

**BEFORE THE HEARING BOARD OF THE
SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**

In the Matter of

**COUNTY OF RIVERSIDE –
SHERIFF’S PUBLIC SAFETY ENTERPRISE
COMMUNICATIONS**

[Facility ID Nos. 162456]

Petitioner.

vs.

**SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT**

Respondent.

Case No.: 6229-3

Order Granting an Interim Variance

Health and Safety Code Section 42350

Date: October 31, 2024

Time: 9:30 am

Place: 21865 Copley Drive
Diamond Bar, CA 91765

FINDINGS AND DECISION OF THE HEARING BOARD

This petition for an interim variance was heard on the consent calendar on **October 31, 2024**, pursuant to notice in accordance with the provisions of California Health and Safety Code Section 40826. Five members of the Hearing Board were present: Micah Ali, Chair; Robert Pearman, Esq, Vice Chair; Jerry P. Abraham, MD MPH CMQ; Mohan Balagopalan; and Cynthia Verdugo-Peralta. Petitioner, represented by Aaron DeGuzman, Radio Engineer, did not appear and Respondent, Executive Officer, represented by Josephine Lee, Senior Deputy District Counsel, did not appear. 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 Facilities

Petitioner operates a facility located in Lake Elsinore (Facility ID No. 162456). The Lake Elsinore facility is located at 39241 Ortega Highway, Lake Elsinore, CA 92530. The facility operates a radio communications towers that provide critical public safety communications for fire and law enforcement responders in southern Riverside county.

Equipment and Permit to Operate

This petition involves an Internal Combustion (IC) Engine driving an Emergency Generator pursuant to Permit to Operate (P/O) No. G7612 [“IC Engine”].

The IC Engine is used to provide power when there is an interruption of electrical power by Southern California Edison (SCE) to the emergency communication sites. The IC Engine provides emergency backup power in the event of a power outage to allow the radio sites to continue to maintain County emergency communications.

SUMMARY

Petitioner is in violation of Rules 203(b) as it pertains to Condition No. 4 of P/O Nos. G7612, and will achieve compliance on January 1, 2025, when the annual 200-hour operating limitation in Condition No. 4 resets.

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. The hearing was bifurcated to demonstrate that “good cause” exists to justify the holding of a hearing on an interim variance petition in the absence of notice to the public.

A. Good Cause Findings

1. Petitioner is in violation of Section 41701, or of any rule, regulation or order of the District, or that such violation is imminent.

Petitioner has exceeded its annual permitted operating limit of 200 hours for the IC Engine, as specified in Condition No.4. of Petitioner's P/O No. G7612. The current run time of the IC Engine is at 518.3 hours.

2. The circumstances leading to the violation could not reasonably have been avoided by Petitioner, or anticipated in sufficient time to provide for public notice of the variance hearing.

The circumstances leading to this violation could not reasonably have been avoided by Petitioner nor anticipated in sufficient time to provide the public notice of the variance hearing in light of the occurrence of the Airport Fire, which began on or about September 9, 2024, an unforeseen power loss from SCE required operation of the IC Engine. On September 16, 2024, the IC Engine exceeded 200 operating hours.

3. Petitioner exercised diligence in petitioning for the interim variance and scheduling the interim variance hearing; “diligence in petitioning for the variance” shall mean that Petitioner filed a variance petition as soon as feasible after the time Petitioner knew or should have known that a variance would, more likely than not, be needed.

Petitioner exercised diligence by filing for an Emergency Ex Parte, Interim, and Regular Variance on September 25, 2024. The Airport Fire began on or around September 9, 2024 and lasted nearly a month before it was completely contained. Key personnel were dedicated to ensure worker safety and keep radio communications operating for fire and emergency responders during the initial weeks of the fire. The Riverside County Public Safety Enterprise Communications Staff supported the firefighters through September 13th, helping to protect Elsinore Peak from harm. As the immediate threat of the fire diminished and the risk to public safety communications decreased around September 19th, Petitioner began to explore the petition for variance. Petitioner had not filed for a variance for the IC Engine in the last several years and required some time to develop familiarity with the process and gather all necessary information to prepare a complete and

accurate petition. Petitioner initiated the process around September 23rd and filed the petition on September 25th. An ex parte emergency variance was filed and approved on September 25th, 2024. Upon clarification from the Board, Petitioner filed a separate petition for the interim variance for the Lake Elsinore facility on October 24th, 2024.

- 4. A denial of the interim variance will result in either:**
- (a) An increase in the emissions of air pollutants, an adverse impact to air quality, and/or an adverse impact on public health or welfare; or**
 - (b) An unreasonable and unavoidable adverse impact to Petitioner.**

Denial of the variance would cause significant harm to Petitioner, in that Petitioner would be unable to operate the IC Engine, if a power outage occurred, resulting in failure to provide the critical communications to first responders, potentially causing a threat to life and property in the mountain communities. Further, the direct cause of the noncompliance resulted when SCE's equipment burned in the Airport Fire, causing an outage to their customers, including the location of the IC Engine. Power has now been restored and the IC Engine is not operating. Ultimately, however, Petitioner needs to be able to operate the generator in times of emergency.

Upon finding Good Cause the Board then proceeded to the merits of the Interim Variance and the six (6) Findings.

