

**BEFORE THE  
DEPARTMENT OF FOOD AND AGRICULTURE  
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
Rowdy Randy's Gas Station )  
Randy Hicks, Owner )  
650 High Street )  
Auburn, CA 95603 )  
 )  
Appellant )  
\_\_\_\_\_ )

File No. 13/14-005-WM-PLA

**DECISION AND ORDER  
ON APPEAL**

The attached Decision and Order on Appeal of the Hearing Officer is hereby adopted as the Decision of the Department of Food and Agriculture in this matter.

This Decision shall be effective APRIL 2, 2014.

IT IS SO ORDERED: MARCH 3, 2014.

MICHELE DIAS  
General Counsel

By:   
\_\_\_\_\_  
CRYSTAL D'SOUZA  
General Counsel  
Department of Food and Agriculture

Attachment

**APPELLANT'S RIGHT TO SEEK JUDICIAL REVIEW**

Judicial review of the decision of the Department may be sought within thirty (30) days of the effective date of this decision pursuant to Section 1094.5 of the Code of Civil Procedure.

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**I  
PROCEDURAL HISTORY**

On November 19, 2013 the Placer County Department of Agriculture, Weights and Measures (hereinafter "Respondent") served a Notice of Proposed Action (hereinafter "Notice") against Rowdy Randy's Gasoline Station, and owner, Randy Hicks (hereinafter "Appellant"). The Notice set forth one violation of Business and Professions Code (BPC) Section 13532(a)(4). It is unlawful for any person to display any advertising medium which indicates the price of motor fuel unless the advertising medium displays all of the following: the grade designation of the motor fuel in letters or numerals not less than one-sixth the size of the numerals designating the price, but this designation need not be more than four inches in height. The missing grade designation was of diesel fuel (the #2 as part of the name was missing).

Based upon penalty guidelines set forth in Title 4, Chapter 9, California Code of Regulations, Section 4802, Table A, this is a "Category C" violation for which the appropriate penalty range is \$50-\$250. Respondent proposed the maximum penalty of two hundred fifty dollars (\$250) for the violation. Appellant made a timely request for a hearing that was granted.

On December 18, 2013, Hearing Officer Paul Boch conducted an administrative hearing to determine if Appellant had committed the violation alleged in the Notice. Appellant appeared and contended that the county's actions did not credit him with his corrections, and that the proposed civil penalty and \$250 fine was too high for a violation which he had corrected twice. Appellant did not contest that a violation occurred.

On December 27, 2013, Hearing Officer Boch issued a proposed decision, finding that Appellant had committed the alleged violations, but that the imposed civil penalty requested by Respondent is not appropriate. Hearing Officer Boch did not uphold the amount of the fine but instead proposed the fine be no more than one hundred dollars (\$100).

On January 6, 2013, Respondent adopted the proposed decision in part. Respondent did not reduce the fine to \$100 as recommended by the Hearing Officer. Respondent sent the decision, stating that Appellant committed the violation alleged in the "Notice" and that Respondent has the prerogative to determine the appropriate fine amount within the appropriate penalty range. Respondent further stated that the fine was being set at two hundred fifty dollars (\$250) because Appellant had received four Notices of Violation in a four-month period.

Appellant filed a timely appeal with the Department of Food and Agriculture (hereinafter "Department") on January 27, 2013. Appellant is requesting an appeal on the basis that the fine listed by both the Hearing Officer and Respondent are excessive.

## II STATEMENT OF FACTS

On July 31, 2012, Agricultural Standards Inspector Joseph Jimenez conducted an inspection at Appellant's business for the purpose of determining the station's compliance with the Business and Professions Code (BPC) and California Code of Regulations (CCR) as they pertain to petroleum retail sales.

Inspector Jimenez stated that he observed that the price sign was missing the grade designation for diesel. He noted this on his inspection form as a Notice of Violation. Inspector Jimenez stated that he returned for an unannounced re-inspection four months later, on November 26, 2012, and observed that the grade designation was not corrected; he then issued a Formal Notice of Violation. There was no petroleum inspection form completed for this re-inspection.

Nine months later, on August 8, 2013, Inspector Jimenez stated that he performed another inspection and again found the price sign was missing the grade designation for diesel. He marked "Notice of Violation" on his petroleum inspection form. In addition, the disabled sign was missing and was corrected in his presence. Less than a month later, on September 4, 2013, Inspector Jimenez re-inspected and found the grade designation was missing. Appellant's on-site representative walked over to the sign, and both the representative and Inspector Jimenez found the grade designation sign (# 2) had fallen from the sign and was lying in a flower bed at the base of the sign. Inspector Jimenez issued a formal Notice of Violation.

During the hearing, Appellant explained he had tried to comply each time and expressed disappointment in the actions of the County Inspector. With respect to the November 26, 2012 Notice of Violation, Appellant was out of town on family business, and when he returned in December 2012, he reviewed the Formal Notice of Violation. He purchased a "cling-on" type numeral 2 (# 2) and placed it after the word "diesel" on the sign. Appellant did not have any more contact with Inspector Jimenez and assumed the Inspector had driven by, seen the correction, and that all was well. Appellant also stated that he purchased a permanent stick-on type numeral for the sign and was in compliance within days of the September 2013 formal Notice of Violation.

Appellant argues in his appeal that the violations were promptly corrected each time a formal Notice of Violation was issued and therefore, the timeline presented by Respondent at the hearing is incorrect. Appellant also requests consideration for the fact that there were no Notices of Violation issued from November 2012 to August 8, 2013. Lastly, Appellant also argues that none of these violations were intentional and that in all other locations, the signage is correct. .

### III STANDARD OF REVIEW

The Department addresses Appellant's contentions by adopting the standard utilized by the courts when reviewing administrative decisions on mandamus. It may not consider evidence outside the record, but must consider the entire record, and deny the appeal if there is any substantial evidence to support the findings. (*Smith v. County of Los Angeles* (1989) 211 Cal.App.3d 188, 198-199) Substantial evidence is defined as evidence of "ponderable legal significance" which is "reasonable in nature, credible and of solid value", distinguishable from the lesser requirement of "any evidence". (*Newman v. State Personnel Board* (1992) 10 Cal.App.4t 41, 47; *Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873) In other words, the Department cannot substitute its judgment for the judgment of the finder of fact if there is enough relevant and reliable information to establish a fair argument in support of the result, even if other results might have also been reached. (*Smith v. County of Los Angeles, supra*; *Bowers v. Bernards, supra*, 10 Cal.App.4th at 873-874)

### IV DETERMINATION OF ISSUES

Preliminarily, the Department finds that sufficient evidence of a violation was presented during the course of the hearing. Inspector Jimenez testified that the grade designation (# 2) was missing each time he visited Appellant's gas station. Appellant has admitted that the grade designation was missing and presented evidence that he corrected the violation each time he received a Notice of Violation. Additionally, the violation does not require Respondent to prove intent.

Having found sufficient evidence of a violation, the Department next determines whether the penalty in Respondent's Decision and Order is appropriate. Respondent presented evidence that this is a Class C violation and when setting the proposed fine, the Sealer considered relevant facts, including the severity and actual and potential effects and Appellant's compliance history, and included this in the Notice of Proposed Action (NOPA). The Hearing Officer found that the NOPA only stated the fine was for a single violation of BPC Section 13532(a)(4). There was no other NOPA issued for the previous violations. As such, the Department agrees with the recommendation of the Hearing Officer of a one hundred dollar (\$100) fine in total.

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