, and has explicitly stated that the  
7 entirety of this proceeding is based on Rule 415. If the Order is not modified to allow Baker to  
8 resume its trap grease processing operations, or if the District's proposed conditions are imposed,  
9 Baker will be the only such facility that the District is regulating in this manner. Any Order  
10 mandating that Baker be regulated in a manner that no other comparable business is regulated is  
11 arbitrary and capricious.

12 **V. THE DISTRICT'S PROPOSED MODIFICATION TO CONDITION 5**  
13 **HIGHLIGHTS THE ABSURDITY OF THE CONDITION**

14 As an alternative to removing Condition 5, the District proposes "revisions to the  
15 condition so that washing is only required once each working day in areas where equipment has  
16 been operated, and where raw, processed, or waste materials containing animal matter have been  
17 transported or stored." (District Opening Brief at p. 2: 18-22). However, this suggested revision  
18 suffers from the same flaw as the original Condition 5 – Baker is not engaging in any rendering  
19 operations per the terms of the Order, so there is no raw, processed, or waste materials containing  
20 animal matter on-site. Both the existing Condition 5 and the District's proposed revisions to  
21 Condition 5 are wholly unnecessary given the larger scope of the Order.

22 **VI. CONCLUSION**

23 The Order, as currently constituted, exceeds the Hearing Board's authority under Health  
24 and Safety Code section 42451. The Order relies on alleged evidence of violations of Rule 415  
25 associated with rendering to shut down trap grease that is explicitly exempted from Rule 415. The  
26 District has not, and cannot, advance any arguments denying that the plain text of Rule 415 states  
27 that the rule does not apply to Baker's trap grease processing because Baker is not engaging in

1 rendering, and cannot do so until the District and the Hearing Board permit it. As such, there is no  
2 basis for the Hearing Board to regulate Baker's trap grease operations, let alone place further  
3 conditions on Baker's trap grease operations as the District proposes.

4 Accordingly, Baker requests that the Hearing Board reject the District's proposed  
5 modifications and instead grant Baker's request to modify and remove Condition 5, and modify  
6 Conditions 1, 2 and 7 as requested in Baker's opening brief.

7  
8 DATED: December 8, 2022

HANSON BRIDGETT LLP

9  
10 By: 

11 \_\_\_\_\_  
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15 WIEMOND WU  
16 Attorneys for Respondents  
17 BAKER COMMODITIES INC.

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28

# EXHIBIT 1

# ATTACHMENT G

## SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

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### **Final Staff Report Proposed Rule 415 – Odors from Rendering Facilities**

**November 2017**

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Speaker of the Assembly Appointee

Vice Chairman: BEN BENOIT  
Mayor Pro Tem, Wildomar  
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WAYNE NASTRI

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## **CHAPTER 3: SUMMARY OF PROPOSED RULE 415**

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**AFFECTED FACILITIES**

**PROPOSED RULE 415 REQUIREMENTS**

or repair the sheet metal sheathing on the walls and roof which contain a number of holes from oxidation.

### **Enclosure for Wastewater Treatment Area**

One rendering facility currently has an enclosure around the wastewater treatment area. It is an older masonry building and some additional work would need to be performed for the building to be considered a permanent total enclosure to be compliant with the rule proposal. The other three rendering facilities have open wastewater treatment processes that would need to be enclosed and vented to odor control, or converted to closed systems, in order to be compliant with the rule proposal. During site visits, staff noticed some of the most offensive odors emitting from the wastewater treatment process.

### **Odor Control Equipment**

All rendering facilities must comply with the requirements of Rule 472 - Reduction of Animal Matter to control high intensity odors from cookers. Rule 472 requires incineration of all gases, vapors and gas-entrained effluents from equipment emitting high intensity odors. Incineration must occur at a temperature of not less than 1202 degrees Fahrenheit for not less than 0.3 seconds. This temperature and residence time ensure complete thermal destruction of the odors entrained in cooking and effluent processing operations. Alternatively, a rendering facility is allowed to use a method that is equally effective, as determined by the Executive Officer. The Vernon area rendering facilities use three methods for achieving the temperature and residence time requirement in Rule 472, including routing the vapors into an afterburner, a regenerative thermal oxidizer, or into a high temperature boiler.

