

1 40823.

2 Public Hearing, February 6, 2018

3 The Hearing Board conducted a public hearing on February 6, 2018. Susan D. Adams
4 appeared on behalf of the Complainant. None of the Respondents appeared.

5 Because Respondents did not file a notice of defense, Respondents' express admissions may be
6 used as evidence without any notice thereof, and the Hearing Board may decide the matter or dismiss
7 the action at the public hearing, pursuant to Hearing Board Rule 6.9(b). Chair Armento proceeded to
8 conduct the hearing as scheduled.

9 Duncan Campbell, District engineer; Arnold Argao, District inspector; Alona Davis,
10 Acting Supervising Air Quality Specialist; and Frank Dickey, Case Settlement Specialist,
11 testified on behalf of the District.

12 Duncan Campbell testified that Mr. Rana is the Facility owner and operator listed in the
13 District's records (Exhibit 1); that the Facility must hold a District permit to operate gasoline
14 dispensing equipment; and that the Facility has had a permit with a permit period of September 1
15 to September 1 of the following year, but has not had a current and valid permit since September
16 1, 2011. He testified further that pursuant to the stipulated conditional order issued in Hearing
17 Board Docket No. 3690 against Mr. Rana, Mr. Rana had made a payment by check of \$17,309 in
18 July 2016 for a District permit to operate through September 1, 2017, but that the check had been
19 returned by the bank for insufficient funds. Mr. Campbell testified that prior to the District
20 receiving notice that the payment had been returned for insufficient funds, the payment had
21 triggered the District's automatic issuance of the permit to operate; and that the returned payment
22 had triggered the District's rescission of the permit to operate and notification in writing to
23 Respondent Rana of the permit rescission (Exhibit 10). Mr. Campbell testified that Mr. Rana
24 submitted a payment of \$7,309 in July 2016, leaving a balance of \$10,000, for which Mr.
25 Campbell delivered an invoice to Mr. Rana (Exhibit 12), and that in October 2017, the District
26 issued an invoice for the total amount of permit fees amount due - then and now - for a current
27 and valid permit, \$14,425 (Exhibit 5). He confirmed that the District has not received any permit
28 fees since July 2016, and that to obtain a permit for the September 1, 2017 - September 1, 2018

1 permit year, he must pay the balance due for the current and prior unpaid years, for a total of
2 \$14,425.00.

3 Arnold Argao testified that he had observed Facility operations on September 21 and 22,
4 2017; that he saw an "OPEN" sign in a Facility window and gas prices posted; that he saw
5 vehicles entering the station and people pumping gas; and that he saw a copy of a District permit
6 to operate, with an expiration date of September 1, 2017, posted on the wall. Mr. Argao testified
7 that during one of the visits, he met with Respondent Rana, who introduced himself as Sharafat
8 Khan, and that he informed Mr. Rana that the permit was expired and must be renewed. Mr.
9 Argao testified further that the Facility site includes an auto repair or auto-related business.

10 Alona Davis testified that in her current position as Acting Supervising Air Quality
11 Specialist of the Enforcement Division's Gasoline Dispensing Facility Group, after District
12 inspector Argao had confirmed that gasoline dispensing operations were continuing after
13 September 1, 2017, she directed District inspector Steve Krysiak, the current Facility inspector, to
14 conduct a Facility compliance inspection and issue a notice of violation for violation District
15 Regulation 2-1-302 if the Facility was continuing gasoline dispensing operations. She testified
16 further that Mr. Krysiak found the Facility in operation and issued NOV No. A57658 to Sharafat
17 Khan, who stated to Mr. Krysiak that he was the manager and that "the owner is not here."

18 Frank Dickey testified that in the course of his duties, he filed a lien against Respondent
19 Rana in the Santa Clara County Recorder's Office, based on an abstract of judgment he had
20 obtained in the matter of *People of the State of California, by and through the Bay Area Air*
21 *Quality Management District v. Arif Rana, a/k/ Sharafat Khan and d/b/a City Gas Milpitas*
22 (Santa Clara County Superior Court Case No. 16CV300196) (Exhibit 4). He testified that he had
23 notified Mr. Rana in writing of the lien and the amount due; attached to the letter were a copy of
24 the abstract of judgment (Exhibit 4), the Notice of Entry of the judgment, entitled *Judgment*
25 *(Pursuant to Stipulation)*, issued by the Superior Court, to which were annexed the parties'
26 *Stipulation to Judgment* and the parties' *Settlement Agreement and Stipulation for Entry of*
27 *Judgment Pursuant to Stipulation* (Exhibit 3). Mr. Dickey testified further that in December
28 2017, Mr. Rana contacted Mr. Dickey with a settlement offer, which the District declined. (See

1 Exhibit 7.) Since having filed the lien, the District has received no payment of monies owed
2 pursuant to the lien or *Judgment (Pursuant to Stipulation)*.

