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Wine Institute

BEFORE THE HEARING BOARD OF THE AIR POLLUTION CONTROL DISTRICT

COUNTY OF SANTA BARBARA

IN RE: PETITION OF WINE INSTITUTE FOR REVIEW OF ATC ISSUED TO CENTRAL COAST WINE SERVICES FINAL AUTHORITY TO CONSTRUCT 15044; FID 11042; SSID 10834.	H.B. Case No. 2017-21-AP **PETITION FOR REVIEW** **Health & Safety Code Section 42302.1** Date: November 1, 2017 Time: 9:30 a.m. Place: Board of Supervisors Hearing Room 105 E. Anapamu Street, 4th Floor Santa Barbara, California

Executive Summary

Wine Institute submits this petition for review and requests a public hearing pursuant to California Health and Safety Code Section 42302.1 regarding the above-referenced Authority to Construct (ATC) permit issued to Central Coast Wine Services (CCWS) on August 18, 2017.

Under federal and state law, certain facilities must apply "Best Available Control Technology" (BACT) to reduce emissions of air pollutants. In order to be considered BACT, an emissions control system must meet certain requirements. One of those requirements is that the system has been "achieved in practice."

Wine Institute's petition is focused on a narrow issue—whether the emissions control requirements imposed on CCWS with respect to volatile organic chemical (VOC) emissions from wine fermentation tanks have been "achieved in practice" and therefore qualify as BACT. For the reasons set forth below, the NohBell and EcoPAS emissions control systems (the "Emissions Control Systems" or "ECS") required under the permit have not been "achieved in practice" and are therefore not BACT.

Wine Institute has no objection to the issuance of an ATC to CCWS, and has no objection to CCWS implementing the Emissions Control Systems voluntarily at its facility, to whatever extent it deems advisable, to comply with emissions limits imposed by the District. However, the ATC issued to CCWS must be revised to remove any reference to the Emissions Control Systems as being "achieved in practice" or BACT, because those statements are not supported by law or fact.

To be "achieved in practice," District policy requires that the Emissions Control Systems must have a "proven track record of reliability" over all operating ranges to which they will be applied. The Emissions Control Systems do not have this "proven track record of reliability" because they have not been used over a full wine fermentation cycle, as required by the ATC, or in all of the wine-fermentation applications covered by the permit.

District policy also requires that the permit specify a performance standard for the Emissions Control Systems. The District has not yet collected the data necessary to develop, nor developed, a legally-defensible performance standard for the Emissions Control Systems. Instead, the District has estimated an average performance standard based on the ECS manufacturers' representations, and proposes to adjust that standard during operation of the permit. This ad hoc process demonstrates that the ECS have never been applied as the District proposes to apply them in the permit, and are therefore not "achieved in practice."

Finally, the District has failed to apply source testing protocols to the Emissions Control Devices to determine BACT as required by District policy. The District argues that, instead of conducting source testing, it is appropriate to substitute a mass-balance calculation relying on

estimates of average emissions, but this argument, too, simply demonstrates that the ECS are not "achieved in practice." If they were "achieved in practice," the District would not need to rely on estimates, averages, or manufacturer representations.

In 2015 and 2016, the San Joaquin Valley APCD conducted a comprehensive review of all of the existing applications of the ECS in order to determine whether those systems were "achieved in practice." The San Joaquin Valley APCD found that "none" of the installations using the ECS, including those at CCWS, were "achieved in practice." District staff have discounted this study, but it remains the only state-wide study of the use of the ECS, and it demonstrates that the ECS have not been used or tested in a manner that would allow the District to conclude that they have been "achieved in practice."

Wine Institute submits this petition because the District's finding that the Emissions Control Systems are achieved-in-practice BACT is not supported and would likely cause harm to Wine Institute's members. If the District's finding is allowed to stand, this District, and other APCDs, may rely on that finding to impose requirements to use the ECS at other wineries, with potentially devastating economic and operational impacts on wineries across California. Wine Institute is the largest advocacy and public policy association for California wineries, and its members would be severely harmed by an improper "achieved in practice" finding.

