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HEARING BOARD  
BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

Lisa Harper  
Clerk of the Boards  
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.

INTERNATIONAL MARINE FUELS GROUP, INC., a  
California corporation, and *d/b/a* SAN FRANCISCO  
PETROLEUM, a Gasoline Dispensing Facility, located at  
410 Blomquist Street, Redwood City, California, Site No.  
C8716, *a/k/a* PACIFIC COMMERCIAL FUELING  
SYSTEMS, INC.,

Respondents.

DOCKET NO. 3592

STIPULATED CONDITIONAL  
ORDER FOR ABATEMENT

The above-captioned matter, Docket No. 3592, is an accusation and request for conditional order for abatement filed by Complainant, the Air Pollution Control Officer ("APCO") of the Bay Area Air Quality Management District ("District") against INTERNATIONAL MARINE FUELS GROUP, INC., a California corporation, and *d/b/a* SAN FRANCISCO PETROLEUM, a Gasoline Dispensing Facility, located at or about 410 Blomquist Street, Redwood City, California, Site No. C8716, *a/k/a* PACIFIC COMMERCIAL FUELING, INC. ("Respondent"). The APCO sought an order from this Hearing Board requiring Respondent to cease and desist transferring gasoline from the underground gasoline storage tanks to motor vehicles at the gasoline dispensing facility, which is located at 410 Blomquist Street, Redwood City, San Mateo County, California, 94063, Site No. C8716

1 (“Facility”), immediately upon the execution of the Conditional Order for Abatement in this matter by  
2 the Chair of the Hearing Board or his designee until they pay all outstanding annual District permit to  
3 operate fees and install enhanced vapor recovery (“EVR”) Phase II system equipment certified by the  
4 California Air Resources Board (“ARB”) in accordance with the requirements of District Regulation 2,  
5 Rule 1, Section 302 and District Regulation 8, Rule 7, Section 302.1.

6 On August 30, 2010, the APCO filed its original Accusation in this matter against Respondent  
7 and other named parties. The Clerk of Hearing Board assigned this matter Docket No. 3592 and set  
8 a hearing for September 23, 2010. On or about September 15, 2010, the APCO, by and through its  
9 attorney, the District Counsel, and Respondent INTRNATIONAL MARINE FUELS GROUP, INC.,  
10 jointly filed a stipulation to file the Amended Accusation, which this Hearing Board ordered to be  
11 filed.

12 On or about September 15, 2010, the APCO and Respondent jointly filed with this Hearing  
13 Board a Stipulation for Entry of [Proposed] Conditional Order for Abatement for Docket No. 3592  
14 (“Proposed Conditional Order”). The Stipulation requested that this Hearing Board enter the  
15 Proposed Conditional Order for abatement against Respondent that would require Respondent to  
16 cease and desist transferring gasoline from the underground gasoline storage tanks to motor vehicles at  
17 the Facility thirty days from September 23, 2010, or by October 23, 2010, until Respondent pays all  
18 outstanding annual permit to operate fees and install Phase II EVR system equipment certified by the  
19 ARB in accordance with the requirements of District Regulation 2, Rule 1, Section 302 and District  
20 Regulation 8, Rule 7, Section 302.1.

#### 21 **WRITTEN EXPLANATION OF ACTION**

22 Because the Parties have stipulated to the entry of the Proposed Conditional Order as this  
23 Conditional Order, the Hearing Board must include a written explanation of its action in this  
24 Conditional Order, but it is not required to make any factual findings to support the Conditional Order  
25 under Health and Safety Code Section 42451(b). To that end, the Hearing Board explains its action as  
26 follows.

27 The Parties have agreed to address the problems identified in the Accusation and to provide the  
28 relief sought. The Parties have agreed that Respondent owns and operates the Facility as specified in

1 the Stipulation. Respondent agrees it is in continuing violation of District Regulation 2, Rule 1,  
2 Section 302 because Respondent has operated the Facility since December 1, 2009 without a valid,  
3 current annual District permit to operate. Respondent also agrees that it is in continuing violation of  
4 District Regulation 8, Rule 7, Section 302.1 because Respondent has not yet completed the required  
5 Phase II EVR upgrade at the Facility. As such, the Parties have agreed that Respondent should be  
6 required to cease and desist transferring gasoline from the underground gasoline storage tanks to motor  
7 vehicles at the Facility, as of the thirtieth day following September 23, 2010, or October 23, 2010, until  
8 Respondent obtains a valid, current District permit to operate and until Respondent installs an ARB-  
certified Phase II EVR system.

