

San Joaquin Valley Air Pollution Control District

CENTRAL REGION HEARING BOARD MEETING

Central Region Office – Governing Board Room
1990 E. Gettysburg, Fresno, CA 93726

ACTION SUMMARY MINUTES

Wednesday, November 19, 2008

Meeting held in the Governing Board Room
(Room only) in the Central Region, Fresno, CA

AGENDA

1. **CALL MEETING TO ORDER:**

The Chair, Jerry Boren, called the meeting to order at 10:00 a.m.

2. **ROLL CALL:**

Gerry Mulligan – Public	Present
Robert Schumacher – Public	Present
James Waterman – Attorney	Present
Dr. James Glaser – Medical	Present
Jerry Boren – Engineer	Present

Staff Present – Central Region (Fresno: Catherine Redmond, District Counsel; Morgan Lambert, Compliance Manager; Patrick Houlihan, Sr. Air Quality Inspector; Ryan Hayashi, Supervisor Air Quality Specialist Compliance; Lupe Jaurequi, Inspector; Lynn Sargenti, Sr. Office Assistant.

3. Approval of the Minutes from September 17, 2008. The Chair asked if there were any comments. Hearing none, the Chair declared the Minutes approved as submitted.

4. The Chair asked the Clerk to verify that all items had been properly noticed. The Clerk responded that they had. All those present to testify were sworn in by the Chair. The Chair asked that the agenda packet and any addenda brought forth to be entered in the official record.

Morgan Lambert requested through the Chair that the agenda items be switched in order of hearing.

A. C-08-20S Short

Azteca Milling LP
dba Valley Grain Products
23865 Avenue 18
Madera, CA 93638

Petitioners: Berry Runyon, Mike Martin

Patrick Houlihan presented the report.

Jerry Boren asked Patrick for clarification regarding finding #4 regarding curtailment if needed which may include emission reduction fees or ERC's.

James Waterman asked what would happen if the facility cannot comply by December 1st deadline. Patrick stated they would then receive a Notice of Violation and added that they would not shut down nor would the District ask them to. They would receive an Administrative NOV since there would not be excess emissions.

James Waterman asked if the facility had ever received any NOV's. Patrick referred to Lupe Jauregui, inspector, regarding this and he stated they have not received previous violations.

Barry Runyan presented an update to the Board informing them that they had been doing further testing over the last couple of weeks and feel that it will be easy for them to make the necessary modifications

Jerry Boren asked Barry Runyan if they agreed with the recommendations of District staff and the conditions the District has asked. He stated he didn't understand the mitigation part if they do have excessive emissions. Patrick Houlihan explained what the options are if this happens regarding the Emission Reduction Credits or other fees, but mentioned that he didn't feel that would end up being the case, but also suggested that the facility could implement curtailments if needed.

Mr. Runyan agreed to this.

Catherine stated that this should be made part of the conditions.

Morgan Lambert proposed that a condition be added to the variance to address the concerns of legal counsel and the petitioners regarding the possible excess emissions. He stated that this condition in finding #5 was left off at the time because excess emissions were not expected.

Morgan further stated that the applicant would curtail certain operations to offset emissions or if emissions should be in excess or if curtailment was not feasible and should emissions exceed the 1 ton variable they do provide an offset of 25% ERC. This is to be formalized in the conditions.

Morgan Lambert stated the verbiage of the condition would be changed to read: *"If there is excess emissions the applicant shall, if possible, curtail portions of their operations to mitigate those emission and if curtailment is not feasible and if emissions are over one (1) ton, they shall either provide emission reduction credits to offset 20% of those emissions over one ton or provide an emission reduction fee of \$3.75 per pound"*.

Morgan Lambert informed the applicant that moving forward for calculations of excess emissions the District would use the preliminary testing that had been done as credible evidence of what the emissions are once the upgrade is complete and re-tested.

Public Comment: No Public Comment

Moved: Waterman
Seconded: Schumacher

Ayes: Mulligan, Schumacher, Waterman, Boren, Glaser
Nays: None

The Hearing Board voted unanimously to pass the Motion to grant the variance subject to the added conditions as amended.