This petition fulfills the requirements of Santa Barbara County Air Pollution Control District (District) Rule 503 regarding the contents of petitions for review. By submitting its comment letter dated June 20, 2017, Wine Institute fulfilled the requirements of District Rule 209 and California Health and Safety Code Section 42302.1 that it "appear[], submit[] written testimony, or otherwise participate[]" in the District's permitting process as a precondition to requesting a public hearing regarding CCWS's permit. Wine Institute has paid the filing fee required by District Rules 210 and 502. The following sections provide information required by District Rule 503.

A. Petitioner

Petitioner is Wine Institute, located at 425 Market Street, Suite 1000, San Francisco, California 94105, telephone number (415) 512-0151. Counsel for Wine Institute, R. Morgan Gilhuly, Barg Coffin Lewis & Trapp, LLP, 350 California Street, 22nd Floor, San Francisco, California 94104, telephone (415) 228-5400, is authorized to receive service of notices for Wine Institute, and Wine Institute requests that all notices served by the District be directed to counsel.

B. Petitioner's Corporate Status

Wine Institute is a non-profit corporation organized under the laws of the State of California. Wine Institute has the following officers, all located at 425 Market Street, Suite 1000, San Francisco, California 94105:

- Chief Executive Officer Robert P. Koch
- Secretary Maluri Fernandez
- Chief Financial Officer Steve Hayes

C. Activity Involved

The focus of Wine Institute's petition is the Final Authority to Construct Permit No. 15044 issued to CCWS for modifications to 400 series tanks, installation of a barrel room, and use of BACT at CCWS's winemaking facility located at 2717 Aviation Way, Suite 101, Santa Maria, California 93455.

D. Brief Description of Equipment

The ATC authorizes fermentation of red and white wines in previously installed 400 series tanks (Device IDs: 388059, 388060, 388061, and 388062) and installation of a new barrel room. To satisfy BACT requirements, the ATC requires the use of either NohBell's NoMoVo or EcoPAS LLC's EcoPAS wine emission capture and control systems.

E. Petition Filed under California Health and Safety Code 42302.1 and District Rule 206

This petition is filed pursuant to California Health and Safety Code 42302.1, which governs the filing of a petition and a request for a public hearing regarding the District's action to

approve the ATC. Wine Institute also seeks review of the conditional granting of the ATC to CCWS under District Rules 503 and 206.

F. Authorized Signature

R. Morgan Gilhuly, counsel for Petitioner, has executed this Petition on behalf of Wine Institute. Mr. Gilhuly has been duly authorized by Wine Institute to sign this Petition on its behalf.

G. Facts and Argument Supporting the Petition

1. Background.

CCWS is a custom-crush winery. Although one of the larger wine-making facilities within the District, CCWS is small by comparison with large wineries in California. The ATC covers emissions from approximately 148 storage and fermentation tanks with capacities in the range of 350 to 21,200 gallons, plus an oak barrel storage room. The Emissions Control Systems have been used on a non-continuous basis for portions of the fermentation process at CCWS since 2013. CCWS uses two NohBell NoMoVo systems and one EcoPAS system. The NoMoVo systems are portable and may be moved from tank to tank. The EcoPAS system is not portable but is manifolded to multiple tanks and may be connected or disconnected from any of those tanks by opening or closing manifold valves.

CCWS has used the ECS to maintain its daily emissions below its permitted daily emission limit of 54.99 pounds of VOCs. When daily uncontrolled emissions fell below that threshold, the ECS were not used. When daily emissions were likely to exceed that threshold, CCWS used the ECS on tanks of its choosing, sometimes using the systems for a day or two during a fermentation cycle, and sometimes using the ECS for longer periods.

Under its current permit and for the purposes of preparing its application for ATC 15044, CCWS estimates its emissions by using emission factors for wine fermentation and then subtracting the amount of ethanol captured by the ECS. However, CCWS has not recorded how much ethanol has been captured by the ECS from any single tank. Nor has CCWS reported to the District which tanks were connected to the ECS, on what dates, and under what circumstances.

CCWS's records reflect only the results of non-continuous use of the systems on a series of unspecified tanks at unspecified times across the entire facility.

The draft ATC stated that "CCWS proposed the use of the NoMoVo and EcoPAS emission capture and control systems as BACT for this project,"[1] but that statement is not accurate. As CCWS's permit application states, "The District ... has given instructions that CCWS should consider these technologies as BACT for this project."[2] Only with those instructions did CCWS propose a permit using the Emissions Control Systems as BACT.

