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SEP 17 2021

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF FRESNO  
BY [Signature] DEPUTY

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO  
CENTRAL DIVISION

COMITE PROGRESO DE LAMONT, et	)	Case No. 20CECG03416
al.,	)	Department 404
	)	
Petitioners,	)	STATEMENT OF DECISION AND
	)	JUDGMENT
v.	)	
	)	
SAN JOAQUIN VALLEY UNIFIED AIR	)	
POLLUTION CONTROL DISTRICT	)	
	)	
Respondent,	)	
	)	
DOES 1 through 30, inclusive,	)	
	)	
Real Parties in Interest,	)	
	)	
	)	
THE PEOPLE OF THE STATE OF	)	
CALIFORNIA, EX REL. ROB BONTA,	)	
ATTORNEY GENERAL,	)	
	)	
Petitioner/Intervenor.	)	
	)	
	)	
	)	

**INTRODUCTION**

This action concerns a challenge to petroleum refinery air pollution monitoring regulations adopted by Respondent San Joaquin Valley Unified Air Pollution Control District ("Respondent") under Health and Safety Code section 42705.6 (the "Refinery Statute" or "Statute").

The Refinery Statute requires local air districts to install

1 and operate community air monitoring systems at or near sensitive  
2 receptor locations around petroleum refineries, and it requires  
3 petroleum refinery owners and operators to install and operate  
4 fence-line air monitoring systems at or adjacent to a refinery.  
5 (Health & Safety Code § 42705.6, subds. (b), (c).) Both types of  
6 systems were required to be installed and operational by January  
7 1, 2020. (*Id.* at subds. (b), (c).) The purposes of the monitoring  
8 systems include generating data useful for evaluating petroleum  
9 refinery pollution exposure levels and health risks, and for  
10 measuring fugitive emissions, gas leaks, and other air emissions  
11 from petroleum refineries. (*Id.* at subds. (a)(1)-(2).) The  
12 monitoring systems are to be designed, operated, and maintained in  
13 accordance with guidance developed by the air districts. (*Ibid.*)  
14 Real-time data from the monitoring systems must be collected and  
15 maintained by the air districts and petroleum refinery operators,  
16 and must be provided to the public as quickly as possible. (*Id.* at  
17 subd. (d).)

18 In December 2019, Respondent adopted Rules 4460 and 3200  
19 ("Refinery Rules"), its regulations implementing the Refinery  
20 Statute. The Refinery Rules exempt petroleum refineries not  
21 currently refining crude oil from complying with the Statute's  
22 monitoring requirements. The Refinery Rules also exempt petroleum  
23 refineries with a crude oil refining capacity of 40,000 barrels-  
24 per-day or less from monitoring any pollutants other than the six  
25 pollutants included on a pre-determined list developed by  
26 Respondent.

27 Petitioners are a coalition of community groups advocating  
28 for environmental and public health policies ("Petitioners").

1 Petitioners filed this writ petition under Code of Civil Procedure  
2 section 1085, contending that Respondent's Refinery Rules consist  
3 of exemptions which violated the plain text of the Refinery  
4 Statute and are arbitrary, capricious, and lacking in evidence.  
5 Petitioners also contend Respondent violated the Statute by: (1)  
6 failing to deploy community air monitoring stations by January 1,  
7 2020; (2) failing to prepare required guidance materials; (3)  
8 failing to provide for public review and input guidance materials,  
9 and (4) choosing to deploy only one community air monitor per  
10 petroleum refinery. The People of the State of California, via the  
11 Attorney General ("Intervenor"), intervened in the action, joining  
12 Petitioners' claims that the Refinery Rules' exemptions violated  
13 the Refinery Statute and are arbitrary, capricious, and lacking in  
14 evidence.

