

**BEFORE THE HEARING BOARD OF THE
SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**

In the Matter of)	Case No. 6070-10
)	Facility ID No. 161266
COUNT OF SAN BERNARDINO)	
FLEET MANAGMENT)	
)	
[Proposed] Findings and Decision)	
and Order Granting a Regular Variance)	
)	
Section 42350 of the California)	
Health and Safety Code)	
_____)	

[PROPOSED] FINDINGS AND DECISION OF THE HEARING BOARD

This petition for a regular variance was heard on June 1, 2023, pursuant to notice in accordance with the provisions of California Health and Safety Code Section 40826. Five members of the Hearing Board were present: Cynthia Verdugo-Peralta, Chair; Robert Pearman, Esq, Vice Chair; Micah Ali; Allan Bernstein, DPM; and Mohan Balagopalan. Petitioner, represented by Lauren Doucette, Regulatory Environmental Specialist, did not appear. Respondent, Executive Officer, represented by Josephine Lee, Senior Deputy District Counsel, did not appear. The public was given the opportunity to testify. The Declaration of Lauren Doucette and the (Proposed) Findings and Decision and Order of the Hearing Board was received as evidence, and the matter was submitted on consent. The Findings of Fact and Conclusions made by the Hearing Board on March 29, 2023, and the Minute Order of the Hearing Board dated March 3, 2023, are incorporated herein by reference.

The Hearing Board finds and decides as follows:

Nature of Business and Location of Facility

Petitioner's facility runs an 800 MHz radio tower that provides crucial communications for first responders and is located remotely at 3000 Keller Peak Road, Arrowbear Lake, 92382.

Equipment and Permit to Operate

The equipment that is the subject of this petition is an Internal Combustion Engine ("IC Engine") driving an Emergency Generator operated pursuant to Permit to Operate (P/O) No. G4557.

The IC Engine is used to provide power when there is an interruption of electrical power by Southern California Edison (SCE) to the emergency communication site. The IC Engine provides emergency backup power in the event of a power outage which allows the radio site to continue to maintain County emergency communications.

SUMMARY

Petitioner is in violation of Rules 203(b) as it pertains to Condition No. 4 of P/O No. G4557 and will achieve compliance on January 1, 2024, when the annual 200-hour operating limitation in Condition No. 4 resets. This Hearing Board previously granted a variance from these Rules and Permit Conditions at the Ex Parte Emergency variance on March 2, 2023 and at the Interim Variance hearing held on March 29, 2023.

FINDINGS OF FACT AND CONCLUSIONS

Following are the facts and conclusions supporting the findings set forth in Health and Safety Code Section 42352 necessary to grant the variance. The Executive Officer did not oppose the granting of the variance.

a. The petitioner for a variance is or will be in violation of Section 41701, or of any rule, regulation, or order of the South Coast AQMD.

1. The equipment cannot be operated in compliance with South Coast AQMD Rule 203(b), which requires compliance with permit conditions, because Petitioner has exceeded its annual permitted operating limit of 200 hours for the IC Engine, as specified in Condition No.4 of Petitioner's P/O No. G4557.

b(l). Non-compliance with South Coast AQMD Rule(s) is due to conditions beyond the reasonable control of the petitioner.

1. Petitioner is a public entity that provides vehicles, equipment, and services to the officials and employees of the County of San Bernardino. Petitioner owns and operates the IC Engine that drives an emergency generator that provides emergency power to a radio tower that is required for communication between first responders serving the public.

2. As of February 2, 2023, the IC Engine had operated for 9.7 hours. On or about February 24, 2023, an unforeseen power loss from SCE required operation of the IC Engine. On March 3, 2023, the IC Engine exceeded 200 operating hours. Petitioner later learned that the power outage was caused by inclement weather downing a power line.

3. On the morning of March 2, 2023, Petitioner filed a petition for Emergency Ex Parte, Interim, and Regular Variance relief from South Coast AQMD Rule 203(b) with respect to the IC Engine.

