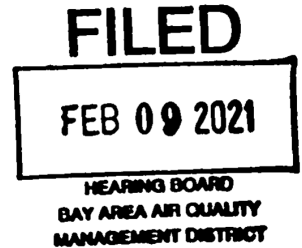


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**BEFORE THE HEARING BOARD OF THE  
BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
STATE OF CALIFORNIA**



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In the Matter of the Application of	)	Docket No. 3728
EQUILON ENTERPRISES LLC dba SHELL OIL PRODUCTS US	)	ORDER GRANTING SHORT-TERM VARIANCE
For Short-Term Variance from Regulation 8, Rule 5, Section 322	)	
_____	)	

**Findings and Decision of the Hearing Board**

The above-entitled matter, being an Application for a Short-Term Variance by Equilon Enterprises LLC d/b/a Shell Oil Products US (“Applicant”) for relief from the provisions of Regulation 8, Rule 5, Section 322 of the Bay Area Air Quality Management District (“District”). The Applicant filed the Application on January 7, 2021, deemed filed on December 17, 2020<sup>1</sup>, and requested relief for the period of 9:00 am to 3:45 pm on December 2, 2020.

Applicant was represented by Brian J. Faulkner, Senior Legal Counsel, Shell Oil Company. Respondent, Air Pollution Control Officer (“APCO”) of the District, was represented by Misha L. Nishiki, Assistant Counsel.

The Hearing Board heard the request for short-term variance on January 26, 2021, pursuant to notice and in accordance with the requirements of California Health and Safety Code Section 40825. The public was given the opportunity to testify, but no one did so. The Hearing Board heard evidence and testimony from the Applicant. The APCO did not oppose the granting of the short-term variance.

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

<sup>1</sup> The Applicant sought Emergency Variance (EV) relief with applications filed on December 2, 2020 (Docket No. 3726) and December 17, 2020 (Docket No. 3727). Hearing Board Orders denying those applications authorized Applicant’s Short Variance Application to be deemed filed as of the date of Applicant’s EV request.

1 **Nature of Business and Location of Facility**

2 Applicant operates a Bulk Storage Terminal (the “Facility”) located at 2165 O’Toole  
3 Avenue, San Jose, California, 95131. The Facility conducts bulk storage and loading of petroleum  
4 products.

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

6 The equipment that is the subject of the petition is storage tank S-5 (“Tank 60”), an internal  
7 floating roof tank, the purpose of which is to store organic liquids such as transmix (a  
8 gasoline/ethanol/diesel mixture) or other petroleum products. Storage of petroleum products is  
9 essential to the business because it is the primary function of the Facility.

10 **Summary**

11 Applicant was in violation of District Regulation 8, Rule 5, Section 322 between 9:00 am  
12 and 3:45 pm on December 2, 2020.

13 Following are the facts and conclusions supporting the findings set forth in California  
14 Health and Safety Code Section 42352(a) necessary to grant the variance. The APCO did not  
15 oppose the granting of the variance for the period of 9:00 am to 3:45 pm on December 2, 2020.

16 **Findings of Fact and Conclusions**

17 **(1) Health and Safety Code Section 42352(a)(1) That the Applicant for a variance is, or will**  
18 **be, in violation of Health and Safety Code Section 41701 or of any rule, regulation or order**  
19 **of the District.**

20 1. Applicant was in violation of District Regulation 8, Rule 5, Section 322 from 9:00  
21 am until 3:45 pm on December 2, 2020 because Applicant was unable to repair newly-discovered  
22 damage to the secondary seal of Tank 60 before the regulatory deadline.

23 **(2) Health and Safety Code Section 42352(a)(2) That, due to conditions beyond the**  
24 **reasonable control of the Applicant, requiring compliance would result in either (A) an**  
25 **arbitrary or unreasonable taking of property, or (B) the practical closing and elimination of**  
26 **a lawful business.**

27 1. On November 30, 2020 at approximately 9:00 am, Applicant discovered a tear in  
28 Tank 60’s secondary seal.

