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UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

In re:)
)
 COMMUNITY COFFEE COMPANY, INC.) Docket No. CAA(211)-47
)
 Respondent.)

ACCELERATED DECISION BY WILLIAM J. SWEENEY,
 ADMINISTRATIVE LAW JUDGE (RET.)

By complaint filed on March 8, 1980 the Community Coffee Company, Inc., respondent, is charged by the United States Environmental Protection Agency with violations of the Clean Air Act (42 U.S.C. 7545) and regulations promulgated thereunder (40 CFR Part 80). The specified violations are that: during the period beginning on or about December 10, 1979, and ending on or about January 21, 1980, the respondent, a wholesale purchaser-consumer of gasoline, on seventy-four (74) separate occasions, introduced, or caused or allowed the introduction of leaded gasoline into twenty (20) motor vehicles which were labeled "unleaded gasoline only" or were equipped with a gasoline tank filler inlet which is designed for the introduction of unleaded gasoline, in violation of 40CFR 80.22(a); on February 1, 1980, the respondent operated a leaded gasoline pump equipped with a nozzle spout having a terminal end with

an outside diameter less than 0.930 inch, in violation of 40CFR 80.22(f) (1). The aforesaid violations are alleged to have occurred at respondent's facility located at 2151 North Riverside, Baton Rouge, Louisiana. The penalty proposed under authority of 40CFR 80.5 is \$524,000.

In its answer filed on March 25, 1980 the respondent specifically admitted to the violations alleged in the complaint. A hearing was requested in the event that the proposed penalty was not set aside in a settlement conference with the complainant.

On June 13, 1980 the Administrator designated the undersigned as presiding officer in this proceeding. By letter dated June 27, 1980, the presiding officer directed the parties to exchange witness lists and certain data on August 4, 1980 if a settlement had not been reached by July 21, 1980. Respondent was specifically directed to state its factual and legal basis for objecting to the proposed penalty. On August 2, 1980 the complainant filed a motion for an accelerated decision. The respondent did not reply to such motion. By order dated August 11, 1980 the motion was denied. On August 27, 1980 the complainant complied with the directive of June 27 by filing a witness list, and narrative summaries of proposed testimony and exhibits. The respondent did not comply with such directive nor did it reply to the data filed by the complainant.

The foregoing circumstances provide reason to apply the provisions of 40CFR 80.320, sua sponte, by rendering this accelerated decision. There clearly is no genuine issue nor

any material fact in dispute and the complainant is entitled to judgment as a matter of law.

Although the respondent has admitted to the violations alleged in the complaint, the amount of the proposed penalty may be examined. It appears from correspondence sent by respondent to complainant that the cause of the violations was promptly eliminated by purchasing unleaded gasoline instead of leaded gasoline for use in all company vehicles.

The proposed penalty was correctly computed, based on the admitted violations and the size of respondent's business, in accord with the Guidelines for the Assessment of Civil Penalties under Section 211(d) of the Clean Air Act, 40FR 39975 (August 29, 1975). In fact, other instances of introducing leaded gasoline into vehicles designed for the use of unleaded gasoline could have been alleged. However, on the theory that four tankfuls of leaded gasoline in an unleaded gasoline vehicle will destroy the effectiveness of the vehicle's catalytic converter, the number of violations alleged per vehicle was limited to four by the complainant.

The introduction of leaded gasoline into vehicles requiring unleaded gasoline is the most serious of seven categories of violations published in the Guidelines, and the failure to equip a leaded gasoline pump with a proper nozzle is the second most serious offense. Giving the respondent full credit for its prompt action in converting its operations to lawful

compliance would at best permit a reduction in the proposed penalty to sixty percent thereof as discussed in paragraph C(1) of the Guidelines; mitigation of the proposed penalty by such percentage appears to be warranted herein.

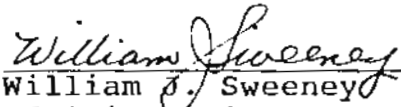
FINDINGS AND CONCLUSIONS

The respondent, Community Coffee Company, Inc., by equipping a pump used for dispensing leaded gasoline with a nozzle spout having a terminal end with an outside diameter of less than 0.930 inch (2.363 centimeters), and by introducing leaded gasoline on seventy-four (74) separate occasions into twenty (20) different motor vehicles which were labeled "unleaded gasoline only" or which were equipped with a gasoline tank filler inlet which is designed for the introduction of unleaded gasoline, was in violation of section 211 of the Clean Air Act and Regulations 40CFR 80.22(f) (1) and 80.22(a) promulgated thereunder. Based on the facts described hereinbefore, it is found that a civil penalty of \$314,400 is just, reasonable and warranted.

ORDER

The respondent, Community Coffee Company, Inc., is hereby assessed a civil penalty in the amount of \$314,400. Respondent is ordered to pay such amount within sixty (60) days after service of this Order. Payment shall be made by forwarding to the Hearing Clerk a cashier's or certified check payable to the United States of America.

Dated: September 25, 1980.



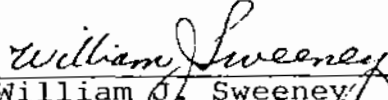
William J. Sweeney
Administrative Law Judge (Ret.)

Certificate of Service

I hereby certify that copies of the foregoing Accelerated Decision were mailed this date to Nevin A. Seeger, Esq. and Ms. Sonia Anderson, Hearing Clerk, by regular mail, and that a copy of such decision was mailed, postage prepaid certified, return receipt requested, this date, to:

Mr. Norman Saurage, III
2151 Riverside North
Baton Rouge, Louisiana 70821

Dated: September 25, 1980



William J. Sweeney
Administrative Law Judge (Ret.)