

FILED

JUN 10 2012

HEARING BOARD  
BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT  
Sean Gallagher  
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.

COLLISION TECHNOLOGIES, INC., a California  
Corporation, *d/b/a* G & G Enterprises, Site No. A8423;

GERARDO MALDONADO, *a/k/a* Gary Maldonado,  
individually and *d/b/a* G & G Enterprises, Site No. A8423,

Respondents.

DOCKET NO. 3633

~~PROPOSED~~  
CONDITIONAL ORDER FOR  
ABATEMENT

On April 11, 2012, 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 Collision Technologies, Inc. a California corporation, *d/b/a* G & G Enterprises, Site No. A8423; Gerardo Maldonado, *a/k/a* Gary Maldonado, individually and *d/b/a* G & G Enterprises, Site No. A8423; and DOES 1 through 25, inclusive (“Respondents”), requesting that the Hearing Board order Respondents to cease and desist operations at G & G Enterprises, an auto body shop located at 1571 Industrial Parkway West, Hayward, California (the “Facility”), until Respondents come into compliance with District Regulation 2, Rule 1, Section 302.

The Clerk of the Hearing Board provided notice of the hearing on the Accusation in accordance

1 with the requirements of Health and Safety Code Section 40823. The Hearing Board heard the request  
2 for an Abatement Order on June 7, 2012.

3 Respondents neither appeared at the hearing nor did they file a Notice of Defense.

4 Justin A. Zucker, Assistant Counsel Legal Intern, and Randi Wallach, Assistant Counsel,  
5 appeared for the Air Pollution Control Officer (“APCO”).

6 Mr. Militus Alagwu and Mr. Duncan Campbell testified for the APCO.

7 The Hearing Board provided the public with an opportunity to testify at the hearing, as required  
8 by the Health and Safety Code. No members of the public testified. The Hearing Board heard evidence,  
9 testimony, and oral argument from the APCO.

10 At the hearing, the District requested that the Hearing Board enter a Conditional Order for  
11 Abatement requiring Respondents to cease operations within ten (10) days from the date of the entry of  
12 this Conditional Order for Abatement.

13 The Hearing Board closed the hearing after receiving evidence, testimony, and argument, and  
14 took the matter under submission for decision. After consideration of the evidence, the Hearing Board  
15 voted to issue a Conditional Order for Abatement against Respondents, as set forth in more detail below.

### 16 FINDINGS OF FACT

17 1. Respondents own and/or operate the auto body shop located at 1571 Industrial Parkway  
18 West, Hayward, California, Site No. A8423 and are operating as G & G Enterprises.

19 2. The Accusation and service papers were mailed via certified mail, return receipt  
20 requested, to Respondents at the Facility in accordance with Hearing Board Rule 4.4, thus effecting  
21 proper service of the Accusation. Evidence presented at the hearing indicates that Respondent Mr.  
22 Maldonado signed for one, if not both, of the two Accusation and service paper packages sent by  
23 certified mail. Respondents were also properly served with notice of the hearing in this matter.

24 3. At the hearing, the District introduced into evidence Complainant’s Exhibit No. 6, which  
25 were the signed and returned certified mail green return receipts for the delivery of the Accusation and  
26 service papers upon Gerardo Maldonado Agent for Service of Process, Collision Technologies, Inc. and  
27 Gerardo Maldonado. The Hearing Board accepted the Exhibit No. 6 into evidence.

1 4. Automotive coating operations emit air pollutants, including volatile organic compounds  
2 (“VOCs”) and toxic air contaminants (“TACs”).

3 5. A solvent typically used in automotive coating operations is ethylbenzene.

4 6. District Regulation 2, Rule 1, Section 302 prohibits the use or operation of any article,  
5 machine, equipment, or other contrivance that causes or controls the issuance of air contaminants –  
6 including VOCs and TACs such as ethylbenzene – by any person (as described in District Regulation 2,  
7 Rule 1, Section 401) without first obtaining written authorization from the APCO in the form of a Permit  
8 to Operate.

