

SEP 25 2014

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

) DOCKET NO. 3663

) STIPULATED CONDITIONAL ORDER
) FOR ABATEMENT

Complainant,

vs.

) Hearing: September 4, 2014

GILBERTO ISLAS, an individual; NANCY RAMALES,
an individual; PASIANO MORENO; and DOES 1
through 25, inclusive,

Respondents.

On July 3, 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 GILBERTO ISLAS, an individual; NANCY RAMALES, an individual; PASIANO MORENO; and DOES 1 through 25, inclusive ("Respondents"). The APCO had 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 29529 Ruus Road, Hayward, Alameda County, California, District ("Facility"), as of 15 days from the Hearing Board's filing of the Conditional Order for Abatement unless and until Respondents came into compliance with District Regulation 2, Rule 1, Section 302.

The Clerk of the Hearing Board assigned this matter Docket No. 3663 and set a hearing for

1 September 4, 2014. The Clerk of the Hearing Board provided notice of the hearing on the Accusation
2 in accordance with the requirements of California Health and Safety Code section 40823. No
3 Respondents filed a notice of defense to this action.

4 On August 27, 2014, the APCO filed the *Bay Area Air Quality Management District's Request*
5 *for Official Notice in Support of Accusation and Request for Conditional Order for Abatement* ("Request
6 for Official Notice") and served the Request for Official Notice on Respondents the same day.

7 The Hearing Board conducted a public hearing on the District's Accusation on September 4,
8 2014.

9 Susan Adams, Assistant Counsel, appeared for the Air Pollution Control Officer, and made an
10 opening statement. The APCO described the alleged violation and the facts to be presented in
11 support of the APCO's allegation; summarized the procedural matters to be presented by the APCO,
12 including its request that result from Respondents having not filed a notice of defense and its request
13 that the Hearing Board take official notice of the facts and documents submitted with its Request for
14 Official Notice in support of the request for a conditional order for abatement; and stated the
15 estimated length of time of the APCO's presentation and direct testimony.

16 Respondent ISLAS appeared for himself. He stated that Respondent RAMALES is his wife and
17 that she would not appear because she was working. Respondent ISLAS stated that he took ownership
18 of the Facility in 2007 from Respondent MORENO, a relative. He stated that he had been operating
19 without a District permit to operate since 2009 and was late in paying the fees for the 2008 – 2009
20 permit year, that he would like to pay his fees and that he had brought a partial payment to the hearing.
21 He stated that he did not recall having spoken with the APCO's counsel about this matter prior to the
22 hearing. Ms. Adams affirmed they had not spoken prior to the hearing.

23 Chair Trumball recessed the hearing for approximately thirty minutes to provide the parties
24 the opportunity to settle the matter.

25 Following the recess, the APCO stated on the record that the APCO and Respondent ISLAS
26 reached agreement on the provisions, terms and conditions of a stipulated conditional order for
27 abatement, which the APCO agreed to provided Respondent ISLAS submit by the end of September
28 4, 2014 a certified check in the amount of One Thousand Five Hundred Dollars (\$1,500.00) as a

1 partial payment of outstanding permit fees due. The APCO presented to the Hearing Board the
2 statements, terms and conditions of the proposed stipulated conditional order for abatement, as follows:

3 1) Respondent ISLAS states and admits that:

4 a. Respondent RAMALES and he have owned P & R Auto Body, located at 29529
5 Ruus Road, Hayward, California (“Facility”) since July 1, 2007, including the
6 solvent evaporating sources at the Facility, when they took ownership from
7 Respondent MORENO, his cousin; and

8 b. Respondents RAMALES and he paid the fees for the 2007 – 2008 District permit
9 to operate; and

10 c. In 2011, he paid the fees for the September 1, 2008 – September 1, 2009 District
11 permit to operate solvent evaporating sources at the Facility and submitted an
12 emissions data update he had prepared; and

13 d. Respondents have not paid any District permit to operate fees for the permit years
14 covered by September 1, 2009 through September 1, 2015.

15 2) Respondent ISLAS shall pay all outstanding District permit to operate fees due for the permit
16 periods covering September 1, 2009 through September 1, 2015 by cashier’s check, which is a
17 total of \$3,422.00, in accordance with the following schedule:

18 a. September 4, 2014, \$1,500.00 (condition precedent to a stipulated conditional order);

19 b. September 12, 2014, \$1,000; and

20 c. September 19, 2014, \$922.00.