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

12 **Conditional Order for Abatement**

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

16 1. That the APCO's and Respondent's Request for this Stipulated Conditional Order for  
17 Abatement shall be and hereby is GRANTED as follows: Respondent INTERNATIONAL MARINE  
18 FUELS GROUP, INC., a California corporation, and *d/b/a* SAN FRANCISCO PETROLEUM, and a  
19 gasoline dispensing facility, located at 410 Blomquist Street, Redwood City, California, Site No. C8716,  
20 a/k/a Pacific Commercial Fueling Systems, Inc.; and its agents, employees, successors and assigns are  
21 hereby ordered to cease gasoline dispensing operations at the Facility thirty (30) days from September  
22 23, 2010, or by October 23, 2010, until:

- 23 a. Respondent comes into compliance with District Regulation 2, Rule 1, Section 302 by  
24 full payment of all outstanding annual District permit to operate fees;
- 25 b. Respondent comes into compliance with Regulation 8, Rule 7, Section 302.1 by  
26 installing an ARB-certified EVR Phase II system at the Facility that complies with  
27 the system manufacturer's specifications and with the terms and conditions of the  
28 District authority to construct the EVR Phase II system at the Facility; and

c. Respondent submits the EVR Phase II upgrade "start-up notification" to Respondent's 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; and

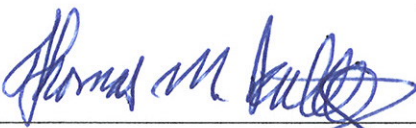
3. That the Hearing Board shall retain jurisdiction over this matter until Respondent comes into compliance with the EVR Phase II requirements of Regulation 2, Rule 1, Section 302 and Regulation 8, Rule 7, Section 302.1 and submits "start-up notification" in accordance with the requirements set forth in Paragraph 1 of this Conditional Order for Abatement.


Moved by: Valerie Armento, Esq.

Seconded by: Terry A. Trumbull, Esq.

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

NOES: None

  
\_\_\_\_\_  
Thomas M. Dailey, M.D., Chair

  
\_\_\_\_\_  
Date



FILED

SEP 16 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.

INTERNATIONAL MARINE FUELS GROUP, INC., a  
California corporation, and *d/b/a* PACIFIC  
COMMERCIAL FUELING SYSTEMS, INC. and *d/b/a*  
SAN FRANCISCO PETROLEUM; NICK WEBER,  
individually; a GASOLINE DISPENSING FACILITY,  
located at 410 Blomquist Street, Redwood City,  
California, Site No. C8716, *a/k/a* PACIFIC  
COMMERCIAL FUELING, INC.,

Respondents.

DOCKET NO. 3592

STIPULATION FOR FILING  
AMENDED ACCUSATION; ORDER

Hearing Date: September 23, 2010

The undersigned stipulate that Complainant in the above-captioned matter, the Air Pollution Control Officer ("APCO") of the Bay Area Air Quality Management District ("District"), may file the attached Amended Accusation to amend the caption in this action pursuant to Hearing Board Rule 7.2.a.

The undersigned acknowledge service of a copy of such Amended Accusation and waive new public notices or service, pursuant to Hearing Board Rule 7.2.a, and waive any continuances or reopening of this matter that may be available pursuant to Hearing Board Rule 7.2.b.

The undersigned further agree that to the extent any allegations in the original Accusation are denied in the Notice of Defense that is on file in this matter, Hearing Board Docket No. 3592, they are deemed denied in the Amended Accusation.

1 SO AGREED, STIPULATED AND EXECUTED.

2 BRIAN C. BUNGER  
3 DISTRICT COUNSEL  
4 BAY AREA AIR QUALITY  
5 MANAGEMENT DISTRICT  
6 939 Ellis Street  
7 San Francisco, CA 94109

8 By: 

9 Susan D. Adams  
10 Assistant Counsel

11 Date: 9-15-10

ROBERT A. FALCHE  
INTERNATIONAL MARINE FUELS  
GROUP, INC.