2. The BACT Requirements.

Under State law, District Rule 802, and the District's Policy No. 6100.064.2017, BACT for any stationary source in a nonattainment area (which the District refers to as "NAR BACT") is determined using the most stringent of three alternative standards. In this case, the District has determined that the Emissions Control Systems are BACT under the Policy because they are:

> The most effective emission control device, emission limit, or technique which has been **achieved in practice** for the type of equipment comprising such stationary source; ....[3]

This particular definition of BACT does not incorporate any consideration of economic or technical feasibility because "[t]he fact that a particular control technology is 'achieved-in-practice' implies its inherent economic and technological feasibility."[4] It is thus of paramount importance that, before a finding of "achieved in practice" is made, the control technology has been implemented and used successfully under real-world conditions under all of the conditions to which it will be applied because, once determined to be "achieved in practice," NAR BACT will apply to all future facilities that use the same processes. There will be no further consideration of economic, energy, or environmental considerations.

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[1] *See* Exhibit A, Final Authority to Construct 15044 (August 18, 2017), Permit Evaluation for Authority to Construct 15044, sections 1.1 and 2.7, at p.2 and p.5.

[2] *See* Exhibit B, Central Coast Wine Services, Authority to Construct Application, Process Description (April 26, 2017) at 2.

[3] *See* Exhibit C, Policy No. 6100.064.2017, § 3.1 (emphasis added).

[4] *Id.* at § 5.0.

As the District's Policy recognizes, to be considered "achieved in practice," emissions controls must have "a proven 'track-record' of reliability."[5] They must also be "effective overall [sic] operating ranges."[6] "If BACT is required, then the permit must have a BACT permit condition. ... The condition should ... state that the specified BACT must be in place at all times of operation during the life of the project/permit."[7]

BACT emissions controls must be implemented through the specification of a "performance standard" and not "solely through the specification of the BACT control technology being employed."[8] The performance standard must be stated as a concentration, rate, removal efficiency or other applicable, enforceable, numerical standard.[9]

3. The Emissions Control Systems Have Not been "Achieved in Practice."

The permit requires "[a]ll fermentation tanks at [the CCWS] facility ... to be controlled by" the ECS "during wine fermentation."[10] Thus, the permit requires the use of the ECS throughout the fermentation process. The ECS, however, do not have a "proven track-record of reliability" because they have never been used over an entire fermentation cycle at CCWS. The ECS have not been used consistently over all operating ranges at CCWS, and their effectiveness has not been documented on even a single tank. In short, there is no track record. Instead, the permit relies on rolling averages and off-the-shelf estimates of emissions, not a track record anchored in real-world data from actual operations.

The way to prove such a track record would be straight-forward: (1) attach the ECS to closed fermentation tanks before fermentation begins, (2) measure all inputs and outputs from the closed systems (including waste products), (3) analyze the resulting data to develop a performance standard, (4) conduct repeated tests of the systems under all likely conditions of

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[5] *Id.* at § 5.1.

[6] *Id.* at § 8.1.

[7] *Id.* at § 8.8.

[8] *Id.* at § 8.1.

[9] *Id.*

[10] *See* Exhibit A, Authority to Construct 15044 at 1.

use—including with different types of grapes and styles of wine—in order to validate the performance standard, and (5) document the testing. The ATC contains no documentation indicating that these steps have ever been performed. As a result, the ECS have not been shown to be "effective over all operating ranges."

a. No Reliable Performance Standard

Neither CCWS nor the District has any basis for accurately establishing a performance standard for the ECS. As noted above, CCWS estimates its emissions by using emission factors for wine fermentation to estimate total emissions from its facility, and then subtracting the amount of ethanol captured by the ECS. Although this mass-balance approach is adequate for documenting compliance with permit conditions, it is not adequate to demonstrate the actual performance of the ECS. Uncontrolled emission rates from fermentation tanks may vary by factors of two or more, and therefore off-the-shelf emissions factors provide at best average emissions, and not actual emissions, from any specific tank.

But even if the District had reliable data on uncontrolled emissions, there is no data regarding which tanks were subject to emissions controls, how much ethanol was captured from them, or the time periods that any controls were in place—essential information for assessing whether emissions reductions were achieved and quantifying those reductions. Thus, there is no data from which a performance standard can be accurately determined for the ECS as applied to a tank over a complete fermentation cycle.

