

FILED

JUL - 8 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 KOMAJDIS
CLERK
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

1	In the Matter of the Application of)	
2)	
3	BOLINAS GARAGE)	No. 3469
4)	
5	For a Variance from Regulation 8, Rule 7,)	<u>ORDER GRANTING VARIANCE</u>
6	Section 302.1)	
7	_____)	
8)	

The above-entitled matter is an Application for Variance from the provisions of Regulation 8, Rule 7, Section 302.1 of the Rules and Regulations of the Bay Area Air Quality Management District (BAAQMD). The Application for Variance was filed June 14, 2004, and requested short-term relief for the period from the date of filing through September 9, 2004.

Greg Hewlett and Tom Williard, of the Bolinas Community Land Trust, appeared on behalf of Bolinas Garage ("Applicant").

Kathleen Walsh, Assistant 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 July 1, 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.

The Hearing Board declared the hearing closed after receiving evidence, testimony and argument, and took the matter under submission for decision. After consideration of the evidence,

ARS

1 the Hearing Board voted to grant the request for variance, as set forth in more detail below:

2 BACKGROUND

3 Bolinas Garage is a gasoline dispensing facility ("GDF") located at 6, Wharf Road
4 in Bolinas, California. This GDF has a divided underground gasoline storage tank with two
5 compartments: an 8,000-gallon, regular-grade compartment and a 4,000-gallon, premium grade
6 compartment. This facility is equipped with a two-point vapor recovery system and a balance
7 Phase II vapor recovery system with four gasoline nozzles. Annual throughput is limited to
8 1.05 million gallons. Bolinas Garage is a small business as described in Health and Safety
9 Code Section 42352.5(b)(1).

10 Bolinas Community Land Trust ("BCLT") acquired the Bolinas Garage by purchase
11 May 7, 2004. Prior to that transaction, on April 28, 2004, Bolinas Garage failed a District-required
12 source test. Further inquiry revealed that the GDF failed the source test because the smaller,
13 premium grade gasoline tank was not connected to the required vapor recovery system.
14 Apparently this condition was the result of major renovation completed on the GDF in 2000.
15 BCLT was aware of this compliance problem when it purchased the GDF.

16 BCLT immediately initiated efforts to bring the GDF into full compliance. At the same
17 time, BCLT commenced operation of the GDF, dispensing fuel from both underground tanks. On
18 June 10, 2004, a District inspector issued notice of violation #A45545 for violation of
19 Regulation 8, Rule 7, Section 302.1. BCLT immediately halted dispensing fuel from the
20 noncompliant tank and has elected not to re-commence use of this tank until a variance is
21 issued or compliance achieved. Immediately after receiving the notice of violation, BCLT as the
22 owner of the Bolinas Garage, filed an Application for Variance.

23 The Applicant has been in contact with the contractor who performed the renovation work
24 in 2000 and two other contractors to obtain bids to bring the tank into compliance with District
25 requirements. The Applicant has selected a contractor and anticipates executing without delay a
26 contract to have the necessary work completed. The work is to commence no later than

1 August 16, 2004 and will be finished by September 9, 2004. The work to be performed includes
2 passing the required source tests, specifically ST-27 (GDF dynamic back pressure test) and ST-30
3 (static pressure integrity test, underground storage tanks).

4 DISCUSSION

5 Bolinas Garage will be in violation of Regulation 8, Rule 7, Section 302.1 if gasoline is
6 dispensed from the premium-grade gasoline tank (implicates both premium-grade and mid-grade
7 gasoline) before it is connected to the Phase II vapor recovery system, and all required source tests
8 are successfully completed. The noncompliance was the result of work performed by the previous
9 owner and only recently discovered. BCLT, owner of Bolinas Garage, has moved forward
10 expeditiously to address the situation.

11 The violation was and is beyond the reasonable control of the Applicant. Applicant cannot
12 curtail operations without incurring a significant economic burden. The economic impact is
13 small in absolute numbers but constitutes a significant portion of the Applicant's income from
14 the GDF, approximately 20%. By the same token, excess emissions will be small in absolute
15 numbers.

