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FILED
DEC 30 2019
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

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

In the Matter of the Application of)
SHORE TERMINALS LLC) DOCKET NO. 3719
) ORDER GRANTING SHORT-
) TERM VARIANCE
)
)
) For Short-Term Variance from Regulation 2, Rule 6,)
) Section 307; Regulation 8, Rule 5, Section 306; and)
) Permit Condition #6185 parts 1 and 20.)
)
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)

Findings and Decision of the Hearing Board

The above-entitled matter, being an Application for Interim Variance (IV)¹ and Short-Term Variance (SV) from the provisions of Regulation 2, Rule 6, Section 307 of the Bay Area Air Quality Management District (District); Regulation 8, Rule 5, Section 306; and Permit Condition #6185 parts 1 and 20 was filed on November 14, 2019 and was heard on December 10, 2019, pursuant to notice and in accordance with the provisions of Health and Safety Code Section 40825. Applicant Shore Terminals LLC was represented by J. Tom Boer, Partner, Hunton Andrews Kurth LLP. Respondent Air Pollution Control Officer (APCO) of the District was represented by Joel Freid, Assistant Counsel II. The public was given the opportunity to testify, but no one did so. Evidence was received and the case was submitted.

¹ While the Applicant requested both an interim and a short-term variance, the request for interim variance relief was tabled during the December 10, 2019 hearing. Accordingly, this Order addresses solely the short-term variance request.

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

3 **Nature of Business and Location of Facility**

4 Applicant operates its Selby Terminal (the "Facility") located at 90 San Pablo Avenue, Crockett,
5 California, 94533. The Selby Terminal receives, stores, and ships liquid petroleum and biofuel products.

6 **Equipment that is Subject to the Variance Petition**

7 The equipment that is the subject of the petition are the ethanol storage tanks S-40 (T-20108), S-
8 42 (T-20110), S-43 (T-20111), and transmix tank S-44 (T-3001) (the "Tankage"), the purpose of which
9 is to store organic liquids, such as transportation fuels. The purpose of A-421 and A-422, which are vapor
10 recovery units (VRU), is to abate tank vapors when the tanks are venting. Storage of organic liquids is
11 essential to the business because it is the primary function of the terminal.

12 **Summary**

13 Applicant was in violation of District Regulation 2, Rule 6, Section 307; Regulation 8, Rule 5,
14 Section 306; and Permit Condition #6185 parts 1 and 20 for limited, intermittent periods of time between
15 November 14, 2019 and November 23, 2019.

16 Following are the facts and conclusions supporting the findings set forth in California Health and
17 Safety Code Section 42352(a) necessary to grant the variance. The APCO did not oppose the granting
18 of the variance for the period from November 14, 2019 to November 23, 2019. The Hearing Board was
19 not presented with evidence of, and did not consider, the cause of the fire and explosions at the Facility
20 on October 15, 2019, or whether it was beyond Applicant's reasonable control.

21 **Findings of Fact and Conclusions**

22 **(a)(1) The Applicant for a variance is or will be in violation of 41701 or of any rule, regulation, or**
23 **order of the District.**

24 1. Applicant was in violation of District Regulation 2, Rule 6, Section 307; Regulation 8, Rule
25 5, Section 306; and Permit Condition #6185 parts 1 and 20 because there were periods of time when
26 repairs to the fire-damaged vapor line piping connecting the tanks to the VRUs caused the tanks to be
27

1 operated without control by either the VRUs or the authorized portable unit.

2 2. This noncompliance occurred during limited, intermittent periods of time between
3 November 14, 2019 and November 23, 2019.

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

7 1. In the afternoon of October 15, 2019, a fire and explosions occurred at the Facility. The
8 incident caused the collapse of ethanol tanks T-20107 and T-20109 and the loss of vapor controls for
9 ethanol tanks T-20106, T-20108, T-20110, T-20111 and transmix tank T-3001. The Facility's permit
10 requires venting of these tanks to be controlled by the VRUs or an authorized portable unit.