In addition to control of the high intensity odors, it is necessary to control fugitive odors, which are of much lower intensity. One rendering facility uses a packed-bed scrubber that controls odors from the raw material receiving building. This facility has also installed a cross-flow scrubber that will vent odors from a new cooking and processing building.

## **PROPOSED RULE 415 REQUIREMENTS**

### **Purpose (Subdivision (a))**

The purpose of Proposed Rule (PR) 415 is to reduce odors from facilities rendering animals and animal parts. PR 415 will establish odor control standards as well as best management practices (BMP) to prevent and minimize odors that can cause verified odor complaints and public nuisances in and around the city of Vernon.

Under Rule 402, enforcement action can only be taken after the SCAQMD receives and verifies a sufficient number of complaints. Moreover, because rendering facilities are clustered together in Vernon, in some cases it is more challenging to ascribe odors to one specific facility and contributions of the odors may be emanating from more than one rendering facility. Rule 402 does not include a mechanism to reduce odors from new and existing rendering facilities. In addition, Rule 402 does not establish minimum standards to prevent or minimize odors. Rule 402 is reactive, where PR 415 is proactive in terms of preventing and minimizing off-site odors.

### Applicability and Exemptions (Subdivisions (b) and (l))

The proposed rule applies to new and existing rendering facilities that process raw rendering materials and treatment of wastewater from processes associated with rendering.

Applicability of the proposed rule is to rendering facilities that conduct inedible rendering operations, whether or not these facilities also conduct edible rendering. If a rendering facility is integrated with either a slaughter house or a meat packing house, or conducts both edible and inedible rendering operations, the edible rendering operations are not subject to the requirements of PR 415. Inedible rendering means that the products and by-products of the rendering process are not intended for human consumption.

Edible rendering processes are essentially meat processing operations; producing lard or edible tallow for use in food products consumed by humans. Edible rendering is generally carried out in a continuous process at temperatures lower than the boiling point of water. The process usually consists of heating edible fats (fat trimmings from meat cuts), followed by two or more stages of centrifugal separation. The first stage separates the liquid water and fat mixture from the solids. The second stage further separates fat from water. The solids may be used in food products or pet foods, and fat may also be used in food products, or soap making operations. Most edible rendering is done by meat packing or processing companies. Edible rendering operations are not as odorous as inedible rendering and are exempted from PR 415.

Through the rulemaking process, staff visited the five affected rendering facilities on multiple occasions. Based on staff's observations of these facilities and their operations, specific exemptions were developed as these operations or the manner in which these operations were carried out were observed to not be sources of off-site odors at rendering facilities. As a result, the proposed rule includes the following exemptions:

- Facilities conducting only edible rendering operations (producing products for human consumption) that do not also conduct inedible rendering operations or handle or process trap grease;
- Collection centers for animal carcasses and parts that do not also conduct inedible rendering operations (products not for human consumption);
- Facilities that process trap grease – odors from these facilities will be addressed under a separate rulemaking;
- Rendering facilities integrated with a slaughterhouse or meat-packing plant that process less than 130,000 pounds of inedible rendering materials per week in a batch cooking operation are not subject to the enclosure requirements of subparagraph (d)(1)(B) provided the cargo area of the vehicle that is used to store and haul materials after rendering is completely covered or fully tarped;
- Blood meal processing operations at a facility integrated with a slaughterhouse or meat-packing plant are not subject to the standards for enclosure and ventilation - provided the operation is conducted in a closed system and is vented to an odor control system; ~~and~~
- Certain meat and boneprotein meal operations (this exemption does not apply to press fat processing; ~~and~~
- Processing of used cooking oil.

In addition to the facility exemptions, an exemption is provided for wastewater treatment systems from the enclosure and odor control standards in certain situations. First, the wastewater treatment operations required to be operated in a permanent total enclosure (PTE) are not applicable for a