1           2.     Upon discovering the damage to the secondary seal, the Facility immediately idled  
2 the Tank 60 by preventing movement of liquids into or out of the tank until repair activities began  
3 on December 2, 2020.

4           3.     The necessary repairs to the secondary seal required personnel to work on Tank  
5 60's internal floating roof, which required the roof to be raised to a level that would ensure safe  
6 ingress, egress and potential rescue of personnel executing the repairs.

7           4.     After considering all reasonably practicable options, Applicant concluded that the  
8 fastest and safest way to raise Tank 60's internal floating roof was to receive product through an  
9 incoming pipeline.

10          5.     Taking Tank 60 out of service would have required the tank to be emptied and  
11 degassed, which could have taken approximately one week to complete, significantly longer than  
12 repairs could be completed using a pipeline receipt.

13          6.     Using water to raise Tank 60's internal floating roof would not have been faster  
14 than raising the roof through a pipeline receipt, and the resulting contact water would have required  
15 disposal as hazardous waste.

16          7.     Using product from other storage tanks on site to raise Tank 60's internal floating  
17 roof was not feasible because terminal piping was not configured to transfer product into Tank 60  
18 from other tanks at the terminal. Reconfiguring terminal piping to allow such a transfer would  
19 have required piping modifications with more than one-week lead time and high cost to complete.

20          8.     Because Applicant does not control the schedule of incoming product, the earliest  
21 pipeline delivery that could be used to raise Tank 60's internal floating roof was received on  
22 December 2, 2020 at 5:30 am. Accordingly, Applicant commenced repairs as early as was within  
23 its reasonable control.

24          9.     Anticipating that repairs may exceed the regulatory deadline, Applicant applied for  
25 emergency variances (Docket Nos. 3726 and 3727) on December 2, 2020 and December 17, 2020,  
26 for relief from the requirement to repair the secondary seal within 48-hours of discovery.

27          10.    Both emergency variances were denied by this Hearing Board on December 15,  
28 2020 and December 31, 2020, respectively.

1 11. Using the December 2, 2020, 5:30 am pipeline delivery, Applicant caused Tank  
2 60's internal floating roof to be raised to a level that would allow safe entry. On December 2,  
3 2020 at 10:00 am, the repair crew began repairs. On December 2, 2020 at 3:45 pm, repairs were  
4 completed.

5 12. The non-compliance with District Regulation 8, Rule 5, Section 322 was  
6 unforeseeable because the Facility performed regular inspections at quarterly intervals and the seal  
7 is within its expected useful life of ten years, as determined by the manufacturer.

8 13. Failure to grant the variance would have placed the Applicant at risk of financial  
9 penalties and would adversely affect Applicant's compliance record before the District.

10 **(3) Health and Safety Code Section 42352(a)(3) That the closing or taking would be without**  
11 **a corresponding benefit in reducing air contaminants.**

12 1. No excess emissions were measured during the period for which variance relief was  
13 requested. To assess the potential for excess emissions from the seal damage, Applicant took  
14 Lower Explosive Limit (LEL) measurements during the inspection of the tank and while repairs  
15 were being completed. These measurements – which detect vapors from flammable gasses – were  
16 0% at all times, meaning that no excess volatile organic compound emissions were detected during  
17 the incident.

18 **(4) Health and Safety Code Section 42352(a)(4) That the Applicant for the variance has given**  
19 **consideration to curtailing operations of the source in lieu of obtaining a variance.**

20 1. The Applicant idled Tank 60 immediately after discovering the damage to the  
21 secondary seal.

22 2. The Applicant considered removing Tank 60 from service and other curtailment  
23 options, but concluded that repairing the damaged secondary seal in-service was the fastest way to  
24 bring Tank 60 into compliance.

25 **(5) Health and Safety Code Section 42352(a)(5) During the period that the variance is in**  
26 **effect, the Applicant will reduce excess emissions to the maximum extent feasible.**

27 1. The Applicant idled Tank 60 immediately after discovering secondary seal damage.

