



Public Service Commission

Sheri Haugen-Hoffart

Randy Christmann

Julie Fedorchak

600 East Boulevard Ave
Dept. 408
Bismarck, ND 58505-0480
701-328-2400
ndpsc@nd.gov

April 9, 2024

Mr. Steve Kahl
Executive Secretary
North Dakota Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck ND 58505-0480

via Hand Delivery

Re: Case No. WM-23-354
Public Service Commission
Lund Oil, Inc.
Weights & Measures Enforcement

Dear Mr. Kahl:

Enclosed is a copy of the Consent Agreement to be filed in the above captioned case.

Best regards,


John Schuh
General Counsel

Enclosure

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

Public Service Commission
Lund Oil, Inc.
Weights & Measures Enforcement

Case No. WM-23-354

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	
)	
vs.)	CONSENT AGREEMENT
)	
Lund Oil, Inc.)	
)	
Respondent.)	

This Consent Agreement is entered into by and between Lund Oil, Inc. (Lund) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case No. WM-23-354.

Discussion

On November 15, 2021, a Commission Weights & Measures Inspector (Inspector) conducted an annual recertification test on two movable platform (platform) scales at Lund's Watford City location at 3605 4th Avenue Northeast, Watford City, North Dakota, 58854-7001. The scales are located next to the propane refilling station and are used as part of the propane tank refilling operation to calculate the volume of propane in the tank prior to the refilling operation to ensure a customer is only charged for the amount of propane dispensed and to ensuring the propane tank is not overfilled.

During the inspection, the Inspector identified one of the platform scales, Serial Number E28118-0228, was missing a poise screw and therefore, was not weighing accurately nor could it be adjusted to weigh accurately without the poise screw. The Inspector rejected the scale and placed a red "Rejected for Repair" tag on the device which states "Commercial use of this device is forbidden until repaired and certified."

After finalizing the inspection, the Inspector reviewed the invoice with Lund's Assistant Manager of Sales/Dispatch, Nick Liebel, and identified the scale issue. The Inspector left a copy of the invoice and test report with Mr. Liebel and Mr. Liebel signed a copy of the invoice for the Inspector's records.

On May 10, 2023, the Inspector returned to conduct the recertification on the platform scales at Lund's Watford City location. The Inspector noted the platform scale that was rejected on November 15, 2021, had not been repaired and was out front next to the propane tank with the red "Rejected for Repair" tag still affixed. The Inspector informed Mr. Liebel the previously rejected platform scale cannot be used commercially and he needed to remove it from the propane tank refill area. Mr. Liebel removed and placed the rejected scale in the back of the shop so it would not be used.

On August 23, 2023, and November 29, 2023, the Inspector was traveling through the area and noticed that on both occasions, the rejected platform scale was back out front in the propane tank refill area indicating it was being used to refill propane tanks and the red "Rejected for Repair" tag was still affixed.

On January 5, 2024, Staff spoke with Mr. Liebel regarding the rejected platform scale. Staff informed Mr. Liebel the scale had been rejected and could not be used

commercially. Mr. Liebel said he understood and would remove the scale from the propane refilling area.

On January 23, 2024, Staff spoke with Mr. Liebel. Mr. Liebel said the rejected platform scale had been removed and was no longer being used. When asked why the rejected platform scale had been returned to the front after it had been removed on May 10, 2023, Mr. Liebel stated that an employee had moved it back out front to weigh propane tanks for refilling and use. Mr. Liebel also said they now had the missing parts to repair the scale and requested the Inspector come to Lund's Watford City location to inspect and certify the scale and they are very busy refilling propane tanks and need to use the scale.

On February 20, 2024, the rejected platform scale was repaired and recertified by the Inspector.

Violation: Using a Rejected Weighing Device in Commerce

N.D.C.C. § 64-02-14 provides that a weighing or measuring device that does not meet applicable design or tolerance requirements must be marked in the manner set by the commission and may not be used in commerce without the consent of the commission.

N.D.C.C. § 64-03-02 provides that it is unlawful for any person to knowingly and fraudulently use a weighing or measuring device, or keep a device for public use, which does not conform to the legal standard of weights and measures of the state.

Furthermore, once a weighing or measuring device has been rejected, the device may not be used in commerce in accordance with N.D. Admin. Code § 69-10-01-05.

Based upon the investigation, Lund violated N.D.C.C. §§ 64-02-14 and 64-03-02 and N.D. Admin. Code § 69-10-01-05 by knowingly using the rejected platform scale in commerce when refilling propane tanks.

Agreement

Staff considered the mitigating circumstances provided by Lund. The Parties engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving this administrative action, the Parties agree to the following, subject to the approval and acceptance of the Commission:

1. Lund violated N.D.C.C. §§ 64-02-14 and 64-03-02 and N.D. Admin. Code § 69-10-01-05 by knowingly using the rejected platform scale in commerce when refilling propane tanks.
2. Lund agrees to be assessed a civil penalty of \$750.
3. Lund agrees to remit the \$750, payable to the North Dakota Public Service Commission within ten (10) business days of service of an Order accepting or approving the Consent Agreement.
4. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in this case.
5. Lund consents to the filing of the Consent Agreement and Order and hereby waives any further procedural requirements with respect to the issuance of the Order. Provided the Commission adopts this Consent Agreement and issues an

Order consistent with it, Lund understands and agrees to waive all rights to contest the violation, the right to be represented by counsel, the right to present evidence and arguments to the Commission, the right to cross-examine witnesses, or contest the validity of this Consent Agreement and Order, including all rights to administrative or judicial hearings or appeals.

6. For purposes of the identification requirement of Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), the performance is restitution, remediation, or an amount paid to come into compliance with the law, Lund agrees to provide the Commission with a U.S. Department of the Treasury Internal Revenue Service Form W-9 for this purpose within ten (10) business days of service of an Order accepting or approving the Consent Agreement.
7. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
8. This agreement may be executed in counterparts and duplicate copies, each of which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.
9. The undersigned is authorized to act on behalf of Lund and bind Lund for the purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 9th day of April, 2024

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – WEIGHTS & MEASURES

By:  _____

John Schuh
Special Assistant Attorney General (Bar ID 08138)
Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480
701-328-2421

Dated this 9th day of April, 2024

Lund Oil, Inc.

By:  _____

Nick Liebel, Assistant Manager