

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

In the Matter of	)	Case No. <b>6070-13</b>
	)	Facility ID No. 161266
<b>COUNTY OF SAN BERNARDINO-</b>	)	
<b>FLEET MANAGEMENT</b>	)	
	)	
Order Granting an Interim Variance and a	)	
Reduction of Excess Emissions Fees	)	
	)	
Section 42350 of the California	)	
Health and Safety Code	)	

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**FINDINGS AND DECISION OF THE HEARING BOARD**

This petition for an interim variance was heard on the consent calendar on **October 15, 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 Lauren Doucette, Regulatory Environmental Specialist, did not appear and Respondent, Executive Officer, represented by Sheri Hanizavareh, Principal 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 Facility**

Petitioner's facility runs an 800 MHz radio tower that provides crucial communications for first responders and is located remotely at 3000 Keller Peak Rd., Arrowbear Lake, CA 92382.

**Equipment and Permit to Operate**

The equipment that is the subject of this petition is an Internal Combustion (IC) Engine driving an Emergency Generator operated pursuant to Permit to Operate (P/O) No. G4557.

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 site. The IC Engine provides emergency backup power in the event of a power outage which allows the radio site 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 No. G4557 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. G4557. The current run time of the engine is at 694 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 Line Fire, which began on or about September 5, 2024, in San Bernardino County. On or about September 7, 2024, an unforeseen power loss from SCE required operation of the IC Engine. On September 14, 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 15, 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 generator, 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 Line Fire, causing an outage to their customers, including the location of the IC Engine. Ultimately,

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. G4557.

**b(i). 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 San Bernardino County. Petitioner owns and operates the IC Engine that drives an emergency generator that provides emergency power to a radio tower that is required for communication between first responders serving the public.

2. On or about September 7, 2024, an unforeseen power loss from SCE required operation of the IC Engine. On September 14, 2024, the IC Engine exceeded 200 operating hours. The power outage was caused by the Line Fire, which resulted in a Proclamation of a State of Emergency.

3. On the afternoon of September 15, 2023, 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 20, 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 its generator for the remainder of the year for emergency purposes, as well as for maintenance and testing purposes to ensure the generator 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 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 generator, 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 Line Fire, causing an outage to their customers, including the location of the IC Engine. 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 generator, when in use during the variance period are as follows: 0.19 pounds per hour (lb./hour) of carbon monoxide (CO), 0.51 lb./hour of oxides of nitrogen (NO<sub>x</sub>), 0.03 lb./hour of reactive hydrocarbons (RHC), 0.03 lb./hour of particulate matter (PM/PMIO), and 0.001lb./hour of oxides of sulfur (SO<sub>x</sub>).

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 generator 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 generator for the remainder of 2024 will reduce emissions to the maximum extent feasible. Petitioner will only use the generator in times of emergency and for no more than one (1) hour each month, 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 generator 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 4, 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. G4557} for an Internal Combustion Engine driving an Emergency Generator, commencing October 15, 2024 and continuing until a noticed Regular Variance Hearing occurs on December 4, 2024 (the 90 days for the Interim Variance period starts from September 20, 2024 when the Ex-parte Emergency Variance was granted).

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 (“ICE”), as described in Permit to Operate (“PO”) No. G4557, to emergency usage, and the ICE shall operate no more than 1.0 hour per month total for maintenance and testing time.

2. Petitioner shall maintain a monthly operating log for the emergency ICE and shall send the records to the South Coast AQMD by email to Adebola John (ajohn@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.
4. Except as otherwise permitted in Variance Condition #1, Petitioner shall cease operation of the ICE (PO No. G4557).

FOR THE BOARD: \_\_\_\_\_

DATED: \_\_\_\_\_





