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KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

JULIAN M. CARROLL
GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

REVIEW COMMISSION

104 BRIDGE ST.
FRANKFORT, KENTUCKY 40601
PHONE (502) 564-6892

September 14, 1977

MERLE H. STANTON
CHAIRMAN

CHARLES B. UPTON
MEMBER

HERBERT L. STOWERS
MEMBER

KOSHRC #324

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

BOWLING GREEN FIRE DEPARTMENT
CENTRAL STATION

RESPONDENT

RICHARD WATSON, ET AL

INTERVENORS

DECISION AND ORDER OF
REVIEW COMMISSION

Before STANTON, Chairman; STOWERS and UPTON, Commissioners.

PER CURIAM.

A Recommended Order of Hearing Officer Herbert B. Sparks, issued under date of June 8, 1977, is presently before this Commission for review, pursuant to a Petition for Discretionary Review.

Finding no error in the application of the law to the facts herein, and the evidence appearing to adequately support the findings and conclusions of the Hearing Officer, it is the unanimous ORDER of the Review Commission that the Recommended Order of the Hearing Officer be and it hereby is AFFIRMED, and the citations and penalty involved are SUSTAINED.


Merle H. Stanton, Chairman

DATED: September 14, 1977
Frankfort, Ky.

/s/ H. L. Stowers
H. L. Stowers, Commissioner

DECISION NO. 467

/s/ Charles B. Upton
Charles B. Upton, Commissioner

This is to certify that a copy of this Decision and Order has been served by mailing or personal delivery on the following:

✓ Commissioner of Labor (Messenger Service)
Commonwealth of Kentucky
Frankfort, Kentucky 40601
Attention: Honorable Michael D. Ragland
Executive Director for
Occupational Safety & Health

✓ Hon. Kenneth E. Hollis, Gen. Counsel (Messenger Service)
Department of Labor
Frankfort, Kentucky 40601
Attention: Hon. Timothy O'Mara
Assistant Counsel

✓ Hon. Whayne C. Priest, Jr. (Certified Mail #456850)
ENGLISH, LUCAS, PRIEST & OWSLEY
Attorneys at Law
1110 College St., P. O. Box 449
Bowling Green, Kentucky 42101

✓ Lonnie Bellamy, Chief (First Class Mail)
Bowling Green Fire Dept., Central Station
325 East 10th Street
Bowling Green, Kentucky 42101

✓ Lt. Richard Watson (First Class Mail)
Rt. 4, Box 275
Bowling Green, Kentucky 42101

✓ Sgt. Joe H. Hagerman (First Class Mail)
Route 2
Bowling Green, Kentucky 42101

✓ Sgt. James H. Yates (First Class Mail)
#12 Box 204-A
Austin Raymer Road
Bowling Green, Kentucky 42101

✓ Sgt. Bedford L. Wilson (First Class Mail)
Rt. #14, Box 152
Bowling Green, Kentucky 42101

✓ Sgt. Robert N. Chaffin (First Class Mail)
1209 Dickens, R. #6
Bowling Green, Kentucky 42101

✓ Sgt. Wayne Harpes (First Class Mail)
Rt. #13
Bowling Green, Kentucky 42101


✓ Mr. Alan B. Bledcoe (First Class Mail)
1700 S. Parkside Drive
Bowling Green, Kentucky 42101

KOSHRC 324
(Decision and Order of Review Commission)

- ✓ Mr. Harold G. Neighbors (First Class Mail)
Rt. #9, Box 72
Bowling Green, Kentucky 42101
- ✓ Mr. Jerry Stewart (First Class Mail)
R. R. #14, Box 146
Bowling Green, Kentucky 42101
- ✓ Mr. Lloyd A. Tarter (First Class Mail)
Route 7, Box 457
Bowling Green, Kentucky 42101
- ✓ Mr. H. D. Clark (First Class Mail)
Route 5
Bowling Green, Kentucky 42101

This 14th day of September, 1977.

✓ Otis R.
✓ H.D.


