

FILED

FEB 1 2011

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

Lisa Harper
Clerk of the Boards
Bay Area Air Quality
Management District

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**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. 3603

Complainant,)

vs,)

**CONDITIONAL ORDER
GRANTING REQUEST TO
MODIFY CONDITIONAL
ORDER FOR
ABATEMENT**

MOHSEN EFRAN KHAZIRI; ELENA KHAZIRI; and)
the Gasoline Dispensing Facility located at 724 N.)
Mathilda Avenue, Sunnyvale, California, Site No. D0284,)
known as Sunnyvale Beacon Gas and Carwash, also)
known as Chevron and/or Sunnyvale Carwash)

Respondents.)

On or about November 12, 2010, 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 for Abatement (“Accusation”) against Mohsen Efran Khaziri; Elena Khaziri; and the Gasoline Dispensing Facility located at 724 N. Mathilda Avenue, Sunnyvale, California, Site No. D0284, known as Sunnyvale Beacon Gas and Carwash, also known as Chevron and/or Sunnyvale Carwash (all of whom are hereafter referred to as “Respondents”); and Does 1 through 10, inclusive requesting that the Hearing Board order Respondents to cease and desist transferring gasoline from the underground gasoline storage tanks to motor vehicles at their gasoline dispensing facility, which

1 is located at 724 N. Mathilda Avenue, Sunnyvale, California, Site No. D0284, known as
2 Sunnyvale Beacon Gas and Carwash, also known as Chevron and/or Sunnyvale Carwash
3 (“Facility”), immediately on the date of execution of an order by the Hearing Board in this
4 matter until Respondents install enhanced vapor recovery (“EVR”) Phase II system equipment
5 certified by the California Air Resources Board (“ARB”) in accordance with the requirements of
6 District Regulation 8, Rule 7, Section 302.1.

7 On December 9, 2010, this Hearing Board heard the request for an Abatement Order and
8 granted it, issuing a Conditional Order for Abatement that, inter alia, required Respondents to
9 cease and desist gasoline dispensing operations at the Facility on January 31, 2011, until
10 Respondents come into compliance with Regulation 8, Rule 7, Section 302.1 by installing an
11 ARB-certified EVR Phase II system. The Conditional Order for Abatement became effective
12 immediately.

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14 On or about January 13, 2011, Respondents filed with this Hearing Board a written
15 Request to Modify the Conditional Order for Abatement to extend the January 31, 2011, cease
16 and desist date.

17 Mr. Mohsen Efran Khaziri appeared for Respondents.

18 Todd Gonsalves, Assistant Counsel, appeared for the Air Pollution Control Officer.

19 The Clerk of the Hearing Board provided notice of the hearing on the request in
20 accordance with the requirements of Health and Safety Code section 40823. The Hearing Board
21 heard the request on January 27, 2011.

22 Mr. Tyler Henthorne testified for the APCO. Mr. Mohsen Efran Khaziri and Mrs. Elena
23 Khaziri testified for the Respondents.

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

27 The Hearing Board closed the hearing after receiving testimony and argument, took the
28 matter under submission for decision. After consideration of the evidence, the Hearing Board

1 found the following findings of fact and conclusions of law, and voted to issue a modified
2 Conditional Order for Abatement as set forth below:

3
4 **FINDINGS OF FACT**

5 1. Respondents Mohsen Efran Khaziri and Elena Khaziri continue to own and
6 operate the gasoline dispensing facility (“GDF”) that is located at 724 N. Mathilda Avenue,
7 Sunnyvale, California, Site No. D0284 and is operating as Sunnyvale Beacon Gas and Carwash,
8 also known as Chevron and/or Sunnyvale Carwash.

9 2. Respondents have not curtailed or ceased dispensing gasoline at the Facility since
10 the initial hearing on this matter before this Hearing Board on December 9, 2010.

11 3. As of January 27, 2011, the Facility had not completed the required EVR Phase II
12 upgrade and was operating in violation of District Regulation 8-7-302.1.

13 4. As of January 27, 2011, Respondents had not conducted the annual source testing
14 of the Facility’s existing Phase I and Phase II vapor recovery equipment referenced in District
15 Regulation 8, Rule 7, section 407 and as a result, efficacy of the equipment in recovering vapors
16 remains uncertain.

17 5. Respondents erroneously believed a test conducted to meet a fire department
18 requirement satisfied the air quality testing requirements in District Regulation 8, Rule 7.

19 6. A relative of Respondent Mohsen Efran Khaziri owns a condominium in
20 Malaysia (“Condominium”).

21 7. The relative has authorized, or will authorize, Respondent Mohsen Efran Khaziri
22 to sell the Condominium, and will provide Respondents with up to \$30,000 from the proceeds of
23 the sale to finance the installation of the Phase II EVR Upgrade at the Facility.

24 8. Respondents are experiencing severe financial hardship and require additional
25 time under the Conditional Order for Abatement in which to affect the sale of the Condominium
26 and perform the installation of the Phase II EVR Upgrade at the Facility.

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CONCLUSIONS OF LAW

Pursuant to Health and Safety Code sections 40750, 40752 and 42451(a), the APCO, who is appointed by the District Board of Directors, is authorized to enforce all rules and regulations adopted or prescribed by the District Board and is authorized to seek an Order for Abatement from the District’s Hearing Board to stop violations of a District rule or regulation prohibiting or limiting the discharge of an air contaminant into the air.