The District argues that the problem of establishing a performance standard can be solved by using a 30-day rolling average of emissions. The District also implies, as discussed below, that the performance standard can be revised as necessary during operations under the permit. But the District's proffered solution is simply an acknowledgement that the actual control efficiency of the ECS is unknown, and that the equipment has never before been used in the manner that the District proposes to require it to be used at CCWS.

b. The Purported "Proven Track Record of Reliability" Relies on Estimates and Averages, Not Real World Data from Actual Operations

The absence of actual performance information is especially significant for a facility such as CCWS, which provides winemaking services to multiple different vineyards and winemakers, producing wine from different varieties of grapes and in different styles. The emissions from these multiple types of wine have been shown to vary significantly. The District admits this variation, but contends that it is accounted for by "utilizing an averaging basis for the emission standard."[11] But the District has no data on which to base even an average performance standard for the ECS, which the District aptly describes as "first generation control system[s]." The systems have never been applied to an entire fermentation cycle, and have never been applied to red wine fermentation in the 400 series tanks at the CCWS facility.

CCWS's application for the draft ATC frankly acknowledges the lack of any data to support a BACT determination. Although the manufacturers of the ECS have guaranteed that they will meet a 67 percent performance standard over an entire fermentation cycle, the EcoPAS guarantee does not apply to the first quarter of a fermentation cycle—EcoPAS specifically disclaims that its system will be effective during that period—and only applies in a specified vapor flow range. As the application notes in the BACT Analysis Summary Form for the EcoPAS system, the "Performance Standard" is "To Be Determined":

> EcoPAS has provided CCWS with a performance guarantee of 67%. **However this control efficiency has not been validated**. Limitations of the capture system were not taken into consideration. **Only with proper validation can a real control efficiency be assigned to this combination of vapor capture and ethanol extraction from the vapor stream**....[12]

The application also notes that "This technology is not effective over all operating ranges" (and therefore fails to meet one of the key requirements of the District's policy) and that "BACT will

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[11] *See* Exhibit A, Authority to Construct 15044, Attachment M, District Responses to Wine Institute Comments on Draft Permit, Comment 2-8.

[12] *See* Exhibit B, Central Coast Wine Services, Authority to Construct Application, Attachment B, at 1 (emphasis added).

not be achievable during non-standard operations."[13] Under "Operating Constraints," the application states, "[t]o be determined."[14]

The EcoPAS system has been used at various times on twenty fermentation tanks, including both older, smaller 100 series red wine fermentation tanks and larger 400 series white wine fermentation tanks (tanks 401-405 and 411-415). Because multiple tanks were manifolded together, identifying the control efficiency achieved at any individual fermentation tank is impossible. Thus, the CCWS EcoPAS data reflects a mix of fermentation tank sizes and configurations as well as contents. There is no record of any use whatsoever on 400 series tanks used for red wine fermentation, nor any "proven track record of reliability" that demonstrates the EcoPAS's system's efficiency on any single tank containing red or white wine, in either 100 series or 400 series tanks. Without any "proven track record," there is no justification for finding that the EcoPAS system has been "achieved in practice."

The capture efficiency of the NohBell NoMoVo system is similarly uncertain. NohBell presents a range of possible capture efficiencies from 45% to over 90%. The application notes that the Performance Standard of the NoMoVo system is uncertain:

> Performance Standard: To be Determined – NohBell has provided CCWS with a performance guarantee of 67.5%. **However this control efficiency has not been validated**. Limitations of the capture system were attempted to be taken into consideration. **Only with proper validation can a real control efficiency be assigned to this combination of vapor capture and ethanol extraction from the vapor stream be assessed.**
>
> ....
>
> The performance of this technology is not consistent over the entire duration of a fermentation cycle. Absorption performance can vary from 45% to 90+% depending upon the timing of the fermentation cycle. Compound that variability with the normal insistent operations of the capture manifold, and **the actual variability of the control efficiency across all operating ranges [is] indeterminable.**[15]

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[13] *Id.* at 2.

[14] *Id.*

[15] *Id.*, Attachment C, at 1-2 (emphasis added).

