

FILED

NOV 01 2010

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

Lisa Harper
Clerk, 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,

DOCKET NO. 3595

Complainant,

vs,

**ORDER FOR
ABATEMENT**

SOM D. GUPTA, individually, a/k/a SON D. GUPTA,
and d/b/a ANABE, INCORPORATED, ABE
PETROLEUM LLC and AMI PETROLEUM, INC.;
PAWAN K. GARG, a/k/a PAUL GARG, individually,
a/k/a GARG PAWANK, and d/b/a AMI PETROLEUM
INC.; ANABE, INCORPORATED, a California
corporation, and d/b/a AMI PETROLEUM and d/b/a
ABE PETROLEUM; and a GASOLINE DISPENSING
FACILITY, located at 33090 Mission Boulevard, Union
City, Alameda County, California, Site No. C1069, and
a/k/a AMI PETROLEUM,

Respondents.

On or about September 13, 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 SOM D. GUPTA, individually, a/k/a SON D. GUPTA, and d/b/a ANABE, INCORPORATED, ABE PETROLEUM LLC and AMI PETROLEUM, INC.; PAWAN K. GARG, a/k/a PAUL GARG, individually, a/k/a GARG PAWANK, and d/b/a AMI PETROLEUM INC.; ANABE, INCORPORATED, a California corporation, and d/b/a AMI PETROLEUM and d/b/a ABE PETROLEUM; a GASOLINE DISPENSING FACILITY, located at 33090 Mission Boulevard, Union City, Alameda County, California, Site No. C1069, and a/k/a AMI PETROLEUM (all of whom are hereafter referred to as "Respondents"); and DOES 1

1 through 10, inclusive, requesting that the Hearing Board order that they cease and desist the
2 transfer of gasoline from the underground gasoline storage tanks to motor vehicles at the
3 gasoline dispensing facility located at 33090 Mission Boulevard, Union City, Alameda County,
4 California, Site No. C1069, also known as AMI Petroleum ("Facility"), thirty days from October
5 14, 2010, the hearing date, until Respondents install enhanced vapor recovery ("EVR") Phase II
6 system equipment certified by the California Air Resources Board ("ARB") in accordance with
7 the requirements of District Regulation 8, Rule 7, Section 302.1.

8 None of the Respondents filed a Notice of Defense prior to the hearing. Pursuant to
9 Government Code § 11506, a copy of which statute was served with the Accusation,
10 Complainant asserted that because the Respondents had not filed a notice of defense, each
11 Respondent had waived the right to a hearing, and that pursuant to said § 11506 and Hearing
12 Board Rule 5.8, had also not utilized that opportunity to raise objections to the Accusation in this
13 matter. Pursuant to Hearing Board Rule 5.8 and Government Code § 11520, the Hearing Board
14 may take action on Respondents' express admissions or upon other evidence and affidavits
15 without any notice thereof to the Respondents.

16 Mr. Abe Gupta, Esq., appeared for Respondents Som D. Gupta and Anabe, Incorporated.
17 Later in the proceeding, Mr. Gupta stated that he represented all Respondents.

18 Susan Adams, Assistant Counsel, appeared for the Air Pollution Control Officer.

19 The Clerk of the Hearing Board provided notice of the hearing on the Accusation in
20 accordance with the requirements of Health and Safety Code section 40823. The Hearing Board
21 heard the Complainant's request for an Abatement Order on October 14, 2010.

22 Mr. Peter Nelson and Mr. Scott Owen testified for the APCO. Mr. Som D. Gupta and
23 Mr. Abe Gupta testified for the Respondents.

24 The Hearing Board provided the public with an opportunity to testify at the hearing, as
25 required by the Health and Safety Code. Mr. Kevin Gilbert, who introduced himself as a
26 litigation attorney for the City of Union City, testified. He submitted one document with his
27 testimony, an email string dated May 6, 2010 through May 7, 2010 between Mr. Abe Gupta and

1 representatives of the City of Union City. Prior to the hearing, on or about October 12, 2010,
2 Mr. Gilbert had also submitted a letter to the Hearing Board, entitled "Response to Gupta
3 Request for Continuance," concerning this Docket.

