



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
AIR AND RADIATION

Ms. Dawna Leitzke
Executive Director
South Dakota Petroleum and Propane Marketers Association/
South Dakota Association of Convenience Stores
P.O. Box 1058
Pierre, South Dakota 57501

Dear Ms. Leitzke:

Thank you for your October 31, 2006, letter concerning the legality of selling ethanol-gasoline blends to motorists at retail outlets.

As you note in your letter, it is legal to sell gasoline containing up to 10 percent ethanol (E10) for use in any gasoline-fueled vehicle in the United States. Gasoline containing more than 10 percent ethanol may only be sold for use in flexible-fueled vehicles (FFVs) that are certified to meet emission standards on E85 (85 percent ethanol and 15 percent gasoline), gasoline without ethanol (E0), and any intermediate combination of gasoline and ethanol. Most vehicles are certified to emission standards for gasoline only, and thus are limited to no more than E10.

You asked for our position on marketers selling ethanol blends other than E10 and E85 through blender pumps for use in FFVs. You also asked if there are any prohibitions under the Clean Air Act or other federal laws that would prohibit a fuel marketer from selling E20 or E30 to consumers for use in FFVs.

With respect to the sale of blends such as E20 and E30 for use in FFVs, such blends are covered under the emissions certification for an E85 FFV, and thus are not prohibited under the Clean Air Act. I am not aware of any federal law that prohibits sale of such blends for use in FFVs.

However, the use of such blends in gasoline-only vehicles is prohibited under the Clean Air Act. Use of gasoline containing ethanol amounts greater than E10 in a gasoline-only vehicle could cause emissions from the vehicle to increase. Section 203(a)(3)(A) of the Clean Air Act (the Act), 42 U.S.C. § 7522(a)(3)(A) prohibits any person from rendering inoperative emission control devices or elements of design. In addition, Section 203(a) prohibits any person from causing a violation of Section 203(a)(3)(A). Mis-fueling a motor vehicle in this manner may

violate this provision of the Act. The retailer who has variable ethanol percentage pumps may be liable for causing such violation, whether the mis-fueling occurs at self-serve or full-serve pumps.

Our understanding is that current industry practice is to dispense E85 from pumps that are separate from normal gasoline pumps and clearly marked as being appropriate for use only by ethanol FFVs. Variable ethanol percentage pumps that are installed in this manner, stand-alone and clearly marked as being available only for ethanol FFVs, may reduce the risk of such a violation.

Again, thank you for your letter. If you have further questions, please contact me or Jim Caldwell of my staff, at (202) 343-9303.

Sincerely,


Margo Tsirigotis Oge
Director

Office of Transportation and Air Quality