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MEMORANDUM

TO: PMAA State Executives

FROM: Holly Tuminello

RE: IMPORTANT UPDATE ON ULSD ISSUES

DATE: April 20, 2006

As we get closer to the implementation date for ULSD, PMAA continues to have discussions with EPA on a number of issues. As a result, many issues that have been raised by members have been clarified by EPA and new issues have been brought to light. The following is an update and clarification of several important aspects of the rule.

LABELING REQUIREMENTS

PMAA has previously issued the labeling requirements that are effective June 1, 2006. It is important for members to be aware that three (3) labels are required as of that date: Two labels for highway fuel and one label for off-road fuel. PMAA has learned that many label vendors have the mistaken impression that, since the off-road program does not formally go into effect until 2007, that off-road tanks do not have to be labeled. That is incorrect. Labeling requirements apply to retailers and “wholesale purchaser-consumers,” which may include farm tanks, construction tanks, tanks at fleet fueling facilities, etc. EPA defines wholesaler purchaser-consumer as “any person that is an ultimate consumer of the.... diesel fuel... and receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that person.”

The required label language follows at the end of this memo. EPA, in some cases, will approve alternative labels such as they did for the API recommended label, which is a smaller size. (To view the API labels, please visit www.clean-diesel.org.)

TAX LABELING ISSUES

IRS labeling requirements for dyed fuel are still in effect. Any pump or tank that dispenses dyed fuel requires IRS language that reads as follows: DYED DIESEL FUEL, NON-TAXABLE USE ONLY, PENALTY FOR TAXABLE USE. All of these pumps or tanks should currently be labeled with this language. The EPA non-road label does not replace this label; it is an additional label.

PRODUCT TRANSFER DOCUMENTS (PTDs)

As PMAA has previously reported, Product Transfer Documents (commonly known as invoices or bills of lading) must be maintained for five years. PMAA has learned of additional language that is required on PTDs, effective June 1, 2006.

For transfers of title or custody from one facility to another in the distribution system where diesel fuel or distillates are taxed, dyed or marked, and for any subsequent transfers (except when such fuel is dispensed into motor vehicles or nonroad, locomotive or marine equipment), an accurate statement on the product transfer document of the applicable fuel uses and classifications is required, as follows:

Undyed 15 ppm sulfur diesel fuel- Required language from June 1, 2006 and beyond:

“15 ppm sulfur (maximum) Undyed Ultra-Low Sulfur Diesel Fuel. For use in all diesel vehicles and engines.”

From June 1, 2006 through May 31, 2010, the product transfer document must also state whether the diesel fuel is #1D or #2D.

Dyed 15 ppm sulfur diesel fuel – Required language from June 1, 2006 and beyond:

“15 ppm sulfur (maximum) Dyed Ultra-Low Sulfur Diesel Fuel. For use in all nonroad diesel engines. Not for use in highway vehicles or engines except for tax-exempt use in accordance with section 4082 of the Internal Revenue Code.”

Undyed 500 ppm sulfur diesel fuel- Required language from June 1, 2006 through September 30, 2010:

“500 ppm sulfur (maximum) Undyed Low Sulfur Diesel Fuel. For use in Model Year 2006 and older diesel highway vehicles and engines. Also for use in nonroad, locomotive, and marine diesel engines. Not for use in model year 2007 and newer highway vehicles or engines.”

Dyed 500 ppm sulfur diesel fuel- required language from June 1, 2006 through September 30, 2010:

“500 ppm sulfur (maximum) Dyed Low Sulfur Nonroad, Locomotive or Marine Diesel Fuel. Not for use in highway vehicles or engines except for use in Model Year 2006 and older highway diesel vehicles or engines for tax-exempt use in accordance with section 4082 of the Internal Revenue Code.”

EPA has indicated that alternative language can be used if approved by EPA. PMAA has requested that EPA consider shorter language, and will advise members of their response.

In addition to the applicable language above, the PTD must also include:

- (1) The names and addresses of the transferor and transferee.
- (2) The volume of diesel fuel or distillate which is being transferred.
- (3) The location of the diesel fuel or distillate at the time of the transfer.
- (4) The date of the transfer.
- (5) The sulfur content standard the transferor represents the fuel to meet.

