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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

SFPP, L.P.

For a Variance from Regulation 8, Rule 33,
Section 301; Regulation 2, Rule 1, Section 307
(Permit Condition No. 7492, Parts 6,
10 and 13)

No. 3525

ORDER GRANTING VARIANCE

The above-entitled matter is an Application for Short-Term Variance from the provisions of Bay Area Air Quality Management District ("District") Regulation 2, Rule 1, Section 307; Regulation 8, Rule 33, Section 301 and Permit Condition No. 7492, Parts 6, 10 and 13 for the Plant No. A4020 located at 2150 Kruse Drive, San Jose, California 95131, owned and operated by SFPP, L.P. an operating partnership of Kinder Morgan Energy Partners, L.P. ("Applicant"). The application was filed on November 22, 2006.

Julia C. Butler of Reed Smith LLP appeared for the Applicant.

Kathleen Walsh, Assistant Counsel, appeared for the Air Pollution Control Officer ("APCO").

The Clerk of the Hearing Board provided notice of the hearing on the Application in accordance with the requirements of the Health and Safety Code. The Hearing Board heard the request for Variance on January 4, 2007. At the hearing, the Applicant amended its Application for Variance by requesting a Variance for the period November 22, 2006 through February 19, 2007, and by requesting relief from Permit Condition No. 7492, Part 10. The Applicant also retracted its request for a Variance from Permit Condition No. 7492, Parts 7, 14, 15 and 16.

ARB

The Hearing Board provided the public an opportunity to testify at the hearing as required by the Health and Safety Code, but no one did so. The Hearing Board heard Applicant's and APCO's testimony and evidence. The APCO did not oppose the granting of the Variance, as amended by the Applicant at the hearing.

The Hearing Board declared the evidentiary portion of the hearing closed after receiving testimony and after deliberation and upon motion decided the matter.

BACKGROUND

Applicant owns and operates a petroleum terminal facility located at 2150 Kruse Drive in San Jose, California ("San Jose Terminal"). The facility stores and transports gasoline and other liquid petroleum products for and belonging to its customers. The facility is a "for hire" terminal that acts as a "common carrier" of products. As such, the Applicant must make these products available on demand to the entities to whom these products belong.

The San Jose Terminal is one of the end points of the pipeline system that accepts product from Applicant's Concord Station, which, in turn, receives product from area refineries. The San Jose Terminal delivers its customers' product by loading the product into tanker trucks via its truck loading racks. At these truck loading racks, vapors are collected in a vapor holding tank (accumulator) and then burned in a thermal oxidizer unit.

Regulation 2, Rule 1, Section 307 requires Applicant to operate its permitted equipment in accordance with the permit conditions. Applicant's Permit Condition No. 7492, Part 6 requires the vapor burner to be fully operational while Part 13 requires the destruction efficiency to be equal to or greater than 98.5%. Permit Condition No. 7492, Part 10 requires Applicant to maintain all equipment in good operating condition at all times. In addition, Regulation 8, Rule 33, Section 301 limits emissions from the thermal oxidizer to 9.6 grams of organic compounds

per cubic meter (0.08 lbs per 1000 gallons) of organic liquid loaded.

The equipment, in question, is the thermal oxidizer manufactured by John Zink Company. On November 17, 2006, the District conducted a source test on the thermal oxidizer. Despite the fact that the thermal oxidizer passed a source test in March 2006, the early indication from the November source test was that the thermal oxidizer may not be operating in compliance with all permit conditions and District regulations. Applicant responded in a timely manner. It hired a third party vendor to conduct another source test on the thermal oxidizer which occurred on November 22, 2006. The November 22, 2006 test revealed that Applicant was out of compliance with the District regulations and permit conditions, as identified above. Following this source test, Applicant submitted its Application for Variance to the Hearing Board.

Applicant immediately contacted the manufacturer to schedule a time for a site visit to conduct an inspection of the thermal oxidizer. The manufacturer conducted the inspection on Monday, November 27, 2006. As part of the inspection, the manufacturer reviewed the entire thermal oxidizer system, conducted some minor troubleshooting and reviewed the maintenance on the unit. The manufacturer reported that there were no apparent maintenance issues with the thermal oxidizer. Although there was nothing obviously wrong with the thermal oxidizer, the manufacturer made the following recommendations to allow the unit to achieve compliance: enclosing the base of the unit and installing louvers.

