

Appendix A

Automatic Temperature Compensation Presentation and Letters

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Statement for the Record
Annual Meeting of the National Conference on Weights and Measures

Laws and Regulations Committee

July 14, 2008, Burlington, Vermont.

Madame Chairman and Members of the NCWM:

My name is Holly Alfano, representing NATSO, a trade association representing more than 1000 truck stops and travel plazas. Thank you for the opportunity to speak today.

I thank you for the many hours you have spent deliberating on the issue of ATC, and I encourage you to continue your careful deliberations. Consumers here in the United States are fortunate—even with the recent run up in fuel prices – to enjoy some of the lowest fuel prices among all of the industrialized nations. Consumers have an expectation of low prices, and any actions that are taken which affect fuel prices will be studied by them with a magnifying glass.

I have a presentation that contains a lot of numbers that explain how fuel is priced both at wholesale and retail—and I will be happy to run through it with anyone here who has questions. But retail fuel pricing is not rocket science; it is simple accounting. A retailer calculates the costs of a load of fuel and passes them on, factoring in the competitive marketplace and hopefully a margin that will allow him to stay in business. As you will see from reviewing the scenarios in the presentation, hot days or cold days make no difference. Costs are factored into pricing.

The recent run-up in fuel prices has seriously impacted independent fuel retailers. Their credit lines are maxed out, with rapidly escalating fuel prices seriously straining their cash flow. Credit card fees and other costs of doing business are cutting into margins like never before—and many retailers are on the verge of bankruptcy. The adoption of an expensive new technology such as ATC—that has no proven consumer benefit—will simply eliminate some of the retailers from the marketplace. They will not be able to afford to upgrade their equipment in the current business environment of shrinking margins and declining volume.

Please carefully evaluate the proposals for implementation of ATC. A continued examination of the facts will reveal that this ATC has no merit or consumer benefit. Thank you for your careful deliberation on this issue.

Holly Alfano
Vice President, Government Affairs
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Fuel Transactions

from Rack to Retail

Holly Alfano, NATSO

From Rack to Retail

- Jobber sends tank truck driver to "rack" to pick up product for retail location – "Bob's Truckstop"

 - Truck pulls up to terminal rack for 7800 gallons of diesel of ULSD

 - Meter at rack shows that truck receives 7800 gallons of ULSD
-

From rack to retail on a cool day

- Supplier produces invoice for fuel
 - Net billing terms calculate value of fuel based on density and temperature**
 - Supplier invoice –
Net billing terms based on
 - 55.8 degrees F, 36.4 gravity
$$7815 \text{ net gallons} \times \$2.597650 =$$
$$\$20,300.63 \text{ invoice cost of load}$$
-

Transportation Costs

- Transportation Costs:
 - Trucker bills for hauling
$$\mathbf{7800 \text{ gallons}} \times 2.5 \text{ cents/gallon} =$$
$$\$195$$
 - Trucker delivers 7800 gallons into Bob's UST
-

From rack to retail

- How many gallons are received by retailer Bob?
 - 7800 (Bob may lose a few gallons due to shrinkage, evaporation, fuel at bottom of truck, etc.)
-

At the retail location

- Bob now must price the fuel he received
 - He has 7800 gallons to sell; it cost him \$20,300 + \$195 for freight for a total of \$20,495
 - Per unit cost of goods
$$\begin{aligned} & \$20,495/7800 = \\ & \quad \$2.62756/\text{gallon} \end{aligned}$$
-

How does Bob price his fuel?

- Unit Cost of goods – \$2.63/gallon
 - Needs margin to cover rent/loan payment, costs of running dispensing equipment, labor costs, credit card and fuel card transaction costs
 - Bob has some aggressive competitors and Bob can't afford to lose business
 - Competition is a key factor in retail pricing of fuel
-

Another (warmer) day....

- Truck goes to terminal, pulls 8000 gallons (as metered)
- **Net billing terms calculate value of fuel based on density and temperature**

Supplier invoice, net billing terms are based on:

- 66.3 degrees F, 33.8 gravity
7987 net gallons X \$3.411800 =
\$27,250.05 (invoice cost of load)
-

Transportation Cost

- Trucker bills for hauling 8000 gallons at 2.5 cents/gallon =
 - \$200.00

 - Trucker delivers 8000 gallons to Bob's Truckstop
-

Back at Bob's Truckstop

- Bob has received 8000 gallons at a cost of $\$27,250.05 + 200 = \$27,450$

 - Cost of goods:
 - $\$27,450 / 8000 =$
 - $\$3.400625$ per gallon

 - Bob checks his competition, calculates his street price to cover his costs and hopefully make a margin to stay in business
-

Myths & Misinformation

- **MYTH:** Sometimes the oil companies give retailers free gallons (when it's warm); other times (when it's cold) they charge for gallons retailers don't receive
 - **Reality:** Net billing is simply a calculation to account for the value of the fuel sold based on temperature and density at the time of sale
 - **Texas vs. Minnesota-** If this myth were true, why would anyone operate a truck stop or gas station in Minnesota?
-

Myths & Misinformation

- **Myth:** Tank temperatures should be compared with the 60 degree standard
 - **Reality:** Wrong! The retailer was billed for and paid for fuel from the terminal that reflected the temperature at the time it was picked up at the rack. Tank temperatures should be compared with terminal temperatures since the pricing factors in temperature and density values.
-

Myths and Misinformation

- **Misinformation:** Retailers are collecting taxes they are not paying to the government.
 - **Reality:** Retailers DO NOT collect excise taxes; they are collected and paid at the wholesale level.
 - **Reality:** Retailers buy loads of fuel, the costs of which (including taxes) are calculated into retail pricing.
-

Myths and Misinformation

- **Myth:** The major oil companies control retailers (and the universe as we know it)
 - **Reality:** Around 95 percent of fuel retailers are independently owned and operated
-

Myths and Misinformation

- **Misinformation:** The major oil companies will pay for ATC.
 - **Reality:** The costs of implementation of ATC, as with other regulatory mandates in the past, will be paid for by retailers (and ultimately consumers).
 - **Reality:** Some retailers who cannot pass on the costs will go out of business, further lessening competition
-



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Good stuff.
TRUCKS
BRING IT

January 24, 2008

Judy Cardin
Chairperson
National Conference on Weights and Measures
15245 Shady Grove Road
Suite 130
Rockville, MD 20850

Re: Automatic Temperature Compensation

Dear Chairperson Cardin:

The Oklahoma Trucking Association (OTA) represents more than 450 companies that are involved and/or affiliated with the trucking industry in Oklahoma. As Executive Director of the OTA, I am writing to provide comments on the issue of Automatic Temperature Compensation (ATC) and its potential impact upon our members who are major consumers of diesel fuel. The ATC is a very serious matter to the OTA because of its impact and potential ramifications on our member companies.

OTA and its members realize and appreciate that the retail fuel industry is very competitive, with gas stations and truckstops competing fiercely to attract additional business. A fuel retailer prices fuel to cover the cost of the bulk fuel purchased and a reasonable return on its investment. In pricing diesel fuel, the retailer also must consider the prices that neighboring stations are charging, since a difference of as little as one penny per gallon could result in a gain or loss of business. In this competitive environment, inventory expansion and shrinkage must be accounted for in the retail price of diesel fuel, and any impact of temperature variances is eliminated through competitive pricing.

Because we believe that the marketplace already accounts for any temperature variation, we oppose both permissive and mandatory automatic temperature compensation.

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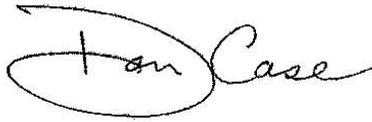
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In the case of permissive temperature control, we are in opposition to this practice because it could undermine fair trade and transparency in the retail marketplace. The use of temperature compensation equipment by an unknown portion of the retail fuel providers would greatly complicate our members' ability to determine the most economical place to refuel. Compensating and non-compensating retailers, whether located across the highway from one another or across a state border, would no longer be selling comparable volumes of product, making it impossible to make an educated purchasing decision.

We also oppose mandatory automatic temperature control because of the impact that we believe such a mandate would have on our trucking members and fuel distributors. We recognize that any significant mandatory equipment investment by fuel distributors must be passed on to consumers. In the case of the installation of automatic temperature compensation devices this would translate into an estimated cost of \$2,000/pump. The net result of this mandate would be higher diesel prices for our member companies toward addressing a problem that we does not believe exist nor is justifies this level of investment..

Please feel free to share our comments at the upcoming meeting of your organization. Also, please contact me at (405) 843-9488 if you have any questions regarding this letter.

Sincerely,

A handwritten signature in black ink that reads "Dan Case". The signature is written in a cursive style, with the first name "Dan" and the last name "Case" clearly legible. There is a large, sweeping flourish above the "D" in "Dan".