11 2. As a result of the fire, the Facility immediately ceased operation. Power was cut to the Facility
12 thereby causing the VRUs to stop controlling vapors from the tanks.

13 3. The fire was put under control and extinguished by approximately 9:00 pm on October 15,
14 2019.

15 4. BAAQMD personnel were on-site by the afternoon during the incident on October 15, 2019
16 and in the following days. BAAQMD staff were constantly involved in assessing the situation at the site
17 that evening and the next day in particular.

18 5. Power was restored to the Facility on October 16, 2019. With power restored, the VRUs were
19 able to provide vapor control to the Facility except for the three tanks that had abatement infrastructure
20 damage caused by the incident (T-20108, T-20110, T-20111).

21 6. On October 16, 2019, the Facility applied for an emergency variance for relief from the
22 requirements to vent storage tank vapors to an abatement device, specific to the tanks T-201108, T-20110,
23 and T-20111 which had damaged vapor lines and for tanks T-20106 and T-3001 which were not controlled
24 by the VRUs due to the power outage.

25 7. This Hearing Board issued the emergency variance granting relief from October 16, 2019 until
26 November 14, 2019.

27 8. The transmix tank T-3001 and ethanol tank T-20106 were controlled by the VRUs as of
28 October 18, 2019 when power was restored and the VRUs could be safely operated.

1 9. The Facility moved expeditiously to locate a portable unit to control the remaining three
2 ethanol tanks that could not be reconnected to the VRUs due to the damage to the vapor lines. Immediately
3 after the incident, the Facility pursued a plan for reconnecting the three ethanol tanks to the VRUs. Initial
4 estimates indicated that the reconnection could take up to 90 days to complete due to the time needed to
5 design, order, and fabricate the required equipment, and install the equipment.

6 10. The remedial work necessarily involved disconnecting the tanks from the portable unit and
7 reconnecting them to the VRUs. As a result, there would have to be periods of time when the tanks would
8 be uncontrolled during the activities needed to reconnect the tanks to the VRUs. As a result, the Facility
9 applied for an interim and short-term variance to provide relief for those potential intermittent periods of
10 no control.

11 11. Given the Facility's concerted efforts, the remedial activities moved expeditiously taking the
12 reasonable steps available to it to avoid and minimize emissions, and the Facility was able to reconnect
13 the tanks to the VRUs, thereby coming into compliance, on November 23, 2019.

14 12. Non-compliance with the aforementioned rules is the direct result of the fire and the work
15 required to reconnect to the VRUs in light of the damaged piping resulting from the fire. Therefore,
16 compliance is beyond Applicant's reasonable control.

17 13. The tanks in question store organic liquids. After the incident, the affected tanks already had
18 liquid product remaining in them. Since the tanks were no longer connected to the VRUs, the only way
19 to immediately achieve compliance would have been to close the tanks' pressure relief valves and create
20 a "closed system." Closing these pressure relief safety valves would not be reasonable.

21 14. Failure to grant the variance would have unreasonably limited or precluded Applicant's ability
22 to reconnect the tanks to the VRUs in a safe manner.

23 **(a)(3) The closing or taking would be without a corresponding benefit in reducing air contaminants.**

24 1. Excess emissions during the limited period of time in which the tanks were uncontrolled are
25 estimated to be de minimis, less than 1 pound of volatile organic compounds total.

26 **(a)(4) Applicant has given consideration to curtailing operations of the source in lieu of obtaining a**
27 **variance.**

28 1. While the Applicant considered whether curtailment could have ameliorated the situation in

1 lieu of obtaining a variance, the concept of curtailment was not applicable given the situation. This
2 variance is not a typical variance where a company seeks to mitigate economic harm by restarting or
3 continuing commercial operation. The Facility was not seeking to undertake normal business operations
4 in this instance. Rather, the need for this variance is related to maintaining the tanks in a safe state while
5 reconnection to the VRUs could be made, given the configuration of the Facility after the fire and the need
6 to install piping to reconnect the tanks to control devices.

