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



In the Matter of the APPLICATION of )  
EQUILON ENTERPRISES LLC ) Docket No. 3726  
dba SHELL OIL PRODUCTS US )  
For Emergency Variance from ) ORDER DENYING  
Regulation 8, Rule 5, Section 322. ) EMERGENCY VARIANCE  
\_\_\_\_\_ )

The above-entitled matter, being an Application for Emergency Variance (EV) from the provisions of Regulation 8, Rule 5, Section 322 (Secondary Seal Requirements), was filed on December 2, 2020, by Equilon Enterprises LLC dba Shell Oil Products US (Applicant) after an initial contact by telephone on 3:03 p.m. on the same day, and having been considered by the Hearing Board,

THE HEARING BOARD STATES as the reasons for its decision and FINDS:

- A. Applicant filed this Application for Variance under the EV procedures, and Hearing Board Rules, Section 2.5, pursuant to Health and Safety Code Sections 42359 and 42359.5, which provide that this Application could be ruled upon without notice and hearing. In accordance with Hearing Board Rules Section 2.5.d.2, upon receipt of this Application, the Clerk promptly requested and received a response to this Application from the Executive Officer / Air Pollution Control Officer (APCO) for the Bay Area Air Quality Management District (Air District). The response recommended the EV be denied.
- B. Applicant operates a floating roof petroleum product storage tank (Source # 5) located at 2165 O’Toole Ave, San Jose, CA 95131.
- C. On November 30, 2020, Applicant discovered on a routine visual inspection that a section of the secondary seal on Tank 60 (Source # 5) was torn. Applicant

1 arranged for repairs to be made, which first required a pipeline delivery in order  
2 to raise the floating tank roof. According to the Air District response, pipeline  
3 delivery began the morning of December 2, 2020 and repairs were completed  
4 later the same day. Applicant requested an EV to temporarily suspend secondary  
5 seal requirements on Tank 60 as of 9:00 a.m. on December 2, 2020.

6 D. Applicant provides no information about the model or age of the secondary seal  
7 on Tank 60. According to the Air District's response, the secondary seal on Tank  
8 60 is about 20 years old but its manufacturer recommends replacement every 10  
9 years. Tank 60's secondary seal experienced a similar equipment failure in 2012  
10 (Notice of Violation #A26688, Oct. 28, 2012). Another storage tank at the same  
11 facility, Tank 800 (Source #2), also experienced two secondary seal equipment  
12 failures (Notice of Violation #A55680, Nov. 25, 2015; Notice of Violation  
13 #A55687, Nov. 17, 2016) and applied for an EV in relation to one of those  
14 incidents that was denied by the Hearing Board (Docket #3696). According to the  
15 Air District's response to the present EV Application, Applicant stated in its 2016  
16 EV application that it had a "run to failure" policy with respect to floating roof  
17 tank secondary seals at its facility.

18 E. As a result of the age of Tank 60's secondary seal and the earlier failure of this  
19 same seal in 2012, the risk of equipment failure and non-compliance at Tank 60  
20 was not unforeseeable to Applicant. A broader pattern of secondary seal  
21 equipment failures at another floating roof tank at the same facility separately  
22 indicates that the risk of equipment failure and non-compliance at Tank 60 was  
23 not unforeseeable to Applicant.

24 F. The decision to replace or not replace Tank 60's entire secondary seal after the  
25 2012 failure or at any time since then was within Applicant's reasonable control.

26 G. Applicant's request does not meet the good cause standard for an EV because  
27 non-compliance was not unforeseeable and the violation was not beyond  
28 Applicant's reasonable control.

1 THEREFORE, THE HEARING BOARD ORDERS:

2           The Application for EV from Regulation 8, Rule 5, Section 322 is denied, as the request  
3 does not meet the good cause standard for issuance of an EV.

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Dec. 12, 2020

8 Danny Cullenward, PhD, JD

Date

9 Hearing Board Member

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**BEFORE THE HEARING BOARD OF THE  
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14 In the Matter of the Application of )  
15 )  
16 EQUILON ENTERPRISES LLC DBA SHELL )  
17 OIL PRODUCTS US )  
18 )  
19 For Emergency Variance from Regulation 8, Rule )  
20 5, Section 322. )  
21 \_\_\_\_\_ )

Docket No. 3726  
CERTIFICATE OF SERVICE

**FILED**  
**DEC 15 2020**  
HEARING BOARD  
BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

22 STATE OF CALIFORNIA )  
23 ) ss.  
24 City and County of San Francisco )

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

26 That I am a citizen of the United States, over the age of eighteen years and not a party to  
27 the above entitled action; that I served a true copy of the attached Order Denying Emergency  
28 Variance on:

**Theresa Geiger, Environmental Advisor  
Equilon Enterprises dba Shell Oil Products US  
2165 O'Toole Avenue  
San Jose, CA 95131**

by depositing same in the U.S. certified mail, and via e-mail, on December 15, 2020; and on

**Brian Bungler, District Counsel  
Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA 94105**

by hand-delivery deposit of same in the in-box of the District Counsel's office, on December 5, 2020.

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\_\_\_\_\_  
Marcy Hiratzka, Clerk of the Boards

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12/15/20  
December 1, 2020