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**Exempt from Filing Fees pursuant  
to Government Code section 6103**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF FRESNO

**COMITE PROGRESO DE LAMONT,  
COMMITTEE FOR A BETTER  
SHAFTER, COMMITTEE FOR A  
BETTER ARVIN, LOST HILLS IN  
ACTION. ASSOCIATION OF IRRITATED  
RESIDENTS, and CLEAN WATER  
ACTION,**

Petitioners/Plaintiffs,

**v.**

**SAN JOAQUIN VALLEY UNIFIED AIR  
POLLUTION CONTROL DISTRICT,**

Respondents/Defendants,

**DOES 1 through 30, inclusive,**

Real Parties in Interest,

**THE PEOPLE OF THE  
STATE OF CALIFORNIA,**

Intervenor.

Case No. 20CECG01008

**PEOPLE'S PETITION FOR WRIT OF  
MANDATE IN INTERVENTION AND  
COMPLAINT IN INTERVENTION FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

**[Code Civ. Proc., §§ 387, 1085, 1060, 526;  
Gov. Code § 12606]**

Dept: 501  
Judge: Hon. D. Tyler Tharpe  
Action Filed: March 18, 2020

## INTRODUCTION

1. The People of the State of California, acting by and through the Attorney General Xavier Becerra (“the People”), intervene as of right in this action pursuant to California Government Code section 12606 and California Code of Civil Procedure sections 387 and 1085. The People challenge the legality of the petroleum refinery air monitoring regulations adopted by Respondents, the San Joaquin Valley Unified Air Pollution Control District and Does 1 through 30 (collectively, “Respondents”). The People seek a declaration pursuant to Code of Civil Procedure section 1060 that the regulations violate the California Health and Safety Code and that approval of the regulations was arbitrary, capricious, and lacking in evidence. The People also seek an injunction rescinding and revising the regulations pursuant to Code of Civil Procedure section 1085, subsection (a).

2. Petroleum refineries are among the largest stationary sources of air pollution in the state, and they are often located near low-income communities and communities of color who suffer from significant health disparities associated with exposure to pollution. The San Joaquin Valley is no exception, and large populations of low-income and minority communities reside within a one-mile radius of the petroleum refineries in Respondents’ jurisdiction. Several of the refineries are located nearby schools. These communities are among the most disproportionately pollution-burdened communities in the state, suffering from adverse health conditions far in excess of other communities. As a result, air quality monitoring is vital to the residents surrounding refineries in the San Joaquin Valley.

3. In an effort to address air quality issues experienced by communities across the State living near refineries, the California Legislature enacted Health and Safety Code section 42705.6 in October 2017 (“Refinery Statute”), which requires air districts and petroleum refineries to install and operate air quality monitoring stations along the fence-lines of petroleum refineries and within adjacent communities by January 2020. (Health & Saf. Code, § 42705.6.) The air districts are required to develop regulations implementing the requirements of the Refinery Statute. (*Id.* at subds. (b), (c).)

4. Respondents adopted Rule 4460 and Rule 3200, their regulations implementing the



1 Refinery Statute, on December 19, 2019 (“Refinery Rules”). Respondents created two  
2 exemptions to the Refinery Statute’s fence-line and community air monitoring requirements in  
3 the Refinery Rules: a total exemption for refineries not currently engaged in crude oil refining  
4 activities and a partial exemption for refineries with less than 40,000 barrel-per-day (“bpd”) crude  
5 oil refining capacity. If both of these exemptions were implemented, none of the four petroleum  
6 refineries in Respondents’ jurisdiction would be required to monitor for the full suite of pollutants  
7 or to fully fund the community air monitoring stations ostensibly mandated by the Refinery  
8 Rules.

9 5. On March 18, 2020, Earthjustice and the Center on Race, Poverty & the Environment  
10 filed a writ petition in Fresno County Superior Court on behalf of several community-based  
11 organizations challenging the exemptions in the Refinery Rules, among other claims. The People  
12 file this petition in support of those claims.

13 6. By intervening in this action, the People seek to represent all the residents of the San  
14 Joaquin Valley air basin exposed to petroleum refinery emissions, to uphold the legislative intent  
15 and purposes of the Refinery Statute, and to enforce the procedural and substantive requirements  
16 of administrative rulemaking. This petition challenges Respondents’ exemptions as violating the  
17 text and legislative purpose of the Refinery Statute and as being arbitrary, capricious, and lacking  
18 in evidentiary support. Respondents’ regulations therefore contravene California law and must be  
19 overturned.

