

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 807 Session of
2011

INTRODUCED BY SONNEY, MAHER, CAUSER, J. EVANS, EVERETT, PICKETT
AND HORNAMAN, FEBRUARY 23, 2011

SENATOR M. WHITE, ENVIRONMENTAL RESOURCES AND ENERGY, IN SENATE,
AS AMENDED, APRIL 2, 2012

AN ACT

1 Amending the act of July 10, 2008 (P.L.1009, No.78), entitled
2 "An act providing for the study and mandated content of
3 biofuels," further providing for definitions, for biodiesel
4 content in diesel fuel sold for on-road use and for
5 cellulosic ethanol content in gasoline; providing for
6 blending, registration and other requirements; further
7 providing for department authority and responsibility;
8 providing for fees; establishing the Biofuel Development
9 Account; and imposing penalties.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Section 2 of the act of July 10, 2008 (P.L.1009,
13 No.78), known as the Biofuel Development and In-State Production
14 Incentive Act, is amended by adding definitions to read:

15 Section 2. Definitions.

16 The following words and phrases when used in this act shall
17 have the meanings given to them in this section unless the
18 context clearly indicates otherwise:

19 "American Society for Testing and Materials International" or
20 "ASTM." A member-based international standards organization

1 that develops and publishes voluntary consensus technical
2 standards and test methods for a variety of materials and
3 products, including automotive fuel and other petroleum
4 products, or any successor organization.

5 "Annualized basis." The sum of three consecutive months of
6 in-State production multiplied by four.

7 "Approved biodiesel blending method." A method whereby
8 diesel fuel is blended with biodiesel under the following
9 conditions:

10 (1) The method utilizes meters approved by the
11 Department of Agriculture to individually measure the volume
12 of each fuel.

13 (2) The method achieves and maintains a consistent blend
14 throughout the entire volume being blended.

15 (3) The method achieves and maintains the blend
16 percentage within a margin of ten percent of the total volume
17 of biodiesel required to make the desired blending
18 percentage.

19 (4) The blending occurs at a facility capable of
20 maintaining the biodiesel at a minimum of ten degrees
21 Fahrenheit above the cloud point of the biodiesel.

22 "ASTM specification." A standard quality specification
23 developed and published by the American Society for Testing and
24 Materials International.

25 * * *

26 "Biodiesel blend." A blend of diesel fuel and biodiesel in a
27 percentage blend to be sold or offered for sale to ULTIMATE
28 consumers in this Commonwealth for use in on-road compression
29 ignition engines.

30 * * *



1 "Consumer." A person who purchases fuel products for
2 purposes other than resale.

3 * * *

4 "Diesel fuel." Petroleum diesel fuel that complies with ASTM
5 D975 or its successor standard.

6 * * *

7 "Person." A natural person, corporation, partnership,
8 limited liability company, business trust, association, estate
9 or foundation.

10 * * *

11 "Retailer." A person that sells, offers for sale or
12 otherwise transfers title to fuel products, including diesel
13 fuel, biodiesel and biodiesel blend, to a consumer.

14 Section 2. Sections 3(a) and (f) and 4(a) of the act are
15 amended to read:

16 Section 3. Biodiesel content in diesel fuel sold for on-road
17 use.

18 (a) Volume standards.--The following standards shall apply:

19 (1) All diesel fuel sold or offered for sale to
20 ~~ultimate~~ consumers in this Commonwealth for use in on-road ←
21 compression ignition engines must [contain] be blended with
22 biodiesel so as to achieve a biodiesel blend of at least 2%
23 biodiesel by volume one year after the in-State production
24 volume of 40,000,000 gallons of biodiesel has been reached
25 and sustained for three months on an annualized basis as
26 determined by the department. Biodiesel blend of less than 6%
27 biodiesel shall comply with ASTM specification D975 or its
28 successor standard. Biodiesel blend of 6% or more through 20%
29 biodiesel shall comply with ASTM specification D7467 or its
30 successor standard. Biodiesel blend of more than 20%

1 biodiesel shall comply with standards adopted by the
2 department through regulation until an ASTM standard is
3 applicable.

