

Action Summary Minutes

CENTRAL REGION HEARING BOARD MEETING

Central Region Office Governing Board Room
1990 E. Gettysburg Ave., Fresno, CA 93726
Video Teleconference with District office in Modesto

Wednesday, March 21, 2012, 10:00 a.m.

MINUTES

1. **CALL MEETING TO ORDER:**

The Chair, Mr. Jerry Boren, called the meeting to order at 10:02 a.m.

2. **ROLL CALL:**

Jerry Boren, Chair – Engineer	Present
Robert Schumacher – Public	Present
Jim Waterman – Attorney	Present
Gerry Mulligan – Public	Present
Dr. Lorraine Goodwin, M.D. – Medical	Present

Staff present – Central Region (Fresno): Ryan Hayashi, Supervising Air Quality Specialist; Catherine Redmond, Legal Counsel; Annette Williamson, Assistant Legal Counsel; Dillon Collins, Supervising Air Quality Inspector (attending in the north); Jeff Voorhees, Air Quality Specialist; Michael Carrera, Compliance Manager; Lynn Sargenti, Senior Office Assistant;

3. Approval of Minutes from December 21, 2011

4. **PUBLIC HEARING:**

Mr. Boren 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 into the official record.

A. C-12-02R Shiralian Enterprises, Inc.
dba Shell EZ Trip
6735 North Golden Gate Blvd.
Fresno, CA 93722

Petitioner: Ty Kharazi (Legal representative)

Mr. Hayashi presented the staff report. In 2001, the California Air Resources Board (CARB) amended Vapor Recovery Certification Procedure CP-201. CP-201 specifies the standard that gasoline vapor recovery must meet in order to receive certification from CARB. The amendments included a revision of vapor recovery system certification requirements to meet Enhanced Vapor Recovery (EVR) standard. In-Station Diagnostics (ISD) system standards were added to CP-201 at this time. ISD is designed to continuously monitor the vapor collection and vapor containment systems and notifies the facility operator of possible problems in the systems through a series of warnings and failure alarms. CARB issued many advisories targeting affected GDFs both throughout the time CP-201 was undergoing amendment in 2001, as well as following the adoption of the amendments. Additionally, CARB held many EVR outreach workshops for GDF operators in 2008. CARB and the District held joint EVR workshops for District-permitted operators in July 2008.

In October 29, 2003, CARB posted an advisory explaining how GDFs that dispense more than 1,800,000 gallons of gasoline per year were required to install ISD by April 2008, and that facilities dispensing 600,000 gallons would be required to install ISD by April 2009. This was later extended to April 1, 2009 and 2010, respectively, as explained in CARB's advisory dated April 15, 2005. It was pushed back again to September 1, 2009, and 2010. Respectively because there was not a certified phase II EVR system certified with ISD until August 31, 2005, and the regulation gave operators four years from the date of certification before they were required to install the ISD system.

The San Joaquin Valley Air Pollution District (District) also sent various Compliance Assistance Bulletins (CABs) to effected facilities advising them of the upcoming compliance date. The District sent one in May 2007 that clearly stated that facilities dispensing more than 600,000 gallons of gasoline would be required to install ISD by September 1, 2010. Another was sent to the affected GDFs in July of 2010, and is still posted on the District's website, which reiterated the information in the May 2007 CAB.

The District had over eight hundred GDFs required to install ISD and of these, only 122 failed to do so by the compliance date of September 1, 2010. On September 3, 2010, the District began hand delivering a CAB to those GDFs and advised them that the only way they could continue to operate was for them to enter into a Mutual Settlement Agreement (MSA) and pay a stipulated penalty amount. This action was in accordance with CARB's directive and in agreement with the other air districts throughout the state. Every facility that failed to install ISD by the compliance date, except one, entered into a MSA and paid their penalty.