#### 20 **ALLEGATIONS SUPPORTING INTERVENTION**

21 7. Pursuant to Government Code section 12606 and Code of Civil Procedure section  
22 387, subsection (d)(1)(a), the People, acting through the Attorney General, intervene in this  
23 action, which alleges facts concerning pollution and related adverse environmental effects. The  
24 Attorney General has an unconditional right pursuant to Government Code section 12606 to  
25 “intervene in any judicial or administrative proceeding in which facts are alleged concerning  
26 pollution or adverse environmental effects which could affect the public generally.” Therefore,  
27 the People have a mandatory statutory right to intervention in this action pursuant to Government  
28 Code section 12606 and Code of Civil Procedure section 387, subsection (d)(1)(a).

8. The People's motion is timely because intervention is being sought within a reasonable time, because intervention at this time will obviate delays and prevent a multiplicity of lawsuits, and because the People have a direct interest in this litigation and the existing parties will not be prejudiced by the People's intervention at this early stage of the proceedings.

## PARTIES

9. The Attorney General, as the chief law officer of the State of California, has broad independent powers under the California Constitution and the California Government Code to participate in all legal matters in which the State is interested, and has special and explicit statutory authority to participate in cases involving the protection of California's environment and the environmental health of its citizens. (Cal. Const., art. V, § 13; Gov. Code §§ 12511, 12600-12612.)

10. Petitioner Comité Progreso de Lamont is a community-based organization located in Lamont, Kern County. The mission of Comité Progreso de Lamont is “to achieve a healthy environment in Lamont, and to improve community infrastructure and the quality of the lives of residents, by involving the community and creating a voice to be able to advocate to deal with issues that our community is facing.”

11. Petitioner Committee for a Better Shafter is a California non-profit organization based in Shafter, Kern County. Initially formed in 2008 to in an effort to help local residents grow their own food and promote healthy lifestyle choices, Committee for a Better Shafter's mission has since expanded to include engagement of community members to take action on local environmental justice issues.

12. Petitioner Committee for a Better Arvin is a California non-profit corporation based in Kern County. Committee for a Better Arvin was formed by community members who wanted a cleaner, healthier city. The organization initially tackled water quality issues, pesticide use, and composting facility odors, and began engaging in advocacy regarding oil, gas, and petroleum emissions in 2014.

13. Petitioner Lost Hills in Action is a community-based organization located in Kern County. Lost Hills in Action is a grassroots group trying to improve the quality of life in the town



1 of Lost Hills, including the air quality. Recently, Lost Hills in Action and two non-profit partners  
2 won a \$400,000 state grant to place seven high-tech air monitors around the town.

3 14. Petitioner Association of Irrigated Residents is a California non-profit corporation  
4 based in Kern County. Association of Irrigated Residents was formed in 1991 to advocate for  
5 clean air and environmental justice in San Joaquin Valley communities.

6 15. Petitioner Clean Water Action is a non-profit organization founded in 1972. Its  
7 mission is “to protect our environment, health, economic well-being and community quality of  
8 life.” Since 2014, Clean Water Action has been working with communities in Kern County to  
9 advocate for community health protections and improved regulations on the oil and gas industry.

10 16. Respondent San Joaquin Valley Unified Air Pollution Control District is a California  
11 air quality regulatory agency formed pursuant to Health and Safety Code sections 40000 and  
12 40600, which vest such districts with the “primary responsibility for control of air pollution from  
13 all sources, other than emissions from motor vehicles.” (Health & Saf. Code, § 40000.) The  
14 districts are required to “adopt and enforce rules and regulations to achieve and maintain the state  
15 and federal ambient air quality standards in all areas affected by emission sources under their  
16 jurisdiction, and [to] enforce all applicable provisions of state and federal law.” (Health & Saf.  
17 Code, § 40001.) Respondent’s jurisdiction is comprised of Fresno, Kings, Madera, Merced, San  
18 Joaquin, Stanislaus, and Tulare counties, as well as that portion of the County of Kern that is  
19 within the San Joaquin Valley air basin. (Health & Saf. Code, § 40600.)