28 2. No excess emissions were measured during the period for which variance relief was

1 requested. LEL measurements taken during the inspection of the tank and while repairs were being  
2 completed were 0%.

3 **(6) Health and Safety Code Section 42352(a)(6) During the period the variance is in effect,**  
4 **the Applicant will monitor or otherwise quantify emission levels from the source, if requested**  
5 **to do so by the District, and report these emissions levels to the District pursuant to a schedule**  
6 **established by the District.**

7 1. During the period for which variance relief is requested, the District did not request  
8 that the Applicant monitor or otherwise quantify emission levels from Tank 60, and the District  
9 did not request that the Applicant report emission levels to the District pursuant to a schedule  
10 established by the District.

11 **Order**

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

13 A short-term variance from Regulation 8, Rule 5, Section 322 of the Bay Area Air Quality  
14 Management District Rules and Regulations is hereby granted for storage tank 60 (Source S-5);  
15 and only concerns and covers the period from 9:00 am on December 2, 2020 through 3:45 pm on  
16 December 2, 2020.

17 Motion to Adopt Findings of Fact and Conclusions

18 Moved by: Peter Y. Chiu, M.D., P.E.

19 Seconded by: Barbara Toole O'Neil, QEP

20 AYES: Peter Y. Chiu, M.D., P.E., Catherine Fortney, P.E., and Barbara  
21 Toole O'Neil, QEP

22 NOES: Valerie Armento, Esq., Chair, and Danny Cullenwald, Ph.D, Esq.

23 NON-PARTICIPATING: Amelia Timbers

24 Motion to Grant Short-Term Variance Application

25 Moved by: Peter Y. Chiu, M.D., P.E.

26 Seconded by: Barbara Toole O'Neil, QEP

27 AYES: Peter Y. Chiu, M.D., P.E., Catherine Fortney, P.E., and Barbara  
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Toole O'Neil, QEP

NOES: Valerie Armento, Esq., Chair, and Danny Cullenwald, Ph.D, Esq.

NON-PARTICIPATING: Amelia Timbers

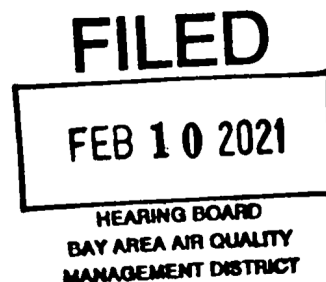
  
Valerie J. Armento, Esq., Chair

  
Date

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 ) Docket No. 3728  
6 EQUILON ENTERPRISES LLC dba SHELL OIL ) CERTIFICATE OF SERVICE  
7 PRODUCTS US )  
8 For Short-Term Variance from Regulation 8, Rule )  
9 5, Section 322 )

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



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

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

17 **Theresa Geijer**  
18 **Shell Oil Products US**  
19 **2555 13<sup>th</sup> Avenue SW**  
**Seattle, WA 98134**  
[theresa.geijer@shell.com](mailto:theresa.geijer@shell.com)

**Akin Okedokun**  
**Shell Oil Products US**  
**2165 O'Toole Avenue**  
**San Jose, CA 95131**  
[Akintunde.okedokun@shell.com](mailto:Akintunde.okedokun@shell.com)

**Brian Faulkner, Esq.**  
**Shell Oil Company**  
**150 N. Dairy Ashford**  
**WCK E-0344H**  
**Houston, TX, 77079**  
[Brian.faulkner@shell.com](mailto:Brian.faulkner@shell.com)

20  
21 by depositing same in the U.S. certified mail, and via e-mail, on February 10, 2021; and on

22 **Misha Nishiki, Esq., Assistant Counsel**  
23 **Bay Area Air Quality Management District**  
24 **375 Beale Street, Suite 600**  
**San Francisco, CA 94105**  
[mnishiki@baaqmd.gov](mailto:mnishiki@baaqmd.gov)

25 via e-mail, on February 10, 2021.

26

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

2/10/21  
\_\_\_\_\_  
February 10, 2021