Shiralian Enterprises, Inc. dba Shell EZ Trip (SHIRALIAN) operates a GDF subject to ISD requirements and compliance dates for ISD. When SHIRALIAN submitted a permit application in August 2009 to upgrade

their phase II vapor recovery system, they specifically stated they would be dispensing less than 600,000 gallons, in which case they would be exempt from the requirement to install ISD. As a result, the CAB explaining the MSA was not hand delivered to them in September 2010. During a routine compliance inspection on June 13, 2011, the District reviewed throughput records and determined that they had dispensed 760,391 gallons in 2010. This meant that they should have installed ISD on September 1, 2010. SHIRALIAN received Notice of Violation #40769 and was presented with the MSA on August 22, 2011, which would have allowed them to continue operating the GDF without the ISD system until September 31, 2011, provided of course that they signed and returned the MSA and paid the applicable penalty. SHIRALIAN never responded to the District's offer and on October 24, 2011, the District offered them another MSA to allow them to continue to operate until December 31, 2011, again provided they sign and return the MSA and paid the penalty. The District received correspondence from SHIRALIAN'S Legal Representative Mr. Ty Kharazi, explaining that the High Speed Rail (HSR) had proposed a route that would pass through the facility, causing it to be purchased by the California High Speed Rail Authority (CHSRA) and shutdown. The District attempted to contact Mr. Kharazi and explain that the station was currently out of compliance and in order for them to continue operating; they would have to enter into the MSA. On January 9, 2011, the District offered one last MSA with a compliance date of April 30, 2012. Rather than sign the MSA, SHIRALIAN opted to file a variance petition and sought protection from having to purchase and install the ISD.

At this time, Ms. Redmond, District Counsel, advised the Hearing Board that taking no action would result in a denial of the variance. She recommended that, based on the information in the staff report, and the Hearing Board jurisdictional limitations, that the Board actually takes action to deny due to lack of jurisdiction over this variance. She recommended that they take this action rather than no action.

Mr. Mulligan asked staff what the monetary penalties were. Mr. Hayashi informed the Board that the initial agreement was for \$1,000. When it was proposed that they wanted to continue to operate past the original deadline, it was increased to \$1,500.00 for the added time. Mr. Hayashi explained the agreement the District offered and the facility's response as noted in the staff report.

Dr. Goodwin asked Mr. Hayashi the cost of installing an ISD System. Mr. Hayashi responded with the information.

Mr. Boren asked Mr. Hayashi if all other GDFs entered into the MSA with the District. Mr. Hayashi stated that this facility is the only one of its type that had failed to either enter into an agreement with the District or had installed ISD.

Mr. Kharazi addressed the Board. He stated that Mr. Shiralian has not refused to install the ISD system and has done so with other stations he owns. Mr. Kharazi explained that the reason it was not installed at this location is due to it being under the 600,000 gallons criteria until 2010 which went over that limit.

Mr. Kharazi continued to explain to the board members what the ISD system is. He explained this site is listed as a superfund site by the State of California and EPA and explained the toxic findings of that site by the EPA.

Mr. Kharazi explained the High Speed Rail Authority plans to purchase the site to build the rail. He reviewed government official's comments regarding this area.

Mr. Kharazi referred to a handout he supplied the board members showing the High Speed Rail plans and route location. Mr. Kharazi explained that the station will close before the end of the year and that due to this they see no reason to spend the money to install the ISD system. He states that the site has been monitored for emissions and tested as below the limit per monitoring and does not make sense to spend the money to install the ISD system for a business that will close due to the High Speed Rail plans.

He stated they are now in compliance due to currently pumping less than the 600,000. He explained that since the station will close by the end of the year, he feels that his client should not have to spend the money for the ISD installation.

Mr. Kharazi feels they should receive a variance to continue to operate until the business closes due to the circumstances involved.

Mr. Waterman asked Mr. Kharazi if they have received the imminent domain paperwork from the government. Mr. Kharazi explained the papers have been received.

