

Environmental Protection Agency

§ 80.79

(i) Product transfer documentation as described in § 80.77 accompanying such gasoline clearly indicates the gasoline is intended for sale and use only outside any covered area; or

(ii) The gasoline is contained in the storage tank of a retailer or wholesale purchaser-consumer outside any covered area.

(5) No person may combine any reformulated gasoline with any non-oxygenate blendstock except:

(i) A person that meets each requirement specified for a refiner under this subpart; and

(ii) The blendstock that is added to reformulated gasoline meets all reformulated gasoline standards without regard to the properties of the reformulated gasoline to which the blendstock is added.

(6) No person may add any oxygenate to reformulated gasoline, except that such oxygenate may be added to reformulated gasoline provided that such gasoline is used in an oxygenated fuels program control area during an oxygenated fuels control period.

(7) No person may combine any reformulated gasoline blendstock for oxygenate blending with any other gasoline, blendstock, or oxygenate except:

(i) Oxygenate of the type and amount (or within the range of amounts) specified by the refiner or importer at the time the RBOB was produced or imported; or

(ii) Other RBOB for which the same oxygenate type and amount (or range of amounts) was specified by the refiner or importer.

(8) No person may combine any VOC-controlled reformulated gasoline that is produced using ethanol with any VOC-controlled reformulated gasoline that is produced using any other oxygenate during the period January 1 through September 15.

(9) Prior to January 1, 1998:

(i) No person may combine any reformulated gasoline or RBOB that is subject to the simple model standards with any reformulated gasoline or RBOB that is subject to the complex model standards, except that such gasolines may be combined at a retail outlet or wholesale purchaser-consumer facility;

(ii) No person may combine any reformulated gasoline subject to the complex model standards that is produced at any refinery or is imported by any importer with any other reformulated gasoline that is produced at a different refinery or is imported by a different importer, unless the other refinery or importer has an identical baseline for meeting complex model standards during this period; and

(iii) No person may combine any RBOB subject to the complex model standards that is produced at any refinery or is imported by any importer with any RBOB that is produced at a different refinery or is imported by a different importer, unless the other refinery or importer has an identical baseline for meeting complex model standards during this period.

(10) No person may combine any reformulated gasoline with any conventional gasoline and sell the resulting mixture as reformulated gasoline.

(b) *Liability.* Liability for violations of paragraph (a) of this section shall be determined according to the provisions of § 80.79.

(c) *Determination of compliance.* Compliance with the standards listed in paragraph (a) of this section shall be determined by use of one of the testing methodologies specified in § 80.46, except that where test results using the testing methodologies specified in § 80.46 are not available or where such test results are available but are in question, EPA may establish non-compliance with standards using any information, including the results of testing using methods that are not included in § 80.46.

(d) *Dates controls and prohibitions begin.* The controls and prohibitions specified in paragraph (a) of this section apply at any location other than retail outlets and wholesale purchaser-consumer facilities on or after December 1, 1994, at any location on or after January 1, 1995.

[59 FR 7813, Feb. 16, 1994, as amended at 59 FR 36965, July 20, 1994; 62 FR 60136, Nov. 6, 1997; 62 FR 68207, Dec. 31, 1997]

§ 80.79 Liability for violations of the prohibited activities.

(a) *Persons liable.* Where the gasoline contained in any storage tank at any

facility owned, leased, operated, controlled or supervised by any refiner, importer, oxygenate blender, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer is found in violation of the prohibitions described in § 80.78(a), the following persons shall be deemed in violation:

(1) Each refiner, importer, oxygenate blender, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer who owns, leases, operates, controls or supervises the facility where the violation is found;

(2) Each refiner or importer whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name, appears at the facility where the violation is found;

(3) Each refiner, importer, oxygenate blender, distributor, and reseller who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation; and

(4) Each carrier who dispensed, supplied, stored, or transported any gasoline which is in the storage tank containing gasoline found to be in violation, provided that EPA demonstrates, by reasonably specific showings by direct or circumstantial evidence, that the carrier caused the violation.

(b) *Defenses for prohibited activities.* (1) In any case in which a refiner, importer, oxygenate blender, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer would be in violation under paragraph (a) of this section, it shall be deemed not in violation if it can demonstrate:

(i) That the violation was not caused by the regulated party or its employee or agent;

(ii) That product transfer documents account for all of the gasoline in the storage tank found in violation and indicate that the gasoline met relevant requirements; and

(iii)(A) That it has conducted a quality assurance sampling and testing program, as described in paragraph (c) of this section; except that

(B) A carrier may rely on the quality assurance program carried out by another party, including the party that

owns the gasoline in question, provided that the quality assurance program is carried out properly.

