

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Washington, D. C.

In re:

LINDSAY'S AMOCO, INC.

Respondent

Docket No.: CAA (211)-456

OFFICE
FEB 12 1972

INITIAL DECISION OF PRESIDING OFFICER SEYMOUR WENNER

Henry J. Noyes for Respondent
Cheryl A. Kenny and Richard Friedman for Complainant

I

INTRODUCTION

This proceeding arises out of a Complaint filed by the United States Environmental Protection Agency (EPA) against Respondent Lindsay's Amoco, Inc., lessor and operator of a retail gasoline facility, and hence a retailer under the regulations, at 1201 Bladensburg Road, N.E., Washington, D.C. The Complaint alleges that, in violation of regulations issued under the Clean Air Act, four of the nozzle spouts on pumps used to dispense leaded gasoline at this station had nozzle spouts whose outside diameters were less than 0.930 inch, the size required for leaded gasoline nozzles. The purpose of the regulations governing nozzle size is to prevent leaded gasoline from being put through the narrower inlet of the tanks of "unleaded only cars," since leaded gas deactivates and damages their emission control systems.

EPA also filed a Complaint against Amoco Oil Company, which was consolidated with the above entitled action against Respondent Lindsay's Amoco, Inc. A settlement in principle has been agreed to in that proceeding.

The Respondent filed an Answer to the Complaint, the Judicial Officer designated the undersigned as Presiding Officer, prehearing submissions were exchanged, a hearing was held in Rockville, Maryland, and the parties have filed briefs and proposed findings.

II

THE VIOLATION

On December 5, 1980, an inspector for EPA inspected Respondent's service station. The station was open for business. It had two "islands," each with a pump labeled leaded gasoline. Each of the two "leaded" pumps had two hoses with nozzles for putting gasoline into cars. The inspector tested the outside diameters of the four "leaded" nozzle spouts with a gauge. The diameter of each spout was less than 0.840 inch. The smallest allowable size for a "leaded" nozzle spout is 0.930 inch. The largest diameter for an "unleaded" spout is 0.840 inch. As a result, the four "leaded" nozzle spouts would fit into the narrow inlets of the gas tanks of "unleaded only cars."

The gasoline for the four leaded hoses came from a single "leaded" tank. A sample of the gas from one of these leaded pumps showed that the gasoline contained 0.653 gram of lead per gallon. Gasoline which contains more than 0.05 gram per gallon is "leaded" gas under the regulations.

Plainly four of Respondent's nozzles used for dispensing leaded gasoline were equipped with nozzle spouts having terminal ends with outside diameters of less than 0.930 inch in contravention of §40 CFR 80.22(f)(1).

Under the regulations Complainant has the burden of proving a prima facie case. This it has done. Thereafter the burden of proving a defense to a violation shifts to Respondent.

Respondent does not deny that the violation occurred. However he suggests the following possibility:

Over two months before the inspection the station was refurbished and the subcontractor might have installed the wrong size nozzles. Respondent offered no evidence to support this possibility. On the other hand: the subcontractor testified that he had investigated the allegation and had found no fault with his company's work. And Respondent testified that both Amoco and the D.C. inspectors had checked the nozzles after they were installed and approved them. Of course, even if the subcontractor had installed improper nozzles, Respondent would still be in violation of his affirmative obligation to assure that his leaded pumps were equipped with properly sized nozzle spouts.

Accordingly, it is concluded that Respondent's service station had leaded gas pumps with four nozzles that could be used to introduce leaded gasoline into cars designed for unleaded gasoline only. This constitutes four violations of 40 CFR §80.22(f)(1), governing the size of leaded gasoline nozzles.

III

THE CIVIL PENALTY

The Clean Air Act provides for a penalty of \$10,000 per day for each violation of the unleaded gasoline regulations. The Guidelines for the assessment of Civil Penalties under the Act establish a uniform system of mitigation based on the size of Respondent's business, his history of compliance, and the gravity of the violation. These factors have been incorporated into a Table for computing a proposed penalty. Application of this

standard to the facts of this case shows that Respondent's gross revenues from the instant station for 1980 were between \$250,000 and \$1,000,000. There is no evidence of any prior violation. The Guidelines treat a leaded nozzle violation of the minimum size requirement as the second most serious of the possible violations. The reason is that such a nozzle can be used to put leaded gas into cars designed for unleaded gas only. This deactivates and damages the catalytic converters, the vital part of the emission control system. On the basis of the Guidelines, Complainant properly proposed a civil penalty of \$4,000.

In assessing a penalty, the Presiding Officer considers the Guidelines and two additional factors: action taken by Respondent to remedy the specific violation and the effect of the penalty on Respondent's ability to continue in business.

Respondent does not claim economic hardship.

Respondent corrected the nozzle violations after the inspection. However, not only did he never have any inspection program to prevent the instant violations, he has not begun to inspect his nozzles on a regular basis. He has not bought a nozzle gauge, which costs some \$12.00, although he was specifically advised to get one by Service Station Association.

Respondent appears to accept no responsibility for compliance with EPA regulations, although he is familiar with them. In suggesting that the subcontractor installed the four undersized nozzles, he concedes that, if true, for over two months he neglected to observe that he had four defective nozzles at his station. Yet he was there daily and can easily distinguish leaded from unleaded nozzles.

