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APR 19 2017

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.

SPRING HILL JERSEY CHEESE, INC., a California
corporation; LARRY K. PETER, an Individual; and
DOES 1 - 25, inclusive,

Respondents.

DOCKET NO. 3698

STIPULATED CONDITIONAL
ORDER FOR ABATEMENT

This action concerns an accusation filed by the Air Pollution Control Officer ("APCO") of the Bay Area Air Quality Management District ("District"), Complainant in this action, against Spring Hill Jersey Cheese, Inc., Larry K. Peter and Doe respondents, (hereafter collectively, "Respondents"), seeking an order for abatement requiring Respondents to cease operation of equipment, including two boilers, at their facility located at 621 Western Avenue, Petaluma, Sonoma County, California, District Facility Identification No. 18712 ("Facility"), unless and until Respondents complied with the requirements of District Regulation 2, Rule 1 and District Regulation 9, Rule 7.

PROCEDURAL BACKGROUND AND HEARING

Procedural Background: Complainant's Accusation

Complainant filed its accusation against Respondents on February 28, 2017 ("Accusation").

The Clerk of the Hearing Board assigned this matter Docket No. 3698 and set a public hearing on the Accusation for April 18, 2017. The Clerk of the Hearing Board provided notice of the

1 hearing in accordance with the requirements of Health and Safety Code section 40823.

2 The Clerk of the Hearing Board set a pre-hearing conference for March 28, 2017, and notified the
3 Complainant and Respondents (hereafter "Parties"). The Hearing Board Chair cancelled the conference
4 at Respondents' request and Complainant's concurrence.

5 Public Hearing, April 18, 2017

6 The Hearing Board conducted a public hearing on April 18, 2017. Susan D. Adams,
7 Assistant Counsel, appeared on behalf of the Complainant. Respondents' attorney, Michael
8 Brook, appeared on behalf of Respondents. In attendance were Hari Doss, a District permit
9 engineer, and Richard Murray, a District inspector. Complainant stated that the Parties had agreed
10 on terms for a stipulated conditional order for abatement to resolve the alleged violations that are
11 the subject of this action. Complainant summarized the facts and undisputed allegations and the
12 terms of the proposed order; Respondents concurred with the statements. The Parties requested
13 approval of the proposed stipulated conditional order for abatement. Complainant moved for entry
14 into the record of proposed exhibits that had been lodged with the Hearing Board prior to the
15 hearing.

16 Because Respondents did not file a notice of defense, Respondents' express admissions
17 could be used as evidence without any notice thereof, and the Hearing Board may decide the matter
18 or dismiss the action at the public hearing, pursuant to Hearing Board Rule 6.9(b).

19 Following statements by the Parties, the Hearing Board Chair opened the hearing to
20 members of the public for comments. There were no public comments. Following Hearing
21 Board member discussions, the Hearing Board entered Complainant's exhibits into the record and
22 approved issuance of a stipulated conditional order for abatement with the terms requested by the
23 Parties.

24 **STATEMENT OF THE PARTIES**

25 Respondents affirm that Spring Hill Jersey Cheese, Inc. ("Spring Hill") is a California
26 corporation that owns and operates the Facility, which is located at 621 Western Avenue, Petaluma,
27 Sonoma County, California and is known as "Petaluma Creamery." Respondents affirm that Larry K.
28 Peter ("Peter"), an individual, is an officer of, and agent for service of process for, Spring Hill, and

1 that he operates the Facility. Respondents admit they have owned and/or or operated the Facility since
2 2004 and have operated the Facility periodically from 2005 to 2010 and continuously since 2011. The
3 Facility is currently listed in the District's records as Facility Identification ("FID") No. 18712.

4 Respondents agree that they require a District permit to operate certain equipment at their
5 Facility, including two 29.3-MMBTU natural gas-fired boilers – one of which began operation in 1982
6 and one which began operation in 1983 – and a milk dryer with a 4.3-MMBTU burner fueled by
7 natural gas. Respondents do not dispute that prior to their ownership and operation, the Facility
8 operated as FID No. 1683 pursuant to a District permit to operate that expired on February 1, 2005.
9 Respondents affirm that they did not submit a transfer of ownership of the permit to operate to the
10 District, and that they have been operating the Facility without a permit to operate since at least 2011.

11 Respondents affirm that in October 2007, they submitted their first application for a new
12 District permit to operate the Facility (Application No. 16783) and that the District notified
13 Respondents that the application was incomplete. Respondents affirm they did not complete the
14 application and that the District cancelled it as incomplete in September 2010.

