

FILED

JUN - 4 2007

**HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT**

BEFORE THE HEARING BOARD
OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
STATE OF CALIFORNIA

**NEEL ADVANI
DEPUTY CLERK
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT**

In the Matter of the Application of)
)
SONOMA SUPER GAS) No. 3530
)
For a Variance from Regulation 8, Rule 7,) ORDER GRANTING VARIANCE
Sections 302.1, 302.2, and 302.3)
_____)

The above-entitled matter is an Application for Variance from the provisions of Regulation 8, Rule 7, Sections 302.1, 302.2, and 302.3 of the Rules and Regulations of the Bay Area Air Quality Management District (the "District"). The Application for Variance was filed on March 28, 2007, and requested relief for the period from March 28, 2007, through June 25, 2007. The Applicant amended its Application for Variance, which was filed on April 2, 2007, to request relief from March 28, 2007 through May 26, 2007.

Saied and Dolores Molavi, owners of Sonoma Super Gas, appeared on behalf of Sonoma Super Gas ("Applicant").

Todd Gonsalves, Assistant Counsel, appeared for the Air Pollution Control Officer ("APCO").

The Clerk of the Hearing Board provided notice of this hearing on the Application for Variance in accordance with the requirements of the California Health and Safety Code. The Hearing Board heard the request for variance on May 10, 2007. During the hearing, Applicant amended its application as to the provisions from which the application requested relief. Originally, the application requested relief from Regulation 8, Rule 7, Sections 302.1, 302.2, and 303.3, and from Conditions 12269 and 20666 of Applicant's Permit to Operate. Applicant amended its application at the hearing to request relief from Regulation 8, Rule 7, Sections 302.1,

ALB

1 302.2, and 302.3 instead.

2 The Hearing Board provided the public an opportunity to testify at the hearing as required
3 by the California Health and Safety Code, but no one did so. The Hearing Board heard evidence,
4 testimony and argument from Applicant and the APCO. The APCO did not oppose the granting of
5 the variance.

6 The Hearing Board declared the hearing closed after receiving evidence, testimony and
7 argument, and took the matter under submission for decision. After consideration of the evidence,
8 the Hearing Board voted to grant the request for variance, as set forth in more detail below:

9 BACKGROUND

10 Applicant Sonoma Super Gas operates a gasoline dispensing facility (“GDF”) located at
11 18618 Sonoma Highway in Sonoma, California (the “Facility”).

12 The Facility is equipped with three underground storage tanks, a two-point Phase I vapor
13 recovery system, and a balance Phase II vapor recovery system with eighteen gasoline nozzles. A
14 Phase II system recovers gasoline vapors from the tanks of automobiles during fueling. In addition to
15 gasoline sales, the Facility operates a small convenience store. The Facility is staffed by four
16 employees, all of whom would be laid off if the Facility were to cease operations for any extended
17 period of time.

18 Regulation 8, Rule 7, Section 302.1 of the District Rules and Regulations prohibits the
19 transfer of gasoline from stationary tanks into motor vehicle fuel tanks at a gasoline dispensing
20 facility unless a CARB certified Phase II vapor recovery system is used during each transfer.

21 Regulation 8, Rule 7, Section 302.2 of the District Rules and Regulations requires that all
22 Phase II vapor recovery systems shall be maintained as per the most recent CARB certifications and
23 the manufacturer's specifications.

24 Regulation 8, Rule 7, Section 302.3 of the District Rules and Regulations requires GDF's to
25 maintain all Phase II vapor recovery equipment to be properly operating as specified by the
26 manufacturer and applicable Executive Orders of the California Air Resources Board (“CARB”), and

1 to be free of defects as defined in section 41960.2(c) of the California Health and Safety Code and
2 California Code of Regulations, Title 17, Section 94006.

3 In 1996, Applicant installed a Phase II balance system to replace the Facility's Hirt Phase II
4 system. In order for Applicant's balance system to function properly, the underground gasoline
5 storage tanks must be connected by a manifold, allowing gasoline vapors to pass between the tanks.
6 As a result, the only configuration for Applicant's balance system certified for use by the California
7 Air Resources Board ("CARB") includes a manifold. However, no manifold ever connected the
8 underground storage tanks at the Facility until Applicant had a manifold installed on or around May
9 6, 2007.

10 At the time the District reviewed the application to install the Facility's current Phase II
11 balance system, the District's permitting staff believed the Facility's underground tanks were
12 connected by a manifold. A schematic diagram depicting the locations of the Facility's tanks and
13 lines that Applicant submitted in connection with a previous permit application shows what appears
14 to be a manifold. A note in an attachment to the schematic diagram states the line that appears to be a
15 manifold, 3" [inch] fiberglass between sumps. Install and test in accordance with Ultramar
16 specification for containment piping."