By: 

Robert A. Falche  
President

Date: 9-14-10

12  
13 ORDER

14 Under the terms of the above stipulation,

15 IT IS ORDERED that the Amended Accusation be filed in this action and that the  
16 Amended Accusation replace the original Accusation, dated August 30, 2010.

17 Date: 9-28-10

  
18 Thomas M. Dailey, M.D.

19 Chair

20 Hearing Board of the Bay Area Air Quality  
21 Management District

FILED

SEP 16 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.

INTERNATIONAL MARINE FUELS GROUP, INC., a  
California corporation, and *d/b/a* SAN FRANCISCO  
PETROLEUM, a Gasoline Dispensing Facility, located at  
410 Blomquist Street, Redwood City, California, Site No.  
C8716, *a/k/a*. PACIFIC COMMERCIAL FUELING,  
INC.; and DOES 1 through 10, inclusive,

Respondents

DOCKET NO. 3592

AMENDED ACCUSATION OF  
VIOLATION OF REGULATION 8,  
RULE 7, SECTION 302, AND  
REQUEST FOR CONDITIONAL  
ORDER FOR ABATEMENT

Complainant, the Air Pollution Control Officer (hereinafter the "APCO") of the Bay Area Air Quality Management District (hereinafter the "District"), requests that the Hearing Board issue a conditional order for abatement ("Conditional Order for Abatement") directed to INTERNATIONAL MARINE FUELS GROUP, INC., a California corporation, and. *d/b/a* SAN FRANCISCO PETROLEUM, a Gasoline Dispensing Facility, located at 410 Blomquist Street, Redwood City, California, Site No. C8716, *a/k/a* PACIFIC COMMERCIAL FUELING SYSTEMS, INC; and DOES 1 through 10, inclusive (hereinafter "Respondents").

In support of this request, the District alleges as follows:

1 Background

2 The District

3 1. The District is and has been organized and existing under Chapter 4 of Part 3 of Division  
4 26 (sections 40200 to 40276) of the California Health and Safety Code. The District is and has been a  
5 governmental agency charged with the primary responsibility for controlling air pollution from all  
6 sources other than motor vehicles, which responsibility includes adopting and enforcing rules and  
7 regulations relating to air pollution and maintaining healthy air quality in the Counties of Alameda,  
8 Contra Costa, Marin, Napa, San Francisco, San Mateo, and Santa Clara, and portions of the Counties of  
9 Sonoma and Solano.

10 2. The APCO is appointed by the District Board of Directors ("District Board") to enforce  
11 all rules and regulations adopted or prescribed by the District Board. *California Health and Safety*  
12 *(Health & Saf.) Code §§40750 and 40752*. The APCO is also authorized to seek an order for abatement  
13 from the District's Hearing Board to stop violations of a District rule or regulation prohibiting or  
14 limiting the discharge of an air contaminant into the air. *Health & Saf. Code §42451(a)*.

15 Respondent and Facility

16 3. A gasoline dispensing facility ("GDF") that is located at 410 Blomquist Street, Redwood  
17 City, San Mateo County, California, Site No. C8716, *a/k/a* Pacific Commercial Fueling, Inc. and *a/k/a*  
18 San Francisco Petroleum ("Facility"), is subject to the jurisdiction of the District. The Facility contains  
19 two underground gasoline stationary storage tanks. The Facility has an annual permit to operate that  
20 covers the period of December 1<sup>st</sup> to December 1<sup>st</sup> of the following year. The Facility's annual gasoline  
21 throughput in calendar year 2008 was approximately 341,436 gallons.

22 4. International Marine Fuels Group, Inc., a California corporation, and *d/b/a* San Francisco  
23 Petroleum (hereinafter "Owner"), owns and/or operates the Facility. (Owner and Facility are hereinafter  
24 referred to as "Respondents.")

