

FILED

APR - 1 2013

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

Sean Gallagher
Clerk of the Boards
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

Complainant,

vs.

KELLY ENGINEER,

Respondents.

DOCKET NO. 3646

~~PROPOSED~~ STIPULATED
CONDITIONAL ORDER FOR
ABATEMENT

On or about January 10, 2013, the Air Pollution Control Officer ("APCO") of the Bay Area Air Quality Management District ("District"), Complainant in this matter, filed an accusation and request for conditional order for abatement against KELLY ENGINEER, an Individual ("Respondent" or "ENGINEER"). The APCO sought an order from this Hearing Board requiring Respondent to cease dispensing gasoline dispensing operations at the gasoline dispensing facility located at 1220 W. Tennyson Road, Hayward, Alameda County, California, District Site No. C8775, also known as "All American Oil" ("Facility"), within ten days of the date of the hearing until Respondent comes into compliance with District Regulation 2, Rule 1, Section 302.

The Clerk of the Hearing Board assigned this matter Docket No. 3646 and set a hearing for March 7, 2013. The Clerk of the Hearing Board provided notice of the hearing on the Accusation in accordance with the requirements of Health and Safety Code section 40823. The Hearing Board

1 conducted a hearing on the District's request for a Conditional Order for Abatement on March 7, 2013.

2 Respondent ENGINEER appeared for himself.

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

4 Following opening statements by the Parties, the Hearing Board recessed the hearing. During
5 the recess, the Parties agreed on the terms for a stipulated conditional order for abatement in this
6 matter. Following the hearing recess, the APCO presented the Parties' agreements and terms for a
7 stipulated conditional order for abatement, and stated that ENGINEER had affirmed he is the
8 operator and sole proprietor of the Facility, as set forth in the District's records. Respondent
9 ENGINEER stated on the record his agreement to the terms of such a stipulated order.

10 The Parties agreed and stipulated that the District will apply Respondent's February 2013 and
11 March 7, 2013 cashier's checks of \$2,000 and \$1,250 respectively toward the outstanding District
12 permit to operate fees due for the July 1, 2010 to July 1, 2013 permit years; and the District will
13 receive from Respondent payments to cover all outstanding District permit to operate fees for the
14 July 1, 2010 to July 1, 2013 permit years by May 31, 2013 and the July 1, 2013 – July 1, 2014
15 permit to operate fees by June 30, 2013, on the dates and in the amounts as follows:

- 16 • April 15, 2013 \$1,650.00
- 17 • May 31, 2013 \$1,584.89
- 18 • June 30, 2013 All July 1, 2013 – July 1, 2014 permit to operate fees, to avoid
19 late or other reinstatement fees if paid thereafter.

20 The Parties agreed and stipulated that as long as the District receives payments in accordance
21 with the payment schedule, Respondent may continue to conduct gasoline dispensing operations at
22 the Facility, but if Respondent fails to pay the monies due on April 15, May 31, or June 30, 2013,
23 Respondent shall cease gasoline dispensing operations at the Facility immediately as of the missed
24 payment date until Respondent comes into compliance with District Regulation 2, Rule 1, Section 302.

25 The Hearing Board provided the public with an opportunity to testify at the hearing, as required
26 by the Health and Safety Code. No members of the public testified. The Hearing Board closed the
27 hearing and approved unanimously issuance of a stipulated conditional order for abatement with the
28 terms agreed upon by the Parties and described hereinabove.

1 **WRITTEN EXPLANATION OF ACTION**

2 Because the Parties have stipulated to the terms that are contained in this Stipulated Conditional
3 Order for Abatement to resolve this matter (“Conditional Order for Abatement”), the Hearing Board is
4 not required to make any factual findings to support the Conditional Order for Abatement, but Health
5 and Safety Code Section 42451(b) requires that the Hearing Board include a written explanation of its
6 action in this Conditional Order for Abatement. To that end, the Hearing Board explains its action as
7 follows:

