

**San Joaquin Valley Air Pollution Control District
CENTRAL REGION HEARING BOARD MEETING**

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

ACTION SUMMARY MINUTES

Wednesday, January 15, 2014

*Meeting held via teleconferencing with the
Central Region Office (Fresno) and the
Northern Region Office (Modesto) participating via teleconferencing.*

1. Call Meeting to Order

The Chair, Jerry Boren, called the meeting to order at 10:01 a.m.

2. Roll Call

Jerry Boren (Chair) - Engineer	Present
Daniel Hartwig – Public	Present
Gerry Mulligan – Public	Present
Lorraine Goodwin – Medical	Present

Central Region (Fresno): David Warner, Director of Permit Services; Morgan Lambert, Director of Compliance; Michael Carrera, Air Quality Compliance Manager; Jessi Fierro, Program Manager Legal Specialist; Ryan Hayashi, Supervising Air Quality Specialist; Dennis Roberts, Senior Air Quality Engineer; Patrick Houlihan, Senior Air Quality Specialist; Annette Williamson, Legal Counsel; Carol Flores, Operations and Program Support Supervisor

3. Approve Minutes of December 18, 2013

The Chair asked if there were any comments regarding the Minutes for December 18, 2013. Hearing no comments, the Chair declared the minutes were approved as submitted.

4. PUBLIC HEARING

The Chair swore in all those present to testify for all matters.

Mr. Boren requested recusal from this item.

<u>Docket No.</u>	<u>Type</u>	<u>Company Name</u>
A. C-13-12M	Modification	Sun-Maid Growers of California 13525 South Bethel Avenue Kingsburg, CA 93631

Petitioners: Kayhan Hazrati and Chris Campbell

Patrick Houlihan presented the Staff Report.

Sun-Maid has requested a modification of a previously granted regular variance from the applicable requirements of District Rules 2070.7.0, 4101 and Section 41701 of the CH&SC, in addition to the applicable condition of the subject Permit to Operate (PTO). The requested variance period would still be from October 16, 2013, until September 30, 2014. If granted, the modification variance would change the date of the belt installation from January 31, 2014, to March 31, 2014, and allow the continued operation of the subject dehydrator with excess visible emissions until measures can be implemented to achieve compliance.

Mr. Hazrati added the supplier was delayed in receiving parts to manufacture the equipment.

Public Comments: None

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

<u>Docket No.</u>	<u>Type</u>	<u>Company Name</u>
B. C-13-19A	Appeal	EcoPAS, LLC 5319 University Drive # 430 Irvine, CA 92612

Petitioners: Steve Colome

Mr. Boren stated the discussion, as agreed by all parties, will consider whether the District has failed to properly issue permits to E&J Gallo Winery. He explained the order of presentation as District staff, EcoPAS and then Gallo Winery. However, no appearances were made on behalf of Gallo Winery.

Dave Warner introduced Dennis Roberts, Senior Air Quality Engineer, as a District technical expert on wineries' permitting requirements. Mr. Warner presented the Staff Report with a Power Point presentation.

EcoPAS has filed a petition pursuant to Health and Safety Code §42302.1, requesting that the Hearing Board find that the permits issued to E&J Gallo Winery (Gallo) for 24 new wine fermentation tanks at Gallo's Livingston winery, under District Project N-1131616, were not properly issued. EcoPAS claims that the District failed to properly follow the requirements of District Rule 2201, *New and Modified Stationary Source Review*, in reaching a Final Decision for the project. The District's Final Decision and the Authorities to Construct (ATC's) were issued on November 4, 2013.

Mr. Warner stated two rules identified in the appeal do not apply. He explained the California Health and Safety Code §42302 allows parties to appeal a denial of a permit which is not applicable in this case. He added Rule 2092 (Standards for Permits to Operate) applies at the time the District proposes to issue a Permit to Operate and the permits in question are Authorities to Construct.

