

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**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,)
)
ALI KAZEMINI, DAVOOD MOLLAI, and FERDOUS)
MOLLAI a.k.a. FERDOUS MOLLAI MEHRJERDI,)
each individually and *d/b/a* KENWOOD GAS; ALI)
KAZEMINI, as Trustee of the ALI KAZEMINI AND)
FERDOUS MOLLAI TRUST; FERDOUS MOLLAI)
a.k.a. FERDOUS MOLLAI MEHRJERDI as Trustee of)
the ALI KAZEMINI AND FERDOUS MOLLAI)
TRUST; KENWOOD GAS, Site No. C8355, a gasoline)
dispensing facility,)
)
Respondents.)

DOCKET NO. 3577

**CONDITIONAL ORDER
FOR ABATEMENT**

On or about May 12, 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 Ali Kazemini, Davood Mollai, and Ferdous Mollai a.k.a. Ferdous Mollai Mehrjerdi, each individually and also doing business as Kenwood Gas; Ali Kazemini, as Trustee of the Ali Kazemini and Ferdous Mollai Trust; and Ferdous Mollai a.k.a. Ferdous Mollai Mehrjerdi, as Trustee of the Ali Kazemini and Ferdous Mollai Trust; and Kenwood Gas, Site No. C8355

1 (collectively, “Respondents”), to cease and desist transferring gasoline at its gasoline dispensing
2 facility located at 8850 Sonoma Highway, Kenwood, Sonoma County, California, Site No.
3 C8355, known as Kenwood Gas (“Facility”). Specifically, the APCO seeks by Accusation to
4 have Respondents cease transferring gasoline from the Facility’s underground gasoline storage
5 tanks to motor vehicles thirty days from the date of hearing in this matter until Respondents
6 install enhanced vapor recovery (“EVR”) Phase II system equipment certified by the California
7 Air Resources Board (“ARB”) in accordance with the requirements of District Regulation 8,
8 Rule 7, Section 302.1.

9 Marvin Pederson, Esq., appeared for Respondents.

10 Todd Gonsalves, Assistant Counsel, appeared for the Air Pollution Control Officer.

11 The Clerk of the Hearing Board provided notice of the hearing on the Accusation in
12 accordance with the requirements of Health and Safety Code section 40823. The Hearing Board
13 heard the request for an Abatement Order on July 22, 2010.

14 Mr. Christopher Coelho and Mr. Scott Owen testified for the APCO. Mr. Ali Kazemini
15 testified for the Respondents.

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

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

23 **FINDINGS OF FACT**

24 1. Ali Kazemini, an individual, admitted that he is the owner and operator of the
25 gasoline dispensing facility (“GDF”) that is located at 8850 Sonoma Highway, Kenwood,
26 Sonoma County, California, Site No. C8355, known as Kenwood Gas. Mr. Kazemini also
27 admitted that he owns the station with Ferdous Mollai, and that the two of them together own the

1 property at 8850 Sonoma Highway, Kenwood, Sonoma County, California, each as a Trustee of
2 the Ali Kazemini and Ferdous Mollai Trust.

3 2. The Facility is subject to the jurisdiction of the District. The Facility contains two
4 underground gasoline stationary storage tanks and 12 gasoline dispensing nozzles.
5 The Facility's annual gasoline throughput for the year ending July 2007 was approximately
6 980,000 gallons, but is likely less currently.

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

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

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

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

25 7. State law requires that stations in existence as of April 1, 2005 with underground
26 stationary gasoline storage tanks have enhanced vapor recovery ("EVR") Phase II systems
27 installed as of April 1, 2009. As of April 1, 2009, only EVR Phase II equipment was ARB-

1 certified, and any Phase II system that was not ARB-certified as EVR Phase II was de-certified.

