

FILED
JUN 27 2016
HEARING BOARD
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.

SULAIMAN DOSOUQI, an individual; ARIF RANA, an
individual; MOHAMMED HUSSAIN, an Individual; and
DOES 2 - 25, inclusive,

Respondents.

) DOCKET NO. 3690

) STIPULATED CONDITIONAL
) ORDER FOR ABATEMENT

The Air Pollution Control Officer (“APCO”) of the Bay Area Air Quality Management District (District), the Complainant in this action, sought an order for abatement from this Hearing Board against Sulaiman Dosouqi, Arif Rana, and Mohammed Hussain, and Doe respondents, inclusive (hereafter collectively, “Respondents”), requiring Respondents to cease gasoline dispensing operations at their facility located at 10 North Main Street, Milpitas, Santa Clara County, California, District Facility Identification No. 112384 (“Facility”), unless and until Respondents came into compliance with District Regulation 2, Rule 1.

PROCEDURAL BACKGROUND AND HEARING

Procedural Background: Complainant’s Accusation; Pre-Hearing Conference, May 20, 2016

Complainant filed an accusation on April 19, 2016, initiating this matter against Respondents Dosouqi and Rana (“Accusation”).

The Clerk of the Hearing Board assigned this matter Docket No. 3690 and set a public

1 hearing for June 9, 2016. The Clerk of the Hearing Board provided notice of the hearing on the
2 Accusation in accordance with the requirements of Health and Safety Code section 40823.

3 The Clerk of the Hearing Board set a pre-hearing conference for this matter for May 20, 2016,
4 and served notice of the conference on the Parties on May 2, 2016. Susan D. Adams, Assistant Counsel,
5 appeared on behalf of Complainant. Mohammed Hussain appeared on behalf of Respondent Rana.
6 Respondent Dosouqi did not appear. Ms. Adams made an opening statement, with a summary of this
7 action, and stated that Complainant intended to request the Hearing Board's approval to file an amended
8 accusation in order to add Mr. Hussain as a respondent, based on recent information.

9 Mr. Hussain spoke. He stated that he has worked at the Facility since May 2014 and that
10 Respondent Rana owns the Facility. Mr. Hussain did not state an objection to Complainant's request for
11 such an amendment. Mr. Hussain stated opposition to the requirement to pay permit fees other than
12 what had been paid already. The Chair urged that Parties to attempt settlement and ended the pre-
13 hearing conference.

14 On June 1, 2016, Complainant filed his request that the Hearing Board Chair permit him to
15 file his proposed amended Accusation in order: (1) to add as a respondent Mr. Mohammed
16 Hussain, an individual, based on his acknowledgement that he operates the Facility, and (2) to
17 update or correct certain allegations in the Accusation "(Amended Accusation)". The Chair
18 approved the request; the Clerk filed the Amended Accusation on June 3, 2016.

19 Public Hearing, June 9, 2016

20 The Hearing Board conducted a public hearing on June 9, 2016. Susan D. Adams appeared
21 on behalf of the Complainant. Respondents Rana and Hussain appeared on behalf of themselves.
22 Respondent Dosouqi did not appear.

23 Because Respondents did not file a notice of defense, Respondents' express admissions may be
24 used as evidence without any notice thereof, and the Hearing Board may decide the matter or dismiss
25 the action at the public hearing, pursuant to Hearing Board Rule 6.9(b). Chair Trumbull held that the
26 hearing would proceed as scheduled.

27 Christian Crowley, District inspector, and Duncan Campbell, District engineer, testified on
28 behalf of the District. Mr. Crowley testified that he had conducted two compliance inspections at

1 the Facility – the first on November 17, 2015 and the second on December 4, 2015 - and found the
2 Facility in operation each time. He described the Facility’s site as including an auto repair or smog
3 check-type of business and a convenience store-type of business. Mr. Crowley testified that at the
4 first inspection, he confirmed that the Facility lacked a current permit to operate and that he issued
5 NOV No. A54329 (Exhibit 1). He testified that Respondent Hussain, who signed for receipt of the
6 NOV, acknowledged the Facility lacked a permit to operate. Mr. Crowley testified that he also
7 found a Facility recordkeeping violation (Exhibit 2) and a minor equipment violation (Exhibit 3)
8 that day. He stated that during the second inspection, in December, he met with Respondents Rana
9 and Hussain and verified that Respondents had corrected both violations (Exhibit 4). Mr. Crowley
10 testified that he reminded these Respondents of the requirement to complete the transfer of
11 ownership form in order to receive an up-to-date invoice for the permit to operate fees and to pay
12 the outstanding permit to operate fees. Mr. Crowley testified that via email he reiterated the
13 continuing need for a current permit.

