

Enforcement Action

Last Revision: January 30, 2014

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Background

What is the appropriate enforcement action for certain violations of retail fuel dispensers?

Under Wis. Stats. § 98.05(2), sealers or inspectors:

"shall inspect and test any weights and measures or commodities which are sold or used commercially as often as necessary to secure compliance with this chapter, and may seize as evidence, or reject and mark or tag as "rejected" those which are incorrect."

Possessing this authority, inspectors are authorized to reject retail motor fuel dispensers found to be incorrect. Depending on the type of violation and the circumstances surrounding it, weights and measures staff also have a variety of other enforcement tools available to ensure compliance.

Enforcement

Warning Letters - Should be considered whenever a series of violations, or a major violation, occur which indicates the owner or operator does not have proper testing and maintenance equipment to ensure the dispenser's accuracy and correctness according to Handbook 44. A written warning should also be considered when the information and education option has been previously exercised for the same violation and the action has failed in achieving compliance.

Red Tag – Red tagging a retail motor fuel dispenser should be considered when one of the following conditions exist:

1. Minus (over-registration) errors are in excess of twice the applicable tolerance.
2. The gallon and dollar indicating elements on the two sides of the dispenser are not in agreement.
3. Defective zero-set-back interlock which permits operator to start and stop the dispenser at will, without going back to zero.
4. Incorrect price extension. (When gallons dispensed multiplied by unit price does not equal the total dollar amount registered on dispenser).
5. Any condition which poses a safety risk to the user. (See petroleum inspection codes)
6. Any dispenser with a combination of violations (either tolerance or specifications), or a history of violations, which would indicate the owner or operator does not properly maintain their equipment to ensure accuracy and correctness.

 [NIST Handbook 44 Sec. 1.10 General Code and Sec. 3.30 Liquid-Measuring Devices; Uniform Compliance Enforcement Policy](#)
 [Wis. Stats. 98.05\(2\)](#)

Higher Level Enforcement Action - One should consult with his/her supervisor to consider higher level enforcement action whenever one of the following conditions exist:

- (1) A re-inspection of a rejected dispenser(s) shows the problem still exists and the owner/operator has control over the situation.
- (2) A re-inspection after a warning letter indicates the problem(s) still exists.
- (3) A prior history of violations exist and, as the result of a consumer complaint, an investigation reveals conditions which would warrant rejecting and "Red Tagging" a dispenser.
- (4) Evidence reveals an unwillingness to comply.
- (5) Conditions facilitate fraud.

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