25 5. The District does not know the true names and capacities of Respondents DOES 1  
26 through 10, inclusive, and therefore names them by the foregoing fictitious names. When the true  
27 names and capacities of these DOE Respondents are discovered, the District will seek leave of the  
28 Hearing Board to amend this Accusation to reflect their true names and capacities. Each of the



1 fictitiously named Respondents is responsible for the occurrences alleged herein.

2 District Hearing Board

3         6.       The District Hearing Board may, after notice and a hearing, issue an order for abatement  
4 against Respondents when the Hearing Board finds that a respondent is operating any equipment or  
5 other contrivance in violation of a District rule or regulation that prohibits or limits the discharge of an  
6 air contaminant into the air. *Health & Saf. Code § 42451(a)*.

7         7.       The Hearing Board's order will require a respondent either to refrain from a particular act  
8 or to refrain from a particular act unless certain conditions are met. *Health & Saf. Code §42452*.

9 Gasoline Vapor is an Air Contaminant

10       8.       Volatile organic compounds ("VOCs") are organic compounds that evaporate quickly  
11 into the atmosphere. VOCs, reacting with oxides of nitrogen in sunlight, create ground level ozone.  
12 Ground level ozone is the primary component of photochemical smog, which is a significant air quality  
13 problem in the Bay Area. Ozone aggravates respiratory diseases and damages vegetation. Children,  
14 seniors, people with respiratory illnesses, and athletes are particularly at risk. *See, Bay Area 2005 Ozone*  
15 *Strategy, Volume I, January 4, 2006 ("2005 Ozone Strategy")*, at pp. 6 - 7, a copy of which is available  
16 at [www.baaqmd.gov/Divisions/Planning-and-Research/Plans/Bay-Area-Ozone-Strategy.aspx](http://www.baaqmd.gov/Divisions/Planning-and-Research/Plans/Bay-Area-Ozone-Strategy.aspx), and  
17 which is incorporated herein by this reference. *See also, Draft Bay Area 2010 Clean Air Plan, Volume I,*  
18 *March 2010 ("CAP")*, at p. 2-12, a copy of which is available at [www.baaqmd.gov/Divisions/Planning-](http://www.baaqmd.gov/Divisions/Planning-and-Research/Plans/Clean-Air-Plans.aspx)  
19 [and-Research/Plans/Clean-Air-Plans.aspx](http://www.baaqmd.gov/Divisions/Planning-and-Research/Plans/Clean-Air-Plans.aspx), and which is incorporated herein by this reference. The  
20 final, adopted *CAP* will update the 2005 Ozone Strategy.

21       9.       Currently, the Bay Area is not in attainment with either of the State's one-hour or eight-  
22 hour ambient air quality standards for ozone. *2005 Ozone Strategy*, at pp. 6 - 7; *CAP*, Introduction, p. 2,  
23 and at pp. 2-1 to 2-3.

24       10.       One of the common sources of VOCs is gasoline vapors. Gasoline vapor, which contains  
25 hydrocarbons, is an air contaminant. *District Regulation 1-233*. Gasoline contains benzene, a known  
26 carcinogen. In the Bay Area, gasoline fueling stations are a major source of VOC emissions. *See, CAP*  
27 at pp. 2-14 – 2-16; Tables 2.3; Fig. 2-5.

28 /////

1 GDF Vapor Recovery System Requirements – State Law and District Implementation of State Law

2 11. For more than thirty years, State law has required that a GDF with stationary gasoline  
3 tanks be equipped with a “vapor recovery system” to control gasoline vapor emissions during gasoline  
4 marketing operations. *Health & Saf. Code § 41950(a)*.

5 12. A GDF “vapor recovery system” collects hydrocarbon vapors and gases that are  
6 discharged during gasoline transfer operations and processes the vapors and gases to prevent their  
7 release into the atmosphere. *Health & Saf. Code §41952*. A GDF vapor recovery system is a complete  
8 system that includes “all equipment used at a GDF to recover, contain, and transfer gasoline vapors  
9 generated by refueling vehicle tanks, gasoline storage tanks, and portable fuel containers ...; dispensing  
10 equipment, couplers, fittings, processors, control boards, gauges, and monitors.” *D-200, Definitions for*  
11 *Vapor Recovery Procedures* (Amended May 2, 2008) (hereinafter “*D-200*”), incorporated by reference  
12 at California Code of Regulations (“Cal. Code Regs.”), title 17, §94010, which is incorporated herein by  
13 this reference (“vapor recovery system for gasoline dispensing facility”). The system comprises a  
14 “Phase I” system, which controls gasoline vapors during the transfer of gasoline from gasoline cargo  
15 tanks to a GDF’s stationary tank, and a “Phase II” system, which controls gasoline vapors during  
16 transfer of gasoline between the GDF’s stationary storage tank and a motor vehicle. *District*  
17 *Regulations 8-7-204* (“Phase I”) and *8-7-205* (“Phase II”); *see also, D-200*, (“phase I” and “phase II”).