Dan Case
Executive Director
Oklahoma Trucking Association

BOB ANTHONY
Commissioner

JEFF CLOUD
Commissioner

JIM ROTH
Commissioner



OKLAHOMA CORPORATION COMMISSION
PETROLEUM STORAGE TANK DIVISION
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January 24, 2008

Ms. Judy Cardin, Chairman
The National Conference on Weights and Measures
15245 Shady Grove Road, Suite 130
Rockville, MD 20850

Re: Automatic Temperature Compensation: Opposition to Permissive
or Mandatory ATC Requirements

Dear Chairman Cardin:

We are writing to you on behalf of the Oklahoma Corporation Commission, The Oklahoma Petroleum Marketers Association and the retail facility owners in the state of Oklahoma. To ensure fair competition, cost effective distribution of fuel and equitable treatment of consumers in addressing the issue of temperature variation in the retail sale of gasoline and diesel in the state of Oklahoma, the Oklahoma Corporation Commission requests that this letter be included as part of the record for the NCWM Interim Meeting to be held January 27-30, 2008. If this requirement is enforced it would put about 50% of our facilities out of business.

Thank you for taking the time to read our letter.

Sincerely,

Butch Jeffers, Manager
Compliance and Inspection
Oklahoma Corporation Commission
Petroleum Storage Tank Division

BJ:sa

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EXCELLENCE IS OUR STANDARD



January 24, 2008

Ms. Vicky Dempsey, Chair
Laws and Regulations Committee
The National Conference on Weights and Measures
15245 Shady Grove Road
Suite 130
Rockville, MD 20850

Re: Proposed changes to Handbook 130 Method of Sale Regulation - Automatic Temperature Compensation for Petroleum Products

Dear Ms. Dempsey:

Thank you for the opportunity to present comments to your Committee on this issue. The North Carolina Petroleum and Convenience Marketers represent more than 400 members in the retail petroleum marketing business. Our members strive to supply high quality fuels at competitive prices to the motoring public.

We are an industry dominated by small independent operators functioning in perhaps one of the most highly regulated industries in the country. Less than three per cent of the stores selling motor fuels are operated by the five major oil companies yet the list of state and federal agencies with oversight of our industry seems endless. Agriculture & Consumer Services (fuel quality & method of sale), DOT (transportation & hazmat), EPA (water & air quality, UST), Homeland Security, Insurance (Building & Fire Code), IRS (tax collection), Labor, OSHA and the list goes on. Compliance with the myriad of laws and regulations is not easy or inexpensive. And the impact of any new regulation impacts one of the most valuable commodities in public commerce, the price of fuel for transportation, heating and energy generation.

In spite of all of the above, the industry is one of the most price competitive there is. We post our price in three foot tall numbers on signs outside of their stores. No other commodity does that. This has generated a motoring public that is more price sensitive on this product than any other in the nation. A penny or two difference in price between competitors can mean gaining or losing a sale where marginal differences in cost decide whether a company is profitable or shows a loss for the month. Our point is that any decision to mandate or permit ATC at retail is costly to retail operators and their customers and must not be made without some objective cost benefit analysis. We sincerely hope that a study being considered by the General Accounting Office (GAO) will offer some concrete cost/benefit numbers. We encourage the NCWM to wait for the GAO study before acting on ATC. We feel recommendations urging moves to temperature compensation at all retail or just on high volume dispensers are based on educated speculation more than a detailed study of temperature of fuels across



January 24, 2008
Page 2

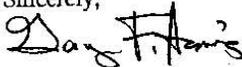
the impacted areas, the turnover rates for fueling facilities impact on temperature, a cost/benefit analysis to the motoring public, seasonal impacts on the perceived problem, alternative recommendations that may address any discrepancies found (i.e. adjustment at rack, regional increases in the reference temperature, etc.), etc. The rush to insure that consumers get the correct amount of fuel could actually adversely impact consumers (which it is touted as designed to protect) negating any argument that this is a consumer driven need when in actuality it is a desire to implement costly and unnecessary equipment upgrades for the sake of a more accurate measure that satisfies the scientific definition of accurate while ignoring the practical impact of a practical function.

In North Carolina we have already seen a drop off in the number of motor fuel outlets in rural areas due to required EPA underground storage tank upgrades. The cost to upgrade/replace tanks and piping and add expensive leak detection equipment was just too much to justify with the low profit margins on motor fuel. Many operators that did upgrade and keep their stores open may still be paying off loans obtained to perform the upgrade work and can not afford another round of costly equipment upgrades. Our association is concerned that a mandated or phased in rule would be difficult to implement due to our ability to obtain the equipment upgrades. Could a move to ATC possibly result in an equipment shortage?

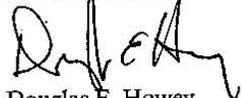
An area that we have heard very little about is how ATC would impact the state agencies responsible for enforcing these requirements. Everything we HAVE heard leads us to believe that inspections and testing will take longer and will require expensive new testing apparatus. Where will the funding come from for this? Since states are not willing or able to raise taxes for ANY new programs, we can only anticipate higher fees on the retail petroleum marketing sector to pay for the new inspection and testing programs resulting from a move to ATC.

Obviously there are many questions yet to be answered. We urge you and your committee to be patient and wait for more information beginning with the GAO study before rushing forward with a recommendation on implementing ATC. The current method of sale has served the American motoring public cost efficiently. While higher prices do exacerbate any gains or losses that temperature impacts have in this area, educated review and information on impacts, costs, equipment availability, etc. are the key. Until definitive evidence nationwide can be gathered and reviewed we encourage the Committee to leave the issue alone.

Sincerely,



Gary F. Harris
Executive Director



Douglas E. Howey
Government & Regulatory Affairs Director

Cc: Mr. Roger Macey
Mr. Stephen Benjamin
Mr. Joe Benavides
Mr. John Gaccione



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January 23, 2008

Ms. Judy Cardin & NCWM Officials
Chairman
The National Conference on Weights and Measures
15245 Shady Grove Road
Suite 130
Rockville, MD 20850

Re: Automatic Temperature Compensation

Dear Chairman Cardin:

PMAA is a national federation of 46 state and regional trade associations who collectively represent 8,000 independent petroleum marketing companies. These marketing companies own 60,000 gas stations, convenience stores, and truck stops. They also supply fuel to an additional 40,000 retail fuel locations independently owned and operated. Additionally PMAA represents all heating oil dealers in the U.S. as well.

We appreciate your effort to examine the issue of Automatic Temperature Compensation (ATC) at retail. PMAA urges the NCWM to oppose any resolution that would either permit or require ATC equipment at retail fueling locations.

As you may be aware, Congressman Bart Gordon (D-Tenn.), Chairman of the House Science and Technology Committee, recently issued a letter requesting that the U.S. Government Accountability Office (GAO) assess several factors associated with the installation of ATC. The purpose of Chairman Gordon's letter is to obtain much needed data on the impact that ATC will have on consumers. Involving GAO in the issue is especially important in light of the decision by the National Academy of Sciences to withhold the completion of the ATC study originally requested of them due to budgetary concerns. The scope of the requested GAO study is outlined in the attached letter.

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You may also be aware that the California legislature enacted a law that requires a comprehensive study of the ATC issue. This study will focus on geographic temperature variances, available temperature compensating technologies and a cost-benefit analysis to determine whether fuel temperature compensation is needed. The California law was supported by the California Independent Oil Marketers Association (CIOMA), a member of PMAA. The results of the California study are due by the end of 2008.

PMAA believes that it is critical for the NCWM to fully understand the implications of such a drastic change in the way fuel is sold at retail in the United States. The studies referenced above will provide NCWM members with the data necessary to make an informed decision on the use of ATC. In the absence of this data, it is unlikely that the NCWM will be able to evaluate ultimate costs and benefits to the consumer from ATC. Without this important information, we may find that consumers are disadvantaged by the use of ATC.

It is very important that all stakeholders seek out the facts on this issue instead of relying merely on unverified and unsubstantiated data that has been distributed by some groups in this debate. We do not agree with the assertion that fuel temperatures directly indicate any losses or gains *to the consumer*. We believe that only a comprehensive scientific and economic study can establish such facts and we urge the NCWM to assist the GAO in the prompt completion of its study.

PMAA is opposed to both the permissive and/or mandatory use of ATC devices at the retail level at this time. Under permissive temperature compensation, few retailers will be likely to install the equipment, unless there is a perception by retailers that somehow those costs can be recouped in the marketplace. Permissive temperature compensation will create ambiguity and lead to unequal cost and volume delivery standards from location-to-location.

