

FILED

OCT 07 2010

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

Lisa Harper
Clerk of the Boards
Bay Area Air Quality
Management District

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**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. 3591

Complainant,

vs,

**CONDITIONAL ORDER
FOR ABATEMENT**

ROBERT LUGLIANI, individually, and *d/b/a* OLDE
ENGLISH GARAGE; a Gasoline Dispensing Facility
located at 988 Howard Avenue, Burlingame, California,
a/k/a OLDE ENGLISH GARAGE, Site No. C2785,

Respondents.

On or about August 25, 2010, the Air Pollution Control Officer (“APCO”) of the Bay Area Air Quality Management District (“District”), Complainant in the above-entitled matter, filed with this Hearing Board an Accusation and Request for Order for Abatement (“Accusation”) against Robert Lugliani, individually, and *d/b/a* Olde English Garage; a Gasoline Dispensing Facility located at 988 Howard Avenue, Burlingame, California, *a/k/a* Olde English Garage, Site No. C2785 (all of whom are hereafter referred to as “Respondents”); and Does 1 through 10, inclusive requesting that the Hearing Board order Respondents to cease and desist

1 transferring gasoline from the underground gasoline storage tanks to motor vehicles at their
2 gasoline dispensing facility, which is located at 988 Howard Avenue, Burlingame, California,
3 Site No. C2785, also known as Olde English Garage ("Facility"), thirty days from the date of
4 hearing in this matter until Respondents install enhanced vapor recovery ("EVR") Phase II
5 system equipment certified by the California Air Resources Board ("ARB") in accordance with
6 the requirements of District Regulation 8, Rule 7, Section 302.1.

7 Mr. Robert Lugliani appeared for Respondents.

8 Randi Wallach, Assistant Counsel, appeared for the Air Pollution Control Officer.

9 The Clerk of the Hearing Board provided notice of the hearing on the Accusation in
10 accordance with the requirements of Health and Safety Code section 40823. The Hearing Board
11 heard the request for an Abatement Order on September 23, 2010.

12 Mr. Scott Owen testified for the APCO. Mr. Robert Lugliani testified for the
13 Respondents.

14 The Hearing Board provided the public with an opportunity to testify at the hearing, as
15 required by the Health and Safety Code. No members of the public testified. The Hearing Board
16 heard evidence, testimony and oral argument from the APCO and Respondents. At the outset of
17 the hearing, Respondent Robert Lugliani admitted all of the facts and allegations contained in the
18 Accusation, including the facts that Respondents own and have operated the Facility without a
19 Phase II EVR Upgrade since April 1, 2009, in violation of state and District regulations, as
20 alleged in the Accusation.

21 The Hearing Board closed the hearing after receiving evidence, testimony and argument,
22 and took the matter under submission for decision. After consideration of the evidence, the
23 Hearing Board found the following findings of fact and conclusions of law, and voted to issue a
24 Conditional Order for Abatement as set forth below:

25 **FINDINGS OF FACT**

26 1. Robert Lugliani ("Owner"), an individual, admitted that he owns and/or operates
27 the gasoline dispensing facility ("GDF") that is located at 988 Howard Avenue, Burlingame,

1 California, Site No. C2785 and is operating as Olde English Garage.

2 2. The Facility is subject to the jurisdiction of the District. The Facility contains one
3 underground gasoline stationary storage tank. The Facility's annual gasoline throughput is
4 approximately 96,000 gallons.

5 3. Volatile organic compounds ("VOCs") are organic compounds that evaporate
6 quickly into the atmosphere. VOCs, reacting with oxides of nitrogen in sunlight, create ground
7 level ozone. Ground level ozone is the primary component of photochemical smog, which is a
8 significant air quality problem in the Bay Area. Ozone aggravates respiratory diseases, reduces
9 visibility, causes eye irritation, and damages vegetation. One of the common sources of VOCs is
10 gasoline vapors. Gasoline vapor, which contains hydrocarbons, is an air contaminant. Gasoline
11 contains benzene, a known carcinogen. In the Bay Area, gasoline dispensing facilities are a
12 major source of VOC emissions.

13 4. A GDF "vapor recovery system" collects gasoline vapors that are discharged
14 during gasoline transfer operations and processes the vapors to prevent their release into the
15 atmosphere.

16 5. A GDF vapor recovery system comprises a "Phase I" system, which controls
17 gasoline vapors during the transfer of gasoline from gasoline cargo tanks to a GDF's stationary
18 storage tank, and a "Phase II" system, which controls gasoline vapors during transfer of gasoline
19 between the GDF's stationary storage tank and a motor vehicle.

20 6. District Regulation 8, Rule 7, Section 302.1 prohibits a person from transferring
21 gasoline between a GDF's stationary storage tank and a motor vehicle without an ARB-certified
22 Phase II system in place and in operation.

23 7. State law requires that stations in existence as of April 1, 2005 with underground
24 stationary gasoline storage tanks had to install an enhanced vapor recovery ("EVR") Phase II
25 system as of April 1, 2009. As of April 1, 2009, only EVR Phase II equipment was ARB-
26 certified, and any Phase II system that was not ARB-certified as EVR Phase II was de-certified.

