



US Environmental Protection Agency
Air and Radiation
Office of Transportation and Air Quality

April 1998

Kevin J. Kyle
PAL Energy Corporation
200 Church Street
Palmyra, N.Y. 14522

Dear Mr. Kyle,

This is in response to your January 22, 1998 letter to the Environmental Protection Agency (EPA) in which you raised an issue regarding the sampling and testing requirements for parties who import conventional gasoline into the United States by means of transport trucks. Specifically, you asked whether "per-batch" sampling and testing conducted by an independent laboratory at the foreign refinery/terminal may be used to satisfy a truck importer's quality assurance sampling and testing requirements.

Under the anti-dumping regulations, importers are required to sample and test each batch of imported gasoline. 40 CFR 80.101(i). For truck importers this means sampling and testing each truck or each truck compartment. The every-batch sampling and testing requirement, however, is difficult to meet for truck importers because of the relatively small batch volumes involved. As a result, on August 29, 1994, EPA issued guidance which states that truck importers of conventional gasoline may meet the importer sampling and testing requirements using test results obtained from the foreign truck-loading terminal, in lieu of sampling and testing each truck or truck compartment. See Question 1, "Importer Issues," RFG/Anti-dumping Questions and Answers, August 29, 1994. Because in most cases the terminal operator is not subject to United States laws, the guidance also includes certain safeguards intended to ensure that the gasoline meets the applicable standards. These safeguards include a requirement that the truck importer conduct a program of quality assurance sampling and testing to verify the terminal's testing. The quality assurance testing may be conducted by either the importer or an independent laboratory. The guidance also provides that EPA inspectors and auditors must be given full access to the foreign terminal and any laboratory that analyzes samples taken at the terminal, for purposes of conducting inspections, reviewing records, collecting gasoline samples and performing audits.

In a situation in which an independent laboratory samples and tests the gasoline at the truck-loading terminal supplying the importer's trucks, EPA believes that additional quality assurance sampling and testing by the importer or independent laboratory may be redundant. As a result, EPA believes that a truck importer may satisfy the sampling and testing requirements of § 80.101(i), including the quality assurance requirement in the August 29, 1994 guidance, using results from sampling and testing by an independent laboratory at the truck-loading terminal, provided that the sampling and testing is conducted subsequent to each receipt of gasoline into the storage tank supplying the importer's truck, or immediately prior to each transfer of gasoline into the importer's truck. All other requirements of the August 29, 1994 guidance must be met, including the requirement that the laboratory be one that is "independent" under the criteria of § 80.65(f)(2)(iii), and the requirement that EPA inspectors and auditors be given full access to the foreign terminal and any laboratory that analyzes samples taken at the terminal, for purposes of conducting inspections, reviewing records, collecting gasoline samples and performing audits.¹

If you have any further questions regarding this matter, please contact Marilyn Bennett at (202) 564-8989.

Sincerely,

Charles N. Freed
Director
Fuels and Energy Division

¹Note that the August 29, 1994 guidance was recently modified to allow tank truck importers to comply with the conventional gasoline standards on an annual average basis rather than on a per-gallon basis as required under the original guidance. See letter dated January 2, 1998, from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, to Gregory M. Scott, Esq., Counsel for the Society of Independent Gasoline Marketers of America.