15 Respondent contends that both the Refinery Statute and its  
16 statutory primary authority for regulating stationary sources of  
17 air pollution vests it with discretion to include in the Refinery  
18 Rules an exemption for facilities not currently engaged in  
19 refining crude oil, and that the crude oil exemption is not  
20 arbitrary, capricious or without rational basis. Respondent also  
21 contends that the exemption for facilities not currently engaged  
22 in refining crude oil is authorized by Health and Safety Code §  
23 42708. With respect to the fence-line monitoring requirements in  
24 the Refinery Rules for facilities with less than a 40,000 barrel  
25 per day (bpd) refining capacity, Respondent contends that it is  
26 not an exemption from the requirements of the Refinery Statute,  
27 and that evidence in the record supports a rational basis for  
28 requiring fence-line monitoring the pre-determined set of

1 pollutants for facilities refining less than 40,000 bpd.  
2 Respondent also denies that it violated the Refinery Statute by  
3 failing to deploy community air monitoring stations by January 1,  
4 2020, denies that it failed to prepare required guidance materials  
5 or to provide for public review and input of guidance materials,  
6 and denies that it violated the Refinery Statute by choosing to  
7 deploy one community air monitor per petroleum refinery.

8         Petitioners and Intervenor request the Court issue a writ of  
9 mandate commanding Respondent to rescind portions of the Refinery  
10 Rules which they characterize as exemptions and to issue revised  
11 regulations that comply with the Refinery Statute and that provide  
12 analytical and evidentiary support for the decisions made and  
13 demonstrate a rational connection to the Refinery Statute.  
14 Petitioners further request the Court command Respondent to issue  
15 guidance materials by a specific date, to set deadlines for  
16 designing and installing community air monitoring systems, and to  
17 set deadlines for review and approval of refineries' fence-line  
18 air monitoring system plans.

19         After a thorough review of the administrative record  
20 ("Record") and the pleadings filed in this case, and after hearing  
21 arguments of counsel, the Court grants Petitioners' and  
22 Intervenor's requests for a peremptory writ of mandate commanding  
23 Respondent to (1) comply with the Refinery Statute by removing  
24 from the Refinery Rules compliance exemptions for non-crude oil  
25 refining facilities and air pollutant monitoring exemptions for  
26 under-40,000 barrel-per-day petroleum refineries, and (2) to issue  
27 revised regulations providing evidentiary support for the  
28 decisions made and demonstrating a rational connection between the

1 Refinery Rules and the Refinery Statute. The Court denies  
2 Petitioners' remaining requests.

3 **DISCUSSION**

4 **I. STANDARD OF REVIEW**

5 In promulgating Rules 4460 and 3200, Respondent exercised its  
6 quasi-legislative power pursuant to statute to issue generally  
7 applicable regulations to achieve its own and the state's air  
8 pollution objectives. (*American Coatings Assn. v. South Coast Air*  
9 *Quality Mgmt. Dist.* (2012) 54 Cal.4th 446, 460.) When a court  
10 assesses the validity of such rules, the scope of its review is  
11 narrow. (*Id.*) If satisfied that the rule in question lay within  
12 the lawmaking authority delegated by the Legislature, and that it  
13 is reasonably necessary to implement the purpose of the statute,  
14 judicial review is at an end. (*Id.*) In assessing the validity of a  
15 quasi-legislative regulation in a mandamus action under Code of  
16 Civil Procedure section 1085, the court's inquiry is confined to  
17 the question of whether the action is arbitrary, capricious or  
18 without rational basis. (*Id.*) When inquiring as to whether the  
19 agency action was arbitrary or capricious, the court must ensure  
20 that an agency has adequately considered all relevant factors, and  
21 has demonstrated a rational connection between those factors, the  
22 choice made, and the purposes of the enabling statute. (*Golden*  
23 *Drugs Co., Inc. v. Maxwell-Jolly* (2009) 179 Cal.App.4th 1455,  
24 1466.)

25 However, when the agency is not exercising a discretionary  
26 rulemaking power but is merely construing a controlling statute,  
27 the review is "one in which the judiciary, although taking  
28

1 ultimate responsibility for the construction of the statute,  
2 accords great weight and respect to the administrative  
3 construction." (*American Coatings, supra*, 54 Cal.4th at 461.) How  
4 much weight to accord an agency's construction is "situational,"  
5 and greater weight may be appropriate when an agency has a  
6 comparative interpretive advantage over the courts as when the  
7 legal text to be interpreted is technical, obscure, complex, open-  
8 ended, or entwined with issues of fact, policy, and discretion.  
9 (*Ibid.*) "Nevertheless, the proper interpretation of a statute is  
10 ultimately the court's responsibility." (*Id.* at p. 462.)

