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May 30, 2010

SENT VIA EMAIL

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Re: EVR at [redacted] Union City, California
Complaint against City of Union City

Dear Mr. Zabel,

This letter responds to your message dated May 28, 2010 sent by e-mail.

Title VI Complaint

In summary, my client's Title VI complaint is as follows: Union City, a municipal corporation that receives federal money, is discriminating against my client by blocking him, without cause, from installing an EVR system at his gas station as required by state law. My client began the work and the City stopped him from completing it.

My client was fully blocked from installing EVR. My client submitted proper plans and the City refused to approve them. Finally, the City sensing legal liability, changed its position and agreed to allow the work to go forward. My client never changed his submission or made a new submission. At the same time, my client questioned the fees the City was attempting to charge. The City agreed to defer the fee issue. As a result work was started.

In a premeditated scheme, the City put a red tag forbidding my client from completing the work. The City even hired a private photographer to aid in this. This was mischievous by the City and breached the contract the City made with my client, the applicant. It is as if the City was looking to pick on my client without cause. As if the City had nothing else to do, but harass my client in his attempt to comply with State law. The City wanted to make a dramatic show of their power, including personally scaring my client's contractor. **Then, the City Attorney asked for a doubled fee.** The whole episode was humiliating and demeaning for my client.

The City continues to not justify their fees. My client requested multiple times, in writing, that the City allow an administrative appeal. Each of those requests was summarily denied. In light of

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will always be some air in between the outside surface of the Canister and the inside surface of the enclosure. Air is non-conductive. As such, the best lay analogy is that of a thermos-- a vacuum flask that preserves temperature of hot or cold drinks. Also, the efficiency at which vapors are captured will be affected by thermal properties.

That said neither you nor I are experts in thermodynamics, heat transfer, material science and fluid mechanics. (In fact, as far as I know, none of the recipients of this letter have such credentials.) But the bottom line is **the burden is on the City.** The City needs to make a clear certification from a learned person (not just an ordinary inspector), that these changes are valid, safe and do not affect the EVR system. How the vapors are captured, how they are released, how they interact with ambient light, how tank pressure affects efficiency, etc—these are all questions that neither you nor I can answer.

A gas station is a critical type of business and land use. The EVR system presents unique life safety challenges for the station operator and the general public. If Union City wants to get into the business of reinventing the Carbon Canister, they should take it up with the State of California and the Air Resources Board. As far as I know, Union City does not have a laboratory or the experts to modify the system and does so without the consent of the manufacturer. My client began to install the Canister the way the State and the manufacturer wishes. Union City stopped him from doing so.

State of California, Approval of Carbon Canister

The Air Resources Board approved the Carbon Canister technology in the attached executive order. (State of California, AIR RESOURCES BOARD, EXECUTIVE ORDER VR-203-F). Please note the plain text of the order (emphasis added):

"NOW, THEREFORE, IT IS HEREBY ORDERED that the VST Phase II EVR System is certified to be at least 95 percent efficient and does not exceed 0.38 pounds of hydrocarbon per 1,000 gallons of gasoline transferred in attended and/or self-service mode ***when used with an ARB-certified Phase I vapor recovery system and installed, operated, and maintained as specified herein and in the following exhibits.*** *Exhibit 1 contains a list of the equipment certified for use with the VST Phase II EVR System. Exhibit 2 contains the performance standards, specifications, and typical installation drawings applicable to the VST Phase II EVR System as installed in a gasoline dispensing facility (GDF). Exhibit 3 contains the manufacturing performance standards and specifications. Exhibit 4 provides items required in conducting TP-201.3. Exhibit 5 is the liquid removal test procedure. Exhibit 6 is the VST ECS hydrocarbon sensor verification test procedure. Exhibit 7 is the VST and Veeder-Root Phase II EVR System Warranty. Exhibit 8 is the vapor pressure*

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Preemption occurs in each of the following situations:

- The scheme of a subject's state regulation is detailed and thorough. *Chavez v. Sargent*, (1959) 52 Cal.2d 162, 177, as cited in *In re Lane*, (1962) 58 Cal.2d 99, at 102.

- Implied preemption occurs when the field that the local ordinance covers is deemed occupied by the state, even though the ordinance's language might not expressly conflict with state law. *In re Lane,* (1962) 58 Cal.2d 99, at 108.

- Where matters of statewide concern are involved, home rule charter cities remain subject to and controlled by applicable general state laws, regardless of their charters' provisions. *Committee of Seven Thousand v. Superior Court*, (1988) 45 Cal.3d 491, 505, citing *Bishop v. San Jose*, (1969) 1 Cal.3d 56, 62-63.

EVR is a matter of statewide concern.

Disparity, Lack of Uniformity
The issue is especially acute considering there are thousands of stations across the state that have installed or will install this same technology.

As you can see from the attached analysis, many similarly situated stations with identical setups have not been required to make the modifications Union City wants made here.

Arbitrary Requirements
The City cannot raise arbitrary requirements (not conforming to their City ordinances or state/federal law). Simply making a requirement, which serves no useful function places my client in unwarranted expenses. In essence, arbitrary requirements are another form of discrimination. Requiring my client to walk a circuitous path, rather than a straight line is an abuse of discretion.

Very truly yours,

ABE GUPTA
Attorney at Law