

FILED

AUG 12 2010

HEARING BOARD  
BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

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

**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. 3581**

Complainant,

vs,

**ORDER FOR  
ABATEMENT**

80 MAGAZINE CORP., a California corporation, and  
*d/b/a* as MAGAZINE GAS *a/k/a* BPG FUEL & MART -  
MAGAZINE *a/k/a* VALLEJO CONVENIENCE  
CENTER; BPG PACIFIC, LLC, a California limited  
liability corporation, and *d/b/a* MAGAZINE GAS *a/k/a*  
BPG FUEL & MART – MAGAZINE *a/k/a* VALLEJO  
CONVENIENCE CENTER; SAEED GHAFORI,  
individually, *a/k/a* PAUL GHAFORI, and *d/b/a*  
MAGAZINE GAS *a/k/a* BPG FUEL & MART –  
MAGAZINE *a/k/a* VALLEJO CONVENIENCE  
CENTER; MANOUCHEHR SHAHAB, individually, and  
*d/b/a* MAGAZINE GAS *a/k/a* BPG FUEL & MART –  
MAGAZINE *a/k/a* VALLEJO CONVENIENCE  
CENTER; and a GASOLINE DISPENSING FACILITY  
LOCATED AT 199 LINCOLN ROAD WEST,  
VALLEJO, SOLANO COUNTY, CALIFORNIA, Site  
No. D1182,

Respondents.

On or about June 7, 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 80 Magazine Corporation, a California corporation, and *d/b/a* Magazine Gas *a/k/a* BPG  
Fuel & Mart – Magazine *a/k/a* Vallejo Convenience Center; BPG Pacific, LLC, a California

1 limited liability corporation, and *d/b/a Magazine Gas a/k/a BPG Fuel & Mart – Magazine a/k/a*  
2 *Vallejo Convenience Center; Saeed Ghafoori, individually, a/k/a Paul Ghafoori, and d/b/a*  
3 *Magazine Gas a/k/a BPG Fuel & Mart – Magazine a/k/a Vallejo Convenience Center;*  
4 *Manouchehr Shahab, individually, and d/b/a Magazine Gas a/k/a BPG Fuel & Mart – Magazine*  
5 *a/k/a Vallejo Convenience Center; a gasoline dispensing facility located at 199 Lincoln Road*  
6 *West, Vallejo, Solano County, California, Site No. D1182 (all of whom are hereafter referred to*  
7 *as “Respondents”); and Does 1 through 10, inclusive, requesting that the Hearing Board order*  
8 *that they cease and desist the transfer of gasoline from the underground gasoline storage tanks to*  
9 *motor vehicles at their gasoline dispensing facility, which is located at 199 Lincoln Road West,*  
10 *Vallejo, Solano County, California, Site No. D1182, also known as Magazine Gas (“Facility”),*  
11 *thirty days from the July 29, 2010 hearing, until Respondents install enhanced vapor recovery*  
12 *(“EVR”) Phase II system equipment certified by the California Air Resources Board (“ARB”) in*  
13 *accordance with the requirements of District Regulation 8, Rule 7, Section 302.1.*

14 The APCO had previously requested and the Hearing Board approved that Docket  
15 Number 3581 and Docket Number 3582 be consolidated for hearing purposes only.

16 Prior to the hearing, Respondents filed a Notice of Defense, in which Respondents  
17 admitted all allegations set forth in the Accusation.

18 Mr. Paul Ghafoori appeared for Respondents 80 Magazine Corporation, BPG Pacific,  
19 LLC, Saeed Ghafoori, Manouchehr Shahab, Magazine Gas, BPG Fuel and Mart – Magazine, and  
20 Vallejo Convenience Center.

21 Susan Adams, Assistant Counsel, Randi Wallach, Assistant Counsel, and Elaine Yu, legal  
22 intern, appeared for the Air Pollution Control Officer.

23 The Clerk of the Hearing Board provided notice of the hearing on the Accusation in  
24 accordance with the requirements of Health and Safety Code section 40823. The Hearing Board  
25 heard the request for an Abatement Order on July 29, 2010.

26 Mr. Christopher Coehlo, Mr. Bradley Kino, Mr. Scott Owen and Ms. Randi Wallach  
27 testified for the APCO. Mr. Paul Ghafoori testified for the Respondents.

1 The Hearing Board provided the public with an opportunity to testify at the hearing, as  
2 required by the Health and Safety Code. No members of the public testified. The Hearing Board  
3 heard evidence, testimony and oral argument from the APCO and Respondents. The Hearing  
4 Board granted the District's Request for Official Notice in Support of Accusation and Request  
5 for Order for Abatement. The Hearing Board admitted the District's Exhibit Nos. 1 through 7.  
6 The Hearing Board also admitted Respondents' Exhibit Nos. 1 through 7.

7 The Hearing Board closed the hearing after receiving evidence, testimony and argument,  
8 and took the matter under submission for decision. After consideration of the evidence, the  
9 Hearing Board found the following findings of fact and conclusions of law, and voted to issue an  
10 Order for Abatement as set forth below:

11 **FINDINGS OF FACT**

12 1. Paul Ghafoori, an individual, admitted that he is the President of 80 Magazine  
13 Corporation, a California corporation, that owns and/or operates the gasoline dispensing facility  
14 ("GDF") that is located at 199 Lincoln Road West, Vallejo, Solano County, California, Site No.  
15 D1182 and is operating as Magazine Gas or BPG Fuel & Mart – Magazine, or Vallejo  
16 Convenience Center. Copeland Creek Apartments owns the property located at 199 Lincoln  
17 Road West, Vallejo, Solano County, California, and 80 Magazine is one of its tenants. Paul  
18 Ghafoori, Saeed Ghafoori, Manouchehr Shahab, 80 Magazine Corporation, and BPG Pacific,  
19 LLC are referred to hereafter collectively as the "Owner." Paul Ghafoori further admitted that  
20 the Owner began GDF operations at the Facility in or around August 2006. The Owner received  
21 an Authority to Construct the Facility on or around March 12, 2004.