Retail petroleum distribution is one of the most competitive industries in the United States. Few industries compete on the basis of one penny per gallon and advertise their prices on signs that are visible to consumers from the highway. Inventory expansion or shrinkage is factored into the price per gallon, and the impact of temperature variances on the quantity of fuel available for sale should be eliminated through competitive pricing. For example, assume a retailer sells fuel in a cold climate and will lose 10 gallons per bulk shipment as a result of product shrinkage. This retailer would be expected to price its product in a manner to cover the cost of the

bulk fuel it purchased, the shrinkage in inventory, and a reasonable return on its investment. Similarly, a retailer that sells fuel in a warm climate may gain an extra 10 gallons per bulk delivery.

This retailer also is expected to price his product in a manner to cover the cost of the fuel purchased in bulk with a reasonable return on investment. The retailer may then recognize that it could undercut the price of fuel sold at the neighboring station due to product expansion, and would be expected to lower the price per gallon to attract additional business. The competing station may also lower its price to remain competitive. Robust competition may ensure that any product expansion or shrinkage will be accounted for and passed on to the consumer as the retailer competitively prices the fuel.

We also believe that mandatory ATC will disadvantage the consumer, as the substantial costs associated with installing and maintaining ATC equipment will simply must be passed on to the consumer. With only pennies per gallon in retail fuel margins, retailers simply cannot absorb the costs associated with installation of ATC equipment, as well as the expected increased state inspection costs that will be passed on to the retail community, and ultimately, the consumer.

PMAA would like to emphasize that our members are mostly small businesses. It should be noted that the large integrated oil companies only own and operate fewer than 5 percent of the nation's retail outlets. Imposing new costs on small business must be carefully considered and fully justified before adopted.

Sincerely,



Dan Gilligan
President



Arizona Petroleum Marketers Association

January 23, 2008

Ms. Judy Cardin & NCWM Delegates
National Conference on Weights & Measures
15245 Shady Grove Road
Suite 130
Rockville MD 20850

Dear Chairman Cardin & NCWM Delegates:

I am writing on behalf of the Arizona Petroleum Marketers Association (APMA), a non-profit trade association representing petroleum marketers throughout Arizona. Our members are primarily small family-owned businesses directly marketing petroleum products through over 850 retail locations throughout the state. APMA members serve a variety of customers including retail consumers, agriculture, construction, public and private business fleets, local government fleets, school districts, hospitals and emergency vehicles.

APMA requests that this letter be entered into the official record for the NCWM Interim meeting taking place in Albuquerque January 27-30, 2008. APMA continues to be opposed to any NCWM resolution that would allow for permissive and/or mandatory ATC equipment at retail because it will likely harm Arizona consumers by increasing gasoline prices.

Gasoline retailers currently sell fuel by the gallon with a gallon of fuel containing 231 cubic inches—retailers are obeying the law when selling fuel in this manner. If ATC becomes law and requires a retailer to sell a gallon containing 235 cubic inches, it would follow that the price of that gallon is going to be more expensive. In other words, if ATC requires a retailer to dispense "larger" gallons, then per-gallon prices are going to rise not decline for consumers. It is quite ironic that the states which would be required to dispense "larger" gallons are the same states where W&M officials are the loudest proponents of ATC—those "larger" gallons are ultimately going to result in higher prices for consumers.

Installing ATC will primarily be on the backs of small retailers. In Arizona, 93% of all retail is independently owned—not owned by a refining company. This means that the cost to install ATC is not going to be paid for by "Big Oil." APMA has repeatedly asked manufacturers and local distributors to provide pricing information for retrofitting and/or

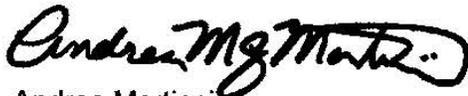
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replacing existing retail dispensers with ATC dispensers. We have not received specific costs for the Arizona market. However, based on equipment sold in Canada, we can estimate that retrofits range in cost from \$2,000-\$3,500 per dispenser. For pumps where retrofits cannot correct, new ATC dispensers would range from \$20,000-\$25,000 each. With over 2,000 retail outlets in Arizona, of which 40% are in rural outlying areas, the cost to those independent rural businesses alone would be over \$20 million dollars. The figure increases to over \$30 million when you include the additional 60% of retail found in larger urban areas. Additional hidden costs of labor and breaking concrete will only add to the retailer's financial burden. Forcing retailers to pay thousands of dollars to install ATC equipment that may result in higher prices for their consumers threatens their ability to even remain in business. Traditionally, less retailers in business means less competition which also harms consumers.

Over the past year at NCWM meetings, delegates have also advocated that ATC equipment offers a more accurate way to measure the energy content in a gallon of gasoline—so that consumers will receive the same energy from a gallon of gasoline regardless of the temperature. However, additional factors affect the energy content of fuel—including the grade of crude oil used, the refining process as well as the percent of ethanol in the fuel. Many states, including Arizona require the use of various “boutique fuels” for air quality purposes which affect the energy content of fuel, arguably more so than the temperature. With the recent federal mandates for the use of renewable fuels like E-85 and biodiesel, how will NCWM handle the use of ATC for these various fuel formulations?

APMA believes that requiring either permissive and/or mandatory ATC equipment at retail will only end up harming the very consumers that Weights & Measures is supposed to protect—resulting in higher gas prices and less independent small petroleum retailers. Again, APMA urges the NCWM to oppose any resolutions that would permit or require ATC equipment at retail fueling sites.

Sincerely,



Andrea Martincic
Executive Director

APMA* P.O. Box 93426* Phoenix AZ* 85070* (480) 460-1561* FAX (480) 460-9016



January 22, 2008

Via e-mail: judy.cardin@wisconsin.gov

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Judy Cardin, Chairperson
National Conference on Weights and Measures
15245 Shady Grove Road, Suite 130
Rockville, MD 20850

Dear Chairwoman Cardin,

The Colorado-Wyoming Petroleum Marketers Association/Convenience Store Association opposes the development of a permissive or mandatory standard for temperature compensation of motor fuel at the retail level. The 400 plus petroleum marketer and associate member companies ask that this letter be incorporated in to the record of the interim meeting of the National Conference on Weights & Measures (NCWM), scheduled for January 27-30, 2008 in Albuquerque, N.M.

As an association representing small business fuel retailers, we and other petroleum retailing groups have attempted to provide factual information for the NCWM, to aid the groups in their decision making process. The implementation of ATC at the retail level will have a major impact on consumers, as it will change the way fuel has been measured in the U.S. for the last 100 years. Before embarking on such a major change, it is important to have factual information about the impact of such a change.

We have supported and encouraged efforts to get an independent body to investigate and gather information on the merits of ATC. We are encouraged to learn that the Government Accountability Office (GAO) has embarked on a study to provide the NCWM with this much-needed information. Though we have no way of predicting the outcome of this study, we have confidence in this unbiased, independent approach of the GAO. We recognize that factual information about the effects of ATC is needed and we are hopeful that the NCWM shares our concern about the need for this information before moving forward with this major change in the way fuel is measured and sold.

Unfortunately, some groups claiming to represent consumers are not interested in factual information. They continue to pressure NCWM, through a variety of tactics, to move forward with ATC without waiting for the facts. Perhaps some of these groups are interested in aggressively pushing the NCWM to adopt a standard for ATC because they are involved in litigation and they believe that if NCWM adopts a standard for ATC, somehow that will boost the chances of success with this litigation. While it is inappropriate to speculate about what the motivations of these various "consumer" groups may be, it is important to point out that they have engaged in a repeated effort to distort and mislead both the public and the NCWM on the issues surrounding ATC.

As one example, the "Foundation for Taxpayer and Consumer Rights" (FTCR) and its subgroup, "OilWatchDog.org" have repeatedly spread false claims on the internet, attempting to suggest improperly not only on the part of petroleum groups but also of the NCWM. They have repeatedly suggested that oil companies sponsor NCWM events, implying that NCWM representative votes would be or could be influenced for the cost of a dinner or a cocktail. The fact is that there have been no sponsorships of any kind involving the petroleum industry and NCWM. These baseless and deliberate distortions should leave the NCWM representatives questioning the motives of these groups.

Page Two – NCWM ATC

It is ironic that FTCR and OilWatchDog should raise these issues, as neither group is willing to provide specific details on their own funding. Harvey Rosenfield, founder of FTCR, is known to represent trial lawyer interests and has received hundreds of thousands of dollars in legal fees as a result of some of FTCR's efforts. For example, it has been reported that FTCR founder Harvey Rosenfield received more than \$570,000 in legal fees from the insurance rate rollback in California that FTCR pursued. It was also reported that Allstate Insurance agreed to donate \$5 million to a non-profit foundation following an agreement with Rosenfield over a suit he had filed against the company. Rosenfield used that money to set up the Consumer Education Foundation, which pays him an annual salary of \$100,000. He also received \$100,000 from FTCR to serve as the group's executive director, until he resigns. Moreover, he continues to provide legal representation for the group, collecting \$150,000 in 2004 and \$167,757 in 2005, according to published reports.

