

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairpersons Cindy Chavez and Carole Groom and Members
of the Administration Committee

From: Chairperson Valerie J. Armento, Esq., and
Members of the Hearing Board

Date: September 10, 2021

Re: Hearing Board Quarterly Report: April 2021 – June 2021

RECOMMENDED ACTION

None; receive and file.

DISCUSSION

This report covers the second calendar quarter (April - June) of 2021.

- Held one hearing;
- Processed four orders; and
- Collected a total of \$1,519 in Hearing Board filing fees.

Below is a detail of Hearing Board activity during the same period:

Location: Alameda County, City of Fremont

Docket: 3725 – Appeal of Tesla, Inc., from Permit Conditions Contained in Authority to Construct for Permit Application 30523 – Appeal

Regulation(s): Regulation 2, Rule 2, Section 301 (Permits, New Source Review, Best Available Control Technology Requirement); Permit Condition 27327, Part 4

Synopsis: Tesla, Inc. filed an Appeal of an Authority to Construct permit issued by Respondent, the APCO of the Bay Area Air Quality Management District (BAAQMD), on October 13, 2020. The Authority to Construct permit was issued by the APCO in response to Tesla's application (Application No. 30523) to install two new aluminum melting furnaces. Specifically, Tesla appealed two emission limitations: oxides of nitrogen (“NOx”) and carbon monoxide (“CO”) – of a maximum 9 pounds per day, set forth in Part 4 of Condition 27327, specified in the Authority to Construct. The APCO included these 9 lb/day emission limits for NOx and CO to ensure that the furnaces’ emissions remain below the level at which they would trigger the “Best Available Control Technology” requirement in District Regulation 2-2-301. Regulation 2-2-301 requires that any new source that will have the potential to emit 10 pounds or more of certain specified

pollutants, including NO_x and CO, must implement the Best Available Control Technology, or “BACT,” to control emissions of those pollutants.

Tesla wanted to obtain its permit in a very short time frame and was willing to agree to keep emissions below 10 lb/day, so that these furnaces would not be subject to the BACT requirement in Regulation 2-2-301. If the sources will have the potential to emit 10 lb/day or more, then BACT would be triggered and Air District staff would need to undertake a detailed review of available control technologies, what type of control technologies and emissions limits have been achieved at other similar sources, and whether it would be technologically feasible and cost-effective to achieve an even more stringent level of control. This is an in-depth engineering analysis that necessarily takes a substantial amount of time to complete, and if District staff had to conduct such an analysis it would take longer to review the application and issue the permit. The APCO therefore understood that Tesla would agree to keep emissions below 10/lb/day so as to avoid triggering the BACT requirement and this more detailed and time-consuming level analysis. Tesla did not agree to this BACT Avoidance approach and it was not aware that the APCO was intending to include these 9 lb/day BACT avoidance limits until the Authority to Construct was issued. Further, Tesla did not receive the engineering analysis until October 21, 2020, eight days after the issuance of the Authority to Construct. Tesla contended that the APCO should have conducted the BACT analysis, and should have agreed that emissions control equipment and corresponding NO_x and CO emissions limits that Tesla proposed in Application 30523 reflect the Best Available Control Technology and should be approved.

The Parties agreed that instead of litigating their dispute, the best way forward was for the Hearing Board to remand the matter for the APCO to undertake further analysis, conducting the full BACT analysis Tesla requested, and render a revised decision on Application 30523. Based on this analysis, the APCO could determine whether the emissions control equipment and corresponding NO_x and CO emissions limits Tesla proposed in Application 30523 satisfied the BACT requirement and complied with District Regulation 2-2-301. The APCO would then be in a position to approve or deny Tesla’s application as compliant or non-compliant with District regulations. Should Tesla be dissatisfied with the APCO’s decision, Tesla would then be able to appeal that decision to the Hearing Board, and at that point, the Hearing Board would have a full and complete record on which to review any remaining questions about what is required by Regulation 2-2-301 for this particular project.

