

APR 26 2014

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT
Sean Gallagher
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

Complainant,

vs.

ALEX AGUILAR; and DOES 1 through 25, inclusive,

Respondents.

) DOCKET NO. 3661
)
) STIPULATED CONDITIONAL ORDER
) FOR ABATEMENT
)
)
) Hearing: April 10, 2014
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)

On February 11, 2014, the Air Pollution Control Officer ("APCO") of the Bay Area Air Quality Management District ("District"), Complainant in this matter, filed its Accusation of Violation of District Regulation 2, Rule 1 and Request for Conditional Order for Abatement ("Accusation") against ALEX AGUILAR; and DOES 1 through 25, inclusive ("Respondents"). The APCO sought an order from this Hearing Board requiring that Respondents cease operating the solvent evaporating source at their auto body and paint facility, located at 3036 Giant Road, San Pablo, Contra Costa County, California, District ("Facility"), as of 15 days from the Hearing Board's filing of the Conditional Order for Abatement unless and until Respondents come into compliance with District Regulation 2, Rule 1, Section 302.

The Clerk of the Hearing Board assigned this matter Docket No. 3661 and set a hearing for April 10, 2014. The Clerk of the Hearing Board provided notice of the hearing on the Accusation in accordance with the requirements of California Health and Safety Code section 40823.

1 On March 19, 2014, the APCO filed the Bay Area Air Quality Management District's Request for
2 Official Notice in Support of Accusation and Request for Conditional Order for Abatement ("Request
3 for Official Notice") and served the Request for Official Notice on Respondents the next day.

4 On April 9, 2014, Respondent AGUILAR requested Spanish translation services. The Hearing
5 Board provided Spanish translation services for Respondent AGUILAR on the day of April 10th.

6 On April 10, 2014, before the hearing commenced and with the translator present, Respondent
7 AGUILAR executed and filed with the Hearing Board a declaration in which he stated that he has
8 owned and operated Alex Auto Body, located at 3036 Giant Road, San Pablo, Contra Costa County,
9 California, since about February 2011. In his declaration, he specified also the terms of a stipulated
10 conditional order for abatement in this action to which he would agree. The Clerk of the Hearing Board
11 witnessed the executed declaration.

12 At the time that Respondent AGUILAR filed his declaration, the District filed with the Hearing
13 Board, a "[Proposed] Stipulated Conditional Order for Abatement" that contained the terms of such a
14 stipulated order agreed upon by Respondent AGUILAR, summarized as follows:

- 15 1) On or before May 9, 2014, Respondent AGUILAR shall obtain an authority to construct and
16 annual permit to operate solvent evaporating sources at 3036 Giant Road, San Pablo, Contra
17 Costa County, California ("Facility"), pursuant to the requirements of District Regulation 2,
18 Rule 1 and Regulation 3, for the period of time commencing as of the date Respondent
19 AGUILAR began operating those sources at the Facility in 2011 through the end of the
20 current permit operating year 2014 – 2015, with a permit year that ends March 1 of each year;
- 21 2) Respondent AGUILAR may continue operating solvent evaporating sources at the Facility
22 pursuant to a Hearing Board conditional order for abatement until the earlier of (1) his having
23 obtained a District permit to operate solvent evaporating sources at the Facility or (2) the end
24 of day May 9, 2014; if Respondent AGUILAR fails to obtain a District permit to operate
25 solvent evaporating sources at the Facility by the end of the day May 9, 2014, he must cease
26 operating all solvent evaporating sources until he has obtained the required permit to operate;
- 27 3) Failure to comply with the terms of the stipulated conditional order for abatement is a
28 violation of the order; and

1 4) The Hearing Board shall retain jurisdiction over this matter, Docket No. 3661, until the earlier
2 of Respondent AGUILAR having complied with all terms of the stipulated conditional order
3 for abatement or having ceased operating all solvent evaporating sources at the Facility.

4 The Hearing Board conducted a hearing on the District's Accusation on April 10, 2014,
5 commencing at 11:25 a.m. Susan Adams, Assistant Counsel, appeared for the Complainant.
6 Respondent AGUILAR appeared for himself.