A second misrepresentation involves the Owner Operator Independent Drivers Association (OOIDA), which has claimed that "Big Oil" (the major oil companies) owns, operates or controls anywhere from 25 to 60 percent of retail stations in the U.S. In fact, the major oil companies own less than 10 percent of retail motor fuels locations. They are owned, operated and controlled by small business retailers. OOIDA and others seem to want to convince the public and NCWM that implementation of ATC will be paid for by major oil companies, when in fact the costs will be paid by retailers, and most likely, passed on to consumers.

As NCWM has heard from many petroleum retailers, implementation of ATC will be very costly for the industry. The costs of ATC equipment are estimated to be between \$1,500 and \$2,000 per dispenser. Margins from the sale of motor fuel are very slim, and sometimes non-existent, which is the reason why retailers have come to rely on other profit centers such as fountain drinks, sandwiches, etc., in order to survive. Because of these slim margins on motor fuel, it is very likely that the costs of implementation of ATC will be passed on to consumers. Before such a radical change in fuel measurement is imposed on the motoring public, we strongly encourage NCWM to gather information about whether there is any benefit to consumers.

It has been suggested that implementation of ATC is a more accurate way to measure fuel since it is believed that expansion of fuel due to temperatures above 60 degrees delivers less energy content per tank. Unfortunately, temperature is only one factor affecting energy content. There are many other variables, including whether the fuel has been blended with ethanol or biodiesel, which deliver significantly less energy per gallon than conventional motor fuels. As you know, Congress has dramatically expanded the national renewable fuels mandate with the passage of the recent energy bill. It will require that 36 billion gallons of biofuels be blended in to our nation's fuel supply over the next few years. It is misleading to the public to suggest that ATC will guarantee that every gallon of fuel delivers equal energy content. Given the fact that over the next few years, a growing percentage of our nation's fuel supply will be blended with biofuels in varying amounts, the energy content from tank to tank, station to station, state to state, will vary.

Finally, the NCWM must recognize that the consumer community is not unanimously in support of ATC. The American Trucking Associations, representing the nation's largest consumers of diesel fuel, oppose both mandatory and permissive temperature compensation. They support national uniformity of fuel measurement, and recognize that the costs of implementation of ATC are disproportionate to any benefit that may be derived by consumers.

On behalf of the Colorado-Wyoming Petroleum Marketers Association/Convenience Store Association, we encourage NCWM to oppose development of a mandatory or permissive standard for ATC.

Sincerely,



Mark Larson
Executive Director



January 21, 2008

Ms. Judy Cardin
Chairman
The National Conference on Weights and Measures
15245 Shady Grove Road
Suite 130
Rockville, MD 20850

Re: Automatic Temperature Compensation; Opposition to Permissive or
Mandatory ATC Requirements

Dear Chairman Cardin:

On behalf of the members of the Petroleum Marketers and Convenience Store Association of Kansas, a trade association representing 300 petroleum marketers and convenience store retailers, we thank you for the opportunity to comment on Automatic Temperature Compensation (ATC) and request that our comments be included as part of the record for the NCWM interim meeting taking place January 27-30, 2008.

We appreciate your effort to examine ATC and your consideration of the views of stakeholders in the debate. PMCA urges the NCWM to oppose any resolution that would permit or require either permissive or mandatory automatic temperature compensation equipment at retail fueling locations. Adopting the ATC standard would create confusion not only for the retailer but the consumer as well. A sign that reads "ATC fuel sold here" would have little meaning to the average consumer, but if forced to pay more at the pump to comply with ATC, the additional cost would definitely get their attention.

While science demonstrates that gasoline and diesel fuel expand slightly under higher temperatures and shrink under cooler temperatures, retailers can only sell the actual number of gallons they receive at the terminal and factor their pricing based on the price paid for the load of fuel. Any expansion or shrinkage of fuel is accounted for in the cost of goods and factored into the retailer's pricing.

The cost of installing ATC equipment is a very significant factor to consider in this debate. The cost of retrofitting an electronic pump is estimated to be \$1,800- \$2,300 per pump, an overall cost to the industry of \$2 - \$3 billion. This expense of retrofitting and replacing existing fuel dispensers would increase the retailer's cost of goods sold, and this increased cost ultimately would be passed on to the consumer -- all for a new method of fuel measurement with no proven consumer benefit. Kansas, being a rural state, has a mix of both electronic and mechanical pumps. We estimate that 40-50% of the pumps in Kansas are mechanical pumps. The cost of retrofitting fuel dispensers in rural areas with sparse population cannot be recouped. There simply aren't enough customers to pay for it.

With the introduction of renewable fuels into the marketplace, fuel retailers are looking for affordable alternatives to add the new products at their facilities. The temperature of renewable fuels when introduced to fossil fuel has not been discussed in great detail. All states are looking for ways to increase the throughput of renewable fuels. The added cost to the infrastructure is definitely a consideration. An additional cost to implement ATC over and above biofuels retrofitting costs, will add more financial

Petroleum Marketers and Convenience Store Association of Kansas

115 SE 7th • Topeka, KS 66603
PO Box 678 • Topeka, KS 66601-0678
785-233-9655 • Fax: 785-354-4374

strain to already strapped fuel retailers. A retailer could forgo retrofitting for renewable fuels if ATC is implemented.

Motor fuel distributors and retailers nationwide have been bombarded with unfunded federal mandates. Regulations such as: Spill Prevention Control and Countermeasure, new CDL requirements for truck drivers, clean air (stage 1 vapor recovery) and operator training for underground storage tanks are all very recent regulations that potentially could force small business owners to close their facilities because they can't justify the cost to retrofit a facility or train employees on the new regulations. The cost to implement even one of these regulations is a serious consideration for small businesses. In Kansas, distributors and retailers have made tough decisions the past 4-5 years, and in many cases the decision to "close the door" has been the most viable. The consumers in rural America are the biggest losers when a retail fueling location shuts down. In many cases, they could face a 15-20 mile drive to find gas for a car or lawn mower. Adding the cost of ATC to the list of "additional regulations" could have dire consequences for many Kansas retailers. As an example, the 1998 mandatory upgrades of USTs left an indelible print on rural Kansas. Faced with the cost of replacing underground storage tanks to comply with the new regulations, many small "Mom and Pop" retailers were forced to close their doors due to the cost. Many rural communities are still dealing with the loss of a fueling source or the absence of a competitive marketplace.

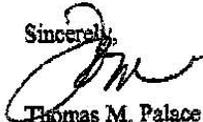
Regulations required by state and federal agencies always come with a cost. Most of the time consumers are unaware of what a new regulation may cost to implement, but they are very aware of the cost of the product if it is increased even minimally. There is no doubt that retailers, if forced to implement ATC, will pass the cost on to the consumer. Who will educate the consumer about ATC? Will the labeling of ATC mean anything to the average consumer?

Kansas Weights and Measures officials have endorsed the permissive standard for ATC as have those in some other states. PMCA opposes permissive ATC. If permissive ATC is adopted, it will be a standard for the "haves and have nots," or the retailers that can afford to retrofit for ATC and those who cannot. It would be a blood bath in Kansas. Taking the permissive approach to ATC is the easy way out for Weights and Measures agencies. Why? Because states adopt NIST Handbook 44 differently; some states adopt HB 44 automatically, some states opt out of some provisions of HB 44, some states adopt HB 44 legislatively and others don't adopt HB 44 at all. Allowing some states to adopt different standards of measurement will confuse the consumer and wreak havoc with retailers.

Obviously, there is a key question that needs to be answered: does the cost of ATC to the retailer justify the benefit to the consumer? I am thankful that Congressman Bart Gordon (D-Tenn.), Chairman of the House Science and Technology Committee, has taken an active role to determine the benefits of ATC. His request to the U.S. Government Accountability Office (GAO) for assistance to determine whether fuel temperature compensation is needed should be a valuable tool for NCWM in your deliberations.

I look forward to seeing you in January at the meeting and thank you for your willingness to distribute our comments to the committee.

Sincerely,



Thomas M. Palace
Executive Director
PMCA of Kansas

AL'S CORNER OIL CO
HWY 71 NORTH
CARROLL IOWA 51401
PHONE 712-673-2723
E-MAIL al.corner@win-4-u.net

January 17 2008
Ms. Judy Cardin Chairman
The National Conference on Weights and Measures
15245 Shady Grove Road Suite 130
Rockville, MD 20850
Re: Opposition to Automatic Temperature Compensation
Dear Chairman Cardin:

I am writing to you as the part owner of Al's Corner Oil Co. with 25 locations in Cities with 10,000 people to towns with 200 people. I would like to request that this letter be included as part of the record for the NCWM Interim Meeting, taking place January 27-30, 2008.

