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HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

BEFORE THE HEARING BOARD OF THE

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Lisa Harper
Clerk, Hearing Board
Bay Area Air Quality
Management District

AIR POLLUTION CONTROL OFFICER of the BAY
AREA AIR QUALITY MANAGEMENT DISTRICT,

DOCKET NO. 3600

Complainant,

vs,

ORDER FOR
ABATEMENT

SURJIT RATTU, individually, *a/k/a* SAM RATTU, and
d/b/a CUTTING FOOD AND GAS, a Gasoline
Dispensing Facility, Site No. D0450, *a/k/a* CUTTING
MINI MARKET (ARCO); and CUTTING FOOD AND
GAS, INC., a California corporation, and *d/b/a*
CUTTING FOOD AND GAS, *a/k/a* CUTTING MINI
MARKET (ARCO),

Respondents.

On or about September 30, 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 SURJIT RATTU, individually, *a/k/a* SAM RATTU, and *d/b/a* CUTTING FOOD AND GAS, a Gasoline Dispensing Facility, Site No. D0450, *a/k/a* CUTTING MINI MARKET (ARCO); and CUTTING FOOD AND GAS, INC., a California corporation, and *d/b/a* CUTTING FOOD AND GAS, *a/k/a* CUTTING MINI MARKET (ARCO) (all of whom are hereafter referred to as “Respondents”); and DOES 1 through 10, inclusive, requesting that the Hearing Board order that they cease and desist the transfer of gasoline from the underground gasoline storage tanks to motor vehicles at the gasoline dispensing facility (“GDF”) located at

1 1001 Cutting Boulevard, Richmond, Contra Costa County, California, Site No. D0450, also
2 known as Cutting Food and Gas and Cutting Mini Market (“Facility”), immediately upon
3 execution of an order for abatement, until Respondents install enhanced vapor recovery (“EVR”)
4 Phase II system equipment certified by the California Air Resources Board (“ARB”) in
5 accordance with the requirements of District Regulation 8, Rule 7, Section 302.1.

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

14 Mr. Uttam Mann appeared for Respondents, including Respondent Surjit Rattu, who also
15 appeared.

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

17 The Clerk of the Hearing Board provided notice of the hearing on the Accusation in
18 accordance with the requirements of Health and Safety Code section 40823. The Hearing Board
19 heard the Complainant’s request for an Abatement Order on November 4, 2010.

20 Mr. Chris Berglund and Mr. Scott Owen testified for the APCO. Mr. Mann and Mr.
21 Surjit Rattu testified for the Respondents.

22 The Hearing Board provided the public with an opportunity to testify at the hearing, as
23 required by the Health and Safety Code. No one appeared. However, near the conclusion of the
24 hearing, Ms. Adams stated that her office had just received a letter directed to the Clerk of the
25 Hearing from Contra Costa Health Services, copying Ms. Adams, concerning this Facility. The
26 letter is dated November 1, 2010. The Hearing Board heard evidence, testimony and oral
27 argument from the APCO and the Respondents. The District offered into evidence the facts set

1 forth in the District’s Request for Official Notice in Support of Accusation and Request for
2 Order for Abatement, which the Hearing Board granted. The Hearing Board admitted the
3 District’s Exhibits 1 through 6 and Respondents’ Exhibits A and B.

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

8 **FINDINGS OF FACT**

9 1. Respondent Rattu, individual, stated that he is the sole shareholder of Cutting
10 Food & Gas, Inc., a currently-suspended California corporation, which owns and operates the
11 GDF at 1001 Cutting Boulevard, Richmond, Contra Costa County, California, designated as
12 District Site No. D0450. He stated further that Cutting Food & Gas, Inc. leases the real property
13 at which the facility is located, from Mr. George Young, the real property owner.

14 2. The Facility is subject to the jurisdiction of the District. The Facility contains two
15 stationary underground gasoline storage tanks. The District stated that according to the Facility’s
16 September 2009 – August 2010 annual gasoline throughput records, the Facility’s annual
17 gasoline throughput for that period was 464,000 gallons, but that Mr. Rattu his throughput has
18 increased to approximately 500,000 gallons annually.