4 The Hearing Board heard evidence, testimony and oral argument from the APCO and the
5 Respondents. The District offered into evidence the facts set forth in the District's Request for
6 Official Notice in Support of Accusation and Request for Order for Abatement, which the
7 Hearing Board granted. The Hearing Board admitted the District's Exhibit Nos. 1 through 8.
8 Respondents submitted no exhibits at the Hearing. The Respondents directed the Hearing Board
9 to documents that Mr. Abe Gupta had submitted to the Hearing Board prior to the hearing in
10 support of the Respondents' positions.

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

15 **FINDINGS OF FACT**

16 1. Mr. Som D. Gupta, an individual, admitted that he is an officer of Anabe,
17 Incorporated, a California corporation. He admitted that Anabe, Incorporated owns the land that
18 is located at 33090 Mission Boulevard, Union City, Alameda County, California, and owns
19 and/or operates the gasoline dispensing facility ("GDF") at that location, Site No. C1069, and
20 that is operating as AMI Petroleum or ABE Petroleum ("Facility"). Mr. Som D. Gupta stated
21 that AMI Petroleum and ABE Petroleum LLC are dissolved as limited liability corporations
22 ("LLCs"). Mr. Som D. Gupta stated further that Pacific Lee Auto, an auto repair business is a
23 tenant of Anabe, Incorporated that is located at the Facility address.

24 2. The District introduced California State Board of Equalization gasoline and sales
25 tax records, available through a LexisNexis search, and Alameda County Assessor's Office
26 records, which indicated that Pawan K. Garg, Krishna Garg, Som D. Gupta and Lalita Gupta
27 own the property at 33090 Mission Boulevard, Union City. Mr. Som D. Gupta stated that he

1 received a quitclaim deed, executed in 2005, from Mr. Paul Garg, also known as Pawan K. Garg,
2 which Mr. Gupta has not recorded against the property, through which quitclaim deed Mr. Garg
3 relinquished his property interests in the land and the Facility.

4 3. The Facility is subject to the jurisdiction of the District. The Facility contains two
5 stationary underground gasoline storage tanks. The District estimated the Facility's annual
6 gasoline throughput as approximately 360,000 for the calendar year 2009 based on the
7 Respondents' handwritten report of 8 months of gasoline throughput submitted to the District in
8 or about October 2009. Ms. Adams stated that the last gasoline throughput records available to
9 the District were records for calendar year 2004.

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

18 5. A GDF "vapor recovery system" collects gasoline vapors that are discharged
19 during gasoline transfer operations and processes the vapors to prevent their release into the
20 atmosphere.

21 6. A GDF vapor recovery system comprises a "Phase I" system, which controls
22 gasoline vapors during the transfer of gasoline from gasoline cargo tanks to a GDF's stationary
23 storage tank, and a "Phase II" system, which controls gasoline vapors during transfer of gasoline
24 between the GDF's stationary storage tank and a motor vehicle.

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

1 8. State law requires that stations in existence as of April 1, 2005 with underground
2 stationary gasoline storage tanks had to install an enhanced vapor recovery (“EVR”) Phase II
3 system as of April 1, 2009. As of April 1, 2009, only EVR Phase II equipment was ARB-
4 certified, and any Phase II system that was not ARB-certified as EVR Phase II was de-certified.

5 9. The District is authorized to tag “out of order” components at a GDF that are not
6 certified by ARB. Until such components are replaced, repaired or adjusted and the District has
7 reinspected the components (or authorized use of the components pending reinspection), no one
8 may operate them.

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

13 11. On numerous occasions, the District conducted compliance inspections at the
14 Facility, including most recently on October 13, 2010. A District inspector photographed the
15 Facility conducting gasoline dispensing operations that day and purchased gasoline that day as
16 well.

17 12. Mr. Som D. Gupta admits that he has known for at least two years of the
18 requirement to install the EVR Phase II system as of April 1, 2009.

19 13. The Respondents have stipulated that as of the date of the hearing in this matter,
20 they have not installed the EVR Phase II system or any of the EVR Phase II equipment at the
21 Facility.

22 14. The Respondents have stipulated that they have not curtailed or ceased dispensing
23 gasoline at the Facility on or after April 1, 2009 and that they continue to conduct gasoline
24 dispensing operations with an uncertified EVR Phase II system, in violation of District
25 Regulation 8-7-302 as of the date of the hearing on this Docket.