17 Most of Applicant's source testing contractors did not notice that the Phase II system lacked a
18 manifold, and none ever informed Applicant that the Facility's Phase II system might not be in a
19 CARB-certified configuration.

20 In March 2007, contractor for the Applicant submitted a routine source test report to the
21 District's Source Tests Group. In response, District Source Test staff visited the site on
22 March 15, 2007, and discovered, during an equipment check, that the Facility's underground tanks
23 likely were not connected by a manifold. The source test report described the Facility's Phase II
24 system as unmanifolded, with dedicated vapor lines for each product, which is an unusual
25 configuration. On March 20, 2007, District staff returned to the Facility to conduct a "tie-tank" test to
26

1 determine whether a manifold connects the underground tanks. The tie-tank test confirmed that the
2 Facility's Phase II system lacked any manifold. Neither did each tank have a dedicated vapor line.

3 On March 20, 2007, Applicant applied to the District for an Authority to Construct to install a
4 manifold to link the tanks. On March 28, 2007, Applicant filed the instant Application for Variance.
5 On or around May 6, 2007, Applicant installed a manifold to connect all three underground storage
6 tanks at the Facility. Prior to installing the manifold, Applicant switched the contents of the 87 and
7 91 octane tanks, thereby lowering emissions. The majority of gasoline sales are of 87 octane fuel and,
8 after the switch, this grade had vapor recovery through Applicant's Phase II balance system. In
9 addition, much of the emissions from the sale of 91 and 89 octane gasoline were recovered by the
10 vehicle's onboard vapor recovery system ("OVR"). Approximately half the fleet of existing vehicles
11 has OVR.

12 DISCUSSION

13 The Hearing Board may grant a variance upon finding that the criteria set forth in Health and
14 Safety Code § 42352 are met. The burden is on the Applicant to establish the basis for making each
15 of the Findings. In this matter, Applicant has provided sufficient evidence to demonstrate that each
16 of the criteria has been met.

17 Applicant was in violation of Regulation 8, Rule 7, Sections 302.1, 302.2, and 302.3.
18 Because the Facility's Phase II system lacked a manifold, it did not qualify for CARB certification;
19 thus, insofar as the Facility transferred gasoline to motor vehicles, it operated in violation of
20 Regulation 8-7-302.1. Likewise, the Facility's lack of a manifold in its Phase II system rendered
21 Applicant in violation of Regulation 8-7-302.2. Finally, as Applicant's Phase II system cannot
22 properly function without a manifold, the lack of a manifold rendered Applicant in violation of
23 Regulation 8-7-302.3.

24 The violation of each of the above-referenced regulations lasted during the variance period
25 from the day the application was filed, March 28, 2007, through at least the day on which Applicant
26 installed the manifold at the Facility, on or about May 6, 2007. However, District staff received the

1 testing data only on May 10, 2007, the day of the hearing for the Application for Variance. This data
2 might indicate whether or not the newly-installed manifold is functioning correctly, and, therefore,
3 whether or not Applicant has achieved compliance with Regulation 8, Rule 7, Sections 302.1, 302.2,
4 and 302.3.

5 The violation was the result of conditions beyond the reasonable control of Applicant and
6 requiring immediate compliance would have resulted in an arbitrary taking of property or the practical
7 closing and elimination of a lawful business.

8 The violation was beyond Applicant's reasonable control. Applicant had reason to believe the
9 Phase II system did include a manifold, and that the Phase II system was compliant, in that the
10 District reviewed and approved plans in 1996 to install the current Phase II system and in that a
11 schematic diagram of the Facility referenced above showed what appeared to be a manifold. None of
12 Applicant's contractors ever informed Applicant the Facility's Phase II system might not be
13 compliant.

14 In addition, the fact that no manifold existed was not obvious. Any manifold would have
15 been underground. The only parts of the manifold that might have been visible would have been the
16 connections to each underground storage tank; however, even the connections are not always located
17 where they would be visible. Thus, the fact that no manifold could be seen did not strongly indicate
18 none existed.

19 Requiring immediate compliance would have required shutting down the business during the
20 permitting process for the installation of the manifold and during the installation of the manifold.
21 However, Applicant reduced emissions to a negligible level by switching the contents of the 87 and
22 91 octane tanks. This action lowered emissions because the majority of gasoline sales are of 87
23 octane fuel and, after the switch, this grade had vapor recovery through Applicant's Phase II balance
24 system. In addition, because approximately half the fleet of existing vehicles has OVR, much of the
25 emissions from the sale of 91 and 89 octane gasoline were recovered by the vehicle's OVR. Finally,
26 Applicant curtailed the Facility's operations to further reduce emissions.