Status: Appeal filed on November 12, 2020; hearing scheduled for January 12, 2021; parties submitted Stipulation and Request for Entry of Stipulated Order for Remand on January 11, 2021; hearing held on January 12, 2021; Stipulated Order for Remand (ordering Air Pollution Control Officer to grant or deny Application 30523 by January 29, 2021) filed on January 12, 2021; parties submitted Stipulation and Request for Entry of Amendment of Stipulated Order for Remand on February 12, 2021; Order Extending Time (revising decision date to March 19, 2021) filed on February 19, 2021; parties submitted Stipulation and Request for Order Extending Time on March 19, 2021; Stipulated Order Extending Time (revising decision date further to April 19, 2021) filed on March 19, 2021; Order Extending Time Further (revising decision further to April 30, 2021) filed on April 20, 2021; Order Further Extending Time Based Upon Stipulation (revising decision further to May 14, 2021) filed on April 30, 2021; parties requested a withdrawal of the matter on May 14, 2021, which was granted by the Hearing Board Chair on May 17, 2021.

Appeal-related fees collected this quarter: \$0

Location: Alameda County; City of Oakland

Docket: 3729 – APCO vs. Vspetrousa, Inc., et al – Request for Order for Abatement

Regulation(s): Regulation 2, Rule 1, Section 302 (Permits, General Requirements, Permit to Operate)

Synopsis: Respondents own or operate a gasoline dispensing facility in Oakland California, for which a District permit to operate is required pursuant to District Regulation 2, Rule 1. District records indicate they have owned or operated the facility since at least October 27, 2015 and have not had a current or valid permit to operate the facility for the entire period of ownership. The District is informed and believes and thereon alleges that Respondents know they must hold a permit to operate a gasoline dispensing facility, but that despite knowledge, they had been operating it without one since at least October 2015. Complainant seeks an order that Respondents cease conducting these operations unless and until they obtain a District permit to do so.

Status: Accusation filed on March 10, 2021; Notice of Hearing (for April 20, 2021) file/issued on March 16, 2021; Complainant filed Request for Official Notice in Support of Accusation on April 12, 2021; Complainant submitted Exhibits C-1 through C-9 to the Clerk on April 14, 2021; hearing held on April 20, 2021; Conditional Order for Abatement filed on May 11, 2021.

Location: Santa Clara County; City of San Jose

Docket: 3730 – SFPP L.P. San Jose Terminal – Request for Emergency Variance

Regulation(s): Regulation 8, Rule 5, Section 305.5 (Organic Compounds, Storage of Organic Liquids, Requirements for Internal Floating Roof Tanks)

Synopsis: SFPP L.P. San Jose Terminal (Applicant) operates a bulk petroleum terminal with petroleum product storage and loading in San Jose, California. At that location, “Tank SJ12” is a multi-purpose internal floating roof tank in ethanol service. A visual inspection is conducted every three months; a seal gap inspection is conducted every five years; tank is inspected thoroughly when out of service, every ten years; at approximately 14:30 (Pacific) on April 27, 2021, the tank inspector observed a small puddle of liquid/slug on the internal floating roof tank through the fixed roof hatch during the quarterly visual seal inspection, and the puddle was confirmed to be product; the cause of failure was a defect on the roof near the ladder well; the operator attempted to conduct a temporary repair within 48 hours, as required by Air District Regulation 8-5; however, due to safety concerns, the facility deemed it impossible to complete the repair within 48 hours; the tank was about half full when the defect was identified; facility attempted temporary repair, and began emptying the tank in order for an out-of-service inspection and permanent repair; the product on the roof was cleaned as quickly as possible; the facility planned to repair the defect and conduct an investigation once the tank is taken out of service.

Status: Application filed on May 3, 2021; Air District Compliance and Enforcement Division recommendation that the emergency variance be denied filed on May 10, 2021; Hearing Board recommendation that the emergency variance be denied filed on May 11, 2021; Order Denying Emergency Variance filed on May 12, 2021.

Requested Period of Variance: April 29, 2021 to May 28, 2021

Estimated Excess Emissions: 13.16 lb (2 gallons) of volatile organic compounds (ethanol)/day

Variance-related fees collected this quarter: \$1,519.00 (filing fee)

Respectfully submitted,

/s/ Valerie J. Armento

Valerie J. Armento, Esq.
Chair, Hearing Board

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