

FILED

AUG 12 2010

HEARING BOARD  
BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

Dea Hader  
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. 3582

Complainant,

vs,

ORDER FOR  
ABATEMENT

SPG GROUP INC., a California corporation, and *d/b/a*  
TOSCO FACILITY #11142 *a/k/a* DIABLO GAS AND  
MART; SAEED GHAFOORI, individually, *a/k/a* PAUL  
GHAFOORI, and *d/b/a* TOSCO FACILITY #11142 *a/k/a*  
DIABLO GAS AND MART; and a GASOLINE  
DISPENSING FACILITY LOCATED AT 198 DIABLO  
ROAD, DANVILLE, CONTRA COSTA COUNTY,  
CALIFORNIA, Site No. C9294, ,

Respondents.

On or about June 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 SPG Group, Inc., a California corporation, and *d/b/a* Tosco Facility #11142 *a/k/a* Diablo Gas and Mart; Saeed Ghafoori, individually, *a/k/a* Paul Ghafoori, and *d/b/a* Tosco Facility #11142 *a/k/a* Diablo Gas and Mart; a gasoline dispensing facility located at 198 Diablo Road,

1 Danville, Contra Costa County, California, Site No. C9294 (all of whom are hereafter referred to  
2 as "Respondents"); and Does 1 through 10, inclusive, requesting that the Hearing Board order  
3 that they cease and desist the transfer of gasoline from the underground gasoline storage tanks to  
4 motor vehicles at their gasoline dispensing facility, which is located at 198 Diablo Road,  
5 Danville, Contra Costa County, California, Site No. C9294, also known as Diablo Gas and Mart  
6 ("Facility"), thirty days from the July 29, 2010 hearing, until Respondents install enhanced vapor  
7 recovery ("EVR") Phase II system equipment certified by the California Air Resources Board  
8 ("ARB") in accordance with the requirements of District Regulation 8, Rule 7, Section 302.1.

9 The APCO requested and the Hearing Board approved that Docket Number 3581 and  
10 Docket Number 3582 be consolidated for hearing purposes only.

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

13 Mr. Paul Ghafoori appeared for Respondents Saeed Ghafoori, SPG Group, Inc., Tosco  
14 Facility #11142, and Diablo Gas and Mart.

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

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

20 Mr. Christopher Coehlo, Mr. Bradley Kino, Mr. Scott Owen, and Ms. Randi Wallach  
21 testified for the APCO.

22 Mr. Paul Ghafoori testified for the Respondents.

23 The Hearing Board provided the public with an opportunity to testify at the hearing, as  
24 required by the Health and Safety Code. No members of the public testified. The Hearing Board  
25 heard evidence, testimony and oral argument from the APCO and Respondents. The Hearing  
26 Board granted the District's Request for Official Notice in Support of Accusation and Request

1 for Order for Abatement. The Hearing Board admitted the District's Exhibit Nos. 1 through 7.  
2 The Hearing Board also admitted Respondents' Exhibit Nos. 1 through 7.

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

7 **FINDINGS OF FACT**

8 1. Paul Ghafoori, an individual, admitted that he is the President of SPG Group, Inc.,  
9 a California corporation, which owns and/or operates the gasoline dispensing facility ("GDF")  
10 that is located at 198 Diablo Road, Danville, Contra Costa County, California, Site No. C9294  
11 and is operating as Tosco Facility #11142 and Diablo Gas and Mart. Paul Ghafoori, Saeed  
12 Ghafoori, and SPG Group, Inc., are referred to hereafter collectively as the "Owner." The  
13 Owner began GDF operations at the Facility in or about December 2007.

14 2. The Facility is subject to the jurisdiction of the District. The Facility contains  
15 three stationary underground gasoline storage tanks. The Facility's annual gasoline throughput  
16 for the time period of August 2007 through August 2008 was approximately 625,000 gallons.  
17 The Facility's annual gasoline throughput for the time period of June 2008 through May 2009  
18 was approximately 496,921 gallons.

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

27 4. A GDF "vapor recovery system" collects gasoline vapors that are discharged  
28

1 during gasoline transfer operations and processes the vapors to prevent their release into the  
2 atmosphere.