26 15. The Facility is one of two remaining facilities within a District inspection area
27 that includes approximately 360 GDFs that continues to dispense gasoline without the required
28

1 ARB-certified EVR Phase II equipment in place; the other GDF is the subject of a conditional
2 abatement order already issued by this Hearing Board.

3 16. On or about June 24, 2009, the District issued Respondents Notice of Violation
4 (“NOV”) No. A50175.

5 17. As of October 14, 2010, the Facility had not completed the required EVR Phase II
6 upgrade and was operating in violation of District Regulation 8-7-302.1.

7 **CONCLUSIONS OF LAW**

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

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

17 Cause for determination that Respondents are in violation of District Regulation 8-7-
18 302.1 is established by Findings of Fact Nos. 1, 2, 10, 11, 12, 13, 14, 15, 16, 17.

19 Cause for issuance of an order that Respondents abate this violation is established by
20 Respondents’ admissions and Findings of Fact Nos. 1 through 17, inclusive.

21 **ORDER**

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

25 1. That the APCO’s Request for a Order for Abatement shall be and hereby is
26 GRANTED as follows: Respondents Som D. Gupta; Pawan K. Garg; Anabe, Incorporated, AMI
27 Petroleum; ABE Petroleum; and a gasoline dispensing Facility, located at 33090 Mission

1 Boulevard, Union City, California, and any other gasoline dispensing facility doing business at
2 that location; and their agents, employees, successors and assigns are hereby ordered to cease
3 gasoline dispensing operations at the Facility on Saturday, November 13, 2010, which is thirty
4 (30) days from the October 14, 2010 hearing, until:

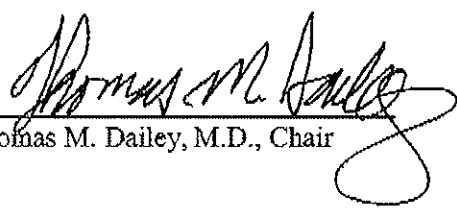
- 5 a. Respondents come into compliance with Regulation 8, Rule 7, Section 302.1
6 by installing an ARB-certified EVR Phase II system that complies with the
7 system manufacturer's specifications and with the terms and conditions of the
8 District authority to construct the EVR Phase II system at the Facility; and
- 9 b. Respondents submit the EVR Phase II upgrade "start-up notification" to
10 Respondents' District permit engineer, as required by the EVR Phase II
11 system's authority to construct, with a copy submitted simultaneously to this
12 Hearing Board and to the District Legal Division, attention Brian C. Bungler,
13 via facsimile or certified mail;
- 14 c. Respondents submit to the to this Hearing Board and to the District Legal
15 Division, attention Brian C. Bungler, via facsimile or certified mail:
 - 16 1) State Board of Equalization records for calendar year 2009 that verify
17 gasoline sales and throughput for that year;
 - 18 2) Monthly gasoline throughput logs on a District-approved form for the
19 Calendar Years 2005, 2006, 2007, 2008, and 2009; and Calendar Year 2010,
20 January through September; and
 - 21 3) a deed of trust or other instrument filed in Alameda County Recorder's
22 Officer, verifying ownership of the gasoline dispensing facility, District Site
23 No. C1069, located at 33090 Mission Boulevard, Union City, California, and
24 of the real property located at the same street address.

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

26 3. That the Hearing Board shall retain jurisdiction over this matter until Respondents
27 come into compliance with the EVR Phase II requirements of Regulation 8, Rule 7, Section

1 302.1 and submit "start-up notification" in accordance with the requirements set forth in
2 Paragraph 1 of this Order for Abatement.

3 Moved by: Terry A. Trumbull, Esq.
4 Seconded by: Thomas M. Dailey, M.D.
5 AYES: Christian Colline, P.E.; Rolf Lindenhayn, Esq.; Julio Magalhães,
6 Ph.D.; Terry A. Trumbull, Esq., and Thomas M. Dailey, M.D.
7 NOES: None
8 ABSTAINED: None

9
10 
11 Thomas M. Dailey, M.D., Chair 11-9-10
12 Date

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28