

## Environmental Protection Agency

## § 80.400

determinations of liability for any violation of this subpart, may be based on information obtained from any source or location. Such information may include, but is not limited to, business records and commercial documents.

### § 80.395 Who is liable for violations under the gasoline sulfur program?

(a) *Persons liable for violations of prohibited acts.*—(1) *Averaging violation.* Any refiner or importer who violates § 80.385(a) is liable for the violation.

(2) *Causing an averaging violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who causes another party to violate § 80.385(a), is liable for a violation of § 80.385(c).

(3) *Cap standard violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who owned, leased, operated, controlled or supervised a facility where a violation of § 80.385 (b) occurred, is deemed in violation of § 80.385(b).

(4) *Causing a cap standard violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who produced, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation or storage of gasoline that violates § 80.385(b), is deemed in violation of § 80.385(c).

(5) *GPA use violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who produced, imported, sold, offered for sale, dispensed, supplied, offer for supply, stored, transported, or caused the transportation or storage of gasoline that violates § 80.385(f), is deemed in violation of § 80.385(f).

(6) *Causing a GPA use violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who causes another party to violate § 80.385(f), is deemed liable for a violation of § 80.385(c).

(7) *Branded refiner/importer liability.* Any refiner or importer whose corporate, trade, or brand name, or whose marketing subsidiary's corporate,

trade, or brand name appeared at a facility where a violation of § 80.385(b) or (f) occurred, is deemed in violation of § 80.385(b) or (f), as applicable.

(8) *Causing violating gasoline to be in the distribution system.* Any refiner, importer, distributor, reseller, carrier, or oxygenate blender, who owned, leased, operated, controlled or supervised a facility from which gasoline was released into the distribution system which does not comply with an applicable sulfur cap standard, a sulfur averaging standard, or a GPA use prohibition, is deemed in violation of § 80.385(d).

(9) *Carrier causation.* In order for a carrier to be liable under paragraph (a)(2), (4), (6), or (8) of this section, EPA must demonstrate, by reasonably specific showing by direct or circumstantial evidence, that the carrier caused the violation.

(10) *Denatured ethanol violation.* Any oxygenate blender who violates § 80.385(e) is liable for the violation.

(11) *Parent corporation liability.* Any parent corporation is liable for any violations of this subpart that are committed by any of its wholly-owned subsidiaries.

(12) *Joint venture liability.* Each partner to a joint venture is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or is committed by the joint venture operation.

(b) *Persons liable for failure to meet other provisions of this subpart.* (1) Any refiner, importer, distributor, reseller, carrier, wholesale purchaser-consumer, retailer, or oxygenate blender who fails to meet a provision of this subpart not addressed in paragraph (a) of this section is liable for a violation of that provision.

(2) Any refiner, importer, distributor, reseller, carrier, wholesale purchaser-consumer, retailer, or oxygenate blender who caused another person to fail to meet a requirement of this subpart not addressed in paragraph (a) of this section, is liable for causing a violation of that provision.

### § 80.400 What defenses apply to persons deemed liable for a violation of a prohibited act?

(a) Any person deemed liable for a violation of a prohibition under § 80.395

§ 80.405

40 CFR Ch. I (7-1-00 Edition)

(a)(3) through (8), will not be deemed in violation if the person demonstrates that:

(1) The violation was not caused by the person or the person's employee or agent; and

(2) The person conducted a quality assurance sampling and testing program, as described in paragraph (d) of this section. A carrier may rely on the quality assurance program carried out by another party, including the party who owns the gasoline in question, provided that the quality assurance program is carried out properly. Retailers and wholesale purchaser-consumers are not required to conduct quality assurance programs.

(b) In the case of a violation found at a facility operating under the corporate, trade or brand name of a refiner or importer, or a refiner's or importer's marketing subsidiary, the refiner or importer must show, in addition to the defense elements required under paragraphs (a)(1) and (2) of this section, that the violation was caused by:

(1) An act in violation of law (other than the Clean Air Act or this part 80), or an act of sabotage or vandalism;

(2) The action of any refiner, importer, retailer, distributor, reseller, oxygenate blender, carrier, retailer or wholesale purchaser-consumer in violation of a contractual agreement between the branded refiner or importer and the person designed to prevent such action, and despite periodic sampling and testing by the branded refiner or importer to ensure compliance with such contractual obligation; or

(3) The action of any carrier or other distributor not subject to a contract with the refiner or importer, but engaged for transportation of gasoline, despite specifications or inspections of procedures and equipment which are reasonably calculated to prevent such action.

(c) Under paragraph (a) of this section for any person to show that a violation was not caused by that person, or under paragraph (b) of this section to show that a violation was caused by any of the specified actions, the person must demonstrate by reasonably specific showing, by direct or circumstantial evidence, that the violation was

caused or must have been caused by another person and that the person asserting the defense did not contribute to that other person's causation.

(d) *Quality assurance and testing program.* To demonstrate an acceptable quality assurance and testing program under paragraph (a)(2) of this section, a person must present evidence of the following:

(1) A periodic sampling and testing program to ensure the gasoline the person sold, dispensed, supplied, stored, or transported, meets the applicable sulfur standard; and

(2) On each occasion when gasoline is found not in compliance with the applicable sulfur standard:

(i) The person immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing or transporting the non-complying product; and

(ii) The person promptly remedies the violation and the factors that caused the violation (for example, by removing the non-complying product from the distribution system until the applicable standard is achieved and taking steps to prevent future violations of a similar nature from occurring).

(3) For any carrier who transports gasoline in a tank truck, the quality assurance program required under this paragraph (d) need not include periodic sampling and testing of gasoline in the tank truck, but in lieu of such tank truck sampling and testing, the carrier shall demonstrate evidence of an oversight program for monitoring compliance with the requirements of this subpart relating to the transport or storage of gasoline by tank truck, such as appropriate guidance to drivers regarding compliance with the applicable sulfur standard and product transfer document requirements, and the periodic review of records received in the ordinary course of business concerning gasoline quality and delivery.

**§ 80.405 What penalties apply under this subpart?**

(a) Any person liable for a violation under § 80.395 is subject to civil penalties as specified in section 205 of the Clean Air Act for every day of each