While it waited for the manufacturer's recommendations, Applicant did some troubleshooting and tinkering of its own on the thermal oxidizer in the hope of getting it back into compliance as soon as possible. For example, the Applicant cleaned and replaced the burner tips, checked the burner arrester, reviewed maintenance records, and checked the unit for potential clogging, leaks and other potential maintenance problems. After it received the

manufacturer's recommendations, Applicant began work on constructing a temporary enclosure for the base of the unit and installed manual louvers. With these modifications, the thermal oxidizer operated at a higher temperature with improved combustion efficiency.

On December 13, 2006, the Applicant again hired a third party vendor to conduct another source test on the unit. This source test revealed that the modifications to the unit improved its efficiency, but also revealed that the unit was still not back in complete compliance. After optimizing the operating parameters to the greatest extent possible, including but not limited to varying flow rates, damper positions and the number of burner heads in use, the Applicant believed it developed operating conditions that enabled the thermal oxidizer to get closer to meeting the District's regulations and permit conditions. Therefore, on December 20, 2006, Applicant hired a third party vendor to conduct another source test, which confirmed Applicant's belief.

However, because the Applicant had to change the operating parameters to allow the thermal oxidizer to operate to its maximum efficiency (thus limiting the amount of product that could be delivered), Applicant looked for and eventually found a portable thermal oxidizer to enable the San Jose Terminal to meet customer demand. The portable thermal oxidizer arrived on site and began operating for a portion of each day, beginning December 22, 2006. The portable unit must be operated manually and Applicant hired an operator for that specific purpose. Applicant has applied for certification of the portable unit.

Although Applicant believes it has achieved a temporary solution to the problems with the thermal oxidizer identified in late November 2006, despite the efforts of the manufacturer and the Applicant's engineering group, it has not been able to identify a permanent solution that would enable the thermal oxidizer to operate at full capacity in compliance with all applicable

permit conditions and District regulations. Applicant plans on continuing to work with the manufacturer to discover and implement a long-term solution.

DISCUSSION

As demonstrated by the failure of the source tests conducted in November and December 2006, Applicant is and will be in violation of Regulation 2, Rule 1, Section 307, Regulation 8, Rule 33, Section 301 and Permit Condition No. 7492, Parts 6, 10 and 13 from November 22, 2006 through February 19, 2007 while operating at a level that allows it to meet its product supply obligations.

The failure of the thermal oxidizer was beyond the reasonable control of the Applicant. The thermal oxidizer was properly maintained and inspected twice daily. In addition, a March 2006 source test showed the unit to be in full compliance with District regulations and permit conditions. Despite Applicant's diligent efforts, it has not been able to determine a long-term solution for the problems identified by the November and December 2006 source tests and without the Variance Applicant would have to shut down the San Jose Terminal until the thermal oxidizer is fixed or replaced. Shutting down the San Jose Terminal would likely result in product shortages in the greater San Jose area, cause petroleum to be shipped by truck instead of pipe, cause economic losses of approximately \$1.5 million in revenue to Applicant and laying off of 8 of Applicant's employees. As such, requiring compliance would result in the practical closing and elimination of a lawful business and would be without a corresponding benefit in reducing air contaminants.

Applicant estimated excess emissions to be 4,668 pounds of Volatile Organic Compounds (VOCs) and 233 pounds of Toxic Air Contaminants (TACs) during the Variance period. Facility is in an area zoned for light industrial use. To assess potential health risk of the

substantial emissions of TACs, the Hearing Board requested that a Health Risk Assessment be performed as a Variance condition.

Applicant did curtail its operations in an attempt to limit excess emissions and still operate its business. Further, during the period the Variance is in effect, during testimony, the Applicant offered to reduce excess emissions to the maximum extent feasible and will comply with the Variance conditions set forth below. During the period the variance is in effect, the Applicant testified that it will monitor or otherwise quantify emission levels from the source and report these emission levels to the District in accordance with the variance conditions set forth below.

SPECIFIC FINDINGS

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

1. Based on the source tests conducted in November and December 2006, during the time period of November 22, 2006 through February 19, 2007, Applicant was and is expected to be in violation of Regulation 2, Rule 1, Section 307, Regulation 8, Rule 33, Section 301 and Permit Condition No. 7492, Parts 6, 10 and 13.

2. Applicant could not have reasonably known or anticipated that the thermal oxidizer was operating outside of the permit conditions and District regulations identified above because:

(i) Applicant followed a reasonable maintenance schedule for the thermal oxidizer;

(ii) the thermal oxidizer was inspected on a regular basis; and

(iii) the annual source test conducted in March 2006 did not reveal any problem with the thermal oxidizer.

