UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

REGIONAL HEARING CLERK
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REGION VII

IN THE MATTER OF:	)	Docket No. 114601
	)	
CLARK SERVICE STATION	)	Marvin E. Jones
CLARK OIL & REFINING CORPORATION	)	Administrative Law Judge
	)	1735 Baltimore
	)	Kansas City, Missouri

INITIAL DECISION

By Complaint filed March 7, 1978, Clark Oil and Refining Corporation (hereinafter Clark), the owner and operator of a retail outlet located at 43rd and Cambridge, Kansas City, Kansas, is charged with violation of 40 CFR 80.22 in that on or about March 5, 1978, Clark's employee allegedly introduced or caused or allowed the introduction of leaded gasoline into a motor vehicle which is labeled "unleaded gasoline only."

Said Section 80.22(a) provides, in pertinent part, as follows:

> "(a) After July 1, 1974, no retailer or his employee or agent...shall... introduce, or cause or allow the introduction of leaded gasoline into any motor vehicle which is labeled "unleaded gasoline only" or which is equipped with a gasoline tank filler inlet which is designed for the introduction of unleaded gasoline."

Section 80.24, relating to the subject complaint, provides in pertinent part, as follows:

> "Section 80.24 Controls applicable to motor vehicle manufacturers.
>
> "The manufacture of any motor vehicle equipped with an emission control device which the Administrator has determined will be significantly impaired by the use of leaded gasoline shall:
>
> "(a) Affix two or more permanent legible labels reading 'Unleaded Gasoline Only' to such vehicle at the time of its manufacture, as follows:

"(1) One label shall be located on the instrument panel so as to be readily visible to the operator of the vehicle: Provided, however, That the required statement may be incorporated into the design of the instrument panel rather than provided on a separate label; and

"(2) One label shall be located immediately adjacent to each gasoline filler tank inlet, outside of any filler inlet compartment, and shall be located so as to be readily visible to any person introducing gasoline to such filler inlet: Provided, however, That the Administrator may, upon application from a motor vehicle manufacturer, approve other label locations that achieve the purpose of this paragraph.

"(3) Such labels shall be in the English language in block letters which shall be of a color that contrasts with their background."

FINDINGS OF FACTS

1. Clark Oil and Refining Corporation owns and operates a retail gasoline station at 43rd and Cambridge in Kansas City, Kansas.

2. At about 4:00 p.m. on Sunday, March 5, 1978, a 1975 AMC Pacer was driven into subject station by one Carlos Ruiz who ask that Clark's employee, James Loutzenhiser, put gasoline into the tank of said automobile. Gasoline was transferred from Clark's pump, which was labeled as leaded regular gasoline, into the car's fill pipe.

3. Subject automobile's gasoline tank filler inlet was not then equipped with a "restrictor" (so as to prevent introduction of a leaded gasoline nozzle into the filler inlet) for the reason that said restrictor had been removed at some time after manufacture of subject automobile and prior to the time of the sale of the gasoline here considered.

4. The catalytic converter on the vehicle was, in all likelihood, inoperable.

5. Respondent Clark Service Station and Respondent Clark Oil and Refining Corporation are in fact the same entity and constitute the sole respondent in this matter.

6. The brand name "Clark" is, and at all times pertinent to this matter has been, displayed at the retail outlet at 43rd and Cambridge, Kansas City, Kansas.

7. Two grades of gasoline are offered for sale at the retail outlet above, to-wit: regular (leaded) and unleaded gasoline.

8. The pumps dispensing leaded gasoline are labeled with the word "regular"; the pumps dispensing unleaded gasoline are labeled with the word "unleaded".

9. At the time of its manufacture said 1975 Pacer had two permanent-type legible labels affixed reading "Unleaded Gasoline Only", one appearing on the instrument panel, and the other appearing immediately adjacent to the filler tank inlet. The first is clearly visible to the operator of said vehicle and the other readily visible to any person introducing gasoline to said filler inlet.

10. At the time of subject sale of gasoline, the word "Unleaded" had been obliterated from the label immediately adjacent to said filler tank inlet, leaving only the words "fuel only".

CONCLUSIONS OF LAW

1. Respondent Clark violated 40 CFR 80.22(a) by introducing leaded gasoline into the fuel tank of a motor vehicle requiring unleaded gasoline.