14 During Mr. Hussain’s cross-examination of Mr. Crowley, Mr. Hussain stated that
15 “everything [Mr. Crowley stated] is true,” but asserted that exchanged emails between Mr. Crowley
16 and him verified that Respondents had paid all the required permit fees and that Mr. Crowley
17 would “take care of it.” Mr. Hussain sought copies of the email exchanges; Hearing Board
18 Member Chiu requested that the Air District provide copies of emails that pertain to Respondents’
19 allegation that permit fees were paid. Ms. Adams agreed to do so and to provide any additional
20 documents the Hearing Board might request following Mr. Campbell’s testimony.

21 Mr. Campbell testified that the District’s Facility records listed Respondent Dosouqi as the
22 Facility owner and listed a pending transfer of ownership to Respondent Rana. Mr. Campbell
23 testified that in response to the District’s November 17, 2015 inspection, the District sent permit
24 renewal invoice to the Facility for permit fees overdue for the September 1, 2011 – September 1,
25 2016 permit period; the invoice, dated December 3, 2015, listed Respondent Dosouqi as the owner
26 (Exhibit 5). Thereafter, the District received Respondent Rana’s transfer of ownership form
27 (Exhibit 6). Mr. Campbell testified that as a result of Respondent Rana having initiated a transfer
28 of ownership, he sent Respondents a copy of the original permit renewal invoice for September 1,

1 2011 to September 1, 2012 permit period. He testified that the District has received the permit fees
2 for the September 1, 2011 to September 1, 2012 permit period, but that as of the morning of this
3 hearing, the District had not yet received the transfer of ownership fee, without which the transfer
4 will not become complete (Exhibit 7).

5 Mr. Campbell testified he has explained to Respondents Hussain and Rana that there are two
6 procedures available to a new facility owner to bring its facility into compliance with the District's
7 permit requirements: either reinstate an expired permit by payment of all prior year permit fees
8 through the current year, or submit an application for a new permit that dates back to the
9 commencement date of applicant's ownership. He testified further that he has informed
10 Respondents of the costs to reinstate the expired permit (less the permit fees paid already) and an
11 estimate of the costs for their new permit. Mr. Campbell testified that the permit fees for a new
12 Facility permit, commencing as of August 12, 2015, or for the reinstated permit (with a permit
13 modification to update the permit) for September 1, 2012 – 2016 would be approximately \$16,000
14 or more.

15 Following an adjournment, the District provided copies of six documents to the Hearing
16 Board. They included email exchanges between Respondents and Enforcement Division and
17 Engineering Division staff (Exhibits 8 – 12) and a District record of the Facility's recent source
18 testing compliance (Exhibit 13).

19 The District called Respondent Rana as a hostile witness. He testified that his name is Sharafat
20 Khan and that his "nickname" is Arif Rana. He testified that since August 12, 2015, he has owned and
21 operated the Facility. He testified stated that he purchased the Facility from an individual named
22 Hamid Amini. He stated that he leases a portion of the Facility's site to a smog check business. In
23 December 2015, he submitted a transfer of ownership form to the District listing himself as the
24 Facility owner as of August 12, 2015; Respondent Hussain stated that they can show a copy of the
25 transfer of ownership fee they paid. Respondent Rana testified that he does not know Respondent
26 Dosouqi.

27 Respondent Hussain testified. He admitted that he is responsible for all gasoline dispensing
28 operations pertaining to the Facility. He asserted that Respondents paid the invoice for the September

1 1, 2011 – September 1, 2012 permit fees and that that permit fee payment satisfied Respondents’ fee
2 requirements to September 1, 2015. He stated also that he does not know Respondent Dosouqi.

3 Prior to the hearing, Complainant had lodged seven documents with the Hearing Board.
4 During the hearing, Complainant lodged six additional documents. At the conclusion of the
5 public hearing, following the APCO’s request, the Chair entered the thirteen documents into
6 evidence.

7 Following discussions, the Hearing Board approved unanimously issuance of a conditional
8 order for abatement with the terms requested by Complainant, with the exception that
9 Respondents must return to compliance with District Regulation 2-1-302 within sixty days of the
10 effective date of conditional order for abatement.

11 **WRITTEN FINDINGS IN SUPPORT OF ITS DECISION**

12 Health and Safety Code Section 42451(a) provides that the Hearing Board may, upon a motion
13 from the Air Pollution Control Officer, issue and order for abatement where it finds that a person is
14 operating equipment without a permit that the District requires. To that end, the Hearing Board finds
15 as follows:

16 Respondent Rana’s name is Sharafat Khan; his “nickname” is Arif Rana. Respondent Rana
17 owns and operates the Facility, a gasoline dispensing facility at 10 North Main Street, Milpitas, Santa
18 Clara County, California, District Facility Identification No. 112384. He leases a portion of the
19 Facility’s site to an auto-related services business. In December 2015, he submitted a transfer of
20 ownership form to the District listing himself as the Facility owner as of August 12, 2015, but
21 Respondent Rana has not completed the transfer because he has not paid the transfer of ownership fee.

