BEFORE THE HEARING BOARD OF THE

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

STATE OF CALIFORNIA

In the Matter of the Application of FERMA Corporation For Regular Variance from Regulation 11, Rule 2, Subsections 303.1, 303.3, 303.4, 303.5, 303.6, 303.7, 303.10, and 304.1	Docket No. 3750 FINDINGS AND DECISION AND ORDER GRANTING REGULAR VARIANCE

FILED
MAR 08 2024
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

Findings and Decision of the Hearing Board

This application for a Regular Variance from certain provisions of the Bay Area Air Quality Management District's Regulation 11, Rule 2, Sections 303 and 304, was filed on December 22, 2023, and subsequently amended on February 15, 2024, and February 22, 2024. It was heard on February 27, 2024, pursuant to notice and in accordance with the provisions of California Health and Safety Code Section 40826. Four members of the Hearing Board participated: Valerie Armento, Chair; Barbara Toole O'Neil, Vice Chair; Jeffrey Maddox; and Amelia Timbers. The Applicant, FERMA Corporation, was represented by Nicholas W. van Aelstyn of Sheppard Mullin Richter & Hampton LLP. Respondent, the Air Pollution Control Officer ("APCO"), was represented by Greg Dhawan-Muren, Assistant Counsel. The public was given the opportunity to speak, evidence was received, and the case was submitted.

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

The Applicant is a demolition contractor that has been engaged to demolish an industrial hangar commonly known as "Hangar 3" that has been determined to be structurally compromised

and hazardous. Hangar 3 is referred to herein as the "Facility." The Facility is located at Moffett Federal Airfield in Santa Clara County, California 94035.

Equipment Subject to the Variance Petition

The equipment that is the subject of the petition is the roofing portion of the hangar that comprises the Facility. The 180-foot tall Facility was erected in 1942 to house dirigibles. The hangar was constructed from wood due to the limited availability of steel during World War II, and therefore required the use of asbestos containing material ("ACM")—specifically, a non-friable felt paper liner positioned between the wooden roof sheathing and aluminum corrugated panels. It is this ACM within the roof of the hangar that is the subject of the variance petition.

Summary

On June 17, 2022, the National Aeronautics and Space Administration ("NASA") prepared and submitted an Environmental Assessment regarding the deconstruction of the Facility to remedy its unsafe conditions and eliminate unacceptable structural hazards. Significant efforts had been undertaken to repair the damage to the hangar over many decades, including the damaged trusses; however, these efforts have been outpaced by the damage continuously advancing throughout the structure. The hangar is currently unsafe for occupancy and vulnerable to further damage and collapse, especially from seismic or high wind load events. Demolition of the Facility will eliminate the risk of continued degradation or collapse under normal or adverse conditions, thereby protecting life and property.

Investigations by the licensed structural engineer of record, KPFF Consulting Engineers ("KPFF"), indicate that the Facility is vulnerable to collapse or partial collapse and that it should not be occupied by employees or personnel under any uncontrolled circumstance, nor should any weight be placed upon the roof; the structure essentially consists entirely of a roof. The inability for personnel to be situated upon or beneath the hangar during demolition makes it technically infeasible to lower the units of ACM in sections or to abate the roofing material in place in full compliance with the District's Regulation 11, Rule 2, Sections 303 and 304 ("Sections 303 and 304").

Following are the facts and conclusions supporting the required findings set forth in Health and Safety Code Section 42352(a) for the granting of a regular variance. The APCO submitted Proposed Operating Conditions for the Regular Variance with which the Applicant agreed. The APCO did not oppose the granting of the Regular Variance with the Proposed Operating Conditions.

Findings of Fact and Conclusions

(a)(l) That the Applicant for a variance is, or will be, in violation of Health and Safety Code 14 Section 41701 or of any rule, regulation or order of the District.

1. The need for a variance exists because the Facility has been deemed structurally unsafe and therefore needs to be demolished; however, certain of the requirements set forth in Sections 303 and 304 would be technically infeasible to implement due to the structure's size and safety hazards.