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

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

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

12 11. Respondents admit to owning and operating another gasoline dispensing facility
13 known as Sebastopol Fast Gas, located at 1080 Gravenstein Highway, Sebastopol, Sonoma
14 County, California, Site No. C8363. Respondents also admit to having completed installation of
15 the Phase II EVR upgrade at Sebastopol Fast Gas, as required under District Regulation 8, Rule
16 7, section 302.1 and state regulations.

17 12. On several occasions, the District inspected the Facility to remind Respondents of
18 the April 1, 2009 deadline and to monitor the progress of the EVR Phase II system upgrade, if
19 any. After April 1, 2009, the District’s inspector visited the Facility several times, and once
20 contacted Mr. Kazemini by telephone, each time confirming that Respondents continued to
21 conduct motor vehicle refueling operations without ARB-certified Phase II EVR equipment.
22 The inspector last visited the Facility on July 21, 2010.

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

25 14. On November 18, 2009, the District issued Respondents Notice of Violation
26 (“NOV”) No. A50967 for conducting gasoline dispensing operations with an uncertified EVR
27 Phase II system as of April 1, 2009, in violation of District Regulation 8-7-302.1.

1 15. The District inspector photographed the Facility in operation on July 21, 2010.

2 16. Due to the Respondents' failure to install the required ARB-certified EVR Phase
3 II equipment, the Respondents emit approximately 556 pounds of excess VOCs annually with an
4 annual gasoline throughput of 980,000 gallons per year. Respondents would emit less to the
5 extent the Facility's throughput is less.

6 17. Respondents presented evidence of financial hardship and Ali Kazemini testified
7 that Respondents' financial condition prevented their installation of the Phase II EVR Upgrade at
8 the Facility. On June 4, 2010, Respondents applied to the California State Water Resources
9 Control Board for a RUST grant.

10 18. As of July 22, 2010, the Facility had not completed the required EVR Phase II
11 upgrade and was operating in violation of District Regulation 8-7-302.1.

12 19. The APCO's Exhibits Nos. 1 through 25, inclusive, and Respondents' Exhibits
13 Nos. A, B, and D through G, inclusive, were entered into evidence.

14 **CONCLUSIONS OF LAW**

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

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

24 Cause for determination that Respondents are in violation of District Regulation 8-7-
25 302.1 is established by Findings of Fact Nos. 1, 2, and 12 through 19, inclusive.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

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

1. That the APCO’s Request for a Conditional Order for Abatement (“Order”) shall be and hereby is GRANTED as follows: Respondents Ali Kazemini and Ferdous Mollai a.k.a. Ferdous Mollai Mehrjerdi, as well as Kenwood Gas and any other gasoline dispensing facility doing business at 8850 Sonoma Highway, Kenwood, Sonoma County, California, and their agents, employees, successors and assigns are hereby ordered to cease gasoline dispensing operations at the Facility thirty (30) days from the date of the hearing on this matter, until:

- 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. Bungler, via facsimile or certified mail;

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

3. That Respondents obtain from the Air District an Authority to Construct the Phase II EVR Upgrade at the Facility, in accordance with District Rule 2, Regulation 1;

4. That Respondents accept delivery of this Conditional Order for Abatement by personal delivery, by certified mail at the Facility’s address, or by any other manner authorized in civil actions;

5. That at no time during such 30-day period described in Paragraph 1 of this

1 Conditional Order for Abatement shall Respondents conduct any gasoline dispensing operations
2 at the Facility on any day that is designated a “Spare the Air Day” by the District; and

3 6. That the Hearing Board shall retain jurisdiction over this matter until Respondents
4 come into compliance with the EVR Phase II requirements of Regulation 8, Rule 7, Section
5 302.1 and submit “start-up notification” in accordance with the requirements set forth in
6 Paragraph 1 of this Conditional Order for Abatement.

7 Moved by: Christian Colline, P.E.

8 Seconded by: Terry A. Trumbull, Esq.

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

11 NOES: None

12 ABSTAINED: None

13
14
15 _____
16 Thomas M. Dailey, M.D., Chair

Date