B. Interim Variance Findings

- a. The petitioner for a variance is or will be in violation of Section 41701, or of any rule, regulation, or order of the South Coast AQMD.**

1. The equipment cannot be operated in compliance with South Coast AQMD Rule 203(b), which requires compliance with permit conditions, because Petitioner has exceeded its annual permitted operating limit of 200 hours for the IC Engine, as specified in Condition No.4. of Petitioner's P/O No. G7612.

- b(l). Non-compliance with South Coast AQMD Rule(s) is due to conditions beyond the reasonable control of the petitioner.**

1. Petitioner is a public entity that provides vehicles, equipment, and services to the officials and employees of Riverside County. Petitioner owns and operates the IC Engine that drives emergency generators that provide emergency power to radio towers in Corona that are required for communication between first responders serving the public.

2. On or about September 9, 2024, an unforeseen power loss from SCE required operation of the IC Engine. On September 10, 2024, the IC Engine exceeded 200 operating hours. The power outage was caused by the Airport Fire, which resulted in the Governor issuing a Proclamation of a State of Emergency on September 11, 2024.

3. On September 25, 2024, Petitioner filed a petition for an Emergency Ex Parte, Interim, and Regular Variance relief from South Coast AQMD Rule 203(b) with respect to the IC Engine.

4. On September 25, 2024, Petitioner was granted an Emergency Ex Parte Variance from South Coast AQMD Rule 203(b).

5. Petitioner requested an Interim and Regular Variance to continue to operate the IC Engine for the remainder of the year for emergency purposes, as well as for maintenance and testing purposes to ensure the engine is in good working order in the event of a power outage.

6. Petitioner will achieve compliance on January 1, 2025, when the annual 200-hour operating limitation in Condition No. 4 for the IC Engine resets.

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 Petitioner, in that Petitioner would be unable to operate the IC Engine, if a power outage occurred, resulting in failure to provide the critical communications to first

responders, potentially causing a threat to life and property in the mountain communities. Further, the direct cause of the noncompliance resulted from the Airport fire, which was beyond the Petitioner’s control. The radio communication towers must operate to ensure first responder communications at all times. Ultimately, Petitioner needs to be able to operate the generator in times of emergency.

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

1. The estimated excess emissions for the IC Engine, when in use during the variance period are as follows:

Lake Elsinore IC Engine

Criteria Emission Calculations

Emission Rates	CO	NO _x	PM	PM10*	ROG	SO _x
Controlled Hourly (lb/hour)	0.09	0.01	0.00	0.00	0.00	0.0000
Maximum Daily Emissions Rate (lb/day)	2.27	0.23	0.00	0.00	0.05	0.0000

*PM10=0.96*PM

The excess emissions calculations are attached as Exhibit 1 to the Stipulation.

2. The Board determined that the significant harm to Petitioner and the public outweighs the benefit to air quality, if the emissions associated with this request were eliminated, because of denying the variance.

d. The Petitioner for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.

1. Curtailment or shutdown of the IC Engine would not bring Petitioner into compliance, as Petitioner has already exceeded the 200-hour operating limit for the calendar year of 2024.

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

1. The limited usage of the IC Engine for the remainder of 2024 will

reduce emissions to the maximum extent feasible. Petitioner will only use the IC Engine in times of emergency and for no more than one (1) hour each month per engine, for required maintenance and testing.

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 South Coast AQMD, and report these emission levels to the South Coast AQMD pursuant to a schedule established by the South Coast AQMD.

1. Petitioner shall maintain a monthly operating log of the hours of operation of the IC Engine and shall send the monthly records to South Coast AQMD, by email to South Coast AQMD staff, on the first Tuesday of each month.

g. Petitioner has also petitioned for a Regular Variance, which is scheduled to be heard on December 11, 2024.

ORDER

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

A. Petitioner is granted an interim variance from South Coast AQMD Rule 203(b) from Condition No. 4 of P/O No. G7612 for an Internal Combustion Engine driving an Emergency Generator, commencing October 31, 2024 and continuing until a noticed Regular Variance Hearing occurs on December 11, 2024.

B. Petitioner is granted, pursuant to Rule 303(p), a waiver from all fees. A copy of the Proclamation of a State of Emergency is attached as Exhibit 2 to the Stipulation.

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

1. Petitioner shall limit the operation of the Internal Combustion Engine as described in Permit to Operate (“P/O”) No. and G7612

[“IC Engine”], to emergency usage, and the IC Engine shall operate no more than 1.0 hour per month for each engine for maintenance and testing time.

2. Petitioner shall maintain a monthly operating log for the emergency IC Engine and shall send the records to the South Coast AQMD by email to Jacquelyne Drainville (jdrainville@aqmd.gov) on the first Tuesday of each month beginning November 5, 2024. The operating log shall list all engine operations in the following areas:
 - a. Date and hours of emergency operation, and specify the cause of the emergency;
 - b. Date and hours of maintenance and testing operations; and
 - c. Date and hours of any other non-emergency operation.
3. Petitioner shall calculate, record, and report all excess emissions during the variance period and submit the report to the Clerk of the Board (clerkofboard@aqmd.gov) by no later than January 31, 2025.
4. Except as otherwise permitted in variance condition 1, Petitioner shall cease operation of the IC Engine.

FOR THE BOARD: _____

DATED: _____