11 **II. RESPONDENT IS REQUIRED TO REMOVE THE CRUDE OIL EXEMPTIONS UNDER THE**  
12 **REFINERY RULES**

13 The Court finds that Respondent's exemptions for the non-  
14 crude oil refining facilities are not authorized by Health and  
15 Safety Code Section 42708 nor the Refinery Statute.

16 **A. Health and Safety Code Section 42708 Does Not Apply to**  
17 **the Refinery Statute's Monitoring Requirements**

18 Respondent contends that Health and Safety Code section 42708  
19 vests it with discretion to exempt facilities not currently  
20 engaged in refining crude oil from the requirement to install a  
21 fence-line monitoring system at their facility. Although courts  
22 often defer to agencies' statutory interpretations, such deference  
23 is "situational," and appropriate when text is "technical,  
24 obscure, complex, open-ended, or entwined with issues of fact,  
25 policy, and discretion," or if the interpretive task has been  
26 delegated to the agency. (*American Coatings, supra*, 54 Cal.4th at  
27 461.) Here, however, the Court agrees with Petitioners and  
28 Intervenor that the plain text of Section 42708 indicates that it

1 does not apply to the Refinery Statute's air monitoring  
2 requirements.

3 Section 42708 (adopted in 1976), entitled "Powers of local or  
4 regional agency," provides as follows: "This chapter shall not  
5 prevent any local or regional authority from adopting monitoring  
6 requirements more stringent than those set forth in this chapter  
7 or be construed as requiring the installation of monitoring  
8 devices on any stationary source or classes of stationary sources.  
9 This section shall not limit the authority of the state board to  
10 require the installation of monitoring devices pursuant to Chapter  
11 1 (commencing with Section 41500)."

12 Section 42708 authorizes local agencies to adopt requirements  
13 more stringent than the requirements adopted by the California Air  
14 Resources Board ("CARB") per Health and Safety Code sections  
15 42701, 42702, 42704 and 42705.5. The same sentence also provides  
16 that the chapter shall not be construed as requiring the  
17 installation of monitoring devices on any stationary source or  
18 class of stationary source. The Court agrees with Petitioners and  
19 Intervenor that this phrase logically refers back to the same  
20 local agency discretion regarding the CARB requirements. Section  
21 42708 does not prevent local agencies from adopting stricter  
22 standards than those imposed by CARB. Similarly, the section does  
23 not require that local agencies mandate installation of monitoring  
24 devices.

25 By its plain terms, Section 42708 does not apply to the  
26 Refinery Statute's air monitoring requirements. As to community  
27 monitoring, the Refinery Statute states that air districts are  
28 required to install the stations "notwithstanding Section 42708."

1 (§ 42705.6, subd. (b).) As to fence-line monitoring, Section  
2 42708 describes the authority of local agencies to mandate  
3 installation of monitoring devices on stationary sources or  
4 classes of sources as compared to CARB. The Refinery Statute's  
5 fence-line monitoring requirements, however, are directly  
6 applicable to petroleum refineries, and do not require air  
7 districts to install and operate fence-line monitoring systems.  
8 Section 42708 has no application to monitoring requirements  
9 imposed by the Legislature directly on private owners and  
10 operators of petroleum refineries.

11 Even if the text of Section 42708 was ambiguous and required  
12 consultation of extrinsic materials, the legislative history of  
13 Section 42708 confirms that the statute is concerned with air  
14 districts' powers relative to CARB.

