

**FILED**

**MAR 16 2006**

HEARING BOARD  
BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

MARY ROMAIDIS  
CLERK  
HEARING BOARD  
BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

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

13 In the Matter of the Application of:

14  
15 **CLEAN HARBORS SAN JOSE, LLC**

NO. 3507

16 For a Variance from Regulation 2,  
17 Rule 1, Section 307 (Permit Condition Nos.  
18 9036, Parts 1, 2 & 3; 9037, Parts 2, 3 & 4;  
and 9042, Parts 1, 2 & 3) and Regulation 8,  
Rule 5, Section 301

**ORDER GRANTING VARIANCE**

19  
20 The above-entitled matter is an Application for Variance from District Regulations  
21 2-1-307 and 8-5-301 and from the provisions of operating Permit Conditions ("PC") 9036,  
22 Parts 1, 2 & 3; PC 9037, Parts 2, 3 & 4; and PC 9042, Parts 1, 2 & 3, for Condenser A-1, Plant  
23 B1925, located at 1021 Berryessa Road, San Jose, California. The Application for Variance was  
24 filed on December 13, 2005, and requested Short-Term relief from Regulation 2-1-307 and PC  
25 9036, Part 3, PC 9037, Part 4, and PC 9042, Part 3, for the period from December 13, 2005  
26 through and including January 11, 2006. On January 9, 2006, Clean Harbors San Jose, LLC  
27 ("Clean Harbors" or "Applicant") filed a request for an amendment to extend the Variance period  
28 through and including March 10, 2006. On January 18, 2006, Applicant filed a reply letter that

AMS

1 included a request for an amendment for additional relief from Regulation 8-5-301 and Parts  
2 1 & 2 of PC 9036, Parts 2 & 3 of PC 9037, and Parts 1 & 2 of PC 9042. At the hearing on  
3 February 16, 2006 the Applicant further amended its Application for Variance to request relief  
4 for the period December 13, 2005 through and including March 12, 2006.

5 Robert P. Hoffman, Paul Hastings Janofsky & Walker, appeared as Counsel for  
6 Applicant. Lon Stewart and Christopher Murphy of Clean Harbors also appeared on behalf of  
7 Applicant.

8 Todd Gonsalves, Assistant Counsel, appeared for the Air Pollution Control Officer  
9 ("APCO").

10 The Clerk of the Hearing Board provided notice of this hearing on the Application  
11 for Variance in accordance with the requirements of the California Health and Safety Code. The  
12 Hearing Board heard the request for Variance on February 16, 2006. Consistent with Applicant's  
13 reply to the Hearing Board dated January 18, 2006, the Application was amended at the hearing  
14 to request that the Variance include Regulation 8-5-301 and Parts 1 & 2 of PC 9036, Parts 2 & 3  
15 of PC 9037 and Parts 1 & 2 of PC 9042.

16 The Hearing Board provided the public opportunity to testify at the hearing as  
17 required by the California Health and Safety Code, but no one did so. The Hearing Board  
18 received documentary evidence, and heard testimony and argument from the Applicant and the  
19 APCO. The APCO did not oppose the granting of this Variance.

20 After hearing argument, the Hearing Board took the matter under submission for  
21 decision. After consideration of the evidence, the Hearing Board voted to grant the request for  
22 Variance, subject to the conditions as set forth in more detail below.

### 23 BACKGROUND

24 Applicant operates a hazardous waste facility located at 1021 Berryessa Road, San  
25 Jose, California. The facility stores and consolidates liquid hazardous waste in fixed roof solvent  
26 collection tanks collected from customers throughout the San Francisco Bay Area prior to  
27 shipping the waste offsite for disposal. Applicant collects liquid wastes in drums and bulk liquid  
28 tankers, consolidates the liquid wastes in tanks, and then ships the liquid wastes in bulk loads via

1 truck or rail to out-of-state disposal facilities. Applicant's operations include six storage tanks,  
2 ranging from 8,000 gallons to 25,000 gallons, and two truck loading stations. The tanks are  
3 identified in Applicant's permit as S-54, S-55, S-72, S-73, S-58 and S-60. The tanks are  
4 connected to Condenser A-1 by a closed system, which operates 24 hours per day, 7 days per  
5 week and serves to collect and condense emissions from the tanks' breathing and working losses.  
6 The condensed vapors are collected and returned to the solvent collection tanks. The tanks are  
7 also equipped with conservation vents used to hold minimal pressure on the tanks. Any release of  
8 vapors from the conservation vents is passed into the piping to the condenser. Vapors may be  
9 released to the atmosphere in the event Condenser A-1 is not operating. During truck loading  
10 operations, the trucks are connected by piping connected to Condenser A-1 so that emissions  
11 generated during loading are also condensed, collected and returned to the solvent collection  
12 tanks.