21 3) Respondents may continue operating solvent evaporating sources at the Facility under, and
22 pursuant to, a Hearing Board conditional order for abatement until no later than the end of day
23 September 19, 2014, unless Respondent ISLAS has made all permit payments in the amounts
24 of and accordance with the schedule set forth in Paragraph 2 above, in which case,
25 Respondents may continue to operate the solvent evaporating sources until Respondents
26 obtain a current permit to operate; and

27 4) If Respondent ISLAS fails to pay either the second or third payment in the amount of, and by
28 the deadline set forth in, Paragraph 2 above, Respondents must cease operating all solvent

- 1 evaporating sources until the District has issued the required permit to operate; and
- 2 5) Respondent ISLAS shall submit to the District's Engineering Division a completed and
- 3 accurate District transfer of ownership form for P & R Auto Body and shall provide the
- 4 District a current e-mail address and working phone number as contact information for the
- 5 Facility and Respondent ISLAS; and
- 6 6) Respondent ISLAS shall submit documentation that Respondents ISLAS and RAMALES
- 7 own P & R Auto Body solvent evaporating sources; and
- 8 7) Respondent ISLAS agrees that Respondents RAMALES and ISLAS were properly served
- 9 the accusation and accompanying information; that he accepted into the record of Docket
- 10 No. 3663 the documents and facts submitted pursuant to the Request for Official Notice;
- 11 and that he reviewed the APCO's proposed exhibits that the APCO submitted to the
- 12 Hearing Board in this action, numbered as Exhibits 1 through 9, and accepted the
- 13 submission of the exhibits into the record of Document No. 3663; and
- 14 8) Failure to comply with the terms of the stipulated conditional order for abatement is a
- 15 violation of the order.

16 Respondent ISLAS affirmed to the Hearing Board that he agreed to the terms and provisions

17 of the proposed stipulated Hearing Board conditional order for abatement as they were stated by the

18 APCO.

19 **WRITTEN EXPLANATION OF ACTION**

20 Because the Parties have stipulated to the entry of the proposed stipulated conditional order as

21 the Stipulated Conditional Order for Abatement ("Stipulated Conditional Order") in this matter, the

22 Hearing Board is not required to make any factual findings to support the Stipulated Conditional

23 Order under California Health and Safety Code Section 42451(b). However, the Hearing Board must

24 include a written explanation of its action in this Stipulated Conditional Order. To that end, the

25 Hearing Board explains its action as follows:

26 Respondents ISLAS and RAMALES were timely notified of this action and this hearing. None

27 of the Respondents filed a notice of defense to this action, and thus, waived their right to a hearing in

28 this action. Respondent ISLAS admits that Respondent RAMALES and he were properly served the

1 accusation and accompanying documents. Respondent ISLAS appeared at the September 4, 2014
2 hearing.

3 Respondents ISLAS and RAMALES are knowledgeable of the requirement to keep a current
4 District permit to operate solvent evaporating sources at an auto body shop. Respondent ISLAS
5 admits Respondent RAMALES and he have owned and operated P & R Auto Body since July 1, 2007
6 and that they paid permit fees in 2007 and in 2008; he admits further that they continue to own and
7 operate the Facility, at which they operate solvent evaporating sources. Respondent ISLAS admits
8 further to having violated the permit requirements of District Regulation 2, Rule 1 and Regulation 3,
9 by having operated solvent evaporating sources at the Facility since September 1, 2009 without the
10 required District permit to operate the sources.

11 The Parties have agreed that Respondent ISLAS may continue to operate solvent evaporating
12 sources without the required permit to operate until no later than the end of the day September 19,
13 2014, unless he has paid all outstanding permit fees – a total of \$3,422.00 - in accordance with the
14 Parties' agreed-upon installment payment plan. If he timely pays all permit fees, he may continue to
15 operate until he receives a current District permit to operate through September 1, 2015.

16 Failure to comply with the terms of the Stipulated Conditional Order is a violation of thereof.

17 The Hearing Board believes that it is reasonable to accept the terms of the Stipulated
18 Conditional Order if Respondent ISLAS demonstrates a willingness to return to compliance by
19 submitting the first permit fee installment payment of \$1,500.00 by the end of the day September 4,
20 2014, which was the APCO's condition precedent to its agreement to the terms and conditions of the
21 Stipulated Conditional Order. The Hearing Board believes that under those circumstances, the
22 Parties' agreed-upon course of action is in the public interest, and thus, the entry of this Stipulated
23 Conditional Order is appropriate.