20 17. Does 1 through 30, inclusive, are persons whose names and identities are unknown to  
21 the People at this time, and the People therefore sue them under these fictitious names. The  
22 People will amend this Petition to allege the true names and capacities of Does 1 through 30 as  
23 soon as they are discovered.

#### 24 **JURISDICTION AND VENUE**

25 18. The Court has jurisdiction over the matters alleged in this Petition pursuant to  
26 California Code of Civil Procedure sections 526, 1060, and 1085.

27 19. Venue is proper in the Superior Court of California, County of Fresno, under Code of  
28 Civil Procedure section 395, which provides, “the superior court in the county where the

1 defendants or some of them reside at the commencement of the action is the proper court for the  
2 trial of the action.” (Code Civ. Proc., § 395.) Because Respondents’ headquarters are located in  
3 the County of Fresno, the Superior Court of California in the County of Fresno is the correct  
4 venue for this matter.

5 20. The People have satisfied all statutory prerequisites to filing this action.

## 6 BACKGROUND

### 7 I. COMMUNITY EXPOSURE TO PETROLEUM REFINERIES IN THE SAN JOAQUIN VALLEY

8 21. Decades of discriminatory land use practices have concentrated heavy industries,  
9 including petroleum refineries, near low-income communities and communities of color.<sup>1</sup> The  
10 San Joaquin Valley is no exception—the four petroleum refineries in the region are located near  
11 poor and minority communities.<sup>2</sup> These refineries are Alon Bakersfield Refining (Delek US),  
12 Kern Oil & Refining Company, San Joaquin Refining Company, and Tricor Refining, LLC.  
13 Significant populations reside within a one-mile radius of each of the refineries, and several of the  
14 refineries are located near schools.<sup>3</sup>

15 22. Petroleum refineries emit air pollutants that can cause serious adverse health  
16 reactions.<sup>4</sup> Notably, the communities surrounding all four of the refineries in the San Joaquin  
17 Valley display higher rates of respiratory disease, low birth weight, low educational attainment,  
18 and poverty as compared to the rest of the state.<sup>5</sup> Moreover, several studies identify increased risk

19 <sup>1</sup> Kay and Katz, *Pollution, Poverty and People of Color: Living with Industry*  
20 (June 4, 2012) Scientific American <<https://www.scientificamerican.com/article/pollution-poverty-people-color-living-industry/>>.

21 <sup>2</sup> Jacobs, *Anger Over Dirty Air Intensifies in California’s Oil Hub* (Apr. 29, 2020)  
E&E News <<https://www.eenews.net/stories/1062998341>>.

22 <sup>3</sup> Population statistics confirmed using the U.S. Environmental Protection Agency’s  
23 Environmental Justice Screening and Mapping Tool (“EJSCREEN”). EJSCREEN is a “mapping  
24 and screening tool that provides EPA with a nationally consistent dataset and approach for  
combining environmental and demographic indicators.” (U.S. EPA, What is EJSCREEN?,  
<<https://www.epa.gov/ejscreen/what-ejscreen>>.)

25 <sup>4</sup> California Office of Environmental Health Hazard Assessment, Analysis of Refinery  
Chemical Emissions and Health Effects (March 2019).

26 <sup>5</sup> CalEnviroScreen 3.0: <<https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>>.  
27 CalEnviro Screen is a tool that uses environmental, health, and socioeconomic data to score and  
28 rank every census tract in the state. Census tracts with a high scores experience higher pollution  
burdens than those with a low scores. (See Office of Environmental Health Hazard Assessment,  
CalEnviroScreen 3.0 Report (January 2017) <<https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>>.)



1 of COVID-19 mortality associated with long-term exposure to air pollution.<sup>6</sup> In sum, the  
2 communities surrounding the petroleum refineries in the San Joaquin Valley are some of the  
3 poorest in the state, and they are disproportionately exposed to the dangerous health effects  
4 associated with air pollution.