27 8. The District is authorized to tag "out of order" components at a GDF that are not
28

1 certified by ARB. Until such components are replaced, repaired or adjusted and the District has
2 reinspected the components (or authorized use of the components pending reinspection), no one
3 may operate them.

4 9. The District conducted an extensive public outreach program to GDF owners and
5 operators about the EVR Phase II upgrade requirements and District Regulation 8-7-302.1
6 through public workshops, delivery of District compliance advisories, and on-site compliance
7 assistance visits at GDFs.

8 10. Respondents admit that they are aware of the requirement to have installed the
9 Phase II EVR system as of April 1, 2009.

10 11. Respondents did not curtail or cease dispensing gasoline at the Facility on or after
11 April 1, 2009.

12 12. On October 7, 2009, the District issued Respondents Notice of Violation
13 (“NOV”) No. A50641 for conducting gasoline dispensing operations with an uncertified EVR
14 Phase II system as of April 1, 2009, in violation of District Regulation 8-7-302.1.

15 13. As of September 23, 2010, the Facility had not completed the required EVR
16 Phase II upgrade and was operating in violation of District Regulation 8-7-302.1.

17 14. Respondents’ completed the Phase I EVR upgrade and other work at the Facility
18 in or about 2004 at the expense of approximately \$275,000. Respondents’ delay in completing
19 the Phase II EVR upgrade can be attributed to extreme financial hardship, in part as a result of
20 Respondents’ significant expenditures in 2004 to complete the Phase I EVR upgrade and other
21 work at the Facility, and also the current economic recession.

22 **CONCLUSIONS OF LAW**

23 Pursuant to Health and Safety Code sections 40750, 40752 and 42451(a), the APCO, who
24 is appointed by the District Board of Directors, is authorized to enforce all rules and regulations
25 adopted or prescribed by the District Board and is authorized to seek an Order for Abatement
26 from the District’s Hearing Board to stop violations of a District rule or regulation prohibiting or
27 limiting the discharge of an air contaminant into the air.

1 Pursuant to Health and Safety Code Section 42451(a), the Hearing Board may issue an
2 Order for Abatement if it finds that a person is operating a gasoline dispensing facility in
3 violation of a District rule or regulation that prohibits or limits the discharge of an air
4 contaminant into the air.

5 Cause for determination that Respondents are in violation of District Regulation 8-7-
6 302.1 is established by Findings of Fact Nos. 1, 2, 6, 7, 11, 12, and 13.

7 Cause for issuance of an order that Respondents abate this violation is established by
8 Findings of Fact Nos. 1 through 14, inclusive.

9 **ORDER**

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

13 1. That the APCO's Request for a Conditional Order for Abatement ("Order") shall
14 be and hereby is GRANTED as follows: Robert Lugliani as well as Olde English Garage and
15 any other gasoline dispensing facility doing business at 988 Howard Avenue, Burlingame,
16 California and their agents, employees, successors and assigns are hereby ordered to cease
17 gasoline dispensing operations at the Facility sixty (60) days from the September 23, 2010
18 hearing on this matter, until:

- 19 a. Respondents obtain the required District authority to construct an ARB-
20 certified EVR Phase II system at the Facility, in accordance with Regulation
21 2, Rule 1, Section 301; and
- 22 b. Respondents come into compliance with Regulation 8, Rule 7, Section 302.1
23 by installing an ARB-certified EVR Phase II system that complies with the
24 system manufacturer's specifications and with the terms and conditions of the
25 District authority to construct the EVR Phase II system at the Facility; and
- 26 c. Respondents submit the EVR Phase II upgrade "start-up notification" to
27 Respondents' District permit engineer, as required by the EVR Phase II

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

system's authority to construct, with a copy submitted simultaneously to this Hearing Board and to the District Legal Division, attention Brian C. Bungler, via facsimile or certified mail;

2. That this Conditional Order for Abatement shall become effective immediately.

3. That the Hearing Board shall retain jurisdiction over this matter until Respondents come into compliance with the EVR Phase II requirements of Regulation 8, Rule 7, Section 302.1 and submit "start-up notification" in accordance with the requirements set forth in Paragraph 1 of this Conditional Order for Abatement.

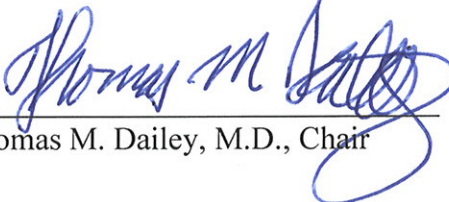
Moved by: Christian Colline, P.E.

Seconded by: Terry A. Trumbull, Esq.


AYES: Christian Colline, P.E., Valerie Armento, Esq., Julio Magalhães, Ph.D., Terry A. Trumbull, Esq., and Thomas M. Dailey, M.D.

NOES: None

ABSTAINED: None



Thomas M. Dailey, M.D., Chair



Date