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OCCUPATIONAL LICENSES

BEFORE THE LIQUEFIED PETROLEUM GAS SAFETY BOARD

STATE OF IDAHO

In the Matter of the License of: ALAN L. KOYLE, License No. PGD-326, K-ENERGY, INC. dba Permagas-Filer, License No. PGLF-546, K-ENERGY, INC.dba Permagas-Gooding, License No. PGLF-545, Respondents.	Case No. LPG-2008-1 LPG-2008-2 LPG-2008-3 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER**

INTRODUCTION

This is a discipline case being prosecuted by the Bureau of Occupational Licenses ("BOL") before the Liquefied Petroleum Gas Safety Board of the State of Idaho ("Board"). The Respondents in this matter are Alan L. Koyle, individually, and the corporation, K-Energy, Inc. doing business as Permagas in Filer and in Gooding, Idaho. The two corporate locations are licensed separately from Mr. Koyle's dealer license. This matter came on for hearing before the undersigned Hearing Officer on Friday, April 18, 2008. The Bureau was represented by Emily MacMaster of the Idaho Attorney General's Office. Respondents were represented by Tony Valdez of Twin Falls, Idaho. During the course of the hearing, testimony was received from the following witnesses: Penny Ragland, John Kersey and Alan Koyle. Also, documentary evidence consisting of State exhibits 1 thru 7 and 9 thru 16 were admitted into evidence. Exhibit 8 was offered but not admitted into evidence. Respondents' exhibits A, B and C were admitted into evidence. At the conclusion of the hearing, the record was closed. Additional time was

afforded to the parties pursuant to stipulation of counsel to file post-hearing briefs and arguments. The matter is now fully submitted and is before the undersigned Hearing Officer for the entry of recommended findings of fact, conclusions of law and recommended order. As correctly noted by the Deputy Attorney General in her Post-Hearing Closing Brief, the undersigned Hearing Officer's duties do not include a recommendation to the Board as to what, if any, sanctions may be appropriate in this case. The duty of the Hearing Officer is limited to merely recommending whether grounds for discipline exist. With that limitation in mind, the Hearing Officer respectfully enters the following recommended findings of fact, conclusions of law and recommended order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent Koyle has been in the propane business since 1999 and currently holds LPG Dealer License No. PGD-326. Respondent K-Energy, Inc. currently holds License No. PGLF-546 to operate a liquefied petroleum gas facility in Filer, Idaho the ("Filer facility") and License No. PGLF-545 to operate a facility in Gooding, Idaho ("Gooding facility"). The Filer and Gooding facilities are both storage plants licensed by the Board as large facilities.

2. In June 2006 Respondent K-Energy purchased the Filer and Gooding facilities. In order to lawfully operate these facilities, the Respondent K-Energy, Inc. was required to apply for and obtain appropriate licenses from the Board. The Board came into existence on July 1, 2005 by act of the 2005 Idaho legislature. Mr. Koyle in 2005 was a member of his industry's trade association and actively participated in lobbying efforts to persuade the Idaho legislature to adopt the LPG Licensing Act.

3. When K-Energy purchased the facilities in June 1006, Mr. Koyle knew that neither facility met applicable Board rules in that neither facility met all of the requirements of the National Fire Protection Association ("NFPA") Code 58. The Statute

at I.C. §54-5308(f) and Board rule at IDAPA 24.22.01.350.01(c) expressly require that each facility meet all requirements of NFPA 58. The Gooding facility, in particular, did not have sufficient room to accommodate the size of tank necessary for a bulk plant facility. At the Filer facility, the port-o-pack tank was essentially a storage tank on wheels which is regarded as temporary and may not be used for longer than a six month period. The tank could not be made compliant without replacing the wheels with a suitable structure and supporting frame.

4. As noted, at the time Mr. Koyle purchased the Filer and Gooding facilities, they were unlicensed and would not have met the requirements of the licensing statute and rules which took effect July 1, 2005. Knowing that it would take time and considerable expense to upgrade the facilities, Mr. Koyle spoke to two members of the Board, Mr. Keller and Mr. Van Hees, regarding his situation and who advised Mr. Koyle that "they would work with him" TRP 117-118. The Hearing Officer finds Mr. Koyle's testimony in this regard credible. There is no evidence in the record to rebut the testimony. That being said, however, there is no evidence or suggestion in the record that this discussion between the licensee and two members of the Board resulted in Mr. Keller or Mr. Van Hees prejudging this discipline case or resulting in such bias that they would not be qualified to decide this matter.

5. Following Mr. Koyle's purchase of the Filer and Good facilities, he did begin the process of soliciting bids to upgrade the facilities. The record indicate that within the LPG industry, April, May and June is the time frame in which bulk plants are remodeled, upgraded, repaired and enhanced. After this three month window of time, Mr. Koyle testified that he was unable to effect the necessary repairs and upgrades to come into compliance with the licensing law. In February of 2007 he began to solicit bids in earnest to make the necessary upgrades.

