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**FILED**

**DEC - 5 2007**

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: **Docket No. 3535**

**THE AIR POLLUTION CONTROL OFFICER of the BAY AREA AIR QUALITY MANAGEMENT DISTRICT** **CONDITIONAL ORDER OF ABATEMENT**  
(Health and Safety Code Section 42451a)

**Complainant,**

vs.

**HIEP VO, individually and dbaMCKEE BEACON SERVICE**  
**Site No. C9809**

**Respondent.**

The above-entitled matter involves an Accusation and Request for Order of Abatement ("Accusation") as a result of alleged violation of Regulation 2, Rule 1 of the Rules and Regulations of the Bay Area Air Quality Management District ("District"). The District filed the Accusation on May 4, 2007.

Mr. Hiep Vo, owner of McKee Beacon Service, located at 3495 McKee Road, San Jose, California ("Respondent"), appeared on behalf of Respondent at the June 28, 2007 hearing but did not appear at the continued hearing of December 6, 2007.

ARB

1 Susan Adams, Assistant Counsel, appeared for the District Air Pollution Control Officer  
2 (“APCO”).

3 The Hearing Board held an initial the hearing on June 28, 2007 and continued the hearing  
4 to December 6, 2007. The Clerk of the Hearing Board provided notice of the hearings on the  
5 Accusation in accordance with the requirements of the California Health and Safety Code. The  
6 Hearing Board provided the public with an opportunity to testify at the hearings, as required by  
7 the California Health and Safety Code. No members of the public testified. The Hearing Board  
8 heard evidence, testimony and argument from Respondent and APCO.

### 9 BACKGROUND

10 McKee Beacon Service is a gasoline dispensing facility (“GDF”) that operates seven days  
11 a week, twenty-four hours a day. The GDF is equipped with three 10,000-gallon gasoline  
12 storage tanks and twenty-four (24) dispensing nozzles. Respondent has had a permit to operate,  
13 Permit No. C9809, which covers the period of August 1 through July 31 of the following year  
14 and which provides a permitted gasoline throughput limit of 1,700,000 gallons in any  
15 consecutive twelve-month period.

16 Volatile organic compounds (“VOCs”) are organic compounds that evaporate quickly  
17 into the atmosphere. VOCs, reacting with oxides of nitrogen in sunlight, create ground level  
18 ozone. Ground level ozone is the primary component of photochemical smog, which is a  
19 significant air quality problem in the Bay Area. Smog aggravates respiratory diseases, reduces  
20 visibility, causes eye irritation, and damages vegetation. One of the common sources of VOCs is  
21 gasoline vapors. Gasoline vapor, which contains hydrocarbons, is an air contaminant. Gasoline  
22 contains benzene, a known carcinogen.

23 District Regulation 2, Rule 1, Section 302 prohibits the use or operation of any article,  
24 machine, equipment or other contrivance that causes or controls the issuance of air contaminants  
25 by any person (as described in District Regulation 2, Rule 1, Section 401) without first obtaining  
26 a written authorization from the APCO in the form of a permit to operate.

27 District Regulation 8, Rule 7, Sections 301.13 and 302.14 require a GDF operator to  
28 demonstrate annually that its Phase I vapor recovery system is leak-free and vapor tight and that

1 its Balance Phase II vapor recovery system passes a backpressure test in order to assure that the  
2 GDF does not release air contaminants into the atmosphere.

3 1. Permit to Operate.

4 This matter originates from Respondent's failure to obtain a permit to operate for the  
5 period of August 1, 2006 to July 31, 2007. In June 2006, the District sent Respondent the  
6 invoice for the 2006 - 2007 Permit to Operate fees, which totaled \$1,176.96. The invoice  
7 informed Respondent that the GDF was not authorized to operate as of August 1, 2006, until the  
8 District received payment. Because Respondent had failed to pay the permit fees as of  
9 September 1, 2006, the District imposed reinstatement fees of \$117.89 and \$471.58, for a total  
10 amount of fees due of \$1,768.44., in accordance with District Regulations 3-405.3.1 and 3-  
11 405.3.2, for a total amount due of \$1,296.86. Until the June 28, 2007 hearing, Respondent had  
12 not paid the outstanding fees.

13 From August 1, 2006 through and including June 28, 2007, Respondent continued to  
14 operate the GDF, which a District inspector confirmed through site inspections. During an  
15 inspection on November 7, 2006, the inspector issued to the Facility Notice of Violation  
16 ("NOV") No. A48569 for operation of the GDF without a valid permit to operate, in violation of  
17 District Regulation 2, Rule 1, Section 302.

18 2. Other Violations of District Rules and Regulations.