13 Condenser A-1 is the sole abatement system for the liquid waste consolidation  
14 system. Applicant's permit contains conditions requiring that (1) Condenser A-1 abate the  
15 emissions from each of the six storage tanks and from the two truck loading stations, (2)  
16 Condenser A-1 provide a non-methane hydrocarbon efficiency of at least 99.5%, and (3)  
17 Condenser A-1 operate at a temperature no greater than minus 110 degrees Fahrenheit. Each of  
18 the three Permit Conditions for which variance relief has been sought, PC 9036, PC 9037 and PC  
19 9042, includes these three analogous requirements.

#### 20 DISCUSSION

21 On the morning of December 12, 2005, Applicant's Maintenance Manager  
22 observed an oil leak under Condenser A-1 during a routine daily inspection. He immediately shut  
23 down Condenser A-1, notified Applicant's General Manager and contacted Applicant's  
24 refrigeration service contractor, R&R Refrigeration ("R&R"). R&R was onsite within an hour.  
25 The General Manager immediately directed facility personnel to cease loading and unloading  
26 operations. In addition, the General Manager also notified Applicant's Regulatory Compliance  
27 Manager. The Regulatory Compliance Manager notified the District of the incident at  
28 approximately 3:00 p.m. on December 12, 2005 and filed an Episode Report with the District

1 shortly thereafter on December 12, 2005.

2 R&R determined that the oil leak was the result of metal fatigue and could not be  
3 immediately repaired. Replacement parts had to be ordered, resulting in a delay in returning  
4 Condenser A-1 to service. Once R&R informed the General Manager that the condenser could  
5 not be immediately repaired, the General Manager apprised the Regulatory Compliance Manager,  
6 who submitted the Application for Variance on December 13, 2005. At that time, a decision was  
7 made between the Regulatory Compliance Manager and the General Manager to empty the  
8 liquids standing in the tanks in order to minimize passive emissions from the tanks by reducing  
9 the available source material. Thus, from December 17 through 19, 2005, all but two of the tanks  
10 were emptied.

11 Condenser A-1 is a custom-designed system that is not typical of the systems used  
12 by the waste management industry. Therefore, diagnosing and repairing the condenser required  
13 extensive investigation and troubleshooting. R&R continued their efforts to repair Condenser  
14 A-1, and were able to repair the condenser which returned to operation on December 22, 2005.  
15 Applicant resumed its waste consolidation operations on December 22, 2005 until Condenser  
16 A-1 failed again on December 27, 2005. R&R was unable to immediately repair the condenser  
17 coil, and on January 4, 2006, a replacement coil was ordered from the engineering firm that  
18 designed Condenser A-1. On January 9, 2006, the new coil was received, but was found to be the  
19 incorrect part. A replacement was again ordered on January 10, 2006. Applicant was informed  
20 that the new part would take six weeks to manufacture and deliver. R&R continued to attempt to  
21 repair the existing condenser coil. Condenser A-1 was repaired and returned to operation on  
22 January 25, 2006. Other than a brief period on February 6, 2006, Condenser A-1 has been in  
23 continuous operation from January 25, 2006 to and including February 16, 2006. During the  
24 period in which Condenser A-1 was operational, Applicant continued to conduct liquid waste  
25 consolidation operations.

26 Applicant has received the new condenser coil on February 23, 2006 and is  
27 making scheduling arrangements with R&R for installation. Applicant's requested Variance will  
28 include relief for the period of three to four days in early March 2006, during which it will be

1 necessary to take Condenser A-1 offline in order to replace the condenser coil.

2 SPECIFIC FINDINGS

3 The Hearing Board finds pursuant to Health and Safety Code Section 42352 that:

4 1. Applicant will be in violation of District Regulation 2, Rule 1, Section 307 (PC  
5 9036, Parts 1, 2 & 3; PC 9037, Parts 2, 3 & 4 and PC 9042, Parts 1, 2, 3) (abate the emissions  
6 from the six storage tanks and truck loading stations, provide a non-methane hydrocarbon  
7 efficiency of at least 99.5%, and operate at a temperature no greater than minus 110 degrees  
8 Fahrenheit) for Condenser A-1 during the Variance period; and

9 Applicant will be in violation of District Regulation 8, Rule 5, Section 301 (a  
10 person shall not store organic liquid in any storage tank unless such tank is equipped with a vapor  
11 loss control device) for the tanks identified as S-54, S-55, S-72, S-73, S-58 and S-60 during the  
12 Variance period.

