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

In the Matter of the Application of
POTRERO HILLS LANDFILL, INC.
For Interim Variance from Regulation 2, Rule 1, and Permit Condition # 27218
Docket No. 3736
ORDER GRANTING INTERIM VARIANCE

Findings and Decision of the Hearing Board

The above-entitled matter, being an Application for Interim and Regular Variance from the provisions of Regulation 2, Rule 1 & Permit Condition #27218 of the Bay Area Air Quality Management District (District) was filed on September 1, 2022. The Interim Variance portion of the application was heard on September 13, 2022, pursuant to notice and in accordance with the provisions of Health and Safety Code Sections 40824 and 40825. Applicant, Potrero Hills Landfill, Inc., was represented by Megan L. Morgan and Susan Smith of Beveridge & Diamond P.C. Respondent, Air Pollution Control Officer (APCO) of the Bay Area Air Quality Management District (BAAQMD), was represented by Adan Schwartz, Senior Assistant Counsel at the BAAQMD.

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

Applicant is a municipal solid waste landfill (the “Facility”) located at 3675 Potrero Hills Lane, Suisun City, California, 94585. The Facility is considered an essential public service that serves as a critical public health function.
Equipment Subject to the Variance Petition

The equipment that is the subject of the petition is two portable diesel tipper engines (S-38 and S-39) which are critical to the facility’s waste disposal operations. These engines are 174 brake-horsepower [bhp], Tier 4F certified engines. The tippers are mobile hydraulic platforms powered by a diesel engine, and are used to tip cargo trailer truck containers vertically to empty the loads.

Summary

On Friday, August 5, 2022, the Facility experienced a small, isolated fire in the active filling area, suspected to be caused by a hot load from a residential refuse hauling truck. The fire was centralized in the trash and caused damage to the two tippers, S-38 and S-39, rendering them inoperable. There was no damage caused to any other equipment or to the landfill gas system, nor were there any excess emissions as a result the event. The Tier 4F engines were not damaged by the fire.

Applicant applied for, and was granted by the Air District, an Emergency Variance (Docket No. 3735) for relief to temporarily operate two tippers that use a 174 bhp Tier 4 interim tipper engine and 156 bhp Tier 3 tipper engine, for the period of 7:00 a.m. on August 15, 2022, to 7:00 a.m. on September 15, 2022. Following the issuance of the aforementioned Order Granting Emergency Variance on August 23, 2022, Applicant contacted the Clerk of the Hearing Board on September 1, 2022, seeking relief beyond that stipulated within the granted Emergency Variance, in the form of an Application for Interim and Regular Variances.

The Applicant’s plan for returning to compliance includes repair, retrofitting, and replacement options, but all options are currently being impacted by either high workload demand or supply chain delays. Applicant represents that there are only two companies that make tippers appropriate for this facility; a repair quote and a replacement quote have been obtained from Columbia Industries, but as of yet Columbia has not provided an estimated timeframe for implementation. Applicant also represents that it has sought quotes from two companies for retrofitting the temporary tippers with the permitted Tier 4F engines. Some scenarios may require an Air District permit application for Authority to Construct. Once the Applicant decides whether
to replace, retrofit, or repair the tippers, the Applicant will notify the Air District and provide a
tentative schedule detailing the course of actions planned to return to compliance.

Pursuant to California Health and Safety Code Section 42351(a), an interim variance may
be granted based upon a finding of good cause. The findings required for a regular variance,
though not necessary for an interim variance, are nevertheless useful guides in determining
whether good cause exists to grant an interim variance. Following are facts and conclusions
supporting the findings set forth in California Health and Safety Code Section 42352(a) for the
granting of a regular variance. Because the regular variance findings are met in this instance,
“good cause” also exists to support an interim variance. The APCO did not oppose the granting
of an interim variance.

Findings of Fact and Conclusions

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

1. The need for a variance exists because the unforeseeable fire damage to S-38 and
S-39 required the temporary use of Tier 3 and Tier 4 interim engines to power temporary
replacement tippers. Because these engines would likely not meet Best Available Control
Technology as defined in Regulation 2, Rule 2, Section 202, the engines would not be eligible for
an Air District permit as required by Regulation 2, Rule 2, Section 301. The landfill therefore
cannot fulfill its contractual obligations to provide tippers to accept waste while complying with
Air District regulations

2. Permit Condition #27218 allows for operation of two (2) 174 bhp Tier 4F portable
tipper engines.

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

1. On August 5, 2022 a small, isolated, fire, likely caused by a hot load from a
residential refuse hauling truck, occurred at the facility. The Air District inspector testified this
incident was unforeseeable and beyond the Applicant’s reasonable control.
2. On August 12, 2022, Columbia Industries completed a damage assessment of the tippers, which reported fire damage to the hydraulic system, undercarriage, and warping of the metal platforms of S-38 and S-39. This equipment was rendered inoperable.