Respondent argues that he should not be liable for the violation because millions of gallons of leaded gasoline are being used in unleaded vehicles by use of nozzle adapters,

or by removing the inlet restrictors from the fill cap of "Unleaded only cars," etc. There is no evidence of this in the record; and whether true or not, this is not a tenable argument.

Respondent Amoco's agreement in principle to settle the action against it does not demonstrate that Respondent is not liable for the instant violations: Amoco could be independently liable under the regulations, or it might be willing to settle for any number of reasons.

Due consideration has been given to other contentions of Respondent. They do not warrant any changes in the conclusions reached.

Accordingly, the Presiding Officer finds that the proposed penalty of \$4,000 is proper.

Findings of Fact, Conclusions of Law, and an Order are attached to this opinion and made a part hereof.

IV

FINDINGS OF FACT

1. On December 5, 1980, Respondent leased, operated, controlled and supervised the Lindsay's Amoco retail outlet located at 1201 Bladensburg Road, N.E., Washington, DC.
2. On December 5, 1980, Lindsay's Amoco was an establishment at which gasoline was sold or offered for sale for use in motor vehicles.
3. On December 5, 1980, an authorized representative of the U.S. Environmental Protection Agency (EPA) performed a consensual inspection of the Lindsay's Amoco retail facility.
4. The Lindsay's Amoco pump stand with serial number 0449160 contains two pumps and two nozzle spouts.

5. The Lindsay's Amoco pump stand with serial number A42-XFXB9119 contains two pumps and two nozzle spouts.

6. On December 5, 1980, the Lindsay's Amoco gasoline pump stands with serial numbers 0449160 and A42-XFXB9119, each equipped with two pumps and two nozzles, were used for introducing leaded gasoline into motor vehicles.

7. On December 5, 1980, the four (4) pump nozzles on the Lindsay's Amoco leaded gasoline pump stands with serial numbers 0449160 and A42-XFXB9119 were measured with a standard EPA nozzle gauge.

8. On December 5, 1980, the Lindsay's Amoco pump stand with serial number 0449160 was equipped with two pumps and two nozzle spouts, the nozzle spouts having outside diameters of less than 0.930 inch. In fact, the diameters of those two nozzle spouts were less than 0.839 inch, the size required on gasoline pumps used for the introduction of unleaded gasoline into motor vehicles.

V

CONCLUSIONS OF LAW

1. Respondent Lindsay's Amoco Inc., is, and at all relevant times has been, a person within the meaning of §211 of the Clean Air Act, as amended 1977.

2. Jurisdiction exists in this matter under §211 of the Clean Air Act, as amended 1977, and 40 CFR Part 80.

3. Lindsay's Amoco, located at 1201 Bladensburg Road, N.E., Washington, D.C., is, and at all relevant times, has been a retail outlet as defined by 40 CFR §80.2(j).

4. Respondent is, and at all relevant times has been, the retailer, as defined by 40 CFR §80.2(k), of the Lindsay's Amoco retail facility.

5. The inspection performed at Lindsay's Amoco, Inc., on December 5, 1980, was consensual and authorized.

6. On December 5, 1980, the Lindsay's Amoco gasoline pump stands with serial numbers 0449160 and A42-XFXB9119, used for dispensing leaded gasoline into motor vehicles, were each equipped with two pumps and nozzle spouts, and each of those four nozzle spouts had a terminal end with an outside diameter of less than 0.930 inch, in violation of 40 CFR §80.22(f)(1).

7. Respondent, Lindsay's Amoco, Inc. is liable for these four (4) violations of 40 CFR §80.22(f)(1).

8. A civil penalty of Four Thousand Dollars (\$4,000) is assessed against Respondent for these four (4) violations of 40 CFR §80.22(f)(1).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Washington, D. C.

_____)
 In re:)
)
 LINDSAY'S AMOCO, INC.)
)
 Respondent)
 _____)

Docket No. CAA (211)-456

ORDER

1. Pursuant to §211(d) of the Clean Air Act, as amended, 42 U.S.C. §7545, and the Regulations promulgated thereunder (40 CFR 80), Respondent is found liable for four (4) violations of 40 CFR §80.22(f)(1) and is assessed a civil penalty of \$4,000.

2. Payment of the full amount of the penalty assessed shall be made within sixty (60) days of service upon Henry J. Noyes, Attorney for Lindsay's Amoco, Inc., by forwarding to the Hearing Clerk, a cashier's check in the amount of the penalty payable to the United States of America.

SO ORDERED.

By the Presiding Officer
 February 2, 1982

Seymour Wenner
 Seymour Wenner
 Administrative Law Judge (Ret.)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Initial Decision of Presiding Officer Seymour Wenner, and Order attached thereto, were forwarded first-class postage prepaid, to the following:

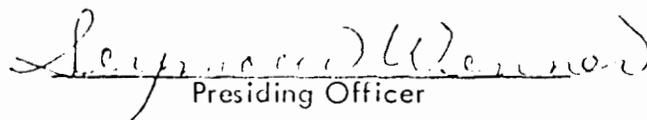
Ms. Bessie L. Hammel (A-110)
Acting Hearing Clerk
U. S. Environmental Protection Agency
401 M Street, S. W. - Room 3708
Washington, D. C. 20460

Certified:

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February 2, 1982


Presiding Officer