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**LOCAL LAW NO. 2 OF 1986 AS AMENDED BY LOCAL LAW NO. 2 OF 2011**

**A LOCAL LAW REGULATING THE SALE OF GASOLINE FOR SALE IN DUTCHESS COUNTY**

**BE IT ENACTED by the County Legislature of the County of Dutchess as follows:**

**SECTION 1. LEGISLATIVE INTENT**

This local law prescribes regulations regarding the sale of Motor Vehicle Fuel and the prohibition of water contamination, lead contamination and the proper labeling of motor vehicle fuels for use in motor vehicles and motor vehicle engines. These regulations are based upon determination by this Legislature that the contamination of a Fuel or its improper use will endanger the public health or will impair, to a significant degree, the performance of a motor vehicle emission control device and for prevention of fraudulent practices which may occur in the sale of Motor Vehicle Fuels and certain other findings.

**SECTION 2. DEFINITIONS**

- (a) “**Commissioner**” means the Dutchess County Commissioner of Health.
- (b) “**Distributor**” means any person who transports or stores or causes the transportation or storage of gasoline from any point to any other point.
- (c) “**Gasoline**” means any fuel sold in Dutchess County for sale in motor vehicles and motor vehicle engines and commonly or commercially known or sold as Gasoline.
- (d) “**Gasoline Station**” means any Motor Fuel dispensing facility, service station, repair shop or other place or premises where gasoline is sold, offered for sale or allowed to be sold to the General Public at retail.
- (e) “**Leaded Gasoline**” means gasoline which contains more than .05 grams of lead per gallon or more than .005 grams of phosphorous per gallon.
- (f) “**Motor Fuel**” means liquid used as fuel for internal combustion engines. This term shall specifically include, but not be limited to gasoline and diesel fuel.
- (g) “**Operator**” means the person in charge of a Gasoline Station. This term shall specifically include, but not be limited to, the Owner, Leasee, Manager, Assistant Manager or any other person in charge of the operations or activities of a Gasoline Station.
- (h) “**Person**” means any natural person, corporation, unincorporated association, firm partnership, joint venture, joint stock association or other entity or business organization of any kind.
- (i) “**Storage Tank**” means any reservoir or container used for the holding of Motor Fuel. This term includes, but is not limited to, above ground gasoline tanks, underground gasoline tanks, and delivery gasoline tanks or trucks.
- (j) “**Unleaded Gasoline**” means gasoline containing not more than .05 grams of lead per gallon and not more than .005 grams of phosphorus per gallon.
- (k) “**Octane**” means the rating of the anti-knock characteristics of a grade or type of automotive gasoline as more fully defined in 15 United States Code Section 2821 and the applicable Federal Regulations pursuant thereto.

**SECTION 3. TEST METHODS**

The water, Octane, Lead and Phosphorus content of Gasoline will be determined by such tests as may be approved by the Commissioner. Any certificate duly signed by a chemist, analyst or other expert employed by the Commissioner or any analysis, examination or investigation made by such analyst, chemist or expert with respect to any sample of Gasoline which the Commissioner has caused to be examined shall be presumptive evidence of the facts therein stated.

**SECTION 4. RIGHT OF ENTRY**

The Commissioner or his Authorized representatives shall have the right to enter any gasoline station or the premises or property of any operator or distributor and shall have the right to make inspections, take samples and conduct tests to determine compliance with this Local Law. All distributors and operators shall be required to produce their books to the Commissioner for inspection.

**SECTION 5. GASOLINE DISTRIBUTORS**

No Distributor shall sell to any Distributor or Operator, any gasoline which is falsely described or labeled. A distributor shall be liable for the transfer of gasoline into the proper storage tank.

