September 2015

VFDA Compliance Bulletin

Guaranteed Price Contract Language

Vermont law (Title 9, Chapter 63, §2461e) requires a written contract between the consumer and fuel dealer for any guaranteed price plan for heating fuel. Failure to honor a contract with a consumer is a violation of the Vermont Consumer Fraud Act which is enforced by the Vermont Attorney General. The law applies to all guaranteed price plans, including fixed price, cap price, pre-buys, cost plus, or rack plus agreements.

The contract must be in writing (12 point font) and the terms and conditions of the plan must be clearly disclosed in "plain language." Solicitations for guaranteed price plans must also be in writing. The contract must include the number of gallons purchased by the customer, the price per gallon, the date when the program opens and closes, the effective date of the contract, whether the price per gallon is in effect regardless of market fluctuations, when the payment for the fuel is due, and whether the program offering is limited.

The contract should also spell out refund terms. Language suggested by VFDA's attorney is below.

> *Vermont law (Title 9, Chapter 63, §2461e) requires a written contract between the consumer and fuel dealer for any guaranteed price plan. The law requires a fuel dealer to secure any guaranteed price agreement with a futures contract or other means in order to ensure supply. If there is any undelivered fuel purchased under this guaranteed price plan which remains at the end of the contract period, it will be credited to the customer's account. This credit can be applied at the end of the season toward next year's contract or used for any future deliveries of fuel on a "will-call" basis – no cash reimbursement will be made. Any delivery of fuel over and above the original gallons agreed upon in the contract will be priced at market rate on the day of delivery.*

If the contract is a pre-buy or prepaid agreement, the disclosure must show how the gallons purchased by the consumer are secured. Vermont law requires that the dealer who sells a guaranteed price contract put in place one of the three following methods of security within seven days:

1) Obtain a fixed price futures contract for at least 75% of the maximum gallons the dealer has agreed to deliver under all the dealer's then accepted pre-buy contract, including this contract. For example, if a dealer has agreed to deliver at least 100,000 prepaid gallons, then the dealer, within 7 days of accepting the contract, must obtain fixed price futures contracts against at least 75,000 gallons: or,
2) Obtain a surety bond for at least 50% of the total amount of funds paid by all his pre-buy customers including this latest customer (A surety bond is a bond guaranteed by a financially responsible party other than the dealer. It is typically used in the construction industry and the surety is typically an insurance company); or,
3) Obtain a line of credit or letter of credit from an FDIC insured bank or similar financial institution for 100% of the cost of all the gallons the dealer has agreed to deliver. In the alternative, the dealer may elect to deposit cash for 100% of said cost in an FDIC insured account.

The suggested language in this compliance document was provided by Edward Miller, Attorney-at-Law. The language is designed to be generic and used for demonstration purposes only. As always, it is recommended you consult with an attorney before entering into any legal contract. Ed Miller can be reached at 802-485-8396 or edmiller@tds.net.

Vermont Fuel Dealers Association — 963 Paine Turnpike North, Berlin, VT 05602
Office: 802-230-4722 — Fax: 802-419-3313 — info@vermontfuel.com — www.vermontfuel.com