15 Section 42708 was added to the Health and Safety Code as  
16 section 39052.12 by Assembly Bill ("AB") 2317 in 1973, and amended  
17 by AB 1758 in 1975 and AB 3425 in 1976. The original section  
18 39052.12 contained specific requirements for CARB to make  
19 feasibility recommendations for monitoring devices. The  
20 Legislative Counsel's Digest for the 1973 legislation explained,  
21 "the act shall not prevent any local or regional authority from  
22 adopting more stringent monitoring requirements [than those  
23 adopted by CARB under the chapter] *or from determining that*  
24 *monitoring devices are not necessary or appropriate for any*  
25 *stationary source or class of stationary sources."* (Legis.  
26 Counsel's Dig., Senate Amends. to Assem. Bill No. 2317, Aug. 20,  
27 1974, p. 2 (1973-1974 Reg. Sess. [italics in original].) The  
28 italicized language was later deleted and replaced with language



1 providing that the act shall not prevent any local agency from  
2 "requiring the installation of such devices," and that the chapter  
3 should not be "construed as requiring the installation" of  
4 devices. (Legis. Counsel's Dig., Conf. Amends. to Assem. Bill. No.  
5 2317, Aug. 29, 1974, pp. 2, 5 (1973-1974 Reg. Sess.)) Thus, from  
6 its inception, Section 42708 was intended to articulate the  
7 respective authorities of CARB and local agencies and to prevent  
8 CARB's requirements from impeding local discretion.

9 The 1975 amendments renumbered the statute to section 42708  
10 and further emphasized the authority of CARB and local agencies.  
11 (Legis. Counsel's Dig., Senate Amends. to Assem. Bill No. 1758,  
12 Aug. 28, 1975, pp. 2, 78 (1975-1976 Reg. Sess.)) The 1976  
13 amendments clarified CARB's authority as the "state" board.  
14 (Legis. Counsel's Dig., Senate Amends. to Assem. Bill 3425, Aug.  
15 16, 1976, p. 27 (1975-1976 Reg. Sess.)) As this history shows,  
16 Section 42708 reiterates the balance of authority between CARB and  
17 local agencies.<sup>1</sup>

18 The Court rejects Respondent's interpretation of Section  
19 42708. The plain language and legislative history of Section  
20 42708 demonstrate that it has no application to the Refinery  
21 Statute's community and fence-line monitoring requirements.

22 **B. The Crude Oil Exemption Is Not Authorized by the**  
23 **Refinery Statute**

24 Respondent contends that as the regulatory agency with  
25 primary authority for regulating stationary sources of air  
26 pollution in the San Joaquin Valley, in context with the Refinery

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27 <sup>1</sup>The Court grants Intervenor's Requests for Judicial Notice  
28 numbers 5, 6, and 7, which contain the cited legislative history  
materials.

1 Statute's requirement that monitoring systems be developed and  
2 installed "in accordance with guidance" from the air districts, it  
3 has discretion to exempt petroleum refineries not currently  
4 refining crude oil. The plain language of the Statute provides  
5 otherwise.

6 The Refinery Statute does not mention the terms "crude oil,"  
7 nor does it differentiate between petroleum refineries based on  
8 their refining capacity or any other characteristic. The term  
9 "petroleum refinery" is not ambiguous, and the Legislature did not  
10 include language directing the air districts to further define the  
11 Statute's provisions. (*Delta Stewardship Council Cases* (2020) 48  
12 Cal.App.5th 1014, 1052.) As such, Respondent's interpretation of  
13 the Statute allowing it to craft exemptions through "guidance" is  
14 not entitled to great deference.

15 Moreover, the Statute's requirements that the monitoring be  
16 performed "in accordance with guidance" from local air districts  
17 does not grant Respondent the discretion to nullify the same  
18 statutory provision by exempting certain petroleum refineries.  
19 (*Clean Air Constituency v. Cal. State Air Res. Bd.* (1974) 11  
20 Cal.3d 801, 813-15.) The Statute defines the parameters of the  
21 guidance to be developed by the air districts, which include  
22 incorporating information from the Refinery Emergency Air  
23 Monitoring Assessment Reports ("REAMAR") prepared by CARB. The  
24 parameters set forth in these reports do not include the  
25 discretion to exempt certain classes of petroleum refineries—such  
26 as facilities not refining crude oil from monitoring requirements.  
27 There are no indications in the text of the Statute that the  
28 Legislature intended for the monitoring requirements to apply to

1 only specific subsets or classes of petroleum refineries, and  
2 courts will not read exceptions into statutes where none exist.  
3 (*Dicampoli-Mintz v. Cnty. of Santa Clara* (2012) 55 Cal.4th 983,  
4 992.)