Ms. Redmond reminded the Board that under the state Health & Safety Code, this Board does not have the authority to grant a variance from a state law requirement, which the ISD requirement is. Also, per Mr. Kharazi testimony, they are now below the 600,000 gallon limit per the

requirement, which means they are not in violation of ISD which means they cannot grant a variance due to a finding of the station no longer in violation. She felt the issue is more of a forum issue and is more of a violation issue rather than a variance issue.

Mr. Kharazi responded regarding the jurisdiction of the Board and felt they have the enforcement jurisdiction. Ms. Redmond reminded Mr. Kharazi that the Board does not have enforcement authority and that authority lies with the District APCO.

Mr. Kharazi argued that point and felt that the Board should be able to make the decision. Ms. Redmond explained the purpose of the Board.

Discussion continued between Mr. Kharazi, Ms. Redmond and the Board regarding who has authority and who does not.

At this point, Mr. Boren stated he did not see any reason to go any further due to the Board's lack of authority with this issue.

Public Comment: No public comment.

Having decided the Hearing Board lacks jurisdiction by statute, on motion of Mr. Mulligan, seconded by Dr. Goodwin, unanimously passed, declined to hear the petition.

B. C-12-04S Algonquin Power Sanger, LLC
 1125 Muscat Avenue
 Sanger, CA 93657

Petitioners: Bernie Reed, Brad Helm

Mr. Hayashi presented the staff report. Algonquin Power Sanger, LLC (ALGONQUIN) is a natural gas fired, nominally rated 49 mega watt combined cycle power generating facility that is contracted with PG&E. the facility also generates hydro mulch for hydro seeding using a portion of the heat and steam that is created by the main turbine.

The power plant is currently offline while construction is being completed on several projects. ALGONQUIN is upgrading their substation from 70 kilovolts (kV) to 115 kV due to a line change on PG&E's system. They are also overhauling the steam turbine and replacing the electrical generator that is connected to the steam turbine.

ALGONQUIN plans on commissioning the new equipment in early April. The commissioning should take two consecutive weeks, however, they

have asked for a 60 day window to account for any contingencies that may delay the construction processes and/or commissioning period.

Mr. Hayashi brought the Board's attention to the calculation of excess emissions and informed them that this was calculated to the full 60 days and a worst case scenario.

Mr. Reed was asked to comment. He stated they have filed similar variances in the past and he commented that past variances did not have any problems and anticipate the same process this time as well. He explained the need for the variance and working with PG&E. He stated that they need the long window in case there are parts that may need to be ordered should there be a problem.

Mr. Boren asked if it would be better to move the variance window. Mr. Reed said they could move the window to begin April 15th through June 15. District staff agreed that this would not be a problem.

Public Comment: No public comment.

Having decided the petition has met the required findings, on motion of Mr. Mulligan, seconded by Dr. Goodwin, unanimously passed, the petitioner was granted a short variance.

5. The Central Region Hearing Board granted the following emergency variance since the December 21, 2011, Hearing:

A. Docket C-12-03E Chevron USA, Inc.

6. **PUBLIC COMMENTS:**

Ms. Elizabeth Jonasson introduced herself to the Board. She has recently been appointed as a public alternate to the Central Region Hearing Board.

Mr. Andrew Robertson introduced himself to the Board. He has recently been appointed as the engineer alternate to the Central Region Hearing Board

The Board welcomed both new members and thanked them.

7. **HEARING BOARD COMMENTS:**

None.

8. **NEW BUSINESS:**

Mr. Boren was nominated by Mr. Mulligan and seconded by Dr. Goodwin to the Chair of the Hearing Board.

Dr. Goodwin was nominated by Mr. Waterman to the position of Vice Chair. Dr. Goodwin declined the nomination and nominated Mr. Mulligan.

Both nominations were unanimously accepted for the Chair and Vice Chair positions.

9. **NEXT SCHEDULED MEETING:**

April 18, 2012. This meeting will be held in the Central Region Office (Fresno) in the Governing Board room.

10. **ADJOURNMENT:**

The Chair, Mr. Boren, adjourned the meeting at 10:46 a.m.