Mr. Warner explained Rule 2201 (New and Modified Stationary Source Review) also known as NSR was referenced and applies to the project. He reviewed the three

main requirements of NSR and how the District met them. He explained new sources of emissions over certain emission rate thresholds must be controlled with the Best Available Control Technology (BACT). Mr. Warner explained the District found that, even after giving all reasonable doubt to the Petitioner, and using the Petitioner's proposed numbers in all areas that are consistent with good engineering judgment, their technology remained too expensive to be considered cost-effective for the purposes of requiring it as BACT for the proposed project. Mr. Warner said this requirement will be the focus of the presentation.

Mr. Warner explained another requirement of NSR is that projects with emissions over certain annual levels be mitigated or "offset" with reduction in emissions from other sources of emissions. He explained since Petitioner did not comment on this issue during the public comment period, and the District's position with respect of offsetting was not changed during the public comment period, Petitioner has waived their right to use this issue as a basis of a permit appeal. However, the District has corrected the calculation error and has reissued the ATC's appropriately.

Mr. Warner added the third requirement of NSR is that projects with emissions over certain thresholds be publicly noticed, and comments invited and addressed. He explained the District did consider all comments received during the public comment period, and further considered information requested of EcoPAS after the close of the public comment period. All comments were considered and addressed in the final analysis.

Mr. Warner explained Best Available Control Technology (BACT) is the most stringent emissions limit or control that is achieved in practice or is both technologically feasible and cost effective. Mr. Hartwig asked how a facility chooses between two competing technologies. Mr. Warner explained the facility may select any technology that meets the emissions control level.

Mr. Warner explained the Petitioner states an 88-93% overall efficiency is possible but based on accepted engineering principles and District experience the claim is not substantiated. He stated the Petitioner claims four control units are sufficient for maximum vapor flow rate but the cost effectiveness calculation which is based on EcoPAS's proposal was unsubstantiated. Mr. Colome explained there was no time constant on the maximum flow rate for each tank so the assumption that all tanks were inoculated at exactly the same time is unreasonable. He added that the calculation used by the District assumes the EcoPAS units are designed to accept the maximum flow rate, which is incorrect.

Mr. Warner stated the Petitioner does not believe the costs associated with meeting fire code requirements should be included. He explained the District found the units were not cost effective without including the costs associated with fire code compliance.

Mr. Warner stated the Petitioner does not agree with the inclusion of engineering costs of 5% but proposes 1.2% engineering costs. He explained the District believes for a first-of-its-kind project the minimum cost for total engineering would be 5%. Mr. Boren asked how the District came to 5% being the minimum engineering cost. Mr. Roberts explained that experience in the major process industries, literature for determining cost effectiveness and a historical basis played a part in determining the percentage. Mr. Colome stated EcoPAS had engineers review the information who agreed to the 1.2% engineering costs.

Mr. Warner stated the Petitioner does not agree with including the costs of source testing when the District's evaluation concludes that no source testing is required. He explained the facility does not have control technology to test, but if Petitioner's equipment is required, source testing would have to be required, and therefore the cost effectiveness calculation must include costs associated with the source testing. Mr. Warner said the Petitioner objects to the inclusion of costs faced by the owner of the facility due to potential required installation. He explained the facility would have to undergo considerable changes and the proposal by EcoPAS does not account for those costs.

Mr. Warner stated the Petitioner does not agree with the inclusion of a contingency cost of 20% of the capital investment. He explained the District maintains the contingency amount is justified and conservative due to no prior commercial demonstration or priority study. Mr. Hartwig asked if staff has utilized the amount in previous projects. Mr. Roberts explained the District applies contingency costs based on many inputs, including the level of engineering performed to date, and the commercial experience of the system.

Mr. Warner stated the Petitioner disagrees with the use of Gallo's estimate of recovered ethanol in the cost effectiveness calculation adding the Petitioner offered to pay \$25 per gallon. He explained the District cannot use one-time offers or incentives to determine cost effectiveness, since such revenues cannot be expected to be present for future projects. Mr. Warner stated the Petitioner does not agree with the inclusion of costs related to installing programmable logic controls (PLC) and associated programming. He explained the District must include all new costs associated with proposed emissions controls.

