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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. 3563

Complainant,)

vs,)

**CONDITIONAL ORDER
FOR ABATEMENT**

IRAJ SAFAPOUR, individually, and *d/b/a* 5 STAR GAS
/ N&M MARKET, and 5 STAR GAS / N&M MARKET,)
an unincorporated association)

Respondents.)

On November 6, 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 Iraj Safapour, individually and *d/b/a* 5 Star Gas / N&M Market and 5 Star Gas / N&M Market, an unincorporated association, Respondents in this matter, to cease and desist from operating the gasoline dispensing facility known as 5 Star Gas / N&M Market (“5 Star Gas”) until Respondents pass outstanding annual source tests and regain compliance with the requirements of District Regulation 8, Rule 7, Sections 301.6, 301.13, 302.3, 302.5, 302.14 and 407.

Mr. Iraj Safapour, owner of 5 Star Gas, located at 101 W. Lincoln Road, Solano County, California, Site No. C6537 (“Facility”), appeared on his own behalf and on behalf of 5 Star Gas.

Randi Wallach, Assistant Counsel, appeared on behalf of the APCO.

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 December 11, 2008.

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

7 The Hearing Board closed the hearing after receiving evidence, testimony and argument,
8 and took the matter under submission for decision. After consideration of the evidence, the
9 Hearing Board voted to issue a Conditional Order of Abatement, as set forth in more detail
10 below:

11 **BACKGROUND**

12 Volatile organic compounds ("VOCs") are organic compounds that evaporate quickly
13 into the atmosphere. VOCs, reacting with oxides of nitrogen in sunlight, create ground level
14 ozone. Ground level ozone is the primary component of photochemical smog, which is a
15 significant air quality problem in the Bay Area. Smog aggravates respiratory diseases, reduces
16 visibility, causes eye irritation, and damages vegetation. One of the common sources of VOCs is
17 gasoline vapors. Gasoline vapor, which contains hydrocarbons, is an air contaminant. District
18 Regulation 1-233. Gasoline contains benzene, a known carcinogen.

19 District Regulation 8, Rule 7 was promulgated in order to limit emissions of VOCs from
20 gasoline dispensing facilities ("GDFs"). GDFs are required to install and operate Phase I and
21 Phase II vapor recovery equipment in order to limit VOC emissions. District Regulation 8-7-
22 301.6 requires that Phase I vapor recovery equipment be maintained to be leak-free and vapor
23 tight. To confirm the vapor tightness of Phase I equipment, District Regulation 8-7-301.13
24 requires that GDFs conduct and pass an ST-30 (or ST-38) source test at least once in the
25 preceding 12 month period. District Regulations 8-7-302.3 and 8-7-302.5 require that Phase II
26 vapor recovery equipment be free of defects, leak-free and vapor tight. District Regulation 8-7-
27 302.14 requires that GDFs conduct and pass an ST-27 source test in the preceding 12 month
28 period to confirm compliance. Finally, District Regulation 8-7-407 prohibits the operation of

1 gasoline dispensing equipment unless the periodic testing requirements of Sections 301 and 302
2 are satisfied.

3 The Facility is a gasoline dispensing facility currently in operation and subject to these
4 regulations. The Facility includes one 15,000-gallon gasoline storage tank, one 12,000-gallon
5 gasoline storage tank and 8 triple-product gasoline dispensing nozzles. Respondent Safapour has
6 owned the Facility since 1983.

7 DISCUSSION

8 Pursuant to Health and Safety Code Section 42351(a), the Hearing Board may issue an
9 order for abatement if it finds that a person is operating a gasoline dispensing facility in violation
10 of a District rule or regulation that prohibits or limits the discharge of an air contaminant into the
11 air. District Regulation 8, Rule 7, Sections 301.6, 301.13, 302.3, 302.5, 302.14 and 407 all are
12 designed to limit the discharge of VOCs into the air.