15 Respondents affirm that in November 2015, the District issued Notice of Violation ("NOV")
16 No. A51690 to the Facility for continuing to operate the Facility without a permit as required by
17 District Regulation 2, Rule 1.

18 Respondents affirm also that in November 2015, the District issued to the Facility NOV No.
19 A51691 for failure to comply with requirements of District Regulation 9, Rule 7. Respondents agree
20 that pursuant to District Regulation 9, Rule 7, the Facility's two boilers must meet 9 ppm NOx
21 emission limits (for one boiler as of January 1, 2012, and for the second boiler as of January 1, 2013)
22 and have had to demonstrate compliance with those limits with initial and periodic source tests. In
23 2008, Respondents had conducted source tests which had demonstrated that NOx emissions from one
24 of the two boilers were more than 90 ppm. Respondents affirm that they neither performed the
25 compliance monitoring required under District Regulation 9, Rule 7 nor demonstrated compliance
26 with the NOx emission limits.

27 Respondents agree that after having received the NOV's, Respondents submitted a new permit
28 application (Application No. 27597) in November 2015, which the District determined was

1 incomplete and notified Respondents by letter dated December 8, 2015. Respondents agree they did
2 not submit all the needed information for a complete application, as well as the permit fees needed in
3 order to process the application and that the District cancelled this application in March 2017.

4 Between 2007 and November 2016, District staff conducted at least 6 Facility site visits and
5 contacted Respondents via phone calls, letters and e-mails at least 15 times. Efforts to resolve the
6 continuing violation of District Regulation 2, Rule 1 and Regulation 9, Rule 7 failed, and
7 Complainant filed this action. Respondents agree that they have been operating the Facility since
8 at least 2011 without the required District permit and continue to operate the boilers in violation of
9 District Regulation 9, Rule 7. At this time, Complainant does not dispute Respondents' assertion
10 that they have had significant financial difficulties that have rendered compliance with the
11 District's permit and boiler requirements a challenge.

12 **PARTIES' PROPOSED STIPULATED CONDITIONAL ORDER FOR ABATEMENT**

13 Complainant presented the Parties' agreed-upon terms for a stipulated conditional order for
14 abatement:

- 15 • Respondents will timely submit a complete application for an authority to construct
16 or install equipment at the Facility, including boilers, that will comply with the
17 applicable requirements of District Regulation 2, Rule 1 and District Regulation 9,
18 Rule 7; and
- 19 • A "timely" complete application" shall mean one that is submitted on a schedule that
20 enables adequate time for (a) the District to process the review and issuance of the
21 authority to construct and a permit to operate and (b) Respondents to meet its
22 deadlines in the stipulated conditional order for abatement; and
- 23 • On or before September 30, 2017, Respondents shall install new, or retrofit existing,
24 boilers at the Facility that comply with all applicable requirements of District
25 Regulation 9, Rule 7; and
- 26 • On or before September 30, 2017, Respondents shall obtain a District permit to
27 operate the Facility, which permit shall comply with District Regulation 2, Rule 1;
28 and

- By no later than October 1, 2017, Respondents shall operate the Facility in accordance with a District permit to operate and in accordance with District Regulation 9, Rule 7; and
- The Parties shall agree to a continued public hearing as early as mid-October, 2017; the Parties may request jointly a cancellation of the hearing if Respondents have complied with all requirements and terms of the stipulated conditional order for abatement.

WRITTEN EXPLANATION IN SUPPORT OF ITS DECISION

Health and Safety Code Section 42451(b) provides that the Hearing Board may, upon a motion from the Air Pollution Control Officer, issue a stipulated conditional order for abatement without making the requisite findings set forth in Section 42451(a), but the Hearing Board must include a written explanation of this action to issue such an order. The Hearing Board has determined that it is appropriate to enter a stipulated conditional order for abatement that requires Respondents to cease violations of District Regulation 2, Rule 1 and Regulation 9, Rule 7 by no later than September 30, 2017. The Hearing Board issues the following explanation of its action:

Respondents have owned and/or operated Petaluma Creamery, a facility located at 621 Western Avenue, Petaluma, Sonoma County, California ("Facility"), since at least 2004. The Facility includes two boilers that must comply with NOx emission limits and other requirements prescribed in District Regulation 9, Rule 7. The Facility requires a District permit to operate pursuant to District Regulation 2, Rule 1. The Facility's prior owner's permit to operate expired February 2005. Respondents have been operating the Facility since at least 2011 without the required permit.

