



up at the Town Pump on 32<sup>nd</sup> Street West and King Avenue West in Billings. Officer Dandrea followed the vehicle as it headed east on King Avenue West. After pulling the pickup over, he identified the driver as Joseph Rocky Ramirez and initiated an inspection of the fuel in the vehicle.

Officer Dandrea told Mr. Ramirez he had observed him fueling with red-dyed diesel and that it was illegal to use red-dyed diesel in a vehicle driven on a public road. When asked for a receipt, Mr. Ramirez stated he did not have one and had paid with his credit card. Officer Dandrea asked Mr. Ramirez if he knew that driving on a roadway with red-dyed diesel was illegal. Mr. Ramirez told Officer Dandrea he did not have any money, was going through a divorce, and was living out of his truck. Officer Dandrea testified that Mr. Ramirez never denied he had red-dyed diesel in his vehicle.

MCS Officers Peigneaux and Adkins arrived on the scene and offered Officer Dandrea their assistance. Officer Peigneaux drew samples of the red-dyed diesel and Officer Dandrea issued a citation to Mr. Ramirez for using special dyed diesel to operate a motor vehicle on a public road.

Officer Dandrea sealed the fuel sample and sent the fuel sample to the Department of Transportation's chemistry lab in Helena to be tested. The sample was tested and found to contain 12.85 milligrams per liter of red dye. Department of

Transportation rules provide that a fuel sample with a presence of red dye in a concentration of 2.0 mg/l or greater is considered to be in violation of § 15-70-330, MCA. *See* ARM 18.10.112 (1) (b).

During the hearing, Mr. Ramirez admitted that he knew he had put red-dyed diesel in his truck when he drove away from the Town Pump.

MDOT assessed a civil penalty of \$1,000 against Mr. Ramirez, pursuant to § 15-70-372 (2), MCA, for using dyed special fuel in violation of § 15-70-330 (2), MCA. The Hearings Examiner upheld the imposition of the \$1000 fine.

Mr. Ramirez has appealed the MDOT hearing examiner's decision to this Board and asked this Board to review this matter and lower the \$1000 fine imposed by the Department of Transportation.

In his Response to Request for Admission 3 of MDOT's first discovery request, Mr. Ramirez stated he "mistakenly" put red-dyed diesel in his truck on February 26, 2013, on King Avenue West in Billings. In his Answer to Interrogatory 7 of MDOT's first discovery request, Mr. Ramirez stated, "I mistakenly put red fuel in my truck," and referred to various personal and health conditions he faced at the time. In his Answer to Interrogatory 8 of MDOT's first discovery request, Mr. Ramirez stated, "I did not realize that I had put red fuel until I shut the pump off. Accidental!"

At the hearing, Mr. Ramirez cited emotional and health issues which led to his lapse in judgment, as well as “unusual circumstances.”

### **BOARD DISCUSSION**

The Montana Tax Appeal Board has jurisdiction over this matter pursuant to § 15-70-111, MCA, and § 15-2-201(3), MCA. The Board serves as the appellate body for appeals from a MDOT final decision. This Board’s function is to review the record and, from that review, to determine if the Board should affirm, modify or reverse the final agency decision of the MDOT. Section 15-70-111, MCA.

In determining whether to affirm, modify or reverse the final agency action, we will not substitute our judgment for that of the Hearing Examiner as to the weight of the evidence. Although there are no Montana statutes setting forth appellate standards of review for use by the tax appeal board, we look to the concepts used by the district court in its appellate capacity. *See, e.g.*, § 2-4-704, MCA. In addition, we will only reverse or modify the decision of the agency when a substantial right of the Appellant has been prejudiced.

A special fuel user may not use dyed special fuel to operate a motor vehicle on the public roads and highways of Montana unless permitted under rules adopted by the MDOT. § 15-70-330 (2 (a)), MCA. In Montana, red dye is used to identify tax-

exempt special fuel. Montana Department of Transportation Rule 18.10.112 (1) (a), Administrative Rule of Montana.

In this instance, the Hearing Examiner found that Mr. Ramirez had knowingly used dyed diesel on the public roads in violation of the law, and affirmed the \$1000 fine.

The Appellant claims he accidentally used dyed fuel on Montana public roads and highways. He requested a smaller fine of \$50 from \$1,000 penalty imposed for using dyed fuel in violation of §15-70-330(2).

The Hearing Examiner set forth complete and well-reasoned Findings of Fact and Conclusions of Law. The Hearing Examiner determined the evidence presented at the hearing supports the Department's conclusion that Mr. Ramirez knowingly operated his truck with dyed special fuel, thereby violating §15-7-330(2)(a) MCA, and is subject to the civil penalty required by §15-70-372 (2) MCA. Penalties are determined by the Department of Transportation pursuant to the requirements set out in statute. While we recognize that Mr. Ramirez has requested a lower fine due to personal circumstances, this Board has no legal authority to substitute its judgment for the Department when there is no legal reason to do so, and we see no indication that Mr. Ramirez has suffered from prejudice to his rights. We find no reason to

substitute our discretion for that of the Hearing Examiner in setting the fine in this matter.

Therefore, after review of all materials relating to this matter, the Board concludes that the Hearing Examiner's Finding of Fact, Conclusions of Law, and Proposed Order are supported by evidence and are not clearly erroneous. Mr. Ramirez requested a lowered fine amount. While it is not in this Board's power to lower the fine in this instance, we do urge the MDOT to work with Mr. Ramirez to implement a payment schedule for the fine.

**ORDER**

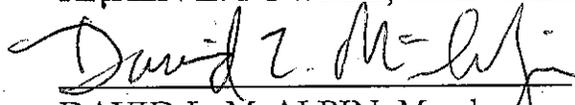
Upon review of the administrative record and the arguments of the parties, the Final Agency Decision of the Department of Transportation is affirmed.

Dated this 12<sup>th</sup> day of December, 2014.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

(SEAL)

  
KAREN E. POWELL, Chairwoman

  
DAVID L. McALPIN, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-70-111, MCA, and 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court of Lewis and Clark County within 60 days following the service of this Order.

**CERTIFICATE OF SERVICE**

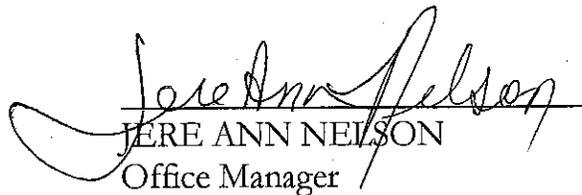
The undersigned hereby certifies that on this 15<sup>th</sup> day of December 2014, the foregoing Order of the Board was served on the parties hereto by the method indicated below and addressed as follows:

Joseph R. Ramirez  
P.O. Box 324  
Pryor, Montana 59066

- U.S. Mail, Postage Prepaid
- Hand Delivered
- E-Mail
- Telecopy

Eli Z. Clarkston  
Legal Services Unit  
Department of Transportation  
P.O. Box 201001  
Helena, MT 59620-1001

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Deadhead
- E-Mail
- Telecopy

  
JERE ANN NELSON  
Office Manager