

D&T, Compliance, and Enforcement

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U.S. EPA- Office of Enforcement
and Compliance Assurance

The Real D&T

- Registration
- Designation
- Tracking
- Reporting
- Managing

Source: Buster Brown, Colonial Pipeline



Registration: Facilities and Entities

- Entity
 - Any refiner, importer, distributor, retailer, or wholesale purchaser-consumer- *i.e.*, **a person**
- Facility
 - Any place, or series of places (see *aggregated facility* definition, below), where an entity produces, imports, or maintains custody of fuel from the time fuel is received to the time it is transferred to another party- *i.e.*, **a place**
- Aggregated Facility
 - A series of places owned by one entity who **maintains custody** of the batch of fuel may be considered aggregated
- Must Register by **Dec 31, 2005**



Designation

- Fuel designated by refiners
- Carries designation throughout distribution system
- Designations may change – but within volume balance limits
- Product Transfer Document Changes
 - Codes may continue to be used for parties upstream of terminals
 - 15, 500, or >500 must be on the PTD somewhere to convey appropriate sulfur content- can appear in the code
 - Making a reg change to allow this
 - Addition of the transferee facility number (where applicable) on all tickets
 - Starting in June 1, 2006



Tracking

- Volumes are totaled for each facility
 - Total grade volumes are reported, not individual batch volumes
 - May require new practices to allocate surplus and losses
- Reconcile volumes
 - One party normally handles ticketing
 - Both parties should agree on volumes before submission to EPA



Reporting

- Quarterly reports
 - Volume received and delivered to each entity
 - Compliance balances
 - Two months to report
- Annual reports
 - Volume received and delivered to each entity
 - Compliance balances
 - August 31
- Statement that volumes are identical to IRS reported volumes
- Signed and certified by a responsible corporate officer



Managing

- Volume Balances (§ 80.599)
 - Total highway pool does not increase
 - 20% downgrade limitation
 - High sulfur limitations
- Ensure quarterly/yearly compliance
- Recordkeeping



Recordkeeping Requirements

- Records that must be kept:
 - Refiner batch reports
 - PTDs
 - MVNRLM sampling and/or testing information for sulfur, cetane index, aromatics, and additives
 - NRLM sampling and/or testing information for marker (Solvent Yellow 124), dye (Solvent Red 164), and heating oil
 - Handling of non-compliant MVNRLM
- Records must be kept by each registered entity



Recordkeeping Requirements

- Records must be kept for **5 years**
- Special case for credit transfers
 - Transferor (seller)
 - 5 years from the date the credits were transferred
 - Transferee (buyer)
 - 5 years from the date the credits were transferred, used, or terminated – whichever is later



Compliance

- Compliance Goals
 - Applicable Sulfur standard - from refinery through retailer/end user
 - Cetane/aromatics – refinery through retail/end user
 - Dye (if applicable)
 - Marker (if applicable)



Compliance- Refiner/Importer Requirements

- Test every batch of 15 ppm diesel fuel
 - Probably prior to the transfer point relevant for D&T
- Options/Flexibilities built into rule
 - Temporary compliance option
 - Small refiner options
 - GPA option
 - Hardship provisions
- Credit generation, use and transfer
- Reporting/Recordkeeping/Designations
 - Refiner batch reporting



Compliance- Downstream Requirements

- Compliance with applicable standards
- Compliance with anti-downgrading restrictions
- Designate and track requirements and limitations (through terminal level)
 - Product transfer documents
 - Reporting and recordkeeping
- Additive standards and use
- Fuel pump stand labeling



Types of Non-Compliance

- PTD errors
 - Fuel received/delivered does not meet the standard designated on the PTD
- D&T balances
 - Handoffs to/from another party do not match
 - Downgraded or redesignated volumes do not equal out over compliance period
- Tank transitions
- Dye/marker errors
 - Failure to add dye or marker (terminal)
 - Distribution or dispensing of fuel containing dye or marker for an improper use



Types of Non-Compliance (con't.)

