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

In the Matter of the Petition of) Docket No. 3770
Waste Management Of Alameda County – Tri-)
Cities Landfill [Facility ID No. 2246]) ORDER GRANTING SHORT VARIANCE
For Short Variance from Regulation 2, Rule 1 §)
307; Regulation 8, Rule 34 §§ 301, 303, and 305.1;)
and Permit Condition 8366 §§ 4, 5, and 20)

FILED
APR 15 2026
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

Findings and Decision of the Hearing Board

The above-entitled matter, being a Petition for Short Variance (Petition), was filed on March 9, 2026 by Waste Management of Alameda County (Petitioner) with regard to its Tri-Cities Landfill (Facility). The Petition requested a Short Variance from the provisions of Regulation 2, Rule 1, Section 307; Regulation 8, Rule 34, Sections 301, 303, and 305.1, and Permit to Operate (PTO) Condition 8366, Sections 4, 5 and 20. The Bay Area Air Quality Management District (Air District) Hearing Board published a Notice of Hearing on March 23, 2026, and a public hearing was held on April 7, 2026. Petitioner was represented by Clare Ellis, Esq. and Malcolm Weiss, Esq. of Hunton Andrews Kurth LLP. Respondent, the District Air Pollution Control Officer (APCO), was represented by Anne Baptiste, Assistant Counsel at the Air District. The APCO did not oppose the granting of the requested Short Variance.

THE HEARING BOARD STATES as the reasons for its decision and FINDS as to those matters in which findings are required:

Nature of Business and Location of Facility

The Facility (ID No. 2246) is an inactive regional waste disposal facility located at 7010 Auto Mall Parkway, Fremont, CA 94538.

Equipment Subject to the Variance Petition

The equipment that is the subject of the Petition is the Facility's landfill gas collection system (GCS) and enclosed flare (Flare). The GCS and the Flare are operated pursuant to a PTO

1 issued by the Air District.

2 **Summary**

3 Petitioner identified the need to perform maintenance on the Flare to remove and replace
4 its existing ceramic fiber blanket insulation and burners, and to repaint the Flare exterior.
5 Performing this work and subsequent well tuning and return-to-service activities (together
6 comprising the Project) will require suspending operation of the GCS and the Flare, making it
7 beyond Petitioner's reasonable control to comply with the above-referenced Air District rules
8 and PTO conditions for the duration of the Project. These include the requirements to
9 continuously operate the GCS, to collect and abate all landfill gas (LFG) at all times by the GCS
10 and Flare, and to operate each wellhead in the GCS under a vacuum. Requirements also include
11 prohibitions on disconnecting wells or closing isolation or adjustment valves without written
12 authorization, venting raw LFG to the atmosphere, as well as component and landfill surface
13 leaks that exceed specified concentrations of methane. *See* Petition at pp. 2-3.

14 It is necessary for Petitioner to undertake the Project to avoid Flare failure in the long
15 term. Petitioner engaged third-party engineers and contractors to carry out the work
16 expeditiously. Based upon the proposals received, however, the Project will require more than
17 240 hours and more than five (5) consecutive days of GCS shutdown time, thus will not qualify
18 for the limited exemption for inspection and maintenance activities that is set forth in Air District
19 Rule 8-34-113. Petitioner thus requested a Short Variance from the above-referenced Air District
20 rules and PTO conditions for the duration of the Project.

21 **Findings of Fact and Conclusions**

22 The following facts and conclusions support the Hearing Board making the findings in
23 Health and Safety Code Section 42352 in support of granting the requested Short Variance.

24 **(1) That the Petitioner for a variance is, or will be, in violation of Health and Safety Code**
25 **Section 41701 or of any rule, regulation or order of the Air District.**

26 For the duration of the Project, Petitioner will be in violation of Regulation 2, Rule 1,
27 Section 307, which prohibits operation of equipment for which a PTO has been issued in
28 violation of applicable permit conditions, because Petitioner will be operating the GCS and the

1 Flare in violation of PTO Condition 8366, Sections 4, 5 and 20. Further, Petitioner will be in
2 violation of Air District Regulation 8, Rule 34, Sections 301, 303, and 305.1 for the duration of
3 the project.

4 **(2) That, due to conditions beyond the reasonable control of the Petitioner, requiring**
5 **compliance would result in either (A) an arbitrary or unreasonable taking of property, or**
6 **(B) the practical closing and elimination of a lawful business.**

7 Non-compliance with the above-referenced Rules and PTO conditions will be beyond
8 Petitioner's reasonable control during the Project. Petitioner has no choice but to undertake the
9 Project to avoid long-term operational issues with the Flare, which could include catastrophic
10 failure. Petitioner has undertaken proper inspection and maintenance practices for the Flare. The
11 issues identified were unexpected, and Petitioner is proactively addressing them by undertaking
12 the Project rather than risking Flare failure. And it is not possible to carry out the Project without
13 suspending GCS and Flare operation while the work is undertaken, which in turn will cause non-
14 compliance with the relevant Air District Rules and PTO conditions.

15 Denial of the requested Short Variance and requiring compliance during the Project would
16 cause an unreasonable burden to Petitioner in that Petitioner would either have to defer the Project
17 and risk the possibility of significant Flare failure or proceed with the Project and be subject to
18 monetary fines and penalties for violations of its PTO and the above-referenced Air District rules.

19 **(3) That the closing or taking would be without a corresponding benefit in reducing air**
20 **contaminants.**

21 The significant harm to Petitioner, described above, would be without a corresponding
22 benefit in reducing air contaminants, as such denial would not eliminate the necessity of
23 undertaking the Project due to the circumstances stated herein or greater emissions if the Flare
24 were to catastrophically fail, which would likely result in a longer period of non-operation.

