

FILED

FEB 17 2004

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

BEFORE THE HEARING BOARD
OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
STATE OF CALIFORNIA

MARY ROMAIDIS
CLERK
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

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In the Matter of the Application of)
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CAMPUS MINI MART) No. 3456
)
For a Variance from Regulation 8, Rule 7,) ORDER GRANTING VARIANCE
Section 301.13)
_____)

The above-entitled matter is an Application for Variance from the provisions of Regulation 8, Rule 7, Section 301.13 of the Rules and Regulations of the Bay Area Air Quality Management District. The Application for Variance was filed on January 12, 2004, and requested short-term relief for the period from the date of filing through and including April 10, 2004. At the hearing, Applicant amended the variance request to cover the time period from the date of filing through and including February 6, 2004.

Nickie Ly, Station Manager, appeared on behalf of Campus Mini Mart ("Applicant").

Kathleen Walsh, Assistant District Counsel, appeared for the Air Pollution Control Officer ("APCO").

The Clerk of the Hearing Board provided notice of this hearing on the Application for Variance in accordance with the requirements of the California Health and Safety Code. The Hearing Board heard the request for variance on January 29, 2004.

The Hearing Board provided the public opportunity to testify at the hearing as required by the California Health and Safety Code, but no one did so. The Hearing Board heard evidence, testimony and argument from the Applicant and the APCO. The APCO did not oppose the granting of the variance.

ARB

1 The Hearing Board declared the hearing closed after receiving evidence, testimony and
2 argument, and took the matter under submission for decision. After consideration of the evidence,
3 the Hearing Board voted to grant the request for variance, as set forth in more detail below:
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5 BACKGROUND

6 Campus Mini Mart (CMM) is a gasoline dispensing facility (GDF) located at 2200
7 Durant Avenue in Berkeley, California. This GDF has three 12,000-gallon underground storage
8 tanks (87 grade and 91 grade gasoline, and diesel). This facility has six multi-product gasoline
9 nozzles and six diesel nozzles; it is equipped with a two-point Phase I vapor recovery system and
10 a balance Phase II vapor recovery system. Annual throughput is limited to 2.5 million gallons.
11 CMM is a small business as described in Health and Safety Code Section 42352.5(b)(1).

12 During the summer of 2003, CMM contracted with Tanknology to perform annual source
13 tests on the two underground storage tanks that contain gasoline, as required by Regulation 8,
14 Rule 7. The tests were completed in July, 2003; however, CCM failed the vapor tightness source
15 test (ST-30).

16 CMM asked Tanknology to diagnose the cause of the source test failure. Tanknology
17 determined the test failure was likely caused by a hole in a vapor vent or piping and that the leak
18 was likely the result of slab work performed by Trans Tech Consultants (Trans Tech).

19 In December 2002, Trans Tech replaced tank piping and the center concrete slab above
20 the underground storage tanks. Trans Tech did not perform a source test after completing the slab
21 replacement so it is not possible to determine compliance status at that time.

22 In August, 2003 CMM's lawyer contacted Trans Tech to have the leak repaired. Trans
23 Tech did some exploratory work in September, 2003 but was unable to find the leak in the area the
24 company worked on earlier. Thereafter, CMM scheduled the test and repair work necessary to
25 come into compliance with Regulation 8, Rule 7, Section 301.13 but was unable to have this work
26 done immediately because reputable contractors who perform these services were backlogged

1 with work.

2 CMM arranged for Tanknology to perform additional diagnostic testing to determine the
3 cause of the source test failure on December 22, 2003. Tanknology came to the facility that day
4 but was unable to perform the tests then because it was not equipped to test separate tanks that
5 day.

6 CMM then arranged to have Rich Environmental perform the diagnostic and repair work,
7 and to re-test the tanks. Rich Environmental was not able to begin this work until January 19,
8 2004. CMM obtained an authority to construct for the necessary repairs. At the January 29, 2004
9 hearing, CMM reported that the leak had been found and repaired. CMM was scheduled to have
10 a source test performed the following day (January 30, 2004) and committed to submit the results
11 within one week.

12 13 DISCUSSION

14 CMM is currently in violation of Regulation 8, Rule 7, Section 301.13 because it has not
15 passed the vapor tightness test for the Phase I vapor recovery system. This requirement was added
16 to Regulation 8, Rule 7 in November 2002, and took effect June 1, 2003. Regulation 8,
17 Rule 7, Section 301.13 prohibits operation of an underground storage tank for gasoline equipped
18 with a Phase I vapor recovery system unless the tank has passed a ST-30 (or CARB TP-201.3)
19 within the previous 12 months. Applicant failed the ST-30 in July, 2003 and as of the date the
20 Application for Variance was filed, had yet to effect repairs and retest the system.