# EXHIBIT 2

1           CYNTHIA VERDUGO-PERALTA: Okay. Uh, this is  
2           the Hearing Board of the South Coast Air Quality  
3           Management District. We are now in session. Today  
4           is Wednesday, September 28, 2022. The time is  
5           just after 9:00 am, and we are meeting remotely  
6           via Zoom due to the current pandemic and the fact  
7           that the AQMD hearing boardroom is not open to  
8           the public as of yet. I want to share some  
9           information as I did yesterday with everyone so  
10          that those public members who choose to do so may  
11          participate in our hearing this morning. You may  
12          choose to watch or listen to the meeting in the  
13          language of your choice by clicking on the globe  
14          icon labeled interpretation at the bottom of your  
15          screen. From there, select the language of your  
16          choice and when you select your language, if you  
17          hear both languages at the same time, please  
18          click mute original audio. For those  
19          participating, uh you can also uh participate by  
20          phone if you wish. To hear the meeting in  
21          Spanish, please call 669-900-6833 and enter the  
22          meeting ID number 99988599458. This information  
23          is also posted on the AQMD's website online  
24          calendar where you will find the listing for this  
25          meeting. The hearing time limit. Today's hearing

1           ALENE TABER: Let's talk about the NOVs that  
2 are in the petition and I'm asking you -- let's  
3 do it this way. In your experience, um, because  
4 rendering facilities are clustered together in  
5 Vernon, is it difficult to ascribe odors to one  
6 particular rendering plant?

7           DILLON HARRIS: Should you want me to answer  
8 the NOVs or -- I'm, I'm --

9           ALENE TABER: Okay. Just answer my question.

10          DILLON HARRIS: Okay. Can you please restate  
11 it?

12          ALENE TABER: Sure. Um, would it be in your  
13 experience true or that because all the rendering  
14 facilities are clustered together, that it can be  
15 challenging to identify an odor as coming from a  
16 specific rendering operation?

17          DAPHNE HSU: Objection. This is a Rule 415  
18 NOV that was issued. We are not doing nuisance  
19 odors as part of this petition.

20          ALENE TABER: Oh, can I have that as a  
21 stipulation please?

22          DAPHNE HSU: I do not need to stipulate to  
23 that. You have a copy of the petition. It, it  
24 states what rules we are, are basing our petition  
25 on.

1           ALENE TABER:    Okay.

2           CYNTHIA VERDUGO-PERALTA:   Let me interject  
3 something here. You're asking him a question and  
4 you're also asking him to know what the situation  
5 is with the other facilities. So, I don't uh, --  
6 to my knowledge and please correct me if I'm  
7 wrong here Mr. Harris, the only one that you  
8 inspected in reference to this case was Baker,  
9 not the others. Is that correct?

10          DILLON HARRIS:   In reference to this case,  
11 yes, uh Baker.

12          CYNTHIA VERDUGO-PERALTA:   Okay.

13          ALENE TABER:    Didn't you testify yesterday  
14 that you were the inspector for all of the  
15 facilities?

16          DILLON HARRIS:   That's also correct.

17          ALENE TABER:    Okay. So, it's already been  
18 introduced in this proceeding that he's an  
19 inspector for all the facilities. So, --

20          CYNTHIA VERDUGO-PERALTA:   So, you're asking,  
21 you're asking him about this situation during  
22 this period of time.

23          ALENE TABER:    No, I'm going to -- I'm making  
24 it general. I'm saying based on your experience,  
25 because all of the rendering facilities are

1 clustered together that it can be challenging to  
2 ascribe a particular rendering odor to a specific  
3 facility.

4 DILLON HARRIS: Um--

5 DAPHNE HSU: Objection. Irrelevant,  
6 immaterial.

7 ALENE TABER: Why is it irrelevant?

8 DAPHNE HSU: As I said, nuisance odor is not  
9 a part of this petition. This is not a Rule 402  
10 issue that we are litigating.

11 ALENE TABER: Well, I'm asking this is  
12 actually -- this issue was discussed in the Rule  
13 415 staff report. So, it is -- it is pertinent  
14 and I agree with you that odors is not part of  
15 the, the allegations or should it form any basis  
16 um of uh any support for an order for abatement.  
17 I absolutely agree with you on that point.

18 ROBERT PEARMAN: And how is it this  
19 Ms. Taber and how is it relevant to this issue?  
20 To this proceeding?

21 ALENE TABER: Because the district won't  
22 stipulate that um odors are not a basis for  
23 issuing a violation notice.

24 ROBERT PEARMAN: It's not in -- it's not in  
25 the record, it's not in an NOV, it's not in the

1 petition and you just heard the council of  
2 representation, that- that should be enough. I'd  
3 say move on.