25 **(4) That the Petitioner for the variance has given consideration to curtailing operations of**
26 **the source in lieu of obtaining a variance.**

27 Petitioner considered but cannot achieve compliance by curtailing operations in lieu of
28 obtaining a variance. Because the Facility is an LFG control and processing facility, and LFG is

1 a byproduct of decomposing waste that was historically placed in the landfill, Petitioner is unable
2 to curtail the natural processes generating LFG and cannot stop LFG generation or emissions
3 while the Project is implemented.

4 **(5) During the period that the variance is in effect, that the Petitioner will reduce excess**
5 **emissions to the maximum extent feasible.**

6 Petitioner will reduce emissions to the maximum extent feasible during the variance period
7 by minimizing GCS and Flare downtime and restoring them to operational capacity expeditiously
8 once the Project is complete. Petitioner also will ensure that the isolation valves on the GCS main
9 header piping connected to the Flare are closed while the Flare is out of service.

10 **(6) During the period the variance is in effect, the Petitioner will monitor or otherwise**
11 **quantify emission levels from the source, if requested to do so by the Air District, and report**
12 **these emission levels to the Air District, pursuant to a schedule established by the Air District.**

13 Petitioner will monitor or otherwise quantify emission levels and report these emission
14 levels to the Air District pursuant to the conditions of this Order granting the requested Short
15 Variance.

16 Order

17 Based on the Petition, testimony, exhibits and other evidence presented by Petitioner, THE
18 HEARING BOARD finds: (a) that the required public notice of the Petition and hearing were
19 given in the proper form and sufficient time before the hearing; and (b) substantial evidence
20 supports each the six findings required by the California Health and Safety Code for granting a
21 variance from the rules and permit conditions specified in the Petition.

22 THE HEARING BOARD ORDERS as follows:

23 Petitioner is granted a Short Variance in Docket No. 3770, for the period starting no earlier
24 than April 13, 2026, and ending no later than 30 calendar days from the variance start date (which
25 will correspond to the start of onsite Project work), from District Regulation 2, Rule 1, Section
26 307; Regulation 8, Rule 34, Sections 301, 303, and 305.1, and Permit to Operate (PTO) Condition
27 8366, Sections 4, 5 and 20.

28 The Short Variance granted is subject to the following conditions:

1. Petitioner will notify the Air District counsel and staff two (2) business days before commencement of the variance period (based upon the start date of the Flare maintenance project). Petitioner will notify the Air District counsel, staff, and Hearing Board (through the Clerk) within one (1) business day after project completion.
2. Petitioner will monitor a 100 square foot section of each quadrant of the landfill surface every five (5) calendar days, using a flame ionization detector (FID), until the gas collection system and flare return to compliance.
3. Petitioner will also use an FID monitor for component leaks of valves and flanges at the flare blower station every five (5) calendar days until the gas collection system and flare return to compliance.
4. Petitioner will report any exceedances of the Regulation 8-34-301.2 and 8-34-303 standards for surface and component leaks (respectively, above 1,000 ppm and 500 ppm by volume, expressed as methane above background other than non-repeatable, momentary readings). Reports, if any, will be due to the Air District staff within three (3) business days of data collection.
5. Within ten (10) business days of termination of the variance, Petitioner will calculate and report excess emissions during the variance period, if any, to Air District staff and counsel.
6. Petitioner shall remit excess emission fees to the Air District within thirty-five (35) days of receiving an invoice issued by the Air District in accordance with Hearing Board Rule 7.17.

Moved by: Barbara Toole O'Neil, MS, QEP, Ch.E., Vice Chair
Seconded by: Peter Y. Chiu, M.D., P.E.
AYES: Barbara Toole O'Neil, MS, QEP, Ch.E., Vice Chair; Peter Y. Chiu, M.D., P.E.; Rajiv Dabir, P.E.; Amelia Timbers; and Valerie J. Armento, Esq., Chair.
NOES: None.
ABSTAIN: None.


Valerie J. Armento, Esq., Chair


Date

1 BEFORE THE HEARING BOARD
2 OF THE
3 BAY AREA AIR QUALITY MANAGEMENT DISTRICT
4 STATE OF CALIFORNIA

4 In the Matter of the Application of)
5 Waste Management of Alameda County –)
6 Tri-Cities Landfill)
7 For Short-Term Variance from Regulation,)
8 8, Rule 34, Sections 301, 303, and 305.1;)
and Permit Conditions 4 and 5)

Docket No.: 3770
CERTIFICATE OF SERVICE



9 STATE OF CALIFORNIA)
10 City and County of San Francisco) SS.

11 I, Marcy Hiratzka, do hereby certify under penalty of perjury as follows:
12 That I am a citizen of the United States, over the age of eighteen years and not a party to the
13 above-entitled action; that I served a true copy of the attached **Order Granting Short
Variance** on:

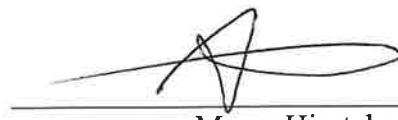
14 Malcom Weiss, Esq. Hunton Andrews Kurth LLP mweiss@hunton.com	Clare Ellis, Esq. Hunton Andrews Kurth LLP 50 California Street Suite 1700 San Francisco, CA 94111 cellis@Hunton.com
17 Tim Miller, Esq. Waste Management Tmille32@wm.com	

20 by depositing same via email on April 15, 2026 and on:

21 Anne Baptiste, Esq., Assistant Counsel
22 Bay Area Air Quality Management District
375 Beale Street, Suite 600
23 San Francisco, CA 94105
abaptiste@baaqmd.gov

25 via email April 15, 2026

26 DATED: April 15, 2026

27 
28 Marcy Hiratzka
Clerk of the Boards