5 Notwithstanding the Refinery Statute's plain terms and  
6 parameters, Respondent's exemptions for non-crude oil facilities  
7 relieves an entire class of petroleum refineries from complying  
8 with all or parts of the Refinery Statute's requirements. Because  
9 the exemptions for facilities not engaged in crude oil refining  
10 contravenes the express requirements of the Statute, they exceed  
11 the authority granted to Respondent by the Legislature and must be  
12 stricken as void. (*Clean Air Constituency, supra*, 11 Cal.3d at pp.  
13 813-15; *Assn. for Retarded Citizens v. Dept. of Developmental*  
14 *Services* (1985) 38 Cal.3d 384, 391 (hereafter *ARC*.) The Court  
15 grants Petitioners' and Intervenor's requests for a writ of  
16 mandate commanding Respondent to rescind the Refinery Rules'  
17 exemptions for non-crude oil refining facilities.

18 **C. In the Alternative, the Crude Oil Exemption Is**  
19 **Arbitrary, Capricious, and Lack Rational Bases**

20 Where a court concludes that agency regulations contravene  
21 the authorizing statute, "it need not proceed to review the action  
22 for abuse of discretion; in such a case, there is simply no  
23 discretion to abuse. Administrative action that is not authorized  
24 by, or is inconsistent with, acts of the Legislature is void."  
25 (*ARC, supra.*, 38 Cal.3d at p. 391.) Nonetheless, even assuming the  
26 exemptions were authorized under the Refinery Statute, the  
27 exemptions are arbitrary, capricious, and lacking rational bases.  
28 When inquiring as to whether agency action was arbitrary,

1 capricious, or lacking rational bases, courts must verify that the  
2 agency adequately considered all relevant factors, and has  
3 demonstrated a rational connection between those factors, the  
4 choices made, and the purposes of the enabling statute. (*Golden*  
5 *Drugs, supra*, 179 Cal.App.4th at p. 1466.) Respondent does not  
6 demonstrate rational connections between the exemption, the  
7 relevant factors, and the purposes of the Refinery Statute.

8         Respondent maintains it is rational to exempt non-crude oil  
9 refining facilities from complying with the Refinery Statute's  
10 monitoring requirements because the facilities "do not generate  
11 emissions of significance from the refinery process, or indeed at  
12 all," and because "they do not produce the types of refinery  
13 emissions that may be of concern." (Respt.'s Mem. P. & A. in Oppn.  
14 to Pet. for Writ of Mandate 31:26-32:2; AR000006.) But these  
15 assertions conflict with the Record and are inconsistent with the  
16 Statute's requirements. Respondent concedes that Alon Bakersfield  
17 Refining Company and Tricor LLC, the two non-crude oil refining  
18 facilities, generate emissions of particulate matter, nitrogen  
19 oxide, and toxic air contaminants. These pollutants are  
20 recommended for petroleum refinery monitoring by the Office of  
21 Environmental Health Hazard Assessment ("OEHHA") report.  
22 (AR003221.) Respondent does not offer evidence or analysis for  
23 why these or other emissions from Alon and Tricor are not  
24 emissions "that may be of concern" or why they should not be  
25 monitored. Additionally, the Air Toxics Hot Spots program, which  
26 Respondent counters already measures emissions from these  
27 petroleum refineries, is not a substitute for the Refinery  
28 Statute's requirements. Emissions data collected in that program

1 is provided to the public only if significant health risks are  
2 identified, but the Refinery Statute requires real-time emissions  
3 data be provided to the public as fast as possible regardless of  
4 health risk. (§ 42705.6, subd. (d).)

