


ATTACHMENT 3

Draft Variance Order 2024-06-R

July 3, 2024

Santa Barbara County Air Pollution Control District  
Hearing Board

260 San Antonio Road, Suite A  
Santa Barbara, California 93110

 <p>air pollution control district SANTA BARBARA COUNTY</p>	<b>Case No / Date</b>	<b>2024-06-R</b>	<b>07/03/2024</b>
	<b>Petitioner</b>	<b>County Santa Barbara Public Works Department</b>	
	<b>Permit #</b>	<b>ATC 14500-10</b>	
	<b>Date Rec'd</b>	<b>06/03/24</b>	
	<b>Time Rec'd</b>	<b>0859 hours</b>	
	<b>FOR OFFICIAL USE ONLY</b>		

**BEFORE THE HEARING BOARD  
OF THE SANTA BARBARA COUNTY  
AIR POLLUTION CONTROL DISTRICT**

In the Matter of the Application of )  
 Santa Barbara County Public Works )  
 Department for a Regular Variance )  
 from District Rules 328.C.2, C.4, G )  
 and I.1 and 206, ATC 14500-Mod 10, )  
 Conditions 9.B.12, 9.C.9.a.i, )  
 9.C.9.a.v., 9.C.9.b.ii, 9.C.9.b.xvii, )  
 9.C.9.b.xviii, 9.C.9.c.xiii (ADF CHP IC )  
 engines only), 9.C.19.a (ADF CHP IC )  
 engines only), 9.C.21 (ADF and MRF )  
 CHP IC engines only), 9.C.22 and )  
 9.C.23. )

**H.B. Case No. 2024-06-R**

**VARIANCE FINDINGS**

**AND ORDER**

Santa Barbara County Public Works Department (Petitioner) filed a Petition for Interim Variance on March 22, 2024 and a Regular Variance on June 3, 2024. The request for Interim Variance 2024-05-I was heard on May 31, 2024, and granted by Hearing Board Member Terence Dressler. Interim Variance Order 2024-05-I is in effect from March 22, 2024 through June 19, 2024 (not to exceed 90 days) or the date a decision is made on the Regular Variance, or the date compliance is achieved, whichever occurs first.

A hearing of the Regular Variance was held on July 3, 2024, in accordance with Health and Safety Code Section 40808. John Hancock and Jeanette Gonzales-Knight represented the Petitioner, and Aimee Long represented the Santa Barbara County Air Pollution Control District (District).

This matter having been fully presented and duly considered, the Hearing Board makes the following findings and gives the following reasons for its decision.

**HEARING**

1. Notice of the Hearing was duly given in the manner and for the time required by law.
2. Sworn testimony and argument on behalf of the Petitioner and the Air Pollution Control Officer were made, received, and considered.
3. A nuisance as defined in District Rule 303 is not expected to occur as a result of this Variance.
4. If, due to reasons beyond the control of the Petitioner, compliance is not achieved during this Variance period, additional relief will be sought.
5. District staff supports the Petition as conditioned below.

**BACKGROUND**

1. The Petitioner operates the equipment described in the Petition at the Santa Barbara County Tajiguas Landfill (Tajiguas Landfill) located at 14470 Calle Real in Goleta, California.
2. The equipment is owned by the County of Santa Barbara (County) and was previously operated by MSB Investors, LLC (MSB) under contract (Appendix A of the Petition) with the Petitioner.
3. The Tajiguas Landfill receives refuse from the City of Santa Barbara, City of Goleta, unincorporated areas of Montecito and Summerland, rural areas of southern Santa Barbara County, the Santa Ynez Valley and Cuyama Valley.
4. In an effort to extend the life of the Tajiguas Landfill, reduce the amount of material landfilled, increase the recovery rate of recyclable materials, and generate renewable energy, the Tajiguas ReSource Recovery Project (ReSource Center) equipment was installed at the landfill. In addition, SB 1383 required the Tajiguas Landfill to reduce the amount of organic waste disposed of in the landfill by 50% by 2014. It further requires a 75% reduction in landfilled organics by 2025.
5. The Petitioner receives municipal solid waste (MSW) in the tipping area inside the Material Recovery Facility (MRF) building at the landfill. The material is subsequently sorted into organics, recyclables, and residue in the material sorting area. Recyclables collected in the materials sorting area are sold to the market while waste residue is landfilled. The sorted organics are placed in the anaerobic digesters to generate biogas in the Anaerobic Digester Facility (ADF). The biogas is treated and combusted in combined heat and power (CHP) internal combustion (IC) engines for power generation, or an enclosed flare located at the