Iris R. Barrett
Executive Director



KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

104 BRIDGE ST.

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

JULIAN M. CARROLL
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KOSHRC #324

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

BOWLING GREEN FIRE DEPARTMENT
CENTRAL STATION

RESPONDENT

RICHARD WATSON, ET AL

INTERVENORS

DECISION AND ORDER OF
REVIEW COMMISSION

Before STANTON, Chairman; STOWERS and UPTON, Commissioners.

PER CURIAM.

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Finding no error in the application of the law to the facts herein, and the evidence appearing to adequately support the findings and conclusions of the Hearing Officer, it is the unanimous ORDER of the Review Commission that the Recommended Order of the Hearing Officer be and it hereby is AFFIRMED, and the citations and penalty involved are SUSTAINED.

Merle H. Stanton, Chairman

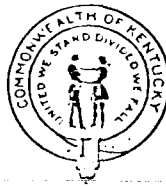
DATED: Frankfort, Ky.

H. L. Stowers, Commissioner

DECISION NO.

Charles B. Upton

Charles B. Upton, Commissioner



KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

104 BRIDGE ST.

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

JULIAN M. CARROLL
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KOSHRC #324

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

BOWLING GREEN FIRE DEPARTMENT
CENTRAL STATION

RESPONDENT

RICHARD WATSON, ET AL

INTERVENORS

DECISION AND ORDER OF
REVIEW COMMISSION

Before STANTON, Chairman; STOWERS and UPTON, Commissioners.

PER CURIAM.

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Finding no error in the application of the law to the facts herein, and the evidence appearing to adequately support the findings and conclusions of the Hearing Officer, it is the unanimous ORDER of the Review Commission that the Recommended Order of the Hearing Officer be and it hereby is AFFIRMED, and the citations and penalty involved are SUSTAINED.

Merle H. Stanton, Chairman

H. L. Stowers, Commissioner

DATED:

Frankfort, Ky.

DECISION NO.

Charles B. Upton, Commissioner



KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

104 BRIDGE ST.

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

June 8, 1977

JULIAN M. CARROLL
GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

MERLE H. STANTON
CHAIRMAN

HERBERT L. STOWERS
MEMBER

CHARLES B. UPTON
MEMBER

KOSHRC # 324

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

BOWLING GREEN FIRE DEPARTMENT
CENTRAL STATION

RESPONDENT

RICHARD WATSON, ET AL

INTERVENORS

NOTICE OF RECEIPT OF
RECOMMENDED ORDER, AND
ORDER OF THIS COMMISSION

All parties to the above-styled action before this Review Commission will take notice that pursuant to our Rules of Procedure a Decision, Findings of Fact, Conclusions of Law, and Recommended Order is attached hereto as a part of this Notice and Order of this Commission.

You will further take notice that pursuant to Section 48 of our Rules of Procedure, any party aggrieved by this decision may within 25 days from date of this Notice submit a petition for discretionary review by this Commission. Statements in opposition to petition for discretionary review may be filed during review period, but must be received by the Commission on or before the 35th day from date of issuance of the recommended order.

Pursuant to Section 47 of our Rules of Procedure, jurisdiction in this matter now rests solely in this Commission and it is hereby ordered that unless this Decision, Findings of Fact, Conclusions of Law, and Recommended Order is called for review and further consideration by a member of this Commission within 40 days of the date of this order, on its own order, or the granting of a petition for discretionary review, it is adopted and affirmed as the Decision, Findings of Fact, Conclusions of Law and Final Order of this Commission in the above-styled matter.

Parties will not receive further communication from the Review Commission unless a Direction for Review has been directed by one or more Review Commission members.


