

FILED

MAY 12 2003

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

MARY ROMAIDIS
CLERK
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

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

In the Matter of the Application of)
ALASKA GAS AND FOOD)

No. 3427

For a Variance from Regulation 8,)
Rule 7, Section 302.2)

ORDER DENYING VARIANCE

The above-entitled matter is an Application for Variance (Application) from the provisions of Bay Area Air Quality Management District (District) Regulation 8, Rule 7, Section 302.2 for the Gasoline Dispensing Facility (GDF) located at 6211 San Pablo Avenue, Oakland, California, operated by Alaska Gas Co. (Applicant). The Application was filed on April 10, 2003.

Mr. Sayed Nawab appeared for Applicant.

Shirley R. Edwards, Assistant Counsel, appeared for the Air Pollution Control Officer (APCO).

The Clerk of the Hearing Board provided notice of the hearing on the Application in accordance with the requirements of the California Health and Safety Code. The Hearing Board heard the request for variance on May 1, 2003.

The Hearing Board provided the public an opportunity to testify at the hearing as required by the California Health and Safety Code, but no members of the public testified.

ARB

1 The Hearing Board heard the Applicant's testimony. The APCO originally opposed the
2 granting of the variance, but at the hearing amended its position by not opposing the
3 variance subject to the following conditions: 1) that the variance begin on or after April 10,
4 2003 and end on June 30, 2003; 2) that Applicant complete and submit all necessary and
5 required permit applications and fees to obtain an Authority to Construct for the operation
6 of a Two-Point system at the facility and the modification of piping at the 91 tank to meet
7 CARB certification requirements; 3) that Applicant cease all operations at the facility no
8 later than June 30, 2003 to begin all necessary work to obtain a current and required permit
9 to operate the facility.

10 The Hearing Board declared the hearing closed after receiving testimony and took
11 the matter under submission for decision.

12 **BACKGROUND AND DISCUSSION**

13 Applicant operates a gasoline dispensing facility (GDF) at 6211 San Pablo Avenue,
14 Oakland, California. This GDF is equipped with three 10,000 gallon underground tanks, a
15 Two-Point Phase I Vapor Recovery System and a balance Phase II Vapor Recovery System
16 with eighteen gasoline nozzles.

17 This GDF is subject to District Regulation 8, Rule 7, Section 302.2, which requires
18 that "All Phase II Vapor Recovery Systems shall be maintained as per the most recent
19 CARB certifications and the manufacturer's specifications." On or about April 9, 2003,
20 Applicant was issued a Notice of Violation (NOV) No. 44593 for failing to comply with
21 District Regulation 8, Rule 7, Section 302.2. This NOV was issued when the 89 grade tank
22 at this GDF failed a Source Test (ST-30) on or about March 26, 2003, because of leaks. To
23 date, this 89 grade tank remains out of compliance with District Regulation 8, Rule 7,
24 Section 302.2 until such time as it passes ST-30. Applicant seeks a variance from this
25 requirement for the 89 grade tank for the period April 10, 2003, through and including June
26 30, 2003, after which time Applicant intends on shutting down the GDF in order to begin

1 modification and other changes to its operating system. Applicant was first given notice on
2 or about November 12, 2002, that in order to continue to operate its current Two-Point
3 Phase I Vapor Recovery System with three underground tanks, the GDF would need to
4 apply for and obtain an Authority to Construct and permit to operate such a system. This
5 GDF's current Permit to Operate is for a Coaxial Phase I Vapor Recovery System only. In
6 order to obtain a Permit to Operate for the Two-Point Phase I Vapor Recovery System, the
7 GDF needed to pass a Source Test (ST-27 and ST-30) at all three tanks. Applicant was put
8 on notice of this requirement on or after November 12, 2002. Applicant submitted an
9 incomplete application for an Authority to Construct for the Two-Point Phase I Vapor
10 Recovery System on or about November 25, 2002. The application was subsequently
11 cancelled by the District in or around February 2003, after several contacts had been made
12 with Applicant to try to obtain the requested information necessary for completing the
13 application. To date, Applicant operates the GDF without an applicable and current Permit
14 to Operate.

15 To date, Applicant operates only the 89 grade and 87 grade tanks for retail sale of
16 gasoline. The 91 grade tank is out of service until such time as it complies with CARB
17 certification requirements as required by District Regulation 8, Rule 7, Section 302.3.
18 Applicant testified at the hearing that approximately 300 gallons of gasoline are sold daily
19 from the 89 grade tank and 2,000 gallons of gasoline are sold daily from the 87 grade tank.
20 Applicant also testified that prior to placing the 91 grade tank out of service, approximately
21 200 gallons of gasoline were sold daily from the 91 grade tank. Applicant testified that it
22 makes approximately ten cents per gallon from the sale of 89 grade gasoline. A closure of
23 the 89 grade tank would mean a loss of approximately \$30.00 per day. Applicant also
24 testified that this GDF grosses approximately \$2 million per year with all tanks in service.

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1 Applicant is considered a small business as described by California Health and
2 Safety Code Section 42352.5(b)(2).

3 **SPECIFIC FINDINGS**

4 The Hearing Board finds pursuant to Health and Safety Code Section 42352 that:

5 1. On or between April 10, 2003, through and including June 30, 2003, Applicant
6 will be in violation of District Regulation 8, Rule 7, Section 302.2.

7 2. The conditions of noncompliance are not beyond the reasonable control of
8 Applicant, compliance with Regulation 8, Rule 7, Section 302.2 (i.e., curtailing operation of
9 the 89 grade tank until it passes source tests), will not result in an arbitrary or unreasonable
10 taking of property and will not result in the practical closure and elimination of a lawful
11 business.

12 3. Applicant has considered curtailing operations of the 89 grade tank in lieu of
13 obtaining a variance and has expressed a willingness to do so if the 89 grade tank fails
14 another source test tentatively scheduled for May 8 or 9, 2003. Curtailment would bring the
15 Applicant into compliance with District Regulation 8, Rule 7, Section 302.2.

16 **THEREFORE, THE HEARING BOARD ORDERS:**

17 A variance is denied from District Regulation 8, Rule 7, Section 302.2.

18 Moved by: Terry A. Trumbull, Esq.

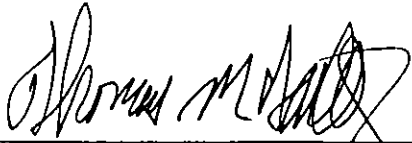
19 Seconded by: Allan R. Saxe, Esq.

20 AYES: Christian Colline, P.E.; Allan R. Saxe, Esq.;

21 Terry A. Trumbull, Esq.; and Thomas M. Dailey, M.D.

22 NOES: Julio A. Magalhães, Ph.D.

23 NON-PARTICIPATING: None.

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Thomas M. Dailey, M.D., Chair

May 8, 2003
Date