ADF. Following biogas generation, the digestate is processed into soil amendments and compost at the Compost Management Unit (CMU). The MRF, ADF, and CMU were designed and constructed by MSB and owned by the Santa Barbara County Public Works Department.

6. Biogas from the ADF digesters is sent to two CHP IC engines (APCD Device IDs 388360 and 389006) to produce electricity for the grid and for onsite needs. Anaerobic digesters are necessary to process organic waste. The CHP IC engines, identified by the Petitioner as engine 300 and engine 400, are equipped with Steuler dual SCR/oxidation catalyst control systems (APCD Device IDs 388361 and 389007). The oxidation catalyst reduces CO and ROC emissions while the SCR system uses urea injection to control NOx emissions. These engines are also equipped with a continuous emissions monitoring system (CEMS) and data is telemetered to the District via the Data Acquisition System (DAS).
7. On December 13, 2016, the Petitioner contracted (Appendix A of the Petition) with MSB for the development of the County's ReSource Center. The contract identified MSB (Contractor) as having exclusive control over the manner and means of performing Contractor obligations and Persons performing them.
8. The contract required MSB to install and maintain equipment at the ReSource Center. The ReSource Center includes the separation of waste products, anaerobic digestion process, composting and combustion equipment.
9. The Contract further required MSB to furnish all of the management, labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required.
10. In addition, the Contract required MSB to comply with all federal, State, City and any other governmental unit permits, order, licenses, approvals and CEQA mitigations required by Applicable Law for the facility.
11. On November 6, 2023, the Petitioner issued an intent to terminate letter to MSB with formal notification of the County's intent to terminate the Contract. Included in this letter is an explanation of why the termination was occurring and supporting documentation (including nonpayment of subcontractors). A copy of this letter is included in Appendix B of the Petition.
12. On December 12, 2023, the County Board of Supervisors unanimously voted to terminate the County's Contract with MSB for the ReSource Center due to failure to meet contractual obligations. Initially, two termination dates were set for the ReSource Center. The MRF operations were immediately terminated and transferred to the County, while the ADF and CMU operations would continue to be operated by MSB for at least 180 days, per the term of the Contract. However, on January 3, 2024, MSB requested immediate transfer of all ReSource Center permitting, compliance, operational and maintenance obligations to the County, and immediately stopped all performance under the Contract. As a result, the Contract

with the County and MSB was fully terminated, and the County took over operations and environmental compliance for the entire ReSource Center.

