

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.**

Aircraft Owners and Pilots
Association, *et al.*
Complainants,

v.

FAA Docket No. 16-22-08

County of Santa Clara,
California,
Respondent.

**COMPLAINANTS' OPPOSITION TO
RESPONDENT COUNTY OF SANTA CLARA'S
MOTION TO FURTHER SUPPLEMENT THE RECORD**

Complainants oppose Respondent Santa Clara County's Motion to "Further Supplement the Record". While the availability of a 100 octane unleaded fuel at Reid Hillview Airport (RHV) and a 94 octane fuel at San Martin Airport (E16) are incremental steps forward in the unleaded fuel transition, they are not a comprehensive solution. The entire industry is working to speed a safe and coordinated transition, and we are not yet at the finish line. If the transition was easy, it would already be done. The transition to high octane unleaded fuels, in Santa Clara County and at the 3,300 other public use airports in the National Plan of Integrated Airport Systems (NPIAS), must preserve NPIAS safety and efficiency. It is dangerous to create fragmented fuel availability for the piston fleet.

BACKGROUND

"Nearly three years after the County of Santa Clara implemented an unprecedented fuel ban"¹ on 100LL effective January 1, 2022, there has been one documented aircraft accident with serious injuries due to "fuel starvation"² and two documented misfuelings.

This is a matter that has always demanded speedy resolution. The Complainant-Initiated proceedings timeline overview shows 120 days from Complaint to Director's Determination,³ and as of today, it has been 770 days since the Complaint in this Part 16 was filed. Reasonable access to federally funded airports should not be denied for any meaningful period of time. Complainants'

¹ See Attachment 1, press release dated October 31, 2024, in which Santa Clara County admits it banned 100LL and mistakenly states 100 octane unleaded fuel "is available and usable by all piston-powered aircraft."

² NTSB Aviation Investigation Final Report on the July 22, 2022, accident number WPR22LA271.

³ See Attachment 2.

Part 16 was filed on October 14, 2022. Santa Clara County has filed a variety of motions seeking to delay the decisional timeline, and the FAA has issued itself eight extensions of time delaying issuance of its decision by approximately 10 months so far:

- 1) U.S. DOT/FAA - Notice of Extension of Time Dated February 9, 2024
- 2) U.S. DOT/FAA - Notice of Extension of Time Dated May 7, 2024
- 3) U.S. DOT/FAA - Notice of Extension of Time Dated June 7, 2024
- 4) U.S. DOT/FAA - Notice of Extension of Time Dated July 3, 2024
- 5) U.S. DOT/FAA - Notice of Extension of Time Dated August 7, 2024
- 6) U.S. DOT/FAA - Notice of Extension of Time Dated September 10, 2024
- 7) U.S. DOT/FAA - Notice of Extension of Time Dated October 7, 2024
- 8) U.S. DOT/FAA - Notice of Extension of Time Dated November 4, 2024

FAA Docket No. 16-22-08, available at <https://www.regulations.gov/docket/FAA-2022-1385>.

REASONS A DETERMINATION IS NECESSARY WITHOUT FURTHER DELAY.

In the interest of public safety, after multiple documented aviation safety impacts and for the additional reasons below, the FAA should deny the Motion to Further Supplement the Record as improper and issue its Director’s Determination without further delay.

- 1. The FAA is required to deny Respondent’s Motion to Further Supplement the Record, to extent it seeks dismissal of the Complaint.** In its misleadingly captioned document, Respondent makes a motion for dismissal of the Complaint, which must be denied as untimely as Respondent has already filed an Answer in this case. Under 14 CFR § 16.26(a) a respondent may file, in lieu of an answer to a complaint, a motion to dismiss. Respondent filed its Answer on March 31, 2023. Respondent’s present motion to dismiss, made almost a year and eight months after its Answer has been filed, is untimely and must be denied.

This marks Respondent’s third attempt to dismiss this Complaint and avoid a decision on the merits. Like Respondent’s previous unsuccessful attempts, this effort must fail because it is untimely and fails to meet the burden required to support any request for dismissal of this proceeding.

- 2. The FAA should deny Respondent’s Motion to “Further Supplement the Record”, to the extent it seeks to amend its Answer or Supplement the Record.** Amendments or supplements to the pleadings described in this section will not be allowed without showing good cause through a motion and supporting documents. 14 CFR 16.23(j). Respondent has failed to comply with procedural requirements and meet its burden of proof to show good cause.

