

FILED

JUN 24 2010

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

Lisa Harper
Clerk, Hearing Board
Bay Area Air Quality
Management District

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**BEFORE THE HEARING BOARD OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

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

DOCKET NO. 3575

Complainant,

vs,

**CONDITIONAL ORDER
FOR ABATEMENT**

KEN CHOI, individually, and *d/b/a* SKY
HOPPER INVESTMENT, INC., and *d/b/a*
GREENVILLE GAS & FOOD MART and SKY
HOPPER INVESTMENTS; JAE KYUNG CHOI,
individually, and *d/b/a* GREENVILLE GAS & FOOD
MART and SKY HOPPER INVESTMENTS; SKY
HOPPER INVESTMENT, INC., a California
corporation; and SKY HOPPER INVESTMENTS, Site
No. D1174, a gasoline dispensing facility,

Respondents.

On or about May 6, 2010, 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 Ken Choi, individually, and *d/b/a* Sky Hopper Investment, Inc., and *d/b/a* Greenville Gas
& Food Mart and Sky Hopper Investments; Jae Kyung Choi, individually, and *d/b/a* Greenville
Gas & Food Mart and Sky Hopper Investments; Sky Hopper Investments, Inc., a California
corporation; and Greenville Gas & Food Mart, *a/k/a* Sky Hopper Investments, Site No. D1174

1 (collectively, "Respondents"), to cease and desist transferring gasoline at its gasoline dispensing
2 facility located at 200 North Greenville Road, Livermore, Alameda County, California. Site No.
3 D1174, known as Greenville Gas & Food Mart and as Sky Hopper Investments ("Facility"),
4 from the Facility's underground gasoline storage tanks to motor vehicles thirty days from the
5 date of hearing in this matter until Respondents install enhanced vapor recovery ("EVR") Phase
6 II system equipment certified by the California Air Resources Board ("ARB") in accordance
7 with the requirements of District Regulation 8, Rule 7, Section 302.1.

8 Andrew Kim, Esq., appeared for Respondents.

9 Susan Adams, Assistant Counsel, appeared for the Air Pollution Control Officer.

10 The Clerk of the Hearing Board provided notice of the hearing on the Accusation in
11 accordance with the requirements of Health and Safety Code section 40823. The Hearing Board
12 heard the request for an Abatement Order on June 3, 2010.

13 Mr. John Marvin, Mr. Richard Murray, and Mr. Scott Owen testified for the APCO. Mr.
14 Ken Choi testified for the Respondents.

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

18 The Hearing Board closed the hearing after receiving evidence, testimony and argument,
19 and took the matter under submission for decision. After consideration of the evidence, the
20 Hearing Board found the following findings of fact and conclusions of law, and voted to issue a
21 Conditional Order for Abatement as set forth below:

22 **FINDINGS OF FACT**

23 1. Ken Choi, an individual, admitted that he is the owner of Sky Hopper Investment,
24 Inc., a California corporation, and that Ms. Jae Kyung Choi, an individual, owns and/or operates
25 the gasoline dispensing facility ("GDF") that is located at 200 North Greenville Road,
26 Livermore, Alameda County, California, Site No. D1174 and is operating as Sky Hopper
27 Investment, Inc. or Sky Hopper Investments. Sky Hopper Investment, Inc. owns the property

1 located at 200 North Greenville Road, Alameda County, California. Ken Choi, Jae Kyung Choi,
2 and Sky Hopper Investment, Inc. are referred to hereafter collectively as the "Owner." The
3 Owner purchased the Facility on May 11, 2007.

4 2. The Facility is subject to the jurisdiction of the District. The Facility contains
5 underground gasoline stationary storage tanks and 12 gasoline dispensing nozzles.
6 The Facility's annual gasoline throughput for the calendar year 2008 was approximately 893,487
7 gallons.

8 3. Volatile organic compounds ("VOCs") are organic compounds that evaporate
9 quickly into the atmosphere. VOCs, reacting with oxides of nitrogen in sunlight, create ground
10 level ozone. Ground level ozone is the primary component of photochemical smog, which is a
11 significant air quality problem in the Bay Area. Ozone aggravates respiratory diseases, reduces
12 visibility, causes eye irritation, and damages vegetation. One of the common sources of VOCs is
13 gasoline vapors. Gasoline vapor, which contains hydrocarbons, is an air contaminant. Gasoline
14 contains benzene, a known carcinogen. In the Bay Area, gasoline dispensing facilities are a
15 major source of VOC emissions.

16 4. A GDF "vapor recovery system" collects gasoline vapors that are discharged
17 during gasoline transfer operations and processes the vapors to prevent their release into the
18 atmosphere.

19 5. A GDF vapor recovery system comprises a "Phase I" system, which controls
20 gasoline vapors during the transfer of gasoline from gasoline cargo tanks to a GDF's stationary
21 storage tank, and a "Phase II" system, which controls gasoline vapors during transfer of gasoline
22 between the GDF's stationary storage tank and a motor vehicle.

