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FILED

JUN 15 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.

T&N GRIMMER ENTERPRISE INC., a California
corporation; TONY NGUYEN (also known as TUAN
NGUYEN), an individual; and DOES 1-25, inclusive,

Respondents.

DOCKET NO. 3699

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 T&N Grimmer Enterprise, Inc., Tony Nguyen (also known as Tuan Nguyen), and Doe respondents, (hereafter collectively, "Respondents"), seeking an order for abatement requiring Respondents to cease operation of gasoline dispensing equipment at their gasoline dispensing facility ("GDF") located at 43411 Grimmer Boulevard, Fremont, Alameda County, California, District Facility Identification No. 112241 ("Facility"), unless and until Respondents complied with the requirements of District Regulation 2, Rule 1.

PROCEDURAL BACKGROUND AND HEARING

Procedural Background: Complainant's Accusation

Complainant filed its accusation against Respondents on May 5, 2017 ("Accusation").

The Clerk of the Hearing Board assigned this matter Docket No. 3699 and set a public

1 hearing on the Accusation for May 30, 2017. The Clerk of the Hearing Board provided notice of the
2 hearing in accordance with the requirements of Health and Safety Code section 40823.

3 The Clerk of the Hearing Board set a pre-hearing conference for May 23, 2017, and notified the
4 Complainant and Respondents (hereafter "Parties"). The Hearing Board Chair cancelled the conference
5 at Respondents' request.

6 Public Hearing, May 30, 2017

7 The Hearing Board conducted a public hearing on May 30, 2017. Susan D. Adams,
8 Assistant Counsel, appeared on behalf of the Complainant. None of the Respondents appeared.

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

12 The District made an opening statement and requested official notice of the District's
13 Regulation 1; Regulation 2, Rule 1; Regulation 3, and its 2017 Clean Air Plan. The Hearing Board
14 granted official notice of the documents.

15 The APCO called three witnesses on behalf of the Complainant. Lorna Santiago, a District
16 permit engineer, testified that she has been a permit engineer at the District for more than 20 years
17 and is the permit engineer for the Facility; that Respondents have owned the Facility since 2010
18 according to the District's records; that Respondents have had a District permit to operate with a
19 permit period of December 1 to December 1 of the following year, but that they have not had a
20 current or valid permit since December 1, 2013; that the Facility has received invoices for the
21 outstanding permit fees for the period of December 1, 2013 to December 1, 2017; and that in
22 connection with a compliance and settlement agreement with the District, Respondents paid \$4,000
23 in 2016, which covered the 2013-2014 fees and a portion of the 2014-2015 fees, but that
24 Respondents did not receive a District permit to operate because the payments were made after the
25 2013-2014 permit year had passed already; and that Respondents have made no further permit fee
26 payments since then.

27 Jorge Franco, a District inspector, testified that he has been an inspector for the District for
28 29 years and for the past five years has inspected gasoline dispensing facilities; that he inspected

1 the Facility in September 2016 and found it operating and in compliance with District Regulation 8,
2 Rule 7, but not in compliance with District Regulation 2, Rule 1, Section 302; that he issued Notice
3 of Violation (“NOV”) Number A58834 to Respondent Nguyen that day for violation of the permit
4 requirement; that when he arrived at the Facility that day, Respondent Nguyen was speaking with
5 Assistant Counsel Susan Adams about a compliance agreement; and that he spoke with Respondent
6 Nguyen thereafter and that said Respondent knew of the permit requirement and knew that the
7 Facility was operating without a current permit.

8 Arnold Argao, a District inspector, testified that he has been a District inspector for 26 years
9 and beginning approximately eight months ago, he has been inspecting GDFs in an area that
10 includes Fremont; that the Facility is one of the GDFs in his assigned area; that in May 2017, he
11 made two site visits, the first time observing the Facility in operation and the second time
12 conducting an on-site follow-up compliance visit, when he found the Facility operating without a
13 current or valid District permit and in violation of the Facility’s source test requirements, for which
14 Inspector Argao issued a notice to comply; and that he identified an auto repair and convenience
15 store at the Facility’s location.

16 The Hearing Board Chair opened the hearing to members of the public for comments.
17 There were no public comments.

18 The Hearing Board entered Complainant’s eight exhibits into the record.

19 **WRITTEN FINDINGS IN SUPPORT OF ITS DECISION**

20 Following discussion, the Hearing Board made the following findings:

21 Respondents own or operate the Facility, a gasoline dispensing facility at 43411 Grimmer
22 Boulevard, Fremont, Alameda County; and

23 Respondents have an obligation to hold a current and valid District permit to operate the
24 Facility; and

25 Respondents know of their requirement to hold such a permit in order to conduct their gasoline
26 dispensing operations; and

27 Respondents had entered into a compliance and settlement agreement with the District in
28 October 2016, in which Respondents agreed to pay all the Facility’s outstanding District permit to

1 operate fees for the period of December 2013 to December 1, 2017 in accordance with the installment
2 payment schedule set forth in the agreement, completing the payments by the end of March 2017; and

3 Respondents failed to pay the outstanding permit fees and since December 1, 2013, have been
4 operating - and continue to operate - the Facility without a current or valid permit.

5 **CONDITIONAL ORDER FOR ABATEMENT**

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

- 9 1. That on or before 30 days from the Effective Date of this Conditional Order for Abatement,
10 Respondents, and their agents, employees, successors and assigns, shall cease gasoline
11 dispensing operations at 43411 Grimmer Boulevard, Fremont, Alameda County, California,
12 until they come into compliance with District Regulation 2, Rule 1, Section 302, by
13 payment of outstanding permit fees in the amount of \$10,756.50; and
- 14 2. That the Hearing Board shall retain jurisdiction over the conditional order for abatement for one
15 year from May 30, 2017, i.e., the date of the public hearing in this matter, pursuant to Hearing
16 Board Rule 4.12; and
- 17 3. That this Conditional Order for Abatement shall take effect on the date the Hearing Board causes
18 this Order to be filed ("Effective Date"), pursuant to Hearing Board Rule 10.3.

19 **Moved By:** James M. Ralph, Esq., Vice-Chair

20 **Seconded By:** Qian Tan, Ph.D. (Public Member Alternate)

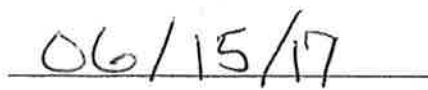
21 **Ayes:** Valerie Armento, Esq.; James M. Ralph, Esq.; Peter Y. Chiu, M.D., P.E.; Qian Tan,
22 Ph.D.

23 **Noes:** None.

24 **Absent:** Gilbert G. Bendix, P.E.

25 

27 James Ralph, Esq., Vice Chair

26 

Date

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FILED
JUN 22 2017
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

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,

Docket No.: 3699

CERTIFICATE OF SERVICE -
Conditional Order for Abatement

Complainant,

vs.

T&N GRIMMER ENTERPRISE INC., a
California corporation; TONY NGUYEN
(also known as TUAN NGUYEN),
an individual; and DOES 1 through 25,
inclusive,

Respondents.

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

ss.

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:

Thanh Nguyen, Agent for Service of Process T&N Grimmer Enterprise Inc. 43411 Grimmer Boulevard Fremont, California 94538	Tony Nguyen a.k.a Tuan Nguyen, an individual c/o Beacon Gas Service 43411 Grimmer Boulevard Fremont, California 94538
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by depositing same in the United States certified mail, return receipt requested, and via email,
on June 22, 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 June 22, 2017.

DATED: June 22, 2017



Marcy Hiratzka
Clerk of the Boards