

FILED

JUL 02 2008

HEARING BOARD  
BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

Lisa Harper  
Clerk, Hearing Board  
Bay Area Air Quality  
Management District

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

AIR POLLUTION CONTROL OFFICER of the BAY  
AREA AIR QUALITY MANAGEMENT DISTRICT )

DOCKET NO. 3548

Complainant, )

vs, )

AMENDED CONDITIONAL  
ORDER FOR ABATEMENT

MASOOD AMINI-FILABAD, *aka* AMINI FILABAD  
and HAMID AMINI, individually, and *d/b/a*  
LIVERMORE BEACON, Site No. C8876 )

Respondent. )

On January 30, 2008, the Air Pollution Control Officer (“APCO”) of the Bay Area Air Quality Management District (“District”), Complainant in the above-entitled matter, filed with this Hearing Board an Accusation and Request for Order of Abatement (“Accusation”) against Masood Amini-Filabad, *aka* Amini Filabad and Hamid Amini, individually and *d/b/a* Livermore Beacon, Respondent in this matter, to cease and desist from operating its gasoline dispensing facility, Livermore Beacon, until Respondent obtains a valid permit to operate the Facility and is in compliance with the requirements of District Regulation 8, Rule 7, Section 301.

Mr. Masood Amini-Filabad, owner of Livermore Beacon, located at 2620 East Old First Street, Livermore, California, Site No. C8876 (“Facility”), appeared on his own behalf.

Susan Adams, Assistant Counsel, appeared for the Air Pollution Control Officer.

1 The Clerk of the Hearing Board provided notice of the hearing on the Accusation in  
2 accordance with the requirements of the Health and Safety Code. The Hearing Board heard the  
3 request for an abatement order on March 20, 2008. At the hearing, the District withdrew that  
4 portion of its request in the Accusation for an order that Respondent abate violations of District  
5 Regulation 8, Rule 7, Section 301.

6 The Hearing Board provided the public with an opportunity to testify at the hearing, as  
7 required by the Health and Safety Code. No members of the public testified. The Hearing Board  
8 heard evidence, testimony and argument from the APCO and Respondent.

9 The Hearing Board closed the hearing after receiving evidence, testimony and argument,  
10 and took the matter under submission for decision. After consideration of the evidence, on  
11 March 21, 2008, the Hearing Board issued a Conditional Order for Abatement ("Order").

12 Thereafter, the APCO requested that the Hearing Board amend Paragraph 2 of the Order.  
13 The Clerk of the Hearing Board provided notice to Respondent of the District's request for the  
14 amendment. The Hearing Board, after reviewing the request for reconsideration, has voted to  
15 issue an Amendment to Conditional Order for Abatement, as set forth below:

#### 16 DISCUSSION

17 The Hearing Board issued a Conditional Order for Abatement on March 21, 2008 in this  
18 matter, in which it required the District to "obtain the Facility's actual annual gasoline  
19 throughput information for the period of 2003 - 2008 from the California Franchise Tax Board,  
20 State Board of Equalization and/or other appropriate State agency or agencies." See, Paragraph  
21 2 of the Order.

22 By letter dated April 24, 2008, Assistant Counsel Susan Adams, on behalf of the APCO,  
23 requested a modification of Paragraph 2 of the Order. In the letter, the District stated that  
24 District staff had confirmed that the State Board of Equalization was the correct entity to contact  
25 for such records. However, the District learned thereafter that, pursuant to Cal. Revenue and  
26 Taxation Code section 7056, in order for the District to obtain such records, the District had to  
27 obtain prior written approval from the Governor and to enter into an agreement with the State  
28 Board of Equalization. The District also stated that, according to staff of the State Board of

1 Equalization, the process takes approximately one year.

2           Thereafter, by letter dated June 9, 2008, Assistant Counsel Susan Adams, on behalf of the  
3 APCO, asserted that given the uncertainty of the State agreeing to provide the information and  
4 that the Respondent has the information in its possession or available to it, there is less of a  
5 burden upon Respondent than the District to provide the information to the Hearing Board.  
6 Further, the APCO requested that Respondent provide a copy of the information to the District to  
7 enable it to perform its duties.

8           The Hearing Board took the matter under advisement and notified Respondent of the  
9 District's request.

10   **SPECIFIC FINDINGS**

11           The Hearing Board finds that it is reasonable to require Respondent to provide a copy to  
12 both the Hearing Board and to the District of Respondent's submission to the State Board of  
13 Equalization or other appropriate State agency of the Facility's actual annual gasoline throughput  
14 information for the period of 2003 – 2008 because the information is in the possession of, or  
15 readily available to, Respondent and the information will assist the District in carrying out its  
16 duties.

17           The Hearing Board finds further that the procedural challenges placed upon the District  
18 to comply with the requirements set forth in Paragraph 2 of the Order, as stated by the District,  
19 are burdensome and cause an unnecessary delay, given the reasonable alternative of requiring  
20 Respondent to submit its Facility's information to the Hearing Board and the District.

21           THEREFORE, pursuant to Sections 42451(a) and 42452 of the California Health and  
22 Safety Code, THE HEARING BOARD of the BAY AREA AIR QUALITY MANAGEMENT  
23 DISTRICT hereby ORDERS that its March 21, 2008 Conditional Order for Abatement shall be  
24 and is amended as follows:

25           1.       Paragraph 2 of the Order shall be amended to read as follows:

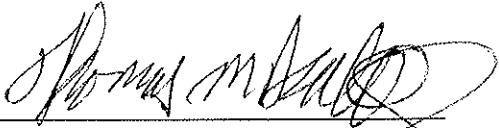
26           "2.       That Respondent shall obtain the Facility's actual annual gasoline throughput  
27 information for the period of 2003 - 2008 from the California Franchise Tax Board, State Board  
28

1 of Equalization and/or other appropriate State agency or agencies and shall provide a copy of  
2 such information to the Hearing Board and the District on or before August 15, 2008.”

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4 2. Paragraphs 1, 3, 4, 5, and 6 of the Order shall remain in full force and effect.  
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Thomas M. Dailey, M.D., Chair

6-26-08  
Date