19 3. Volatile organic compounds (“VOCs”) are organic compounds that evaporate
20 quickly into the atmosphere. VOCs, reacting with oxides of nitrogen in sunlight, create ground
21 level ozone. Ground level ozone is the primary component of photochemical smog, which is a
22 significant air quality problem in the Bay Area. Ozone aggravates respiratory diseases, reduces
23 visibility, causes eye irritation, and damages vegetation. One of the common sources of VOCs is
24 gasoline vapors. Gasoline vapor, which contains hydrocarbons, is an air contaminant. Gasoline
25 contains benzene, a known carcinogen. In the Bay Area, gasoline dispensing facilities are a
26 major source of VOC emissions.

27 4. A GDF “vapor recovery system” collects gasoline vapors that are discharged
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1 during gasoline transfer operations and processes the vapors to prevent their release into the
2 atmosphere.

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

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

10 7. Stations in existence as of April 1, 2005 with underground stationary gasoline
11 storage tanks had to install an enhanced vapor recovery ("EVR") Phase II system as of April 1,
12 2009. As of April 1, 2009, only EVR Phase II equipment was ARB-certified, and any Phase II
13 system that was not ARB-certified as EVR Phase II was de-certified.

14 8. The District is authorized to tag "out of order" components at a GDF that are not
15 certified by ARB. Until such components are replaced, repaired or adjusted and the District has
16 reinspected the components (or authorized use of the components pending reinspection), no one
17 may operate them.

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

22 10. On numerous occasions, the District conducted compliance inspections at the
23 Facility, including most recently on November 3, 2010. A District inspector photographed the
24 Facility conducting gasoline dispensing operations that day and purchased gasoline that day as
25 well.

26 11. The respondents do not dispute that they are dispensing gasoline at the Facility.
27 They assert that they have installed Goodyear hoses that meet the Phase II EVR requirements.

1 from the District's Hearing Board to stop violations of a District rule or regulation prohibiting or
2 limiting the discharge of an air contaminant into the air.

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

7 Cause for determination that Respondents are in violation of District Regulation 8-7-
8 302.1 is established by Findings of Fact Nos. 1, 2, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20.

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

11 **ORDER**

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

15 1. That the APCO's Request for a Order for Abatement shall be and hereby is
16 GRANTED as follows: Respondents and their agents, employees, successors and assigns are
17 hereby ordered to cease gasoline dispensing operations at the Facility on Saturday, December 4,
18 2010, which is thirty (30) days from the November 4, 2010 hearing, until:

19 a. Respondents obtain the required District authority to construct an ARB-certified
20 EVR Phase II system at the Facility, in accordance with Regulation 2, Rule 1, Section 301; and

21 b. Respondents come into compliance with Regulation 8, Rule 7, Section 302.1 by
22 installing an ARB-certified EVR Phase II system that complies with the system manufacturer's
23 specifications and with the terms and conditions of the District authority to construct the EVR
24 Phase II system at the Facility; and

25 c. Respondents submit the EVR Phase II upgrade "start-up notification" to
26 Respondents' District permit engineer, as required by the EVR Phase II system's authority to
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1 construct, with a copy submitted simultaneously to this Hearing Board and to the District Legal
2 Division, attention Brian C. Bunger, via facsimile or certified mail.

- 3 1. That this Order for Abatement shall become effective immediately.
4 2. That the Hearing Board shall retain jurisdiction over this matter until Respondents
5 come into compliance with the EVR Phase II requirements of Regulation 8, Rule 7, Section
6 302.1 and submit "start-up notification" in accordance with the requirements set forth in
7 Paragraph 1 of this Order for Abatement.

8 Moved by: Christian Colline, P.E.

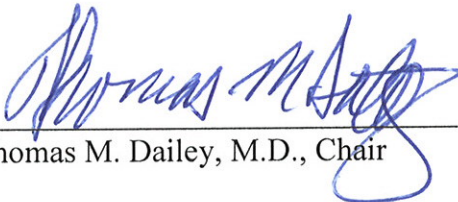
9 Seconded by: Valerie Armento, Esq.

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

12 NOES: None

13 ABSTAINED: None

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Thomas M. Dailey, M.D., Chair

11-10-10
Date