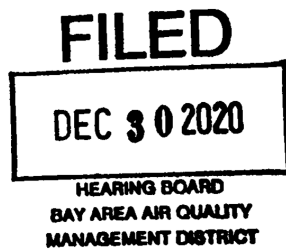


1 **BEFORE THE HEARING BOARD OF THE**
2 **BAY AREA AIR QUALITY MANAGEMENT DISTRICT**
3 **STATE OF CALIFORNIA**



4
5 In the Matter of the APPLICATION of)
6 EQUILON ENTERPRISES LLC)
7 dba SHELL OIL PRODUCTS US)
8 For Emergency Variance from)
9 Regulation 8, Rule 5, Section 322.)
_____)
10)

Docket No. 3727
ORDER DENYING
EMERGENCY VARIANCE

11 The above-entitled matter, being an Application for Emergency Variance (EV) from the
12 provisions of Regulation 8, Rule 5, Section 322 (Secondary Seal Requirements), was filed on
13 December 17, 2020, by Equilon Enterprises LLC dba Shell Oil Products US (Applicant) after an
14 initial contact by telephone on 4:49 p.m. on December 16, 2020, and having been considered by
15 the Hearing Board,

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

- 17 A. Applicant filed this Application for Variance under the EV procedures, and
18 Hearing Board Rules, Section 2.5, pursuant to Health and Safety Code Sections
19 42359 and 42359.5, which provide that this Application could be ruled upon
20 without notice and hearing. In accordance with Hearing Board Rules Section
21 2.5.d.2, upon receipt of this Application, the Clerk promptly requested and
22 received a response to this Application from the Executive Officer / Air Pollution
23 Control Officer (APCO) for the Bay Area Air Quality Management District (Air
24 District). The response recommended the EV be granted.
- 25 B. Applicant operates a floating roof petroleum product storage tank (Source # 5)
26 located at 2165 O’Toole Ave, San Jose, CA 95131.
- 27 C. On November 30, 2020, Applicant discovered on a routine visual inspection that a
28 section of the secondary seal on Tank 60 (Source # 5) was separated and/or torn.

1 Applicant arranged for repairs to be made, which first required a pipeline delivery
2 in order to raise the floating tank roof. Pipeline delivery began the morning of
3 December 2, 2020 and repairs were completed by 3:45 p.m. the same day.
4 Applicant requested an EV to temporarily suspend secondary seal requirements
5 on Tank 60 from 9:00 a.m. to 11:59 p.m. on December 2, 2020.

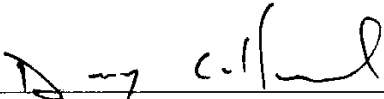
6 D. Although Applicant appears to have made good-faith efforts to complete the
7 repairs within the 48-hour repair period provided for in Regulation 8, Rule 5,
8 Section 119, that provision specifically contemplates the possibility of secondary
9 seal equipment failure and provides a grace period for correcting any equipment
10 failures. As a result, the possibility of equipment failure was foreseeable, no
11 matter the age of the equipment in question.

12 E. Applicant completed quarterly inspection and maintenance requirements with
13 respect to Tank 60, indicating that issues of poor maintenance or negligence were
14 not a factor in this matter. However, Applicant has not specified why delays in
15 pipeline deliveries needed to raise the floating roof were unforeseeable or outside
16 of its reasonable control.

17 F. Applicant's request does not meet the good cause standard for an EV because the
18 failure of its secondary seal was not unforeseeable and because Applicant has not
19 demonstrated that remedying the problem within the 48-hour period allowed by
20 Regulation 9, Rule 5, Section 119 was beyond its reasonable control.

21 THEREFORE, THE HEARING BOARD ORDERS:

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

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25
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27 Danny Cullenward, PhD, JD

28 Hearing Board Member

Dec. 29, 2020

Date

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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 DBA SHELL)
OIL PRODUCTS US)
For Emergency Variance from Regulation 8, Rule)
5, Section 322.)

Docket No. 3727
CERTIFICATE OF SERVICE

FILED
DEC 31 2020
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

11 STATE OF CALIFORNIA)
12) ss.
13 City and County of San Francisco)

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


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

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

21 by depositing same in the U.S. certified mail, and via e-mail, on December 31, 2020; and on

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

25 by hand-delivery deposit of same in the in-box of the District Counsel's office, on December 31,
26 2020.

27 
28 _____
Marcy Hiratzka, Clerk of the Boards

12/31/20

December 31, 2020