I would first like to thank the National Conference for the time and effort you have taken to examine the issue of Automatic Temperature Compensation (ATC) at retail. I strongly encourage the NCWM to oppose both a permissive or mandatory change to retail motor fuel distribution through the use of ATC.

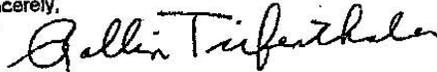
For over 73 years our company has serviced our retail customer base by delivering 231 cubic inches of fuel per gallon to our customers. Our customers have reason to be confident that they receive an accurate volume of fuel for their dollar. Before a wholesale change is made to the way I deliver fuel to my patrons I urge the NCWM to accumulate all of the facts regarding ATC. It is our understanding that studies are being conducted by the U.S. Government Accountability Office as well as the California Legislature. I encourage the NCWM to await the results of these studies before moving ATC any further towards a final vote on implementation. ATC will greatly affect competition, small business owners, employees, and communities. I urge you to gather all of the facts and consequences regarding ATC before imposing costly changes to both consumers and retailers.

Our company operates 25 convenience stores. Contrary to information conveyed by proponents of ATC our stores are not owned by a major oil company. We are an independent owner and operator and have been doing business that way for 78 years. Our father started this business in 1935 and my brother and I took over in 1978 continuing to operate under the same principles. When our patrons come to our stores to buy fuel they equate the prices displayed on our street sign and dispensers with a gallon of fuel. Our patrons can be assured that they are going to receive 231 cubic inches of fuel per gallon from our dispensers. Moving to ATC will create an enormous amount of confusion for our customers as well as our employees. Ultimately, it is our employees who will be tasked with explaining why a 5 gallon purchase did not fill the customer's 5 gallon container.

For the reasons listed in this letter I ask that the NCWM oppose any implementation of ATC under either a permissive or mandatory standard.

I would like to thank you for including this statement in the hearing record for the NCWM January 2008 Interim Meeting. Thank you for allowing statements to be submitted to the record and ensuring that all affected parties have the opportunity to be heard on this important issue.

Sincerely,



Rollin Tiefenthaler
Al's Corner Oil Co.
President


Southern Iowa Oil
PO Box 147
Corydon, IA 50060

January 17, 2008

Chairman Judy Cardin
National Conference on Weights and Measures

Re: Opposition to Automatic Temperature Compensation

Dear Chairman Cardin:

We are writing to you as a family owned business for over 60 years located in rural southern Iowa who operate two convenience stores & bulk delivery to farmers. We would like to request that this letter be included as part of the record for the NCWM Interim Meeting, taking place January 27-30, 2008.

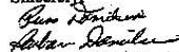
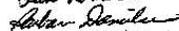
First, we want to thank the National Conference for the time and effort they have taken to examine the issue of ATC at retail. We strongly encourage the NCWM to oppose both a permissive or mandatory change to retail motor fuel distribution through the use of ATC.

Our customers have reason to be confident that they receive an accurate volume of fuel for their dollar. Before a wholesale change is made to the way we deliver fuel to our customers we urge the NCWM to accumulate all of the facts regarding ATC. It is our understanding that studies are being conducted by the US Government Accountability Office as well as the California Legislature. We encourage the NCWM to await the results of these studies before moving ATC any further towards a final vote on implementation. ATC will greatly affect competition, small business owners, employees and communities imposing costly changes to both consumers and retailer.

Contrary to information conveyed by proponents of ATC our stores are not owned by a major oil company. Moving to ATC will create an enormous amount of confusion for our customers as well as our employees. Ultimately, it is our employees who will be tasked with explaining why a 5 gallon purchase did not fill the customer's 5 gallon container.

For the reasons listed in this letter we ask that the NCWM oppose any implementation of ATC under either a permissive or mandatory standard.

We would like to thank you for including this statement in the hearing record for the NCWM January 2008 Interim Meeting. Thank you for allowing statements to be submitted to the record and ensuring that all affected parties have the opportunity to be heard on this important issue.

Sincerely,


Russ Danielsen, President
Barb Danielsen, Vice President

**Harold Dickey Oil Corp.
401 East 4th Street
Packwood, Iowa 52580**

*Written Statement for Submission to Record
National Conference on Weights and Measures
NCWM Interim Meeting in Albuquerque, New Mexico,
January 27-30, 2008*

January 17, 2008
Ms. Judy Cardin, Chairman
The National Conference on Weights and Measures
15245 Shady Grove Road, Suite 130
Rockville, MD 20850

Re: Opposition to Automatic Temperature Compensation

Dear Chairman Cardin:

I am writing to you as the owner of Harold Dickey Oil Corp, with locations in Packwood, Iowa and Mount Pleasant, Iowa. I would like to request that this letter be included as part of the record for the NCWM Interim Meeting, taking place January 27-30, 2008. I would first like to thank the National Conference for the time and effort you have taken to examine the issue of Automatic Temperature Compensation (ATC) at retail. I strongly encourage the NCWM to oppose both a permissive or mandatory change to retail motor fuel distribution through the use of ATC.

For over 59 years my company has serviced our retail customer base by delivering 231 cubic inches of fuel per gallon to our customers. Our customers have reason to be confident that they receive an accurate volume of fuel for their dollar. Before a wholesale change is made to the way I deliver fuel to my patrons I urge the NCWM to accumulate all of the facts regarding ATC. It is our understanding that studies are being conducted by the U.S. Government Accountability Office as well as the California Legislature. I encourage the NCWM to await the results of these studies before moving ATC any further towards a final vote on implementation. ATC will greatly affect competition, small business owners, employees, and communities. I urge you to gather all of the facts and consequences regarding ATC before imposing costly changes to both consumers and retailers.

My company operates two stores. Contrary to information conveyed by proponents of ATC my store is not owned by a major oil company. I am an independent owner and operator and have been doing business that way for 59 years.

When my patrons come to my store to buy fuel they equate the prices displayed on my street sign and dispensers with a gallon of fuel. My patrons can be assured that they are going to receive 231 cubic inches of fuel per gallon from my dispensers. Moving to ATC will create an enormous amount of confusion for my customers as well as my employees. Ultimately, it is my employees who will be tasked with explaining why a 5 gallon purchase did not fill the customer's 5 gallon container.

For the reasons listed in this letter I ask that the NCWM oppose any implementation of ATC under either a permissive or mandatory standard.

I would like to thank you for including this statement in the hearing record for the NCWM January 2008 Interim Meeting. Thank you for allowing statements to be submitted to the record and ensuring that all affected parties have the opportunity to be heard on this important issue

Sincerely,

Dave Dickey
President
Harold Dickey Oil Corp.

*McCullough Bros. Service, Inc.
700 Superior Street
Webster City, IA 50595
515-832-2353*

January 17, 2008

Ms. Judy Cardin, Chairperson
The National Conference on Weights and Measures
15245 Shady Grove Road, Suite 130
Rockville, MD 20850

Re: Opposition to Automatic Temperature Compensation

Dear Chairperson Cardin:

I am writing to you as the owner of McCullough Bros. Service, Inc. located at Webster City. I would like to request that this letter be included as part of the record for the NCWM Interim Meeting, taking place January 27-30, 2008.

I would first like to thank the National Conference for the time and effort you have taken to examine the issue of Automatic Temperature Compensation (ATC) at retail. I strongly encourage the NCWM to oppose both a permissive or mandatory change to retail motor fuel distribution through the use of ATC. For over 48 years my company has serviced our retail customer base by delivering 231 cubic inches of fuel per gallon to our customers. Our customers have reason to be confident that they receive an accurate volume of fuel for their dollar. Before a wholesale change is made to the way I deliver fuel to my patrons I urge the NCWM to accumulate all of the facts regarding ATC. It is our understanding that studies are being conducted by the U.S. Government Accountability Office as well as the California Legislature. I encourage the NCWM to await the results of these studies before moving ATC any further towards a final vote on implementation. ATC will greatly affect competition, small business owners, employees, and communities. I urge you to gather all of the facts and consequences regarding ATC before imposing costly changes to both consumers and retailers.

My company operates one store. Contrary to information conveyed by proponents of ATC my store is not owned by a major oil company. I am an independent owner and operator and have been doing business that way for 48 years.

When my patrons come to my store to buy fuel they equate the prices displayed on my street sign and dispensers with a gallon of fuel. My patrons can be assured that they are going to receive 231 cubic inches of fuel per gallon from my dispensers. Moving to ATC will create an enormous amount of confusion for my customers as well as my employees. Ultimately, it is my employees who will be tasked with explaining why a 5 gallon purchase did not fill the customer's 5 gallon container.