4 (2) All diesel fuel sold or offered for sale to
5 ~~ultimate~~ consumers in this Commonwealth for use in on-road ←
6 compression ignition engines must [contain] be blended with
7 biodiesel so as to achieve a biodiesel blend of at least 5%
8 biodiesel by volume one year after the in-State production
9 volume of 100,000,000 gallons of biodiesel has been reached
10 and sustained for three months on an annualized basis as
11 determined by the department. Biodiesel blend of less than 6%
12 biodiesel shall comply with ASTM specification D975 or its
13 successor standard. Biodiesel blend of 6% or more through 20%
14 biodiesel shall comply with ASTM specification D7467 or its
15 successor standard. Biodiesel blend of more than 20%
16 biodiesel shall comply with standards adopted by the
17 department through regulation until an ASTM standard is
18 applicable.

19 (3) All diesel fuel sold or offered for sale to
20 ~~ultimate~~ consumers in this Commonwealth for use in on-road ←
21 compression ignition engines must [contain] be blended with
22 biodiesel so as to achieve a biodiesel blend of at least 10%
23 biodiesel by volume one year after the in-State production
24 volume of 200,000,000 gallons of biodiesel has been reached
25 and sustained for three months on an annualized basis as
26 determined by the department. Biodiesel blend of 10% or more
27 through 20% biodiesel shall comply with ASTM specification
28 D7467 or its successor standard. Biodiesel blend of more than
29 20% biodiesel shall comply with standards adopted by the
30 department through regulation until an ASTM standard is

1 applicable.

2 (4) All diesel fuel sold or offered for sale to
3 ~~ultimate~~ consumers in this Commonwealth for use in on-road ←
4 compression ignition engines must [contain] be blended with
5 biodiesel so as to achieve a biodiesel blend of at least 20%
6 biodiesel by volume one year after the in-State production
7 volume of 400,000,000 gallons of biodiesel has been reached
8 and sustained for three months on an annualized basis as
9 determined by the department. Biodiesel blend of 20%
10 biodiesel shall comply with ASTM specification D7467 or its
11 successor standard. Biodiesel blend of more than 20%
12 biodiesel shall comply with standards adopted by the
13 department through regulation until an ASTM standard is
14 applicable.

15 * * *

16 (f) [Exception] Exceptions.--The requirements of this
17 section shall not apply to [aviation]:

18 (1) Aviation fuel, [home heating] fuel OIL OF ANY GRADE ←
19 or where prohibited by law.

20 (2) Fuel stored at a nuclear power plant.

21 (3) The blend percentage requirements of subsection (a)
22 (2), (3) and (4) shall not apply to diesel fuel produced from
23 100% Pennsylvania grade crude oil by a small refiner, as
24 defined by 40 CFR 80.1101(g).

25 Section 4. Cellulosic ethanol content in gasoline.

26 (a) Cellulosic ethanol content required.--All gasoline sold
27 or offered for sale to ~~ultimate~~ consumers in this Commonwealth ←
28 must contain at least 10% cellulosic ethanol by volume as
29 determined by an appropriate Environmental Protection Agency or
30 American Society for Testing Materials standard method of

1 analysis one year after the in-State production volume of
2 350,000,000 gallons of cellulosic ethanol has been reached and
3 sustained for three months on an annualized basis as determined
4 by the department.

5 * * *

6 Section 3. The act is amended by adding a section to read:

7 Section 4.1. Blending, registration and other requirements.

8 ~~(a) Blending requirements. Biodiesel blend shall be created~~ ←

9 (A) BLENDED REQUIREMENTS.--THE FOLLOWING REQUIREMENTS SHALL ←

10 APPLY:

11 (1) BIODIESEL BLEND SHALL BE CREATED using an approved
12 biodiesel blending method.

