

Cause #: 97-9L

Name: Amoco Petroleum Products and Emro Marketing Co.

Administrative Law Judge: William K. Teegarden

Date: June 29, 1998

Commission Action: Affirmed

FINDINGS OF FACT

1. The FPBS Commission is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5, IC 36-7, and Indiana Building Code Chapter 31 ("IBC") apply to this proceeding.
3. Pursuant to IC 36-7-8-6, local building officials may take enforcement actions involving state statutes and rules.
4. Pursuant to this authority, a duly authorized representative of the City issued orders to the stations.
5. The orders cited violations of Sections 4.30.2, 4.2.5, and 4.2.6 of the Chapter 31 of the IBC.
6. The stations asked the FPBSC to overturn the orders.
7. When the FPBSC did not overturn the orders, the stations petitioned for administrative review.
8. At all times relevant to these proceedings, the stations were involved in the retail sales of petroleum products including the self-pumping of gasoline.
9. At issue is the failure of the stations to install pumps in a manner which is handicapped accessible.
10. The undisputed testimony at hearing showed that neither of the two major manufacturers of gas pumps makes a pump that is fully accessible.
11. The Tokheim pump involved in this case, when installed on a six inch concrete platform, has a 54 inch reach to the credit card slot and a 59 inch reach to the control panel.
12. At the time this controversy arose, 675 IAC 13-22 was in effect and 675 IAC

13-2.2-1 specified that the 1991 Uniform Building Code¹ was adopted as the IBC, however in 1995, the handicapped accessibility, Chapter 31, was amended.

13. As amended, Chapter 31.4.30 specified standards for controls and specifically requires the “highest operable part of controls . . .” to reach ranges specified in 4.2.5 and 4.2.6.
14. IBC Chapter 31.4.2.5 specifies that to meet accessibility requirements, the forward reach must be between 15 inches and 48 inches.
15. IBC Chapter 31.4.2.6 allows a more liberal range (9 inches to 54 inches) if available space allows a parallel approach by a person in a wheel chair.
16. Exhibit A is diagram of the Tokheim dispenser being used.
17. If installed on the ground, the maximum height of any of the control panel is approximately 53 inches and the height of the credit card slot is approximately 48 inches.
18. Current practice in newly constructed or remodelled gasoline stations is to place the dispenser on a 6 inch safety island.
19. This clearly puts the top of the control panel above the most liberal of the IBC code sections on height requirements.
20. The purposes of the island are safety from moving traffic, allow easy access to the pollution control devices, and to keep to pollution control devices above the drainage area so rain water, fuel spills, and other drainage remain on the paved area and exit into drains instead of entering the base of the dispenser.
21. The representatives of all three parties agreed that the concrete islands are a valuable aid to safety and pollution control.
22. P.L. 168-1997, effective July 1, 1997, amended IC 22-13-4-1.5 and requires the FPBSC to comply and implement the ADA Accessibility Guidelines found in 28 CFR 36.101 et seq.
23. Specifically, P.L. 168-1997 requires accessibility unless it is structurally

¹ This issue arose in 1996. A new IBC was adopted in 1998 which adopts the 1997 Uniform Building Code.

impracticable. As an alternative, the use of reasonable and cost-effective alternative means of access or service is permitted.

24. The stations have raised two important issues that need to be decided by the FPBSC.
25. The first issue of interest is whether or not a fuel dispenser is part of a class I structure and therefore subject to regulation by the FPBSC.
26. 675 IAC 12-6-2 defines a class I structure as “A building or structure that is intended to be . . . used . . . by . . . (c) the public”
27. The dispensers in question are integral parts of a canopy-island-tank construction that is a class I structure and is regulated by the FPBSC.
28. The language of Chapter 31 of the IBC is very broad and as seen in 31.4.30, refers to height of “. . . controls, dispensers, receptacles, and other operable equipment”
29. Since the dispenser is a necessary part of this construction which is solidly attached to the island, the trier of fact concludes that the dispenser is regulated as part of a class I structure.
30. The second issue of note deals with commercial impracticability and reasonable alternatives as provided in P.L. 168-1997.
31. The stations are aware of their responsibility to make refueling available to customers with disabilities.
32. The evidence presented by the stations, shows that one set of fuel dispensers² is marked for accessibility, has a speaker system, and will provide attendant pumped fuel at self serve prices for the handicapped motorist.
33. The accompanying store premises are accessible.
34. Exhibit 1 is a copy of a settlement agreement involving Exxon Company provided by the U.S. Department of Justice, Civil Rights Division.
35. While of little or no binding precedential value, Exhibit 1 does indicate that the Civil Rights Division recognizes that employee aided refueling at marked

² The City agrees that one set of ADA compliant dispensers will meet ADA requirements; not every set need comply.

handicapped pumps for self serve prices is a reasonable accommodation for pumps that do not meet the height requirements of the ADA.³

36. Under the circumstances, the stations have made the best of a bad situation for which they were not and are not responsible.
37. The ADA plan in effect at the stations conforms with appropriate safety and environmental standards and is a reasonable alternative for the handicapped patron.
38. As such, it complies with the mandates of IC 22-13-4-1.5 (P.L. 168-1997) in that there has been a showing of both impracticability and cost effective alternative.
39. One issue was raised by the Office of the State Fire Marshal.
40. The Office of the State Fire Marshal contends that the appropriate remedy for the stations is to seek a variance pursuant to 675 IAC 12-5 and IC 22-13-2-11.
41. To qualify for a variance, an applicant must first be in violation of rules of the FPBSC.
42. By meeting the requirements of IC 22-13-4-1.5, the stations are not in violation of the SBC, and therefore do not need to apply for a variance.
43. The order should be vacated; the stations are in compliance with SBC.

NONFINAL ORDER

The decision of the Fire Prevention and Building Safety Commission to uphold the local order is reversed. The Notice of Correction issued to the petitioners is vacated.

³ The agreement, signed in 1994, imposes the employee aid condition on an otherwise noncompliant service station as a compromise settlement of an ADA complaint filed against Exxon by the U. S. Department of Justice.