4. On March 3, 2023, Petitioner was granted an Emergency Ex Parte Variance from South Coast AQMD Rule 203(b), and on March 29, 2023, Petitioner was granted an Interim Variance from South Coast AQMD Rule 203(b), with respect to the IC Engine.

5. Petitioner requested a Regular Variance to continue to operate its generator for the remainder of calendar year 2023 for emergency purposes, as well as for

maintenance and testing purposes to ensure the generator is in good working order, in the event of a power outage.

6. Petitioner will achieve compliance on January 1, 2024, when the annual 200-hour operating limitation in Condition No. 4 resets.

b(2). Requiring compliance would result in either (1) an arbitrary or unreasonable taking of property, or (2) the practical closing and elimination of a lawful business.

1. Denial of the variance would cause significant harm to Petitioner, in that Petitioner would be unable to operate the generator, if a power outage occurred, resulting in failure to provide the critical communications to first responders, potentially causing a threat to life and property in the mountain communities. Further, the direct cause of the noncompliance was due to a third-party when SCE's equipment failed as a result of the severe winter storms, causing an outage to their customers, including the location of the IC Engine. Ultimately, Petitioner needs to be able to operate the generator in times of emergency.

c. The closing or taking would be without a corresponding benefit in reducing air contaminants.

1. The estimated excess emissions for the generator, when in use during the variance period are as follows: 0.19 pounds per hour (lb/hour) of carbon monoxide (CO), 0.51 lb/hour of oxides of nitrogen (NO_x), 0.03 lb/hour of reactive hydrocarbons (RHC), 0.03 lb/hour of particulate matter (PM/PMIO), and 0.001 lb/hour of oxides of sulfur (SO_x).

2. The Board determined that the significant harm to Petitioner and the public outweighs the benefit to air quality, if the emissions associated with this request were eliminated, because of denying the variance.

d. The Petitioner for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.

1. Curtailment or shutdown of the generator would not bring Petitioner into compliance, as Petitioner has already exceeded the 200-hour operating limit for the calendar year of 2023.

e. During the period the variance is in effect, the petitioner will reduce excess emissions to the maximum extent feasible.

1. The limited usage of the generator for the remainder of 2023 will reduce emissions to the maximum extent feasible. Petitioner will only use the generator in times of emergency and for no more than one (1) hour each month, for required maintenance and testing.

f. During the period the variance is in effect, the petitioner will monitor or otherwise quantify emission levels from the source, if requested to do so by the South Coast AQMD, and report these emission levels to the South Coast AQMD pursuant to a schedule established by the South Coast AQMD.

1. Petitioner shall maintain a monthly operating log of the hours of operation of the generator and shall send the monthly records to South Coast AQMD, by email to South Coast AQMD staff, on the first Tuesday of each month.

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ORDER

THEREFORE, good cause appearing, the Hearing Board orders as follows:

1. Petitioner shall limit the operations of the emergency Internal Combustion Engine (ICE), Permit to Operate No. G4557 to emergency usage, and the ICE shall operate no more than 1.0 hour per month total for maintenance and testing time.

2. Petitioner shall maintain a monthly operating log for the emergency ICE and shall send the monthly records to South Coast AQMD by email to AQ Inspector III Kristina Crabtree (kcrabtree@aqmd.gov) on the first Tuesday of each month beginning in April 2023. The operating log shall list all engine operations in the following areas:

- a. Date and hours of emergency operation, and specify the cause of the emergency;
- b. Date and hours of maintenance and testing operations; and
- c. Date and hours of any other non-emergency operation.

3. Petitioner shall calculate, record, and report all excess emissions during the variance period to the Clerk of the Board by January 30, 2024. The emission factors for calculating excess emissions are listed below:

- a. CO: 0.19 lb/hr
- b. NOx: 0.51 lb/hr
- c. PM10: 0.03 lb/hr
- d. RHC: 0.03 lb/hr
- e. SOx: 0.001 lb/hr

4. Pursuant to South Coast AQMD Rule 303(p), all fees for this variance shall be waived.

BOARD MEMBER: _____

DATED: _____