(2)(i) Where a violation is found at a facility which is operating under the corporate, trade or brand name of a refiner, that refiner must show, in addition to the defense elements required by paragraph (b)(1) of this section, that the violation was caused by:

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

(B) The action of any reseller, distributor, oxygenate blender, carrier, or a retailer or wholesale purchaser-consumer supplied by any of these persons, in violation of a contractual undertaking imposed by the refiner designed to prevent such action, and despite periodic sampling and testing by the refiner to ensure compliance with such contractual obligation; or

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

(ii) In this paragraph (b), to show that the violation "was caused" by any of the specified actions the party must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(c) *Quality assurance program.* In order to demonstrate an acceptable quality assurance program for reformulated gasoline at all points in the gasoline distribution network, other than at retail outlets and wholesale purchaser-consumer facilities, a party must present evidence of the following.

(1) Of a periodic sampling and testing program to determine if the applicable maximum and/or minimum standards for oxygen, benzene, RVP, or VOC emission performance are met.

(2) That on each occasion when gasoline is found in noncompliance with one of the requirements referred to in paragraph (c)(1) of this section:

(i) The party immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing,

transporting, or causing the transportation of the violating product; and

(ii) The party promptly remedies the violation (such as by removing the violating product or adding more complying product until the applicable standards are achieved).

(3) An oversight program conducted by a carrier under paragraph (c)(1) of this section need not include periodic sampling and testing of gasoline in a tank truck operated by a common carrier, but in lieu of such tank truck sampling and testing the common carrier shall demonstrate evidence of an oversight program for monitoring compliance with the requirements of § 80.78 relating to the transport or storage of gasoline by tank truck, such as appropriate guidance to drivers on compliance with applicable requirements and the periodic review of records normally received in the ordinary course of business concerning gasoline quality and delivery.

[38 FR 1255, Jan. 10, 1973, as amended at 62 FR 68207, Dec. 31, 1997]

§ 80.80 Penalties.

(a) Any person that violates any requirement or prohibition of subpart D, E, or F of this part shall be liable to the United States for a civil penalty of not more than the sum of \$25,000 for every day of each such violation and the amount of economic benefit or savings resulting from each such violation.

(b) Any violation of a standard for average compliance during any averaging period, or for per-gallon compliance for any batch of gasoline, shall constitute a separate violation for each and every standard that is violated.

(c) Any violation of any standard based upon a multi-day averaging period shall constitute a separate day of violation for each and every day in the averaging period. Any violation of any credit creation or credit transfer requirement shall constitute a separate day of violation for each and every day in the averaging period.

(d)(1)(i) Any violation of any per-gallon standard or of any per-gallon minimum or per-gallon maximum, other than the standards specified in paragraph (e) of this section, shall constitute a separate day of violation for

each and every day such gasoline giving rise to such violations remains any place in the gasoline distribution system, beginning on the day that the gasoline that violates such per-gallon standard is produced or imported and distributed and/or offered for sale, and ending on the last day that any such gasoline is offered for sale or is dispensed to any ultimate consumer for use in any motor vehicle; unless

(ii) The violation is corrected by altering the properties and characteristics of the gasoline giving rise to the violations and any mixture of gasolines that contains any of the gasoline giving rise to the violations such that the said gasoline or mixture of gasolines has the properties and characteristics that would have existed if the gasoline giving rise to the violations had been produced or imported in compliance with all per-gallon standards.

(2) For the purposes of this paragraph (d), the length of time the gasoline in question remained in the gasoline distribution system shall be deemed to be twenty-five days; unless the respective party or EPA demonstrates by reasonably specific showings, by direct or circumstantial evidence, that the gasoline giving rise to the violations remained any place in the gasoline distribution system for fewer than or more than twenty-five days.

(e)(1) Any reformulated gasoline that is produced or imported and offered for sale and for which the requirements to determine the properties and characteristics under § 80.65(f) is not met, or any conventional gasoline for which the refiner or importer does not sample and test to determine the relevant properties, shall be deemed:

(i)(A) Except as provided in paragraph (e)(1)(i)(B) of this section to have the following properties:

Sulfur content—970 ppm
Benzene content—5 vol %
RVP (summer)—11 psi
50% distillation—250 °F
90% distillation—375 °F
Oxygen content—0 wt %
Aromatics content—50 vol %
Olefins content—26 vol %

(B) To have the following properties in paragraph (e)(1)(i)(A) of this section unless the respective party or EPA demonstrates by reasonably specific