3. Without the tippers, the Facility would not be able to properly dispose of the waste delivered to the facility. Curtailment is not an option, as the Facility is considered an essential public service.

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

1. Without the tippers, the Applicant would have to divert the waste to other facilities in the region, which would involve transportation of the waste over additional vehicle miles and the corresponding pollution due to longer travel distances.

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

1. The Applicant immediately alerted the Facility’s Air District Inspector of the incident, and contacted the Clerk of the Air District’s Hearing Board to begin an Emergency Variance, and then Interim and Regular Variance, application processes (to operate temporary, non-permitted tippers).

2. The Applicant scheduled a damage assessment of the Facility seven (7) calendar days after the fire occurred, and is considering three courses of action to return to compliance: A) repair the existing (damaged) tippers; B) retrofit the temporary tippers to use the already permitted Tier 4F engines; and C) replace the existing (damaged) tippers with new equipment, and obtain necessary corresponding Air District permits.

3. Curtailing operations is not feasible. A truck trailer that is emptied via tipper has 17.5% more capacity than a standard truck trailer. The landfill has contractual obligations requiring it to have tippers available to receive waste.

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

1. The Applicant estimated excess emissions from the temporary, non-permitted
tippers, during the period for which Emergency Variance relief was requested. Those calculations have yet to be confirmed by the Facility's Air District Permit Engineer. The Applicant also has estimated worst-case scenario excess emissions from the temporary, non-permitted tippers, during the period for which the Interim and Regular Variances were requested. If both Interim and Regular Variances are granted, the Facility’s Air District Permit Engineer also will confirm those calculations.

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

1. The engineering consultant to the landfill stated that in addition to estimating the worst-case scenario for emissions that the actual emissions would be quantified. The consultant also stated that the Applicant could and would be willing to calculate actual excess emissions during the variance period by tracking the actual operating hours of the replacement tippers. During the period for which interim variance relief is requested, the Air District did not request that the Applicant monitor or otherwise quantify emission levels from the source, and the Air District did not request that the Applicant report emission levels to the Air District pursuant to a schedule established by the District.

Order

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

Applicant is granted an Interim Variance from Regulation 2, Rule 2 & Permit Condition #27218 for S-38 and S-39; and this variance only concerns and covers the period from 10:30 a.m. on September 13, 2022 through the date the Hearing Board makes a determination on the regular variance application (anticipated to be October 18, 2022), or December 12, 2022, whichever occurs first.
Motion to Adopt Findings of Fact and Conclusions and Grant Interim Variance

Moved by: Barbara Toole O’Neil, QEP
Seconded by: Catherine Fortney, P.E.

AYES: Barbara Toole O’Neil, QEP, Catherine Fortney, P.E., and Valerie J. Armento, Esq., Chair.

NOES: None.

ABSTAIN: None.

NON-PARTICIPATING: Jeffrey K. Lee.

Date: 9/21/2020

Valerie J. Armento, Esq., Chair
BEFORE THE HEARING BOARD
OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
STATE OF CALIFORNIA

In the Matter of the Application of
POTRERO HILLS LANDFILL, INC.
Docket No.: 3736
CERTIFICATE OF SERVICE

For Interim and Regular Variances from
Regulation 2, Rule 1 &
Permit Condition # 27218

STATE OF CALIFORNIA
City and County of San Francisco

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; that I served a true copy of the attached Order Granting Interim
Variance on:

<table>
<thead>
<tr>
<th>Natalie Hicks</th>
<th>Kathleen Beresh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Potrero Hills Landfill - Waste Connections</td>
<td>SCS Engineers</td>
</tr>
<tr>
<td>P.O. Box 68 Fairfield, CA 94533</td>
<td><a href="mailto:kberesh@scsengineers.com">kberesh@scsengineers.com</a></td>
</tr>
<tr>
<td><a href="mailto:Natalie.Hicks@WasteConnections.com">Natalie.Hicks@WasteConnections.com</a></td>
<td>(email only)</td>
</tr>
</tbody>
</table>

by depositing same via email and in the United States certified mail, return receipt requested,
on September 22, 2022 and on:

Adan Schwartz, Esq.
Bay Area Air Quality Management District
375 Beale Street, 6th Floor
San Francisco, California 94105
aschwartz@baaqmd.gov

via email on September 22, 2022
DATED: September 22, 2022

Marcy Hiratzka
Clerk of the Boards

CERTIFICATE OF SERVICE
Page 1