5       Moreover, the Refinery Statute expressly provides that the  
6 purposes of petroleum refinery air monitoring include generating  
7 data that may be useful for tracking fugitive and other refinery  
8 emissions and for estimating pollution exposure, trends, and  
9 health risks over time. Respondent does not provide scientific or  
10 technical analysis explaining how exempting non-crude oil refining  
11 facilities' emissions from air monitoring furthers, rather than  
12 frustrates, these goals.

13       Respondent does not articulate a rational connection between  
14 the exemption for non-crude oil refining facilities, the emissions  
15 from these facilities, and the purposes of the Refinery Statute.  
16 Therefore, the exemption is arbitrary, capricious, and lacks a  
17 rational basis.

18       Notwithstanding the Refinery Statute's plain terms and  
19 parameters, Respondent's exemptions for non-crude oil facilities  
20 relieves an entire class of petroleum refineries from complying  
21 with the Refinery Statute's requirements. Because the exemptions  
22 for facilities not engaged in crude oil refining contravenes the  
23 express requirements of the Refinery Statute, it exceeds the  
24 authority granted to Respondent by the Legislature and must be  
25 stricken as void. (*Clean Air Constituency, supra*, 11 Cal.3d a pp.  
26 813-15; *Assn. for Retarded Citizens v. Dept. of Developmental*  
27 *Services* (1985) 38 Cal.3d. 384, 391 (hereinafter "ARC"))

28

1 **III. RESPONDENT IS REQUIRED TO PROVIDE EVIDENTIARY SUPPORT AND A RATIONAL**  
2 **BASIS FOR ITS DECISIONS TO REQUIRE MONITORING FOR A PRE-**  
3 **DETERMINED SET OF SIX POLLUTANTS FOR FACILITIES WITH A**  
4 **REFINING CAPACITY OF LESS THAN 40,000 BPD**

5 Under Code of Civil Procedure section 1085, when reviewing an  
6 agency's exercise of discretionary rulemaking power, the court's  
7 task is to determine whether the regulation is "arbitrary,  
8 capricious, or [without] reasonable or rational basis.'" (*American*  
9 *Coatings, supra*, 54 Cal.4th at p. 460 [citing *Yamaha Corp. of*  
10 *America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11.) To  
11 do so, "the court must confirm that an agency has adequately  
12 considered all relevant factors, and has demonstrated a rational  
13 connection between those factors, the choice made, and the  
14 purposes of the enabling statute." (*Ibid.* [citing *Golden Drugs,*  
15 *supra*, 179 Cal.App.4th at p. 1466].) The Court grants Petitioners'  
16 and Intervenor's request for a writ of mandate requiring  
17 Respondent to issue revised rules that provide evidentiary support  
18 for the decisions made and demonstrate a rational connection  
19 between its decision to require monitoring for a pre-determined  
20 set of six pollutants for facilities with a refining capacity of  
21 less than 40,000 bpd and the Refinery Statute.

22 **A. List of Six Pre-Selected Pollutants for Under-40,000-**  
23 **bpd Facilities Decision**

24 Respondent's specific list of six pre-determined pollutants  
25 selected for monitoring by 40,000-bpd-or-less petroleum refineries  
26 lacks a rational basis in the Record. Respondent's list of six  
27 pollutants is inconsistent with the OEHHA and REAMAR 02 reports  
28 and is not supported by current emissions information.

The two facilities subject to the 40,000-bpd exemption, San  
Joaquin Refining Company and Kern Oil & Refining Co., generate

1 emissions of pollutants recommended for monitoring by OEHHA, but  
2 Section 6.3 of Rule 4460 does not require many of these emissions  
3 be monitored. Specifically, although these petroleum refineries  
4 produce emissions of ammonia, nitrogen oxide, particulate matter,  
5 and toxic air contaminants, and these pollutants are recommended  
6 for monitoring by OEHHA, Respondent's pre-selected list omits them  
7 entirely and the refineries are not required to conduct fence-line  
8 monitoring for these pollutants.<sup>2</sup> Though the Refinery Statute  
9 does not require monitoring for every potential refinery-related  
10 pollutant identified by OEHHA, Respondent fails to provide any  
11 meaningful health risk or other analyses to justify its inclusion  
12 and exclusion of OEHHA-recommended or other pollutants on the pre-  
13 selected list.

