GC

BEFORE THE HEARING BOARD OF THE

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

In the Matter of	)	**Case No. 6124-1**
	)	
CITY OF SAN BERNARDINO MUNICIPAL WATER DISTRICT	)	
	)	
Order Granting a Regular Variance	)	
	)	
	)	
Section 42350 of the California Health and Safety Code and	)	
	)	

FINDINGS AND DECISION OF THE HEARING BOARD

This petition for a regular variance was heard on **December 20, 2018**, pursuant to notice in accordance with the provisions of California Health and Safety Code Section 40826. Five members of the Hearing Board were present: Julie Prussack, Chair; Patricia Byrd, Vice Chair; Mohan Balagopalan; Hon. Nate Holden and Roger L. Lerner, M.D. Petitioner was represented by Michael E. Vergara, Attorney at Law and Alyson E. Ackerman, Attorney at Law. Respondent, Executive Officer, was represented by Shahrzod Hanizavareh, Senior Deputy District Counsel. The public was given the opportunity to testify. Evidence was received, and the case submitted. The Hearing Board finds and decides as follows:

Nature of Business and Location of Facility

Petitioner owns and operates the Water Reclamation Plant located at 399 Chandler Place, San Bernardino, California 92408-2022 and provides wastewater collection, treatment and potable water treatment and distribution for the residents of the Cities of San Bernardino, Highland and Loma Linda.

Equipment and Permit to Construct/Operate

The equipment that is the subject of this petition consists of five digester gas-fueled Internal Combustion Engines (ICEs) that directly drive process equipment and power critical to the facility's operation. The engines are operated pursuant to District permits to operate G37211 (A/N 572764), G12477 (A/N 493319), G12476 (A/N 493317), G12499 (A/N 493324) and G12498 (A/N 493323).

SUMMARY

Petitioner will be in violation of District Rules 203(b), 1110.2(d)(1)(B)(ii); 1110.2(f)(1)(C)(ii); 1110.2(f)(1)(D)(iii); and 1110.2(f)(1)(H)(i) and intends to achieve compliance by implementing the "Digester Gas Beneficial Use Program" which includes a new fuel cell system, flares, digester gas storage system, newly converted pumps and new blowers. All digester gas-fueled ICEs will not be operated after September 1, 2021 when final compliance is expected to be achieved.

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 District.

1. Beginning January 1, 2019 Petitioner will be in violation of District Rule 203(b), which requires compliance with permit conditions and Rules 1110.2(d)(1)(B)(ii); 1110.2(f)(1)(C)(ii); 1110.2(f)(1)(D)(iii); and 1110.2(f)(1)(H)(i) which require applicable emission concentration limits and reporting and correcting any source testing phase in which an exceedance of Rule 1110.2 emission limits is found.

b(1). Non-compliance with District Rule(s) is due to conditions beyond the reasonable control of the petitioner.

1. The City of San Bernardino Municipal Water Department ("Department") entered into a "Field Test Agreement" as a host site from 2012 through 2018 for evaluating and documenting the capability of a new technology to meet Rule 1110.2 emissions standards; however it was determined to not be commercially viable as of February 2018.

2. From March through June of 2018 Petitioner took part in the "Department's Beneficial Use Study" which evaluated possible technologies to achieve compliance with Rule 1110.2 in order to meet emission limits and engaged and completed a "Digester Gas Beneficial Use Study" in May of 2018 in order to determine the feasibility of alternative technologies.

3. It was noted that Petitioner cannot reasonably achieve compliance with Rule 1110.2 emissions by January 1, 2019 as elimination of all subject ICEs would alter operations and cause a health risk to the public due to potential exposure to untreated wastewater.

4. Petitioner retained outside special counsel, which engaged with District staff to compile a compliance timeline, proposed conditions and increments of progress.

5. Petitioner intends to remove five digester gas fueled internal combustion engines from service, and complete the "Digester Gas Beneficial Use Program" which includes 7 separate projects and intends to achieve full compliance by September 1, 2021.

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 the petitioner as well as the public as they are an essential public service which provides wastewater treatment and would create an unreasonable burden on the public if services were to cease.