9 7. The purpose of District Regulation 2, Rule 1, Section 302, which requires a Permit to  
10 Operate before the operation of any machine or instrument that causes the emission of air contaminants,  
11 is to limit emissions of air pollutants.

12 8. The Facility is subject to the jurisdiction of the District. The Facility contains two  
13 automotive coating spray booths. Respondents’ operation of the two automotive coating spray booths at  
14 the Facility causes the emission of VOCs and TACs, and are subject to the permitting requirements of  
15 District Regulation 2, Rule 1, Section 302.

16 9. Under District Regulation 3-408, a Permit to Operate is valid for twelve (12) months (or  
17 other period authorized by the APCO). The Permit to Operate for this Facility covers the period of  
18 January 1 through January 1 of the following year. After the initial Permit to Operate expires, the  
19 Facility must renew the permit on an annual basis and pay associated permit fees pursuant to District  
20 Regulation 3. Permit fees for automotive coating facilities are calculated using Schedule E (Solvent  
21 Evaporating Sources) of District Regulation 3. Renewal processing fees are calculated using District  
22 Regulation 3-327.1. Reinstatement fees are assessed for late payment of fees and are calculated using  
23 District Regulation 3-405.3.

24 10. Currently, Respondents do not have a valid Permit to Operate for the operation of their  
25 Facility in direct violation of District Regulation 2, Rule 1, Section 302. Since January 1, 2006,  
26 Respondents have failed to maintain a current Permit to Operate. At the hearing, the District introduced  
27 into evidence Complainant’s Exhibit No. 1, Notice of Violation No. A51009. The Notice of Violation  
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1 was issued to G & G Enterprises on July 5, 2011 for operating without a valid Permit to Operate since  
2 January 1, 2006 in violation of District Regulation 2, Rule 1, Section 302. The Hearing Board accepted  
3 Exhibit No. 1 into evidence.

4 11. Respondents owe permit fees for the period of January 1, 2006 through January 1, 2013.  
5 The District has determined that the total amount of permit fees owed is Three Thousand Seventy Four  
6 Dollars and Fifty Cents (\$3,074.50). At the hearing, the District introduced into evidence Complainant's  
7 Exhibit No. 5, the District's updated Invoice No. 1FX90, which shows in detail the District's calculation  
8 of permit fees owed for the period of January 1, 2006 through January 1, 2013. The Hearing Board  
9 accepted the Exhibit No. 5 into evidence.

10 12. The District has not received any payments from Respondents to renew the Facility's  
11 Permit to Operate since November 2005.

12 13. The District provided notice to Respondents of their need to obtain and maintain a current  
13 Permit to Operate no fewer than thirteen (13) times before and after January 1, 2006, through mailings,  
14 facsimile, and site visits and inspections.

15 14. At the hearing, the District introduced into evidence Complainant's Exhibit No. 3, the  
16 District's original Annual Permit Renewal Invoice No. 1FX90, which included the Permit to Operate  
17 renewal fee breakdown for the period of January 1, 2006 through January 1, 2007. The Hearing Board  
18 accepted Exhibit No. 3 into evidence.

19 15. At the hearing, the District introduced into evidence Complainant's Exhibit No. 4, which  
20 was a facsimile the District sent to Respondent, Mr. Maldonado on June 7, 2011 regarding overdue  
21 permit renewal payment. The Hearing Board accepted Exhibit No. 4 into evidence.

22 16. Evidence establishes that Respondents have continuously operated the Facility without a  
23 valid Permit to Operate since the Facility's Permit to Operate lapsed on January 1, 2006. At the hearing,  
24 the District introduced into evidence Complainant's Exhibit No. 2, which consisted of a series of five (5)  
25 color photographs taken by a District Inspector during a site visit on May 23, 2012. The photographs  
26 show the Facility was still in operation as of that date and that the parking lot was full with clients'  
27 automobiles. The Hearing Board accepted Exhibit No. 2 into evidence.

1 **CONCLUSIONS OF LAW**

2 Pursuant to Health and Safety Code sections 40750, 40752 and 42451(a), the APCO, who is  
3 appointed by the District Board of Directors, is authorized to enforce all rules and regulations adopted or  
4 prescribed by the District Board and is authorized to seek an Order for Abatement from the District's  
5 Hearing Board to stop violations of a District rule or regulation prohibiting or limiting the discharge of  
6 an air contaminant into the air.

