

GEORGIA GASOLINE MARKETING ENFORCEMENT PLAN  
AIR PROTECTION BRANCH  
ENVIRONMENTAL PROTECTION DIVISION  
JULY 11, 2003

The Clean Air Act, Section 101(a)(3), states that the prevention and control of air pollution at its source is the primary responsibility of States and local governments. The Georgia Air Quality Act, Section 12-9-2., declares it to be public policy of the State of Georgia to preserve, protect, and improve air quality; to control emissions; and to attain and maintain Ambient Air Quality Standards so as to safeguard the public health, safety, and welfare. If compliance with these laws is to be maintained, an enforcement strategy must be established and implemented that can remedy alleged violation(s) of these statutes within a reasonable time period.

Georgia's Air Quality Act provides sufficient motivation and incentive to encourage emissions sources to comply with the requirements of the Act and the Air Quality Control Rules promulgated thereunder. These incentives include the use of a civil penalty of not more than \$25,000 per day for each day an alleged violation occurs, injunctive relief, or the assessment of noncompliance penalties. The purpose of this document is to set forth the enforcement strategy for the Georgia Gasoline Marketing Rule, 391-3-1-.02(bbb), to ensure compliance with State requirements. The Air Protection Branch of the Environmental Protection Division (EPD) has established a written, branch-wide enforcement policy. This Gasoline Marketing Rule enforcement plan is intended to supplement the Branch enforcement policy. This plan is not intended to be inflexible. There may be changes and modifications in the future or it may be applied within some discrepancy limits because of an unusual circumstance that would render normal procedures inappropriate.

First and foremost, EPD shall require sufficient sampling, testing, recordkeeping, and periodic reporting to the Division from all parties involved in gasoline distribution to the fuel control area, so as to minimize the opportunities for retail dispensing and use of non-compliant gasoline. The quality assurance program required of the producers and importers by rule provides for refinery-level and terminal-level sampling, testing, recordkeeping and periodic reporting. EPD is to provide on-going program review, including field audits as needed, to ensure that all required sampling, testing, recordkeeping and periodic reporting are satisfactorily completed.

Secondly, EPD shall provide independent, down-stream testing, to assure that the fuel standards are maintained at both the terminal and retail dispensing levels throughout the fuel control area for both RVP and sulfur. In order to accomplish this task, EPD will adhere to the "Methodology for Randomized Sampling to Estimate Mean Sulfur in Gasoline During a Specified Ozone Season", dated April 1, 2000, for sampling of all gasoline subject to the Rule. All sulfur test results obtained will be averaged arithmetically for the subject gasoline pool. The overall average sulfur test result for each year's testing plan will serve either to validate the existing fuel control program effectiveness or will serve as a trigger for more stringent sampling and testing in the following year.

As noted above, the Rule includes a requirement for rigorous, volume-weighted, sampling and testing at the terminal level in the event EPD's independent testing program reveals a potential quality assurance problem.

Last but not least, EPD subscribes to the precept that an effective outreach program is vital to the success of any regulatory undertaking. The Division will continue to work with persons and entities

subject to regulation under the Gasoline Marketing Rule to ensure full knowledge of all regulatory requirements.

The Gasoline Marketing Rule establishes a maximum Reid vapor pressure (RVP) standard, a volume-weighted, pool-average sulfur content standard (by weight), and a per-gallon sulfur cap (by weight) for all gasoline destined for sale or supply to an ultimate consumer within the specified fuel control area.

The per-gallon, seasonal RVP standard applies during the period from June 1 to September 15 of any calendar year and requires that the Reid vapor pressure of the gasoline not exceed 7.0 psi. EPD will apply the United States Environmental Protection Agency's (U.S. EPA's) RVP enforcement tolerance of "0.30 psi" in determining compliance with this standard.

The volume-weighted, quarterly pool-average sulfur content (not to exceed 90 ppm by weight) and 200 ppm by weight per-gallon cap applies to the period of April 1 to September 15 of calendar year 2003. Compliance with the quarterly pool-average standard is to be determined for each producer or importer based on refinery-level testing, averaged on a volume-weighted basis over the pool of gasoline supplied by the producer or importer in accordance with the Gasoline Marketing Rule. Compliance with the per-gallon cap standard will be determined for each producer or importer based on retail and/or terminal-level testing conducted by EPD.

