

FILED

JUN - 8 2004

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In the Matter of the Application of:)	Docket No. 3463
OX MOUNTAIN LANDFILL)	
HALF MOON BAY, CALIFORNIA)	ORDER GRANTING SHORT-TERM VARIANCE
)	
For a Variance from Regulation 2, Rule 1,)	
Section 307 and Regulation 8, Rule 34,)	
Sections 113, 301, and 303)	

The above-entitled matter is an Application for a Short-Term Variance from the provisions of Regulation 2, Rule 1, Section 307 and Regulation 8, Rule 34, Sections 113, 301, and 303 for the Ox Mountain Landfill located at 12310 San Mateo Road, Half Moon Bay, California 94019, owned and operated by Browning-Ferris Industries of California, Inc. ("Applicant"). Applicant filed an Application for a Variance on April 1, 2004.

Patrick Sullivan of SCS Engineers and Lochlin Caffey of BFI appeared on behalf of 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 Short-Term Variance in accordance with the requirements of the California Health and Safety

ARB

1 Code. The Hearing Board heard the request for variance on May 20, 2004.

2 The Hearing Board provided the public an opportunity to testify at the hearing as
3 required by the Health and Safety Code. No members of the public testified. The Hearing Board
4 received evidence from both parties. The APCO did not oppose the granting of the variance
5 subject to certain conditions.

6 The Hearing Board declared the evidentiary portion of the hearing closed after receiving
7 testimony. Following deliberation on May 20, 2004, the Hearing Board decided the matter.

8 **BACKGROUND**

9 Applicant operates a solid waste landfill located at 12310 San Mateo Road in Half Moon Bay,
10 California ("Facility"). The Facility has been issued a Major Facility Review ("MFR") permit
11 from the Bay Area Air Quality Management District ("District"). Applicant is not considered
12 a small business as described by California Health and Safety Code Section 42352.5(b)(2) and
13 emits more than 10 tons per year of air contaminants.

14 The Facility includes three flares, denoted A-4, A-5, and A-6 in the MFR permit,
15 which are used to combust landfill gases and maintain compliance with District Regulation 8,
16 Rule 34, and the MFR permit. The Application stems from Applicant's intent to replace the
17 three flares so as to be better able to comply with applicable requirements. According to the
18 Application, replacement of the three flares will cause the Facility to go beyond the 240-hour
19 annual landfill gas collection and control system downtime limit of Regulation 8, Rule 34,
20 may also lead to excess surface emissions in violation of that rule, and will violate the
21 provisions of the MFR permit and Regulation 8, Rule 34 pertaining to a requirement for
22 continuous operation of the landfill gas system.

24 **DISCUSSION**

25 Current permit conditions and Regulation 8, Rule 34, Section 301 require the landfill gas
26 collection and control be operated in a continuous fashion to control surface emissions of landfill
27 gas. Regulation 8, Rule 34, Section 113 allows an exemption to this criterion as long as the
28 downtime for the landfill gas system can be limited to 240 hours per year. Regulation 8,

1 Rule 34, Section 303 limits landfill gas surface emissions to less than 500 parts per million by
2 volume above background of total organic gases measured as methane. During the variance
3 period, the Facility will be in violation of these requirements during the replacement of the three
4 landfill gas flares utilized on-site, denoted A-4, A-5, and A-6 in the MFR permit, as a result of
5 landfill gas system downtime due to flare installation activities. Applicant and the District are in
6 substantial agreement in estimating that volatile organic compound emissions during the
7 variance period may be as high as 753.97 pounds per day of unabated emissions in excess of
8 District Regulation limits. The toxic air contaminant emissions during the variance period may
9 be as high as 193.78 pounds per day of unabated emissions in excess of District Regulation
10 limits.

11
12 Aside from the events that are the subject of this variance application, Applicant has
13 recently been in compliance with emissions regulations and permit conditions. Applicant does
14 not anticipate further need for a variance after the current flare replacements are performed.

15 The Applicant has requested a variance from April 1, 2004, through June 28, 2004, or
16 until such time as the flare replacement project is complete, whichever occurs first.

17 Based on the daily excess emissions estimates described above, excess volatile organic
18 compound emissions are predicted to be 7.16 tons over the variance period. Excess toxic air
19 contaminant emissions are predicted to be 1.74 tons over the variance period.

20 SPECIFIC FINDINGS

21 Pursuant to the California Health and Safety Code, the Hearing Board may grant a Short-Term
22 Variance upon a finding that the Application meets the six regular variance criteria found at
23 Section 42351(a).

24 **On the matter of Variance from Regulation 2, Rule 1, Section 307 and Regulation 8,**
25 **Rule 34, Sections 113, 301, and 303** the Hearing Board finds:

26 1. Applicant is or will be in violation of Regulation 2, Rule 1, Section 307 and
27 Regulation 8, Rule 34, Sections 113, 301, and 303 during the replacement of the three landfill
28 gas flares utilized on-site for landfill gas control, denoted A-4, A-5, and A-6 in the MFR permit,

1 as a result of landfill gas system downtime due to flare installation activities. The flare
2 replacement project will result in landfill gas system downtime, which is in violation of the MFR
3 permit and Regulation 8, Rule 34, Section 301. This downtime will also exceed the 240-hour
4 annual exemption allowed in Regulation 8, Rule 34, Section 113. While one or more landfill
5 gas flares are off-line during the flare replacement project, the ability of the landfill gas system
6 will be compromised such that it is likely that there will be landfill gas surface emissions in
7 excess of the limit allowed under Regulation 8, Rule 34, Section 303.

