

**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: February 11, 2021

Re: Hearing Board Quarterly Report: October 2020 – December 2020

**RECOMMENDED ACTION**

None; receive and file.

**DISCUSSION**

This report covers the second calendar quarter (October - December) of 2020.

- Held no hearings;
- Processed two orders; and
- Collected a total of \$9,124.00 in variance/appeal filing fees.

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

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**Location:** San Mateo County, City of South San Francisco

**Docket:** 3724 – Air Pollution Control Officer (APCO) vs. E & S Auto Collision, Inc., et al – Accusation

**Regulation(s):** Regulation 2, Rule 1 (Permits, General Requirements)

**Synopsis:** Respondents own and operate a facility in South San Francisco, California, where they conduct auto body coating operations, for which they must hold a District Permit to Operate pursuant to District Regulation 2, Rule 1. Respondents were conducting operations without a valid or current District permit, despite their knowledge that they must hold a permit to do so. They had not had a permit since December 2017. Complainant sought an order that Respondents cease violating District Regulation 2, Rule 1 within 15 days from the effective date, either by obtaining a current and valid permit, or ceasing their auto body coding operations until they obtain a District permit to do so.

**Status:** Accusation filed on October 29, 2020; hearing scheduled for December 8, 2020; hearing continued to January 19, 2021.

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**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:** This matter concerns an Appeal filed by Tesla, Inc. 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 to install two new aluminum melting furnaces, which was administratively designated Application No. 30523. Specifically, Tesla appealed two emission limitations (of oxides of nitrogen (“NOx”) and carbon monoxide (“CO”) to 9 pounds per day), set forth in Part 4 of Condition 27327, specified in the Authority to Construct for Application 30523. 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 NOx 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 said it did not agree to this BACT Avoidance approach and that 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 NOx 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 that 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 NOx and CO emissions limits Tesla has proposed in Application 30523 do in fact satisfy the BACT

requirement and comply 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

**Appeal-related fees collected this quarter:** \$6,086.00 (filing fee)

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**Location:** Santa Clara County; City of San Jose

**Docket:** 3726 – Equilon Enterprises LLC dba Shell Oil Products US – *Request for Emergency Variance*

**Regulation(s):** Regulation 8, Rule 5, Section 322 (Organic Compounds, Storage of Organic Liquids, Secondary Seal Requirements)

**Synopsis:** Shell SJ Terminal (Applicant) operates a bulk storage petroleum product terminal in San Jose, California. At that location, "Tank 60" is an internal floating roof tank with a capacity of 252,000 gallons storing Transmix (a gasoline/ethanol/diesel mixture). The tank is equipped with a mechanical shoe primary seal and single wiper secondary seal, **which, the Applicant claimed in this application, were installed in 2000.** The tank operator has implemented an Enhanced Monitoring Program per Reg 8-5-411 that includes Tank 60. The Enhanced Monitoring Program requires the secondary seal to be inspected on a quarterly basis, and if a violation is found, the facility is granted up to a 48-hour repair period per the limited exemption in Reg 8-5-119.2.3.

On November 30, 2020, during a visual inspection, facility representatives discovered a tear/gap (1.5- to 2-foot section) on the secondary seal of Tank 60 in violation of Reg 8-5-322.1. Applicant's inspection report indicates that moisture and/or staining was present adjacent to the missing portion of the secondary seal. Having discovered a tear in the secondary seal at approximately 11:50 a.m. on November 30, 2020, Applicant immediately arranged for a repair to be made, but was unable to complete the repair within the 48-hour period allowed by Regulation 8-5-119.2.3 because the tank's floating roof was too low to conduct the repair at the time the broken seal was discovered. Applicant was unable to raise the floating roof until after a pipeline delivery began at 5:30 a.m. on December 2, 2020, which the Applicant claimed was the earliest possible delivery time. The Applicant claimed that no faster alternative to remedy the tear was available at the time.