13 (2) BIODIESEL BLEND CREATED IN THIS COMMONWEALTH FOR ←
14 TRANSFER, OFFER FOR SALE OR SALE IN THIS COMMONWEALTH SHALL
15 BE CREATED USING AN APPROVED BIODIESEL BLENDING METHOD AT
16 SUCH TIME WHEN AND PLACE WHERE THE DIESEL FUEL IS LOADED OUT
17 OF THE PETROLEUM LOAD RACK TERMINAL.

18 (3) BIODIESEL BLEND CREATED OUTSIDE OF AND IMPORTED INTO
19 THIS COMMONWEALTH SHALL NOT BE TRANSFERRED, OFFERED FOR SALE
20 OR SOLD IN THIS COMMONWEALTH UNLESS IT HAS BEEN CREATED USING
21 AN APPROVED BIODIESEL BLENDING METHOD.

22 (4) DIESEL FUEL IMPORTED INTO THIS COMMONWEALTH SHALL BE
23 BLENDED WITH BIODIESEL TO CREATE BIODIESEL BLEND BY AN
24 APPROVED BIODIESEL BLENDING METHOD BEFORE THE DIESEL FUEL MAY
25 BE SOLD OR OFFERED FOR SALE OR USE WITHIN THIS COMMONWEALTH.

26 (b) Registration requirements.--Any person that offers for
27 sale, sells or otherwise transfers title in this Commonwealth to
28 biodiesel blend or biodiesel for use by consumers in on-road
29 compression ignition engines shall register annually with the
30 department. Each location in this Commonwealth where the person

1 conducts the activity shall be separately registered, but may be
2 submitted in a single form. This subsection shall apply to in-
3 State and out-of-State persons. The application for registration
4 shall be on a form prescribed by the department and may be
5 accepted electronically by the department.

6 (c) Bill of lading.--

7 (1) Each time biodiesel blend is sold, offered for sale
8 or title to which is otherwise transferred by a person other
9 than a retailer for ultimate sale to consumers in this
10 Commonwealth, a bill of lading or shipping manifest meeting
11 the requirements of paragraph (2) shall be provided to the
12 person that receives the biodiesel blend.

13 (2) The bill of lading or shipping manifest required
14 under paragraph (1) shall:

15 (i) Include a certification by the person that
16 created the biodiesel blend stating that it was created
17 by an approved biodiesel blending method and that the
18 information contained in the bill of lading or shipping
19 manifest is true and correct. The certification shall be
20 subject to the penalties under 18 Pa.C.S. § 4904
21 (relating to unsworn falsification to authorities).

22 (ii) Contain the following information:

23 (A) The name and location of the person that
24 created the biodiesel blend and, if the biodiesel
25 blend was created in this Commonwealth, the
26 registration number assigned by the department to the
27 subject location.

28 (B) The biodiesel content, stated as volume
29 percentage, based upon ~~gallons of biodiesel per~~
30 ~~gallons of diesel fuel base stock, or an ASTM "Bxx"~~



1 designation where "xx" denotes the volume percentage
2 biodiesel included in the blended product.

3 (C) The ASTM specification of the biodiesel used
4 in the biodiesel blend.

5 (D) The grade and ASTM specification of the
6 diesel fuel.

7 (E) The ASTM specification of the biodiesel
8 blend.

9 (F) The total gallons of biodiesel blend sold,
10 offered for sale or title to which is otherwise being
11 transferred.

12 (3) A retailer selling, offering to sell or otherwise
13 transferring title to a biodiesel blend shall retain a copy
14 of the bill of lading or shipping manifest required under
15 paragraph (1) for a period of one year from receipt of the
16 biodiesel blend or for a longer period of time, if the bill
17 of lading or shipping manifest is part of an enforcement
18 action initiated during the one-year period. The bill of
19 lading or shipping manifest must remain at the facility where
20 the biodiesel blend has been offered for sale, sold or title
21 to which has otherwise been transferred at least until the
22 biodiesel blend physically leaves the facility, after which
23 it may be retained at the corporate headquarters of the
24 retailer. Failure by a retailer to make a copy of a bill of
25 lading or shipping manifest immediately available to the
26 department for inspection at the facility where the biodiesel
27 blend was offered for sale, sold or title to which was
28 otherwise transferred shall not be deemed a violation of this
29 act if the copy is submitted to the department within two
30 business days following the inspection.