Pursuant to Health and Safety Code Section 42451(a), the Hearing Board may issue an Order for Abatement if it finds that a person is operating a gasoline dispensing facility in violation of a District rule or regulation that prohibits or limits the discharge of an air contaminant into the air.

Cause for determination that Respondents are in violation of District Regulation 8-7-302.1 is established by Findings of Fact Nos. 1, 2 and 3.

Cause for determination that Respondents are in violation of District Regulation 8-7-407 is established by Finding of Fact No. 4.

Cause for issuance of a conditional order extending additional time to Respondents in which to abate the violations is established by Findings of Fact Nos. 1 through 8, inclusive.

ORDER

Cause being found therefore, pursuant to Sections 40821, 42451(a), and 42452 of the California Health and Safety Code, THE HEARING BOARD of the BAY AREA AIR QUALITY MANAGEMENT DISTRICT hereby ORDERS:

1. That Respondents’ Request to Modify the Conditional Order for Abatement shall be and hereby is GRANTED as follows: Mohsen Efran Khaziri, Elena Khaziri as well as Sunnyvale Beacon Gas and Carwash, Chevron, and/or Sunnyvale Carwash and any other gasoline dispensing facility doing business at 724 N. Mathilda Avenue, Sunnyvale, California and their agents, employees, successors and assigns are hereby ordered to submit to the District, no later than February 28, 2011, passing results for all applicable annual Phase I and Phase II

1 source testing required by District Regulation 8, Rule 7, section 407 in accordance with all the
2 relevant provisions of District Regulation 8, Rule 7 and the District Manual of Procedures; and

3 2. Mohsen Efran Khaziri, Elena Khaziri as well as Sunnyvale Beacon Gas and
4 Carwash, Chevron, and/or Sunnyvale Carwash and any other gasoline dispensing facility doing
5 business at 724 N. Mathilda Avenue, Sunnyvale, California and their agents, employees,
6 successors and assigns are hereby ordered to cease gasoline dispensing operations at the Facility
7 on February 28, 2011, if Respondents fail to satisfy the testing requirements set forth above in
8 paragraph 1 of this Order, or March 31, 2011, if Respondents satisfy those requirements, until:

- 9 a. Respondents come into compliance with Regulation 8, Rule 7, Section 302.1
10 by installing an ARB-certified EVR Phase II system that complies with the
11 system manufacturer's specifications and with the terms and conditions of the
12 District authority to construct the EVR Phase II system at the Facility; and
13 b. Respondents submit the EVR Phase II upgrade "start-up notification" to
14 Respondents' District permit engineer, as required by the EVR Phase II
15 system's authority to construct, with a copy submitted simultaneously to this
16 Hearing Board and to the District Legal Division, attention Brian C. Bunker,
17 via facsimile or certified mail;

18 3. That this Modified Conditional Order for Abatement shall become effective
19 immediately.

20 4. That the Hearing Board shall retain jurisdiction over this matter until Respondents
21 come into compliance with the EVR Phase II requirements of Regulation 8, Rule 7, Section
22 302.1 and submit "start-up notification" in accordance with the requirements set forth in
23 Paragraph 1 of this Conditional Order for Abatement.

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25 Moved by: Rolf Lindenhayn, Esq.

26 Seconded by: Julio Magalhães, Ph.D.
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1 AYES: Julio Magalhães, Ph.D., Rolf Lindenhayn, Esq., and Thomas M. Dailey, M.D.

2 NOES: Terry A. Trumbull, Esq.

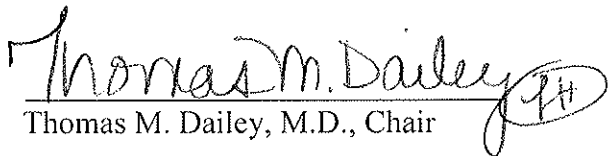
3 ABSTAINED: None

4 ABSENT: Christian Colline, P.E.

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Thomas M. Dailey, M.D., Chair

2/15/11
Date

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

In the Matter of the Accusation of:

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

Complainant,

v.

MOHSEN EFRAN KHAZIRI; ELENA KHAZIRI; and the Gasoline
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Carwash, also known as Chevron and/or Sunnyvale Carwash; and
DOES 1 through 10, inclusive,

Respondents

DOCKET NO. 3603

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA

City and County of San Francisco

ss.

I, Lisa Harper, do hereby certify under penalty of perjury as follows:

That I am a citizen of the United States, over the age of eighteen years and not a party to the above entitled action; that I served a true copy of the attached Notice of Re-Hearing on:

**Mohsen Efran and Elena Khaziri
724 N. Mathilda Avenue
Sunnyvale, CA 94085-3510**

**Mohsen Efran and Elena Khaziri
18982 Bonnet Way
Saratoga, CA 95070-5217**

**Sunnyvale Beacon Gas and Carwash
724 N. Mathilda Avenue
Sunnyvale, CA 94085-3510**

by depositing same in the United States mail, first class, certified, postage prepaid, on February 15, 2011; and on

**Brian C. Bunger
District Counsel
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109**

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BAY AREA AIR QUALITY MANAGEMENT DISTRICT
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Brian C. Bungler
District Counsel
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109