## 5 **II. THE REFINERY STATUTE AND THE OEHHA REPORT**

6 23. In an effort to address the problems affecting communities surrounding the refineries,  
7 the California Legislature adopted the Refinery Statute in October 2017. The Refinery Statute  
8 requires air districts and petroleum refineries to install and operate air quality monitoring stations  
9 along the fence-lines of petroleum refineries and within adjacent communities to monitor the  
10 refineries' emissions. (Health & Saf. Code, § 42705.6.) The purpose of the fence-line air  
11 monitoring systems is to gather data that may be useful for "detecting or estimating the quantity  
12 of fugitive emissions, gas leaks, and other air emissions from the refinery." (*Id.* at subd. (a)(2).)  
13 The purpose of the community air monitoring stations, in turn, is to gather data that may be useful  
14 for "estimating associated pollutant exposures and health risks and in determining trends in air  
15 pollutant levels over time." (*Id.* at subd. (a)(1).) While refineries are required to install and  
16 operate the fence-line monitoring systems, the air districts are required to install and operate the  
17 community air monitoring stations with costs paid by the refineries. (*Id.* at subd. (f)(1).) The air  
18 districts are required to collect the data from the air monitoring stations and make this data  
19 available to the public. (*Id.* at subd. (d).) Air districts are required to develop guidance pertaining  
20 to the types of equipment selected as well as the locations and operation of the air monitoring  
21 stations. (*Id.* at subds. (b), (c).) These requirements were effective as of January 1, 2020. (*Id.* at  
22 subds. (b), (c).)

23 24. According to the Assembly Bill Analysis for the Refinery Statute, "in an effort to  
24 understand the sources of pollution, how to appropriately mitigate them, and identify when  
25 pollution becomes hazardous for the communities, the state has an interest in collecting data on

26  
27 <sup>6</sup> Wu & Nethery, Harvard University T.H. Chan School of Public Health, Exposure to air  
28 pollution and COVID-19 mortality in the United States: A nationwide cross-sectional study,  
(Apr. 24, 2020) <<https://projects.iq.harvard.edu/covid-pm>>.

1 air quality.”<sup>7</sup> The Refinery Statute seeks to bolster air-monitoring requirements to produce more  
2 effective air pollution control strategies and technologies.

3 25. In March 2019, the California Office of Environmental Health Hazard Assessment  
4 (“OEHHA”) published a report entitled, “Analysis of Refinery Chemical Emissions and Health  
5 Effects” (“OEHHA Report”). The OEHHA Report analyzed air pollutant emissions from  
6 California petroleum refineries and recommended a suite of 18 air pollutants for monitoring based  
7 on emissions amounts and toxicity evaluations, and pervasiveness in refinery operations.

### 8 **III. RESPONDENTS’ IMPLEMENTATION OF THE REFINERY STATUTE AND** 9 **PETITIONERS’ WRIT PETITION**

10 26. Respondents adopted Rule 4460 and Rule 3200, their regulations implementing the  
11 Refinery Statute, on December 19, 2019 (“Refinery Rules”). Respondents created two  
12 exemptions to the Refinery Statute’s fence-line and community air monitoring requirements in  
13 the Refinery Rules: (1) a total exemption from all requirements for refineries “not currently  
14 engaged in refining crude oil;” and (2) a partial exemption for refineries refining less than 40,000  
15 bpd to perform fence-line monitoring and fund community monitoring for a smaller suite of air  
16 pollutants compared to facilities refining more than 40,000-bpd. (Rule 4460, Sections 4.0, 6.3;  
17 Rule 3200, Sections 4.0, 5.0, 6.0.)

18 27. If both of Respondents’ exemptions were implemented, none of the four petroleum  
19 refineries in Respondents’ jurisdiction would be required to perform fence-line monitoring or  
20 fund community monitoring for the full suite of air pollutants ostensibly required by the Refinery  
21 Rules. Two of the refineries (Alon Bakersfield Refining and Tricor Refining, LLC) are not  
22 currently refining crude oil and would be exempt from fence-line air and community air  
23 monitoring requirements. The other two refineries, Kern Oil & Refining Company and San  
24 Joaquin Refining Company, are currently refining crude oil but have operating capacities at less  
25 than 40,000-bpd, and so they would be required to consider monitoring for and funding only six  
26 air pollutants (compared to the 18 pollutants that must be monitored for by refineries with greater  
27

28 <sup>7</sup> Assem. Com. on Natural Resources, Analysis of Assem. Bill. 1647 (2017-2018 Reg. Sess.) August 29, 2017 (AB 1647 Assembly Analysis).



1 than 40,000-bpd refining capacities).

2 28. On March 18, 2020, Earthjustice and the Center on Race, Poverty & the Environment  
3 filed a writ petition on March 18, 2020, in Fresno County Superior Court on behalf of several  
4 community-based organizations challenging the exemptions in the Refinery Rules, among other  
5 claims. The People file this petition in support of those claims.