Copy of this Notice and Order has been served by mailing or personal delivery on the following:

- ✓ Commissioner of Labor (Messenger Service)
Commonwealth of Kentucky
Frankfort, Kentucky 40601
Attention: Honorable Michael D. Ragland
Executive Director for
Occupational Safety & Health
- ✓ Hon. Kenneth E. Hollis, General Counsel (Messenger Service)
Department of Labor
Frankfort, Kentucky 40601
Attention: Hon. Timothy O'Mara
Assistant Counsel
- ✓ Hon. Wayne C. Priest, Jr. (Certified Mail #114272)
ENGLISH, LUCAS, PRIEST & OWSLEY
Attorneys at Law
1110 College St., P. O. Box 449
Bowling Green, Kentucky 42101
- ✓ Lonnie Bellamy, Chief (First Class Mail)
Bowling Green Fire Department
Central Station
325 East 10th Street
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- ✓ Mr. Jerry Stewart (First Class Mail)
R. R. 14, Box 146
Bowling Green, Kentucky 42101
- ✓ Mr. Lloyd A. Tarter (First Class Mail)
Route 7, Box 457
Bowling Green, Kentucky 42101
- ✓ Mr. H. D. Clark (First Class Mail)
Route 5
Bowling Green, Kentucky 42101

This 8th day of June, 1977.

✓ 3 Comm
✓ H.O.'s
✓ Atisk.



Iris R. Barrett
Executive Director

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHRC # 324

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDED ORDER

BOWLING GREEN FIRE DEPARTMENT
CENTRAL STATION

RESPONDENT

VS.

RICHARD WATSON, JOE H. HAGERMAN,
JAMES H. YATES, BEDFORD L. WILSON,
ROBERT N. CHAFFIN, WAYNE HAYNES,
ALAN B. BLEDCOE, HAROLD G. NEIGHBORS,
JERRY STEWART, LLOYD A. TARTER and
H.D. CLARK (EMPLOYEES OF BOWLING GREEN
FIRE DEPARTMENT CENTRAL STATION)

INTERVENORS

* * * * *

Hon. Timothy O'Mara, Attorney at Law, Department of Labor,
Frankfort, Kentucky, for Complainant

Hon. Whayne C. Priest, Jr., English, Lucas, Priest & Owsley,
1110 College Street, Bowling Green, Kentucky, for
Respondent

The following intervenors were present:

Lonnie Bellamy, Chief, Bowling Green Fire Department,
Central Station, 325 East 10 Street, Bowling Green,
Kentucky

Sgt. Joe H. Hagerman, Route 2, Bowling Green, Kentucky

Sgt. Bedford L. Wilson, Route 14, Box 152, Bowling Green,
Kentucky

Sgt. Robert N. Chaffin, 1209 Dickens, Route 6, Bowling Green, Kentucky

Harold G. Neighbors, Route 9, Box 72, Bowling Green, Kentucky

Jerry Stewart, Rural Route 14, Box 146, Bowling Green, Kentucky

Lloyd A. Tarter, Route 7, Box 457, Bowling Green, Kentucky

* * * * *

Pursuant to an employee complaint an inspection was made on August 17, 1976, by the Kentucky Department of Labor, Division of Occupational Safety and Health, at a place of employment located in Warren County, Kentucky, at or near 325 East 10 Street, Bowling Green, Kentucky, where the operation of a fire station was being conducted by and under the direction and control of the Respondent. On the basis of that inspection it was alleged in a citation dated September 24, 1976, that the Respondent violated the provisions of KRS Chapter 338 (Kentucky Occupational Safety and Health Act of 1972) in the following respects which were alleged to be other than serious violations.

There was an alleged violation of 803 KAR 2:180, Section 4(1), in that:

"The Annual Summary of Occupational Injuries and Illnesses had not been compiled for 1973, 1974, 1975 (i.e. Form No. 102)."

There was an alleged violation of 803 KAR 2:180, Section 1(1), in that:

"The Log of Occupational Injuries and Illnesses was not maintained for the years 1973, 1974 and 1975."

There was an alleged violation of 29 CFR 1910.141(c)(1)(i) (as adopted by 803 KAR 2:020) in that:

"Toilet rooms for each sex were not provided, nor were the first and second floor toilet rooms capable of being locked from the inside."

There was an alleged violation of 29 CFR 1910.141(c)(2)(iii) (as adopted by 803 KAR 2:020) in that:

"The walls of the first and second floor restrooms were not of a finish that could be easily cleaned."