1 Also, Applicant acted diligently to apply to the District for an Authority to Construct to
2 manifold the Phase II balance system and very quickly hired a contractor to install the manifold. Had
3 the Facility shut down for the variance period, the Facility's staff of four employees would have lost
4 their jobs. As a result, it would have been unreasonable to require the Facility to shut down during
5 the permitting process for the installation of the manifold and during the installation of the manifold.

6 The burden to the Applicant would be without a corresponding benefit in reducing air
7 contaminants. Although the emissions resulting from the violation have not been measured, the
8 emissions were likely small, especially after Applicant switched the contents of the 87 and 91 octane
9 tanks and Applicant's curtailment of the Facility's operations. In contrast, the economic burden
10 associated with shutting down the facility would have been considerable. Applicant would have lost
11 from approximately \$275,000.00 to \$330,000 in total revenue over the requested variance period, and
12 would have lost its entire staff of four employees.

13 Applicant did curtail the Facility's operations to reduce emissions; however, this action could
14 not obviate the need for a variance, as any gasoline transfer constituted a violation of District
15 regulations.

16 SPECIFIC FINDINGS

17 The Hearing Board finds pursuant to Health and Safety Code section 42352 that:

18 1. As of March 28, 2007, Applicant was in violation of Regulation 8, Rule 7,
19 Sections 302.1, 302.2, and 302.3 of the District Rules and Regulations. Regulation 8, Rule 7, Section
20 302.1 of the District Rules and Regulations prohibits the transfer of gasoline from stationary tanks
21 into motor vehicle fuel tanks at a gasoline dispensing facility unless a CARB certified Phase II vapor
22 recovery system is used during each transfer. Regulation 8, Rule 7, Section 302.2 of the District
23 Rules and Regulations requires that all Phase II vapor recovery systems shall be maintained as per the
24 most recent CARB certifications and the manufacturer's specifications. Regulation 8, Rule 7, Section
25 302.3 of the District Rules and Regulations requires GDF's to maintain all Phase II vapor recovery
26 equipment to be properly operating as specified by the manufacturer and applicable Executive Orders

1 of the California Air Resources Board (“CARB”), and to be free of defects as defined in section
2 41960.2(c) of the California Health and Safety Code and California Code of Regulations, Title 17,
3 Section 94006.

4 2. Due to conditions beyond the reasonable control of Applicant, requiring compliance
5 with Regulation 8, Rule 7, Sections 302.1, 302.2, and 302.3 would result in an arbitrary and
6 unreasonable taking of property or the practical closing of a lawful business. Applicant could not
7 reasonably have known his Phase II balance system lacked a manifold and therefore was not
8 CARB-certified. Applicant was diligent in installing a manifold once the lack of a manifold was
9 brought to Applicant’s attention. Moreover, it would have been unreasonable to require the
10 Facility to shut down during the permitting process for the installation of the manifold and during
11 the installation of the manifold.

12 3. The hardship due to requiring immediate compliance with Regulation 8, Rule 7,
13 Sections 302.1, 302.2, and 302.3 would be without a corresponding benefit in reducing air
14 contaminants. In part, due to Applicant’s actions to mitigate excess emissions during the variance
15 period—Applicant’s switching the contents of the 87 and 91 octane tanks and curtailing
16 operations—excess emissions resulting from the violation were negligible; however, the economic
17 burden associated with shutting down the facility would have been considerable.

18 4. Applicant could not have curtailed operations in lieu of obtaining a variance
19 without significant financial hardship.

20 5. During the variance period, Applicant reduced excess emissions to the maximum
21 extent feasible by switching the contents of the 87 and 91 octane tanks, curtailing operations, and
22 acting expeditiously to install a manifold in the Facility’s Phase II system.

23
24 THEREFORE, THE HEARING BOARD ORDERS:

25 A variance from Regulation 8, Rule 7, Sections 302.1, 302.2, and 302.3 of the Bay Area
26 Air Quality Management District Rules and Regulations is hereby granted from March 28, 2007,

1 through and including May 26, 2007, or the date as of which the District determines Applicant has
2 achieved compliance with Regulation 8, Rule 7, Sections 302.1, 302.2, and 302.3, whichever shall
3 first occur.

4 Moved by: Terry A. Trumbull, Esq.

5 Seconded by: Christian Colline, P.E.

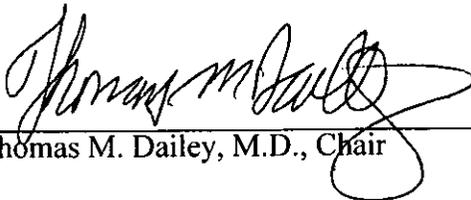
6 AYES: Christian Colline, P.E., Rolf Lindenhayn, Esq., Julio Magalhães, Ph.D.,
7 Terry A. Trumbull, Esq., and Thomas M. Dailey, M.D.

8 NOES: None

9

10

11



Thomas M. Dailey, M.D., Chair

Date 5-30-07

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26