## 6 **FIRST CAUSE OF ACTION**

### 7 **(Traditional Mandate – Violation of Health and Safety Code section 42705.6)**

#### 8 **(Health & Saf. Code, § 42705.6; Code Civ. Proc., § 1085, subd. (a))**

9 29. The allegations in paragraphs 1 through 28 are realleged and incorporated by  
10 reference herein as though set forth in full.

11 30. The exemptions included in the Refinery Rules violate the Refinery Statute and  
12 should be stricken.

13 31. The Refinery Statute, Health and Safety Code section 42705.6, provides that, “on or  
14 before January 1, 2020, the owner or operator of a *petroleum refinery shall* develop, install,  
15 operate, and maintain a fence-line monitoring system in accordance with guidance developed by  
16 the appropriate district.” (Health & Saf. Code, § 42705.6, subd. (c) [emphasis added].)  
17 Additionally, the Refinery Statute requires the air districts to “design, develop, install, operate,  
18 and maintain the refinery-related community air monitoring system, which shall be operated and  
19 maintained in accordance with guidance from the appropriate district,” and the costs of which  
20 shall be paid for by the owners and operators of the “petroleum refinery.” (*Id.* at subds. (b)(1);  
21 (f)(1).) The Refinery Statute refers to “petroleum refineries” generally, and does not classify or  
22 exempt refineries from any requirements based on size, type, product, activity, output, or any  
23 other factor, including whether they are currently engaged in refining crude oil or based on their  
24 crude oil refining capacity.

25 32. Moreover, the Refinery Statute explains that fence-line air monitoring may be useful  
26 for “detecting or estimating the quantity of fugitive emissions, gas leaks, and other air emissions  
27 from the refinery,” and that community air monitoring may be useful for “estimating associated  
28 pollutant exposures and health risks and in determining trends in air pollutant levels over time.”

1 (Health & Saf. Code, § 42705.6, subd. (a)(2), (1).) The Refinery Statute does not limit these  
2 purposes to refineries currently engaged in refining crude oil, nor only to refineries capable of  
3 refining 40,000-bpd or more of crude oil.

4 33. Notwithstanding the broad applicability of the statutory text, Respondents adopted  
5 exemptions to air monitoring requirements based on whether a refinery was currently engaged in  
6 refining crude oil, and based on whether a refinery was able to refine less than 40,000-bpd of  
7 crude oil.

8 34. Although the Refinery Statute requires Respondents to develop guidance relating to  
9 technical aspects of the air monitoring systems, it does not authorize Respondent to adopt  
10 exemptions to the Refinery Statute's requirements. The guidance developed by the air districts  
11 must "take into account technological capabilities," "incorporate input from affected parties," and  
12 be informed by refinery-related guidance developed by the California Air Resources Board  
13 pursuant to subdivision (b) of Section 42705.5. (Health & Saf. Code, § 42705.6, subd. (e).)  
14 Nothing in the Refinery Statute, however, gives Respondent the discretion to render the Refinery  
15 Statute's requirements inapplicable to certain types of refineries or to limit the required air  
16 monitoring in a manner that obstructs the full implementation of the Refinery Statute as  
17 envisioned by the Legislature. Respondents are granted "only as much rulemaking power as  
18 invested in [them] by statute," and "regulations that are inconsistent with a statute, alter or amend  
19 it, or enlarge or impair its scope are void." (*PaintCare v. Mortensen* (2015) 233 Cal.App.4th  
20 1292, 1305-06 [citations omitted].)

21 35. The first exemption exempts refineries not currently engaged in refining crude oil  
22 from performing or funding any air monitoring under the Refinery Rules and the Refinery Statute.  
23 (Rule 4460, Section 4.0; Rule 3200, Section 4.0.) This exemption would apply to Alon  
24 Bakersfield Refining and Tricor Refining, LLC, which are allegedly not currently engaged in  
25 refining crude oil. As Petitioners note, however, Respondents conceded in the materials  
26 supporting the Refinery Rules that refineries not engaged in refining crude oil can still produce air  
27 emissions from other activities, such as "refining, blending, or storing a variety of specialized  
28 products such as biofuels, asphalt products, drilling fluids, fuel additives, hydraulic fluids, and



1 lubricants.” There is no basis in the statutory text of the Refinery Statute for exemptions from air  
2 monitoring requirements for refineries engaged in these types of activities but not engaged in  
3 crude oil refining operations.

