

5/27

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

81 JUN 2 3:19

In re:

J & M OIL COMPANY, INC.,
a California Corporation

Respondent.

)
)
)
)

Docket No. CAA(211)-165

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

By complaint filed on June 23, 1980 the United States Environmental Protection Agency charged the respondent with violation of section 211 of the Clean Air Act (42 U.S.C. 7545) and a regulation promulgated thereunder. The specified violation is that on February 25, 1980 the J & M Service, Unit No. 3 at 500 North Garfield, Montebello, California, had a gasoline pump, serial number 7A0007859, which was used to dispense leaded gasoline and was equipped with a nozzle spout having a terminal end with an outside diameter of less than 0.930 inch (2.363 centimeters), contrary to the provisions of 40 CFR section 80.22(f) (1). The respondent is charged as a retailer and a penalty of \$6,000 is proposed.

The respondent's vice-president responded to the complaint with a letter, the body of which is quoted in full below:

"After my conversation of June 13, 1980 to Mr. Darrell L. Williams, Attorney/Advisor, Environmental Protection Agency, I was under the impression all the facts had been stated by phone to him. I was led to believe because of this information and our record of no prior violations this matter would likely go no further.

Our family has been in the retail gasoline business since 1938 and we currently run four Self Service Stations. Our Company in all these years has never had any violations or major complaints on local, state or federal levels.

This entire situation was caused by simple human error. On 2/18/80 a maintenance man from Ral Company, a company that sells and installs all of our C&E series vapor recovery nozzles, was sent to our location to replace a broken nozzle. This maintenance man inadvertently installed a lead-free nozzle on a premium pump. The day the violation was issued, 2/25/80, our manager for that station called and we immediately locked the pump and on 2/26/80 had the nozzle replaced. I have enclosed a photocopy of the sale and follow up sale dated 2/18/80 and 2/26/80. Since this incident we have no longer allowed Ral Co. to install any of our gasoline nozzles. This is now being done by our Station managers.

We feel with the above mentioned circumstances that a penalty is not justified for this incident."

On May 4, 1981 the complainant filed a motion for an accelerated decision on the ground that the respondent in the foregoing letter had admitted that the alleged violation occurred due to a mistake and hence there exists no genuine issue of material fact. Counsel for respondent replied that the foregoing letter did not constitute an admission. Such contention is in error. The statements of the respondent in the quoted letter provide good cause to apply the provisions of 40 CFR section 22.20 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.

The fact that an admitted "lead-free" nozzle was installed on a leaded gasoline pump by a maintenance man of a company which sold such equipment to respondent does not free the respondent from responsibility for the error. The respondent as the retailer has the obligation to use only nozzles of legal proportions. The admitted violation was corrected immediately upon notification. There is no reason to believe that the nozzle was used, during the short period it was on the pump, to dispense leaded gasoline to an automobile equipped to use unleaded gasoline only. The respondent is a family-owned and operated establishment and has a long record free of any governmental regulation violations.

The proposed penalty of \$6,000 does not appear to be warranted on this record. The facts provide special circumstances for adjustment and mitigation

of the penalty to be assessed to \$500 and that amount is hereby proposed.

FINDINGS AND CONCLUSIONS

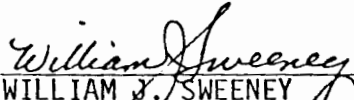
The J & M Oil Company, Inc., by having a pump used for the dispensing of leaded gasoline equipped with a nozzle spout having a terminal end with an outside diameter of less than 0.930 inch (2.363 centimeters) was in violation of section 211 of the Clean Air Act and regulation 40 CFR section 80.22(f) (1) promulgated thereunder. Based on the facts described hereinbefore it is found that a proposed penalty of \$500 is warranted.

PROPOSED ORDER

The violation of the Clean Air Act section 211 (42 U.S.C. 7545) and 40 CFR section 80.22(f) (1) having been established as alleged in the complaint, a penalty of \$500 is assessed against the respondent J & M Oil Company, Inc., in accordance with the Clean Air Act section 211 (42 U.S.C.7545) and 40 CFR sections 80.5 and 80.22(f) (1).

This Order shall be the Final Order of the Administrator thirty (30) days after transmission of the Accelerated Decision to the Hearing Clerk without further proceedings, unless, pursuant to 40 CFR section 22.30, an appeal from it is taken to the Administrator by a party to the proceedings or the Administrator elects, sua sponte, to review the Accelerated Decision. Except as otherwise provided by 40 CFR section 22.31(b), payment of the full amount of the civil penalty shall be made by the respondent within sixty (60) days of service of the Final Order on respondent by forwarding to the Hearing Clerk a cashier's check or a certified check made payable to the Treasurer, United States of America, in the amount stated above.

Dated: May 27, 1981


WILLIAM J. SWEENEY
Administrative Law Judge (Ret.)

Certificate of Service


I hereby certify that copies of the foregoing Accelerated Decision were sent this date by certified mail, return receipt requested, to the following:

Ms. Sonia Anderson
Hearing Clerk (A-110)
U.S. Environmental Protection Agency
Room 3706, Waterside Mall
401 M Street, S.W.
Washington, D.C. 20460

Darrell L. Williams, Esq.
U.S. Environmental Protection Agency
Mobile Source Enforcement Division
Bldg. 53, Box 25227, Denver Federal Center
Denver, Colorado 80225

Norman N. Hirata, Esq.
3868 Carson Street, Suite 307
Torrance, California 90503

Dated: May 27, 1981



WILLIAM J. SWEENEY
Administrative Law Judge (Ret.)