Without the Variance Applicant would have to shut down the San Jose Terminal until the thermal oxidizer is fixed or replaced. Shutting down the San Jose Terminal would likely result in product shortages in the greater San Jose area, cause petroleum to be shipped by truck instead of pipe, cause economic losses of approximately \$1.5 million in revenue to Applicant and laying off of 8 of Applicant's employees. Thus, due to conditions beyond the reasonable control of Applicant, requiring compliance with the District Regulations and permit conditions, as identified above, would result in a practical closing and elimination of a lawful business.

3. Excess VOC emissions will occur during a season when ozone formation is not a concern, and the amounts are small compared to the District's overall VOC budget. Excess TAC emissions will occur in an area zoned as light industrial, and the incremental impact of the short-term exposure will be evaluated through a Health Risk Assessment included as a condition of this Variance. The closing of Applicant's business would incur a large cost to the Applicant and would have a major impact on the distribution of petroleum products in the San Jose area. Therefore, the closing or taking would be without a corresponding benefit in reducing air contaminants.

4. The Applicant has given due consideration to curtailing operations of the source in lieu of obtaining a Variance. In an attempt to get the thermal oxidizer back into compliance as quickly as possible, Applicant optimized the operating parameters to the greatest extent possible, including but not limited to varying flow rates, damper positions and the number of burner heads in use. In optimizing these operating parameters, Applicant did curtail its operations by limiting the amount of product that could be delivered.

5. During the period the Variance is in effect, the Applicant has offered to

reduce excess emissions to the maximum extent feasible and will comply with the Variance conditions set forth below.

6. During the period the Variance is in effect, the Applicant will monitor or otherwise quantify emission levels from the source and report these emission levels to the District in accordance with the Variance conditions set forth below.

THEREFORE, THE HEARING BOARD ORDERS:

A Short-Term Variance is hereby granted from District Regulation 2, Rule 1, Section 307, Regulation 8, Rule 33, Section 301 and Permit Condition No. 7492, Parts 6, 10 and 13 for the period November 22, 2006 through February 19, 2007, subject to the following conditions:

1. The portable thermal oxidizer shall be operated to the maximum extent feasible, at a minimum during daylight hours (5:30 a.m. to 5:00 p.m.), except when conducting source tests on the existing thermal oxidizer.
2. The flow to the existing thermal oxidizer shall be limited to the existing thermal oxidizer's flow as determined in the last source test that showed at or near compliance, except during engineering or source tests.
3. Applicant shall provide a written report to the Hearing Board and the District, in an original plus nine copies, within 30 days of the end of the Variance period, outlining all actions taken to bring the existing thermal oxidizer into compliance since the non-compliance was discovered as well as a final report indicating if it will be in compliance or, if not, what steps will be taken to further bring it into compliance.

4. Applicant shall provide a written report to the Hearing Board and the District, in an original plus nine copies, on the excess emissions, including both criteria and Toxic Air Contaminants on an individual basis, using the District-approved emission factors from the source tests during the Variance period, within 30 days of the end of the Variance period or two weeks after the District's approval of the source test emission factors, whichever is later.
5. Applicant shall conduct and submit a Health Risk Assessment to the Hearing Board and the District prepared according to Regulation 2, Rule 5 for Toxic Air Contaminants and other excess emissions during the Variance period. The written report shall be submitted to the Hearing Board and the District within 30 days of the end of the Variance period.
6. Applicant shall ensure that the portable thermal oxidizer unit is operated within all permit conditions and certification requirements.
7. Applicant shall comply with all other parts of the permit conditions during the Variance period.
8. Specifically, Applicant shall comply with Permit Condition # 7492, Part 6 to ensure that the loading racks vapor recovery system of the thermal oxidizer and the vapor bladder are fully operational as much as practicable while performing necessary repairs on the unit. If both are not fully operational during repairs, the Applicant shall stop loading regulated materials once the vapor bladder reaches its saturation point to minimize or avoid excess emissions.

9. Applicant shall pay excess emission fees pursuant to the District's Regulation 3, Schedule A, and based on the Applicant's estimated calculations for the entire Variance period.

Moved by: Christian Colline, P.E.

Seconded by: Terry A. Trumbull, Esq.

AYES: Christian Colline, P.E., Terry A. Trumbull, Esq., Julio Magalhães, Ph.D.,
Valerie J. Armento, Esq. and Thomas M. Dailey, M.D.

NOES: None

NON-PARTICIPATING: None



Thomas M. Dailey, M.D., Chair

1-27-07
Date