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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.

BRETT GAYNER, an Individual; and DOES 1 through
25, inclusive,

Respondents.

) DOCKET NO. 3683

) STIPULATED CONDITIONAL
) ORDER FOR ABATEMENT

On November 23, 2015, the Air Pollution Control Officer ("APCO") of the Bay Area Air Quality Management District ("District"), Complainant in this matter, filed an accusation against Brett Gayner, an Individual ("Gayner"), and Does 1 through 25, inclusive (collectively referred to as "Respondents") for violation of District Regulation 2, Rule 1 by conducting motor vehicle refinishing operations at 120 Todd Road, Santa Rosa, Sonoma County, California, District Site No. 200132 ("Facility") without a District permit to do so ("Accusation"). The APCO sought a conditional order for abatement of this violation, requiring Respondents cease conducting such operations unless and until they come into compliance with District Regulation 2, Rule 1, Section 302.

The Clerk of the Hearing Board assigned this matter Docket No. 3683 and set a hearing for January 21, 2016. 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 December 10, 2015, the Hearing Board received Respondent Gayner's Notice of Defense,
2 requesting a hearing on this matter and denying "all parts of the Accusation not expressly admitted."

3 On January 20, 2016, the APCO lodged with the Clerk the APCO's proposed exhibits, i.e., a
4 copy of Notice of Violation No. A52304 and provisions of the District's rules and regulations.

5 The Hearing Board conducted a hearing on the Accusation on January 21, 2016. Susan Adams,
6 Assistant Counsel, appeared for the Air Pollution Control Officer. Respondent Gayner appeared for
7 himself.

8 Both the APCO and Respondent Gayner made an opening statement. Complainant APCO
9 stated it had filed the Accusation in order to obtain a conditional order for abatement of
10 Respondents' continuing motor vehicle refinishing operations at the Facility without the required
11 District permit to operate. The APCO stated the facts that it would prove through testimony and
12 documentary evidence in support of its request; the APCO named the District witnesses and stated it
13 would move entry of the NOV into the record and official notice of the District's rules and
14 regulations as documentary evidence. Next, the APCO stated that the previous day, the parties had
15 spoken and that Respondent Gayner had admitted to operating without a permit and had agreed to
16 the terms for resolving the ongoing violation pursuant to a stipulated conditional order for
17 abatement. The APCO stated that therefore, at this time, Complainant sought issuance of a
18 stipulated conditional order for abatement.

19 Respondent Gayner spoke. He admitted to having operated the Facility since September 2013
20 without a required District permit to operate, stated that he agreed with the allegations presented by
21 Complainant, and stated that he had agreed to the terms for a resolution of this matter. He stated
22 further that he had installed a filtration system at the Facility to capture emissions from his
23 refinishing operations, and that the system captured 98% of the operations' emissions. He stated
24 further that he intends to cease operations at the Facility and to relocate the operations to another
25 location in Santa Rosa as of February 1, 2016.

26 The Complainant stated on the record that it had served the Accusation and its accompanying
27 documents upon Respondents by certified mail and substitute personal service to assure proper
28 service of process, thereby allowing the Hearing Board to issue an order adverse to Respondent's

1 rights pursuant to Hearing Board Rule 4.4.c, should it desire to do so. Complainant and Hearing
2 Board Member Armento also noted that Respondent Gayner had appeared at the hearing, further
3 permitting issuance of such an order. Respondent Gayner stated that someone other than he had
4 signed the certificate of receipt of the certified mail delivery.

5 The APCO also requested that the Hearing Board amend the caption in this action to correct
6 the spelling of Respondent Brett Gayner's name from "Brett Gaynor." The APCO stated that
7 Respondent's attorney had confirmed the correct spelling the previous day. Respondent Gayner
8 confirmed at the hearing the correct spelling of his name.

9 The Chair of the Hearing Board called a hearing recess. During the recess, Respondent
10 Gayner executed a compliance and settlement agreement to resolve the continuing violation. The
11 APCO and Respondent Gayner reached agreement on the terms for a proposed stipulated conditional
12 order for abatement in this matter.

13 Following the recess, the APCO presented to the Hearing Board the proposed findings and terms
14 of a proposed stipulated conditional order for abatement, as follows:

- 15 1) Respondents have been properly served;
- 16 2) Respondent Gayner filed a notice of defense in this action;
- 17 3) The caption in the action shall be amended to correct the spelling of Respondent Brett
18 Gayner's name from "Brett Gaynor;"
- 19 4) Respondent Gayner admits to having owned and operated motor vehicle refinishing
20 operations at 120 Todd Road, Santa Rosa, Sonoma County, since September 2013;
- 21 5) Respondent Gayner shall:
 - 22 a. Cease motor vehicle refinishing operations, as those operations are defined in the
23 Accusation, at 120 Todd Road, Santa Rosa, Sonoma County, as of January 31, 2016;
 - 24 b. Submit to the District a complete application to conduct motor vehicle refinishing
25 operations at that location or any location on or before January 31, 2016; and
 - 26 c. Not conduct any motor vehicle refinishing operations at any location as of February 1,
27 2016 until a valid authority to construct or permit to operate motor vehicle refinishing
28 equipment and conduct such operations has been issued to Respondent Gayner for that

1 particular location.

2 6) The Hearing Board will continue or schedule another hearing on this matter in approximately
3 60 days in order to confirm Respondent Gayner's having ceased such operations at the
4 Facility and having submitted a complete application to the District by the deadline.

