

Montana Department of Transportation
Report on Dyed Fuel Enforcement
Submitted to the Revenue and Transportation Interim Committee
September 4, 2014

Background

Motor fuel tax, including the tax on diesel fuel, is the primary funding source for the construction, maintenance, and administration of the highway system in Montana, including the state match for over \$300 million in federal revenue received each year. Diesel fuel is taxed at the rate of \$0.2775 per gallon and all diesel powered vehicles traveling on public roads in Montana are subject to this tax.

Untaxed diesel fuel is available in Montana for off-road use and other non-taxable activities. To distinguish untaxed fuel from taxed fuel, a red dye is added to the untaxed fuel at the refinery. Dyed fuel is exempt from both Montana and Federal taxes and can be purchased through petroleum distributors or at many retail stations.

Impact on State Special Revenue Fund

Special Fuel (diesel) Tax accounts for more than \$70 million in revenue to the Highways State Special Revenue Fund. Dyed (untaxed) diesel represents nearly 40% of the diesel fuel sold in Montana and is sold at many retail locations across the state. Without adequate enforcement, the State of Montana would be at substantial risk of fuel tax evasion, resulting in lower revenue collections at MDT, lower investment in Montana's highway infrastructure and reduced ability to match federal-aid funds.

Motor Carriers Services (MCS) Enforcement Activity:

Montana law allows for the inspection of motor vehicle supply tanks to ensure that dyed fuel is not being consumed on Montana roadways. MDT's Motor Carriers Services (MCS) Officers routinely check for dyed fuel during motor carrier safety inspections. Additionally, they may pull vehicles over specifically to check for dyed fuel if probable cause exists to suspect dyed fuel abuse.

Civil penalties of up to \$1,000 for first offenses and \$5,000 for second and subsequent offenses are imposed on the driver if a concentration of dye of 2 parts per million or greater is found through such an inspection. The below table demonstrates the number of vehicles checked for dyed fuel and the number of violations found.

Fiscal Year	Vehicles Inspected	First Offense (\$1,000)	Second Offense (\$5,000)
2010	23,230	95	2
2011	25,474	59	3
2012	23,264	71	1
2013	25,016	76	1
2014	29,521	54	2
TOTAL	126,505	355	9

Construction Sites

Contractors performing work on public road projects are required to use clear (taxed) fuel for all project activities. MCS officers periodically inspect contractor's vehicles and equipment for compliance with this requirement. Below is a summary of the construction inspections:

FY2013 Construction Site & SU Fuel Checks Summary			
JOB Type	# Checked	Contractor Type	# Checked
City	5	Prime	30
County	1	Sub	17
State	46	Unknown	9
Federal	11	TOTAL	56
Unknown	2		
TOTAL	65		
		Total Vehicles / Equip Ckd 167	
		Total Time 33 hrs	

FY2014 Construction Site Fuel Checks Summary			
JOB Type	# Checked	Contractor Type	# Checked
City	8	Prime	29
County	1	Sub	6
State	18	Unknown	1
Federal	5	TOTAL	36
Unknown	4		
TOTAL	36		
		Total Vehicles / Equip Ckd 87	
		Total Time 13 hrs	

Appeals

Once a citation has been issued, the driver may file an appeal to the Department, either through an informal review or formal appeal. If the penalty is upheld at the Department level, the driver may wish to elevate to the State Tax Appeal Board (STAB) and ultimately to the District Court.

During the informal review, the penalty may be upheld at the full \$1,000, dismissed completely, or reduced based on the circumstances. The below table summarizes the dyed fuel citations that have been appealed.

Fiscal Year	Informal Appeal	Formal Appeal	STAB	District Court	Supreme Court
2009	29	3	1	0	0
2010	47	5	0	0	0
2011	28	4	1	1	0
2012	28	6	1	0	0
2013	11	1	0	0	1
2014	10	2	0	0	0
TOTAL	153	19	3	1	1

Biodiesel Fuel Refund

15-70-369 MCA provides a refund of 2 cents per gallon to licensed distributors and 1 cent per gallon to retailers who sell Biodiesel that is produced entirely from Biodiesel ingredients produced in Montana.

The department has never had any person apply for this incentive.

Contacts

If you have questions or comments regarding MDT's dyed fuel enforcement activities, please contact one of the following:

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