3 Following the presentation of testimonial evidence, the Hearing Board admitted all of the
4 Complainant's proposed Exhibits 1 – 12 into evidence. The Hearing Board took official notice of
5 judicial and District documents, in accordance with Hearing Board Rule 9.3. In so doing, the
6 Hearing Board entered into evidence Respondent Rana's admissions that he is also known as
7 Sharafat Khan and that has owned and operated the Facility since at least August 2015 (Transfer of
8 Ownership, Exhibit 1), that he knows he has owned and operated the Facility that has lacked a
9 current and valid permit since September 1, 2011 (*Stipulated Conditional Order for Abatement*, P.
10 4, L. 4 – 26, Exhibit 2), that he agreed to pay all outstanding permit to operate fees through
11 September 1, 2017 pursuant to the *Stipulated Conditional Order for Abatement*, issued by this
12 Hearing Board in Docket No. 3690, but failed to do so (Letter to Mr. Rana, dated August 31, 2016,
13 Exhibit 11, and Invoice No. 229556, Permit Period 9/1/2011 – 9/1/2017, Exhibit 12), and that as a
14 result, the District filed a lawsuit in Santa Clara County Superior Court and obtained a judgment
15 against Mr. Rana for outstanding permit fees, as well as civil penalties, with terms agreed to by
16 Respondent Rana in the parties' *Settlement Agreement and Stipulation for Entry of Judgment*
17 *Pursuant to Stipulation* (See Exhibit 3, and *Abstract of Judgment – Civil and Small Claims*).

18 Following discussions, the Hearing Board approved unanimously issuance of a conditional
19 order for abatement with the terms requested by Complainant, specifically that Respondents
20 cease violation of District Regulation 2-1-302 within fifteen days of filing the Hearing Board's
21 findings and decision in this matter.

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

23 Health and Safety Code Section 42451(a) provides that the Hearing Board may, upon a motion
24 from the Air Pollution Control Officer, issue an order for abatement where it finds that a person is
25 operating equipment without a permit that the District requires. To that end, the Hearing Board finds
26 as follows:

27 Respondent Rana, who is also known as Sharafat Khan and does business as City Gas Milpitas,
28 owns and operates gasoline dispensing facility at 10 North Main Street, Milpitas, Santa Clara County,

1 California, District Facility Identification No. 112384, and known as City Gas Milpitas (Facility). An
2 auto-repair or auto-related business is located at the Facility address. Respondent Rana has owned
3 and operated the Facility since at least August 2015.

4 Respondents require an annual District permit to operate their gasoline dispensing facility,
5 pursuant to District Regulation 2-1-302. The Facility has had a permit, with a permit period of
6 September 1, to September 1 of the following year. Respondents have been operating since
7 September 1, 2017 without a current and valid permit. Moreover, since taking ownership of the
8 Facility, Respondents have never brought the Facility into compliance with District Regulation 2-1-
9 302 by obtaining a current and valid permit.

10 Respondents are knowledgeable of the obligation to hold a permit to operate a gasoline
11 dispensing facility. This Hearing Board issued a stipulated conditional order for abatement against
12 Respondent Rana in 2016 for having operated the Facility, without a current or valid permit since
13 September 1, 2011. The District inspected the Facility in September and November 2017, confirmed
14 that Respondents were conducting gasoline dispensing operations without a current and valid
15 September 1, 2017 – September 1, 2018 permit to operate, issued NOV No. A57658 for violation of
16 District Regulation 2-1-302, and during those inspections, had spoken directly to Respondent Rana
17 and reiterated that he had an expired permit. Further, the District has issued Mr. Rana an invoice for
18 permit fees that covers the current period of September 1, 2017 – 2018 permit period, as well as the
19 period of time since September 1, 2011.