4 36. The second exemption exempts refineries with less than 40,000-bpd crude oil refining  
5 capacity from performing or funding monitoring for the full suite of pollutants that would be  
6 required for refineries with greater than 40,000-bpd. (Rule 4460, Section 6.3, Rule 3200,  
7 Sections 5.0, 6.0.) Specifically, while the Refinery Rules require refineries with greater than  
8 40,000-bpd crude oil refining capacity to consider monitoring for 18 pollutants, refineries with  
9 less than 40,000-bpd are required to consider performing or funding monitoring for only six  
10 pollutants. This exemption would apply to the remaining two refineries in Respondents’  
11 jurisdiction not exempted by the first exemption: Kern Oil & Refining Company and San Joaquin  
12 Refining Company. The Refinery Statute does not distinguish between refineries based on their  
13 refining capacity, nor on any other basis. The stated purpose of the fence-line monitoring in the  
14 Refinery Statute is to gather information to “detect[] or estimat[e] the quantity of fugitive  
15 emissions, gas leaks, and other air emissions from the refinery,” and the stated purpose of the  
16 community air monitoring is to gather data for “estimating associated pollutant exposures and  
17 health risks and in determining trends in air pollutant levels over time.” The Respondent’s limited  
18 air monitoring requirements at refineries with less than 40,000 bpd refining capacity—three of the  
19 four refineries in Respondents’ jurisdiction—will not achieve these legislative purposes.

20 37. The two exemptions in the Refinery Rules adopted by Respondents operate to exempt  
21 all of the four refineries in Respondents’ jurisdiction from the full suite of air monitoring  
22 requirements of the regulations. Such an outcome obstructs the Refinery Statute’s stated goals of  
23 gathering information that may be useful for “detecting or estimating the quantity of fugitive  
24 emissions, gas leaks, and other air emissions from the [refineries]” and “estimating associated  
25 pollutant exposures and health risks and in determining trends in air pollutant levels over time.”  
26 (Health & Saf. Code, § 42705.6, subd. (a)(2), (1).) Because the Refinery Rules are inconsistent  
27 with the legislative purposes of the Refinery Statute and unlawfully impair its scope, the Refinery  
28 Rules violate the Refinery Statute. (*PaintCare, supra.*)

38. The Refinery Statute mandates expansive monitoring for the benefit of communities neighboring petroleum refineries, and the text of the statute does not envision or authorize exemptions to air monitoring requirements based on whether refineries are currently refining crude oil, their refining capacities, nor any other characteristic. Therefore, interpretation of this statute does not require interpretation of statutory text that is “technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.” (*American Coatings Association v. South Coast Air Quality Management District* (2012) 54 Cal.4th 446, 461.)

39. Respondents' two exemptions in the Refinery Rules run counter to the plain text of the Refinery Statute, expose neighboring communities to unmonitored air emissions in contravention of the Refinery Statute's text and purposes, and should be stricken as unlawful.

## SECOND CAUSE OF ACTION

(Traditional Mandate – Arbitrary and Capricious Rulemaking)

(Health & Saf. Code, § 42705.6; Code Civ. Proc., § 1085, subd. (a))

40. The allegations in paragraphs 1 through 28 are realleged and incorporated by reference herein as though set forth in full.

41. Respondents are required to explain their reasoning and cite to evidence to justify their regulatory decisions, as well as identify all the factors they relied upon in making their determinations—they must demonstrate “a rational connection between those factors, the choice made, and the purposes of the enabling statute.” (*American Coatings, supra*, 54 Cal.4th at p. 460.) Although Respondents are entitled to some deference in drafting rules and regulations, they are required to explain their “mode of analysis” and to expose their reasoning to public view. (*Association of Irrigated Residents v. San Joaquin Valley Unified Air Pollution Control District* (2008) 168 Cal.App.4th 535, 547-49.) Respondents have failed to meet these standards with the Refinery Rule exemptions, and the exemptions are therefore arbitrary, capricious, and lacking in evidentiary support.