21 Based on the reasonable assumption that the system was leaking due to work performed
22 by Trans Tech in December 2002, CMM first attempted to get that company to fix the leak that
23 caused the test failure. This effort was unavailing. CMM thereafter contacted other contractors,
24 but due to work backlogs for reputable tank companies, the required work could not be completed
25 until January, 2004.

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1 The APCO agreed that the violation was due to circumstances beyond the reasonable
2 control of the Applicant, and that the Applicant was taking reasonable steps to come into
3 compliance without delay.

4 The facility could not curtail operations to limit emissions without shutting down the
5 station. This would result in significant financial loss to the company during the period of any shut
6 down and possibly beyond, due to loss of customer base. CMM volunteered to limit sales of
7 gasoline and diesel to 2003 monthly average sales during the variance period. At the hearing, the
8 Applicant confirmed that sales during the variance period had not exceeded those limits.

9 The excess emissions are not easily quantified. As an upper bound, the District staff
10 estimates that excess emissions could be as much as 10 pounds per day, but the actual amount of
11 excess emissions could be zero. As of January 28, 2004, when the leak was repaired, there are no
12 excess emissions. While fixing the leak will prevent the excess emissions, it is not clear that
13 shutting down the station, while the leak is being fixed, would eliminate or even reduce excess
14 emissions. The District did not request that the Applicant monitor or quantify actual emissions.

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16 SPECIFIC FINDINGS

17 The Hearing Board finds pursuant to Health and Safety Code Section 42352 that:

18 1. Applicant was in violation of BAAQMD Regulation 8, Rule 7, Section 301.13 during
19 the variance period, which requires annual source testing of underground storage tanks that are
20 required to be equipped with a Phase I vapor recovery system.

21 2. Due to conditions beyond the reasonable control of the Applicant, requiring compliance
22 with Regulation 8, Rule 7, Section 301.13 would result in an arbitrary and unreasonable taking
23 of property. The facility failed the vapor tightness source test (ST-30) in July, 2003. The facility
24 owner made reasonable and continuing efforts to find the leak and repair it so that the equipment
25 could be tested.

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1 It would be an unreasonable taking of property to require the business to shut down. In
2 light of the minimal emissions, continued operation of the facility while the leak is repaired will
3 not adversely affect air quality. Moreover, there is no indication that shutting down the facility
4 would avoid or reduce excess emissions.

5 3. The hardship due to requiring immediate compliance with Regulation 8,
6 Rule 7, Section 301.13 would be without a corresponding benefit in reducing air contaminants.
7 The District staff was unable to provide a definitive estimate of excess emissions; they determined
8 that excess emissions would be no more than 10 pounds per day during the variance period, but
9 be as little as zero pounds per day during that time. After January 28, 2004, there were no excess
10 emissions.

11 4. Applicant considered curtailing operations in lieu of obtaining a variance but could
12 not have done so without significant financial hardship. Sales of gasoline at the station have not
13 exceeded the monthly average sales for the previous year.

14 5. The Applicant did not apply for a variance until January 12, 2004 although the
15 problem was discovered in July, 2003. The variance relief provided by this Order covers only the
16 time period from the date the Application for Variance was filed, January 12, 2004, through and
17 including February 6, 2004.

18 6. During the period the variance is in effect, Applicant will reduce excess emissions
19 to the maximum extent feasible by coming into compliance as quickly as possible.

20 7. The District staff has not requested Applicant to monitor or otherwise further
21 quantify any emission levels.

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1 THEREFORE, THE HEARING BOARD ORDERS:

2 A variance is hereby granted from District Regulation 8, Rule 7, Section 301.13 from
3 January 12, 2004, through and including February 6, 2004, without conditions.

4 Moved by: Christian Colline, P.E.

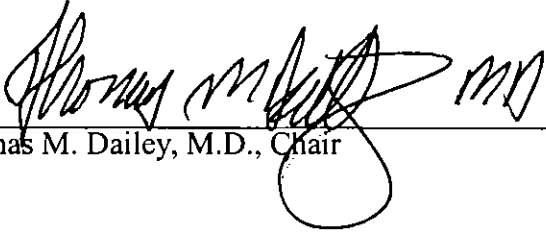
5 Seconded by: Terry A. Trumbull, Esq.

6 AYES: Christian Colline, P.E., Julio Magalhães, Ph.D., Allan R. Saxe, Esq.,
7 Terry A. Trumbull, Esq., and Thomas M. Dailey, M.D.

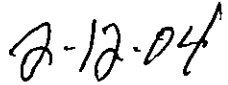
8 NOES: None

9 NON-PARTICIPATING: N/A

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Thomas M. Dailey, M.D., Chair



Date