

**Illinois Department of Revenue
Regulations**

Title 86 Part 500 Section 500.298 Civil Penalties for Dyed Diesel Fuel Violations

**TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 500
MOTOR FUEL TAX**

Section 500.298 Civil Penalties for Dyed Diesel Fuel Violations

- a) Definitions. For purposes of this Section, the following definitions apply:

"Inspection" means the periodic examination by duly authorized agents of the Department of places at which motor fuel is or may be produced or stored. Such places may include, but are not limited to, any terminal, any fuel storage facility that is not a terminal, any retail fuel facility, and any State highway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the Department to be used as a fuel inspection site. Inspection of multiple locations may be conducted as part of one inspection. When one inspection spans multiple sites, the inspection may occur over a period of up to 15 days.

"Occurrence" means each event that results in a violation. As noted in subsections (c) and (d), an occurrence may encompass a series of similar violations occurring during an inspection (e.g., multiple violations of notice requirements). However, a separate occurrence results each time a violation of subsection (b) is found. For purposes of the penalty imposed under subsection (e), a first occurrence results for any amount of sales or attempted sales made to a specific customer during the course of a single day. A second and subsequent occurrence results for each day subsequent to the first occurrence in which any amount of sales or attempted sales are made to that same customer.

"Operator" means the person who has physical control over a motor vehicle. For purposes of this Section, the driver of a vehicle is considered the operator of that vehicle irrespective of any ownership or lease agreements. When a motor vehicle is not under the control of a driver, the operator will be the person that has physical control over that vehicle. For instance, if a truck parked on company property is found to have dyed diesel fuel in its tanks, a penalty will be issued to the company. If, however, the company has leased that truck to a lessee and the lease remains in effect at the time an inspection occurs on the company property, the lessee will be the operator to whom a penalty is issued. In the latter case, the lessee is the party having physical control over the leased vehicle, until such time as the lease has terminated.

- b) From January 1, 2000 through June 30, 2001, *if a licensed motor vehicle is found to have dyed diesel fuel within the ordinary fuel tanks attached to the motor vehicle, the operator shall pay a penalty of \$2500 for the first occurrence and \$5000 for the second occurrence and each occurrence thereafter. On and after July 1, 2001, when a motor vehicle required to be registered for highway purposes is found to have dyed diesel fuel*

within the ordinary fuel tanks attached to the motor vehicle, the operator shall pay a penalty of \$2500 for the first occurrence and \$5000 for the second occurrence and each occurrence thereafter. On and after August 2, 2001, if a recreational-type watercraft is found to have dyed diesel fuel within the ordinary fuel tanks attached to the watercraft, the operator shall pay a penalty of \$2500 for the first occurrence and \$5000 for the second occurrence and each occurrence thereafter. (Section 15 of the Law). The first occurrence penalty imposed by this subsection (b) on and after July 29, 2010 shall be \$1,000. Each licensed motor vehicle or recreational-type watercraft found to have dyed diesel fuel in its tanks constitutes a separate occurrence.

EXAMPLE 1: A truck is inspected at a designated inspection site and dyed diesel fuel is found in the ordinary fuel tank of the truck (owned by the ABC Company). The truck driver tells Department agents that his or her boss, Mr. ABC, tells employees to fill ABC Company trucks with dyed diesel fuel. The truck driver tells the agents that there are other trucks located at the ABC Company with dyed diesel fuel in the ordinary fuel tanks attached to the trucks. Department agents then go to the ABC Company and conduct an inspection. Agents find 2 vehicles registered to the ABC Company with dyed diesel fuel in the ordinary fuel tanks of the vehicles.

In this example, there are 3 separate occurrences. The truck driver is assessed a first occurrence penalty for dyed diesel fuel found in the ordinary fuel tank attached to the truck. The driver is the operator who had physical control over the truck when dyed diesel fuel was found in the tanks. The ABC Company is assessed a first occurrence penalty for the first licensed motor vehicle inspected at the business found with dyed diesel fuel in the ordinary fuel tank attached to the motor vehicle. The company is also assessed a \$5000 second occurrence penalty for the second licensed motor vehicle inspected at the business found with dyed diesel fuel in the ordinary tank attached to the motor vehicle. The ABC Company is the person who has physical control over the trucks at the time of inspection.

EXAMPLE 2: Truck driver #1 was previously issued a first occurrence penalty when he or she was found operating an ABC Company truck with dyed diesel in its tanks. Truck driver #1 returns this truck to the ABC Company. Several months later, agents inspect the ABC Company. The same truck previously driven by truck driver #1 is found to have dyed diesel fuel in its tanks. At a later inspection, truck driver #2 is found to be operating the same truck with dyed diesel in its tanks. In addition, truck driver #1 was found to be operating a truck with dyed diesel in its tanks. Six months after its first inspection, ABC Company acquires 5 new trucks. During the course of an inspection, all 5 of the new trucks are found to have dyed diesel in their tanks.

The ABC Company is issued a first occurrence penalty for the truck discovered during the agent's first inspection at ABC Company. The ABC Company is the person who has physical control over the truck at the time of inspection. . Truck driver #2 is issued a first occurrence penalty. Truck driver #2 is the person who has physical control over the truck at the time of inspection. Truck driver #1 is issued a \$5000 second occurrence penalty because he or she has physical control over the truck at the time of inspection and it is the second time he or she has committed a violation of subsection (b) of this Section. Company ABC is issued a separate \$5000 second occurrence penalty for each of the 5 new trucks

because the company has physical control over each of these trucks, and each truck represents a second and subsequent violation of subsection (b) of this Section.