13. As the Petitioner began operations of the ReSource Center, it became evident to the County that MSB failed to fully communicate the state of the facility and equipment.
14. Since the Contract with MSB was terminated, the County continued to identify and repair issues resulting in outstanding violations with multiple regulatory agencies. The violations identified that are associated with District Rules and permit conditions are outlined below.
  - a. Operating two ADF CHP IC engines without emission controls and CEMS.
  - b. Operating two MRF CHP IC engines without emission controls and CEMS.
  - c. Exceeding Best Available Control Technology (BACT) emissions limits.
  - d. Failing to comply with source testing requirements for the ADF CHP IC engines.
15. The Petitioner's permit requires the ADF and MRF CHP IC engines to operate with the SCR/oxidation catalyst control system at all times. In addition, the CHP IC engines are required to be equipped with CEMS and telemeter data to the District, as required by District Rule 328.
16. The Petitioner's permit also requires annual source testing on the ADF and MRF CHP IC engines by the anniversary date. The anniversary date for the ADF CHP IC engines is March 9th plus or minus thirty days. These engines were last source tested on March 9 and 10, 2022 with passing results achieved. Due to the lapse in required testing, the District issued an NOV for failing to conduct annual source testing in 2023. The Petitioner received an administrative extension for good cause to conduct the 2024 source testing by June 8, 2024. The Petitioner has informed the District that source test passing results cannot be achieved until the repairs on the ADF CHP IC engines are completed.
17. According to the Petitioner, they have experienced significant difficulty when trying to hire contractors due to MSB's historical lack of payment to the subcontractors.
18. Due to the nature of the landfill, gas is generated by the decomposition of organic materials. The gas is routed to control equipment where it is further processed, or destroyed, using a combustion source. At the Petitioner's facility, a combination of thermal oxidizers and CHP IC engines are used to destroy the gas produced by the decomposition process. This process also prevents surface emissions at the landfill where the refuse is buried.
19. The control equipment at the landfill, the ADF and MRF CHP IC engines, are a vital process at the Petitioner's facility. Heat from the ADF CHP IC engines is needed to keep the percolate microorganisms alive and metabolizing the organic matter in the ADF digesters. In addition, the Petitioner has stated that the non-operation of the MRF and ADF CHP IC engines could

create surface emissions at the Petitioner's landfill and could result in violations elsewhere and/or create a violation with other Agency's Rules and Regulations. As a result, variance coverage was sought to continue to operate the ADF and MRF CHP IC engines in violation of District emission, monitoring, and source testing requirements.

## **FINDINGS**

1. Without Variance coverage, the Petitioner will be in violation of District Rules 328.C.2, C.4, G and I.1 and 206, ATC 14500-Mod 10, Conditions 9.B.12, 9.C.9.a.i, 9.C.9.a.v., 9.C.9.b.ii, 9.C.9.b.xvii, 9.C.9.b.xviii, 9.C.9.c.xiii (ADF CHP IC engines only), 9.C.19.a (ADF CHP IC engines only), 9.C.21 (ADF and MRF CHP IC engines only), 9.C.22 and 9.C.23.
2. Due to conditions beyond the reasonable control of the Petitioner, requiring compliance would result in either (A) an arbitrary or unreasonable taking of property, or (B) the practical closing and elimination of a lawful business.

The Petitioner recently took over operations and environmental compliance for the MRF and ADF at the Tajiguas Landfill ReSource Center, which was previously operated and maintained by MSB. After taking over, the Petitioner discovered several areas requiring attention. Although the Petitioner is the owner of the facility, while they were under contract with MSB they had no authority to interfere with the operations or maintenance of the ReSource Center. According to the contract, MSB was solely responsible for all operation and maintenance conducted at, or with relation to the project site (ReSource Center) in accordance with the requirements of the Contract, using good industry practices and meeting all performance guarantees. In addition, the Contract specified the operations conducted by MSB shall include, but not be limited to, the furnishing of all management, labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The Contract further required MSB to operate and maintain the facility in compliance with applicable laws and shall include noise, odor and other required Environmental Performance Guarantees.

Several calls with the Petitioner and MSB occurred to track and discuss facility commissioning, operations, maintenance, safety, environmental compliance, and other issues. However, it is evident to the Petitioner that MSB failed to fully communicate the state of the facility and equipment. This resulted in the Petitioner unknowingly inheriting violations from MSB, despite the Petitioner's efforts to oversee them. Therefore, these violations were beyond the reasonable control of the Petitioner. Furthermore, it will take the Petitioner time to achieve compliance because that involves obtaining equipment that is shipped from overseas, or obtaining contractors who left the facility due to lack payment for services rendered.

If the facility were to shut down, waste would be transported to the Chiquita Canyon Landfill

in Los Angeles County at an approximately cost of \$13.4 million per year. This increased cost would be passed onto the end user. Additionally, this increased distance and added truck trips would also result in a large increase in transportation related greenhouse gases.