2. The demolition of the Facility may not adhere to the wetting methodologies set forth in Section 303.1 because the non-friable ACM liner is positioned between the wood roof sheathing and aluminum corrugated panels, allowing for wetting of exposed cut points but not complete saturation. Large pieces of the structure will be compressed and removed using a long-reach specialized excavator. The wetted non-friable ACM felt liner will descend to the ground sandwiched within the large pieces that are removed, and only once on the ground may it be handled in compliance with Section 303.4.

3. As the Facility has been deemed structurally unsafe for workers on the roof, the removal of the non-friable asbestos felt must use a mechanical process that results in such felt paper being exposed at the cut points and thus deemed regulated asbestos containing material ("RACM"), which makes compliance with Section 303.3 infeasible.

4. The current state of the Facility's structural integrity, coupled with its large size, does not allow for the safe installation or operation of a chute or container, nor the safe installation or operation of a general containment, which makes compliance with Sections 303.5 and 303.6, respectively, infeasible.

5. Sections 303.7, 303.10, and 304.1 require compliance with certain of the above-mentioned sections, and to the extent that compliance with the above-mentioned sections is infeasible, so is compliance with Sections 303.7, 303.10, and 304.1.

(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. As detailed in the NASA Environmental Assessment, historical and ongoing efforts to rehabilitate the Facility have proven to be ineffective; and KPFF has determined that the Facility is vulnerable to seismic and/or high wind forces as well as future collapse, and that it should not be occupied. Thus, the deconstruction of the Facility is necessary to remedy its unsafe condition and eliminate the unacceptable structural hazard that it poses.

2. The purpose of the demolition is to remedy the unsafe condition of the Facility and eliminate an unacceptable structural hazard. The demolition eliminates the risk of continued degradation or collapse under normal or adverse conditions, thereby protecting life and property.

3. Compliance with Section 303 would require workers and equipment to be placed on or attached to the hangar in order to abate the material in place or lower it in sections. It also would require the installation of scaffolding above and/or below the structure. KPFF has recommended that for the safety of the workforce, none of these activities are advisable due to the compromised state of the structure.

4. The inability to put personnel directly on the hangar makes it infeasible to abate the roofing material in place. The inability to put personnel directly beneath the hangar, once truss demolition begins, makes it infeasible to lower the units in sections.

5. The demolition needed to address the structural hazards of the Facility cannot be safely performed without a variance, and if the demolition does not take place the Facility will remain in its current hazardous condition, which is both functionally unusable and dangerous.

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

1. No or negligible excess emissions or opacity are expected during the variance period.

2. In accordance with 8 CCR § 1529(c)(1) and 29 CFR § 1910.1001(c)(1), the airborne concentrations of asbestos shall not exceed 0.1 fiber per cubic centimeter of air as an eight-hour time-weighted average. Accordingly, irrespective of compliance with District regulations, the total emissions of asbestos from the Facility will be negligible. Upon completion of the demolition, there will be none.

(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 Environmental Assessment determined that demolition of the Facility is appropriate to remedy its unsafe condition and eliminate an unacceptable structural hazard. Demolition of the hangar is a long-term solution that eliminates the potential for continued degradation or collapse of the hangar under normal or adverse conditions, thereby protecting life and property.

2. Curtailing the use of the Facility would not address the risk of a catastrophic collapse.

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

1. To mitigate asbestos emissions, during removal of the roof structure containing the non-friable asbestos felt liner, industrial misting machines and a sprayer mounted on the long-reach excavator will apply water both to the cut points on the structure and the removed portions as they descend to the ground. Once on the ground, the removed roofing material will be wetted as well until being loaded in leak-tight containers and ultimately disposed of as hazardous waste in accordance with the Resource Conservation and Recovery Act. At the end of a shift, an industrial encapsulant mixed with water will be applied to the exposed cut areas and to any roofing materials not yet placed in leak-tight containers.