14 Similarly, Respondent's pre-determined pollutants list is  
15 inconsistent with the REAMAR 02 report, which cautions against  
16 adopting one-size-fits-all rules and recommends site-specific  
17 analyses to develop monitoring requirements. However, Respondent  
18 adopted a one-size-fits-all rule requiring monitoring only for a  
19 pre-determined list of six pollutants that omits several chemicals  
20 emitted from the refineries. Respondent does not provide analysis  
21 in the Record for why it selected the same six pollutants for  
22 monitoring at all under-40,000-bpd petroleum refineries regardless  
23 of their emissions or site-specific characteristics.

24 The Court also agrees with Petitioners and Intervenor that  
25 Respondent relied on data from 2011 and 2012 that lacked emissions  
26

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27 <sup>2</sup>As noted above, existing monitoring under the Air Toxics Hot  
28 Spots programs is not a substitute for the Refinery Statute's  
monitoring requirements.

1 information for several petroleum refinery pollutants, such as  
2 ammonia and nitrogen oxide, and that lacked health risk analyses  
3 for nitrogen oxide and organic gases. Respondent does not explain  
4 why it relied on this data when newer, more complete data from  
5 2017 and 2018 is in the Record. Agency regulations are arbitrary  
6 and capricious if the evidence relied on by the agency to develop  
7 the regulations is outdated and when more recent data is  
8 available. (*Cal. Assn. for Health Services at Home v. State Dept.*  
9 *of Health Care Services* (2012) 204 Cal.App.4th 676, 688-89.)

10 Finally, Respondent's pre-determined pollutants list  
11 undermines the Refinery Statute's express objectives by preventing  
12 air monitoring of petroleum refineries despite their emissions.  
13 Respondent requires that all under-40,000-bpd petroleum refineries  
14 must monitor for only the same six pollutants regardless of their  
15 actual emissions, and are not required to monitor for other  
16 pollutants they emit. As such, Respondent's pre-determined  
17 pollutants list frustrates the Refinery Statute's explicit goal of  
18 collecting real-time data that may be useful for detecting  
19 petroleum refinery emissions and estimating pollutant exposure,  
20 trends, and health risks over time.

21 Respondent does not articulate a rational basis for its pre-  
22 determined pollutants list. Respondent must issue revised rules  
23 that provide evidentiary support for its decision and demonstrate  
24 a rational connection between the pollutants selected for  
25 monitoring, emissions from petroleum refineries, and the purposes  
26 of the Refinery Statute.

27  
28



1                   **1. Exemption for 40,000-bpd-or-Less Facilities Is**  
2                   **Arbitrary, Capricious and Lacks Rational Basis**

3                   Similarly, the Refinery Rule's limitation of the number  
4 of pollutants that must be monitored by facilities that refine  
5 40,000 bpd or less is not authorized by Section 42708 or the  
6 Refinery Statute on the basis that it is arbitrary, capricious,  
7 and lacking rational basis. Respondent does not demonstrate  
8 rational connections between the limited monitoring requirements  
9 for facilities that refine less than 40,000 bpd, the relevant  
10 factors, and the purpose of the Refinery Statute.

11                   Respondent maintains that the exemption for facilities with a  
12 refining capacity of 40,000-bpd or less provides consistency  
13 across geographic regions while still requiring air monitoring. It  
14 notes that the 40,000-bpd exemption threshold figure is based on  
15 similar regulations adopted by the South Coast Air Quality  
16 Management District ("South Coast AQMD") (AR000053-55; AR000057-  
17 58; Respt.'s Mem. P. & A., *supra*, 20:18-21:4.). However, the  
18 critical analysis underlying these explanations is lacking, and  
19 Respondent fails to show a scientific or technical justification  
20 for the 40,000-bpd cutoff figure in the Record. Respondent does  
21 not explain why the South Coast AQMD adopted the 40,000-bpd  
22 threshold, nor does it explain why the figure is relevant for San  
23 Joaquin Valley petroleum refineries or for refinery air monitoring  
24 generally. The Record lacks any analytical justification for using  
25 the 40,000-bpd figure as a threshold to differentiate between  
26 petroleum refineries for air monitoring purposes.