Just as with the EcoPAS system, the application notes that "Operating Constraints" are "[t]o be determined."[16]

Further, the NoMoVo control system has not been applied to all of the wine-making operations at CCWS. It has reportedly been used for white wine fermentation, and for red wine fermentation in 100 series tanks. But there is no record of its use on red wine fermentation in larger 400 series tanks. Moreover, none of the data on the NoMoVo system show the control efficiency with respect to any specific tank. Again, aggregated data obtained from some tanks over portions of a fermentation cycle does not constitute a "proven track record of reliability."

c. Adjustments During the Source Compliance Demonstration Period Are No Substitute for a Performance Standard.

Neither the District, nor CCWS, nor the vendors of the ECS, are able to establish a performance standard based on source testing. CCWS candidly acknowledges that the purported performance guarantees "have not been validated." The District down plays the absence of source testing and has set, as a performance standard, a 30-day rolling average that covers up the real variability of the actual performance. This "standard," which the District candidly admits may need to be revised, is simply an acknowledgement that the District has not determined what the actual performance will be.[17]

In its response to the draft permit, CCWS noted that the District agreed that the performance standard in the draft permit was essentially a placeholder, and that the actual control efficiency would be determined during the Source Compliance Demonstration Period:

> "[I]t was also understood from our discussions with the District during the pre-application meeting that if the control efficiency that was presented in our application was not achievable during the Source Compliance Demonstration

[16] *Id.*, Attachment C, at 2.

[17] "A 30-day rolling average addresses these constraints, and is a reasonable approach to enable the BACT process to move forward *without being bogged down by excessive analytical roadblocks*." *See* Exhibit A, Authority to Construct 15044, Attachment M, District Responses to Wine Institute Comments on Draft Permit, Comment 2-9 (emphasis added). The analytical roadblock in this case is measuring the actual performance of the Emissions Control Systems.

Period ..., CCWS would be allowed to petition the District ... to adjust this value appropriately."[18]

In other words, the District decided to require the ECS so that their efficacy could be demonstrated by CCWS during its operations under the permit. If the ECS were "achieved in practice," then their effectiveness would have been demonstrated and the control efficiency would be known. If the efficiency of the ECS cannot even be reasonably estimated before implementation, those systems do not have a "proven track-record" and are not "achieved in practice."

Although the District seeks to minimize the importance of a readjustment during the Source Compliance Demonstration Period by arguing that it is standard operating procedure to work out bugs, that "this situation is special since it is a first generation BACT determination,"[19] and that the control efficiency can be changed by modifying the ATC permit, these arguments simply highlight the fact that the ECS do not have a proven standard of performance.

4. The SJVAPCD has Thoroughly Analyzed Whether the Emissions Control Systems Have been "Achieved in Practice" and Has Concluded that They have Not.

The San Joaquin Valley APCD has conducted a thorough analysis of whether the Emissions Control Systems are "achieved in practice" and has concluded that they are not. In February 2015 and May 2016, the SJVAPCD published a memorandum on the subject "Achieved in Practice Analysis for Emission Control Technologies Used to Control VOC Emissions from Wine Fermentation Tanks." The SJVAPCD's memorandum is the only written analysis that thoroughly examines publicly available information on the use of the ECS at California wineries to determine whether they are "achieved in practice." The SJVAPCD concludes that the ECS are not "achieved in practice."

[18] *See* Exhibit A, Authority to Construct 15044, Attachment J, CCWS Comments on Draft Permit at 1.

[19] *See* Exhibit A, Authority to Construct 15044, Attachment M, District Responses to Wine Institute Comments on Draft Permit, Comment 2-10.

The SJVAPCD's memorandum specifically examines the use of the ECS at the CCWS facility. The SJVAPCD concludes that the use of the ECS at CCWS has not shown those systems to be achieved in practice because:

- "The permit does not require continuous operation of the [ECS]."
- "The effectiveness of the [system] has only been estimated using ... a theoretical calculation of the quantity of ethanol that would be emitted if the tanks were uncontrolled. Inlet and outlet air quality testing has not been performed for this particular installation."
- "[T]he overall effectiveness of the system, including any ethanol re-emitted into the atmosphere during [waste] disposal, has yet to be sufficiently determined."
- "[T]he control technology has not been demonstrated to operate in a manner that would be required by BACT...."[20]

All of these critiques are valid today and preclude the District from finding that the ECS have been "achieved in practice."