18 13. The California Air Resources Board (“ARB”) establishes the performance standards of a  
19 GDF vapor recovery system that ARB determines are reasonable and necessary to achieve or maintain  
20 any applicable ambient air quality standard, including ground level ozone. *Health & Saf. Code*  
21 *§41954(a)*. ARB is also responsible for certifying those GDF gasoline vapor recovery systems that meet  
22 the applicable performance standards established by ARB. *Health & Saf. Code §41954(c)*; *CP-201,*  
23 *Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities* (hereinafter  
24 “*CP-201*”), §§1, 2, at pp. 1-4, incorporated by reference at Cal. Code Regs., tit. 17, §94010. A copy of  
25 CP-201 is available at [www.arb.ca.gov/testmeth/vol2/cp201\\_may2006.pdf](http://www.arb.ca.gov/testmeth/vol2/cp201_may2006.pdf) and is incorporated herein by  
26 this reference.

27 14. ARB compiles a list of equipment defects in vapor recovery systems that ARB  
28 determines “substantially impair the effectiveness of the systems in reducing air contaminants.” *Health*

1 & *Saf. Code §41960.2(c)(1)*.

2 15. The list, entitled the Vapor Recovery Equipment Defects List (“*VRED List*”), specifies  
3 that “installation or use of any [ARB] uncertified component” is an equipment defect. *VRED List*, page  
4 1, incorporated by reference at Cal. Code Regs., tit. 17, §94006. A copy of the *VRED List* (September  
5 5, 2008) is available at [www.arb.ca.gov/vapor/vred/vredlist.pdf](http://www.arb.ca.gov/vapor/vred/vredlist.pdf) and is incorporated herein by this  
6 reference.

7 16. The District is authorized to mark a defective GDF vapor recovery system component  
8 found at a GDF “out of order,” including use of a component not certified by ARB. No one may use the  
9 component until the defective component is replaced, repaired or adjusted and the District has  
10 reinspected the component or authorized use of the component pending reinspection. *Health & Saf.*  
11 *Code §41960.2(d)*.

12 17. In March, 2000, ARB established an *enhanced* vapor recovery (“EVR”) program to  
13 improve collection and control of gasoline vapors attributable to GDF gasoline marketing operations.  
14 *ARB Resolution 00-9* (March 23, 2000 and *ARB Executive Order G-01-024*, which are available at  
15 [www.arb.ca.gov/vapor](http://www.arb.ca.gov/vapor) and are incorporated herein by this reference. Among other requirements, the  
16 EVR program required that unless otherwise exempt, as of April 1, 2005, owners or operators of new or  
17 modified GDFs with underground stationary gasoline storage tanks had to meet ARB’s vapor recovery  
18 system EVR Phase II system performance requirements. *CP-201§§2.1 - 2.6, Table 2-1, at pp. 2 - 5*.

19 18. ARB provided four years, or until April 1, 2009, for owners or operators of *existing*  
20 GDFs with underground stationary gasoline storage tanks to update their vapor recovery systems to meet  
21 EVR Phase II performance standards. *Health & Saf. Code §§ 41954(c), 41956.1(a); CP-201§§2.1 - 2.6,*  
22 *Table 2-1, at pp. 2 - 5*.

