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FILED
DEC 27 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,

Complainant,

vs,

MOHSEN EFRAN KHAZIRI; ELENA KHAZIRI; and
the Gasoline Dispensing Facility located at 724 N.
Mathilda Avenue, Sunnyvale, California, Site No. D0284,
known as Sunnyvale Beacon Gas and Carwash, also
known as Chevron and/or Sunnyvale Carwash

Respondents.

DOCKET NO. 3603

**CONDITIONAL ORDER
FOR ABATEMENT**

On or about November 12, 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 Mohsen Efran Khaziri; Elena Khaziri; and the Gasoline Dispensing Facility located at 724 N. Mathilda Avenue, Sunnyvale, California, Site No. D0284, known as Sunnyvale Beacon Gas and Carwash, also known as Chevron and/or Sunnyvale Carwash (all of whom are hereafter referred to as “Respondents”); and Does 1 through 10, inclusive requesting

1 that the Hearing Board order Respondents to cease and desist transferring gasoline from the
2 underground gasoline storage tanks to motor vehicles at their gasoline dispensing facility, which
3 is located at 724 N. Mathilda Avenue, Sunnyvale, California, Site No. D0284, known as
4 Sunnyvale Beacon Gas and Carwash, also known as Chevron and/or Sunnyvale Carwash
5 (“Facility”), immediately on the date of execution of an order by the Hearing Board in this
6 matter until Respondents install enhanced vapor recovery (“EVR”) Phase II system equipment
7 certified by the California Air Resources Board (“ARB”) in accordance with the requirements of
8 District Regulation 8, Rule 7, Section 302.1.

9 Mr. Mohsen Efran Khaziri appeared for Respondents.

10 Todd Gonsalves, Assistant Counsel, appeared for the Air Pollution Control Officer.

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

14 Mr. Tyler Henthorne testified for the APCO. Mr. Mohsen Efran Khaziri testified for the
15 Respondents.

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

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

26 **FINDINGS OF FACT**

- 27 1. Mohsen Efran Khaziri, an individual, admitted that he and Respondent Elena

1 Khaziri own and/or operate the gasoline dispensing facility (“GDF”) that is located at 724 N.
2 Mathilda Avenue, Sunnyvale, California, Site No. D0284 and is operating as Sunnyvale Beacon
3 Gas and Carwash, also known as Chevron and/or Sunnyvale Carwash.

4 2. The Facility is subject to the jurisdiction of the District. The Facility contains
5 three underground gasoline stationary storage tanks. The Facility’s annual gasoline throughput
6 is approximately 800,000 gallons.

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

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

18 5. A GDF vapor recovery system comprises a “Phase I” system, which controls
19 gasoline vapors during the transfer of gasoline from gasoline cargo tanks to a GDF’s stationary
20 storage tank, and a “Phase II” system, which controls gasoline vapors during transfer of gasoline
21 between the GDF’s stationary storage tank and a motor vehicle.

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

25 7. State law requires that stations in existence as of April 1, 2005 with underground
26 stationary gasoline storage tanks had to install an enhanced vapor recovery (“EVR”) Phase II
27 system as of April 1, 2009. As of April 1, 2009, only EVR Phase II equipment was ARB-

1 certified, and any Phase II system that was not ARB-certified as EVR Phase II was de-certified.

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

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

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

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

14 12. On July 21, 2009, the District issued Respondents Notice of Violation (“NOV”)
15 No. A50887 for conducting gasoline dispensing operations with an uncertified EVR Phase II
16 system as of April 1, 2009, in violation of District Regulation 8-7-302.1.

17 13. As of December 9, 2010, the Facility had not completed the required EVR Phase
18 II upgrade and was operating in violation of District Regulation 8-7-302.1.

19 14. The Facility is currently in foreclosure. Respondents are pursuing an action in the
20 courts to avoid the foreclosure, and have already obtained an order delaying the foreclosure by
21 ninety days. Respondents have another hearing in the case, to take place on December 29, 2010,
22 in which they will seek to delay the foreclosure an additional ninety days.

23 **CONCLUSIONS OF LAW**

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

1 limiting the discharge of an air contaminant into the air.

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

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

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

10 **ORDER**

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

14 1. That the APCO's Request for a Conditional Order for Abatement ("Order") shall
15 be and hereby is GRANTED as follows: Mohsen Efran Khaziri, Elena Khaziri as well as
16 Sunnyvale Beacon Gas and Carwash, Chevron, and/or Sunnyvale Carwash and any other
17 gasoline dispensing facility doing business at 724 N. Mathilda Avenue, Sunnyvale, California
18 and their agents, employees, successors and assigns are hereby ordered to cease gasoline
19 dispensing operations at the Facility on January 31, 2011, until:

- 20 a. Respondents come into compliance with Regulation 8, Rule 7, Section 302.1
21 by installing an ARB-certified EVR Phase II system that complies with the
22 system manufacturer's specifications and with the terms and conditions of the
23 District authority to construct the EVR Phase II system at the Facility; and
24 b. Respondents submit the EVR Phase II upgrade "start-up notification" to
25 Respondents' District permit engineer, as required by the EVR Phase II
26 system's authority to construct, with a copy submitted simultaneously to this
27 Hearing Board and to the District Legal Division, attention Brian C. Bunger,

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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.

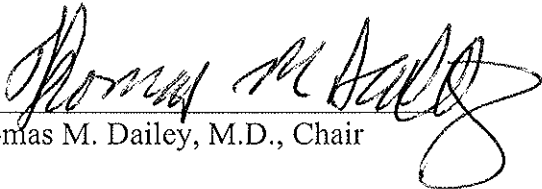
Seconded by: Terry A. Trumbull, Esq.

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

NOES: None

ABSTAINED: None

ABSENT: Rolf Lindenhayn, Esq.


Thomas M. Dailey, M.D., Chair

12-23-10
Date