2. Pursuant to the Proposed Operating Conditions lodged February 27, 2024, attached hereto as Attachment A and referred to herein as the "Conditions," on days during which demolition activities are conducted that may expose or release RACM, if wind speeds exceed 25 miles per hour ("mph"), or if gusts exceed 30 mph, the Applicant shall pause demolition activities that may expose

or release RACM until wind speeds have declined to below 25 mph and gusts have declined to below 30 mph.

3. The Conditions require that during any activities that involve manipulating or demolishing the roof of the Facility, Applicant shall ensure that the truss bay that is being manipulated or demolished and the immediately adjacent truss bay, as well as the air and ground underneath the truss bays, are sprayed by water at a level sufficient, in the APCO's sole discretion, to ensure that any RACM that is not covered by other materials will be immediately adequately wetted if either truss bay collapses.

4. At all times throughout the term, Applicant shall ensure that all RACM that is not adequately wetted or being sprayed with water is treated with an industrial encapsulant. If exposed RACM is not adequately wetted during off hours, it shall be treated with an industrial encapsulant in accordance with the Conditions.

5. At the end of each workday, Applicant's personnel shall walk the perimeter of the worksite to look for, collect, and dispose of any asbestos debris. The collection and disposal of any asbestos debris shall be carried out in accordance with all applicable laws.

(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. In accordance with the Conditions, the Applicant shall not commence demolition-related activities that may expose or release RACM until DevCon Construction, Inc., has contracted with an independent third party to conduct perimeter air monitoring for asbestos.

2. The Applicant shall ensure perimeter air monitoring for asbestos is conducted for at least eight hours every workday, including at all times when personnel are present to conduct demolition-related activities that may expose or release RACM, unless and until the APCO, in its sole discretion, approves a change in the monitoring requirements.

3. At least three perimeter air monitoring stations for asbestos shall be installed at the Facility; one upwind and two downwind mobile stations shall be positioned at the discretion of a

third-party certified asbestos consultant or certified site surveillance technician. Perimeter air monitoring stations shall include both asbestos sampling pumps and PM10 monitors.

Order

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

1. The Applicant is granted a Regular Variance from Regulation 11, Rule 2, Subsections 303.1, 303.3, 303.4, 303.5, 303.6, 303.7, 303.10, and 304.1 for its handling of asbestos-containing felt paper in the roof of the Facility during demolition of the Facility, subject to the terms herein.

2. The Applicant shall comply with the Conditions affixed hereto as Attachment A, as well as with all applicable District regulations except to the extent explicitly subject to this Regular Variance. This Order does not grant a variance with regard to treatment or handling of any asbestos-containing materials at the Facility other than felt paper in the roof of the Facility.

3. This Regular Variance shall go into effect on the date upon which this Order is executed and shall expire upon the earlier of: (a) 365 days after the date upon which this Order is executed; or (b) the date upon which the APCO approves the cessation of oversight over the project under Regulation 11, Rule 2, pursuant to Condition 11 in Attachment A.

Motion to Grant Variance and Adopt Findings of Fact and Conclusions

Moved by:	Jeffrey Maddox
Seconded by:	Amelia Timbers
AYES:	Jeffrey Maddox, Amelia Timbers, Vice Chair Barbara Toole O'Neil, Valerie J. Armento
NOES:	None
ABSTAIN:	None

Valerie J. Armento, Esq., Chair — 3/8/2024 Date

Attachment A

OPERATING CONDITIONS

Definitions

1. The definitions applicable to and included in Bay Area Air Quality Management District Regulation 11, Rule 2 (Regulation 11-2), apply to these Conditions.

2. Demolition-related activities that may expose or release RACM: Any demolition-related activities that may reasonably be expected to result in ACM that was previously covered or encapsulated becoming uncovered and unencapsulated. These activities include, without limitation, the use of an excavator to manipulate and demolish the roof of Hangar 3, and any manipulation of waste debris from the roof of Hangar 3.