For the reasons listed in this letter I ask that the NCWM oppose any implementation of ATC under either a permissive or mandatory standard.

I would like to thank you for including this statement in the hearing record for the NCWM January 2008 Interim Meeting. Thank you for allowing statements to be submitted to the record and ensuring that all affected parties have the opportunity to be heard on this important issue.

Sincerely,


McCullough Bros. Service, Inc.



January 22, 2008

Judy Cardin
Chairperson
National Conference on Weights and Measures
15245 Shady Grove Road
Suite 130
Rockville, MD 20850

Re: Automatic Temperature Compensation

Dear Chairperson Cardin:

On behalf of the Colorado Motor Carriers Association, representing almost 600 companies that are involved or affiliated with trucking in Colorado, I am writing to provide comments on the issue of Automatic Temperature Compensation ("ATC") and its potential impact upon our members who are major consumers of diesel fuel. As the state organization representing the trucking industry in Colorado, CMCA views this matter very seriously because of its impact and potential ramifications on our member companies.

CMCA and its members realize and appreciate that the retail fuel industry is very competitive, with gas stations and truckstops competing fiercely to attract additional business. A fuel retailer prices fuel to cover the cost of the bulk fuel purchased and a reasonable return on its investment. In pricing diesel fuel, the retailer also must consider the prices that neighboring stations are charging, since a difference of as little as one penny per gallon could result in a gain or loss of business. In this competitive environment, inventory expansion and shrinkage must be accounted for in the retail price of diesel fuel, and any impact of temperature variances is eliminated through competitive pricing.

Because we believe that the marketplace already accounts for any temperature variation, we oppose both permissive and mandatory automatic temperature compensation.

In the case of permissive temperature control we are in opposition to this practice oppose because it could undermine fair trade and transparency in the retail marketplace. The use of temperature compensation equipment by an unknown portion of the retail fuel providers would greatly complicate our members' ability to determine the most economical place to refuel. Compensating and non-compensating retailers, whether located across the highway

from one another or across a state border, would no longer be selling comparable volumes of product, making it impossible to make an educated purchasing decision.

We also oppose mandatory automatic temperature control because of the impact that we believe such a mandate would have on our trucking members and fuel distributors. We recognize that any significant mandatory equipment investment by fuel distributors must be passed on to consumers. In the case of the installation of automatic temperature compensation devices this would translate into an estimated cost of \$2,000/pump. The net result of this mandate would be higher diesel prices for our member companies toward addressing a problem that we does not believe exist nor is justifies this level of investment..

Please feel free to share our comments at the upcoming meeting of your organization. Also, please contact me at 303-433-3375 Ext. 102, if you have any questions regarding this letter.

Sincerely,
Gregory D. Fulton
President
Colorado Motor Carriers Association



1737 King Street
Suite 200
Alexandria, VA 22314
(703) 549-2100

January 17, 2008

Ms. Judy Cardin, Chair
National Conference on Weights and Measures
15245 Shady Grove Road
Suite 130
Rockville, MD 20850

RE: Automatic Temperature Correction- NCWM Interim Meeting 2008

Dear Chairman Cardin:

As the National Conference on Weights and Measures (NCWM) continues its examination of whether automatic temperature compensation (ATC) should be permitted or required for fuel retailers, NATSO wishes to commend the NCWM for its efforts to consider the views of all stakeholders in the debate. On behalf of NATSO, I thank you for the opportunity to comment on this issue and request that you include this letter in the record of the NCWM interim meeting of January 27-30, 2008.

NATSO is a national trade association representing over 1,000 travel plazas and truckstops nationwide. Truckstops and travel plazas sell 75-80 percent of the total volume of diesel fuel sold in the United States. A typical travel plaza or truckstop sells gasoline, diesel fuel, lubricants and additives; operates fast food and/or full-service restaurants; sells convenience items; offers free extended-stay parking; and might offer truck repair and a host of other services. By 2010, interchange-based businesses will employ over two million Americans and generate nearly \$200 billion in annual sales. Most NATSO members are located within close proximity of the National Highway System.

NATSO opposes any change in the method of sale or measurement of motor fuel for retailers. The adoption of an ATC standard will create a major shift in how fuel is dispensed and marketed at a huge cost to retailers with no proven consumer benefit. Because retail gasoline and diesel margins are razor thin, costs of the installation of new ATC systems will most likely be passed on to consumers.

There is no evidence that implementation of ATC will result in lower fuel prices, as retail fuel margins in the U.S. already are extremely low. As you know, the retail motor fuel industry is intensely competitive and retailers compete based on a penny per gallon. In fact, consumers in the U.S. enjoy among the lowest gasoline and diesel prices in the world, according to the U.S. Department of Energy's Energy Information Administration.¹ In spite of these facts, allegations have been made that somehow retailers are profiting from temperature variations. While science demonstrates that gasoline and diesel expand slightly under higher temperatures and shrink under cooler temperatures, retailers can only sell the physical number of gallons they receive, and factor their pricing based on the price paid for the load of fuel to their supplier. Any expansion or shrinkage of fuel is accounted for in the cost of goods and factored into the retailer's pricing.

We cannot overstate the challenges that fuel retailers – most of whom are small businesses – face in earning any profit from the sale of motor fuels. The allegations that somehow the retailers of motor fuels are profiting from a tiny expansion of gasoline and diesel are outrageous given the competitive nature of the retail motor fuels industry. Few retailers can survive if they consistently price their gasoline or diesel higher than their competitors, and retailers conduct daily price surveys of their competitors to ensure they don't out price the market. Frequently retailers jockey for market share and "gas wars" break out, where retailers actually sell below their cost for a period of time to avoid losing market share to their competitors. Because of the intense competition, many retailers have found it is impossible to run their businesses with the profits made from motor fuels, and thus have come to rely on other profit centers, such as convenience stores and fast food service in order to survive.

The costs of installing ATC equipment is a very significant factor to weigh in this debate. The cost of retrofitting an electronic pump is estimated to be \$2,000 per pump, while the cost of replacing a mechanical pump would be \$15,000 - \$20,000 per pump, an overall cost to the industry of \$3 billion to \$4 billion. This expense of retrofitting and replacing existing fuel dispensers would increase the retailers' cost of goods sold and this increased cost ultimately would be passed on to the consumer for a new method of fuel measurement with no proven consumer benefits.

¹ <http://www.eia.doe.gov/emeu/international/gas1.html>

The proponents of ATC, claiming to represent consumer groups, have focused their entire argument on the fact that when temperatures are warmer, gasoline expands and delivers less energy content per gallon. Their credibility is called into question as they fail to acknowledge that in cooler temperatures, gasoline and diesel shrink and deliver slightly more energy content per gallon. It appears that they choose to ignore the fact that winter causes shrinkage of fuel and that in cooler climates, consumers gain energy over the course of a year. While NATSO disputes that any variation in temperature results in a significant loss or gain, any variations in volume due to temperature are accounted for in the pricing of fuel and passed on to the consumer. However, we believe it is worth pointing out that the strategy of promoting ATC by focusing on the effects of only warmer temperatures is unfair and misleading. If proponents of ATC represent consumer groups, wouldn't they be interested in considering all of the facts in the interest of consumers, rather than only those that support their position? In fact, the groups promoting ATC do not represent the majority of consumers. As you are aware, the American Trucking Associations, which represents the largest consumer group of diesel fuel, opposes both mandatory and permissive ATC.

It has been suggested that due to expansion of fuel at warmer temperatures, consumers receive less energy from a gallon of gasoline. However, automatic fuel temperature compensation **will not** ensure that consumers receive uniform energy content per gallon. Fuel temperature is only one of many factors affecting the energy content of fuel. Renewable fuels such as biodiesel and ethanol have far greater impact on the energy content of fuel. It is disingenuous and inaccurate to suggest to consumers that the adoption of an ATC standard will equalize the energy content of fuel.

Many representatives within the NCWM advocate a permissive standard under the rationale that it will give retailers the option of installation of ATC devices. NATSO opposes adoption of a permissive ATC standard, and we encourage the NCWM to consider the importance of uniformity of fuel measurement across the U.S. Consumers rely on a highly transparent marketplace and are accustomed to being able to readily determine fuel prices from signs posted that are visible from great distances. Allowing different standards of measurement from location to location will only make it more difficult for consumers to make purchasing decisions.

NATSO was disappointed to learn that the National Academy of Sciences (NAS) has chosen not to pursue the congressionally requested study of this issue. So, as an alternative, Congressman Bart Gordon (D-TN), Chairman of the House Science and Technology Committee, has issued a new request for greater study of this issue. Chairman Gordon has asked the U.S. Government Accountability Office (GAO) to embark on a study to determine how ATC equipment at the retail level affects the states, retailers and consumers. NATSO strongly supports the effort to obtain more

data on the impact of ATC before adopting a standard that could be very costly for retailers and their customers.