## **SECTION 6. DUTIES OF OPERATOR**

- (a) No operator, distributor or their employee or agent shall sell, introduce or cause or allow the introduction of leaded gasoline into any motor vehicle which is labeled "UNLEADED GASOLINE ONLY."
- (b) No operator, distributor or their employee or agent shall sell, expose for sale or offer for sale any gasoline in any manner whatsoever so as to deceive or tend to deceive the purchaser as to the nature, quality and identity of the gasoline so sold or offered for sale.
- (c) Each operator shall affix to each gasoline pump stand a permanent legible label as follows:
  - 1. For gasoline pump stands containing pumps for the introduction of unleaded gasoline into motor vehicles, the label shall state, "UNLEADED GASOLINE."
  - 2. For gasoline pump stands containing pumps for the introduction of super unleaded gasoline or premium unleaded gasoline into motor vehicles, the label shall state, "PREMIUM UNLEADED GASOLINE."
  - 3. For gasoline pump stands containing pumps for the introduction of leaded gasoline into motor vehicles, the label shall state, "LEADED GASOLINE."
  - 4. For gasoline pump stands containing pumps for the introduction of diesel fuel into motor vehicles, the label shall state, "DIESEL FUEL."
  - 5. Each gasoline pump shall clearly identify the octane rating of the gasoline dispensed from said pump.
- (d) Any label required under sub-section (c) of this section shall be located so as to be readily visible to the operator's employees and customers.
- (e) The operator of a gasoline station shall be required to measure the level of water contained in each gasoline storage tank located at such facility at least once each day on any day during which the facility is open to the public for any portion of such day.
- (f) The operator of a gasoline station shall be required to measure the level of water contained in each gasoline storage tank located at such facility within one hour after delivery of gasoline has been made to any such storage tank, except that if a delivery of gasoline is made during the time in which the gasoline station is not open to the public, then the operator shall measure the level of water contained in each gasoline storage tank into which gasoline was delivered within one hour after the gasoline station facility opens to the public.
- (g) No operator shall sell or offer for sale any gasoline which draws from a storage tank at a gasoline station which contains more than two (2) inches of water.
- (h) No operator shall sell or offer for sale gasoline from a pump which draws from any storage tank during the time in which a delivery of gasoline is being made to or into such tank unless the operator of the gas station shall have measured the level of water contained in any such storage tank immediately before the delivery begins and determined that the storage tank contains no more than two (2) inches of water.
  - (1) Every gasoline station in this County shall cause to be posted, in a conspicuous place:
    - 1. The name of the station.
    - 2. The kind of entity it is.
    - 3. The operators of the station as defined in this Local Law.
    - 4. The post office address of the station.

## **SECTION 7. PENALTIES**

- (a) Any distributor who violates this Local law shall be subject to a civil penalty and shall pay to Dutchess County the amount of \$5,000.00 for each and every day of the continuance of such violation. Violation shall be presumed to have begun on the last delivery of gasoline to that pump's storage tank.
- (b) Any operator who violates Section 6 (a) or 6 (b), or 6 (c) or 6 (d) shall be subject to a Civil Penalty and shall pay to Dutchess County the amount of \$1,000.00 for each and every day of the continuance of such violation. Violation shall be presumed to have begun on the last delivery of gasoline to that pump's storage tank.
- (c) Any operator who violates any other Sections of this Local Law shall be subject to a Civil Penalty and shall pay to Dutchess County continuance of such violation. Violation shall be presumed to have begun on the last delivery of gasoline to that pump's storage tank.
- (d) Where there is evidence of intent to defraud, the Commissioner may refer evidence of such violation to the Dutchess County District Attorney or, in absence of intent to defraud, refer the violation to the Dutchess County Attorney for commencement of a Civil Action in the name of Dutchess County to recover a Civil Penalty in the amounts prescribed by this Local law. A cause of Action for recovery of such penalty may be released, settled or compromised by the Commissioner before the matter is referred to the Dutchess County Attorney and thereafter by the Dutchess County Attorney.
- (e) All moneys collected shall be deposited in the General Fund of the County of Dutchess.