7 Pursuant to Health and Safety Code Section 42451(a), the Hearing Board may issue an Order for  
8 Abatement if it finds that a person is operating an auto body shop facility without a permit to operate or  
9 is otherwise in violation of a District rule or regulation that prohibits or limits the discharge of an air  
10 contaminant into the air.

11 Cause for determination that Respondents are in violation of District Regulation 2, Rule 1,  
12 Section 302 is established by Findings of Fact Nos. 1, 4, 6, 8, 9, 10, 11, 12, 13, and 16.

13 Cause for issuance of an order that Respondents abate this violation is established by Findings of  
14 Fact Nos. 1 through 16, inclusive.

15 **ORDER**

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

19 1. That the APCO's Request for a Conditional Order for Abatement ("Order") shall be and  
20 hereby is GRANTED as follows: Collision Technologies, Inc., doing business as G & G Enterprises,  
21 and Mr. Gerardo Maldonado, also known as Gary Maldonado, individually and doing business as G & G  
22 Enterprises, Respondents in this matter, and their agents, employees, successors and assigns are hereby  
23 ordered to cease operations at G & G Enterprises, located at 1571 Industrial Parkway West, Hayward,  
24 California, ten (10) days from the date of the entry of this Conditional Order for Abatement. This  
25 Conditional Order of Abatement shall remain in full force and effect until Respondents come into  
26 compliance with Regulation 2, Rule 1, Section 302 by obtaining the required District Permit to Operate  
27 for the Facility by remitting Three Thousand Seventy Four Dollars and Fifty Cents (\$3,074.50) for  
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1 permit to operate renewal, reprocessing, and reinstatement fees that are past due in the form of a  
2 cashier's check, made payable to the Bay Area Air Quality Management District; and

3 2. That this Conditional Order for Abatement shall become effective immediately.

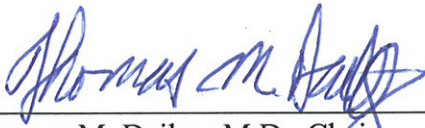
4 Moved by: Terry A. Trumbull, Esq.,

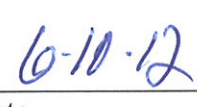
5 Seconded by: Rolf Lindenhayn, Esq.

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

8 NOES: None

9 ABSTAINED: None

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14 Thomas M. Dailey, M.D., Chair

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Date

BEFORE THE HEARING BOARD  
OF THE  
BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
STATE OF CALIFORNIA

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

Complainant, )

vs. )

COLLISION TECHNOLOGIES, INC., a )  
California Corporation, d/b/a G & G Enterprises, )  
Site No. A8423; )

GERARDO MALDONADO, a/k/a Gary )  
Maldonado, individually and d/b/a G & G )  
Enterprises, Site No. A8423; )  
and )

DOES 1 through 15, inclusive, )

Respondents )

DOCKET NO. 3633

CERTIFICATE OF SERVICE

I, Sean Gallagher, do hereby certify under penalty of perjury as follows:

That I am a citizen of the United States, over the age of eighteen years and not a party to the above entitled action; that I served a true copy of the attached Notice of Hearing on:

**Gerardo Maldonado, Agent for Service of Process  
Collision Technologies, Inc.  
1571 Industrial Parkway West  
Hayward, CA 94544**

and


**Gerardo Maldonado, a/k/a Gary Maldonado  
Individually and d/b/a G & G Enterprises  
1571 Industrial Parkway West  
Hayward, CA 94544**

by depositing same in the United States certified mail with return receipt requested, postage prepaid, on July 12, 2012; and

**Brian C. Bungler**  
**District Counsel**  
**Bay Area Air Quality Management District**  
**939 Ellis Street, 7<sup>th</sup> Floor**  
**San Francisco, CA 94109**

by hand-delivery deposit of same in the in-box of the District Counsel's office, on July 12, 2012.

DATED: July 12, 2012

  
Sean Gallagher  
Clerk of the Boards

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