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

1. Given the harm that petitioner will incur if the variance were denied, The Board determined that the significant harm to petitioner outweighs the benefit to air quality if the emissions associated with the variance are eliminated as a result of denying the variance.

d. The petitioner for the variance and alternative operating condition has given consideration to curtailing operations of the source in lieu of obtaining a variance.

1. Petitioner is unable to curtail operations as the Department provides an essential public service to its ratepayers and service area in order to treat wastewater.

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

1. Petitioner shall comply with the monitoring conditions set forth in the variance conditions.

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 District, and report these emission levels to the District pursuant to a schedule established by the District.

1. Petitioner has agreed to comply with the conditions set forth in this variance order.

ORDER

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

A. Petitioner is granted a regular variance from 203(b), 1110.2(d)(1)(B)(ii), 1110.2(F)(1)(C)(ii), 1110.2(f)(1)(D)(iii), and 1110.2(f)(1)(H)(i) of the South Coast Air Quality Management District Rules and Regulations, for five Internal Combustion Engines (ICEs) G37211 (A/N 572764), G12477 (A/N 493319), G12476 (A/N 493317), G12499 (A/N 493324) and G12498 (A/N 493323) for the period commencing January 1, 2019 and continuing through September 1, 2021, the final compliance date.

B. The variance granted herein is subject to the following conditions:

1. Petitioner shall, within 30 working days from the date this regular variance is granted, submit to the SCAQMD, by email to Harry Moon (hmoon@aqmd.gov) and Alisha Lewis (alewis@aqmd.gov), a detailed plan (preliminary plan is acceptable) with a project schedule (Gantt Chart or a similar tool) which shows in as much detail as is available to Petitioner at that time the deliverables, increments of progress and timeline for the Digester Gas Beneficial Use Program.
2. Petitioner shall expedite the execution of bidding specifications and contracts, as well as the delivery, installation, startup, and testing of the Resultant Projects' components of the Digester Gas Beneficial Use Program.
3. Petitioner shall not operate the digester gas-fueled internal combustion engines (ICEs): CoGen #1 (Permit No. G37211, A/N 572764), Roots #1 (Permit No. G12477, A/N 493319), Roots #2 (Permit No. G12476, A/N 493317), CAT #2 (Permit No. G12499, A/N 493324), and CAT #3 (Permit No. G12498, A/N 493323) after September 1, 2021, or after the date when the fuel cell system, new flares, digester gas storage system, newly converted pumps and new blowers have been installed, tested and determined to be fully operational, whichever shall occur first.

4. Petitioner may sequence the removal of the digester gas-fueled ICEs as necessary to assure reliable supply of aeration to the treatment process and pumping capacity at the Arrowhead Lift Station, but in no event shall any digester gas-fueled ICE be operated within the Water Reclamation Plant (WRP) after September 1, 2021, unless the Petitioner has been granted a Petition for Modification to the Variance as required by Condition 8.

5. Petitioner shall provide written notification to the SCAQMD, by email to Harry Moon (hmoon@aqmd.gov) and Alisha Lewis (alewis@aqmd.gov), at least 48 hours prior to the scheduled shutdown and decommissioning of each of digester gas-fueled internal combustion engines (ICEs): CoGen #1 (Permit No. G37211, A/N 572764), Roots #1 (Permit No. G12477, A/N 493319), Roots #2 (Permit No. G12476, A/N 493317), CAT #2 (Permit No. G12499, A/N 493324), and CAT #3 (Permit No. G12498, A/N 493323), so that a SCAQMD representative may be present to witness the final shutdown and decommissioning of the engines subsequent to the digester gas cutover date.

6. Petitioner shall monitor and record the number of hours of operation per day and the quantity of digester gas (in scfm) combusted for each digester gas-fueled internal combustion engines (ICEs): CoGen #1 (Permit No. G37211, A/N 572764), Roots #1 (Permit No. G12477, A/N 493319), Roots #2 (Permit No. G12476, A/N 493317), CAT #2 (Permit No. G12499, A/N 493324), and CAT #3 (Permit No. G12498, A/N 493323), until final compliance is achieved.