4 CYNTHIA VERDUGO-PERALTA: As I've requested.

5 ALENE TABER: I just re- I respectfully need  
6 to put out my objections on the record, but um, I  
7 wanted a stipulation from the district that they  
8 are not seeking to have an abatement order issued  
9 based on odor complaints. If they will give me  
10 that stipulation, I will stop on this line of  
11 questioning.

12 DAPHNE HSU: As I said, I do not need to do  
13 that. You have the petition. Rule 402 is not a  
14 part of the petition.

15 ALENE TABER: So, are you stipulating or  
16 not?

17 DAPHNE HSU: It's not necessary. We are  
18 putting something--

19 CYNTHIA VERDUGO-PERALTA: Ms. Taber, Ms.  
20 Taber, let's, let's move on. Let's not waste more  
21 time on this. Let's move on.

22 ALENE TABER: Well, I have to waste time on  
23 this and I don't consider wasting time I should  
24 say because the district refuses to say and  
25 stipulate that they're not seeking an abatement

1 order based on odors. We heard a bunch of  
2 testimony yesterday all about odor from people.  
3 So, if I could have a stipulation that we're not  
4 going to do that, I will happily move on.

5 DAPHNE HSU: Yeah, I believe Mr. Sanchez  
6 from the district would like to say, say  
7 something.

8 NICOLAS SANCHEZ: Yeah, and I think Mr.  
9 Pearman's -- I'm sorry, go ahead.

10 DAPHNE HSU: Go ahead.

11 NICOLAS SANCHEZ: Yeah, I mean I think Mr.  
12 Pearman's kind of ruled on this. Um Ms. Taber, I  
13 mean, you're- you're kind of overreaching here.  
14 Um, you know, we're not litigating the rule  
15 development, that's long past.

16 [01:45:02]

17 If there's no allegations in there, the  
18 district does not put itself in a position where  
19 we over stipulate to something that we have not  
20 made as an allegation, so I mean you keep asking  
21 the same question, we are not going to stipulate.

22 ALENE TABER: Okay, then I'm going to go  
23 through Rule 402. I mean, you just said you were  
24 not willing to stipulate, that you're, that

25

1 you're not seeking an abatement order based on  
2 odors.

3 NICOLAS SANCHEZ: Well, it's at your peril  
4 with the board if, if you want to get into a rule  
5 that we did not allege in the petition.

6 ALENE TABER: Okay. If you don't allege it  
7 in the petition, why can't you stipulate that  
8 you're, you're not seeking an abatement order  
9 based on odors?

10 ROBERT PEARMAN: Madam Chair, this is Mr.  
11 Pearman, we're going in circles. I think you  
12 should just rule that --

13 CYNTHIA VERDUGO-PERALTA: Yes.

14 ROBERT PEARMAN: You accept what's been  
15 stated and she should move on. Rule 402 is not in  
16 play, move on. She's made an objection, move on.  
17 No more questions on this subject.

18 ALENE TABER: That is a violation of uh  
19 Baker's due process rights because you heard a  
20 bunch of testimony about odors and the district  
21 refuses to stipulate that they're not seeking--

22 CYNTHIA VERDUGO-PERALTA: Ms. Taber, you're  
23 wasting your time. I'm going on the same thing  
24 over and over and over. You've made your

25

# EXHIBIT 3

1           CYNTHIA VERDUGO-PERALTA: Okay. Uh, this is  
2           the Hearing Board of the South Coast Air Quality  
3           Management District. We are now in session. Today  
4           is Wednesday, September 28, 2022. The time is  
5           just after 9:00 am, and we are meeting remotely  
6           via Zoom due to the current pandemic and the fact  
7           that the AQMD hearing boardroom is not open to  
8           the public as of yet. I want to share some  
9           information as I did yesterday with everyone so  
10          that those public members who choose to do so may  
11          participate in our hearing this morning. You may  
12          choose to watch or listen to the meeting in the  
13          language of your choice by clicking on the globe  
14          icon labeled interpretation at the bottom of your  
15          screen. From there, select the language of your  
16          choice and when you select your language, if you  
17          hear both languages at the same time, please  
18          click mute original audio. For those  
19          participating, uh you can also uh participate by  
20          phone if you wish. To hear the meeting in  
21          Spanish, please call 669-900-6833 and enter the  
22          meeting ID number 99988599458. This information  
23          is also posted on the AQMD's website online  
24          calendar where you will find the listing for this  
25          meeting. The hearing time limit. Today's hearing