3. The closing or taking would be without a corresponding benefit in reducing air contaminants. If the landfill were to close, the waste would be transported to the Chiquita Canyon Landfill in Los Angeles County. The increased distance and added truck trips would also result in a large increase in the transportation related greenhouse gases.

Alternatively, if the Petitioner were to bury the organic waste rather than routing it to the ADF digesters, there could be an increase in methane surface emissions, accelerated reduction of available landfill space (which is already projected to reach full capacity by February 2026), and non-compliance with Senate Bill 1383 organic waste diversion requirements with CalRecycle.

Additionally, the combustion of methane rich biogas in the ADF is more environmentally friendly than letting the biogas vent to atmosphere in the landfill, from a greenhouse gas standpoint.

4. The Petitioner evaluated shutting down the ADF CHP IC engines, however, this will require an alternative means to supply hot water to maintain the percolate tank microorganisms.
5. During the period the Variance is in effect, the Petitioner will reduce emissions by operating the ADF CHP IC engines to maintain the microorganisms in the percolate tank.
6. The Petitioner will monitor the volume of gas combusted in the ADF and MRF CHP IC engines daily and conduct monthly portable emissions analyzer monitoring on the engine stacks. At this time, the excess emissions are unknown.

**THEREFORE, THE HEARING BOARD ORDERS,** as follows:

That a Regular Variance be granted for relief from the source testing requirements for the ADF CHP IC engines, BACT emissions limits for ADF and MRF CHP IC engines, emissions controls and maintenance for the ADF and MRF CHP IC engines, CEMS requirements and data telemetry for the ADF and MRF CHP IC engines, and CEMS excursions until the repairs can be made, which is in violation of District Rules 328.C.2, C.4, G and I.1 and 206, ATC 14500-Mod 10, Conditions 9.B.12, 9.C.9.a.i, 9.C.9.a.v., 9.C.9.b.ii, 9.C.9.b.xvii, 9.C.9.b.xviii, 9.C.9.c.xiii (ADF CHP IC engines only), 9.C.19.a (ADF CHP IC engines only), 9.C.21 (ADF and MRF CHP IC engines only), 9.C.22 and 9.C.23 from June 19, 2024 through March 21, 2025, or the date compliance is achieved, whichever occurs first, with the following conditions:

1. Petitioner shall submit monthly written reports to the Hearing Board and District, to

[variance@sbcapcd.org](mailto:variance@sbcapcd.org), starting on July 15, 2024, and on the 15<sup>th</sup> of every month thereafter for the duration of the variance period. The report shall include: fuel monitoring records for the ADF and MRF CHP IC engines, monthly portable analyzer results, date of source tests once determined, repairs completed, listed of repairs to be completed along with the expected timeline of return to compliance for each item covered under this Variance and the excess emissions (in lbs) for this variance period.

2. Petitioner shall submit a written report to the Hearing Board and District, to [variance@sbcapcd.org](mailto:variance@sbcapcd.org), by April 30, 2025, or within 30 calendar days of achieving compliance, whichever comes first. The report shall include the date the repairs were completed, date the equipment returned to service, fuel monitoring records for the ADF and MRF CHP IC engines, monthly portable analyzer results, source testing date, the ADF CHP IC engine source test results (submit preliminary results if final results are not available), and the excess emissions (in lbs) for this variance period.
3. Petitioner shall retain the obligation to comply with all other local, state, and federal regulations not specifically referenced in the Order.
4. Failure to abide by all conditions of this Order shall subject the Petitioner receiving the variance to penalties set forth in Health and Safety Code section 42402.
5. In accordance with District Fees Rule 210, Hearing Board Fees, the Petitioner shall pay excess emission fees for each additional ton of pollutant emissions or portion thereof allowed as the result of the issuance of this Variance.
6. Each day during any portion of which a violation occurs is a separate offense.
7. The Environmental Protection Agency does not recognize California's Variance Program; therefore, this Variance does not protect the Petitioner from Federal Enforcement actions.
8. Petitioner shall submit deviation reports to the District for all violations of Federal requirements.

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

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Terence Dressler  
Santa Barbara County Air Pollution Control District  
Hearing Board