

GEORGIA GASOLINE MARKETING PENALTY POLICY  
AIR PROTECTION BRANCH  
ENVIRONMENTAL PROTECTION DIVISION  
JULY 11, 2003

I. INTRODUCTION

This document is intended to provide guidance for any Environmental Protection Division (EPD) associate involved in calculating the initial proposed monetary settlement for violation(s) of the Gasoline Marketing Rule, 391-3-1-.02(bbb). The policy is designed to provide an effective means of deterrence while ensuring fair and equitable treatment of violators. The "initial penalty target figure" calculations noted in the Notice of Impending Enforcement Action (NIEA) are based on a number of factors which include: procedural violations, severity of the violation, economic benefit to the violator, degree of cooperation or willfulness, history of compliance or noncompliance, ability to pay and other factors unique to the case. Each of these factors may be considered during case negotiations prior to arriving at the "adjusted penalty target figure" or "settlement amount".

Enforcement associated with the Gasoline Marketing Rule can be extremely complex due to the multiplicity of standards involved: a.) the per-gallon Reid Vapor Pressure (RVP) cap, b.) the volume-weighted, pool-average sulfur content, and c.) the per-gallon sulfur cap. It is because of this complexity that the discussions of the calculations will be grouped as follows: procedural, severity, economic benefit, cooperation factor, history of non-compliance, ability to pay, and other.

II. BASE PENALTIES

A. PROCEDURAL

The penalty for failure to submit required reports, submission of late reports, failure to provide mandatory records upon request, or other shall range from not less than \$1000 to no more than \$5000.

B. FUEL STANDARDS

The penalty for violation of the applicable air quality control standard(s) shall range up to \$25,000 per violation per day.

EXCESS EMISSIONS CALCULATIONS

RVP- In the case of excessive RVP, the severity is a matter of excess VOC emissions resultant from the transportation, transfer, storage, and combustion of the noncompliant gasoline. EPD has developed two alternatives for consideration in this scenario. ALTERNATIVE 1: For volumes greater than 8,800 gallons, EPD associates perform the appropriate evaporative loss calculations for transportation, transfer and storage over the entire non-compliant volume using the emission factors and guidance detailed in EPA's AP-42, Compilation of Air Pollutant Emission Factors. The excess emissions associated with combustion of the higher RVP gasoline will be calculated

using an appropriate gasoline vehicle emission factor from EPA's mobile source emissions factor model, composited from the fuel control area's fleet mix. The penalty assessed is then determined by multiplying the total excess emissions by \$100 per ton. ALTERNATIVE 2: For volumes less than 8,800 gallons, instances where the volume cannot be determined accurately, or instances where the penalty calculated is not sufficiently large to constitute adequate deterrence, EPD will utilize the attached RVP look-up chart to determine the assessed penalty per 8800-gallon fuel drop or any part thereof.

SULFUR- In the case of an exceedance of the per-gallon sulfur content cap or the volume-weighted pool average sulfur content, the severity is a matter of excess NO<sub>x</sub> emissions resultant from the combustion of the non-compliant gasoline volume. EPD associates will calculate the excess NO<sub>x</sub> emissions associated with combustion of the higher sulfur content gasoline using an appropriate gasoline vehicle emission factor from EPA's mobile source emissions factor model, composited from the fuel control area's fleet mix. The penalty assessed will be determined by multiplying the total excess emissions for the volume in question by \$100 per ton.

### III. ECONOMIC BENEFIT

The economic benefit that the violator has received from noncompliance will be calculated based on the estimated differential cost of the gasoline at wholesale with due consideration given for any benefit gained by any reduction in competition brought about by the noncompliance. EPD will utilize current available market research data and/or published studies to estimate the cost differential to be used.

### IV. COOPERATION FACTOR

The degree of cooperation of a violator in remedying the violation is an appropriate element to consider in adjusting a penalty. A greater degree of cooperation and expeditious action would decrease the penalty. For very low cooperation EPD will add 30 percent, for reasonable cooperation, no adjustment, and for very good cooperation subtract 30 percent.

### V. HISTORY OF NONCOMPLIANCE

Sources that have had a history of Gasoline Marketing Rule violations may not be providing the necessary resources to assure compliance. A history of noncompliance would normally result in a greater increase of the penalty. For no history of noncompliance no adjustment, for one past violation add 10 percent, for two past violations add 20 percent, and for three or more past violations, add 30 percent.

### VI. ABILITY TO PAY

It is not the intent of this penalty guidance to seek penalties that are clearly beyond the means of the violator to pay. At the same time, it is important that the regulated community not

view non-compliance as a way of abetting a financially troubled business. The burden to demonstrate its ability to pay rests strictly with the violator. Absent information to the contrary, the penalty should not be adjusted for this factor. This ability to pay factor requires a significant amount of financial information specific to each violator.

VII. NONATTAINMENT COUNTY

For violations occurring in a non-attainment county, add 50 percent.

VIII. VIOLATION OF CONSENT ORDERS

For violation of prior Consent Orders to which both parties have agreed, a penalty of up to 10 times the original penalty may be imposed.

IX. SPECIAL BASIS

In unusual cases, the Division may elect to use a special basis for penalties. That is not expected to occur often. When done, the reasons and basis of the penalty will be documented. The occurrence of such cases may be used to make appropriate changes to these procedures in the future.

X. EXPEDITED AGREEMENT AND ACTION

If a violator promptly enters into a negotiated final Consent Order and agrees to expeditiously correct the violation(s), the proposed penalty may be negotiated downward - normally no more than 30 percent if a first-time violation or 15 percent if not the first time in violation. If the violator is difficult to negotiate with, no reduction should be considered.

XI. ADMINISTRATIVE ORDERS

If negotiation does not result in a Consent Order in a reasonable period, EPD may elect to issue an Administrative Order. The violator who receives an Administrative Order may appeal that action before an Administrative Law Judge. The Judge will determine the final amount of penalty in such a case. The Office of the Attorney General will provide all legal representation for EPD.