20 Moreover, Respondents are knowledgeable of their lengthy non-compliance District
21 Regulation 2, Rule 1 as a result of the prior abatement action (Docket No. 3690), the lawsuit to collect
22 permit fees and penalties and the lien filed against Respondent Rana in the Santa Clara County
23 Recorder's Office. As of February 6, 2018, Respondents have not paid the permit fees due in order to
24 obtain a current and valid district permit to operate the Facility.

25 As a result of Respondents' continuing violation of District Regulation 2-1-302 despite their
26 knowledge of the violation, the Hearing Board finds it appropriate to issue a conditional order for
27 abatement that requires Respondents to cease gasoline dispensing operations at the above-referenced
28 address as of fifteen days from the date the Hearing Board files its findings and decision in this action.

1 CONDITIONAL ORDER FOR ABATEMENT

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

- 5 1. That as of the fifteenth (15th) calendar day after the Effective Date, Respondents and their agents,
6 employees, successors and assigns shall cease violation of District Regulation 2, Rule 1, Section
7 302 at 10 North Main Street, Milpitas, Santa Clara County, California, listed in the District's
8 records as Facility Identification Number 112384 (Facility), either by (a) obtaining a valid Permit
9 for the Facility current through September 2, 2018; or (b) ceasing operation of gasoline dispensing
10 operations at the Facility unless and until they obtain a current and valid permit to do so; and
11 2. Respondents shall demonstrate compliance with this Order by submitting to the Hearing Board
12 either (a) a copy of a current and valid District permit to operate the Facility, or (b) written
13 affirmation executed by Respondents that they have ceased conducting gasoline dispensing
14 operations at the Facility and that they shall not recommence gasoline dispensing operations, if
15 ever, until they have met all applicable requirements to obtain and maintain a valid District
16 permit to operate pursuant to District Regulation 2, Rule 1. Respondents shall deliver such
17 documentation via electronic mail and certified mail to the Clerk of the Hearing Board, by no
18 later than fifteen (15) calendar days from the Effective Date, with a copy of such documentation
19 to Brian C. Bunger, District Counsel, also delivered via electronic mail and certified mail; and

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1 3. That this Hearing Board shall retain jurisdiction over the order for abatement for one year from
2 February 6, 2018, i.e., the date of the public hearing in this matter, during which period the parties
3 may apply to modify or terminate this Order in accordance with the Rules of the Hearing Board.

4 **Moved By:** James M. Ralph, Esq.

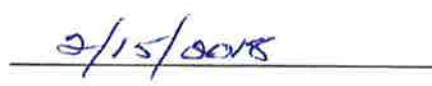
5 **Seconded By:** Peter Y. Chiu, M.D., P.E.

6 **Ayes:** Valerie J. Armento, Esq., Chair; James M. Ralph, Esq., Vice-Chair; Peter Y. Chiu,
7 M.D., P.E.; Ryan Janoch, P.E.; and Barbara Toole O'Neil, Ch.E., Q.E.P.

8 **Noes:** None.

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11 Valerie J. Armento, Esq., Chair



12 Date

FILED

FEB 16 2018

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.: 3703

CERTIFICATE OF SERVICE

Complainant,

vs.

ARIF RANA, aka Sharafat Khan, an
individual, dba City Gas Milpitas; CITY
GAS MILPITAS, a business entity; and
DOES 1 – 25, inclusive,

Respondent.

STATE OF CALIFORNIA)

City and County of San Francisco)

ss.

I, Marcy Hiratzka, 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 Conditional Order for Abatement on:

Arif Rana, aka Sharafat Khan, an individual,
dba City Gas Milpitas
10 North Main Street
Milpitas, CA 95035

City Gas Milpitas, a business entity
10 North Main Street
Milpitas, CA 95035

by depositing same via email and in the United States certified mail, return receipt requested, on February 16, 2018; and on

Susan Adams
Bay Area Air Quality Management District
375 Beale Street, 6th Floor
San Francisco, California 94105

via email and hand-delivery deposit of same in the in-box of the District Counsel's office, on February 16, 2018.

DATED: February 16, 2018

Marcy Hiratzka,
Clerk of the Boards