3. End of the project: The date on which the APCO approves the worksite pursuant to Condition 11.

4. FERMA: FERMA Corporation.

5. Hangar 3: Hangar 3 at Moffett Field, CA 94035.

6. PAMP: Rincon's Perimeter Air Monitoring Plan for the project, submitted by FERMA as Exhibit A-1. Any future revisions to Rincon's Perimeter Air Monitoring Plan do not alter the meaning of these Conditions.

7. Project: The demolition of the roof of Hangar 3.

8. Term: The period from the first day on which FERMA conducts demolition-related activities that may expose or release RACM until the end of the project.

9. Workday: Any day during which personnel are present at Hangar 3 conducting activities relating to the project.

Conditions

1. On days during which demolition activities are conducted that may expose or release RACM, if wind speeds exceed 25 miles per hour (mph), or if gusts exceed 30 mph, FERMA shall pause demolition activities that may expose or release RACM until wind speeds have declined to below 25 mph and gusts have declined to below 30 mph. Wind and gust speed

shall be measured based on the higher of two sources: (a) readings at the Moffett Field weather station KCAMOUNT440, as reported at https://www.wunderground.com/dashboard/pws/KCAMOUNT440 and (b) a wireless wind speed sensor that will be mounted on a crane near the location of active demolition.

2. FERMA shall not commence demolition-related activities that may expose or release RACM until DevCon Construction, Inc., has contracted with an independent third party to conduct perimeter air monitoring for asbestos in accordance with these Conditions and, except to the extent they are inconsistent with these Conditions, the practices and processes described in sections 4.3.2 and 4.4 of the PAMP. Notwithstanding any statements to the contrary in the PAMP, throughout the entire term, FERMA shall ensure perimeter air monitoring for asbestos is conducted for at least eight hours every work day, including at all times when personnel are present at Hangar 3 conducting demolition-related activities that may expose or release RACM, unless and until the APCO approves an alteration to the project's perimeter air monitoring schedule or procedures pursuant to Condition 2.b below. FERMA shall ensure that at least three perimeter air monitoring stations for asbestos are installed: one upwind and two downwind mobile stations shall be positioned at the discretion of a third-party certified asbestos consultant or certified site surveillance technician. Perimeter air monitoring stations shall include both PM10 monitors and asbestos sampling pumps.

a. FERMA shall send all Phase Contrast Microscopy (PCM) and Transmission Electron Microscopy (TEM) laboratory results to the APCO on the same business day it receives the results. Results shall be sent via email to srueda@baaqmd.gov and kpham@baaqmd.gov. If a PCM sample exceeds the clearance criteria of 0.01 fibers per cubic centimeter (f/cc) it shall be reanalyzed via TEM using a modified Yamate or equivalent method. If a TEM analytical result exceeds 70 structures per square millimeter (s/mm^2), the APCO may require, in its sole discretion, that FERMA halt any activities that involve manipulating or demolishing the roof of Hangar 3 unless and until FERMA receives the APCO's consent, in writing, to

continue such activities. FERMA shall ensure that it generally receives any PCM and TEM analytical results no more than 3 business days after the end of the sample collection period at issue. It shall not be a violation of these Conditions, however, if FERMA receives a test result later due to unexpected exigencies beyond FERMA's reasonable control, such as a delay in laboratory processing, so long as FERMA receives the test result within 5 business days after the end of the sample collection period.

b. FERMA shall ensure any alteration of the perimeter air monitoring schedule or procedures for asbestos takes place only to the extent explicitly approved in writing by the APCO. FERMA may request that the APCO approve alterations to the perimeter air monitoring schedule or procedures for asbestos, including decreases in the number of monitors or the frequency of monitoring. Any such requests shall be submitted to the APCO via email at srueda@baaqmd.gov, kpham@baaqmd.gov, and gdhawanmuren@baaqmd.gov. The APCO may, in its sole discretion, approve or deny such requests.

3. Continuously during any activities that involve manipulating or demolishing the roof of Hangar 3, FERMA shall ensure that the truss bay that is being manipulated or demolished and the immediately adjacent truss bay, as well as the air and ground underneath the truss bays, is sprayed by water at a level sufficient, in the APCO's sole discretion, to ensure that any RACM that is not covered by other materials will be immediately adequately wetted if either truss bay collapses.