We offer ongoing assistance to the NCWM in their efforts to research ATC. NATSO appreciates this opportunity to comment for the January 2008 NCWM Interim hearing record. Please do not hesitate to contact me should you have any questions or need additional information.

Sincerely,

Holly Alfano
Vice President, Government Affairs



January 14, 2008

Judy Cardin
Chairman
National Conference on Weights and Measures
15245 Shady Grove Road
Suite 130
Rockville, MD 20850

Via e-mail: judy.cardin@wisconsin.gov

Re: Automatic Temperature Compensation

Dear Chairman Cardin:

The American Trucking Associations, Inc.¹ ("ATA") is writing to provide comments on the issue of Automatic Temperature Compensation ("ATC") and its potential impact upon consumers of diesel fuel. As the national representative of the trucking industry, ATA is interested in matters affecting the purchase and sale of diesel fuel, including the manner in which diesel fuel is dispensed at retail refueling stations.

The trucking industry is a vital component of our national economy. In 2006, trucks transported nearly 11 billion tons of freight domestically, representing 69 percent of all freight transportation tonnage. The trucking industry accounts for 84 percent of all freight revenues and exclusively serves the freight needs of over 80 percent of all communities in the United States.

Diesel fuel is the lifeblood of the trucking industry. For most motor carriers, fuel is the second-largest operating expense after labor. For this reason, our members are keenly interested in any initiative that could impact diesel fuel prices.

For more than a year, ATA has closely followed the debate over ATC. Early on, ATA adopted a position opposing temperature compensation on a *permissive basis*, concluding that permissive temperature compensation would disadvantage diesel fuel consumers. Permissive temperature compensation leaves the decision regarding whether to install temperature compensation equipment to the fuel retailer's discretion. A permissive temperature compensation regulatory environment could allow retailers to manipulate the system by installing temperature compensation equipment where the average temperature

¹ ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Directly and through its affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

Comments of the American Trucking Associations
January 14, 2008

of the fuel dispensed is below 60 degrees and refrain from such installations where the average temperature of the fuel dispensed is above 60 degrees.

Perhaps most important, permissive temperature compensation could undermine fair trade and transparency in the retail marketplace. Many trucking companies rely upon daily price surveys to determine where and how much fuel to purchase at given points along a truck route. Other trucking companies rely on advertised price to determine where to refuel. The use of temperature compensation equipment by an unknown portion of the retail fuel providers will greatly complicate our members' ability to determine the most economical place to refuel. Compensating and non-compensating retailers, whether located across the street from one another or across a state border, would no longer be selling comparable volumes of product, making it impossible to make an educated purchasing decision.

It took ATA a longer period of time to formulate a position on mandatory ATC. After analyzing the issue and considering its impact upon consumers of diesel fuel, ATA has decided to oppose mandatory ATC. The rationale underlying this decision is discussed in more detail below.

ATA and its members recognize that the retail motor fuels industry is highly competitive, with gas stations and truckstops competing fiercely to attract additional business on the basis of a penny per gallon. A fuel retailer prices fuel to cover the cost of the bulk fuel purchased and a reasonable return on its investment. In pricing diesel fuel, the retailer also must consider the prices that neighboring stations are charging, since a difference of as little as one penny per gallon could result in a substantial gain or loss of business. In this competitive environment, inventory expansion and shrinkage must be accounted for in the retail price of diesel fuel, and any impact of temperature variances is eliminated through competitive pricing.

We are concerned that consumers such as the trucking industry will bear the cost of installing temperature compensation devices on fuel dispensers. The cost of retrofitting a retail fuel pump is estimated to be \$2,000 per pump. The expense of retrofitting or replacing existing fuel pumps would increase the retailers' cost of goods sold and we expect that this increased cost ultimately would be passed on to the consumer. For this reason, ATA is concerned that the installation of ATC devices is a solution that may be more expensive than the problem it is trying to address.

ATA does not believe that ATC technology will ensure that every gallon yields the same energy content. There are far more variables affecting the energy content of fuel other than temperature. Ideally the price of fuel would be adjusted for its energy content (*i.e.*, BTU value), so that consumers could make a fully informed choice when purchasing fuel. BTU reductions from various renewable blends (*e.g.*, ethanol and biodiesel), have a much greater impact upon energy content than temperature.

Finally, we would like to suggest that the NCWM consider the importance of a uniform method of sale for motor fuels nationwide. In a single day, a trucker can travel through

Comments of the American Trucking Associations
January 14, 2008

several states and time zones. We believe it would be detrimental to our industry if various states each adopt their own systems for measuring motor fuel, with some opting for ATC, possibly others adopting methods that measure BTUs, and others continuing traditional systems of fuel measurement. We believe it is important to maintain the pricing transparency in today's marketplace that is so beneficial to fuel consumers and the trucking industry. Therefore, we would recommend that the NCWM consider new language that prohibits states from adopting ATC at the retail level. This action would ensure a unified method of sale of motor fuels throughout the United States.

We regret that we will be unable to join you at your interim meeting later this month. Unfortunately, ATA's annual Winter Leadership conference is scheduled for the same dates. We appreciate your willingness to distribute these comments and make known that the largest consumers of diesel fuel – those that would be most impacted by a change in which diesel fuel is dispensed – oppose efforts to permit or require the use of ATC at the retail level. Should you or any of the other NCWM members have questions concerning the trucking industry's opposition to ATC, please contact me at (703) 838-1910.

Respectfully submitted,



Richard Moskowitz
Vice President & Regulatory Affairs Counsel

cc: National Conference of Weights and Measures Officials

AK

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12050 Industry Way, Bldg. O
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tom.pugh@aspb.ar.gov



January 3, 2008

Ms. Judy Cardin, Chairman
National Conference on Weights and Measures
15245 Shady Grove Road, Suite 130
Rockville, MD 20850

Dear Chairman Cardin:

This letter is being written on behalf of fuel marketers and convenience store owners in Tennessee, and we request that it be included as part of the record for the NCWM Interim Meeting, taking place in Albuquerque, NM, January 27-30, 2008. The Tennessee Oil Marketers Association is a state trade association representing independent petroleum marketers who have both wholesale and retail accounts. We appreciate the opportunity to submit comments on the proposal to change to automatic temperature compensation (ATC) for delivery of fuel at retail.

Stated on the National Council on Weights and Measures' web site, the NCWM's purpose: "Applying uniform weights and measures standards to commercial transaction is one of the most important supports to a strong national economy. The positive outcomes are numerous: uniformity fosters good will, minimizes trade barriers to interstate commerce..." A proposal to change to permissive language that would allow states to make their own decisions on the way fuel is sold does not "protect equity in the marketplace."

Our industry feels that it is very important for our customers to be assured they are receiving fuel in a well-understood, consistent, and effective manner. Preserving competition in the retail distribution of fuel is critical to assuring fair treatment of consumers. In our opinion, it is unreasonable to change a method of delivery that has been effective, understood and consistent throughout the country without a great deal of facts to support such a change.

In a competitive market, which the retail gasoline business is, prices already reflect the seasonal variation in energy output per gallon that changing temperatures bring. So what really matters to a consumer when buying a gallon of gas isn't knowing the energy output in relation to other temperatures, but in relation to nearby stations. If a consumer can be sure that the gallon of gasoline he's buying at one station is the same amount as the gallon of gas he can buy down the street, he can make an informed decision about where he wants to fill up.

We are also concerned that the ATC proposal is not taking into account all the new biofuels that are currently coming into the market. We question if enough study has been done on the effect of temperature compensation at retail on varying ethanol blends and biodiesel blends. We realize that the issue of ATC has been examined for quite some time, but these fuels are fairly new in the retail marketplace; it's been over twenty years since ethanol was sold in any amount and ATC was not addressed at that time.

Following is information from Tennessee in regard to the financial impact a change to ATC would cause:

Dispensers are generally replaced every ten to fifteen years, depending on usage, or as long as they are supportive of their branded programs or can be upgraded. Older dispensers are moved and used at lower volume stations. Based primarily on the number of hoses, dispensers cost anywhere from \$4,000.00 to

P. O. Box 101334 • Nashville, TN 37224 • 615-242-4377
430 Enos Reed Drive • Nashville, TN 37210
FAX 615-254-8117 • E-Mail: TNOMA@toma.org

\$15,000.00. At these prices, marketers don't make a habit of replacing dispensers unless they are damaged beyond repair or parts become obsolete. We understand the cost of retrofitting dispensers that can be retrofitted for ATC would be about \$2,000.00 per dispenser.

