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DEC 09 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. 3598

Complainant,

vs,

**AMENDED
CONDITIONAL ORDER
FOR ABATEMENT**

Cheuk Fung, individually, and *d/b/a* Max Gas, Warm
Springs Valero, and Warm Springs Gas; Cheuk M. &
Juilan Fung Trust; a Gasoline Dispensing Facility located
at 39925 Mission Boulevard, Fremont, California, Site
No. D0587, *a/k/a* Max Gas; and a Gasoline Dispensing
Facility located at 47700 Warm Springs Boulevard,
Fremont, California, Site No. C8687, *a/k/a* Warm Springs
Valero and/or Warm Springs Gas,

Respondents.

On or about September 27, 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 Cheuk Fung, individually, and *d/b/a* Max Gas, Warm Springs Valero, and Warm Springs Gas; Cheuk M. & Juilan Fung Trust; a Gasoline Dispensing Facility located at 39925 Mission Boulevard, Fremont, California, Site No. D0587, *a/k/a* Max Gas; and a Gasoline Dispensing Facility located at 47700 Warm Springs Boulevard, Fremont, California, Site No.

1 C8687, a/k/a Warm Springs Valero and/or Warm Springs Gas and Does 1 through 10, inclusive
2 (all of whom are hereafter referred to as "Respondents") requesting that the Hearing Board order
3 Respondents to cease and desist transferring gasoline from the underground gasoline storage
4 tanks to motor vehicles at their two gasoline dispensing facilities, which are located at 39925
5 Mission Boulevard, Fremont, Site D0587, known as Max Gas, and 47700 Warm Springs
6 Boulevard, Fremont, Site C8687, known as Warm Springs Valero (together "Facilities"), thirty
7 days from the date of hearing in this matter until Respondents install enhanced vapor recovery
8 ("EVR") Phase II system equipment certified by the California Air Resources Board ("ARB") in
9 accordance with the requirements of District Regulation 8, Rule 7, Section 302.1.

10 The Clerk of the Hearing Board provided notice of the hearing on the Accusation in
11 accordance with the requirements of Health and Safety Code section 40823. The Hearing Board
12 heard the request for an Abatement Order on October 28, 2010. Randi Wallach, Assistant
13 Counsel, appeared for the Air Pollution Control Officer. No one appeared for Respondents. The
14 Hearing Board closed the hearing after receiving evidence, testimony and argument, and took the
15 matter under submission for decision. After consideration of the evidence, the Hearing Board
16 voted to issue a Conditional Order for Abatement that would require Respondents to complete
17 the Phase II EVR upgrades or cease gasoline dispensing operations at both of their Facilities by
18 November 27, 2010.

19 After service of the Conditional Order for Abatement, Ms. Fanny Fung, on behalf of Ms.
20 Jui Lan Fung, contacted the Clerk of the Hearing Board to request a re-hearing of the matter.
21 Ms. Fanny Fung informed that Clerk that subsequent to the service of the Accusation, her father
22 and owner of the Facilities, Mr. Cheuk Fung, passed away. Ms. Fanny Fung and Ms. Jui Lan
23 Fung were not aware of the hearing on October 28, 2010. The Hearing Board granted the
24 request for a re-hearing.

25 The Clerk of the Hearing Board provided notice of the re-hearing on the Accusation in
26 accordance with the requirements of Health and Safety Code section 40823. The Hearing Board
27 re-heard the request for an Abatement Order on December 2, 2010.

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Ms. Fanny Fung appeared for the Respondents.

Ms. Randi Wallach, Assistant Counsel, appeared for the APCO.