23 6. District Regulation 8, Rule 7, Section 302.1 prohibits a person from transferring
24 gasoline between a GDF's stationary storage tank and a motor vehicle without an ARB-certified
25 Phase II system in place and in operation.

26 7. State law requires that stations in existence as of April 1, 2005 with underground
27 stationary gasoline storage tanks had to install an enhanced vapor recovery ("EVR") Phase II

1 system as of April 1, 2009. As of April 1, 2009, only EVR Phase II equipment was ARB-
2 certified, and any Phase II system that was not ARB-certified as EVR Phase II was de-certified.

3 8. The District is authorized to tag “out of order” components at a GDF that are not
4 certified by ARB. Until such components are replaced, repaired or adjusted and the District has
5 reinspected the components (or authorized use of the components pending reinspection), no one
6 may operate them.

7 9. The District conducted an extensive public outreach program to GDF owners and
8 operators about the EVR Phase II upgrade requirements and District Regulation 8-7-302.1
9 through public workshops, delivery of District compliance advisories, and on-site compliance
10 assistance visits at GDFs.

11 10. Respondents admit that at least as of some time in 2008, Respondents were fully
12 aware of the requirement to have installed the Phase II EVR system as of April 1, 2009.

13 11. On numerous occasions, the District inspected the Facility to remind Respondents
14 of the April 1, 2009 deadline and to monitor the progress of the EVR Phase II system upgrade, if
15 any. The District’s inspector conducted a compliance assistance visit at the Facility on March 4,
16 2009, confirmed that Respondents had not installed the EVR Phase II system, and left his
17 business card, ARB Compliance Advisory Nos. 372 and 373, and an application for a District
18 authority to construct the EVR Phase II upgrade at the Facility. Thereafter, the District visited
19 the Facility at least ten times, each time confirming that Respondents continued to conduct motor
20 vehicle refueling operations without ARB-certified Phase II EVR equipment. The inspector last
21 visited the Facility on May 5, 2010.

22 12. On at least three compliance assistance visits, the District inspector met with
23 Respondent Ken Choi, who spoke in English with the District inspector.

24 13. Respondents did not curtail or cease dispensing gasoline at the Facility on or after
25 April 1, 2009.

26 14. On August 24, 2009, the District issued Respondents Notice of Violation
27 (“NOV”) No. A50698 for conducting gasoline dispensing operations with an uncertified EVR
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1 Phase II system as of April 1, 2009, in violation of District Regulation 8-7-302.1.

2 15. The District inspector photographed the Facility in operation on August 13, 2009.
3 Another District inspector photographed the Facility in operation on June 2, 2010.

4 16. As of June 2, 2010, the Facility had not completed the required EVR Phase II
5 upgrade and was operating in violation of District Regulation 8-7-302.1.

6 CONCLUSIONS OF LAW

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

12 Pursuant to Health and Safety Code Section 42451(a), the Hearing Board may issue an
13 Order for Abatement if it finds that a person is operating a gasoline dispensing facility in
14 violation of a District rule or regulation that prohibits or limits the discharge of an air
15 contaminant into the air.

16 Cause for determination that Respondents are in violation of District Regulation 8-7-
17 302.1 is established by Findings of Fact Nos. 1, 2, 6, 7, 13, 15 and 16.

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

20 ORDER

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

24 1. That the APCO's Request for a Conditional Order for Abatement ("Order") shall
25 be and hereby is GRANTED as follows: Respondents are hereby ordered to cease gasoline
26 dispensing operations at the Facility forty (40) days from the date of the hearing on this matter,
27 until:

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- a. Respondents come into compliance with Regulation 8, Rule 7, Section 302.1 by installing an ARB-certified EVR Phase II system that complies with the system manufacturer’s specifications and with the terms and conditions of the District authority to construct the EVR Phase II system at the Facility; and
- b. Respondents submit the EVR Phase II upgrade “start-up notification” to Respondents’ 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. Bunger, via facsimile or certified mail;

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

3. That at no time during such 40-day period described in Paragraph 1 of this Conditional Order for Abatement shall Respondents conduct any gasoline dispensing operations at the Facility on any day that is designated a “Spare the Air Day” by the District; and

4. That the Hearing Board shall retain jurisdiction over this matter until Respondents come into compliance with the EVR Phase II requirements of Regulation 8, Rule 7, Section 302.1 and submit “start-up notification” in accordance with the requirements set forth in Paragraph 1 of this Conditional Order for Abatement.

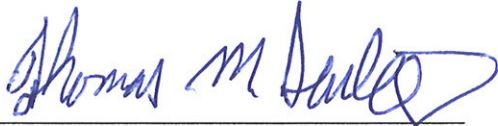
Moved by: Christian Colline, P.E.

Seconded by: Rolf Lindenhayn, Esq.

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

NOES: None

ABSTAINED: None



Thomas M. Dailey, M.D., Chair

6-17-10
Date