6. The Board's investigative and prosecutorial services are provided by the

Bureau of Occupational Licenses ("Bureau"). On March 15, 2007 Bureau Investigator Penny Ragland visited the Filer facility after receiving a complaint from another operator that Respondent's Filer facility was not licensed. Ms. Ragland testified that her purpose in calling upon Mr. Koyle in Filer that day it was to inform him that Bureau inspectors were going to be headed his way at some point in the future and that she wanted to encourage him as much as she could to get the Filer facility licensed prior to the arrival of a Bureau inspector. In the course of her conversation with Mr. Koyle, Penny Ragland was informed that Mr. Koyle also had a facility in Gooding. During this meeting, Mr. Koyle informed Ms. Ragland that he was in the process of applying for his license. However, as of that date, no application for license had been filed with the Bureau.

7. The next encounter between Bureau staff and Mr. Koyle occurred approximately one month later, April 19, 2007. On that date a Bureau investigative team, including Ms. Ragland and Chief Investigator John Kersey, visited the Gooding facility and took photos. The photos of this visit are in evidence in State's Exhibit 6. The Gooding facility was being operated at that time, and no license had been applied for. Believing the matter to be of such seriousness as to warrant the involvement of local law enforcement, the Bureau's investigative team proceeded to the City of Gooding Police Department and requested that a citation be issued against Mr. Koyle for operating the Gooding facility without a license. A citation was issued by Gooding Police Department for unlicensed operation of an LPG facility.

8. Within two days of the April 19 visit, Mr. Koyle filed his applications for licensure of the Gooding and Filer facilities. At the time the applications were signed, Mr. Koyle knew that the facilities did not meet the requirements of Idaho law and rules and the NFPA 58 code. The applications had a form of affidavit stating that the facilities met the legal requirements. Mr. Koyle testified that he had been told to file the applications by the Bureau's investigative team. The Bureau's investigative team both in

March and in April concluded that the facilities would not meet the legal requirements of licensure, but nevertheless requested that Mr. Koyle complete and file the applications. Mr. Koyle likewise knew that the facilities would not meet legal requirements. Mr. Koyle testified that he discussed with the State investigators its concerns regarding the application and in particular the affidavit regarding compliance. He further testified that the despite his concerns, the investigators told him to proceed with filing the applications immediately.

9. On May 9, 2007 licenses were issued to the Gooding and Filer facilities by Tana Corey, Bureau Chief. No additional inspections were made prior to issuance of the licenses. No follow up inspections were made of the facilities following licensure. The testimony and record indicate that following licensure, the necessary upgrades and improvements were made to the facilities so that the facilities are in actual compliance with Idaho law and the requirements of NFPA 58.

10. The Hearing Officer finds the testimony of Mr. Koyle regarding his discussions and interactions with the Bureau staff to be credible. Ms. Ragland was called as a rebuttal witness. In the rebuttal testimony she testified regarding her investigative report and dealings with Mr. Koyle. She did not rebut Mr. Koyle's testimony that he was directed to file the applications despite the fact that the Bureau staff knew the facilities were not in compliance. No other rebuttal evidence or testimony was offered.

11. It is clear in this record that the Filer and Gooding facilities were not licensed until May 9, 2007. As such, the Respondents were in violation of the newly adopted Regulatory Act.

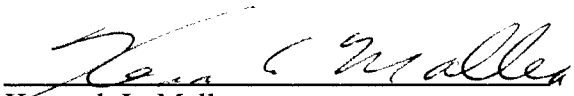
12. The overriding purpose of the Act is to improve and enhance public safety in regards to operation of LPG facilities in the State of Idaho. The manifest goal and intent of the Act is to achieve, through licensure, upgraded and enhanced facilities in order to safeguard operators, their employees, and the public at large. The Act, as

applied in this case, has directly resulted in significant enhancement and upgrading of the Filer and Gooding LPG facilities. To that end, the Act has accomplished its manifest purpose. Mr. Koyle has, at considerable expense, brought the facilities into compliance with Idaho law and is now a licensed and regulated operator.

RECOMMENDATION

Grounds for discipline in this case exist in that Respondents operated the Filer and Gooding facilities prior to May 9, 2007 without issuance of an Idaho PGLF license. Appropriate sanctions, are left to the Board.

Dated this 6th day of August, 2008.



Kenneth L. Mallea

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6 day of August, 2008, a true and correct copy of the within and foregoing document was served upon:

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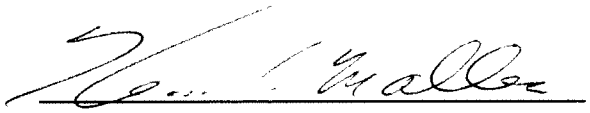
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