23 19. ARB issued numerous advisories about the deadline to install Phase II EVR by April 1,  
24 2009, including Vapor Recovery Advisory No. 385 (March 2009), which reiterated that the deadline  
25 “remained April 1, 2009” and which stated that in cases where the owner did not diligently act to meet  
26 the deadline, an “air district should take traditional enforcement and legal action.” A copy of Advisory  
27 No. 385 is available at [www.arb.ca.gov/vapor/advisories/adv385.pdf](http://www.arb.ca.gov/vapor/advisories/adv385.pdf) and is incorporated herein by this  
28 reference. (Other advisories are available at [www.arb.ca.gov/vapor/advisories/advisories.htm](http://www.arb.ca.gov/vapor/advisories/advisories.htm).)

1 District Regulations and Compliance with EVR Phase II in the Bay Area

2 20. The District prohibits an owner and/or operator of a GDF with an underground stationary  
3 storage tank to transfer gasoline between a GDF's underground stationary storage tank and a motor  
4 vehicle without an ARB-certified EVR Phase II system. *District Regulation 8-7-302.1.*

5 21. The District also requires that the GDF owner and/or operator obtain an authority to  
6 construct the EVR Phase II system upgrade prior to installation of the EVR Phase II system. *District*  
7 *Regulation 2-1-301.*

8 22. Beginning in or about March 2009, the District offered owners and operators of GDFs  
9 with underground stationary gasoline storage tanks the opportunity to enter into a compliance and  
10 settlement agreement that enabled the owner or operator to continue operating the GDF without the  
11 ARB-certified EVR Phase II system, despite the prohibition, while completing the upgrade by  
12 September 1, 2009. The standard compliance and settlement agreement included issuance of a notice of  
13 violation ("NOV") for violation of District Regulation 8-7-302.1 and collection of a penalty. The  
14 District has entered into more than 280 such compliance and settlement agreements with GDF owners or  
15 operators responsible for the EVR Phase II upgrade.

16 23. Approximately 1900 GDFs within the District were required to install an ARB-certified  
17 EVR Phase II System by April 1, 2009. As of March 1, 2010, approximately sixty stations continued to  
18 operate without the required ARB-certified EVR Phase II system in place.

19 Notifications of the April 1, 2009 deadline

20 24. The District published on the District website and mailed directly, and often, hand  
21 delivered, numerous compliance advisories to owners and operators of GDFs with underground  
22 stationary gasoline storage tanks to encourage their compliance. For example, in its June 2008 and  
23 February 2009 compliance advisories, the District reminded owners and operators to take action to meet  
24 the April 1, 2009 deadline. In its March, 2009 advisory, the District announced the opportunity to enter  
25 into compliance and settlement agreements that enabled the continued operation for a limited period of  
26 time while completing the upgrade, with payment of a penalty for missing the April 1, 2009 deadline. In  
27 its June 2009 advisory, the District announced the June 30, 2009 deadline to participate in the reduced  
28 penalty program by executing a compliance and settlement agreement. A copy of each compliance



1 advisory is available on the District website at [www.baaqmd.gov](http://www.baaqmd.gov).

2 **District Permit to Operate a GDF**

3 25. District Regulation 2, Rule 1, Section 302 prohibits a person to use or operate any article,  
4 machine, equipment or other contrivance that causes or controls the issuance of air contaminants,  
5 including a GDF, without first obtaining a District permit to operate.

6 **Respondent Violated District Regulations 2-1-302 and 8-7-302.1**

7 26. Despite being fully aware of the requirement to have installed the Phase II EVR system  
8 as of April 1, 2009, Respondents did not curtail or cease GDF operations on or after April 1, 2009.

9 27. In August 2008, the District delivered its June 26, 2008 compliance advisory at the  
10 Facility about the then-upcoming April 1, 2009 deadline and in April 2009, the District delivered its  
11 March 20, 2009 compliance advisory. At each site visit, the District confirmed that Respondents were  
12 continuing to operate without the ARB-certified Phase II EVR equipment after April 1, 2009.

13 28. On or about March 24, 2009, Respondents obtained an authority to construct the EVR  
14 Phase II system at the Facility.

15 29. On or about June 3, 2009, the District entered into a compliance and settlement  
16 agreement with Respondents, which Respondent PACIFIC COMMERCIAL FUELING, INC., by  
17 Robert Falche, named as its President, executed on behalf of Respondents, enabling Respondents to  
18 continue operating after April 1, 2009 until September 1, 2009 so long as Respondents were diligently  
19 working to upgrade their vapor recovery systems ("Compliance Agreement"). Respondents did not seek  
20 an extension of the September 1, 2009 deadline. A copy of the executed Compliance Agreement is  
21 annexed to this Accusation as Exhibit 1.