4. At all times throughout the term, FERMA shall ensure that all RACM that is not adequately wetted or being sprayed with water is encapsulated with material. If exposed RACM is not adequately wetted during off hours, it shall be encapsulated with material.

5. At or before the end of each workday, FERMA shall capture all water run-off, pump it to Baker tanks, and filter it prior to disposal.

6. During the entire term, FERMA shall continuously maintain a secure perimeter around the worksite to ensure there is no public access. To maintain this secure perimeter, FERMA shall, without limitation, ensure the site is surrounded by fencing that is not reasonably capable of being climbed or otherwise easily penetrated, and shall ensure that all points of entry are either locked or actively monitored at all times such that only authorized individuals have access.

7. At the end of each workday, FERMA shall walk the perimeter of the worksite to look for, collect, and dispose of any asbestos debris. The collection and disposal of any asbestos debris shall be carried out in accordance with all applicable laws.

8. FERMA shall plane any beams and cross braces intended to be salvaged for reuse 6 sides in containment before these materials are removed from the premises for any reason or extent of time. FERMA shall collect all shavings and treat them in accordance with all applicable legal requirements for disposal of contaminated debris.

9. FERMA shall pressure wash all equipment used in demolition-related activities, including the shoring system, before the equipment is removed from the premises for any reason or extent of time.

10. FERMA shall provide the APCO with access to the worksite during any workday to observe any demolition-related activities associated with the project.

11. When the project is complete, FERMA shall notify the APCO, via email to srueda@baaqmd.gov, kpham@baaqmd.gov, and gdhawanmuren@baaqmd.gov. The APCO shall then conduct a visual inspection to determine whether, in the APCO's sole discretion, to approve the cessation of oversight over the project under Regulation 11-2, and may, in the APCO's sole discretion, require FERMA to perform additional clean-up activities.

12. FERMA shall handle all friable asbestos-containing waste material, including pre-existing debris, in accordance with these Conditions and Regulations 11-2-303 and 11-2- 304, except Regulations 11-2-303.1, 303.3, 303.4, 303.5, 303.6, 303.7, 303.10, and 304.1.

13. FERMA shall fully comply with Regulations 11-2-303.10 and 11-2-304.1.1, except to the extent that it is infeasible to place the hangar into containment pursuant to Regulation 11- 2-303.6.

14. Upon the expiration of this Regular Variance, FERMA shall work in concert with the APCO to estimate the amount of excess emission fees required under Regulation 3-301, if any, in accordance with Table 1 of Schedule A to Regulation 3, though the Bay Area Air Quality Management District Hearing Board shall have final discretion to determine the appropriate amount of fees. FERMA shall pay any excess emissions fees within thirty days of the final determination of the amount of fees required under Regulation 3-301.

BEFORE THE HEARING BOARD OF THE

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

STATE OF CALIFORNIA

In the Matter of the Application of FERMA Corporation For Regular Variance from Regulation 11, Rule 2, Subsections 303.1, 303.3, 303.4, 303.5, 303.6, 303.7, 303.10, and 304.1	Docket No. 3750 CERTIFICATE OF SERVICE

FILED
MAR 08 2024
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:

Avery Brown
Ferma Corporation
6639 Smith Ave
Newark, Ca 94560
ABrown@fermacorp.com

Nicholas W. van Aelstyn, Esq.
Sheppard Mullin Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111-4109
nvanaelstyn@sheppardmullin.com

by depositing same via email and in the United States certified mail, return receipt requested, on March 8, 2024 and on:

Greg Dhawan-Muren, Esq.
Bay Area Air Quality Management District
375 Beale Street, 6th Floor
San Francisco, California 94105
gdhawanmuren@baaqmd.gov

via email on March 8, 2024

DATED: March 8, 2024

Marcy Hiratzka
Clerk of the Boards