

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. 3576

Complainant,

vs,

**CONDITIONAL ORDER
FOR ABATEMENT**

JOE DANGTRAN individually, and *d/b/a*
CHEVRON STEVENSON, Site No. C0733

Respondents.

On 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 Joe Dangtran, individually, and *d/b/a* Chevron Stevenson (“Respondents”), to cease and desist transferring gasoline at the gasoline dispensing facility located at 5895 Stevenson Boulevard, Newark, Alameda County, California, Site No. C0733, known as Chevron Stevenson (“Facility”), from the Facility’s underground gasoline storage tanks to motor vehicles thirty days from the date of hearing in this matter until Respondents install enhanced vapor recovery

1 (“EVR”) Phase II system equipment certified by the California Air Resources Board (“ARB”) in
2 accordance with the requirements of District Regulation 8, Rule 7, Section 302.1.

3 Mr. Joe Dangtran, owner and operator of the Facility, did not appear at the hearing or file
4 a notice of defense.

5 Nancy M. Wang, Assistant Counsel, appeared for the Air Pollution Control Officer.

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

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

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

16 **FINDINGS OF FACT**

17 1. Mr. Joe Dangtran, an individual, owns and/or operates a gasoline dispensing
18 facility (“GDF”) that is located at 5895 Stevenson Boulevard, Newark, Alameda County,
19 California, Site No. C0733 and is operating as Chevron Stevenson. Mr. Dangtran is referred to
20 hereafter as the “Owner.” The Owner has owned and/or operated the Facility since at least 1980.

21 2. The Facility is subject to the jurisdiction of the District. The Facility contains two
22 underground gasoline stationary storage tanks. The Facility’s annual gasoline throughput for the
23 period 2007 - 2009 was approximately 1.4 million gallons per year.

24 3. Volatile organic compounds (“VOCs”) are organic compounds that evaporate
25 quickly into the atmosphere. VOCs, reacting with oxides of nitrogen in sunlight, create ground
26 level ozone. Ground level ozone is the primary component of photochemical smog, which is a
27 significant air quality problem in the Bay Area. Ozone aggravates respiratory diseases, reduces

1 visibility, causes eye irritation, and damages vegetation. One of the common sources of VOCs is
2 gasoline vapors. Gasoline vapor, which contains hydrocarbons, is an air contaminant. Gasoline
3 contains benzene, a known carcinogen. In the Bay Area, gasoline dispensing facilities are a
4 major source of VOC emissions.

5 4. A GDF “vapor recovery system” collects gasoline vapors that are discharged
6 during gasoline transfer operations and processes the vapors to prevent their release into the
7 atmosphere.

8 5. A GDF vapor recovery system comprises a “Phase I” system, which controls
9 gasoline vapors during the transfer of gasoline from gasoline cargo tanks to a GDF’s stationary
10 storage tank, and a “Phase II” system, which controls gasoline vapors during transfer of gasoline
11 between the GDF’s stationary storage tank and a motor vehicle.

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

15 7. State law requires that stations in existence as of April 1, 2005, with underground
16 stationary gasoline storage tanks had to install an enhanced vapor recovery (“EVR”) Phase II
17 system as of April 1, 2009. As of April 1, 2009, only EVR Phase II equipment was ARB-
18 certified, and any Phase II equipment that was not ARB-certified as EVR Phase II was de-
19 certified.

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

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

1 is appointed by the District Board of Directors, is authorized to enforce all rules and regulations
2 adopted or prescribed by the District Board and is authorized to seek an Order for Abatement
3 from the District's Hearing Board to stop violations of a District rule or regulation prohibiting or
4 limiting the discharge of an air contaminant into the air.

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

9 Cause for determination that Respondents are in violation of District Regulation 8-7-
10 302.1 is established by Findings of Fact Nos. 1, 2, 6, 7, 13, 15 and 16.

11 Cause for issuance of an order that Respondents abate this violation is established by
12 Findings of Fact Nos. 1-16, inclusive.

13 **ORDER**

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

17 1. That the APCO's Request for a Conditional Order for Abatement ("Order") shall
18 be and hereby is GRANTED as follows: Respondents are hereby ordered to cease gasoline
19 dispensing operations at the Facility immediately as of the effective date of this Order, until:

- 20 a. Respondents come into compliance with Regulation 8, Rule 7, Section 302.1
21 by installing an ARB-certified EVR Phase II system that complies with the
22 system manufacturer's specifications and with the terms and conditions of the
23 District authority to construct the EVR Phase II system at the Facility; and
24 b. Respondents submit the EVR Phase II upgrade "start-up notification" to
25 Respondents' District permit engineer, as required by the EVR Phase II
26 system's authority to construct, with a copy submitted simultaneously to this
27 Hearing Board and to the District Legal Division, attention Brian C. Bungler,

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via facsimile or certified mail;

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

3. 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.

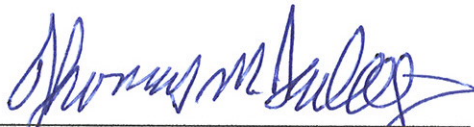
Moved by: Christian Colline, P.E.

Seconded by: Terry A. Trumbull, Esq.

AYES: Christian Colline, P.E., Rolf Lindenhayn, Esq., Julio Magalhaes, 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