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FEB 22 2005

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

MARY ROMAIDIS
CLERK
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

BEFORE THE HEARING BOARD
OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
STATE OF CALIFORNIA

In the Matter of the Application of)	
)	
REDWOOD LANDFILL, INC.)	No. 3484
)	
For a Variance from Regulation 8, Rule 34, Sections 301.1, 303, and 305)	<u>ORDER DENYING INTERIM VARIANCE</u>
)	

The above-entitled matter is an Application for a Short Term and Interim Variance from the provisions of Regulation 8, Rule 34, Sections 301.1, 303, and 305 filed on January 13, 2005.

Patrick Sullivan, SCS Engineers, and Ramin Khany, Redwood Landfill, Inc., appeared on behalf of Redwood Landfill, Inc., Novato, California ("Applicant").

Adan Schwartz, Esq. appeared as counsel for the Air Pollution Control Officer ("APCO").

The Clerk of the Hearing Board provided notice of this hearing on the Application for Interim Variance in accordance with the requirements of the California Health and Safety Code.

The Variance application requested Interim and Short Term relief for the period January 13, 2005 through July 12, 2005. The Hearing Board heard the request for Interim Variance on January 27, 2005. The hearing upon the Short Term Variance has been set for 9:35 A.M., Thursday, March 10, 2005.

The Hearing Board provided the public an opportunity to testify at the hearing, as required

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1 by the California Health and Safety Code. No member of the public offered testimony. The
2 Hearing Board heard evidence and argument from the Applicant. The APCO was opposed to the
3 granting of the Interim Variance.

4 After hearing the Applicant present its case, the Hearing Board voted to deny the request
5 for Interim Variance, as set forth in more detail below:

6 BACKGROUND

7 Applicant operates a solid waste landfill located at 8950 Redwood Highway, Novato,
8 California ("Facility"). The Facility has been issued a Major Facility Review ("MFR") permit
9 from the Bay Area Air Quality Management District ("District"). Applicant is not considered a
10 small business as described by California Health and Safety Code Section 42352.5(b)(2) and emits
11 more than 10 tons per year of air contaminants.

12 The Application concerns past and anticipated future violations at the Facility. The
13 primary pollution control device at the Facility is an enclosed flare, denoted A-50 in the MFR
14 permit, which is used to combust landfill gases and maintain compliance with District
15 Regulation 8, Rule 34, and the MFR permit. According to the Application and testimony offered
16 at the hearing, Applicant began noticing operational problems at S-50 in June, 2004. Applicant
17 asserts that the flare is no longer able to handle the quantity of gas generated at the landfill without
18 risking serious damage to the flare by running it at a higher throughput. Because of this, the
19 Applicant has proposed to voluntarily reduce the flare throughput to levels it deems consistent
20 with good operational practices; however, this would have a negative effect on the Facility's
21 ability to control surface emissions and maintain compliance with the wellhead standards of
22 Regulation 8, Rule 34. Applicant also asserts that it has made all reasonable efforts to address
23 flare problems through maintenance, and that the problems with the flare, and therefore resulting
24 violations, are beyond its reasonable control to avoid. This capacity shortfall has already
25 manifested itself in wellhead exceedences, and it is anticipated that surface emission leaks are
26 likely to follow.

1 Applicant expects delivery of a new enclosed flare in May, 2005. A variance is requested
2 to cover violations that might occur during the anticipated interim period if the flare is operated at
3 the proposed throughput levels. Specifically, Applicant requests that it be relieved of liability for
4 continuous operation of the landfill gas system (8-34-301.1), surface emission leaks (8-34-303),
5 and wellhead standards (8-34-305). Applicant proposes various measures to mitigate excess
6 emissions during the variance period, which, in general, consist of increased surveillance for
7 surface leaks and wellhead emissions, and increased corrective actions designed to prevent or
8 mitigate excess emissions from these events.

9 In describing the harm expected if the variance is not granted, the Applicant refers to a
10 likelihood of increased enforcement and penalties by the District, as well as detriment to the
11 Facility's reputation associated with being a significant violator of District regulations. Applicant
12 also asserts that additional harm could be incurred if, by operating the flare at the higher
13 throughput levels, serious damage to the flare does occur, which would have a direct monetary
14 impact to the Applicant as well as leave it without an operating flare for controlling landfill gas
15 emissions.

16 DISCUSSION

17 Pursuant to Health and Safety Code Section 42351, the Hearing Board may grant an
18 Interim Variance upon a finding of Good Cause. The Hearing Board generally considers the six
19 criteria of Section 42352 to be potentially relevant, but not essential, to a finding of Good Cause.

20 The Application and testimony presented at the hearing do not present Good Cause for
21 granting an Interim Variance. As is the case with any landfill, emissions will be produced at a
22 fairly constant rate independent of actions by the owner/operator. It follows that the shut down or
23 curtailment of operations, if even possible, would have no beneficial effect on controlling air
24 emissions. The only question, from an air pollution control standpoint, is what course of action is
25 best to capture and abate these emissions. Other than the reduction in throughput to the flare, the
26 measures proposed by the Applicant to avoid excess emissions during the interim period before a

1 new flare is installed would not violate any District Rules or Permit Conditions, and, therefore, do
2 not require a variance to be performed. The Application, therefore, does not present a situation
3 where a variance from certain requirements is sought in order to achieve an overall positive
4 environmental result since the Hearing Board believes that the environmental impact of the
5 potential excess surface emissions of landfill gas during the interim period would be greater than
6 the potential impact that might occur if the flare is operated at a higher throughput. To the
7 contrary, it would appear that the granting of a variance would provide no additional incentive for
8 the Applicant to engage in these activities designed to avoid non-compliance.

9 The Hearing Board finds that no significant harm to the Applicant would result from the
10 denial of Interim Variance relief. The prospect that the District will seek penalties that are either
11 inappropriate to the violations or damaging to the financial viability of Applicant is speculative,
12 and so cannot be the basis for a finding of Good Cause. Absent some indication to the contrary,
13 the Hearing Board presumes that the District will act reasonably in seeking penalties for violations.
14 There is, therefore, no compelling reason for the Hearing Board to grant relief relative to this claim
15 prior to a more measured consideration in the context of a Regular Variance hearing.

16 Likewise, Applicant's claim that it will suffer stigma from non-compliance, to the extent it
17 is quantifiable at all, is not subject to evaluation at this preliminary stage, nor is there a compelling
18 reason to attempt such an evaluation prior to the Regular Variance hearing. As an aside, the fact
19 that a variance does not affect the obligation of a Title V (MFR) permit holder to certify
20 compliance with the terms of its federal permit calls into question whether the Hearing Board can
21 alleviate the stigma of noncompliance to a significant extent.

22 SPECIFIC FINDING

23 The Hearing Board finds pursuant to Health and Safety Code Section 42351 that Good
24 Cause does not exist to issue this Interim Variance.

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1 THEREFORE, THE HEARING BOARD ORDERS:

2 The Application for Interim Variance is denied.

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4 Moved by: Terry A. Trumbull, Esq.

5 Seconded by: Jeffery R. Raines, P.E.

6 AYES: Julio Magalhães, Ph.D., Jeffery R. Raines, P.E., Terry A. Trumbull, Esq., and
7 Thomas M. Dailey, M.D.

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9 NOES: Allan R. Saxe, Esq.

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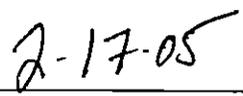
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Thomas M. Dailey, M.D., Chair



Date

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