The Hearing Board provided the public with an opportunity to testify at the hearing, as required by the Health and Safety Code. No members of the public testified. The Hearing Board heard evidence, testimony and oral argument from the APCO and Respondents. At the hearing on the matter, Respondents admitted that Respondent Jui Lan Fung is the new owner and operator of the Facilities, and that the Facilities have operated without the Phase II EVR upgrade since April 1, 2009, in violation of state and District regulations, as alleged in the Accusation. Further, at the hearing on the matter and before the Hearing Board, the Parties stipulated to entry of an Amended Conditional Order for Abatement, and requested that this Hearing Board enter an Amended Conditional Order for Abatement against Respondents that would amend the original Conditional Order for Abatement so as to require Respondents to install Phase II EVR systems certified by the ARB in accordance with the requirements of District Regulation 8, Rule 7, Section 302.1 or cease and desist transferring gasoline from the underground gasoline storage tanks to motor vehicles at the Facilities by January 1, 2011, thirty days from December 2, 2010. The parties also agreed that an Amended Conditional Order for Abatement should be issued to Jui Lan Fung, the current owner and operator of the Facilities.

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

WRITTEN EXPLANATION OF ACTION

Because the Parties have stipulated to the entry of this Amended Conditional Order for Abatement, the Hearing Board must include a written explanation of its action in this Amended Conditional Order for Abatement, but it is not required to make any factual findings to support

1 the Amended Conditional Order for Abatement under Health and Safety Code Section 42451(b).

2 To that end, the Hearing Board explains its action as follows.

3 The Parties have agreed to address the problems identified in the Accusation and to
4 provide the relief sought. The Parties have agreed that Respondent Jui Lan Fung owns and
5 operates the Facilities and that Respondents are in continuing violation of District Regulation 8,
6 Rule 7, Section 302.1 because Respondents have not yet completed the required Phase II EVR
7 upgrade at the Facilities. As such, the Parties have agreed that Respondents should be required
8 (1) to install certified Phase II EVR systems at both Facilities or cease and desist transferring
9 gasoline from the underground gasoline storage tanks to motor vehicles at their Facilities by
10 January 1, 2011, or thirty days from December 2, 2010 until Respondents complete the Phase II
11 EVR upgrades.

12 The Hearing Board therefore believes that the Parties' agreed course of action is in the
13 public interest and that entry of this Amended Conditional Order for Abatement is appropriate
14 under the circumstances.

15 **ORDER**

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

19 1. That the APCO's Request for an Amended Conditional Order for Abatement
20 ("Order") shall be and hereby is GRANTED as follows: Respondents Jui Lan Fung, Max Gas,
21 Warm Springs Valero, and Warm Spring Gas, as well as any other gasoline dispensing facility
22 doing business at 39925 Mission Boulevard, Fremont, California and/or 47700 Warm Springs
23 Boulevard, Fremont, California, and their agents, employees, successors and assigns are hereby
24 ordered to cease gasoline dispensing operations at the Facilities on or before January 1, 2011,
25 until:

- 26 a. Respondents come into compliance with Regulation 8, Rule 7, Section 302.1
27 by installing an ARB-certified EVR Phase II system that complies with the

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system manufacturer's specifications and with the terms and conditions of the District authority to construct the EVR Phase II system at each of the Facilities; and

b. Respondents submit the EVR Phase II upgrade "start-up notification" to Respondents' District permit engineer, as required by the EVR Phase II 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.

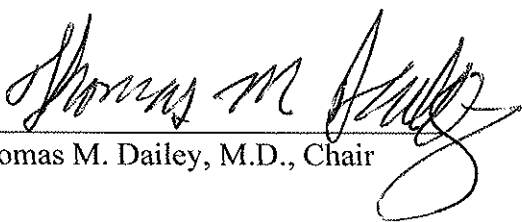
Moved by: Christian Colline, P.E.

Seconded by: Terry A. Trumbull, Esq

AYES: Christian Colline, P.E., Rolf Lindenhayn, Esq., Julio Magalhaes, Ph.D., Terry A. Trumbull, Esq., and Thomas M. Dailey, M.D.

NOES: None

ABSTAINED: None


Thomas M. Dailey, M.D., Chair

12.9.10
Date