Mr. Warner stated the Petitioner objects to the use of the District's standardized discount rate of 10% and equipment life of 10 years. He explained the quantities have been used for decades and are used as part of the cost effectiveness calculations and pollutant thresholds. He added the amounts are contained in the District's BACT implementation policies and have never varied. Mr. Warner noted any change would involve extensive public involvement. Mr. Hartwig asked if there was a change, would it be applied equally. Mr. Warner explained if there was a change in the quantities, it would apply to all BACT determinations. He added there was a discussion in 2008 but the decision was made to not change the standardized amounts. Mr. Boren asked if other facilities have questioned the standardized amounts. Mr. Warner responded there have been similar discussions with other facilities since 2008, but nothing further.

Mr. Warner stated the District recommends and requests the Hearing Board move to deny Petitioner's request for relief, as the Petitioner has not demonstrated any substantive failure in the District's implementation of its rules and associated implementing policies, and therefore has not provided the Hearing Board with a basis to find that the permits were improperly issued.

Dr. Goodwin asked how long the current technology has been in place at the facility. Mr. Roberts explained the only BACT the facility has is a temperature control of the fermentation process.

Mr. Colome asked if staff knew where in the tank the temperature is recorded. Mr. Roberts had no information available. Mr. Colome asked how compliance is

evaluated. Mr. Warner responded there are permits that contain conditions associated with this issue. He added staff is out in the field determining compliance with those permits.

Mr. Colome asked if there are any VOC reductions in the potential emissions that are attributable to the BACT policy. Mr. Roberts explained BACT was established because there was not much available or proven to control emissions. Mr. Boren asked if the temperature limit is included in the ATC. Mr. Roberts responded affirmatively.

Mr. Colome commented the BACT policy does not offer any emission reductions. Mr. Colome asked how the value was arrived from the daily VOC emissions for fermentation operation in the tank. Mr. Roberts explained the value was determined through a study and a model developed by UC Davis.

Mr. Colome explained EcoPAS has discussed with Gallo the possibility of using their unit. He added his belief is that this facility is a major source of VOC emissions and that the Hearing Board now has the potential to control them. Mr. Colome stated EcoPAS now has a cost effective solution to this source. Dr. Goodwin commented that another forum, like a public process, would be a better setting to distribute information regarding the industry and new technology possibilities.

Mr. Boren commented that the Hearing Board has to abide by District standards and policies but EcoPAS is contending their findings are more stringent and correct. He added these findings should be discussed in an industrywide setting. Mr. Colome stated he is requesting factual information that has bearing on the whether the EcoPAS technology is cost effective. Dr. Goodwin noted the Hearing Board is not to determine if the product is cost-effective but whether or not the District properly issued the permit.

Mr. Colome stated he wanted to pursue the issue of capital cost recovery. He asked if the District knows of any public agency that uses a 10% discount rate. Mr. Warner commented this question was not part of the appeal and therefore no research was done on the information. He added there may be several air districts in California that are using the District's BACT policy to guide their actions.

Mr. Colome began his Power Point presentation with background on himself and EcoPAS. He explained that wine as a pollution source has been very difficult to determine how to control. He added the emissions of ethanol are highly temperature dependent. He noted that the District's adoption of Rule 4694 (Wine Fermentation and Storage Tanks) stimulated the coordination to develop new technology. Mr. Colome stated ARB and the Wine Institute evaluated methods for controlling the emission source which was very different than EcoPAS and their competitor. He noted the majority of wine derives from the Valley and is a key industry. He added the Valley is the second most polluted basin in the country due to reasons that include the geography. Mr. Colome estimated 2 million pounds of VOC's as ethanol are released each year. He explained the release of emissions is seasonal whereas the District evaluates the levels of emissions on a period of one year.

Mr. Colome explained the process of how the emissions are created and released. He stated in the passive alcohol system used by EcoPAS the volume of CO₂ is used to act as the engine so there are no moving parts. He added what is taken out of the air is put in a bottle. He showed an example. He stated the District argued the

substance should go into a brandy. He noted it loses all of the esters in the heating process.

Dr. Goodwin stated the Hearing Board is deciding whether or not the District made an error in issuing a permit. She commented the presentation is good, but is not on point regarding whether the District made an error in issuing the permit.