13 At the hearing, the District presented evidence that Respondents have not passed the
14 required annual ST-30 and ST-27 source tests since December 16, 2005, in violation of District
15 Rules 8-7-301.13, 302.14 and 407. The District issued Notice of Violation No. A48915 for these
16 violations. The District also presented evidence that Respondents failed the ST-30 source test,
17 which was conducted by Respondents' independent contractor, Tanknology, on August 29, 2007,
18 and failed the ST-27 source test in a test conducted by the District on September 27, 2007. The
19 District testified that these test failures indicate that the Facility is and/or was not leak-free and
20 vapor tight, in violation of District Rules 8-7-301.6, 8-7-302.3 and 8-7-302.5. The District
21 issued Notice of Violation Nos. A49266 and A49302 for these violations.

22 At the hearing, Respondents testified that the Facility passed the ST-27 source test in
23 August or September of 2007. In response, the District testified that it had not received results of
24 any passing ST-27 source tests at the Facility since December 16, 2005 and that GDFs must
25 submit passing source test results for District review and approval in order to be in compliance
26 with the annual testing requirements of Regulation 8, Rule 7. Respondent Safapour stated that
27 he would locate and submit the passing results to the District. The District further testified that,
28 even if the Facility had passed the ST-27 source test in August or September of 2007, because it

1 has not passed the ST-27 since that time (more than 12 months ago), it is currently not in
2 compliance with District Rules 8-7-302.14 and 8-7-407.

3 Both the District and Respondents testified that Respondents have hired several
4 independent contractors to attempt to complete testing at the Facility in Fall 2008. There was
5 testimony that an underground leak likely exists at the Facility that likely must be repaired before
6 Respondents will be able to pass the required annual source tests. The parties agreed that
7 Respondents require a permit from the Solano County Environmental Health Department in
8 order to conduct the underground work at the Facility which is believed to be necessary to repair
9 the underground leak. Respondent Safapour testified that he (or his agent) would apply for the
10 necessary permit on the date of the hearing, December 11, 2008, have necessary repairs made,
11 and conduct the outstanding source test.

12 The District testified that, upon receipt of source test results from Respondents, the
13 District would review the source tests and inform Respondents and the Hearing Board in writing
14 as soon as possible whether the District has approved the source test results and whether
15 Respondents are in compliance with District Regulation 8, Rule 7, Sections 301.6, 301.13, 302.3,
16 302.5, 302.14 and 407.

17 At the hearing, Respondent Safapour testified that he leased operations of the Facility to a
18 third party, VJR, on or about January 2001. Respondent Safapour testified that he served an
19 eviction order on VJR on February 7, 2007 and that Respondent Safapour regained constructive
20 control of Facility operations on that date. Respondent Safapour testified that he was awarded
21 full control of operations five or six months prior to the hearing date of December 11, 2008.
22 Respondent Safapour alleged that he was not responsible for any violations that occurred during
23 the time that he leased operations to VJR.

24 At the hearing, Respondent Safapour testified that he has not received District
25 communications, including Notices of Violation and a notice of the potential for this Accusation,
26 which were sent via certified mail and/or hand-delivered to the Facility, because he works from a
27 home office at a different address from the Facility. The District testified that, in general facility
28 owners are responsible for communications that are sent via certified mail and/or hand-delivered

1 to the facilities regulated by the District and that facility owners are responsible for providing the
2 District with alternate contact information if they desire to be contacted at alternate addresses.
3 The District testified that its inspectors have had ongoing contact with on-site personnel at the
4 Facility, including Facility manager H. Dhillon Singh, who was present at the hearing but did not
5 testify. The District further testified that the Facility has paid District permit fees in accordance
6 with fees invoices sent to the Facility's address.

7 At the conclusion of the evidentiary hearing, the District testified that it would support a
8 Conditional Order of Abatement which would require that Respondents cease and desist from
9 operating the Facility in 45 days if Respondents do not pass the outstanding ST-27 and ST-30
10 source tests and receive District approval of passing source test results by that date. Respondents
11 requested that the Hearing Board allow three months to complete and pass the outstanding source
12 tests.

13 **SPECIFIC FINDINGS**

14 The Hearing Board finds that Respondents are currently operating the Facility in
15 violation of District Regulation 8, Rule 7, Sections 301.6, 301.13, 302.3, 302.5, 302.14 and 407.