In its responses to Wine Institute's comments, the District argues that the SJVAPCD's memorandum is out of date because it preceded two September and October 2016 letters from EPA opining that fermentation with the ECS constitutes the "Lowest Achievable Emission Rate" (LAER) under federal law. But EPA had previously stated the same opinions regarding the ECS in four letters to the SJVAPCD; the SJVAPCD's memorandum was a detailed rebuttal to EPA's conclusory opinions. EPA's September and October 2016 letters do not rebut the facts on which the SJVAPCD based its analysis.

The District also argues that the term "achieved in practice" is subject to interpretation by each APCD, and that the District is not bound by the interpretations of other agencies. But the SJVAPCD's letter applies the same standard and conducts the same analysis that the District must conduct in determining NAR BACT, and its analysis was made on the very same Emissions Control Systems as those covered by the ATC permit. The SJVAPCD's analysis is therefore

[20] *See* Exhibit A, Authority to Construct 15044, Attachment L, Wine Institute Comments on Draft Permit, SJVAPCD Memo re: Achieved in Practice Analysis for Emission Control Technologies Used to Control VOC Emissions from Wine Fermentation Tanks (Feb. 9, 2015, revised May 9, 2016) at 11-13.

directly applicable and relevant to the District's BACT determination for CCWS.

5. The District's Policies and Procedures Require Source Testing to Determine BACT.

The District's Policy and Procedure No. 6100.064.2017, Section 8.4, provides in part that "Source testing is *required* to ensure that the BACT performance standards and hourly mass emission rates are in compliance."[21] This policy is subject to exceptions only in situations where other specified means of compliance may be used. Thus, to qualify for BACT, a technology must be subject to source testing or other equivalent means of demonstrating compliance.

The District has recognized that a "mass-balance" approach is not equivalent to a "source test" to demonstrate the effectiveness of the ECS. In a March 1, 2017 email, the Manager of the District's Engineering Division wrote to CCWS:

> Just wanted to share with you a conversation I had with EPA recently regarding winery emission control source testing. In particular, we discussed the CCWS question and options, including a potential EPA study to evaluate source testing methodologies (a longer term project). In the meantime, EPA provided us guidance that source testing using the mass balance calculations currently in place would be an acceptable compliance tool in lieu of traditional inlet/outlet source testing. Once complete, we would utilize EPA's test method for new projects. ...[22]

The District's email implicitly acknowledges that source testing is feasible, because EPA apparently plans to perform such testing and the District plans to use EPA's method when it is developed. The District's email also recognizes that "mass balance calculations" are a stop-gap until inlet/outlet source testing is conducted. Once that testing is conducted, the District will use the source testing for "new projects."

The manufacturers of the ECS also recognize that source testing should be performed. As recently as January 2017, EcoPAS proposed that the District support EPA funding of source testing and admitted that "a solid assessment of actual emissions factors and inventory is long overdue."[23]

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[21] *See* Exhibit C, Policy No. 6100.064.2017, § 8.4 (emphasis added).

[22] *See* Exhibit D, Email from M. Goldman (District) to R. Mather (CCWS) re: Source Testing (March 1, 2017).

[23] *See* Exhibit E, Email from P. Thompson (EcoPAS) to M. Goldman (SBCAPCD) re: EPA Position on Winery VOCs (Jan. 6, 2017).

If source testing will be performed in the future to demonstrate the effectiveness of the ECS, that testing should be done before concluding that the systems are effective and achieved in practice, as required by District Policy. Indeed, as the SJVAPCD notes, NohBell and EcoPAS's refusal to conduct source testing raises significant questions and concerns regarding their control efficiency claims:

> The refusal of the control vendors to demonstrate the actual control efficiency raises significant questions and concerns over the vendors' control efficiency claims. The Valley Air District cannot, in good faith, require controls which the vendors refuse to validate. The District's concern is that, if the vendors of this technology are aware that claims of the control efficiency are potentially overstated, but they also know that EPA is about to require their technology to be installed on a widespread basis, they gain no advantage by demonstrating their actual control efficiency. Since the effectiveness was yet again not demonstrated in 2015, and for the reasons stated in the 2013 evaluation of the use of controls at CCWS, the criteria of Achieved in Practice have yet to be satisfied for these installations.[24]

The "mass-balance" calculations that the District proposes to use in place of source testing to estimate the effectiveness of the ECS are subject to considerable variability and should not be the basis for a determination that the ECS have been "achieved in practice." As EPA has noted, emissions factors for wineries "are generalized. There is a great deal of variation in parameters and emissions. Actual emissions may be much higher or lower."[25] To establish a performance standard and demonstrate that the ECS are "achieved in practice," a source test should be performed.