1 (d) Certification.--

2 (1) Any time biodiesel is sold, offered for sale or
3 title to which is otherwise transferred in this Commonwealth
4 for use in biodiesel blend, the person selling, offering for
5 sale or otherwise transferring title to the biodiesel shall
6 provide a certification stating that the biodiesel is
7 compliant with the definition and quality standards for
8 biodiesel under this act, including ASTM D 6751-02, or its ←
9 successor standard. The certification shall also contain the
10 name and location of the person that manufactured the
11 biodiesel and, if the biodiesel was manufactured in this
12 Commonwealth, the registration number assigned by the
13 department to the subject location and shall be subject to
14 the penalties of 18 Pa.C.S. § 4904.

15 (2) A copy of the certification required under paragraph
16 (1) shall be provided to any person that receives the
17 biodiesel, AND the person that blends the biodiesel with the ←
18 diesel fuel to create the biodiesel blend and to any person ←
19 that receives the biodiesel blend. The person providing the
20 certification and each person that receives a copy of the
21 certification shall retain a copy of the certification for a
22 period of one year from the delivery of the biodiesel or ←
23 biodiesel blend, as applicable, or for a longer period of
24 time, if the bill of lading or shipping manifest is part of ←
25 an enforcement action initiated during the one-year period.
26 With respect to a retailer that receives the biodiesel blend, ←
27 a copy of the certification must remain at a facility where
28 the biodiesel blend made with the biodiesel is offered for
29 sale, sold or title to which is otherwise transferred at
30 least until it physically leaves the facility, after which it

~~may be retained at the corporate headquarters of the
retailer. Failure by a retailer to make a copy of the
certification immediately available to the department for
inspection at a facility where biodiesel blend made with the
biodiesel is offered for sale, sold or title to which is
otherwise transferred shall not be deemed a violation of this
act if the copy is submitted to the department within two
business days following the inspection.~~

Section 4. Section 5 heading and (a) of the act are amended
and the section is amended by adding subsections to read:

Section 5. [Agency responsibilities] Department authority and
responsibility.

(a) [Compliance] Enforcement.--With the exception of section
3(d), the department shall [ensure compliance with] enforce this
act and[, in consultation with the Department of Transportation
and the Department of Environmental Protection,] shall
promulgate regulations as necessary to implement and enforce the
requirements of this act. The department may employ all proper
means for the enforcement of this act, including issuing notices
and orders, initiating criminal prosecutions, seeking injunctive
relief, imposing civil penalties and entering into consent
agreements.

* * *

(e) Authority.--

(1) The department shall have the following authority:

(i) To access during regular business hours and to
conduct unannounced random inspections of any facility
located in this Commonwealth that stores, holds, blends,
sells, offers for sale or otherwise transfers title to
diesel fuel, biodiesel or biodiesel blend. Inspections

1 shall include the premises of the facility, tanks,
2 storage facilities, transportation and storage vehicles,
3 dispensing devices and any other place where diesel fuel,
4 biodiesel or biodiesel blend is stored, held, blended,
5 sold, offered for sale, or title to which is otherwise
6 transferred.

7 (ii) To take samples of and test the diesel fuel,
8 biodiesel and biodiesel blend being stored, held,
9 blended, sold, offered for sale or title to which is
10 otherwise being transferred.

11 (iii) To audit and copy the books and records
12 pertaining to the diesel fuel, biodiesel or biodiesel
13 blend being stored, held, sold, offered for sale or title
14 to which is otherwise being transferred, and its
15 component parts, including:

16 (A) Delivery invoices, sales invoices, bills of
17 lading and shipping manifests.

