

FILED

JUN 21 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,

Complainant,

vs,

SHA CAPITAL INC., a California corporation, d/b/a
AUTOPIA EXPRESS; SATWANT SINGH, a/k/a SAT
SINGH, individually; MICHAEL LODWIG,
individually; a GASOLINE DISPENSING FACILITY
LOCATED AT 3950 ALHAMBRA AVENUE,
MARTINEZ, CONTRA COSTA COUNTY,
CALIFORNIA, a/k/a MARTINEZ GAS & CAR WASH,
Site No. C9730; and DOES 1 through 10, inclusive,

Respondents.

DOCKET NO. 3578

**CONDITIONAL ORDER
FOR ABATEMENT**

On or about May 14, 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 SHA Capital, Inc., a California corporation, *d/b/a* Autopia Express; Satwant Singh, *a/k/a* Sat Singh, individually; Michael Lodwig, individually; a gasoline dispensing facility located at 3950 Alhambra Avenue, Martinez, Contra Costa County, California, Site No. 9730; and Does 1 through 10, inclusive (hereinafter “Respondents”), to cease and desist transferring gasoline at its

1 gasoline dispensing facility located at 3950 Alhambra Avenue, Martinez, Contra Costa County,
2 California, Site No. C9730, also known as Martinez Gas & Car Wash (“Facility”), from the
3 Facility’s underground gasoline storage tanks to motor vehicles thirty days from the date of
4 hearing in this matter until Respondents install enhanced vapor recovery (“EVR”) Phase II
5 system equipment certified by the California Air Resources Board (“ARB”) in accordance with
6 the requirements of District Regulation 8, Rule 7, Section 302.1.

7 Mr. Satwant Singh and Mr. Michael Lodwig appeared for Respondents.

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

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

12 Mr. Christopher Coelho and Mr. Scott Owen testified for the APCO. Mr. Satwant Singh
13 and Mr. Michael Lodwig testified for the Respondents.

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

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

21 **FINDINGS OF FACT**

22 1. SHA Capital, Inc., a California corporation, which does business as Martinez
23 Gas & Car Wash and Autopia Express; Satwant Singh, *a/k/a* Sat Singh, individually; and
24 Michael Lodwig, individually, own and/or operate the Facility (hereinafter “Owner”).

25 2. The Facility is subject to the jurisdiction of the District. The Facility contains
26 two underground gasoline stationary storage tanks. The Facility’s annual gasoline throughput
27 for the calendar year 2008 was approximately 756,000 gallons.

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

9 4. A Gas Dispensing Facility (“GDF”) “vapor recovery system” collects gasoline
10 vapors that are discharged during gasoline transfer operations and processes the vapors to
11 prevent their release into the atmosphere.

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

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

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

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

27 9. The District conducted an extensive public outreach program to GDF owners and
28

1 operators about the EVR Phase II upgrade requirements and District Regulation 8-7-302.1
2 through public workshops, delivery of District compliance advisories, and on-site compliance
3 assistance visits at GDFs.

4 10. On numerous occasions, the District inspected the Facility to remind
5 Respondents of the April 1, 2009 deadline and to monitor the progress of the EVR Phase II
6 system upgrade. Prior to April 1, 2009, the District's inspector conducted two compliance
7 verification inspections, which included review of Facility records, including throughput records,
8 and inspections of GDF equipment for compliance with District rules and regulations. During
9 one of those inspections, the inspector left ARB Vapor Recovery Advisory Numbers 372, 373,
10 and 374 at the Facility with the station manager. Between August 12, 2009 and June 8, 2010, the
11 District's inspector conducted 7 compliance assistance visits, confirming each time that
12 Respondents continued to conduct motor vehicle refueling operations without having installed all
13 of the ARB-certified EVR Phase II system upgrade at the Facility. The District noted that during
14 one of the compliance assistance visits, the District identified one EVR Phase II hose installed at
15 the Facility.

16 11. Respondents were aware of the requirement to have installed the EVR Phase II
17 system as of April 1, 2009, but stated that they were seeking a grant or loan of funds from the
18 State Water Resources Control Board's Replacing, Removing or Upgrading Underground
19 Storage Tanks ("RUST") Program to cover the costs to install the ARB-certified EVR Phase II
20 system.

21 12. Respondents did not curtail or cease dispensing gasoline at the Facility on or
22 after April 1, 2009. Respondents did not enter into a compliance and settlement agreement with
23 the District that enabled Respondents to continue gasoline dispensing operations from April 1,
24 2009 until September 1, 2009 or later while completing work to install the EVR Phase II system.

25 13. On October 1, 2009, the District issued Respondents Notice of Violation
26 ("NOV") No. A50957 for conducting gasoline dispensing operations without ARB-certified
27 EVR Phase II system as of April 1, 2009, in violation of District Regulation 8-7-302.1.

1 dispensing operations at the Facility sixty (60) days from the date of the hearing on this matter,
2 until:

- 3 a. Respondents come into compliance with Regulation 8, Rule 7, Section 302.1
4 by installing an ARB-certified EVR Phase II system that complies with the
5 system manufacturer's specifications and with the terms and conditions of the
6 District authority to construct the EVR Phase II system at the Facility; and
- 7 b. Respondents submit the EVR Phase II upgrade "start-up notification" to
8 Respondents' District permit engineer, as required by the EVR Phase II
9 system's authority to construct, with a copy submitted simultaneously to this
10 Hearing Board and to the District Legal Division, attention Brian C. Bunger,
11 via facsimile or certified mail;

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

13 and

14 3. That Respondents submit "start-up notification" in accordance with the
15 requirements set forth in Paragraph 1 of this Conditional Order for Abatement.

16 Moved by: Valerie Armento, Esq.

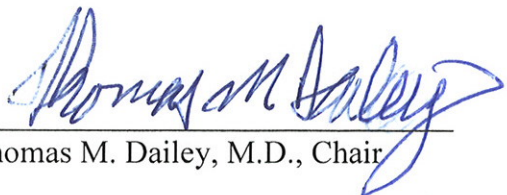
17 Seconded by: Gilbert G. Bendix, P.E.

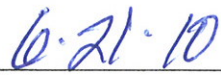
18 AYES: Valerie Armento, Esq., Gilbert G. Bendix, P.E., and Thomas M.
19 Dailey, M.D.

20 NOES: Julio Magalhães, Ph.D., Terry A. Trumbull, Esq.

21 ABSTAINED: None

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24 _____
25 Thomas M. Dailey, M.D., Chair

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24 _____
25 Date

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