There was an alleged violation of 29 CFR 1910.141(d)(2)(iv) (as adopted by 803 KAR 2:020) in that:

"Individual hand towels, warm air blowers or continuous cloth toweling were not provided in the second floor restroom."

There was an alleged violation of 29 CFR 1910.141(c)(1)(iii) (as adopted by 803 KAR 2:020) in that:

"The sewage disposal method endangered the health of the employees, in that the second floor restroom water closet did not flush properly and the urinal was cracked, which made it impractical to be properly cleaned."

There was an alleged violation of 29 CFR 1910.141(h) (as adopted by 803 KAR 2:020) in that:

"Employee food service facilities and operations were not carried out in accordance with sound hygienic principles (i.e. storage of food, dishes and condition of countertop surfaces in kitchen)."

There was an alleged violation of 29 CFR 1910.106(g)(1)(iii) (c) (as adopted by 803 KAR 2:020) in that:

"Class II liquid was stored and dispensed inside service station building (garage) from a tank with more than 120 gallons capacity (diesel fuel)."

There was an alleged violation of 29 CFR 1910.106(g)(8) (as adopted by 803 KAR 2:020) in that:

"There were not conspicuous and legible signs prohibiting smoking in the fuel dispensing area."

There was an alleged violation of 29 CFR 1910.106(g) (9)
(as adopted by 803 KAR 2:020) in that:

"There was no fire extinguisher having a minimum approved classification of 6 B,C within 75 feet of the fuel pump."

There was an alleged violation of 29 CFR 1910.106(g) (3) (iv)
(as adopted by 803 KAR 2:020) in that:

"Class I liquid is not transferred from tanks by means of fixed pumps so designed as to allow control of the flow and to prevent leakage (i.e. gasoline pump hose is cracked)."

All of the above referred to violations were alleged to be nonserious violations within the meaning of the Act.

The procedural pertinent information and dates are as follows:

1. Inspection of the premises mentioned above was August 17, 1976.
2. Citation was issued September 24, 1976.
3. Notice of Contest was received on October 8, 1976.
4. Certification of Employer Form was received October 15, 1976.
5. Complaint was received on October 26, 1976.
6. Order of Intervention was allowed October 29, 1976.
7. Received a Motion to Dismiss and a Motion for Local Hearing on November 10, 1976.
8. Case was assigned to Hearing Officer on November 11, 1976.
9. Hearing was scheduled for and held on November 30, 1976, in Bowling Green, Kentucky.

The aforesaid hearing was held under the provisions of KRS 338.071(4), one of the provisions dealing with the safety and health of employees which authorized the Review Commission to hear

and rule on appeals from citations, notifications and variances issued under the provisions of this chapter, and to adopt and promulgate rules and regulations with respect to procedural aspects of the hearing. Under the provisions of KRS 338.081, the hearing was authorized by the provisions of said chapter and such may be conducted by a Hearing Officer appointed by the Review Commission to serve in its place. After hearing and appeal, the Review Commission may sustain, modify or dismiss the citation or penalty.

After hearing the testimony of the witnesses, having considered same, together with the exhibits filed and stipulations and representations of the parties, it is concluded that the substantial evidence of the record considered as a whole supports the following Findings of Fact.

DISCUSSION OF THE CASE AND
FINDINGS OF FACT

Jurisdiction of the parties in the subject matter and due and timely notice of the hearing is found by the Hearing Officer.

Respondent argues strenuously with a well-written brief that the subject Kentucky OSHA Act should not apply to state and local governmental agencies, and further that civil penalties should not be assessed under the Kentucky OSHA Act against municipalities. Further, he argued strenuously that the Respondent, as joined herein, is not an employer as contemplated under the Kentucky OSHA Act.

The record is replete with the arguments of the two able counsel and two fine briefs, but in summary it would seem that the following is very appropriate.