On December 2, 2020, Applicant sought an emergency variance from the requirements of Regulation 8-5-322's Secondary Seal Requirements and to repair the secondary seal at Tank 60 outside of an allowed 48-hour repair window.

**Status:** Application filed on December 2, 2020; Air District Compliance and Enforcement Division recommendation that the emergency variance be denied filed on December 8, 2020;

Hearing Board recommendation that the emergency variance be denied filed on December 9, 2020; Order Denying Emergency Variance filed on December 15, 2020.

**Requested Period of Variance:** December 2, 2020 to December 31, 2020

**Estimated Excess Emissions:** None

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

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**Location:** Santa Clara County; City of San Jose

**Docket:** 3727 – Equilon Enterprises LLC dba Shell Oil Products US – Request for Emergency Variance

**Regulation(s):** Regulation 8, Rule 5, Section 322 (Organic Compounds, Storage of Organic Liquids, Secondary Seal Requirements)

**Synopsis:** Shell SJ Terminal (Applicant) operates a bulk storage petroleum product terminal in San Jose, California. At that location, “Tank 60” is an internal floating roof tank with a capacity of 252,000 gallons storing Transmix (a gasoline/ethanol/diesel mixture). The tank is equipped with a mechanical shoe primary seal and single wiper secondary seal, **which, the Applicant claimed in this application, were installed in 2012.** The tank operator has implemented an Enhanced Monitoring Program per Reg 8-5-411 that includes Tank 60. The Enhanced Monitoring Program requires the secondary seal to be inspected on a quarterly basis, and if a violation is found, the facility is granted up to a 48-hour repair period per the limited exemption in Reg 8-5-119.2.3.

On November 30, 2020, during a visual inspection, facility representatives discovered a tear/gap (1.5- to 2-foot section) on the secondary seal of Tank 60 in violation of Reg 8-5-322.1. Applicant’s inspection report indicates that moisture and/or staining was present adjacent to the missing portion of the secondary seal. Having discovered a tear in the secondary seal at approximately 11:50 a.m. on November 30, 2020, Applicant immediately arranged for a repair to be made, but was unable to complete the repair within the 48-hour period allowed by Regulation 8-5-119.2.3 because the tank’s floating roof was too low to conduct the repair at the time the broken seal was discovered. Applicant was unable to raise the floating roof until after a pipeline delivery began at 5:30 a.m. on December 2, 2020, which the Applicant claimed was the earliest possible delivery time. The Applicant claimed that no faster alternative to remedy the tear was available at the time.

On December 17, 2020, Applicant sought a (second) emergency variance (as Docket No. 3726 was denied) from the requirements of Regulation 8-5-322 (Secondary Seal Requirements), presumably because it exceeded the 48-hour grace period for repairs allowed by Regulation 9-5-119 (Limited Exemption, Repair Period). **The emergency variance application for Docket No. 3727 was a revised version of the emergency variance application for Docket No. 3726.** Both were reviewed by the same Hearing Board member. The two principal differences between the two applications were: 1) Due to an apparent miscommunication between Applicant and BAAQMD staff, the BAAQMD staff response to the earlier application erroneously put the age of

Tank 60's secondary seal at about 20 years, when in fact it is only about 8 years old; and 2) BAAQMD staff recommended that the Hearing Board deny the earlier application and grant the present application.

**Status:** Application filed on December 17, 2020; Air District Compliance and Enforcement Division recommendation that the emergency variance be granted filed on December 21, 2020; Hearing Board recommendation that the emergency variance be denied filed on December 30, 2020; Order Denying Emergency Variance filed on December 30, 2020.

**Requested Period of Variance:** December 2, 2020 from 9:00 a.m. to 11:59 p.m.

**Estimated Excess Emissions:** None

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

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Respectfully submitted,

*/s/ Valerie J. Armento*

Valerie J. Armento, Esq.  
Chair, Hearing Board

Prepared by: Marcy Hiratzka  
Reviewed by: Vanessa Johnson