7 **(a)(5) During the period the variance is in effect, Applicant will reduce excess emissions to the**
8 **maximum extent feasible.**

9 1. The transfer of control from the portable vapor combustor to the VRUs was accomplished.,
10 when the tanks would not have been venting at that time. Thus, to the extent there were any emissions,
11 those would be de minimis during this work, i.e., substantially less than one pound.

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

15 1. During the period the variance is in effect, Applicant has agreed to comply with the conditions
16 set forth in this variance order.

17 **Order**

18 THEREFORE, good cause appearing, THE HEARING BOARD ORDERS as follows:

19 A. Applicant is granted a short-term variance from District Regulation 2, Rule 6, Section 307
20 only with respect to Permit Condition #6185 parts 1 and 20 for tanks S-40 (T-20108), S-
21 42 (T-20110), S-43 (T-20111), and transmix tank S-44 (T-3001); and from District
22 Regulation 8, Rule 5, Section 306; and this variance only concerns and covers the period
23 from November 14, 2019 through November 23, 2019.

24 B. The variance granted herein is subject to the following conditions:

25 1. Applicant shall not operate ethanol storage tanks S-40 (T-20108), S-42 (T-20110),
26 S-43 (T-20111), and transmix tank S-44 (T-3001) without compliance with all
27 permit condition and regulatory requirements, including but not limited to all
28 applicable vapor control requirements past November 23, 2019;

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- 2. Within 30 days of the filing of this Order, Applicant shall provide excess emission estimates for the Tankage, which was required to be controlled by permit condition and regulatory requirements, but was not so controlled for the short-term variance period; the estimates provided shall include supporting data such as continuous pressure monitoring data from the ethanol storage tanks S-40 (T-20108), S-42 (T-20110) and S-43 (20111);
- 3. Applicant shall pay all applicable fees to the Clerk of the Board by January 1, 2020.

Moved by: Peter Y. Chiu, M.D., P.E.
Seconded by: Barbara Toole O'Neil, QEP
AYES: Valerie Armento, Esq., Chair; Peter Y. Chiu, M.D., P.E., Catherine Fortney, P.E., and Barbara Toole O'Neil, QEP
NOES: None



Valerie J. Armento, Esq., Chair

DATED: 12/30/2019

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

In the Matter of the Application of)
)
 SHORE TERMINALS LLC) No. 3719
)
 For Interim and Short-Term Variances from) CERTIFICATION OF SERVICE
 Regulation 8, Rule 5, Section 306; Regulation)
 2, Rule 6, Section 307;)
 Permit Condition #6185, Parts 1 and 20)
)

FILED
DEC 30 2019
 HEARING BOARD
 BAY AREA AIR QUALITY
 MANAGEMENT DISTRICT

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

I, Marcy Hiratzka, do hereby certify under penalty of perjury as follows:

That I am a citizen of the United States, over the age of eighteen years and not a party to the above entitled action; and that I served a true and correct copy of the attached Order Granting Short-Term Variance on:

<p style="text-align: center;">Julie Cress, Esq. Hunton Andrews Kurth LLP 50 California Street, # 1700 San Francisco, CA 94111</p>	<p style="text-align: center;">Shannon Broome, Esq. Hunton Andrews Kurth LLP 50 California Street, # 1700 San Francisco, CA 94111</p>	<p style="text-align: center;">Tom Boer, Esq. Hunton Andrews Kurth LLP 50 California Street, # 1700 San Francisco, CA 94111</p>
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by depositing same in the United States certified mail, return receipt requested, and via email, on December 30, 2019 on

Joel Freid, Assistant Counsel
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, California 94105

via email and by hand-delivery deposit of same in the in-box of the District Counsel's office, on December 30, 2019

12/30/19

 Date

 Marcy Hiratzka, Clerk of the Boards