Respondent’s admitted “unprecedented ban” was enacted in direct violation of FAA Grant Assurance obligations, as established by the filings in this case and as has been the stated

position of the FAA in similarly situated airports in Santa Monica, California (see Attachment 3) and Superior, Colorado (see Attachment 4). This is yet another example of Respondent stating a falsity in this proceeding that is exposed by a press release by Respondent about its true conduct. Respondent now seems to be taking the position that its recent purchase of a limited quantity of G100UL that is currently available at one airport and authorized for use in certain piston aircraft resolves the past and ongoing grant assurance violations resulting from Respondent's "unprecedented ban" at both its airports of 100LL fuel that is authorized for use in the entire piston fleet. It most assuredly does not. The general aviation community looks forward to effecting a safe and coordinated transition to unleaded fuels, and substantive progress is being made. However, it's premature for Respondent or the general aviation community to posit that such a transition is complete, or even nearly complete.

Currently, no FAA unleaded fuels are authorized for use in all piston aircraft. Two unleaded 100 octane fuels have FAA authorization for use in certain aircraft makes and models. Those unleaded 100 octane fuels cannot be mixed with each other, but each can be safely mixed with 100LL. This is why its continued availability of 100LL while 100 octane unleaded fuels become available is vital for safety, efficiency and airport access.

- a. GAMI's G100UL STC is not available to piston rotorcraft, light sport aircraft, experimental aircraft, and even some type certificated aircraft based at RHV (see Attachment 5). Cirrus Aircraft, the largest global manufacturer of piston aircraft, issued a Service Advisory on June 18, 2024, disapproving the use of G100UL in SR series aircraft (see Attachment 6). G100UL cannot be mixed with Swift 100R.
- b. Swift's 100R STC, granted just two months ago, only authorizes the fuel's use in Cessna 172 R/S models at this time, and does not allow mixing 100R with G100UL. Swift's 94UL is not authorized for use in aircraft with high compression engines, and therefore cannot meet the needs of aircraft with high compression engines that purchase 70% of the annual volume of AvGas sold in the nation.

At this time, it is unclear whether there will be any 100 octane unleaded fuel with fleetwide approval. It is unclear when existing authorized fuels will be legally authorized for use by the broader piston fleet. It is unclear when any fuel that meets the demands of the diverse piston fleet will become available on a consistent and sustained basis, in quantities and at times sufficient to meet the piston fleet demands.

- 3. Reasonable access to necessary, and previously available before the "unprecedented ban", fuel is still being denied at RHV and E16.** It remains unreasonable for a portion of the industry to be denied reasonable, and previously available, amenities that effectively

limit and deny fair use of the airport. G100UL is not currently approved for use in all piston aircraft, as detailed in Section 2 above, despite Respondent's press release claims to the contrary. Additionally, light sport and experimental aircraft cannot use the STC process for G100UL, 100R, or any other fuel. The fleet of training aircraft at San Carlos Airport (SQL), just 23nm away from RHV, with Swift's 100R STC cannot legally use G100UL (see Attachment 7). There are based aircraft at RHV without a Swift STC that legally cannot install a GAMI STC. For example, Complainants Michael and Chris Luvara own a Cessna 182 powered by a P. Ponk Aviation O-470-50 Engine that requires 100/130 minimum grade aviation gasoline, and this engine is not listed on the FAA Approved Model List for the GAMI STC (see Attachment 5). These aircraft need the reasonable access they had before the "unprecedented ban" was implemented.

4. **There is no evidence of 100LL, G100UL, or Swift 100R at San Martin Airport (E16).** 100LL was previously available at E16 before Respondent's "unprecedented fuel ban" and remains unavailable. Even if Respondent made G100UL or Swift 100R available at E16, neither are approved for use in all piston aircraft as detailed in Section 2. Respondent replaced E16's 100LL with Swift 94UL, which cannot be used in the aircraft with high compression engines that purchase approximately 70% of the annual AvGas volumes in the nation.
5. **There is still a lot to learn and to be done to demonstrate reasonable access, and dismissal would be premature without a full and fair experience.** At the time Respondent filed its Motion to "Further Supplement the Record", it only offered G100UL for 14 days with no evidence of safe and sustained availability. This does not justify its ban on the sale or use of 100LL. The Affidavit relied upon by Complainant only says, "County has offered...G100UL for purchase..." and "...intends to continue selling both fuels." Upon information and belief, Respondent has purchased only 7,500 gallons (approximately one tanker truck) of G100UL (see Attachment 8).⁴ There is no evidence in the record to indicate future supply. Upon information and belief, there is no longer any fuel available for self-service although self-service fuel was available at Respondent's airports prior to the "unprecedented ban."