22 30. On or about May 29, 2009, the District issued Respondents NOV No. A50593 for  
23 conducting gasoline dispensing operations with an uncertified EVR Phase II system as of April 1, 2009.  
24 A copy of NOV No. A50593 is annexed to this Accusation as Exhibit 2.

25 31. The Compliance Agreement provides that if the Owner fails to complete the upgrade by  
26 September 1, 2009 or fails to comply with other requirements of the Compliance Agreement, the Owner  
27 is in breach of the Compliance Agreement:

28 Enforcement Action. If PACIFIC COMMERCIAL FUELING continues to

operate the GDF and fails to comply with any of the requirements or provisions of Paragraphs 1 through 13 inclusive, it will be in breach of this Agreement, and thus, as a remedy and at its sole discretion, the DISTRICT may terminate this Agreement upon written notice to PACIFIC COMMERCIAL FUELING. The DISTRICT may seek civil or criminal penalties, or otherwise take any enforcement action against PACIFIC COMMERCIAL FUELING, including tag out of PACIFIC COMMERCIAL FUELING.

32. Respondents continue to be in breach of the Compliance Agreement because, among other requirements, they failed to complete the EVR Phase II upgrade by September 1, 2009. Respondents did not seek or obtain any extensions from the District. The District has not sought to terminate the Compliance Agreement.

33. As of the date of this Accusation, despite the District's repeated efforts to obtain Respondents' compliance with District Regulation 8-7-302.1, Respondents continue to operate the Facility without ARB-certified EVR Phase II equipment, in violation of District rules and regulations.

34. Since December 1, 2009, Respondents have also operated the Facility without a current Permit to Operate, in violation of District Regulation 2-1-302. As of this date, the total amount due for the 2009 – 2010 Permit to Operate and all fees, including the reinstatement fees, is One Thousand Two Hundred Seventy-Four Dollars and Fifty-Eight Cents (\$1,274.58). A true copy of Invoice No. 2HJ24, dated October 19, 2009 and now marked "DELINQUENT," which the District issued to Respondent INTERNATIONAL MARINE FUELS GROUP INC. ("Invoice"), is annexed to this Accusation as Exhibit 3. The Invoice had informed Respondents that the Facility was not authorized to operate after December 1, 2009, unless the District received payment. The Invoice lists all permit and other fees that comprise the total amount due.

35. By this Accusation, the APCO seeks a Conditional Order for Abatement that requires Respondents to cease violating District Regulation 8, Rule 7, Section 302 by ceasing motor vehicle gasoline fueling operations until Respondents have paid all outstanding Permit to Operate fees and until Respondents have installed an ARB-certified Phase II EVR system at the Facility.

36. It is not unreasonable to require Respondents to comply with District Regulation 2, Rule 1, Section 302 and District Regulation 8, Rule 7, Section 302.

**Request for Conditional Order for Abatement**

WHEREFORE, the APCO requests as follows:

1           1.       That this Hearing Board issue a Conditional Order for Abatement to Respondents that  
2 takes effect immediately upon its execution by the Chair of the Hearing Board or his designee  
3 ("Effective Date") and that directs Respondents to cease gasoline dispensing operations as of the  
4 Effective Date until:

5                   a.       Respondents pay all outstanding 2009 – 2010 Permit to Operate fees and come  
6 into compliance with District Regulation 2-1-302;

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

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

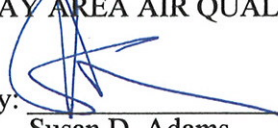
15           2.       That this Hearing Board retain jurisdiction over this matter until Respondents come into  
16 compliance with the EVR Phase II requirements of Regulation 8, Rule 7, Section 302.1 and submit  
17 "start-up notification" in accordance with the requirements set forth in Paragraph 1 above.

18           3.       That this Hearing Board provide for such other and further relief as the Hearing Board deems  
19 just and proper.

20 Dated: September 14, 2010

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