## **SECTION 8. ENFORCEMENT**

- (a) This Local Law shall be enforced by the Dutchess County Department of Health which shall have the authority to condemn any equipment used in dispensing gasoline in violation of this Local Law or to order such a condition rectified within twenty-four (24) hours.
- (b) Any condemnation of equipment shall be in accordance with the procedures set forth in Article 16 of the New York State Agriculture and Markets Law.

## **SECTION 9. HEARING PROVISIONS**

- I.** (a) The Commissioner may cause to be held a formal hearing on any alleged violation of this Local Law. A formal hearing shall be on due and adequate notice to the person(s) concerned and shall be set down for a day certain.
- (b) The Commissioner is empowered to appoint a Hearing Officer who shall conduct a formal hearing. The Hearing Officer may be an impartial employee of the Department of Health who has not been involved in any way with the action in question.
- (c) **The notice of hearing shall set forth:**
1. The time and place of the hearing;
  2. The purpose of the hearing;
  3. The charges and violations complained of;
  4. The right to present evidence;
  5. The right to examine and cross-examine witnesses;
  6. The right to be represented by counsel.
- (d) **On the return day of the hearing:**
1. The Hearing Officer shall note the appearance of the persons attending the hearing;
  2. Witnesses shall be sworn and testimony shall be recorded;
  3. The testimony shall be transcribed within a reasonable time after the conclusion of the Hearing.
- (e) The Hearing Officer shall thereafter prepare Finds of Fact, Conclusions, and Recommendations on which the Commissioner shall make a formal order setting forth the determination, conditions if any to be complied with, and Civil Penalties, if any.
- (f) A copy of the Order of the Commissioner following a formal hearing shall be served on all respondents.
- (g) Nothing herein contained shall preclude the Commissioner from taking any action in addition to the formal hearing herein provided for, as may be prescribed by law, nor shall the Commissioner be precluded from taking such other action by virtue of the Order made pursuant to this Section.

### **II. Service of an Order or Notice of Hearing shall be made as follows:**

- (a) Enclosing the Order or Notice in a post-paid envelope directed to the person(s) concerned at the address last known to the Commissioner and depositing such envelope in an official depository maintained by the United States Post Office; or
- (b) Leaving the Order or Notice with the person concerned or with a person in charge of the premises; or
- (c) Posting the Order of Notice at the entrance door of the premises involved.

### **III. The Commissioner, the designated Hearing Officer or the Dutchess County Attorney may issue subpoenas on request of any party** to the proceedings of any formal hearing set down by the Commissioner.

## **IV.**

- (a) **The Hearing Officer shall not be bound by the rules of evidence in the conduct of a hearing, but the Determination shall be founded on sufficient factual evidence to sustain it.**
- (b) Proof may be adduced with respect to ongoing violations occurring up to and through the date of the Hearing, when those violations are sufficiently similar to those charged, to put respondent on notice of the nature of the violation.
- (c) If a respondent has been served with a Commissioner's Order in conjunction with a Notice of Hearing, proof may be adduced with respect to violations of that Order after the underlying violation has been proven.
- (d) On the conclusion of a Hearing, the Commissioner shall take such action as he deems proper, and shall execute an Order carrying the findings and Determinations into effect.
- (e) The action of the Commissioner may include the assessment of Civil Penalties as provided by law.
- (f) The minutes of a formal hearing shall be made available to all parties for examination at the office of the Commissioner.
- (g) Copies of the minutes of a formal hearing may be purchased at the rate per page covering the cost thereof.

## **SECTION 10. SEVERABILITY**

If any provision of this Local Law of the application thereof to any person or circumstance shall be adjudged invalid by a court of competent jurisdiction, the remainder of this Local Law and the application of any part thereof to any other person or circumstance shall not be affected thereby. To this end, the provisions of each section of the Local Law are hereby declared to be severable.