6. No Proven Track Record With Respect to Wine Quality or Costs

Neither CCWS nor the District has developed any data regarding the effect of the ECS on the quality of the wine produced. The District responded to Wine Institute's comments that there have been no reports of wine quality issues, but this response flips the "achieved in practice" determination on its head.[26] The question is not whether there have been complaints about wine

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[24] *See* Exhibit A, Authority to Construct 15044, Attachment L, SJVAPCD Memo at 13

[25] US EPA, Inventory Guidance and Evaluation Section, VOC Emissions from Wineries (March 10, 1992).

[26] *See* Exhibit A, Authority to Construct 15044, Attachment M, District Responses to Wine Institute Comments on Draft Permit, Comment 2-7.

quality given CCWS's irregular use of the ECS but whether the ECS have been demonstrated not to affect wine quality when used over an entire fermentation cycle. Neither CCWS nor the District has conducted any testing on this issue.

Similarly, the District has not considered the costs of installing and operating the ECS. To determine whether the ECS are feasible controls for wine-making, the District must determine the costs of the controls and whether they are reasonable both in relation to the their control efficiency and for the affected businesses. The District has conducted no such analysis.

7. Conclusion

The District's own policies acknowledge that an "achieved in practice" determination is a substitute for a determination that a particular control technology is both economically and technically feasible: "The fact that a particular control technology is 'achieved-in-practice' implies its inherent economic and technological feasibility."[27] In this case, it is plain that the ECS have not been "achieved in practice." The ECS have never been used on all tanks throughout the fermentation cycle at CCWS, nor has the District demonstrated their use in that manner at any other facility. There is no source testing data from which to develop a performance standard, and as a result the District has been forced to use a rolling average based on estimates that it concedes may require revision. The ECS have never been used in the manner that the District proposes to require them to be used at CCWS. The SJVAPCD has comprehensively reviewed the use of the ECS statewide and has concluded that they have not been "achieved in practice." The regulated community should not be required to use technology that has never been used under the same conditions as BACT and has not been demonstrated to be effective.

Wine Institute has no objection to the District's issuing an ATC to CCWS that permits the proposed facilities and that provides, with CCWS's agreement, for the use of the ECS. However, those systems have not been "achieved in practice" and are not BACT, and all references to such systems as "achieved in practice" or BACT should be removed from the permit.

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[27] *See* Exhibit C, Policy No. 6100.064.2017, § 5.0.

Wine Institute hereby requests that the District hold a public hearing on this Petition and order staff to revise the permit to delete references to the Emissions Control Systems being BACT or "achieved in practice."

Dated: September 14, 2017

BARG COFFIN LEWIS & TRAPP, LLP

By: _____
R. MORGAN GILHULY
Counsel for Wine Institute

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Barg Coffin Lewis & Trapp, LLP, 350 California Street, 22nd Floor, San Francisco, California 94104-1435. On September 14, 2017, I served the following document:

Petition For Review
Health & Safety Code Section 42302.1

☐ by transmitting via facsimile the document(s) listed above to the fax number set forth below on this date before 5:00 p.m.

☒ by causing personal delivery overnight delivery by Federal Express of the document(s) listed above to the person at the address set forth below.

☐ by dispatching a messenger from my place of business with instructions to hand-carry the above and make delivery to the following during normal business hours, by leaving a true copy thereof with the person whose name is shown or the person who was apparently in charge of that person's office or residence.

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.

☐ by transmitting via email the document(s) listed above to the email address(es) set forth below on this date before 5 p.m.

Richard Mather Central Coast Wine Services 2717 Aviation Way, Suite 101 Santa Maria, CA 93455 T: (805) 318-6500 F: (805) 928-5629	Aeron Arlin Genet Air Pollution Control Officer Santa Barbara County APCD 260 N San Antonio Rd, Suite A Santa Barbara, CA 93110-1315 T: (805) 961-8853

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 14, 2017, at San Francisco, California.

Carlotta Datanagan