BEFORE THE HEARING BOARD OF THE

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

STATE OF CALIFORNIA

FILED
OCT 26 2022
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

In the Matter of the Application of POTRERO HILLS LANDFILL, INC. For Regular Variance from Regulation 2, Rule 1, and Permit Condition # 27218	Docket No. 3736 ORDER GRANTING REGULAR 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 Regular Variance was heard on October 18, 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 Jacob P. Duginski and Megan L. Morgan 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 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. The tippers that use these engines were damaged in a fire, and while a fix for the damaged tippers is implemented, the Facility seeks a variance to temporarily operate two unpermitted tipper engines, one of which is a 174 bhp Tier 4 interim engine, and the other of which is a 156 bhp Tier 3 engine.

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. Applicant was granted by the Air District an Interim Variance (Docket No. 3736) for relief to temporarily operate the same two tippers and engines for 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.

The Applicant's plan for returning to compliance includes purchasing a new tipper and

retrofitting it to use one of the Applicant's existing permitted engines (S-39), and retrofitting one of the tippers that the Applicant has used during the emergency and interim variance periods with the second existing permitted engine (S-38). Both retrofitting plans are currently being impacted by either high workload demand or supply chain delays. Applicant represents that the supplier has not yet provided firm estimates for when the work will be completed, but that the tentative estimates are for delivery of the new tipper and retrofitting for both permitted engines in November 2022. Once the Applicant receives additional information, the Applicant will notify the Air District.

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. The APCO did not oppose the granting of the regular 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 without this variance.

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 has promptly updated the Air District of the results of that assessment. The Applicant intends to replace one of the existing (damaged) tippers with a new tipper that is retrofitted to use one of the already permitted Tier 4F engines. The Applicant will retrofit one of the tippers that has been operated under the emergency and interim variances to use the second already permitted Tier 4F engine. Neither option should require the Applicant to obtain additional Air District permits.

3. Applicant has not yet been provided with a firm timeline for the supplier to deliver the new tipper and retrofit the tippers with the already permitted Tier 4F engines. The supplier has given Applicant a tentative estimate of delivery of the new tipper and the corresponding retrofitting

for both permitted engines in November 2022.

4. 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 tipper engines, 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 tipper engines, during the period for which the Interim and Regular Variances were requested. With the granting of this Regular Variance, 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 regular 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:

1. Applicant is granted a 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 October 18,

2022 through October 18, 2023.

2. The Variance granted herein is subject to the following reporting deadlines. These deadlines represent estimated milestones for achieving compliance, which are subject to change depending on supply chain issues and vendor availability, among other possible issues. At each of the following milestones, Applicant will update BAAQMD (attn: Salvador Rueda, srueda@baaqmd.gov) within 2 business days of each estimated completion date (where available) with whether the milestone has been completed, or, if not completed, with an estimate of when the milestone will be completed. Applicant will also update BAAQMD promptly after receipt of any information that may impact its ability or timeline to achieve compliance.

a. Receipt of new tipper with permitted engine (estimated to be either November 8, or November 22, 2022).

b. Contractor begins work on retrofitting tipper that is on-site (estimated to be November 11, 2022).

c. Following testing, regular operation of either tipper with retrofitted permitted engine begins.

Motion to Adopt Findings of Fact and Conclusions

Moved by:	Peter Y. Chiu, M.D., P.E.
Seconded by:	Barbara Toole O'Neil, QEP
AYES:	Peter Y. Chiu, M.D., P.E., Barbara Toole O'Neil, QEP, Amelia Timbers, and Valerie J. Armento, Esq., Chair.
NOES:	None.
ABSTAIN:	None.
NON-PARTICIPATING:	None.

Motion to Grant Variance

Moved by:	Amelia Timbers
Seconded by:	Peter Y. Chiu, M.D., P.E.

AYES:	Amelia Timbers, Peter Y. Chiu, M.D., P.E., Barbara Toole O'Neil, QEP, and Valerie J. Armento, Esq., Chair.
NOES:	None.
ABSTAIN:	None.
NON-PARTICIPATING:	None.

Valerie J. Armento, Esq., Chair

10/24/2022
Date

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 and Regular Variances from Regulation 2, Rule 1 & Permit Condition # 27218	Docket No.: 3736 CERTIFICATE OF SERVICE

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HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

STATE OF CALIFORNIA)
) ss.
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 Regular Variance** on:

Natalie Hicks Potrero Hills Landfill - Waste Connections P.O. Box 68 Fairfield, CA 94533 Natalie.Hicks@WasteConnections.com	Kathleen Beresh SCS Engineers kberesh@scsengineers.com (email only)

by depositing same via email and in the United States certified mail, return receipt requested, on October 26, 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 October 26, 2022

DATED: October 26, 2022

Marcy Hiratzka
Clerk of the Boards