

Montana Department of Transportation
Report on Dyed Fuel Enforcement
Submitted to the Revenue and Transportation Interim Committee
December 4, 2013

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:

Vehicle Inspections

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)
2009	27,377	84	2
2010	23,230	95	2
2011	25,474	59	3
2012	23,264	71	1
2013	25,016	76	1
TOTAL	124,361	385	9

Construction Site and Special Fuel User Checks

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

FY2012 Construction Site Fuel & SU Checks Summary			
JOB Type	# Checked	Contractor Type	# Checked
City	1	Prime	12
County	3	Sub	6
State	14	Unknown	2
Federal	5	TOTAL	20
Unknown	1		
TOTAL	24		

Total Vehicles / Equip Ckd
67

Total Time
12 hrs

FY2013 Construction Site Fuel & SU 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 to date Construction Site Fuel Checks Summary			
JOB Type	# Checked	Contractor Type	# Checked
City	8	Prime	17
County	1	Sub	5
State	12	Unknown	1
Federal	1	TOTAL	23
Unknown	1		
TOTAL	23		

Total Vehicles / Equip Ckd
51

Total Time
10 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 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
TOTAL	143	19	3	1	1

*Decisions still pending on FY13 formal appeals

2013 Legislative Changes

The 2013 Legislature passed two bills that impact dyed fuel enforcement:

SB116 removed the Special Fuel User's License requirement for contractors working on public road projects. Public road contractors are still required to use clear fuel when working on public road projects but do not need to obtain a license from MDT nor are they required to submit quarterly tax returns.

SB226 allows feed trucks to travel on public roads using dyed fuel. In order to qualify for the exemption, a truck must meet these requirements:

- (a) the feed-delivery box is permanently affixed to the vehicle;
- (b) the vehicle is used exclusively for the feeding of livestock; and
- (c) the gross vehicle weight of the vehicle, exclusive of any towed units, is greater than 12,000 pounds.

Biodiesel Fuel Tax Incentives

The 2005 Montana Legislature created fuel tax incentives for Biodiesel producers, licensed distributors, and retailers selling Biodiesel. House Bill 756 became effective July 1, 2005 and provides 10 cents per gallon incentive on each gallon increase of Biodiesel production over the previous year. The tax incentive may be claimed for 1) the first year's total production, 2) the production in the second year that exceeds the production in the first year, and 3) the production in the third year that exceeds production in the second year.

Two licensed distributors applied for and qualified for the incentive of \$.10 per gallon. In FY09, \$495.90 was paid to a Belgrade distributor.

In FY10, \$3,536.70 was paid to a Chester distributor.

This incentive expired effective June 30, 2010.

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 refunds must be applied for within 30 days after the quarter ends. 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:

Larry Flynn, Administration Division Administrator	444-9418	lflynn@mt.gov
Duane Williams, Motor Carriers Services Division Administrator	444-7312	duwilliams@mt.gov