

Faye Thomas

Subject: FW: South Coast AQMD - Hearing Board Case No. 4780-5 | Consent Filing

From: Clerk of Board <Front_PC@aqmd.gov>

Sent: Wednesday, October 23, 2024 1:43 PM

To: Jorgensen, Maia <maia.jorgensen@hoganlovells.com>; Mary Reichert <mreichert@aqmd.gov>

Subject: FW: South Coast AQMD - Hearing Board Case No. 4780-5 | Consent Filing

From: Mohan Balagopalan

Sent: Wednesday, October 23, 2024 11:37 AM

To: Clerk of Board <Front_PC@aqmd.gov>

Subject: Re: South Coast AQMD - Hearing Board Case No. 4780-5 | Consent Filing

Hi,

I appreciate the detailed responses to my questions. Unless the Parties object, I propose changing the effective date for this modification from November 1 to January 31, 2025. This is how it is normally done, as per my understanding. I will also revise Conditions #6 and #8 during the hearing to include the Gantt charts unless the Petitioner submits a revised Findings and Decisions document.

With the changes mentioned above, I agree that the case could be heard on the Consent Calendar. Thanks.

Mohan Balagopalan

From: Clerk of Board <Front_PC@aqmd.gov>

Sent: Wednesday, October 23, 2024 10:58 AM

To: Mohan Balagopalan

Subject: FW: South Coast AQMD - Hearing Board Case No. 4780-5 | Consent Filing

From: Boer, Tom <tom.boer@hoganlovells.com>

Sent: Wednesday, October 23, 2024 9:25 AM

To: Clerk of Board <Front_PC@aqmd.gov>

Cc: Jorgensen, Maia <maia.jorgensen@hoganlovells.com>; Mary Reichert <mreichert@aqmd.gov>

Subject: [EXTERNAL] RE: South Coast AQMD - Hearing Board Case No. 4780-5 | Consent Filing

CASE NO. 4780-5

Madam Clerk,

Good morning.

Below are Petitioner's responses to Board Member Balagopalan's questions in connection with Pharma's petition for an extension to its existing variance. We consulted with Ms. Reichert in preparing this response.

1. Relevant Dates

The current variance, as referenced by Board Member Balagopalan, runs from January 1, 2024, to October 31, 2024. Petitioner seeks an extension of the final compliance date in that existing variance, so that the variance will run through January 31, 2025.

It is correct, as pointed out by Board Member Balagopalan, that the period of the extension, if approved by the Hearing Board, will run from November 1, 2024, through January 1, 2025.

In preparing the request, Petitioner did not see a reason to modify the initial effective date of the variance. Assuming the requested extension is granted by the Hearing Board, the variance will simply be extended through January 31, 2025, obviating the need for a new initial effective date (i.e., November 1, 2024, in Board Member Balagopalan's question).

Petitioners understood that maintaining the initial January 1, 2024, effective date would provide procedural clarity. For example, the total term of the variance, after an extension,

will be 13 months. That total term is the basis for the Increments of the Progress, which are proposed for inclusion in the extended variance.

However, Petitioner defers to the Hearing Board, should the Board prefer to establish a new initial effective date of November 1, 2024.

2. Request for Gantt Chart

Petitioner is prepared to provide a Gantt chart as part of its reporting obligations under the extended variance. Petitioner proposes to provide a Gantt Chart as part of future quarterly reports prepared under Condition No. 6

3. Health & Safety Code § 42351.5

Petitioner appreciates Board Member Balagopalan's concern about the feasibility of the schedule and thanks him for noting the limitations in H&S Code § 42351.5.

Petitioner has used its best engineering judgment, in reliance upon reports from Bloom Energy and Southern California Edison, to determine the length of the requested extension. As of the date of filing, Petitioner remains confident that the Project can be completed by the proposed January 31, 2025, deadline. Any request for additional time would be based upon hypothetical or unpredictable future developments, which Petitioner does not understand to be a reasonable basis upon which to seek a longer extension.

That being said, the Petitioner also recognizes that it is in a difficult stage of the Project completion. As reported in the declarations, the Project is largely complete, with the remaining stages more-or-less entirely dependent upon the availability of Southern California Edison personnel to complete required yard infrastructure upgrades. While Petitioner has worked proactively with Southern California Edison, and believes that the

current schedule as included in the application for an extension will be met, at the end of the day Petitioner does not (and cannot) control Southern California Edison's schedule and availability. If there is any further delay in the Project completion, it will almost certainly be due to Southern California Edison's availability and/or its unilateral changes to the schedule for electrical infrastructure improvements. Petitioner will keep District Staff updated, per the Conditions in the Variance, in the event of such a development and is prepared to seek further relief consistent with the requirements of the Health & Safety Code if needed.

4. Compliance With Existing Variance Conditions

Please refer to the Declaration of Aniekan Udobot filed on August 30, 2024, as Petitioner's Exhibit No. 21 to Pharma's petition for an extension (attached to this e-mail for ease of reference). The final sentence of paragraph 6 states: "The Q1 and Q2 Quarterly Reports confirm that Pharma, and BMI before it, is in compliance with Variance Condition Nos. 1-7 and 11." The quarterly reports referenced in Mr. Udobot's declaration have also been filed, as Petitioner's Exhibit Nos. 15 and 16, respectively.