Respondents are knowledgeable of the obligation to hold a permit to operate the Facility. For example, the Facility's prior permit to operate expired in February 2005 after Respondents had become the Facility's owners and/or operators. Respondents submitted two applications for a new permit, in 2007 and 2015, both of which were deemed incomplete and cancelled. In November 2015, the District issued an NOV for operating the Facility without the required permit. The District has notified and reminded Respondents of the continuing permit violation many times through site visits and other contacts.

1 Respondents are also knowledgeable of the emission limits and monitoring requirements for
2 their boilers to comply with District Regulation 9, Rule 7 through the District's outreach to them as
3 well as issuance of an NOV in November 2015.

4 The Parties do not dispute that Respondents have had financial challenges to meeting the
5 permit and boiler emission requirements of District Regulation 2, Rule 1, and Regulation 9, Rule 7.
6 Accordingly, the Hearing Board finds it appropriate to provide until September 30, 2017 to achieve
7 compliance with District Regulation 9, Rule 7 and to be operating in compliance with District
8 Regulation 9, Rule 7 and District Regulation 2, Rule 1, as of October 1, 2017.

9 **STIPULATED CONDITIONAL ORDER FOR ABATEMENT**

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

- 13 1. Respondents and their agents, employees, successors and assigns (collectively,
14 "Respondents") will submit a timely complete application for an authority to construct or
15 install and permit to operate equipment, including boilers, at the Facility, located at 621
16 Western Avenue, Petaluma, Sonoma County, California, which application complies with
17 the District's permitting requirements of District 2, Rule 1 and District Regulation 9, Rule
18 7; and
- 19 2. A "timely" complete application is one that is submitted on a schedule that enables adequate
20 time for (a) the District to process the review and issuance of the authority to construct and
21 a permit to operate and (b) Respondents to meet its deadlines in the stipulated conditional
22 order for abatement; and
- 23 3. On or before September 30, 2017, Respondents shall install new, or retrofit existing, boilers
24 at the Facility that comply with all applicable requirements of District Regulation 9, Rule 7;
25 and
- 26 4. On or before September 30, 2017, Respondents shall complete in a timely fashion all
27 necessary tasks to obtain a permit to operate the Facility, including Facility boilers, which
28 permit shall comply with District permitting requirements, including those set forth in

1 Regulation 2, Rule 1; and

2 5. As of October 1, 2017, Respondents shall operate the Facility in accordance with a District
3 permit to operate and in accordance with District Regulation 9, Rule 7; and

4 6. The Hearing Board shall set a public hearing as early as mid-October, 2017; the Parties may
5 request jointly a cancellation of the hearing if Respondents have complied with all requirements
6 and terms of the stipulated conditional order for abatement; and

7 7. That the Hearing Board shall retain jurisdiction over the order for abatement for one year from
8 April 18, 2017, i.e., the date of the public hearing in this matter, during which period the Parties
9 may apply to modify or terminate this Stipulated Conditional Order for Abatement in accordance
10 with the Rules of the Hearing Board.

11 **Moved By:** Julio A. Magalhães, Ph.D.

12 **Seconded By:** Valerie Armento, Esq.

13 **Ayes:** Terry A. Trumbull, Esq.; Julio A. Magalhães, Ph.D.; Valerie Armento, Esq.; Gilbert G.
14 Bendix, P.E.; Peter Y. Chiu, M.D., P.E.

15 **Noes:** None.

16 

17 

18 Terry A. Trumbull, Esq., Chair

Date

APR 20 2017

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BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

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OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
STATE OF CALIFORNIA

AIR POLLUTION CONTROL OFFICER of
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SPRING HILL JERSEY CHEESE, INC., a
California corporation; LARRY K. PETER, an
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Respondents.

Docket No.: 3698

CERTIFICATE OF SERVICE -
Conditional Order for Abatement

STATE OF CALIFORNIA)
) ss.
City and County of San Francisco)

I, Marcy Hiratzka, do hereby certify under penalty of perjury as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the
above entitled action. I served a true copy of the attached Conditional Order for Abatement to
the addressees listed below at the addresses specified:

Michael Brook, Esq.
Law Offices of Michael Brook
645 4th Street, Ste. 200
Santa Rosa, CA 95404

by depositing same in the United States certified mail, return receipt requested, and via email,
on April 20, 2017; and on

Susan Adams, Assistant Counsel
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, California 94105

by hand-delivery deposit of same in the in-box of the District Counsel's office, and via email,
on April 20, 2017.

DATED: April 20, 2017

Marcy Hiratzka
Clerk of the Boards