22 2. The Facility is subject to the jurisdiction of the District. The Facility contains two  
23 stationary underground gasoline storage tanks. The Facility's annual gasoline throughput was  
24 approximately 2.95 million gallons for the calendar year 2007; approximately 1.8 million gallons  
25 for the calendar year 2008; and approximately 1.3 million gallons for the calendar year 2009.  
26 The Facility's consecutive twelve month gasoline throughput level is 940,000.

27 3. Volatile organic compounds ("VOCs") are organic compounds that evaporate  
28

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

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

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

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

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

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

26 9. The District conducted an extensive public outreach program to GDF owners and  
27 operators about the EVR Phase II upgrade requirements and District Regulation 8-7-302.1

1 through public workshops, delivery of District compliance advisories, and on-site compliance  
2 assistance visits at GDFs.

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

5 11. On numerous occasions, the District inspected the Facility to remind Respondents  
6 of the April 1, 2009 deadline and to monitor the progress of the EVR Phase II system upgrade, if  
7 any. The District's inspector conducted a compliance verification inspection visit at Magazine  
8 Gas on October 28, 2008, and confirmed that Respondents had not installed the EVR Phase II  
9 system. Thereafter, the District inspector visited Magazine Gas at least six more times, each  
10 time confirming that Respondents continued to conduct motor vehicle refueling operations  
11 without ARB-certified Phase II EVR equipment. The inspector last visited Magazine Gas on  
12 July 27, 2010.

13 12. On at least one occasion, the District inspector spoke over the telephone with  
14 Respondent Paul Ghafoori regarding his EVR Phase II non-compliant status.

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

17 14. On June 30, 2009, Paul Ghafoori, acting in his capacity as President of 80  
18 Magazine Corporation, entered into a Compliance and Settlement Agreement with the District  
19 that extended the compliance deadline for upgrading to ARB-certified Phase II EVR equipment  
20 to September 1, 2009.

21 15. On July 7, 2009, the District issued Respondents Notice of Violation ("NOV")  
22 No. A50855 for conducting gasoline dispensing operations with an uncertified EVR Phase II  
23 system as of April 1, 2009, in violation of District Regulation 8-7-302.1.

24 16. On September 1, 2009, the Facility had not completed the required EVR Phase II  
25 upgrade and was operating in violation of District Regulation 8-7-302.1.

26 17. Respondents did not contact the District to request any further extension of the  
27 September 1, 2009 Phase II EVR compliance deadline.

1 18. The District inspector photographed the Facility in operation on July 27, 2009.

2 19. Due to the Respondents' failure to install the required ARB-certified EVR Phase  
3 II equipment, the Respondents emit approximately 1,086 pounds of excess VOCs annually  
4 assuming a throughput of 1.81 million gallons per year; and 1,770 pounds of excess VOCs  
5 annually assuming a throughput of 2.95 million gallons per year.

6 20. As of July 27, 2010, the Facility had not completed the required EVR Phase II  
7 upgrade and was operating in violation of District Regulation 8-7-302.1.

8 **CONCLUSIONS OF LAW**

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

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

18 Cause for determination that Respondents are in violation of District Regulation 8-7-  
19 302.1 is established by Findings of Fact Nos. 1, 2, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20.

20 Cause for issuance of an order that Respondents abate this violation is established by  
21 Findings of Fact Nos. 1 through 20, inclusive.

22 **ORDER**

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

26 1. That the APCO's Request for a Order for Abatement shall be and hereby is  
27 GRANTED as follows: Respondents Paul Ghafoori, Saeed Ghafoori, 80 Magazine Corporation,



1 BPG Pacific, LLC, and Manouchehr Shahab, as well as Magazine Gas, BPG Fuel and Mart –  
2 Magazine, Vallejo Convenience Center and any other gasoline dispensing facility doing business  
3 at 199 Lincoln Road West, Vallejo, California and their agents, employees, successors and  
4 assigns are hereby ordered to cease gasoline dispensing operations at the Facility on Saturday,  
5 August 28, 2010, which is thirty (30) days from the July 29, 2010 hearing, until:

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

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

16 3. That the Hearing Board shall retain jurisdiction over this matter until Respondents  
17 come into compliance with the EVR Phase II requirements of Regulation 8, Rule 7, Section  
18 302.1 and submit “start-up notification” in accordance with the requirements set forth in  
19 Paragraph 1 of this Order for Abatement.

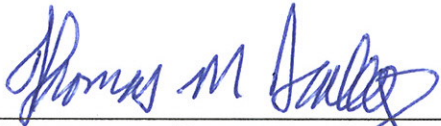
20 Moved by: Terry A. Trumbull, Esq.

21 Seconded by: Julio Magalhães, Ph.D.

22 AYES: Gilbert G. Bendix, P.E., Julio Magalhães, Ph.D., Terry A. Trumbull,  
23 Esq., and Thomas M. Dailey, M.D.

24 NOES: None

25 ABSTAINED: None

26   
27 \_\_\_\_\_  
28 Thomas M. Dailey, M.D., Chair

8-9-10  
\_\_\_\_\_  
Date