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

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

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

14 8. The District is authorized to tag "out of order" components at a GDF that are not  
15 certified by ARB. Until such components are replaced, repaired or adjusted and the District has  
16 reinspected the components (or authorized use of the components pending reinspection), no one  
17 may operate them.

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

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

24 11. On numerous occasions, the District inspected the Facility to remind Respondents  
25 of the April 1, 2009 deadline and to monitor the progress of the EVR Phase II system upgrade, if  
26 any. The District's inspector conducted a compliance assistance visit at the Facility on August  
27 21, 2008, confirmed that Respondents had not installed the EVR Phase II system, and left his

1 business card, and ARB Compliance Advisory Nos. 372 and 373. During another compliance  
2 assistance visit at the Facility on March 17, 2009, the District's inspector confirmed that  
3 Respondents still had not installed the EVR Phase II system, and left his business card, ARB  
4 Compliance Advisory No. 385, and the District's legal department's contact information about  
5 entering into a Compliance and Settlement Agreement. Thereafter, the District visited the  
6 Facility at least five more times, each time confirming that Respondents continued to conduct  
7 motor vehicle refueling operations without ARB-certified Phase II EVR equipment. The  
8 inspector last visited the Facility on July 27, 2010.

9 12. On at least two occasions, the District inspector spoke with Respondent Paul  
10 Ghafoori over the telephone regarding the April 1, 2009 compliance deadline for upgrading to  
11 ARB-certified Phase II EVR equipment.

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

14 14. On June 30, 2009, Respondent Paul Ghafoori, acting in his capacity as President  
15 of SPG Group, Inc., entered into a Compliance and Settlement Agreement with the District that  
16 extended the compliance deadline for upgrading to ARB-certified Phase II EVR equipment to  
17 September 1, 2009.

18 15. On July 7, 2009, the District issued Respondents Notice of Violation ("NOV")  
19 No. A50856 for conducting gasoline dispensing operations with an uncertified EVR Phase II  
20 system as of April 1, 2009, in violation of District Regulation 8-7-302.1.

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

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

25 18. The District inspector photographed the Facility in operation on July 27, 2010.

26 19. Due to the Respondents' failure to install the required ARB-certified EVR Phase  
27 II equipment, the Respondents emit approximately 300 pounds of excess VOCs annually

1 assuming a throughput of 500,000 gallons per year; and 375 pounds of excess VOCs annually  
2 assuming a throughput of 625,000 gallons per year.

3 20. As of July 29, 2010, the Facility had not completed the required EVR Phase II  
4 upgrade and was operating in violation of District Regulation 8-7-302.1.

5 **CONCLUSIONS OF LAW**

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

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

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

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

19 **ORDER**

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

23 1. That the APCO's Request for a Order for Abatement shall be and hereby is  
24 GRANTED as follows: Respondents Paul Ghafoori, Saeed Ghafoori and SPG Group, Inc., as  
25 well as Tosco Facility #11142, Diablo Gas and Mart and any other gasoline dispensing facility  
26 doing business at 198 Diablo Road, Danville, Contra Costa County, California and their agents,  
27 employees, successors and assigns are hereby ordered to cease gasoline dispensing operations at

1 the Facility on Saturday, August 28, 2010, which is thirty (30) days from the July 29, 2010  
2 hearing, 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 Order for Abatement shall become effective immediately.

13 3. That the Hearing Board shall retain jurisdiction over this matter until Respondents  
14 come into compliance with the EVR Phase II requirements of Regulation 8, Rule 7, Section  
15 302.1 and submit "start-up notification" in accordance with the requirements set forth in  
16 Paragraph 1 of this Order for Abatement.

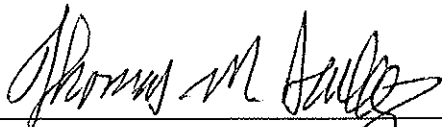
17 Moved by: Terry A. Trumbull, Esq.

18 Seconded by: Julio Magalhães, Ph.D.

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

21 NOES: None

22 ABSTAINED: None

23  
24  
25   
26 Thomas M. Dailey, M.D., Chair

27 8-9-10  
28 Date