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SEP 01 2011

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

Clerk of the Boards
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. 3623

Complainant,

vs,

**CONDITIONAL ORDER
FOR ABATEMENT**

PINAKIN PATEL *a/k/a* PETER PATEL, individually
and *d/b/a* PACIFICA CHEVRON, a Gasoline Dispensing
Facility, Site No. C0013,

Respondent.

On or about August 18, 2011, 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 Conditional Order for Abatement ("Accusation") against PINAKIN PATEL, also known as PETER PATEL, individually, and doing business as PACIFICA CHEVRON, a gasoline dispensing facility, Site No. C0013 ("Respondent"), requesting that the Hearing Board order Respondent to cease and desist transferring gasoline from the underground gasoline storage tanks to motor vehicles at the gasoline dispensing facility ("GDF") located at 100 Milagra Drive, Pacifica, San Maeto County,

1 California, also known as PACIFICA CHEVRON, Site No. C0013 (the "Facility"), thirty days
2 from the date of hearing in this matter until Respondent installs an in-station diagnostics ("ISD")
3 system certified by the California Air Resources Board ("ARB") as part of the Facility's
4 enhanced vapor recovery ("EVR") Phase II system ("ISD upgrade") in accordance with the
5 requirements of District Regulation 8, Rule 7, Section 302.1.

6 Mr. Pinakin Patel *a/k/a* Peter Patel appeared for Respondent.

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

8 The Clerk of the Hearing Board provided notice of the hearing on the Accusation in
9 accordance with the requirements of Health and Safety Code section 40823. The Hearing Board
10 heard the request for an Abatement Order on August 18, 2011.

11 Mr. Clifford Sennello testified for the APCO. Mr. Peter Patel testified for the
12 Respondent.

13 The Hearing Board provided the public with an opportunity to testify at the hearing, as
14 required by the Health and Safety Code. No members of the public testified.

15 The Hearing Board heard evidence, testimony and oral argument from the APCO and
16 Respondent. The APCO and Respondent agreed to the following stipulated facts at the hearing:

17 **STIPULATED FACTS**

18 1. Mr. Pinakin Patel *a/k/a* Peter Patel, an individual, is the current owner of the
19 Facility. Respondent has owned the Facility since March 2004.

20 2. The Facility has an actual gasoline throughput of greater than 600,000 gallons per
21 year and therefore was required pursuant to District Regulation 8-7-302.1 to complete
22 installation of the ARB-certified ISD upgrade on or before September 1, 2010.

23 3. Respondent executed a compliance agreement ("Agreement") with the District in
24 October 2010, which enabled Respondent to continue operating the GDF while completing the
25 ISD upgrade by March 1, 2011.

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1 4. As of August 18, 2011, the date of the hearing on this matter, Respondent has not
2 completed the ISD upgrade, yet continues gasoline dispensing operations at the Facility.

3 5. The Facility installed its Phase II EVR system on September 1, 2009, after the
4 Phase II EVR deadline of April 1, 2009.

5 The Hearing Board admitted into evidence the District's Exhibit No. 1.

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

10 **FINDINGS OF FACT**

11 1. The Facility is subject to the jurisdiction of the District.

12 2. 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 ("gasoline dispensing
14 operations") without an ARB-certified Phase II system in place and in operation.

15 3. State law requires that stations in existence as of April 1, 2005, with underground
16 stationary gasoline storage tanks and annual throughputs of greater than 600,000 gallons per year
17 had to install an ARB-certified ISD system as part of their enhanced vapor recovery Phase II
18 system no later than September 1, 2010. As of September 1, 2010, only enhanced vapor
19 recovery Phase II equipment with ISD was ARB-certified for use during gasoline dispensing
20 operations at such gas stations.

21 4. Respondent has admitted that he was fully aware of the requirement complete the
22 ISD upgrade at the Facility on or before March 1, 2011, under his compliance agreement with
23 the District. Respondent has also admitted that the Facility continued gasoline dispensing
24 operations on or after March 1, 2010, without having completed the ISD upgrade.

25 5. As of August 18, 2011, the date of the hearing on this matter, the Facility had not
26 completed the required ISD upgrade and therefore was operating a Phase II vapor recovery
27 system that was not certified by ARB, in violation of District Regulation 8-7-302.1.

1 **CONCLUSIONS OF LAW**

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

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

11 Cause for determination that Respondents are in violation of District Regulation 8-7-
12 302.1 is established by Findings of Fact Nos. 1 through 5, inclusive.

13 Cause for issuance of an order that Respondents abate this violation is established by
14 Findings of Fact Nos. 1 through 5, inclusive.

15 **ORDER**

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

19 1. That the APCO's Request for a Conditional Order for Abatement shall be and
20 hereby is GRANTED as follows: Respondent PINAKIN PATEL, also known as PETER
21 PATEL, individually, and doing business as PACIFICA CHEVRON, a gasoline dispensing
22 facility, Site No. C0013, and its agents, employees, successors and assigns are hereby ordered to
23 cease gasoline dispensing operations at the Facility forty (40) days from the date of the hearing
24 on this matter, until:

- 25 a. Respondents come into compliance with Regulation 8, Rule 7, Section 302.1
26 by installing an ARB-certified ISD system that complies with the system
27 manufacturer's specifications and with the terms and conditions of the District

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authority to construct the ISD system at the Facility; and

b. Respondents submit a copy of the "start-up notification" of the ARB-certified ISD system to the Hearing Board, via facsimile or certified mail; and

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

and

3. That the Hearing Board shall retain jurisdiction over this matter until Respondent comes 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.

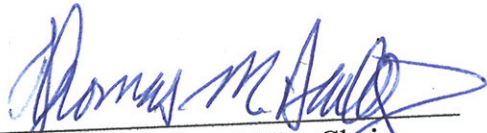
Moved by: Christian Colline, P.E.

Seconded by: Thomas M. Dailey, M.D.

AYES: Christian Colline, P.E., Terry A. Trumbull, Esq., and Thomas M. Dailey, M.D.

NOES: Julio Magalhaes, Ph.D.,

ABSENT: Rolf Lindenhayn, Esq.



Thomas M. Dailey, M.D., Chair

9-1-11
Date