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1. PETROLEUM PRODUCTS STANDARDS ACT

Chapter 57, Article 19, Sections 25 through 37, NMSA 1978

Effective dates. -- Laws 1993, ch. 98, Section 16 makes the Petroleum Products Standards Act effective on July 1, 1993.

Section

57-19-25. Short title.

57-19-26. Purpose.

57-19-27. Definitions.

57-19-28. Duties of the board; authority of the director.

57-19-29. Quality standards.

57-19-30. Inspection of measuring devices.

57-19-31. Inspection and certification of vehicle tanks used as measures.

57-19-32. Labeling.

57-19-33. Deceit; petroleum products; purchasers.

57-19-34. Fees.

57-19-35. Money collected.

57-19-36. Penalties; administrative procedures; appeals.

57-19-37. Injunction.

PETROLEUM PRODUCTS STANDARDS ACT

57-19-25. SHORT TITLE.--This act [57-19-25 to 57-19-37 NMSA 1978] may be cited as the "Petroleum Products Standards Act".

57-19-26. PURPOSE.--It is the purpose of the Petroleum Products Standards Act [57-19-25 to 57-19-37 NMSA 1978] to guarantee adequate quality and quantity standards for petroleum products through a strong and comprehensive program involving inspection, sampling, testing and enforcement measures.

57-19-27. DEFINITIONS.--As used in the Petroleum Products Standards Act [57-19-25 to 57-19-37 NMSA 1978]:

A. "board" means the board of regents at New Mexico state university;

B. "dealer" means a dealer as defined by the Special Fuels Act [7-16A-1 to 7-16A-20 NMSA 1978];

- C. "department" means the New Mexico department of agriculture;
- D. "director" means the director of the New Mexico department of agriculture;
- E. "distributor" means a distributor as defined by the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978];
- F. "lubricating oil" means any oil used to lubricate transmissions, gears or axles;
- G. "motor fuel" means any liquid product used for the generation of power in an internal combustion engine, excluding liquified petroleum gases and aviation fuels;
- H. "motor oil" means oil for use in lubricating internal combustion engines;
- I. "person" means any natural person, firm, partnership, association or corporation;
- J. "petroleum" product means motor fuel, kerosene, lubricating oil, motor oil, anti-freeze or brake fluid;
- K. "retailer" means any person who sells motor fuel and delivers the motor fuel into the supply tanks of motor vehicles.

57-19-28. DUTIES OF THE BOARD; AUTHORITY OF THE DIRECTOR.--

A. The board shall be responsible for the administration and enforcement of the provisions of the Petroleum Products Standards Act [57-19-25 to 57-19-37 NMSA 1978]. The board shall adopt rules and regulations necessary to administer and enforce the provisions of that act. The board shall provide public notice and allow public comment on all proposed rules and regulations.

B. The director shall have the authority to:

- (1) inspect, investigate, analyze and take appropriate actions to administer and enforce the provisions of the Petroleum Products Standards Act;
- (2) enter any commercial premises during normal business hours. If the premises are not open to the public, the director shall present his credentials and enter only with consent from the commercial entity. If no consent is given, the director shall obtain a search warrant;
- (3) collect or cause to be collected samples of petroleum products offered for sale and cause such samples to be tested or analyzed to determine if they are in compliance with the provisions of the Petroleum Products Standards Act and regulations adopted pursuant to that act;
- (4) issue and enforce stop-sale, hold and removal orders with respect to a petroleum product kept, offered or exposed for sale in violation of the provisions of the Petroleum Products Standards Act and regulations adopted pursuant to that act;
- (5) require distributors and retailers to retain records pertaining to petroleum

product purchases and sales for a period of not more than one year;

(6) maintain and operate a petroleum product testing laboratory to ensure that all petroleum products offered for sale in New Mexico meet standards prescribed in the Petroleum Products Standards Act and regulations adopted pursuant to that act;

(7) issue and enforce stop-use orders for measuring equipment or vehicle tanks that are used commercially and that do not conform to the provisions of the Petroleum Products Standards Act and regulations adopted pursuant to that act; and

(8) delegate to authorized representatives any of the responsibilities for the proper administration of the Petroleum Products Standards Act.

57-19-29. QUALITY STANDARDS.--Unless modified by regulation of the board, the quality standards, tests and methods of conducting analyses on petroleum products manufactured, kept, stored, sold or offered for sale in New Mexico shall be those last adopted and published by the American society for testing and materials or the society of automotive engineers and shall be used to determine compliance with the Petroleum Products Standards Act [57-19-25 to 57-19-37 NMSA 1978] and regulations adopted pursuant to that act. In the absence of a petroleum product quality standard, test or method from the American society for testing and materials or the society of automotive engineers, the board may adopt a regulation that establishes a quality standard, test or method to conduct analyses on petroleum products.

57-19-30. INSPECTION OF MEASURING DEVICES.--

A. The director shall inspect all equipment used commercially in measuring or dispensing petroleum products in the state. The director shall ascertain that all such equipment is correct and accurate. The specifications, tolerances and other requirements for equipment used commercially in measuring petroleum products shall be set by regulations adopted by the board.