Currently, the world's largest producer of piston-powered aircraft "does not approve the use of GAMI G00UL fuel in Cirrus SR Series airplanes" (see Attachment 6). Currently, the two leading general aviation aircraft engine manufacturers, Continental and Lycoming, have not authorized use of G100UL in their engines and Lycoming has confirmed that its engine warranty does not cover damage due to use of non-approved fuels including

⁴ "Santa Clara County provided a photo of a fuel tanker truck from Texas-based Lessley And Sons making the first delivery to RHV, which received a 7,500-gal. quantity on Oct. 28."

G100UL (see Attachment 9). Each of these companies has cited lack of sufficient data, at this early stage, to approve G100UL use.

It is notable that Respondent raises the 2024 FAA Reauthorization Act⁵ in an attempt to argue that it is not subject to the new grant assurance and, even if it was, that the new grant assurance would exempt it from Grant Assurance 22 compliance obligations. However, Section C.1.a of the Assurances⁶ contains a statement that the Airport Sponsor will comply with a variety of legal authorities, specifically including “49 U.S.C. subtitle VII, as amended.” Section 770 of the 2024 FAA Reauthorization Act amended 49 U.S.C. subtitle VII by adding “(22) the airport owner or operator may not restrict or prohibit the sale or self-fueling of any 100-octane low load aviation gasoline for purchase or use by operators of general aviation aircraft if such aviation gasoline was available at such airport at any time during calendar year 2022.” Santa Clara County publicized in its own press release and local news media also wrote that 100LL was available in the County controlled tanks and in use at RHV and E16 after January 1, 2022 (see Attachments 10 and 11). This is yet another example of Respondent stating a falsity in this proceeding that is exposed by a press release by Respondent about its true conduct.

CONCLUSION

Not all piston aircraft are legally authorized to use G100UL. Consistent fuel production and distribution for unleaded fuels to supply the NPIAS needs to be developed, as does stakeholder confidence. Progress is occurring, but much more is needed to effect a safe and coordinated national transition to an unleaded future.

This Part 16 is not a complicated matter. Respondent has admitted to its “unprecedented ban” of 100LL, although it voluntarily agreed to comply with grant assurances in exchange for millions of dollars of federal grant monies. The FAA’s Office for the Associate Administrator for Airports has already stated that:

a ban or restriction on the sale or use of 100LL (Avgas) at a federally obligated airport is inconsistent with Grant Assurance 22, Economic Nondiscrimination (49 United States Code Section 47107(a)(1).

Further delay in issuance of a Director’s Determination is contrary to safety, to the just administration of compliance with grant assurances, to safeguard the public’s investment in Santa Clara County’s public use airports, and to a safe and coordinated transition to unleaded fuels across the NPIAS.

⁵FAA Reauthorization Act of 2024, Pub. L. No. 118-63 (2024) <https://www.govinfo.gov/content/pkg/BILLS-118hr3935enr/pdf/BILLS-118hr3935enr.pdf>

⁶ AIP Grant Assurances https://www.faa.gov/sites/faa.gov/files/airports/new_england/airport_compliance/assurances--airport-sponsors-2022-05.pdf

Respectfully submitted,

Dated: November 22, 2024

A handwritten signature in black ink that reads "Justine A. Harrison". The signature is written in a cursive style and is positioned above a horizontal line.

Justine A. Harrison
General Counsel

Aircraft Owners and Pilots Association
421 Aviation Way
Frederick, MD 21701

(301) 695-2000

Justine.Harrison@aopa.org

Certificate of Service

I hereby certify that I have this day caused a copy of the Complainants' Opposition To Respondent County of Santa Clara's Motion To Further Supplement the Record to be served by electronic mail on the following:

Tony LoPresti
County Counsel
Jerett T. Yan
Deputy County Counsel
County Government Center
70 West Hedding St.
East Wing, 9th Floor
San Jose, CA 95110-1770
toni.lopresti@cco.sccgov.org
jerett.yan@cco.sccgov.org

FAA Part 16 Docket Clerk, AGC-600
Federal Aviation Administration
800 Independence Avenue,
SW Washington, DC 20591
9-AWA-AGC-Part-16@faa.gov

Dated: November 22, 2024.



Justine A. Harrison
General Counsel

Aircraft Owners and Pilots Association
421 Aviation Way
Frederick, MD 21701

(301) 695-2000
Justine.Harrison@aopa.org