KRS 338.021 points out that this chapter applies to all employers, employees, and places of employment throughout the Commonwealth, except the following: (a) Employees of United States Government, and (b) Employers, employees, and places of employment over which Federal agencies other than the United States Department of Labor exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

Respondent relied heavily on the Supreme Court case, National League of Cities vs. Usery, 49 L.Ed 2d 245 (June 1976). Your Hearing Officer agrees that the Usery case can be distinguished from the case at bar. Congress tried to impose a Federal Fair Labor Standards Act on state employees. The Federal Occupational Safety and Health Act has a specific exemption for state employees. The Congress has permitted the individual states to voluntarily ~~adopt their own safety and health programs, within Federal guide-~~ lines. The states are not forced to set up their own programs, it is totally optional. The fact that the guidelines require state plans to include state employee coverage is in no way analogous to a federal act applying to state employees. The purpose of insuring coverage of state and local government employees is obvious: safety and health protection, through the most comprehensive program possible.

State and local government employees are not covered under the Federal Fair Labor Standards Act. However, the state has adopted its own minimum wage statute, KRS 337.275, which does apply to state and local government employees. Similarly, the state has

adopted KRS 338, which covers "all employers, employees, and places of employment throughout the Commonwealth" as hereinabove set out.

In short, it is believed that a municipality, such as herein in question, was in fact properly before the Review Commission, and that penalties could be assessed pursuant to KRS 338.991, which gives the Complainant the authority to assess penalties.

Further, the fact that Bowling Green Fire Department Central Station was named as Respondent in the citation of September 24, 1976, has come under attack by the Respondent. Again, your Hearing Officer is compelled to agree with the Complainant's argument that the correct Respondent was before the Review Commission. The name, Bowling Green, was included in the citation. The name cited was supplied by a representative of the fire division, Major T.O. McGalliad. The name supplied was relied on by the Complainant in making the citation (TR. 25). Further, the Respondent has not alleged any damage resulted from the difference in the proper name of the Respondent and it is respectfully submitted that none has occurred to the Respondent.

As to the merits of the various violations, items no. 3, 4, 5 and 11 were admitted and stipulated to subject to the procedural arguments that have been raised by the Respondent.

Testimony as to items no. 1 and 2, which were alleged violations of 803 KAR 2:108, Section 4(1) and 803 KAR 2:180, Section 1(1), respectively, can be found at transcript, pages 25 and 26, wherein the Compliance Officer testified that in the opening conference,

Major McGalliad said that to his knowledge there was no injury or illness records, and, specifically, there was no Annual Summary of Occupational Injuries and Illnesses, and no Log of Occupational Injuries and Illnesses for the years in question.

Testimony as to item no. 6, which alleged a violation of 29 CFR 1910.141(c)(1)(iii) (as adopted by 803 KAR 2:020), as to the sewage disposal method, can be found at transcript, page 30 and pages following thereafter, wherein the Compliance Officer stated that a urinal was cracked to the extent that it could not be kept clean and the porous parts would absorb urine, thus creating a health hazard. He further said that the commode did not flush properly, sewage was left standing, and it was never completely diluted or flushed. Evidence was introduced of a photograph of the urinal in question.

As to item no. 7, which was an alleged violation of 29 CFR 1910.141(h) (as adopted by 803 KAR 2:020), which had to do with the unsanitary conditions of the kitchen in question, wherein there were no lids on various canisters of flour wherein insects and other possible contaminants could get to the exposed material. Further, the clean dishes were stored on top of hand towels used for shelving. There was testimony that these towels were not changed daily and become wet and soiled which invited contamination. There was further testimony that the countertop in the kitchen was cracked in places which could harbor food scraps and made it hard to be properly cleaned. The exhaust fan and oven were greasy and dirty to the extent that they could contaminate other food preparation and also attract insects. There was also a large tin of

bacon drippings or some type of food grease stored open in these cupboards. (TR. 34). The Compliance Officer testified that the overall cleanliness of the facility was basically unsanitary in his estimation.

As to items no. 8 and 9, which were alleged violations of 29 CFR 1910.106(g)(1)(iii)(c) and 29 CFR 1910.106(g)(8) (both as adopted by 803 KAR 2:020), the Compliance Officer testified that a Class II liquid was stored and dispensed inside the service station building from a tank with more than 120 gallons capacity. Complainant's Exhibit B was introduced which indicates the fuel tank which was in question as far as item no. 8 was concerned. (TR. 35). The seriousness was that the tank was inside a building which was actually inside the firehouse itself.