Best Regards,

Tom

Tom Boer

Partner

Hogan Lovells US LLP

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From: Clerk of Board <Front_PC@aqmd.gov>

Sent: Tuesday, October 22, 2024 5:26 PM

To: Jorgensen, Maia <maia.jorgensen@hoganlovells.com>; Mary Reichert <mreichert@aqmd.gov>; Boer, Tom <tom.boer@hoganlovells.com>

Cc: Clerk of Board <Front_PC@aqmd.gov>

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[EXTERNAL]

Please note the following comments and questions from Board Member Balagopalan.



Clerk of the Boards

South Coast Air Quality Management District

21865 Copley Drive | Diamond Bar, CA 91765

☎ [\(909\) 396-2500](tel:(909)396-2500) | ✉ clerkofboard@aqmd.gov

From: Mohan Balagopalan

Sent: Tuesday, October 22, 2024 4:03 PM

To: Clerk of Board <ClerkOfBoard@aqmd.gov>

Subject: Re: South Coast AQMD - Hearing Board Case No. 4780-5 | Consent Filing

Hi,

I have a few comments on this Consent filing request.

1. Did the parties check the dates? The current Variance ends October 31, 2024, and the request in the Proposed Findings & Decision document is to extend the variance from January 1, 2024, to January 31, 2025. Should it not be from November 1, 2024, to January 1, 2025, since the current Regular Variance ends on October 31, 2024?
2. Since the variance will exceed a year from the initial issued date, the Petitioner has proposed Increments of Progress in Condition #8 of the Proposed Findings and Decision document. However, should the compliance staff not be updated on the progress? A Gantt chart showing the tasks involved should be included in the report to the inspector in Condition #8.
3. Is the Petitioner aware that under H&S Code 42351.5 (see below), only one interim authorization can be granted by the Board (see below)? The Petitioner may want to extend the final compliance date from January 31, 2025, to a later date, especially if they find out in late December that they will miss the deadline.
4. The declarations do not state whether the existing conditions have been complied with and are ongoing especially conditions #3, 4, 5, 6, and 7.

California Code, Health and Safety Code - HSC § 42351.5

If a person granted a variance with a schedule of increments of progress files an application for modification of the schedule and is unable to notify the hearing board sufficiently in advance to allow the hearing board to schedule a public hearing on the application, the hearing board may grant no more than one interim authorization valid for not more than 30 days, to that person to continue operation pending the decision of the hearing board on the application.

I await your responses before deciding whether the hearing should be held on the consent calendar. Thanks.

Mohan Balagopalan

From: Clerk of Board <ClerkOfBoard@aqmd.gov>

Sent: Tuesday, October 22, 2024 12:15 PM

Subject: FW: South Coast AQMD - Hearing Board Case No. 4780-5 | Consent Filing

Attached are documents requesting Consent Calendar approval. Please review and let me know ASAP, whether this matter may be placed on the Consent Calendar. The hearing is scheduled for **October 24, 2024**.

From: Jorgensen, Maia <maia.jorgensen@hoganlovells.com>
Sent: Tuesday, October 22, 2024 10:45 AM
To: Clerk of Board <ClerkOfBoard@aqmd.gov>
Cc: Mary Reichert <mreichert@aqmd.gov>; Boer, Tom <tom.boer@hoganlovells.com>
Subject: [EXTERNAL] South Coast AQMD - Hearing Board Case No. 4780-5 | Consent Filing

Madam Clerk,

Attached please find the following materials, in support of the parties' joint request that the petition for an extension, filed by B. Braun US Pharmaceutical Manufacturing LLC (Pharma) on August 30, 2024, in Hearing Board Case No. 4780-5, be placed on the consent calendar:

1. Stipulation to Place Matter on Consent Calendar;
2. Proposed Findings and Decision/Order, in Word and PDF versions; and
3. Supplemental Declaration of Aniekan Udobot in Support of Pharma's Petition.

Senior Deputy District Counsel, Mary Reichert (copied), will coordinate hard copy filing of the above materials later today.

As a courtesy, we are also providing a redline of the Proposed Findings and Decision/Order, showing our proposed changes to the Findings and Decision/Order issued by the Hearing Board in this matter on December 21, 2023.

Finally, for procedural clarity, please find attached updated copies of all declarations previously filed in connection with Pharma's petition for an extension, now bearing this Thursday's hearing date. These declarations were hard-copy filed on August 30, 2024, before a hearing date was assigned. No substantive changes have been made to any of these declarations since August 30. Note that the Supplemental Declaration of Aniekan Udobot, referenced as item (3) above, is being filed today (i.e., it was not previously filed on August 30).

Please contact us if you have any questions or require anything further.

Thank you,
Maia

Maia Jorgensen

Associate

Pronouns: She, Her, Hers

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