8 2. Applicant has made every reasonable effort to cause the existing landfill gas flares to
9 operate in a manner that would achieve compliance with the MRF permit and District Rules and
10 Regulations. Applicant represents, and the Hearing Board finds no reason to doubt, that
11 replacement of these flares is the only reasonable solution to this compliance problem. A
12 necessary consequence of the replacement of the existing flares with compliant control devices
13 is that the landfill gas control system at the Facility will require excessive downtime during
14 construction. Therefore, the Hearing Board finds that the violation was beyond the reasonable
15 control of the Applicant. Applicant represents that not granting the variance would result in an
16 arbitrary or unreasonable taking of property since the District would proceed with enforcement
17 action for the violations that have occurred, which would likely include significant monetary
18 penalty. In addition, the Hearing Board accepts Applicant's representation that maintaining
19 compliance using the flare equipment that was in place prior to commencement of this project
20 requires a heavy expenditure of resources due to the unreliability of the flare equipment.

21 3. This taking would be without corresponding benefit in reducing air contaminants
22 since the flare replacement project is the only way the Facility can achieve compliance with the
23 MRF permit and District Rules and Regulations. As such, excess emissions would occur even
24 if the variance were not granted. In addition, once the flares are replaced, there will be long-term
25 air quality benefit to the District since the Facility will have a more reliable landfill gas control
26 system that will serve to reduce emissions on a more continuous and permanent basis.

27 4. Because of the nature of the Facility, the Applicant cannot curtail operations in lieu of
28 obtaining a variance. This is due to the fact that the landfill will continue to emit landfill gases

1 regardless as to whether the Facility curtails on-site operations.

2 5. Applicant has and will continue to reduce emissions to the maximum extent feasible
3 during the variance period by staging the flare installation project such that only half of the
4 landfill gas collection and control system will be off-line at any one time. Further, the Applicant
5 will make adjustments to the operating portion of the landfill gas system so as to extract as much
6 landfill gas as possible from the portion of the site that is not under active control. In addition,
7 the Applicant will conduct weekly surface emissions monitoring as detailed in the conditions
8 below, and utilize the results of the monitoring to pinpoint areas of excess surface emissions.
9 These areas will be remediated through the use of cover repair to reduce these emissions.

10 6. Applicant has and will continue to conduct landfill gas characterization testing for
11 volatile organic compounds and toxic air contaminants and conduct weekly surface emissions
12 and landfill gas migration monitoring to monitor and quantify excess emissions that will occur
13 during the variance period and report those emissions to the District in accordance with the
14 conditions below.

15 **THEREFORE, THE HEARING BOARD ORDERS:**

16 A variance is granted for the period April 1, 2004, through and including June 28, 2004,
17 from Regulation 2, Rule 1, Section 307 and Regulation 8, Rule 34, Sections 113, 301, and 303.
18 The variance is subject to the following conditions:

19 1. Applicant shall conduct weekly surface emissions monitoring during landfill gas
20 system downtime using procedures specified in Regulation 8, Rule 34 and submit the results of
21 this monitoring to the District and the Hearing Board within 10 working days of the last weekly
22 monitoring event.

23 2. Applicant shall conduct weekly monitoring of landfill gas migration probes and any
24 on-site occupied structures in accordance with Title 27 of the California Code of Regulations
25 during landfill gas system downtime and submit the results of this monitoring to the District and
26 the Hearing Board within 10 working days of the last weekly monitoring event.

27 3. Applicant shall collect one sample each from landfill gas being combusted in the three
28 landfill gas flares and have the samples analyzed for non-methane organic compounds and toxic

1 air contaminants using appropriate District or U.S. Environmental Protection Agency methods
2 and submit these data to the District and the Hearing Board within 10 working days of receipt of
3 the analytical results.

4 4. Applicant shall utilize the analytical data, monitoring results, and actual downtime
5 records to calculate the actual volatile organic compound and toxic air contaminant emissions
6 that occurred during the variance period. These calculations shall be submitted to the District
7 and the Hearing Board within 10 working days after the end of the variance period or within ten
8 working days after the flare replacement project is complete, whichever occurs first.

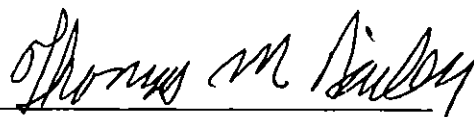
9 5. Applicant shall pay excess emission fees per District Regulation 3. Applicant may, at
10 its option, consult with District staff to determine if staff would concur with use of an estimate
11 of daily excess emissions lower than the figures described above.
12

13 Moved by: Terry A. Trumbull, Esq.

14 Seconded by: Allan R. Saxe, Esq.

15 AYES: Julio Magalhães, Ph.D., Jeffery R. Raines, P.E., Allan R. Saxe, Esq.,
16 Terry A. Trumbull, Esq., and Thomas M. Dailey, M.D.

17 NOES: None
18

19
20 
21 Thomas M. Dailey, M.D., Chair

22 6-5-04
23 Date