22 Respondent Hussain operates the Facility.

23 Respondents require a District permit to operate their gasoline dispensing facility, pursuant to
24 District Regulation 2-1-302. District Regulation 3-405.3 prohibits continuing such operations if the
25 permit has expired. The Facility had had a permit to operate, which expired on September 1, 2011. In
26 December 2015, the District submitted the permit renewal invoice for the September 1, 2011 to
27 September 1, 2016 permit fees to the Facility address, in order for the owner or operator to reinstate
28 the permit. The District also submitted to Respondents a copy of the original invoice for the

1 September 1, 2011 – September 1, 2012 permit fees, which they paid. Respondents have refused to
2 pay any further permit to operate fees. Respondents have provided no evidence to support their
3 allegation that they are not obligated to pay any further fees to reinstate this permit.

4 Respondents are knowledgeable of the obligation to hold a permit to operate a gasoline
5 dispensing facility. Since November 2015, the District has conducted two compliance inspections -
6 with the Facility in operation each time - and has issued NOV No. A54329 for violation of District
7 Regulation 2-1-302. The District has met and corresponded with Respondents Rana and Hussain
8 several times since November 2015, explaining the permit requirements and monies due.

9 Despite Respondents' continuing violation of District Regulation 2-1-302 and their refusal to
10 pay more than the permit fees covering the September 1, 2011 – September 1, 2012 permit period in
11 order to achieve compliance with the District's permit requirements, the Hearing Board finds it
12 appropriate to provide up to sixty days to achieve compliance, given that the costs to come into
13 compliance with District Regulation 2-1-302 may be \$16,000 or more.

14 The Hearing Board has determined that based on these findings, it is appropriate to enter a
15 conditional order for abatement that requires Respondents to cease gasoline dispensing operations at
16 the above-referenced address as of sixty days from the date the Hearing Board files its findings and
17 decision in this action.

18 **CONDITIONAL ORDER FOR ABATEMENT**

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

- 22 1. That as of sixty (60) days after the filing of the written findings and decision of the Hearing Board
23 of the Bay Area Air Quality Management District ("Effective Date"), Respondents and their
24 agents, employees, successors and assigns shall cease gasoline dispensing operations at 10 North
25 Main Street, Milpitas, Santa Clara County, California, District Facility Identification No.
26 112384, unless and until Respondents come into compliance with District Regulation 2, Rule 1,
27 Section 302.

28 /////

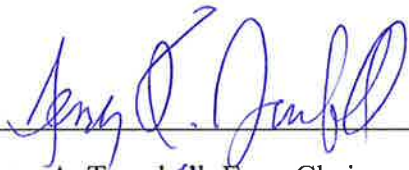
- 1 2. That no later than sixty calendar days from the Effective Date, Respondents and their agents,
2 employees, successors and assigns shall submit to the Hearing Board, with a copy of such
3 documentation to Brian C. Bunker, District Counsel, on behalf of the APCO, either (a) a copy of a
4 current and valid District permit to operate the Facility, or (b) written affirmation executed by
5 Respondents that they have ceased operating gasoline dispensing equipment at the Facility and that
6 they shall not recommence gasoline dispensing operations until they have met all applicable
7 requirements to obtain and maintain a valid District permit to operate pursuant to District
8 Regulation 2, Rule 1; and
- 9 3. That this Hearing Board shall retain jurisdiction over the order for abatement for one year from
10 June 9, 2016, i.e., the date of the public hearing in this matter, during which period the parties may
11 apply to modify or terminate this Order in accordance with the Rules of the Hearing Board.


12 **Moved By:** James M. Ralph, Esq. (Alternate)

13 **Seconded By:** Peter Y. Chiu, M.D., P.E.

14 **Ayes:** Terry A. Trumbull, Esq.; Julio A. Magalhães, Ph.D.; Gilbert G. Bendix, P.E.; Peter Y.
15 Chiu, M.D., P.E.; and James M. Ralph, Esq. (Alternate)

16 **Noes:** None.

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19 Terry A. Trumbull, Esq., Chair

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Date

FILED

JUN 28 2016

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

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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,)

DOCKET NO. 3690

Complainant,)

CERTIFICATE OF SERVICE

vs.)

SULAIMAN DOSOUQI, an individual;)
ARIF RANA, an individual; MOHAMMED)
HUSSAIN, an individual; and DOES 2 - 25,)
inclusive,)

Respondents.)
_____)

STATE OF CALIFORNIA)
City and County of San Francisco)

ss.

I, Marcy Hiratzka, 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 Order for Abatement
on:

Mr. Arif Rana
CITY GAS MILPITAS
10 North Main Street
Milpitas, CA 95305-4342

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AND

**Mr. Mohammed Hussain
CITY GAS MILPITAS
10 North Main Street
Milpitas, CA 95305**

AND

**Mr. Sulaiman Dosouqi
DISCOUNT GAS
10 North Main Street
Milpitas, CA 95305**

by depositing same in the United States certified mail, return receipt requested, on June 28, 2016;
and on

**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 June 28, 2016.

DATED: June 28, 2016



Marcy Hiratzka
Clerk of the Boards