7. Petitioner shall, within 15 calendar days of the end of each calendar month following the issuance of this regular variance, report to the SCAQMD, by email to Harry Moon (hmoon@aqmd.gov), Alisha Lewis (alewis@aqmd.gov), and to the Clerk of the Board (clerkofboard@aqmd.gov) the progress of the Digester Gas Beneficial Use Program. The report shall contain, at a minimum, the following

information:

a. The status(es) on various Digester Gas Beneficial Use Program milestones, such as:

i. Bidding specifications, selection of consultants and contractors, and contract execution with Resultant Project contractors;
ii. Execution of the Fuel Cell system Power Purchase Agreement;
iii. Final Design of Resultant Projects;
iv. Construction commencement of Resultant Projects; and
v. Delivery, installation, startup, and testing of Resultant Projects' components.

b. Discussion on problems encountered or projected to occur pertinent to the delivery, installation and startup of the aeration blowers and lift station pump electric motors, and the solutions implemented to resolve the problems (if any);

c. Excess emissions calculations (if available), broken down daily and summarized monthly; and

d. Updates to the project schedule and increments of progress (as stipulated in Condition No. 1), as necessary.

8. Petitioner shall, if Petitioner reasonably anticipates that final compliance will not be achieved by September 1, 2021, or if Petitioner is unable to meet any increment of progress adopted by the Hearing Board in this variance order, due to reasons beyond its control, submit a timely Petition for a Modification to the Variance. Petitioner shall notify the SCAQMD (Attention: Sheri Hanizavareh, shanizavareh@sqmd.gov) upon learning of any such anticipated delay in the final compliance date or any anticipated requested changes in conditions.

9. Petitioner shall pay all applicable fees to the Clerk of the Board. Failure to do so will result in the variance's invalidation pursuant to Rule 303(k), except for excess emissions fees, which shall be paid on a quarterly basis with the first payment due on 4/15/19, after on a quarterly basis on the 15th of the following month. Petitioner shall pay excess emission fees based on the daily fuel

consumption in each of the 5 internal combustion engines (ICEs), multiplied by an emission factor for each ICE that is derived from the difference between the Rule 1110.2 emission limits in effect prior to 1/1/2019 and the limits in effect on and after 1/1/2019.

10. Petitioner shall notify the SCAQMD (Attention: Sheri Hanizavareh, shanizavareh@aqmd.gov) and the Clerk of the Hearing Board in writing when final compliance has been achieved.

INCREMENTS OF PROGRESS:

1. The Department shall complete its internal scopes of work for the ALS Electrical Supply Project, Pump #2 Electric Conversion Project, and Pump #3 Propane Conversation Project (collectively, "ALS Resultant Projects") by February 15, 2019.
2. The Department shall execute a Power Purchase Agreement (PPA) with a fuel cell vendor by April 30, 2019.
3. The Department shall issue Requests for Proposals (RFPs), either as Design/Build or Design/Bid/Build, for the Digester Gas Storage Project, Flare Replacement Project, and the Blower Decentralization Project by May 31, 2019, upon completion of the Preliminary Design Report (PDR). The PDR represents the substantial completion of the 30% Design Phase.
4. The Department shall submit to the District the permitting materials for the NOx 0.025 lbs per BTU Flare Project by November 30, 2019.
5. The Department shall issue a Notice to Proceed for construction on the Blower Decentralization Project by March 30, 2020.
6. The Department shall have submitted the necessary permitting materials to the District for each Resultant Project by September 30, 2020. This shall not include

cancellation or amendment of permits necessary for compliance through the pendency of this variance.

7. The Department shall procure all major components for the construction of the ALS Resultant Projects by December 31, 2020.
8. The Department shall begin startup testing and commission of the final operational process arrangement by June 30, 2021 ("Digester Gas Cutover Date").
9. The Department shall submit at the close of each quarter on the 15th of the following month a written status update beginning on 4/15/19 presenting evidence of its continued progress to date and present an updated schedule that demonstrates rule compliance by the expiration date of the regular variance. Should the District have questions regarding the update, the Department shall make itself available for a meeting with District staff.
10. The SCAQMD Hearing Board will conduct an annual status hearing the first week of December each year during the variance period for the Department to demonstrate its compliance progress.

FOR THE BOARD: _____
Julie Prussack, Chair

DATED: 1/18/19