24 On September 5, 2014, the District notified the Clerk of the Hearing Board that on September 4,
25 2014, the District had received a cashier's check in the amount of \$1,500.00 as the first installment
26 payment for the Facility outstanding permit to operate fees.

27 **Stipulated Conditional Order for Abatement**

28 **Cause being found therefore, pursuant to Sections 42451(b) and 42452 of the California**

1 **Health and Safety Code, THE HEARING BOARD of the BAY AREA AIR QUALITY**

2 **MANAGEMENT DISTRICT hereby ORDERS:**

3 1. That the APCO's and Respondents' request for this Stipulated Conditional Order for
4 Abatement shall be and hereby is GRANTED as follows:

- 5 a. Respondent ISLAS shall pay by cashier's check the amount of \$1,922.00, which
6 represents the total of \$3,422.00 for all District permit to operate fees due for the
7 permit periods covering September 1, 2009 through September 1, 2015, less the
8 initial payment on September 4, 2014 of \$1,500.00, in accordance with the following
9 schedule:
- 10 i. September 12, 2014, \$1,000; and
 - 11 ii. September 19, 2014, \$922.00; and
- 12 b. Respondents may continue operating solvent evaporating sources at the Facility
13 under, and pursuant to, a Hearing Board conditional order for abatement until no later
14 than the end of day September 19, 2014, unless Respondent ISLAS has made all
15 permit payments in the amounts of and accordance with the schedule set forth in
16 Subparagraph a above, in which case, Respondents may continue to operate the
17 solvent evaporating sources until Respondents obtain a current permit to operate such
18 sources at the Facility; and
- 19 c. Respondent ISLAS shall submit to the District's Engineering Division a completed
20 and accurate District transfer of ownership form for the Facility and shall provide the
21 District a current e-mail address and working phone number as Facility contact
22 information; and
- 23 d. Respondent ISLAS shall submit documentation that Respondents ISLAS and
24 RAMALES own P & R Auto Body solvent evaporating sources; and
- 25 e. Failure to comply with the terms of the stipulated conditional order for abatement is
26 a violation of the order.

27 2. That the Hearing Board moves into the record of this Hearing Board Docket No. 3663 the
28 APCO's exhibits as Exhibits 1 through 9 of Docket No. 3663;

1 3. That the Hearing Board takes official notices of the documents and facts set forth in the
2 *Bay Area Air Quality Management District's Request for Official Notice in Support of Accusation and*
3 *Request for Conditional Order for Abatement*, filed on August 27, 2014 in this action; and

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

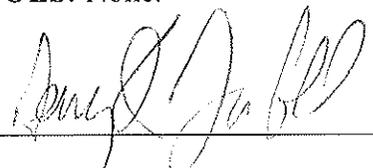
6 5. The Hearing Board shall retain jurisdiction over this matter, Docket No. 3663, until the
7 earlier of either (a) Respondents having complied with all terms of the Stipulated Conditional Order for
8 Abatement and having obtained a current permit to operate, or (b) having ceased operating all solvent
9 evaporating sources at the Facility permanently.

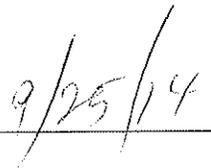
10 **Moved by:** Peter Y. Chiu, M.D., P.E.

11 **Seconded by:** Gilbert G. Bendix, P.E.

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

14 **NOES:** None.

15 
16 _____
17 Terry A. Trumbull, Esq., Chair

15 
16 _____
17 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. 3663

Complainant,)

CERTIFICATE OF SERVICE

vs.)

GILBERTO ISLAS, an individual;)
NANCY RAMALES, an individual;)
PASIANO MORENO, an individual;)
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:

**Gilberto Islas
29529 Ruus Road
Hayward, CA 94544**

AND

**Nancy Rames
29529 Ruus Road
Hayward, CA 94544**

AND

**Pasiano Moreno
29529 Ruus Road**

Hayward, CA 94544

by depositing same in the United States certified mail, return receipt requested, on October 2, 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 October 2, 2014.

DATED: October 2, 2014



Sean Gallagher
Clerk of the Boards