27                   Respondent does not articulate a rational connection between  
28 the exemption for under-40,000-bpd facilities, emissions from  
these facilities, and the purposes of the Refinery Statute.

1 Therefore, the exemption is arbitrary, capricious, and lacks a  
2 rational basis.

3  
4 **DISPOSITION**

5 For the reasons set forth above, IT IS THEREFORE ORDERED and  
6 ADJUDGED as follows:


- 7
- 8 1. The Court GRANTS Petitioners' and Intervenor's requests for a  
9 peremptory writ of mandate commanding Respondent to (a)  
10 remove the exemptions in the Refinery Rule for non-crude oil  
11 refining facilities and under-40,000-bpd petroleum refineries  
12 in the Refinery Rules; (b) remove the monitoring provision  
13 specifying a pre-determined set of six pollutants for  
14 petroleum refineries with a refining capacity of less than  
15 40,000 bpd in the Refinery Rules, and (c) issue revised  
16 regulations and provide evidentiary support for the decisions  
17 made and demonstrate a rational connection between the  
18 regulations devised and Health and Safety Code section  
19 42705.6, including for Respondent's list of pre-determined  
20 pollutants;
  - 21 2. The Court DENIES Petitioners' request that the Court command  
22 Respondent to issue guidance materials by a specific date, to  
23 set deadlines for developing, installing, and operating  
24 petroleum refinery-related community air monitoring systems,  
25 and to set deadlines for review and approval of refineries'  
26 fence-line air monitoring system plans;
  - 27 3. The Court DENIES Petitioners' and Intervenor's request for  
28 declaratory relief;

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- 4. Respondent is required to file a return on the writ by November 1, 2022 following service of the writ. This Court retains jurisdiction for all purposes, including over return on the writ and to issue any orders necessary to ensure compliance with this judgment and writ; and
- 5. Petitioners and Intervenor are the prevailing parties and may seek to recover costs incurred in litigating this case and file a motion(s) to recover attorneys' fees.

IT IS SO ORDERED.

Dated this 17th day of September, 2021

  
\_\_\_\_\_  
Hon. Mark E. Cullers  
Judge of the Superior Court  
**MARK E. CULLERS**

<p align="center"><b>SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO</b>  <b>Civil Unlimited Department, Central Division</b>  <b>1130 "O" Street</b>  <b>Fresno, California 93724-0002</b>  <b>(559) 457-1900</b></p>	<p>FOR COURT USE ONLY</p>
<p>TITLE OF CASE:  <b>Comite Progreso de Lamonte vs San Joaquin Valley Unified Air Pollution Control District</b></p>	
<p align="center"><b>CLERK'S CERTIFICATE OF MAILING</b></p>	<p>CASE NUMBER:  20CECG01008</p>

I certify that I am not a party to this cause and that a true copy of the **Statement of Decision and Judgment** was placed in a sealed envelope and:

- Deposited with the United States Postal Service, mailed first class, postage fully prepaid, addressed as shown below.
- Placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: **Fresno, California 93724-0002** on:

Date: **September 21, 2021**

Clerk, by , Deputy

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<b>Oscar Espino-Padron</b>		<b>Annette A. Bailatore-Williamson</b>	
<b>707 Wilshire Boulevard, Suite 4300</b>		<b>1990 E. Gettysburg</b>	
<b>Los Angeles, CA 90017</b>		<b>Fresno, CA 93726</b>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Davin A. Widgerow</b>			
<b>600 West Broadway, Suite 1800</b>			
<b>San Diego, CA 92101</b>			
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Clerk's Certificate of Mailing Additional Address Page Attached