Mr. Colome explained all the history leads up to how the costs are estimated. He continued to explain the timeline of determining a cost estimate. He stated the cost submitted was an overall cost of adopting the technology in a winery setting based on earlier cost estimates submitted earlier to the District. Mr. Colome stated the issues raised were not included in the final ATC. He added staff included additional comments but no other issues. He noted his written willingness to engage the District and facility in discussing the issues. Mr. Colome added the equipment installation is easier and less expensive. He noted the adjusted capital cost was an unnecessary cost to his system. He illustrated calculations and explained his technology is a cost effective solution.

Dr. Goodwin asked who is using the technology from EcoPAS. Mr. Colome stated the technology has not been sold or installed as a commercial unit. Mr. Boren stated there is no commercial history to substantiate the technology works and is cost effective. He added the forum is not correct for the facility to acquire the technology or overwhelmingly convince them and the District of the cost effectiveness. Mr. Colome explained the notion of BACT is to be technologically feasible and pass the cost effectiveness threshold. He asserted that the calculations prove the technology is cost effective if the erroneous charge is removed or the redaction is removed in the District's calculation illustrated in the presentation.

Mr. Warner stated the redaction in the calculation illustrated by Mr. Colome will not show the technology is cost effective.

Mr. Chris Savage, Senior Director of Global Environmental Affairs at E&J Gallo, spoke during the public comment period. He stated that the District followed their policies to issue the permit. He added the facility has very detailed records of the temperature controls. He stated the units completely offset where the emissions are reduced by the required quantities. Mr. Boren asked what the facility intends on doing in the future. Mr. Savage stated E&J Gallo are early adopters of pollution control technologies. He said E&J Gallo does not shy away from implementing control technologies that are cost effective, make business sense and are beneficial to the environment. He added the technology has yet to demonstrate these factors. Mr. Savage stated EcoPAS representatives visited the facility twice over the past five years without detailed discussion of their technologies.

Dr. Goodwin asked if the EcoPAS technology is patented. Mr. Colome stated he has patents pending and much of the information is trade secret. He added the questions that are not being addressed by him are part of the trade secret and development. Mr. Savage stated his company deals with trade secrets all the time, hence non-disclosure agreements.

Andrew Fedak, Noh Bell Corporation representative, also spoke during the public comment period. He explained that his organization is a competitor to EcoPAS and a stakeholder in the issue at hand. He stated his technology was developed at the request of the wine industry. He added his technology is being used at five

commercial wineries. Mr. Fedak said his opinion is that the District came to an erroneous conclusion for numerous reasons but concedes that it is difficult due to the technology being so new.

Mr. Boren asked if the District has discussed the technology with the air districts which the five commercial wineries that use the technology are in. Mr. Warner responded affirmatively. He explained there was a review of all state air districts cost effectiveness calculations which resulted in raising the thresholds.

Mr. Boren asked why the District is not considering BACT for the technology if the technology from Noh Bell is obtaining a higher level of control. Mr. Warner explained there is no assurance of the guarantee of the level of control at this time.

Dr. Goodwin commented the Hearing Board is not going to make the determination of what a private business must do as long as they meet the minimum standard set by the District. Mr. Boren commented the minimum standard should be reviewed for cost effectiveness and the District should be aware of possible new technology.

Public Comments: Other than those noted above, none

Having decided the petitioner has not demonstrated the District did not properly issue the permits in question, on motion of Mr. Mulligan and seconded by Dr. Goodwin, unanimously passed, the Petition was denied.

5. Emergency Variance

The Central Region Hearing Board granted two emergency variances since the December 18, 2013, Hearing.

6. Public Comments

None

7. Hearing Board Member Comments

None.

8. New Business

Mr. Boren requested nominations for the position of Chair. On motion of Mr. Hartwig and seconded by Dr. Goodwin, unanimously passed, Mr. Boren was appointed as Chair.

Mr. Boren requested nominations for the position of Vice chair. On motion of Mr. Mulligan and seconded by Mr. Hartwig, unanimously passed, Dr. Goodwin was appointed as Vice Chair.

9. Next Scheduled Meeting

The next scheduled meeting is February 19, 2014. The meeting will be held in the Central Region Office (Fresno) in the Governing Board room.

10. Adjourn

The Chair adjourned the meeting at 12:56 p.m.