“RE-GRADING” AND “DOWNGRADING” PRODUCT

As PMAA previously reported, language in the rules appeared to be inconsistent with some of EPA’s guidance documents. As a result, there is a lot of confusion about many aspects of the rule, most particularly downgrading provisions. Recently EPA advised PMAA of the following with respect to downgrading provisions.

The following downgrading provisions apply to retailers and wholesale purchaser-consumers (WP-Cs):

- Retailers and WP-Cs who handle **both** ULSD (15-ppm sulfur maximum) and LSD (500-ppm maximum) may downgrade without limitation.
- Retailers and WP-Cs who handle **only** ULSD (15-ppm), may downgrade up to 20 percent of their annual diesel fuel volume to LSD (500-ppm).
- For retailers and WP-Cs who handle **only** LSD (500-ppm) —if on occasion this facility must purchase 15-ppm, he may downgrade it to 500-ppm up to a maximum of 20 percent of his annual volume.

Note that downgrading limitations apply to **each** retail location or wholesale purchaser-consumer facility. Owners of multiple retail locations may not pool downgrading limits.

It is important to note that if ULSD is used in the non-road pool, EPA has advised PMAA that this is considered a “regrade,” not a downgrade. For example, in some areas, ULSD may be the only product available for all uses, highway and non-road. In those areas, ULSD would be dyed at the rack, and would be labeled and sold as “non-road fuel” (see non-road label).

TRANSITION PERIOD

As you know, by June 1, 2006, at least 80 percent of the highway diesel fuel produced will be Ultra Low Sulfur Diesel, with the remaining 20 percent produced at the current 500-ppm maximum standard. Yet, the retail and WP-C deadline is October 15, 2006. This gives these facilities who will be handling ULSD adequate time to turn over their diesel tanks. During the transition period, between June 1, 2006 and October 15, 2006, EPA will allow product up to 22-ppm to be sold as ultra low sulfur diesel.

PMAA believes that many retailers who will ultimately be handling only ULSD will begin receiving ULSD in mid-summer, but will label their tanks during the transition period as low sulfur diesel (500-ppm) to allow time for tanks to turn over. According to

EPA, “downgrading” of this type during the transition period is not calculated as part of the annual 20 percent limitation. Only “downgrades” that occur after October 15 should be calculated against the 20 percent limitation.

BLENDING AND ADDITIZING OF DIESEL FUEL

It is common practice for marketer to blend diesel fuel with other substances, such as kerosene, additives, used oil, etc., to improve performance. EPA’s rule prohibits the blending of diesel with used motor oil, but does allow most traditional blending practices to continue, as long as the sulfur level of the ULSD remains at 15-ppm or below. PMAA will be providing detailed information on these provisions in an upcoming memo.

DISPENSER LABELING REQUIREMENTS

The following labels are required for compliance. Labels should be posted in a conspicuous place on the dispenser, “on the vertical surface of each pump housing and on each side that has gallon and price meters. The labels shall be on the upper two-thirds of the pump, in a location where they are clearly visible.” Labels must have legible block letters in a color that contrasts with the background color. Also, EPA requires a minimum 24-point bold font.

- **HIGHWAY FUEL PUMP LABELS**

For pumps dispensing 15-ppm highway diesel, the following label is required from June 1, 2006-May 31, 2010:

ULTRA LOW SULFUR DIESEL FUEL (15-ppm Sulfur Maximum)

Required for use in all model year 2007 and later highway diesel vehicles and engines.

Recommended for use in all diesel vehicles and engines.

For pumps dispensing 500-ppm diesel highway fuel, beginning June 1, 2006, labels should read as follows:

LOW-SULFUR HIGHWAY DIESEL FUEL

(500-ppm Sulfur Maximum)

WARNING

Federal law *prohibits* use in model year 2007 and later vehicles and engines. Its use may damage these vehicles and engines.

This label may no longer be posted after September 30, 2010 as dispensing 500-ppm diesel will be prohibited at that time.

- **OFF-ROAD PUMP LABELS**

The label on pumps dispensing off-road diesel fuel that does not meet motor vehicle fuel standards is required **from June 1, 2006 until May 31, 2007** and should read as follows:

NON-HIGHWAY DIESEL FUEL (May exceed 500-ppm Sulfur)
WARNING

Federal Law prohibits use in any highway vehicle or engine.
Its use may damage these vehicles and engines.