As to item no. 9, which alleged a violation of 29 CFR 1910.106(g)(8) (as adopted by 803 KAR 2:020), there was testimony to the effect that there were no signs of any type near the diesel fuel tank and that the Compliance Officer inspected the general area around the tank (TR. 37). The Compliance Officer further stated that it was the position of the Department of Labor that since all vehicles were maintained and serviced in the garage area, it would naturally fall under the service station standards. He stated that his supervisor felt the same way.

As to item no. 10, an alleged violation of 29 CFR 1910.106(g)(9) (as adopted by 803 KAR 2:020) concerning the fire extinguisher, there was testimony that each service station shall be provided with at least one fire extinguisher having a minimum classification of 6 B, C located so that an extinguisher will be within 75 feet of

each pump, dispenser, underground fill pipe opening, and lubrication or service room. The Compliance Officer testified that next to the diesel fuel tank there was a fire truck. There was an extinguisher mounted on the truck, but there was no fire extinguisher permanently mounted within 75 feet of this fuel tank. At the time of his inspection, these trucks were in and out on call so as not to make the pump available at all times. In other words, at some time, theoretically, there would be no fire extinguisher next to that diesel fuel tank if the truck was on call.

On cross-examination it was revealed that the paragraph that he cited under was "service stations", and the subparagraph was "inside buildings". As the Compliance Officer stated "a service station in my mind and in my supervisor's mind is not necessarily one where the public purchases service. It can be where an industry, or in this case, a fire station, where service is done on trucks or cars or whatever. In view of this, I felt that Bowling Green Fire Department qualified as a service station since they did their own service on their own trucks and fueled them there."

In light of the foregoing, the following Conclusions of Law would seem appropriate.

CONCLUSIONS OF LAW

The Department of Labor has sustained its burden of proof as to the alleged violation of 803 KAR 2:180, Section 4(1).

The Department of Labor has sustained its burden of proof as to the alleged violation of 803 KAR 2:180, Section 1(1).

The Department of Labor has sustained its burden of proof as to the alleged violation of 29 CFR 1910.141(c)(1)(i) (as adopted

by 803 KAR 2:020) in that this item was stipulated to by and between the parties.

The Department of Labor has sustained its burden of proof as to the alleged violation of 29 CFR 1910.141(c)(2)(iii) (as adopted by 803 KAR 2:020) in that this item was stipulated to by and between the parties.

The Department of Labor has sustained its burden of proof as to the alleged violation of 29 CFR 1910.141(d)(2)(iv) (as adopted by 803 KAR 2:020) in that this item was stipulated to by and between the parties.

The Department of Labor has sustained its burden of proof as to the alleged violation of 29 CFR 1910.141(c)(1)(iii) (as adopted by 803 KAR 2:020) in that adequate proof has been produced and the testimony of all parties, including the intervenors, is such that there was a violation of this standard. It is further found that there was no proposed penalty for this item.

The Department of Labor has also carried its burden of proof as to the alleged violation of 29 CFR 1910.141(h) (as adopted by 803 KAR 2:020) as to the employee food service facilities. The law would seem to be such that it does not matter who the food is supplied by. The thrust of this act and standard would seem to be on sound hygienic principles being carried forward, and there was a failure to do so in this case. In light of the foregoing it would seem that the proposed penalty of \$34.00 would be appropriate in this instance.

As to the alleged violation of 29 CFR 1910.106(g)(1)(iii)(c) and the alleged violation of 29 CFR 1910.106(g)(8) (both as adopted

by 803 KAR 2:020) this Hearing Officer is aware of the Seventh Circuit Ruling in Amoco Oil, Inc., 1976-1977 OSHD (21,500), "wherein the Appeals Court held that the term "service station" has the well-recognized meaning of an establishment where the public can buy gasoline and obtain minor mechanical repairs. Judge Moore, in that case, related that "undoubtedly the draftsman of this section believed that to the American motoring public a 'service station' had become a well-recognized term - an oasis on a highway where a tank-full of gasoline could be obtained, windshield blade replaced, and not infrequently a place used for sustenance and other important purposes. Under these circumstances it would be highly important that the potentially explosive region of the service station conform to the best safety measures." He further elaborated "quite apart from constitutional limitations, Congress or administrative agencies could have prohibited any person or corporation from having on their property any tank above the ground containing any combustible gas or liquid. They have not done so, but have chosen to specify various plants including service stations. We cannot hold under the facts presented here that a solitary tank located on petitioner's premises, and used as above described, constitutes a service station."