### Exemption 1: Facilities Not Currently Refining Crude Oil

42. Respondents' first Refinery Rule exemption exempts all refineries not currently engaged in refining crude oil activities from performing or funding any monitoring under the



1 Refinery Statute whatsoever. (Rule 4460, Section 4.0; Rule 3200, Section 4.0.)

2 43. Respondents rationalized this exemption in several ways in the Refinery Rules staff  
3 report, dated December 19, 2019 (“Staff Report”). Respondents asserted, without evidentiary  
4 support, that the exemption was justified because non-refining activities such as refining,  
5 blending, and storing biofuels, asphalt products, drilling fluids, fuel additives, hydraulic fluids,  
6 and lubricants “produce significantly less emissions” than crude oil refining, and “many of these  
7 processes are not actually refining operations and do not produce the types of refinery emissions  
8 that may be of concern.” (Staff Report, at p. 6.) Respondents also made conclusory statements  
9 that because the San Joaquin Valley refineries tend to be smaller and independently owned, and  
10 engage less frequently in refinery options, not only do they produce fewer emissions, but they  
11 also have less revenue available to absorb the costs of the full suite of air monitoring  
12 requirements. (Staff Report, at p. 15.)

13 44. Respondents’ assertions are not supported by evidence or analysis. Respondents  
14 provide no analysis or evidentiary support to explain why they believe emissions from refining,  
15 blending, and storing fuels, fluids, lubricants, and asphalt products are of less concern than  
16 emissions from refining activities. There is no scientific, technical, or other mode of analysis  
17 provided in the Refinery Rules, the Staff Report, or any other document referenced or relied upon  
18 when the Refinery Rules were adopted that substantiates this assertion.

19 45. Moreover, Respondents did not provide any discussion or analytical support for their  
20 assumption that even if there are *fewer* emissions that the emissions are therefore *not harmful*. For  
21 instance, while a San Joaquin Valley refinery may be smaller than a Southern California or San  
22 Francisco Bay Area refinery, it may be older and prone to emitting more dangerous pollutants  
23 than larger facilities with newer technologies. Respondents provide no scientific, technical, or  
24 other analysis in the Refinery Rules, the Staff Report, or any other document referenced or relied  
25 upon when the Refinery Rules were adopted that substantiates the assumption that because there  
26 are fewer emissions that emissions are not harmful.

27 46. Finally, Respondents fail to provide an explanation of how the exemption comports  
28 with the Refinery Statute’s goals of gathering information that could be useful for “detecting or

1 estimating the quantity of fugitive emissions, gas leaks, and other air emissions from [refineries],”  
2 and “estimating associated pollutant exposures and health risks and in determining trends in air  
3 pollutant levels over time,” goals which are explicitly not limited to crude oil refining activities.  
4 (Health & Saf. Code, § 42705.6, subd. (a)(2), (1).) If Respondents have a reason explaining how  
5 their decision not to collect emissions data from non-crude oil refining facilities furthers these  
6 policy goals, they have not provided it in the Refinery Rules, the Staff Report, or in any other  
7 document referenced or relied upon when the Refinery Rules were adopted.

8 47. Respondents’ exemption for refineries not currently engaged in refining crude oil is  
9 not supported by evidence or explanations demonstrating “a rational connection between [the  
10 factors identified], the choice made, and the purposes of the enabling statute.” (*American*  
11 *Coatings, supra*, 54 Cal.4th at p. 460.) It is therefore arbitrary, capricious, and lacking in  
12 evidence, and should be overturned.

13 Exemption 2: Refineries with Under 40,000-bpd Capacity

14 48. Respondents’ second Refinery Rule exemption exempts refineries with less than  
15 40,000-bpd crude oil refining capacity from performing or funding monitoring for the full suite of  
16 pollutants applicable to refineries with greater than 40,000-bpd crude oil refining capacity. (Rule  
17 4460, Section 6.3, Rule 3200, Section 5.0, 6.0.) Under this exemption, refineries with less than  
18 40,000-bpd crude oil refining capacity would be required to consider monitoring for only six  
19 pollutants compared to the 18 pollutants required to be considered for monitoring by refineries  
20 with greater than 40,000-bpd crude oil refining capacity.

21 49. Respondents offer several justifications for this partial exemption in the Staff Report.  
22 In their December 19, 2019, memo accompanying the proposed Refinery Rules and Staff Report  
23 (“Memo”), Respondents note that the pollutants selected for monitoring at all refineries were  
24 informed by the OEHHA Report recommendations for air monitoring at petroleum refineries.  
25 (Memo, pp. 10-11.) Additionally, Respondents contend that the pollutants that refineries with less  
26 than 40,000-bpd capacity will be sampling for are the most representative refinery pollutants,  
27 such that evidence of emissions from these pollutants is also strong evidence of emissions of  
28 other, non-monitored pollutants. (Memo, p. 11.) Finally, as with the first exemption, Respondents



1 assert that San Joaquin air basin refineries are smaller, produce fewer emissions, and are less able  
2 to absorb the costs of the full suite of air monitoring requirements. (Staff Report, pp. 5-6, 15;  
3 Memo, p. 9, 10-11.)