- Contamination in pipe/tank
 - Pipeline contamination– interface cuts, sumps, etc.
 - Terminal contamination- manifolds, dead legs, etc.
 - Tank truck contamination- Completely drain truck of higher sulfur product before taking on 15 ppm product
- Misdeliveries (e.g., delivery of 500 ppm fuel into 15 ppm tank)
- Pump labeling- mislabeled or unlabeled pumps
- Misfueling- any party (including a retailer or wp-c) may be considered liable
 - If a vehicle is fueled with noncompliant fuel
 - If the introduction of noncompliant fuel is permitted



Violations and Liability

- Violations of prohibited acts or requirements are subject to Clean Air Act penalties
- Presumptive liability scheme like other fuels programs
 - Liability for distributing/dispensing fuel not meeting the applicable standard and/or requirements at a party's facility
 - Liability extends upstream
 - "Vicarious" liability for branded refiners



Violations and Liability (con't.)

- Any “person” (including a retailer or wp-c) is liable for:
 - “Introducing” noncompliant fuel
 - E.g., retailer pumps >15 ppm fuel into vehicle or equipment requiring 15 ppm fuel
 - “Permitting the introduction” of noncompliant fuel
 - We will look for retailers who condone misfueling or cause it by improper pump labeling, other practices
 - Retail employees not expected to risk safety to stop self-serve violations
 - Construction sites, etc.; Mobile refuelers



General Defenses to Presumptive Liability (§ 80.613)

- Did not cause
- PTDs account for product and show compliance when in custody of the party; **and**
- QA program which includes periodic sampling & testing



Defenses- Branded Refiner/Importer

- Branded refiners have same defense elements as in other rules
- Branded refiner defense element- periodic downstream sampling and testing
 - Retail level compliance in fuel sulfur programs is extremely important; EPA will vigorously enforce
 - NOVs will be issued to branded refiners for retail violations
 - Must meet contract & downstream QA defense element



Defenses- Downstream

- Distributor defense
 - includes proof of adequate QA program
 - Periodic sampling & testing
 - Proof of compliance while in your control (PTDs)
- Others:
 - Truck carriers may use alternative oversight and rely on another party's sampling and testing
 - Retailers/wp-c's not required to sample & test
 - If downstream blender blends additive having >15 ppm sulfur content:
 - Greater risk of violation & liability – strong incentive to not blend or to test every batch (see § 80.613(d)(2))
 - *Blender liable if resulting fuel >15 ppm*
 - Static dissipater additive blenders may use VAR approach (see § 80.614)



Defenses- Downstream

(con't.)

- “Marketer” (distributor and retailer)
 - **Periodic sampling & testing defense element applies to distributor**
- Distributors and Retailers must inspect PTDs and reject improper fuel deliveries
 - **If misdelivery violation occurs, must stop sale and promptly remedy violation**
- Retailer and trucker must insure fuel dropped into proper tank
- Pump labeling required
- Truckers must ensure that truck is fully drained of any high sulfur product before picking up low sulfur product



Enforcement Activities



- Retail inspections, sampling & testing
- Inspection & sampling at other points
- Review D&T reports - computer will flag non-matching hand-offs & failure to meet balances
- Review refiner/importer reports, records
- Audits

Penalties

- Potential penalty of \$32,500 per violation, per day, plus economic benefit or savings
- If settle informally, most penalties will be much less than that
- No penalty policy yet



Refiner Hardship Waivers and Enforcement Discretion

- Hardship (*crude refiner may petition for delayed compliance*)- granted on a case-by-case basis
 - Extreme hardship - - § 80.560
 - Extreme unforeseen circumstances- § 80.561
 - Natural disasters
 - Situations beyond refiner's control (i.e., refinery fire)
- Enforcement discretion
- In no case may fuel exceeding 15 ppm be used in engines requiring 15 ppm fuel



For More Information...



The Compliance Help page of EPA's Clean Diesel website (*Q&As are located here as well*)-

<http://www.epa.gov/cleandiesel/comphelp.htm>

Highway Rule:

<http://www.epa.gov/otaq/diesel.htm>

Nonroad Rule:

<http://www.epa.gov/nonroad-diesel/2004fr.htm>

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