Beginning September 16, 2003, the volume-weighted, annual pool-average sulfur content (not to exceed 30 ppm by weight) will apply year-round. Transition to a 150 ppm sulfur content per gallon cap will occur no later than January 1, 2004. Compliance with the pool-average standard is to be determined for each producer or importer based on refinery-level testing, averaged on a volume-weighted basis over the pool of gasoline supplied by the producer or importer in accordance with the Gasoline Marketing Rule. Compliance with the per-gallon cap standard will be determined for each producer or importer based on retail and/or terminal-level testing conducted by EPD.

In any event where an associate of EPD has evidence of a violation of any of the RVP or sulfur content standards, a Notice of Violation (NOV) is to be sent to the alleged violator.

The NOV letter is to include at a minimum the following information:

1. Responsible party's name and location of the alleged violation
2. The specific fuel control standard for which the violator is considered to be in noncompliance (the violation).
3. Citation of the Rule being violated.
4. Date the violation was observed.
5. Note of any related enforcement action(s) previously taken against the violator, i.e., NOV, Consent Order (EECO or CO), Administrative Order (AO), etc.
6. A 20-day response date for submission of any additional documentation requested.

NOV letters will be signed by a staff member, but reviewed and approved by the supervising Unit Manager prior to mailing. The NOV is to be sent, certified mail, to the alleged violator within 10 days of the determination of non-compliance.

If an acceptable response to the NOV is not received within the time period specified in the NOV, then a letter of Notice of Impending Enforcement Action (NIEA) is to be prepared within 10 days and forwarded by certified mail to the alleged violator under signature of the manager. The NIEA is to include at a minimum the information detailed above for an NOV, in addition to the following:

1. A request that the alleged violator notify EPD within 10 days of receipt of the NIEA as to what action(s) they intend to undertake to resolve the NOV. Note that if the alleged violation(s) cited in the NOV are not addressed satisfactorily within 20 days of receipt of the NIEA, a Consent Order will be proposed to the alleged violator.
2. A brief summary of minimal provisions of the impending Consent Order, such as, a reasonable time period for remedying the alleged violation, possible monetary settlement amount, and any other provisions needed to remedy the specific alleged violation.

Upon receipt of an NOV or NIEA response, an EPD associate will review the documentation provided for compliance with regulatory requirements. In the case of a finding of full compliance, EPD will resolve the NOV by issuing a written Notice of Compliance to the party or parties involved.

In the case of a finding of non-compliance, EPD will determine if a formal enforcement proceeding is required. In the case where no formal enforcement is required, EPD will resolve the NOV by issuing a written letter of warning to the party or parties involved.

For all unresolved NOV's, a Consent Order will be prepared and sent to the alleged violator within 30 days of the response date established in the NIEA. The Consent Order transmittal letter will be prepared for the signature of the Program Manager, if the proposed monetary settlement is less than \$10,000 (or Director, if greater than \$10,000). All copies of the Order and supporting documentation will be immediately placed in the Division's confidential files. Once an Order is executed by the Director, the original Order will then be placed in the public file along with all other supporting documentation. The Order must be signed by an official representative of the violator and returned to EPD within 30 days of the proposal date.

A Consent Order is to provide at a minimum the following provisions:

1. Sufficient documentation to establish what statutory requirements are allegedly in violation, and the evidence that documents the alleged violation(s).
2. Specific steps and dates by which compliance must be achieved.
3. A civil penalty for the alleged violation(s) calculated in accordance with the Gasoline Marketing Penalty Policy.
4. Requirement for a final report from the violator detailing all actions taken to remedy the violation.

A Consent Order may establish additional requirements that are specifically crafted to address any special circumstances relating to the alleged violation(s). The extent of such provisions depends on the nature, frequency, duration, magnitude, and other considerations surrounding the situation. Other provisions that could be used in an Order include, but are not limited to:

1. A schedule of milestone dates and events that when completed will lead to compliance within a reasonable time period.
2. Penalty(ies) for not meeting any milestone date(s).
3. A monetary settlement for each day the alleged violator was determined to be in a noncompliant status.
4. A requirement for intermediate progress reports.

During the Consent Order negotiation process, an EPD associate may consider alternative proposals to a monetary settlement figure in any case where a positive, readily quantifiable, and enforceable air quality benefit can be clearly demonstrated. In any such case, the air quality benefit must be accrued within the ozone non-attainment area, must provide for long-term implementation and must be formalized by enforceable, special provision.

Depending on the severity of a violation and other circumstances, any or all of the steps leading up to a Consent Order may be eliminated and/or the response time may be shortened significantly in order to obtain compliance more rapidly.

In any instance where a Consent Order cannot be negotiated, the Director may refer the situation to the Department of Law for legal assistance, start civil penalty procedures under Section 23 of the Act, or use other means appropriate to remedy the alleged violation(s).