4 50. Respondents have failed to provide any evidence or mode of analysis that  
5 substantiates their decisions underlying the second Refinery Rule exemption. First, Respondents  
6 fail to support with evidence or explain why they selected the 40,000-bpd figure as a threshold for  
7 the partial exemption—none of the four refineries in the San Joaquin Valley has a refining  
8 capacity within the specific range of 40,000-bpd. Respondents provide no scientific, technical, or  
9 policy-based rationale for why 40,000-bpd specifically is a relevant figure for monitoring  
10 emissions from petroleum refineries.

11 51. Respondents also fail to explain or substantiate with evidence how they relied on the  
12 OEHHA Report in selecting the different suites of pollutants for monitoring at different types of  
13 refineries. Although the OEHHA Report recommends 18 pollutants for air monitoring,  
14 Respondents require that refineries with less than 40,000-bpd crude refining capacity perform or  
15 fund monitoring for just six pollutants. Moreover, only four of these six pollutants were  
16 recommended by the OEHHA Report. Respondents do not provide any analysis in the Refinery  
17 Rules, the Staff Report, or any other document referenced or relied upon when the Refinery Rules  
18 were adopted to explain how they relied on the OEHHA Report when selecting pollutants for  
19 monitoring, or why they selected some pollutants but excluded others.

20 52. Respondents further contend that the pollutants selected can be considered  
21 “appropriate surrogates” for all refinery pollutants. However, Respondents provide no evidence or  
22 explanation in the Refinery Rules, the Staff Report, or any other document referenced or relied  
23 upon when the Refinery Rules were adopted to substantiate this assertion.

24 53. Respondents did not articulate any evidentiary or reasoned basis for the selections  
25 they made in developing the lists of pollutants to be considered for monitoring by the various  
26 refineries, nor have they provided evidence or analysis justifying their differentiation between  
27 refineries that are capable of 40,000-bpd and those that are not. Therefore, the exemption limiting  
28 the number of pollutants required to be monitored for at refineries with less than 40,000-bpd is

1 arbitrary, capricious, and lacking in evidence.

2 54. Respondents' exemptions in the Refinery Rules are not authorized by the plain text or  
3 legislative purpose of the Refinery Statute, and the exemptions are arbitrary, capricious, and  
4 lacking in evidence. Therefore, the exemptions should be set aside.

## 5 6 **PRAYER FOR RELIEF**

7 The People pray for judgment as follows:

8 1. As to the FIRST CAUSE OF ACTION:

- 9 a. For a writ of mandate or peremptory writ issued pursuant to Code of Civil  
10 Procedure section 1085 commanding Respondents to comply with Health and  
11 Safety Code section 42705.6 by rescinding the exemptions in the Refinery Rules.  
12 b. For a declaration pursuant to Code of Civil Procedure section 1060 that  
13 Respondents violated Health and Safety Code section 42705.6 by adopting  
14 unlawful exemptions to the statute's air emissions monitoring requirements.  
15 c. For injunctive relief consistent with the writ of mandate prayed for above ordering  
16 compliance with Health and Safety Code section 42705.6.

17 2. As to the SECOND CAUSE OF ACTION:

- 18 a. For a writ of mandate or peremptory writ pursuant to Code of Civil Procedure  
19 section 1085 commanding Respondents to comply with Health and Safety Code  
20 section 42705.6 by requiring Respondents to issue revised Refinery Rules that  
21 provide evidentiary support for the decisions made and demonstrate a rational  
22 connection between the regulations devised and the stated purposes of Health and  
23 Safety Code section 42705.6.  
24 b. For a declaration pursuant to Code of Civil Procedure section 1060 that approval  
25 of the Rule 4460 exemptions was arbitrary, capricious, and lacking in evidence.  
26 c. For injunctive relief consistent with the writ of mandate prayed for above ordering  
27 compliance with Health and Safety Code section 42705.6.

28 (cont.)



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