16 Additionally, curtailing operation of the facility would be a serious inconvenience to local
17 residents and visitors to the area. Bolinas Garage is the only GDF serving the Bolinas-Stinson
18 Beach area; the next closest GDF is 16 miles away.

19 The APCO agreed that the violation is due to circumstances beyond the reasonable control
20 of the Applicant, and that the Applicant was and is taking reasonable steps to come into
21 compliance without delay.

22 The excess emissions have been conservatively estimated to be 0.6 pounds per day. The
23 District did not request that the Applicant monitor or quantify actual emissions.

24 SPECIFIC FINDINGS

25 The Hearing Board finds pursuant to Health and Safety Code section 42352 that:

26 1. Applicant will be in violation of BAAQMD Regulation 8, Rule 7, Section 302.1 during

1 the Variance period, which prohibits dispensing gasoline from an underground storage tank unless
2 a California Air Resources Board ("CARB") certified Phase II vapor recovery system is used
3 during each transfer.

4 2. Due to conditions beyond the reasonable control of the Applicant, requiring compliance
5 with Regulation 8, Rule 7, Section 302.1 would result in an arbitrary and unreasonable taking of
6 property. The Applicant knew the premium-grade gasoline underground storage tank was not in
7 compliance with District requirements when they purchased the facility May 5, 2004 and has been
8 diligently working to bring the facility into compliance since taking ownership of the facility. It
9 would be an unreasonable taking of property to prevent the facility from dispensing mid-grade and
10 premium-gasoline. In light of the minimal emissions, continued operation of the facility while the
11 tank is connected to the Phase II vapor recovery system is reasonable.

12 3. The hardship due to requiring immediate compliance with Regulation 8,
13 Rule 7, Section 302.1 would be without a corresponding benefit in reducing air contaminants.
14 Excess emissions will be less than 0.6 pounds per day of hydrocarbons during the variance period
15 until the repairs are completed.

16 4. Applicant considered curtailing operations in lieu of obtaining a variance but could
17 not have done so without significant financial hardship.

18 5. The Applicant did not apply for a variance until June 14, 2004 although the
19 existence of the problem was known when BCLT took ownership of Bolinas Garage May 7, 2004.
20 The variance relief provided by this order covers only the time period from the date the
21 Application for Variance was filed, June 14, 2004, through September 9, 2004.

22 6. The District staff has not requested Applicant to monitor or otherwise further
23 quantify any emission levels.

24 **THEREFORE, THE HEARING BOARD ORDERS:**

25 A variance from Regulation 8, Rule 7, Section 302.1 of the BAAQMD Rules and
26 Regulations is hereby granted from June 14, 2004 through September 9, 2004, inclusive, subject

1 to the following conditions:

- 2 • Applicant shall meet the increments of progress as set forth in the schedule set forth below.

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Increment Description	Completion Date
Create project plan	July 9, 2004
Begin construction	August 16, 2004
Construction phase complete	September 2, 2004
Final inspection (including passing ST-27 and ST-30)	September 9, 2004

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10 Moved by: Christian Colline, P.E.

11 Seconded by: Terry A. Trumbull, Esq.

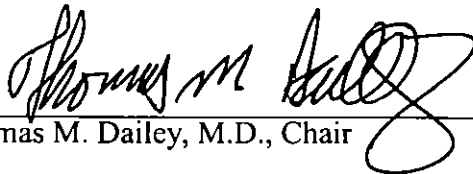
12 AYES: Christian Colline, P.E., Julio Magalhães, Ph.D., Allan R. Saxe, Esq.,
13 Terry A. Trumbull, Esq., and Thomas M. Dailey, M.D.

14 NOES: None

15 NON-PARTICIPATING: N/A

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Thomas M. Dailey, M.D., Chair

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7-8-04

Date