18 (B) Inventory records.

19 (C) Relevant contracts and agreements.

20 (iv) To issue stop-sale orders with respect to all
21 biodiesel blend and biodiesel stored, held, blended, sold
22 or title to which is otherwise transferred or offered for
23 sale to consumers in this Commonwealth for use in on-road
24 compression ignition engines if the department
25 determines, after sampling and analysis, that the
26 biodiesel blend or biodiesel does not comply with the
27 standards established under this act or the regulations
28 promulgated under this act and would be detrimental to
29 the operation of on-road compression ignition engines if
30 used for its intended use. The department may release the

1 noncompliant biodiesel blend or biodiesel for sale only
2 when the department determines the biodiesel blend or
3 biodiesel is either brought into compliance with this act
4 or regulations promulgated under this act or it would no
5 longer be detrimental to the operation of on-road
6 compression ignition engines if used for its intended
7 use. All such biodiesel blend or biodiesel must be
8 properly labeled as to its noncompliant characteristics
9 if released and permitted to be sold without being
10 brought into compliance with this act or regulations
11 promulgated under this act. A person that knowingly
12 sells, offers for sale or otherwise transfers title to
13 biodiesel blend or biodiesel in this Commonwealth subject
14 to a stop-sale order for use by consumers in on-road
15 compression ignition engines commits a misdemeanor of the
16 third degree.

17 (2) A person that willfully and intentionally interferes
18 with an employee of the department in the performance of the
19 duties conferred upon the department under the provisions of
20 this act commits a misdemeanor of the third degree.

21 (f) Penalties.--

22 (1) (i) The department may assess a civil penalty of
23 not less than \$100 nor more than \$1,000 per day for each
24 knowing violation of this act or a regulation promulgated
25 under this act.

26 (ii) If a person fails to pay all or a portion of a
27 penalty assessed against the person, the department may
28 refer the matter to the Office of General Counsel or the
29 Office of Attorney General, which shall institute an
30 action in the appropriate court to recover the penalty.

1 (2) A person that knowingly violates a provision of this
2 act or a rule or regulation adopted or order issued under
3 this act:

4 (i) Unless otherwise specified in this act, for the
5 first offense, commits a summary offense and shall, upon
6 conviction, be sentenced to pay a fine of not less than
7 \$100 nor more than \$500 plus costs of prosecution or to
8 imprisonment for not more than 90 days, or both.

9 (ii) For a subsequent offense at one location that
10 occurs within two years of sentencing for the prior
11 violation at the same location, commits a misdemeanor of
12 the third degree and shall, upon conviction, be sentenced
13 to pay a fine of not less than \$500 nor more than \$1,000
14 plus costs of prosecution or to imprisonment of not more
15 than one year, or both.

16 (3) In addition to any other remedies under this act, a
17 violation of this act or a regulation promulgated under this
18 act shall be abatable in any manner provided by law or
19 equity. In addition to any remedy ordered in an equity
20 proceeding, the court may assess civil penalties in
21 accordance with this act.

22 (g) Account.--

23 (1) There is established a restricted account within the
24 State Treasury to be known as the Biofuel Development
25 Account. All money in the account is hereby appropriated on a
26 continuing basis to the department for the enforcement and
27 administration of this act.

28 (2) The following shall be deposited in the Biofuel
29 Development Account:

30 (i) Federal and State funds appropriated to the

1 department for implementation and administration of this
2 act.

3 (ii) Notwithstanding the provisions of 42 Pa.C.S. §§
4 3733 (relating to deposits into account) and 3733.1
5 (relating to surcharge), all fines, judgments and
6 penalties, including administrative, civil and criminal
7 penalties, and interest on the foregoing collected by the
8 department under this act.

9 (iii) Interest and any other earnings on money in
10 the account.

11 (iv) Funds from any other source, including gifts
12 and other contributions from public and private sources.

13 Section 5. This act shall take effect in 30 days.