8 Respondent affirms that he owns and operates the gasoline dispensing facility at 1220 W.
9 Tennyson Road, Hayward, Alameda County, California, District Site No. C8775, also known as “All
10 American Oil.” Respondent admits he has been in continuing violation of District Regulation 2, Rule
11 1, Section 302 by operating the Facility since July 1, 2010 without a valid, current annual District
12 permit to operate. Respondent has agreed to address the violations of District Regulation 2, Rule 1,
13 Section 302 identified in the Accusation and to provide the relief sought by the District by payment of
14 all outstanding permit to operate fees for the July 1, 2010 – July 1, 2013 permit years in the amounts
15 and on the dates specified by the Parties at this hearing and to pay the July 1, 2013 – July 1, 2014
16 permit to operate fees before July 1, 2013, which if paid by then, will avoid any late fees. The Parties
17 have agreed that Respondent may continue gasoline dispensing operations at the Facility as long as he
18 complies with the agreed-upon schedule, but that if he fails to comply with the payment schedule,
19 Respondent shall cease gasoline dispensing operations at the Facility immediately and until Respondent
20 obtains a valid, current District permit to operate, including payment of all required fees.

21 The Hearing Board believes that the Parties’ agreed course of action is in the public interest
22 and therefore, that the entry of this Conditional Order for Abatement is appropriate under the
23 circumstances.

24 **Conditional Order for Abatement**

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

28 That the APCO’s and Respondent’s request for a Stipulated Conditional Order for Abatement

1 shall be and hereby is GRANTED as follows:

2 1. Respondent ENGINEER and Respondent’s agents, successors and assigns are hereby
3 ordered to cease gasoline dispensing operations at a gasoline dispensing facility, 1220 W. Tennyson
4 Road, Hayward, Alameda County, California, District Site No. C8775, also known as “All American
5 Oil” immediately until Respondent comes into compliance with District Regulation 2, Rule 1, Section
6 302, unless the District receives full payment of all annual District permit to operate fees, including
7 reinstatement fees, for the period of July 1, 2010 through July 1, 2013 and full payment of the July 1,
8 2013 – July 1, 2014 permit to operate fees, in accordance with the following schedule of payment
9 receipt dates and payment amounts:

- 10 • April 15, 2013 \$1,650.00
- 11 • May 31, 2013 \$1,584.89
- 12 • June 30, 2013 All July 1, 2013 – July 1, 2014 permit to operate fees.

13 2. That this Conditional Order for Abatement shall become effective immediately upon its
14 execution by the Chair of the Hearing Board or his designee; and

15 3. That the Hearing Board shall retain jurisdiction over this matter until Respondent comes
16 into compliance with the requirements of Regulation 2, Rule 1, Section 302 for the permit to operate
17 years of July 1, 2010 – July 1, 2014.

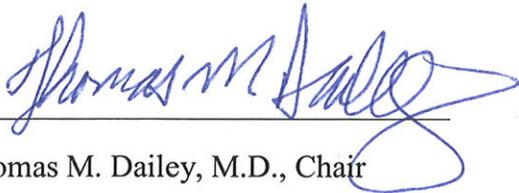
18
19 Moved by: Terry Trumbull, Esq.

20 Seconded by: Julio Magalhães, Ph.D.;

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

22 NOES: None

23 ABSENT: Rolf Lindenhayn, Esq.

24 
25 _____
26 Thomas M. Dailey, M.D., Chair

24 4.1.13
25 _____
26 Date

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

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

Complainant,)

vs.)

KELLY ENGINEER, an individual,)
Respondent.)

DOCKET NO. 3646

CERTIFICATE OF SERVICE

I, Sean Gallagher, 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 Stipulated Conditional Order for Abatement on:

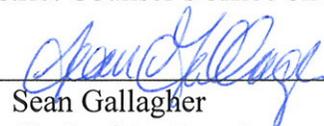
**Kelly Engineer
c/o All American Oil
1220 West Tennyson Road
Hayward, CA 94544**

by depositing same in the United States certified mail, return receipt requested, on April 8, 2013; and

**Susan Adams
Assistant Counsel
Bay Area Air Quality Management District
939 Ellis Street, 7th Floor
San Francisco, CA 94109**

by hand-delivery deposit of same in the in-box of the District Counsel's office on April 8, 2013.

DATED: April 8, 2013


Sean Gallagher
Clerk of the Boards

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