7 The APCO made an opening statement. The APCO stated on the record that the District has
8 agreed to stipulate to a Hearing Board conditional order for abatement against Respondent
9 AGUILAR that contains the terms included in the [Proposed] Stipulated Conditional Order for
10 Abatement, based on Respondent AGUILAR's prior submission of a complete application and all
11 associated fees for the application, the permit to operate all solvent evaporating sources at the
12 Facility and the back fees for having operated the sources from March 1, 2011 to March 1, 2014.

13 The APCO requested that the Hearing Board take official notice of the facts and documents
14 submitted with its Request for Official Notice and also enter into the record for this Docket No.
15 3661 the District's Exhibit Numbers 1 and 2, filed on April 3, 2014, and Notice of Violation No.
16 A51020, annexed to the Accusation. Respondent AGUILAR accepted the admission of these
17 documents. The Hearing Board moved the exhibits and NOV No. A51020 into evidence. The
18 Hearing Board took official notice of the facts and documents contained in the District's Request for
19 Official Notice.

20 The Hearing Board provided the public with an opportunity to testify at the hearing, as required
21 by the California Health and Safety Code. No members of the public testified.

22 The Hearing Board closed the hearing. Hearing Board Member Chiu inquired of Ms. Adams
23 whether the date "November 2014" in Paragraph 19 of the Accusation was a typographical error that
24 should have read "November 2013." Ms. Adams affirmed it was an error and that the date in Paragraph
25 19 should read "November 2013." Pursuant to Hearing Board Rule 4.8, the Hearing Board ordered the
26 Accusation on record was so amended to correct the date.

27 Hearing Board Member Magalhães inquired of the District's permit engineer, Duncan Campbell,
28 and Ms. Adams whether Respondent AGUILAR had submitted an adequate permit application and paid

1 the necessary application and associated permit fees and queried further the amount of fees due. The
2 District informed the Hearing Board that prior to the hearing, Respondent AGUILAR had submitted an
3 adequate application that the District deemed properly filed. The total amount of fees due was
4 \$2,962.00, based on the understanding of the Facility's operation; he paid \$2,960.00, and the District
5 waived the balance.

6 Hearing Board Member Lindenhayn inquired of Mr. Campbell the requirements concerning
7 spray booths for auto refinishing facilities pursuant to District Regulation 8, Rule 45 and inquired of
8 Respondent AGUILAR whether he understood that he is obligated to comply with the requirements of
9 District Regulation 8, Rule 45, including recordkeeping and reporting requirements, and whether
10 Respondent AGUILAR was confident he could comply. Respondent AGUILAR responded
11 affirmatively. In response to a query from Hearing Board Member Chiu, Mr. Campbell affirmed that he
12 had explained that morning to Respondent AGUILAR the permit and the applicable federal
13 requirements for conducting auto refinishing. Mr. Campbell stated that he also provided to Respondent
14 AGUILAR a copy of the permit conditions and a sample of the District-approved solvent and coating
15 logs for his recordkeeping and stated further that he explained the documents to Respondent AGUILAR.
16 Ms. Adams stated that Respondent AGUILAR's solvent and coating materials distributor, Finishmaster,
17 also prepares records of a customer's materials usage to help it comply with District regulations – as
18 shown in Complainant's Exhibit 2 - particularly to assist a customer that may lack access to
19 recordkeeping tools.

20 Respondent AGUILAR made a statement. He apologized to everyone and stated that he made
21 "these mistakes" because he lacked the education, but that from this point on, he would try to do
22 everything.

23 The Hearing Board approved unanimously the terms of the Parties' proposed stipulated
24 conditional order for abatement.

25 **WRITTEN EXPLANATION OF ACTION**

26 Because the Parties have stipulated to the terms set forth in a proposed stipulated conditional
27 order on file in this matter, the Hearing Board is not required to make any factual findings to support
28 the Stipulated Conditional Order for Abatement under California Health and Safety Code Section

1 42451(b). However, the Hearing Board must include a written explanation of its action in this
2 Stipulated Conditional Order for Abatement. To that end, the Hearing Board explains its action as
3 follows.

