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HEARING BOARD  
BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

Lisa Harper  
Clerk, Hearing Board  
Bay Area Air Quality  
Management District

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

In the Matter of the Application of	)	
	)	
West County Landfill, Inc; West Contra	)	No. 3552
Costa Sanitary Landfill	)	
	)	<u>ORDER GRANTING EXTENSION OF</u>
For a Variance from Regulation 8, Rule 34,	)	<u>VARIANCE</u>
Sections 113.2, 301.2, 301.3, 303,	)	
Regulation 2, Rule 1, Section 307,	)	
Regulation 2, Rule 2, Section 112, and	)	
Permit Condition 17547, subsections (1),	)	
(2)(a), (2)(b), (2)(c).	)	
_____	)	

The above-entitled Application for a Regular (Long Term) Variance from the provisions of Regulation 2, Rule 1, Permit Condition 17821-5; Regulation 8, Rule 34, Section 303, Regulation 2, Rule 1, Section 301.2, Regulation 8, Rule 34, Section 414; Regulation 8, Rule 34, Section 415; Regulation 8, 34, Section 416, came on regularly for hearing on October 23, 2008 before the Hearing Board of the Bay Area Air Quality Management District.

Scott W. Gordon, Esq., Law Offices of Scott W. Gordon, A Professional Corporation, appeared on behalf of West County Landfill, Inc. and West Contra Costa Sanitary Landfill ("WCCSL" or "Applicant").

Adan Schwartz, Senior Assistant Counsel, appeared as counsel for the Air Pollution Control Officer ("APCO" or "the District").

1 The Clerk of the Hearing Board provided notice of this hearing on the Application for  
2 Variance in accordance with the requirements of the California Health and Safety Code.

3 The Variance application requests relief for the period October 1, 2008 through August 31,  
4 2009.

5 The Hearing Board provided the public an opportunity to testify at the hearing, as required  
6 by the California Health and Safety Code. No member of the public offered testimony. The  
7 Hearing Board heard evidence and argument from the Applicant and the District. The APCO did  
8 not oppose the application for extension based on Applicant's testimony and response to District  
9 Counsel's letter of October 8, 2008, to the Hearing Board.

10 After the Applicant presented its case, the Hearing Board voted to grant the variance, as set  
11 forth in more detail below:

#### 12 BACKGROUND

13 Applicant owns and operates an inactive solid waste landfill located at Foot of Parr Blvd,  
14 Richmond, California. ("the Facility"). The Facility is subject to a Waste Discharge Requirements  
15 Order from the Regional Water Quality Control Board, San Francisco Bay Region ("RWQCB"),  
16 requiring completion of closure of the landfill Facility. The Facility has City and County Use  
17 Permits to be operated as a bulk materials processing facility for handling recyclables and  
18 compostable materials, and also is permitted to operate a solid waste transfer station. The transfer  
19 station is currently operating at the Facility, and portions of the Facility are currently used for bulk  
20 materials processing. Emissions from the landfill are abated by flares and internal combustion (IC)  
21 engines. Applicant is not considered a small business as described by California Health and Safety  
22 Code Section 42352.5(b)(2) and emits more than 10 tons per year of air contaminants.

23 The Facility is in the final stages of closure construction, and is still awaiting approval  
24 from the California Integrated Waste Management Board (CIWMB) of the Closure Plan to allow  
25 the Applicant to complete final installation of the landfill gas collection system and the placement  
26 of final cover over the currently uncapped areas of the landfill. The Application seeks an

1 extension of the period of variance protection in this matter on the ground that despite reasonable  
2 good faith efforts to obtain the CIWMB's approval of the facility Closure Plan to facilitate final  
3 construction, the Applicant has not been able to obtain the approval of the Closure plan from the  
4 CIWMB to allow closure plan construction. The Applicant presented uncontroverted evidence of  
5 its timely notification to the CIWMB of the Hearing Board's May 22, 2008 grant of a variance and  
6 the need for expeditious action by the CIWMB to approve the Closure Plan. The Applicant  
7 submitted evidence, including the testimony of Larry A. Burch, P.E., regarding the Applicant's  
8 efforts in having made submittals in response to CIWMB questions and information requests,  
9 attendance at meetings, and communications with senior CIWMB management of the Closure  
10 Branch of the CIWMB to urge prompt review and approval of the Closure Plan.

11  
12 DISCUSSION

13 Applicant will likely be in violation of District Regulation 2, Rule 1, Permit Condition 17821-  
14 5; Regulation 8, Rule 34, Section 303, Regulation 2, Rule 1, Section 301.2, Regulation 8, Rule 34,  
15 Section 414; Regulation 8, Rule 34, Section 415.11; Regulation 8, 34, Section 416. The testimony  
16 and evidence offered by Applicant established that until the final cap is completed and installed,  
17 together with the expanded gas collection system at the Facility, excess emissions will likely occur,  
18 although it is difficult to quantify the emissions because of the nature of the facility as a partially  
19 capped, but not fully closed, landfill.  
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21  
22 SPECIFIC FINDINGS

23 The Hearing Board finds, pursuant to Health and Safety Code Section 42352 that:  
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1           1.       Applicant will be in violation of District Regulation 2, Rule 1, Permit Condition  
2 17821-5; Regulation 8, Rule 34, Section 303, Regulation 2, Rule 1, Section 301.2; Regulation 8, Rule  
3 34, Section 415.11; Regulation 8, 34, Section 416