B. C-08-19i Interim Ampersand Chowchilla Biomas
16457 Avenue 24 ½
Chowchilla, CA

Petitioners: Kevin Madry, David Righthouse, Steven Carew,
Wickam Large

Patrick Houlihan presented the report.

Patrick stated the District felt that the interim variance should be denied. However, part of making an interim variance is that good cause needs to be shown and he felt the petitioner did not exercise diligence in petitioning for the interim variance as soon as possible after the time the petitioner knew that a variance would most likely be

necessary. He stated that since they started operation on April 24th they have been out of compliance when they have operated. He felt that the applicant should have approached the District for a variance shortly after that date. The District was contacted on August 14, 2008 to discuss a variance. Applicant was informed at that time of the variance process. However, the applicant did not submit the petition until November 3, 2008.

Patrick Houlihan referenced California Health and Safety Code 42352.5, which reads: *"In determining whether or not conditions exist which are beyond the reasonable control of the petitioner, the Hearing Board shall consider the extent to which the petitioner took actions to comply or seek a variance which were timely and reasonable under the circumstances. In doing so, the Hearing Board shall consider actions taken by the petitioner since adoption of the Rule or Regulation or for which the variance was sought."*

Patrick Houlihan reminded the Board that per the Code, the applicant should have applied for a variance as soon as they were out of compliance.

Morgan Lambert clarified the process and purpose of an interim variance verses a regular variance.

Kevin Madry acknowledged the staff report and felt that it was accurate. However, he did not agree with the District's opinion that they were not diligent in pursuant to the Health & Safety code in seeking compliance. He continued to discuss the source test results and stated they were not aware of any specific time lines between failing a source test and seeking a variance.

There was discussion between the petitioners and the Board regarding why the delay in submitting the variance request.

Patrick Houlihan stated that he did not feel the facility met the criteria of what is considered good cause per District policy and the Health & Safety Code and therefore the District could not support the variance request.

Morgan Lambert informed the Board that the District would be willing to work with the facility to help them get within Compliance through other processes.

Kevin Madry questioned the District findings on the NO_x & SO_x emissions that the facility was found to be in violation of in August & September. There was further discussion regarding RATA test results.

Public Comment: No Public Comment

Gerry Mulligan asked Legal Counsel for an opinion regarding the Health & Safety Code violations. Legal Counsel reminded the Board that there does need to be a finding of good cause in order to grant an interim variance. She stated that it comes down to if the Board feels the petitioners were trying to circumvent the noticing requirements or not.

Moved to Deny: Waterman

Seconded: Mulligan

Ayes: Mulligan, Schumacher, Waterman, Boren,
Glaser

Nos: None

Abstain: None

Having decided the petition was not found to meet the finding of good cause per the Health & Safety Code and District policy, the Hearing Board voted unanimously to deny the variance request.

6. **PUBLIC COMMENTS:** No public comments

7. **HEARING BOARD MEMBER COMMENTS:** Gerry Boren asked Lynn Sargenti regarding the fact that they have not received mileage from the last three Board meetings.

Lynn Sargenti responded that the past records in Finance will be looked into. She will look into this and get the mileage requests generated.

Jerry Boren asked about the stipend increase that was mentioned at the last meeting. Catherine Redmond informed the Board that by statute, the stipend is set by the Governing Board and currently the Hearing Board stipend is the same as the Governing Board stipend. Therefore, would need to go before the Governing Board. Catherine stated this was something they could look into.

8. **NEW BUSINESS:** Morgan Lambert introduced Ryan Hayashi, Supervising Air Quality Specialist to the Board. Ryan will be overseeing the variance program for the District. Patrick Houlihan will continue to do the presentations.

9. **NEXT SCHEDULED MEETING:** December 17, 2008. This meeting will be held in the Central Region Office (Fresno) in the Governing Board room.
10. **ADJOURNMENT:** The Chair adjourned the meeting at 11:16 a.m.