EXAMPLE 3: The owner of XYZ Company is driving a truck that is inspected and found to have dyed diesel fuel in the ordinary fuel tank attached to the truck. Several hours later, a second truck owned by XYZ Company and driven by an employee is inspected. It, too, is found to have dyed diesel fuel in the ordinary tank attached to the truck.

In this example, there are 2 separate occurrences. The owner of Company XYZ driving the truck is assessed a first occurrence penalty for dyed diesel fuel found in the ordinary fuel tank attached to the truck, and the employee of Company XYZ driving the second truck is assessed a first occurrence penalty for dyed diesel fuel found in the ordinary fuel tank attached to the truck. The owner and employee are each persons who have physical control over the trucks, and as such, are operators subject to first occurrence penalties.

EXAMPLE 4: Robert Andrew takes his family water skiing on Fox Lake. The boat is stopped for a routine inspection and dyed diesel fuel is found in the boat's fuel tanks.

Mr. Andrew is assessed a first occurrence penalty for dyed diesel fuel found in the ordinary fuel tank attached to the watercraft. Mr. Andrew's ski boat is a recreational-type watercraft required to use clear diesel fuel. Dyed diesel fuel may be placed in the tanks of commercial watercraft, however, without penalty. For example, tugboats or commercial fishing boats found to have dyed diesel fuel in their tanks will not be subject to the penalty imposed in this subsection (b).

- c) *Any person who owns, operates, or controls any container, storage tank, or facility used to store or distribute dyed diesel fuel without the notice required by Section 4f of the Motor Fuel Tax Law shall pay a penalty of \$500 for the first occurrence and \$1000 for the second occurrence and each occurrence thereafter. [35 ILCS 505/15] Section 4f requires that a legible and conspicuous notice stating "Dyed Diesel Fuel, Non-taxable Use Only" appear on all containers, storage tanks, or facilities used to store or distribute dyed diesel fuel. For purposes of this penalty, a series of similar violations occurring during the course of one inspection constitutes a single occurrence.*

EXAMPLE 1: A licensed motor fuel distributor has 5 bulk storage tanks of dyed diesel fuel. During an inspection, agents find that none of the 5 tanks are marked with the required dyed diesel fuel notice.

In this example, the distributor is assessed a first occurrence penalty of \$500 for all 5 storage tanks found without the required notice. This series of similar violations results in one first occurrence penalty.

EXAMPLE 2: In the course of an inspection of a licensed motor fuel distributor with multiple locations, a motor fuel distributor is found to have 5 unmarked tanks at the first location, 3 unmarked tanks at the second location, and one unmarked tank at the third location. For purposes of this penalty, the violations found at the first, second and third location are considered a single occurrence spanning multiple locations during one inspection. However, if a subsequent inspection

revealed that his or her storage tanks did not contain the required notice, the distributor would be assessed a second occurrence penalty of \$1000. These violations would be considered to have occurred during a separate inspection.

- d) *Any person who sells or transports dyed diesel fuel without the notice required by Section 4e shall pay a penalty of \$500 for the first occurrence and \$1000 for the second occurrence and each occurrence thereafter. (Section 15 of the Law) A legible and conspicuous notice stating "Dyed Diesel Fuel, Non-taxable Use Only, Penalty for Taxable Use" must appear on all bills of lading and invoices accompanying any sale of dyed diesel fuel. (Section 4e of the Law)*

EXAMPLE 1: A licensed motor fuel distributor is inspected at one of its 3 locations. Three dyed diesel fuel sales invoices are found without the required dyed diesel fuel notice. During the course of a week-long inspection, agents examine invoices at the other 2 bulk plants of this distributor. At the second location, no violations are found, and at the third location, none of the diesel fuel sales invoices contain the required dyed diesel fuel notice.

In this example, the licensed motor fuel distributor is assessed a first occurrence penalty of \$500 for all invoices found at the first and third locations without the required notice. The unmarked invoices found at these locations constitute a single occurrence spanning multiple locations during one inspection. However, if a subsequent inspection revealed that his or her invoices did not contain the required notice, the licensed motor fuel distributor would be assessed a second occurrence penalty of \$1000.

- e) *Any licensed motor fuel distributor or licensed supplier who sells or attempts to sell dyed diesel fuel for highway use shall pay a penalty of \$5000 for the first occurrence and a \$10,000 penalty for the second occurrence and each occurrence thereafter. In addition, on and after August 2, 2001, any licensed motor fuel distributor or licensed supplier who sells or attempts to sell dyed diesel fuel for use by recreational-type watercraft on the waters of this State shall pay a penalty of \$5000 for the first occurrence and a \$10,000 penalty for the second occurrence and each occurrence thereafter. The penalties imposed under this subsection (e) on and after July 29, 2010 shall be \$1000 for the first occurrence and \$5000 for the second occurrence and each occurrence thereafter. (Section 15 of the Law)*
- f) *Any person subject to the penalties described in this Section may protest the penalty by making a written request for a hearing within 60 days after notice of the penalty from the Department. If the hearing is not requested in writing within 60 days, the penalty assessment becomes final. (Section 15 of the Law)*
- g) The penalties imposed by subsections (b) and (e) of this Section will be imposed only when the special fuel contains the dye Solvent Red 164 in quantities greater than .1 part per million.

(Source: Amended at 36 Ill. Reg. 6677, effective April 12, 2012)