B. No person shall refuse to permit the director or his authorized representative to inspect, test and seal as necessary any commercial device designed to measure and dispense petroleum products. No person shall break the seal without permission from the director or his authorized representative. A broken seal on a commercial device designed to measure or dispense petroleum products shall be prima facie evidence of a violation of the Petroleum Products Standards Act [57-19-25 to 57-19-37 NMSA 1978].

57-19-31. INSPECTION AND CERTIFICATION OF VEHICLE TANKS USED AS MEASURES.--

A. The director shall establish calibration stations to inspect, measure and calibrate the capacity of a vehicle tank used as a measure to deliver petroleum products in New Mexico. The director shall determine where to locate the stations.

B. The owner or operator of a vehicle tank used as a measure to deliver petroleum

products in the state shall notify the director before he uses the vehicle tank, and the director shall set a time to inspect and calibrate the vehicle tank at a calibration station. The director may accept calibration certificates from other agencies.

57-19-32. LABELING.--

A. No person shall sell, offer for sale or permit the sale of any petroleum product unless there is firmly attached or painted on the container or dispenser from which the petroleum product is offered for sale a sign or label stating the grade or type of product being offered for sale. The sign or label shall be plainly, visibly and prominently displayed in a manner prescribed by regulation of the board.

B. The board may identify petroleum products of a special nature, composition or quality and it may establish labeling requirements for such products.

C. A sign or label used in connection with automotive motor or lubricating oil shall include the society of automotive engineers viscosity grade classification number preceded by the letters "SAE".

57-19-33. DECEIT; PETROLEUM PRODUCTS; PURCHASERS.--No person shall store, sell, offer or advertise for sale a petroleum product that may deceive, tends to deceive or has the effect of deceiving the purchaser of that product about the composition, grade, quantity or price of the product or that the product meets the standards prescribed by the Petroleum Products Standards Act [57-19-25 to 57-19-37 NMSA 1978] and regulations adopted pursuant to that act.

57-19-34. FEES.--The board may authorize the director to establish and publish a schedule of fees to recover the cost of services performed by the director at the request of a person or firm.

57-19-35. MONEY COLLECTED.--All money collected pursuant to the provisions of the Petroleum Products Standards Act [57-19-25 to 57-19-37 NMSA 1978] shall be deposited with the board of regents of New Mexico state university for use by the department in carrying out the provisions of that act.

57-19-36. PENALTIES; ADMINISTRATIVE PROCEDURES; APPEALS.--

A. No person, by himself, by his servant or agent or as the servant or agent of another person shall:

(1) violate the provisions of the Petroleum Products Standards Act [57-19-25 to 57-19-37 NMSA 1978];

(2) violate any regulation adopted pursuant to the Petroleum Products Standards Act; or

(3) misrepresent a petroleum product as meeting the standards of the Petroleum Products Standards Act.

B. Any person who violates Subsection A of this section shall be guilty of a petty

misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

C. The board shall establish a system of administrative penalties for violations of the Petroleum Products Standards Act. The administrative penalties may be assessed by the director in lieu of or in addition to other penalties provided by statute. In establishing the system of administrative penalties, the board, after public notice and public hearing, shall adopt regulations that meet the following minimum requirements:

- (1) the maximum amount of any administrative penalty shall not exceed one thousand dollars (\$1,000) for any one violation of the Petroleum Products Standards Act by any person;
- (2) violations for which administrative penalties may be assessed shall be clearly defined, along with a scale of administrative penalties relating the amount of the administrative penalty to the severity and frequency of the violation;
- (3) provisions shall be included for due process, including proper notification of administrative proceedings, right to discovery of charges and evidence and appeal procedures; and
- (4) prior to assessing administrative penalties pursuant to the provisions of the Petroleum Products Standards Act, the department shall comply with Paragraphs (2) and (3) of this subsection.

D. Appeals from decisions of the director regarding the assessment of an administrative penalty shall be to the district court in the county where the violation is alleged to have occurred. The appeal shall be limited to the record of the administrative proceedings, except that in cases of alleged irregularities not shown in the record, testimony may be taken.

57-19-37. INJUNCTION.--

A. In order to ensure compliance with, and in order to enforce the provisions of, the Petroleum Products Standards Act [57-19-25 to 57-19-37 NMSA 1978] the director may apply to a court of competent jurisdiction to have a person enjoined from engaging in a practice prohibited by that act.

B. Upon application to a court for the issuance of an injunction against a person who is not complying with the provisions of the Petroleum Products Standards Act, the court may issue an order to restrain the person temporarily from engaging in the prohibited practice. The court shall hear the matter and, upon a preponderance of the evidence that the person is not complying with the provisions of the Petroleum Products Standards Act, the court shall enjoin the person from engaging in the prohibited practice.

History: Laws 1993, ch. 98 Section 13. Severability clauses. -- Laws 1993, ch. 98, Section 15

Effective dates. -- Laws 1993, ch 98, § 16 makes provides for the severability of the act if any part or the Petroleum Products Standards Act effective on application thereof is held invalid.

July 1, 1993.