1 CYNTHIA VERDUGO-PERALTA: And I know that we  
2 have staff, uh the clerk's office.

3 ROSALINDA DIAZ: Yes, I'm here.

4 CYNTHIA VERDUGO-PERALTA: Alrighty! Let's go  
5 ahead and resume. Go ahead Ms. Taber.

6 ALENE TABER: Thank you very much. Um we're  
7 going to put up an exhibit um 408, uh it's page  
8 408 and it's exhibit I, you could open that.

9 CYNTHIA VERDUGO-PERALTA: Oh my God, I can't  
10 see that, oh there we go.

11 ALENE TABER: Uh should we make it bigger?

12 CYNTHIA VERDUGO-PERALTA: No that was --  
13 that was very um blurry.

14 ALENE TABER: Okay can you see it now?

15 CYNTHIA VERDUGO-PERALTA: Yes.

16 ALENE TABER: Okay let's like that, perfect.  
17 Um and you can see it, can our witness see it,  
18 Mr. Harris?

19 DILLON HARRIS: Yes.

20 ALENE TABER: Okay, um and um what does it  
21 say at the top of this document?

22 [03:15:04]

23 DILLON HARRIS: Trap grease  
24 hauling/processing facilities.

25

1           ALENE TABER:   Okay. And what I would like to  
2 ask you is um are these facilities subject to  
3 Rule 415?

4           DILLON HARRIS:   Uh Rule 415 specifically  
5 targets rendering facilities.

6           ALENE TABER:   Okay and um does -- is there a  
7 415 requirement for these facilities to address  
8 their uh wastewater?

9           DILLON HARRIS:   For the rendering facilities  
10 that are on this list, yes.

11          ALENE TABER:   Okay and for the non-rendering  
12 facilities that are on this list, what would your  
13 answer be?

14          DILLON HARRIS:   Rule 415 wouldn't apply to  
15 them if they're not a rendering facility.

16          ALENE TABER:   Okay. I want to move this into  
17 evidence please.

18          CYNTHIA VERDUGO-PERALTA:   So moved.

19          ALENE TABER:   Thank you. Um I'm going to go  
20 into a different subject area that um it was  
21 wrong for Baker to have requested an extension to  
22 -- uh, uh an extension under the Rule to um have  
23 an enclosed system or a enclosure.

24          DAPHNE HSU:   Objection calls for an opinion.

25

1 **PROOF OF SERVICE**

2 *In the Matter of SCAQMD v. Baker Commodities, Inc.*  
3 **Case No. 6223-1**

4 **STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA**

5 At the time of service, I was over 18 years of age and not a party to this action. I am  
6 employed in the County of Contra Costa, State of California. My business address is 1676 N.  
7 California Blvd., Suite 620, Walnut Creek, CA 94596.

8 On December 8, 2022, I served true copies of the following document(s) described as

- 9 **▪ REPLY BRIEF IN SUPPORT OF BAKER COMMODITIES, INC.'S  
10 REQUEST TO MODIFY  
11 THE ORDER FOR ABATEMENT**

12 on the interested parties in this action as follows:

13 Daphne P. Hsu  
14 Nicholas Dwyer  
15 Patrick Choi  
16 OFFICE OF THE GENERAL COUNSEL  
17 SOUTH COAST AIR QUALITY  
18 MANAGEMENT DISTRICT  
19 21865 Copley Drive  
20 Diamond Bar, California 91765  
21 Telephone: 909-396-3400  
22 Facsimile: 909-396-3458  
23 Email: dhsu@aqmd.gov  
24 ndwyer@aqmd.gov  
25 pchoi@aqmd.gov

Attorneys for Petitioner  
SOUTH COAST AIR QUALITY  
MANAGEMENT DISTRICT

26 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the  
27 document(s) to be sent from e-mail address emaestro@hansonbridgett.com to the persons at the e-  
28 mail addresses listed above. I did not receive, within a reasonable time after the transmission, any  
electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 8, 2022, at Concord, California.

  
Elaine T. Maestro