5 Following the APCO's recitation of the proposed terms, Respondent Gayner stated on the
6 record his agreement to the terms of proposed stipulated conditional order for abatement. Hearing
7 Board Member Armento asked Respondent Gayner whether he had any problems complying with the
8 terms; he replied that he did not.

9 The APCO requested that NOV No. A52304, Exhibit C1, be moved into evidence and that the
10 Hearing Board take official notice of provisions of District Regulation 2, Rule 1 and of Regulation 3
11 applicable to this matter, Exhibits C2 and C3, respectively, and of District Regulation 8, Rule 45,
12 Exhibit C4.

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

15 The Hearing Board closed the hearing. It moved Exhibit C1 into evidence and took official
16 notice of the District's rules and regulations. The Hearing Board approved unanimously the Parties'
17 proposed stipulated conditional order for abatement. The Hearing Board set another hearing for May
18 5, 2016 at 9:30 a.m. at the District's new offices; both parties agreed to the date and time.

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 were properly served. It is appropriate to amend the caption of this matter to
27 correct the spelling of Respondent Gayner's name at this time, given that Complainant received
28 confirmation of the correct spelling on January 20, 2016 from a representative of Respondent Gayner.

1 Respondent Gayner has admitted on the record to having owned and conducted motor vehicle
2 refinishing operations at 120 Todd Road, Santa Rosa, Sonoma County, since September 2013.

3 Respondent Gayner has agreed to come into compliance with District regulation 2, Rule 1 by:

- 4 a. Ceasing motor vehicle refinishing operations, as those operations are defined in the
5 Accusation, at 120 Todd Road, Santa Rosa, Sonoma County, as of January 31, 2016;
- 6 b. Submitting to the District a complete application to conduct motor vehicle refinishing
7 operations at that location or any location on or before January 31, 2016; and
- 8 c. Not conducting any motor vehicle refinishing operations at any location as of February
9 1, 2016 until a valid authority to construct or permit to operate motor vehicle refinishing
10 equipment and conduct such operations has been issued to Respondent Gayner for that
11 particular location.

12 The Hearing Board believes that the Parties' agreed course of action is in the public interest
13 and that therefore, the entry of this Stipulated Conditional Order for Abatement is appropriate
14 under the circumstances. Failure to comply with the terms of the Hearing Board's stipulated
15 conditional order for abatement is a violation of a Hearing Board order.

16 **Stipulated Conditional Order for Abatement**

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

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

- 22 a. The caption in the action is amended to correct the spelling of Respondent Brett
23 Gayner's name from "Brett Gaynor;"
- 24 b. Respondent Gayner shall cease motor vehicle refinishing operations, as those
25 operations are defined in the Accusation, at 120 Todd Road, Santa Rosa, Sonoma
26 County, as of January 31, 2016:
- 27 c. Respondent Gayner shall submit to the District a complete application to conduct
28 motor vehicle refinishing operations at that location or any location on or before

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January 31, 2016; and

d. Respondent Gayner shall not conduct any motor vehicle refinishing operations at any location as of February 1, 2016 until a valid authority to construct or permit to operate motor vehicle refinishing equipment and conduct such operations has been issued to Respondent Gayner for that particular location.

2. That this matter is continued to Thursday, May 5, 2016 at 9:30 a.m. at the District's offices, located at 375 Beale Street, Suite 600, San Francisco, CA 94105; and

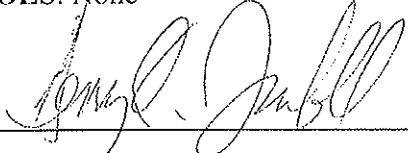
3. That this Stipulated Conditional Order for Abatement shall become effective as of the date of the hearing.

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

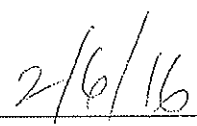
Seconded by: Gilbert G. Bendix, P.E.

AYES: Valerie J. Armento, Esq.; Peter Y. Chiu, M.D., P.E.; Gilbert G. Bendix, P.E.; Julio A. Magalhães, Ph.D.; Terry A. Trumbull, Esq.

NOES: None



Terry A. Trumbull, Esq., Chair



Date

FILED
FEB 11 2016
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

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

AIR POLLUTION CONTROL OFFICER of the) Docket No.: 3683
BAY AREA AIR QUALITY MANAGEMENT)
DISTRICT,) CERTIFICATE OF SERVICE
Complainant,)
vs.)
BRETT GAYNER, an Individual; and DOES 1)
through 25, inclusive,)
Respondent.)

STATE OF CALIFORNIA)
City and County of San Francisco) ss.

I, Tom Flannigan, 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:

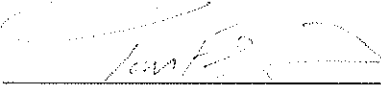
Brett Gayner
American Truck Collision
120 Todd Road
Santa Rosa, California 95402

by depositing same in the United States certified mail, return receipt requested, on February 11, 2016; and on

Susan Adams
Bay Area Air Quality Management District
939 Ellis Street, 7th Floor
San Francisco, California 94109

by hand-delivery deposit of same in the in-box of the District Counsel's office, on February 11, 2016.

DATED: February 11, 2016


Tom Flannigan
Acting Clerk of the Boards