16 The Hearing Board finds that Respondent Safapour is a responsible party for these
17 violations and is aware of these violations.

18 The Hearing Board finds that there is an underground leak(s) at the Facility that must be
19 repaired. Prior to conducting underground work and repairs, the Hearing Board finds that
20 Respondents must obtain a permit for such work from the Solano County Environmental Health
21 Department.

22 The Hearing Board finds that, in order to regain compliance with District Regulation 8,
23 Rule 7, Sections 301.6, 301.13, 302.3, 302.5, 302.14 and 407, Respondents must repair any
24 underground leak(s), pass the outstanding ST-27 and ST-30 annual source tests to confirm
25 compliance with these rules, and submit the results of passing source tests to the District's source
26 test division for the District's approval.

27 **THEREFORE, pursuant to Sections 42451(a) and 42452 of the California Health**
28 **and Safety Code, THE HEARING BOARD of the BAY AREA AIR QUALITY**

1 **MANAGEMENT DISTRICT hereby ORDERS:**

2 1. That the APCO's Request for a Conditional Order For Abatement shall be and
3 hereby is GRANTED as follows: Iraj Safapour, individually and *d/b/a* 5 Star Gas / N&M
4 Market and 5 Star Gas / N&M Market, an unincorporated association, Respondents in this
5 matter, are hereby ordered to comply with each of the following conditions. If Respondents do
6 not comply with each of the following conditions, Respondents shall cease and desist from
7 operating the Facility as set forth herein:

8 a. On or before December 15, 2008, Respondents shall provide the District,
9 in writing, current ownership information and Respondent Safapour's home office
10 address. If Respondents fail to comply with this condition, Respondents shall cease and
11 desist from operating the Facility on December 15, 2008.

12 b. On or before December 31, 2008, Respondents shall provide the District a
13 copy of a current permit from the Solano County Environmental Health Department that
14 authorizes Respondents and/or Respondents' agents to perform underground work and
15 repair and/or replace underground piping at the Facility. If Respondents fail to comply
16 with this condition, Respondents shall cease and desist from operating the Facility on
17 December 31, 2008.

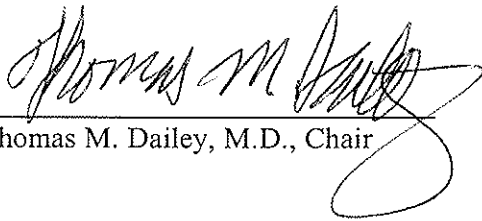
18 c. On or before February 1, 2009, Respondents shall pass the outstanding
19 ST-27 and ST-30 source tests, submit the results of these passing tests to the District for
20 the District's approval, and be in receipt of a letter from the District stating that
21 Respondents have passed all outstanding source tests and are in compliance with District
22 Regulation 8, Rule 7, Sections 301.6, 301.13, 302.3, 302.5, 302.14 and 407. If
23 Respondents are not in possession of a letter from the District stating that Respondents
24 have passed all outstanding source tests and are in compliance with District Regulation 8,
25 Rule 7, Sections 301.6, 301.13, 302.3, 302.5, 302.14 and 407, Respondents shall cease
26 and desist from operating the Facility on February 1, 2009.

27 2. This Order shall become effective immediately upon the filing of this Order and
28 shall be served upon Respondents immediately thereafter.

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3. This Order shall expire upon the filing of a letter from the District to Respondents and to this Hearing Board stating that Respondents have passed all outstanding source tests and are in compliance with District Regulation 8, Rule 7, Sections 301.6, 301.13, 302.3, 302.5, 302.14 and 407.

Moved by: Terry Trumbull, Esq.
Seconded by: Rolf Lindenhayn, Esq.
AYES: Terry Trumbull, Esq., Rolf Lindenhayn, Esq., Gilbert Bendix, P.E.,
and Julio Magalhães, Ph.D.
NOES: Thomas M. Dailey, M.D.
ABSTAINED: None


Thomas M. Dailey, M.D., Chair

12-23-08
Date