4           2.       Due to circumstances beyond the reasonable control of the Applicant, requiring  
5 compliance with District Regulations will result in an unreasonable taking or practical closure of the  
6 Applicant's lawful business. The Applicant's violations are and would be beyond its reasonable  
7 control because the CIWMB has failed to timely approve Applicant's Class II Facility Closure Plan.  
8 Absent approval from the CIWMB and the placement of final cap in the currently uncapped areas, it  
9 is not feasible to prevent excess emissions.  
10

11           3.       The hardship imposed by requiring immediate compliance with District Regulation 2,  
12 Rule 1, Permit Condition 17821-5; Regulation 8, Rule 34, Section 303, Regulation 2, Rule 1, Section  
13 301.2; Regulation 8, Rule 34, Section 415.11; Regulation 8, 34, Section 416 would be without a  
14 corresponding benefit in reducing air contaminants.  
15

16           4.       Applicant considered curtailing Facility operations in lieu of obtaining a variance, but  
17 could not have done so without significant financial hardship and potential financial harm to its bulk  
18 materials processing operations. Regardless of any measures which Applicant could undertake to  
19 control emissions, Applicant would likely be in violation of District Regulations until final capping  
20 and installation of the landfill gas collection system is complete.  
21

22           5.       Applicant is reducing excess omissions to the maximum extent feasible by  
23 implementation of the interim measures specified in the May 22, 2008 Order Granting Variance.  
24 Those measures entail connecting the 2006 Wells and leachate sumps to the landfill gas collection  
25 system to ensure that excess emissions are reduced to the maximum extent feasible.  
26

1           6.       Applicant is required to conduct annual source tests on equipment at the Facility and  
2 under the terms of Applicant's proposal and District's support, the Facility must monitor surface  
3 emissions on a monthly basis within the variance area, and quarterly elsewhere on the landfill.

4 THEREFORE, THE HEARING BOARD ORDERS:

5           The variance from District Regulation 2, Rule 1, Permit Condition 17821-5; Regulation 8,  
6 Rule 34 Section 303, Regulation 2, Rule 1, Section 301.2; Regulation 8, Rule 34, Section 415.11;  
7 Regulation 8, 34, Section 416 of the District Rules and Regulations is hereby extended from October  
8 1, 2008 through and including August 31, 2009, subject to the following conditions:

10           1.       The Facility shall continue to conduct monthly monitoring for surface emissions in the  
11 variance area, including monitoring around each protrusion through the landfill surface;

12           2.       Applicant shall comply with the following Increments of Progress:

13           a.       The Class II Landfill Postclosure Plan will be submitted to the CIWMB for  
14 review and approval on or before October 31, 2008.

15           b.       The 2008 gas sealing activities will continue in order to reduce the avenues for  
16 fugitive gas emissions, including the areas under the alignments of the new landfill gas collection  
17 lines.  
18

19           c.       Weather and site access constraints permitting whenever surface emissions are  
20 observed, repairs will be undertaken as soon as practicable. A log will be maintained on site of the  
21 emission observations and response actions taken.  
22

23           d.       In October and November, 2008, Applicant shall continue the ongoing  
24 installation of the vertical gas extraction wells and the construction of the landfill gas conveyance  
25 pipeline.  
26

1 e. Applicant will provide letter reports to the Hearing Board and BAAQMD staff  
2 and counsel on or before November 21, 2008 and December 31, 2008 summarizing the status of the  
3 Closure Plan and Postclosure Plan approval process. The reports will also address the progress of  
4 new gas extraction well installations and conveyance pipeline construction. The December report will  
5 provide a preliminary schedule for remaining work to be completed in 2009.

6 f. Once the Closure Plan is approved by the CIWMB, Applicant shall mobilize  
7 construction equipment and commence closure plan implementation work following the end of the  
8 2008-2009 rainy season.

9 g. On or before April 15, 2009, Applicant shall provide a supplemental written  
10 progress report on the commencement of closure plan work and indicate the remaining schedule of  
11 work and the expected final cap completion date.

12 h. At such time as the final cap construction has been completed, Applicant shall  
13 notify BAAQMD staff and counsel and provide notice to the Hearing Board.

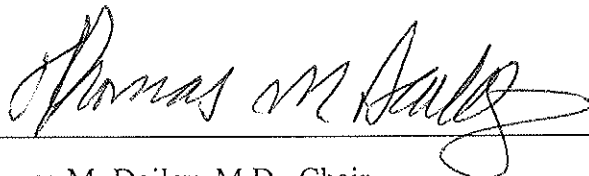
14 i. The nature and mechanisms through which emissions are occurring at the  
15 Facility make calculation of excess emission quantities impractical if not infeasible. Nonetheless, the  
16 District reserves its right to calculate excess emissions and seek associated fees pursuant to applicable  
17 regulations.

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19 Moved by: Terry A. Trumbull, Esq.

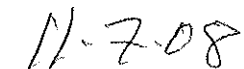
20 Seconded by: Rolf Lindenhayn, Esq.

21 AYES: Julio Magalhães, Ph.D., Terry A. Trumbull, Esq., Gilbert G. Bendix, P.E., and  
22 Thomas M. Dailey, M.D., Rolf Lindenhayn, Esq.

23 NAYES: None

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25 

26 Thomas M. Dailey, M.D., Chair



Date