13 2. Due to conditions beyond the reasonable control of the Applicant, requiring  
14 compliance with District Regulation 2, Rule 1, Section 307 (PC 9036, Parts 1, 2 & 3; PC 9037,  
15 Parts 2, 3 & 4; and 9042, Parts 1, 2 & 3) and with District Regulation 8, Rule 5, Section 301  
16 would result in (A) an arbitrary and unreasonable taking of property, and/or (B) the practical  
17 closing and elimination of an otherwise lawful business. Compliance during the period of the  
18 Variance would have required Applicant to immediately eliminate all emissions by emptying the  
19 tanks of all liquid wastes, opening and cleaning the tanks to remove all residual material from the  
20 tanks. Applicant has estimated the cost of requiring immediate compliance to be approximately  
21 \$37,900. Under the circumstances, such a cost would constitute an unreasonable taking of  
22 property since the process of emptying and cleaning the tanks would result in greater emissions  
23 than the alternative allowed by the Variance.

24 The breakdown of Condenser A-1, ultimately as a result of metal fatigue, was not  
25 something that could have been anticipated by Applicant. Applicant hired R&R to conduct  
26 quarterly maintenance evaluations and conduct necessary repairs on Condenser A-1. Applicant  
27 also conducted daily inspections of Condenser A-1. Applicant's General Manager expressly  
28 asked its contractor, R&R, whether there was anything Applicant could have done in order to

1 anticipate or prevent the breakdown of Condenser and was told that there was no way Applicant  
2 could have anticipated the metal fatigue. Once Applicant discovered that Condenser A-1 was not  
3 operational, Applicant could not have complied with the Regulation 2-1-307 even by shutting  
4 down operations. Accordingly, non-compliance with District Regulations was beyond  
5 Applicant's reasonable control.

6 3. The hardship due to requiring immediate compliance with District Regulation 2,  
7 Rule 1, Section 307 (PC 9036, Parts 1, 2 & 3; PC 9037, Parts 2, 3 & 4; and 9042, Parts 1, 2 & 3)  
8 would be without a corresponding benefit in reducing air contaminants. As Applicant later  
9 determined when using engineering calculations, tank emissions created by requiring Applicant to  
10 empty and power wash the tanks would actually increase emissions from the tank system, thereby  
11 resulting in a negative impact on reducing air contaminants. Therefore, denying the Variance and  
12 requiring Clean Harbors to empty the liquid wastes from and then power wash the tanks would  
13 create greater emissions than granting a Variance allowing Clean Harbors to leave the waste in  
14 the tanks in a resting state while Condenser A-1 is inoperable.

15 4. Applicant has considered possibilities for curtailing operations of the source in lieu  
16 of obtaining a Variance and has curtailed operations to the maximum feasible extent. Applicant  
17 has curtailed operations by ceasing its liquid waste consolidation activities while Condenser A-1  
18 is inoperable. However, this curtailment is not sufficient to bring Applicant into compliance with  
19 Regulations 2-1-307 and 8-5-301 due to the unabated passive emissions from the tanks.

20 5. Applicant has identified steps that it will take to keep emissions as low as possible.  
21 Applicant will cease all liquid waste consolidation activities while Condenser A-1 is inoperable.

22 6. District staff has not requested Applicant to monitor perform additional  
23 monitoring.

24 THEREFORE, THE HEARING BOARD ORDERS:

25 A Variance from Regulation 2, Rule 1, Section 307 and Regulation 8, Rule 5,  
26 Section 301 and from the provisions of operating PC 9036, Parts 1, 2 & 3, PC 9037,  
27 Parts 2, 3 & 4; and PC 9042, Parts 1, 2 & 3, is hereby granted from December 13, 2005 to and  
28 including March 12, 2006, subject to the following conditions:

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- 1) Applicant shall take all feasible steps to keep emissions as low as possible, including those identified in its Variance application.
- 2) Applicant shall not consolidate liquid wastes by loading or unloading liquid wastes into or out of the tanks unless Condenser A-1 is operating properly in compliance with all District Regulations and Permit Conditions.
- 3) Applicant shall pay excess emission fees for 133.20 pounds of Volatile Organic Compound (VOC) emissions pursuant to District Regulation 3, Schedule A.

Moved by: Terry A. Trumbull, Esq.

Seconded by: Julio Magalhães, Ph.D.

AYES: Julio Magalhães, Ph.D., Allan R. Saxe, Esq., Terry A. Trumbull, Esq.,  
Thomas M. Dailey, M.D.

NOES: None.

  
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Thomas M. Dailey, M.D., Chair

3-13-06  
\_\_\_\_\_  
Date