19 As of the date of the June 28, 2007, Respondent had also failed to pay the judgment that  
20 the Small Claims Division of the Santa Clara County Superior Court had entered against  
21 Respondent on March 7, 2006, for violations of District regulations pertaining to GDFs ("Case  
22 No. 405SC016374"). The Court ordered Respondent to pay the District \$5,000.00 in civil  
23 penalties, plus \$62.00 in costs.

24 Further, as of June 28, 2007, Respondent had failed to pay a civil penalty or otherwise  
25 resolve another NOV, NOV No. A48559, for significant defects on ten of the 24 nozzles in  
26 violation of District Regulation 8-7-302, which the District had issued to Respondent on August  
27 29, 2006.

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1           3.       Public Hearing on the Accusation.

2           The parties agreed to a settlement of this matter that included a resolution of all past fees  
3 and violations and a schedule of payment of all outstanding fees, penalties and costs. At the June  
4 28, 2007 hearing, the District presented an Election of Payment executed that day by  
5 Respondent, in which Respondent agreed to pay the outstanding permit to operate fees of  
6 \$1,768.44, the civil penalties of \$2,000.00 to resolve the outstanding two NOVs, and \$5,062.00  
7 to pay the outstanding judgment in Case No. 405C016374 ("Civil Penalty Payment"). The  
8 Election of Payment included a schedule of payments, which required a payment of \$2,000.00 on  
9 the date of the hearing and \$1,000.00 on the last day of each month thereafter until the entire  
10 Civil Monetary Penalty was paid by the end of January 2008. Respondent accompanied the  
11 executed Election of Payment with the first payment installment of \$2,000.00.

12           The Hearing Board accepted the proposed settlement, with the additional requirement  
13 that Respondent timely pay the 2007 – 2008 permit to operate fees by the deadline of August 1,  
14 2007. The Hearing Board continued to public hearing to August 16, 2007 which, if Respondent  
15 had paid the fees, the Hearing Board would cancel and continue the hearing to early February  
16 2008, when Respondent should have paid the Civil Penalty Payment in full, in accordance with  
17 the executed Election of Payment.

18           As of this date, Respondent has paid \$3,000.00 of the Civil Penalty Payment. Pursuant to  
19 the schedule in the Election of Payment, Respondent owes \$4,000.00 as of November 30, 2007;  
20 will owe \$1,000.00, as of December 31; and will owe the remaining \$830.44, as of January 31,  
21 2008.

22           4.       Continuing Violations.

23           Respondent has failed to demonstrate for two years compliance with the vapor tightness  
24 standards of the Phase I enhanced vapor recovery system of the underground storage tank, as  
25 required by District Regulation 8-7-301.13 and has failed to demonstrate for two years  
26 compliance with the back pressure standards for the Balance Phase II vapor recovery system.

27           Respondent has a history of non-compliance with District regulations.

28           Respondent has not curtailed or ceased operations since June 28, 2007.

1 DISCUSSION

2 Pursuant to Health and Safety Code Section 42451(a), the Hearing Board may issue an  
3 order for abatement if it finds that any person is operating GDF without a permit or in violation  
4 of any rule, order, or regulation prohibiting or limiting the discharge of an air contaminant into  
5 the air. The Hearing Board finds that Respondent has operated the GDF in violation of the  
6 Election of Payment and in violation of the requirement that limits or prohibits discharge of air  
7 contaminant into the air.

8 ORDER

9 WHEREFORE, pursuant to Sections 42451(a) and 42452 of the California Health and  
10 Safety Code, the HEARING BOARD of the BAY AREA AIR QUALITY MANAGEMENT  
11 DISTRICT hereby ORDERS as follows:

12 1. The APCO's Request for a Conditional Order For Abatement shall be and hereby  
13 is GRANTED as follows: McKee Beacon Service is hereby ordered to cease and desist from  
14 operating the GDF until it pays the unpaid balance of Five Thousand Eight Hundred Thirty  
15 Dollars and Forty-Four Cents (\$5,830.44).

16 2. The Hearing Board shall retain jurisdiction of this matter.

17 3. This Order shall be come effectively immediately upon the filing of this Order.

18 Moved by: Rolf Lindenhayn, Esq.

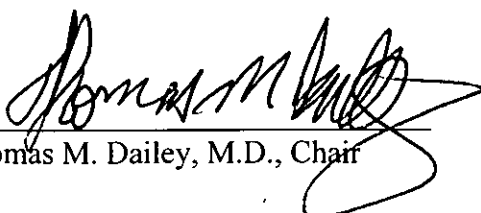
19 Seconded by: Terry A. Trumbull, Esq.

20 AYES: Rolf Lindenhayn, Esq.; Terry A. Trumbull, Esq.; Julio Magalhães,  
21 Ph.D; Thomas M. Dailey, M.D.

22 NOES: None

23 ABSTAINED: None

24 NON-PARTICIPATING: Christine Colline, P.E.

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28 Thomas M. Dailey, M.D., Chair

17-6-07  
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Date