2. Respondent Clark is subject to and should be required to pay an appropriate civil penalty for said violation.

DISCUSSION

On consideration of the evidence in the record, including each party's Proposed Findings of Fact, Conclusions of Law, Brief and Argument, and responses thereto, I have found that Respondent Clark violated Section 80.22(a) for the reason that its employee "introduce(d) leaded gasoline into any motor vehicle which is labeled 'unleaded gasoline only'." Respondent appropriately points out that label located by the manufacturer on the instrument panel of subject 1975 AMC Pacer automobile, pursuant to Section 80.24(a)(1), was for the purpose of advising the operator of the automobile that "unleaded gasoline only" was to be introduced into the fuel tank. Section 80.24(a)(2) provides for another label to be located (by the manufacturer) "immediately adjacent to each gasoline filler inlet...and shall be located so as to be readily visible to any person introducing gasoline to such filler inlet...".

Section 80.24(a)(3) provides:

> "Such labels shall be in the English language in block letters which shall be of a color that contrasts with their background."

I find that the label immediately adjacent to the subject gasoline filler inlet was readily visible to Clark's employee who placed leaded gasoline in subject vehicle; and that, though the word "unleaded" was obliterated, the remaining part of the label stating "...fuel only" was sufficient to place him on inquiry.

Clark and its employees are held to possess knowledge of all regulations applying to the operation of the business in which they are engaged. As to the subject matter here involved, the station attendant (Clark's employee) had knowledge which, when applied to the facts then apparent (block letters in the English language of a contrasting color), raised a duty to inquire. Inquiry, of the owner who was then present, or of checking the other label (on the dash) would have revealed that

subject automobile was one requiring unleaded gasoline. The standard of conduct to which said employee is held is a higher and more onerous one than that exacted of a member of the general public because of the peculiar knowledge, training and experience which he possesses in accordance with the duties and obligations placed on him by the subject regulations. Imputing to him such degree of expertise and knowledge which, when applied to the facts apparent on this record, raises a duty to inquire, is but to recognize that by the exercise of ordinary intelligence and understanding, under the attendant circumstances, he would have discerned that the subject automobile was one requiring "unleaded gasoline only."

The evidence herein further reveals that the automobile's gasoline filler inlet was not equipped with a "restrictor" so as to prevent introduction of a leaded gasoline nozzle. This suggests that the car, before it was acquired by its present owner, had burned regular (leaded) gasoline and that the catalytic converter had been thereby rendered inoperative. This, and other attendant facts, should and will be considered in mitigation in determining the civil penalty here appropriate.

CIVIL PENALTY

In determining the amount of civil penalty properly to be assessed on the basis of the facts contained in this record, I have given consideration to factors set forth in 40 CFR 80.330(b)(1), which provides:

> "Section 80.330(b)(1) In evaluating the appropriateness of such proposed penalty, the Regional Administrator must consider (i) the gravity of the violation, (ii) the size of respondent's business, (iii) respondent's history of compliance with the Act, (iv) the action taken

by respondent to remedy the specific violation, and (v) the effect of such proposed penalty on respondent's ability to continue in business."

I am authorized, under Section 80.327(b) to increase or decrease the amount proposed; the Regional Administrator is granted such authority under Section 80.330(b)(2)

In considering gravity of the violation, I have considered two facets, namely, gravity of harm and gravity of misconduct. The evidence in this record revealing that subject vehicle's gasoline filler tank inlet was not equipped with a "restrictor" gives rise to the suggestion that the vehicle had burned leaded gasoline previously and that its catalytic converter had been rendered inoperative prior to its current ownership. Whereas, we have held Respondent to a duty of inquiry and found it guilty of a violation, the circumstances suggest that the factors comprising said violation are greatly mitigated by the circumstances under which the violation occurred. Further, I find that Respondent's history of compliance with the Act is good, and I find no evidence of bad faith.

By reason of the foregoing, I find that a civil penalty in the sum of $750.00 is appropriate and assessment against Clark in such amount is hereby proposed.

PROPOSED FINAL ORDER

This Initial Decision and the following proposed Final Order assessing a civil penalty shall become the Final Order of the Regional Administrator unless appealed or reviewed by the Regional Administrator as provided in 40 CFR 80.327(c):

"FINAL ORDER

It being hereby determined that Respondent Clark Oil and Refining Corporation has violated 40 CFR 80.22(a), as alleged in the Complaint issued herein, a civil penalty is hereby assessed against Respondent in the sum of $750.00 and Respondent is Ordered to pay the same by Cashier's or Certified Check, payable to the United States Treasury, within sixty (60) days of the receipt of this Order."

This Initial Decision is signed and filed this 5th day of July 1978, at Kansas City, Missouri.

Marvin Jones

ALJ