In light of the foregoing, it would seem that the reasoning of that case would cause the Hearing Officer to recommend the vacation of the alleged violations of 29 CFR 1910.106(g)(1)(iii)(c) (as adopted by 803 KAR 2:020) and 29 CFR 1910.106(g)(8) (as adopted by 803 KAR 2:020).

The same reasoning would seem to apply as to the alleged vio-

lation of 29 CFR 1910.106(g) (9) in that this standard specifically requires each "service station shall be provided with at least one fire extinguisher having a minimum approved classification of 6 B, C located so that an extinguisher would be within 75 feet of each pump, dispenser, underground field pipe opening and lubrication or service room. In light of the foregoing and specifically in light of the Amoco Oil, Inc. case set forth above, it would seem that this item should be vacated.

In light of the foregoing, the following Recommended Order would seem appropriate.

RECOMMENDED ORDER

IT IS ORDERED AND ADJUDGED that the alleged violation of 803 KAR 2:180, Section 4(1) shall be and the same is hereby sustained.

IT IS ORDERED AND ADJUDGED that the alleged violation of 803 KAR 2:180, Section 1(1) shall be and the same is hereby sustained.

IT IS ORDERED AND ADJUDGED that the alleged violation of 29 CFR 1910.141(c) (1) (i) (as adopted by 803 KAR 2:020) shall be and the same is hereby sustained.

IT IS ORDERED AND ADJUDGED that the alleged violation of 29 CFR 1910.141(c) (2) (iii) (as adopted by 803 KAR 2:020) shall be and the same is hereby sustained.

IT IS ORDERED AND ADJUDGED that the alleged violation of 29 CFR 1910.141(d) (2) (iv) (as adopted by 803 KAR 2:020) shall be and the same is hereby sustained.

IT IS ORDERED AND ADJUDGED that the alleged violation of 29 CFR 1910.141(c) (1) (iii) (as adopted by 803 KAR 2:020) shall be and the same is hereby sustained.

IT IS ORDERED AND ADJUDGED that the alleged violation of 29 CFR 1910.141(h) (as adopted by 803 KAR 2:020) shall be and the same is hereby sustained and the proposed penalty of \$34.00 shall be and the same is hereby sustained.

IT IS ORDERED AND ADJUDGED that the alleged violation of 29 CFR 1910.106(g) (1) (iii) (c) (as adopted by 803 KAR 2:020) shall be and the same is hereby vacated along with the proposed penalty of \$34.00.

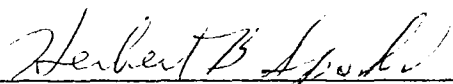
IT IS ORDERED AND ADJUDGED that the alleged violation of 29 CFR 1910.106(g) (8) (as adopted by 803 KAR 2:020) shall be and the same is hereby vacated.

IT IS ORDERED AND ADJUDGED that the alleged violation of 29 CFR 1910.106(g) (9) (as adopted by 803 KAR 2:020) shall be and the same is hereby vacated.

IT IS ORDERED AND ADJUDGED that the alleged violation of 29 CFR 1910.106(g) (3) (iv) (as adopted by 803 KAR 2:020) shall be and the same is hereby sustained.

IT IS FURTHER ORDERED AND ADJUDGED that all the above mentioned violations shall be corrected without delay, but no later than fifteen (15) days from the date of this Recommended Order.

This 6th day of June, 1977.


HERBERT B. SPARKS, HEARING OFFICER

Dated: June 8, 1977
Frankfort, Kentucky

DECISION NO. 423