4 Respondent AGUILAR admits he is the owner and operator of the auto refinishing facility at
5 3036 Giant Road, San Pablo, Contra Costa County, California (“Facility”) and admits further to having
6 violated the permit requirements of District Regulation 2, Rule 1 and Regulation 3 by having operated
7 solvent evaporating sources at the Facility since February, 2011 without the required District permit to
8 operate. He filed a declaration with this Hearing Board in which he agreed to obtain the District
9 permit to operate by on or before May 9, 2014. He has stated on the record that he understands, and
10 can comply with, the requirements of District Regulation 8, Rule 45. He has not disputed the
11 allegations contained in the Accusation in this matter, nor has he filed a notice of defense.

12 The Parties have agreed – through their [Proposed] Stipulated Conditional Order for Abatement
13 on file - that Respondent AGUILAR will obtain the required District permit to operate by on or before
14 May 9, 2014 and that while he does so, he may continue to operate solvent evaporating sources, but
15 until no later than the end of the day May 9, 2014. The Parties agreed further that a stipulated
16 conditional order for abatement issued by the Hearing Board would include the provision that failure to
17 bring the Facility into compliance with District Regulation 2, Rule 1 and Regulation 3 by on or before
18 May 9, 2014 would be a violation of that order.

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

22 **Stipulated Conditional Order for Abatement**

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

26 1. That the APCO’s and Respondent AGUILAR’s request for this Stipulated Conditional
27 Order for Abatement shall be and hereby is GRANTED as follows:

28 a. On or before May 9, 2014, Respondent AGUILAR shall obtain an annual permit to

1 operate solvent evaporating sources at 3036 Giant Road, San Pablo, Contra Costa
2 County, California ("Facility"), pursuant to the requirements of District Regulation 2,
3 Rule 1 and Regulation 3, for the period of time commencing as of the date
4 Respondent AGUILAR began operating those sources at the Facility in 2011 through
5 the end of the current permit operating year 2014 – 2015, with a permit year that ends
6 March 1 of each year; and

7 b. Respondent AGUILAR may continue operating solvent evaporating sources at the
8 Facility pursuant to a Hearing Board conditional order for abatement until the earlier
9 of (1) his having obtained a District permit to operate solvent evaporating sources at
10 the Facility or (2) the end of day May 9, 2014. If Respondent AGUILAR fails to
11 obtain a District permit to operate solvent evaporating sources at the Facility by the
12 end of the day May 9, 2014, he must cease operating all solvent evaporating sources
13 until he has obtained the required permit to operate; and

14 c. Failure to comply with the terms of the stipulated conditional order for abatement is
15 a violation of the order.

16 2. That this Stipulated Conditional Order for Abatement shall become effective as of the
17 date the Chair or Hearing Board or his designee files it, pursuant to Hearing Board Rule 10.3; and

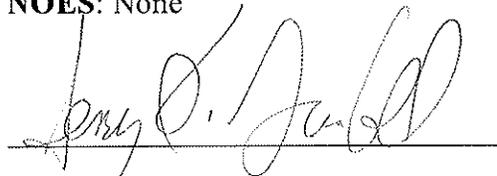
18 3. The Hearing Board shall retain jurisdiction over this matter, Docket No. 3661, until the
19 earlier of Respondent AGUILAR having complied with all terms of the stipulated conditional order for
20 abatement or having ceased operating all solvent evaporating sources at the Facility.

21 **Moved by:** Gilbert G. Bendix, P.E.

22 **Seconded by:** Peter Y. Chiu, M.D., P.E.

23 **AYES:** Julio A. Magalhães, Ph.D.; Rolf Lindenhayn, Esq.; Gilbert G. Bendix, P.E.; Peter Y. Chiu,
24 M.D., P.E.; and Terry A. Trumbull, Esq.

25 **NOES:** None

26
27 

28 Terry A. Trumbull, Esq., Chair

4/26/14

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,)

NO. 3661

Complainant,)

CERTIFICATE OF SERVICE)

vs.)

ALEX AGUILAR; and DOES 1 through 25,)
inclusive,)

Respondents.)

STATE OF CALIFORNIA)
City and County of San Francisco)

ss.

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:

**Alex Aguilar
Alex Auto Body
3036 Giant Road
San Pablo, CA 94806**

AND

**Alex Aguilar
1416 Miner Avenue
San Pablo, CA 94806**

by depositing same in the United States certified mail, return receipt requested, on April 30, 2014; and on

**Susan D. 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 30, 2014.

DATED: April 30, 2014



Sean Gallagher
Clerk of the Boards