There are about four billion gallons of gasoline and diesel fuel sold each year in Tennessee at 4,713 retail outlets from approximately 85,000 dispensers. Assuming that every single dispenser could be retrofitted for ATC, the cost to Tennessee retailers would be \$170,000,000.00. Older dispensers would have to be tested to determine if they could be retrofitted...another expense. And if dispensers have to be replaced, the cost would soar into the billions of dollars.

Proponents of ATC say changing the method of sale will save consumers a lot of money. On the contrary, it will cost consumers because Tennessee retailers can't possibly sustain the cost of implementing ATC, with its immediate expense, without raising the price of fuel. Retailers see only a few pennies per gallon in their fuel margins and cannot absorb the costs associated with installation of ATC equipment without passing along those costs to the consumer. It's not "big oil" who own and operate 95% of the retail outlets in the United States; rather, it's independent retailers, many of whom are small family-owned businesses.

NCWM needs to make sure the facts on the ATC issue are examined even more closely, instead of relying on unverified and unsubstantiated data that has been distributed by certain groups in the debate. Perhaps NCWM can assist the U. S. Government Accountability Office in its study, due to be completed in July, 2008, which should be an unbiased comprehensive scientific and economic study.

The Tennessee Oil Marketers Association opposes both the permissive and/or mandatory use of ATC devices at the retail level at this time. Permissive temperature compensation leads to ambiguity and inconsistency. Mandatory temperature compensation leads to higher costs for retailers, and ultimately, for higher fuel costs for consumers.

Thank you, in advance, for including this letter in the hearing record for the NCWM January, 2008, Interim Meeting. We appreciate your allowing our Association to submit this for the record, and for working to ensure that all parties affected by ATC are heard on this issue.

Sincerely,



Marylee A. Booth
Executive Director

Partnership for Uniform Marketing Practices

*Written Statement for Submission to Record
National Conference on Weights and Measures
NCWM Interim Meeting in Albuquerque, New Mexico, January 27-30, 2008*

January 15, 2008

Ms. Judy Cardin
Chairman
The National Conference on Weights and Measures
15245 Shady Grove Road
Suite 130
Rockville, MD 20850

Re: Automatic Temperature Compensation; Opposition to Permissive or
Mandatory ATC Requirements

Dear Chairman Cardin:

We are writing to you on behalf of the "Partnership for Uniform Marketing Practices" (P.U.M.P.), a coalition of trade and consumer associations who have joined together to ensure fair competition, cost effective distribution of fuel and equitable treatment of consumers in addressing the issue of temperature variation in the retail sale of gasoline and diesel fuels. P.U.M.P. requests that this letter be included as part of the record for the NCWM Interim Meeting, taking place January 27-30, 2008.

We appreciate your effort to examine the issue of Automatic Temperature Compensation (ATC) at retail. The P.U.M.P. Coalition urges the NCWM to oppose any resolution that would either permit or require ATC equipment at retail fueling locations.

As you may be aware, Congressman Bart Gordon (D-Tenn.), Chairman of the House Science and Technology Committee, recently issued a letter requesting that the U.S. Government Accountability Office (GAO) assess several factors associated with the installation of ATC. The purpose of Chairman Gordon's letter is to obtain much needed data on the impact that ATC will have on consumers. The scope of the requested GAO study is outlined in the attached letter.

You may also be aware that the California legislature enacted a law that requires a comprehensive study of the ATC issue. This study is focusing on geographic temperature variances, available temperature compensating technologies and a cost-benefit analysis to determine whether fuel temperature compensation is needed. The California law was

supported by the California Independent Oil Marketers Association (CIOMA), a founding P.U.M.P member, the California Trucking Association and AAA. The results of the California study are due by the end of 2008. The study is underway and the first meeting of the study advisory committee is scheduled for Thursday, January 24, 2008. A fuel temperature analysis by the state Division of Measurement Standards is scheduled for completion in March/April, 2008.

The P.U.M.P. Coalition believes that it is critical for the NCWM to fully understand the implications of a drastic change in the way fuel is sold at retail in the United States. The studies referenced above will provide NCWM members with the data necessary to make an informed decision on the use of ATC. In the absence of this data, it is unlikely that the NCWM will be able to evaluate ultimate costs and benefits to the consumer from ATC, nor will they know if ATC requirements are cost-effective. Without this important information, we may find that consumers are disadvantaged by the use of ATC.

The coalition is interested in establishing the facts on this issue instead of relying merely on unverified, statistically questionable and unsubstantiated data that has been distributed by some groups in this debate. We do not agree with the assertion that fuel temperatures directly indicate any losses or gains to the consumer. We believe that only a comprehensive scientific and economic study can establish such facts and we urge the NCWM to assist the GAO in the prompt completion of its study.

P.U.M.P. members oppose both the permissive and/or mandatory use of ATC devices at the retail level at this time. Under permissive temperature compensation, few retailers will be likely to install the equipment, unless there is a perception by retailers that somehow those costs can be recouped in the marketplace. Permissive temperature compensation will create ambiguity and lead to unequal cost and volume delivery standards from location-to-location.

Retail petroleum distribution is one of the most competitive industries in the United States. Few industries compete on the basis of one penny per gallon and advertise their prices on signs that are visible to consumers from the convenience of the driver's seat. Inventory expansion or shrinkage is factored into the price per gallon, and the impact of temperature variances on the quantity of fuel available for sale should be eliminated through competitive pricing. For example, assume a retailer sells fuel in a cold climate and will lose 10 gallons per bulk shipment as a result of product shrinkage. This retailer would be expected to price its product in a manner to cover the cost of the bulk fuel it purchased, the shrinkage in inventory, and a reasonable return on its investment. Similarly, a retailer that sells fuel in a warm climate may gain an extra 10 gallons per bulk delivery. This retailer also is expected to price his product in a manner to cover the cost of the fuel purchased in bulk with a reasonable return on investment. The retailer may then recognize that it could undercut the price of fuel sold at the neighboring station due to product expansion, and would be expected to lower the price per gallon to attract additional business. The competing station may also lower its price to remain competitive. Robust competition may ensure that any product expansion or shrinkage

will be accounted for and passed on to the consumer as the retailer competitively prices the fuel.

We also believe that mandatory ATC will disadvantage the consumer, as the substantial costs associated with installing and maintaining ATC equipment will, and simply must, be passed on to the consumer. With only pennies per gallon available in retail fuel margins (and much of that passed on in credit card transaction costs) retailers simply cannot absorb the costs associated with installation of ATC equipment, as well as the expected increased state inspection costs that will be passed on to the consumer.

The P.U.M.P. Coalition would like to make clear that this issue is not “big oil versus the truck driver/consumer.” In fact, the large integrated oil companies only own and operate fewer than 5 percent of the nation’s retail outlets. Instead, this issue directly affects the independent petroleum retailing community, many of whom are small family-owned businesses.

In advance, we thank you for including our statement in the hearing record for the NCWM January 2008 Interim Meeting. Thank you for allowing the coalition to submit this statement for the record and for working to ensure that all affected parties are heard thoroughly on this important issue.

Sincerely,

The Partnership for Uniform Marketing Practices (P.U.M.P.) Coalition

(Please see the undersigned coalition members)

American Trucking Associations (ATA)

Arizona Petroleum Marketers Association (APMA)

Arkansas Oil Marketers Association, Inc. (AOMA)

California Independent Oil Marketers Association (CIOMA)

Colorado Petroleum Marketers and Convenience Store Association (CWPMA)

Empire State Petroleum Association (ESPA – NY)

Florida Petroleum Marketers & Convenience Store Association, Inc. (FPMA)

Fuel Merchants Association of New Jersey

Illinois Association of Convenience Stores/Illinois Petroleum Marketers Association

Indiana Petroleum Marketers and Convenience Store Association, Inc. (IPCA)

Kentucky Petroleum Marketers Association (KPMA)
Michigan Petroleum Association/Michigan Association of Convenience Stores (MPAPACS)
Mid-Atlantic Petroleum Distributors Association
Minnesota Petroleum Marketers Association (MPM)
Mississippi Petroleum Marketers & Convenience Stores Association (MPMCSA)
Missouri Petroleum Marketers and Convenience Store Association (MPCA)
Montana Petroleum Marketers & Convenience Store Association
National Association of Convenience Stores (NACS)
National Association of Shell Marketers (NASM)
National Tank Truck Carriers, Inc. (NTTC)
NATSO, Inc., Representing America's Travel Plazas and Truckstops
Nebraska Petroleum Marketers & Convenience Store Association (NPCA)
Nevada Petroleum Marketers & Convenience Store Association (NPM & CSA)
New Jersey Fuel Merchants Association (NJFMA)
New Mexico Petroleum Marketers Association
Ohio Petroleum Marketers & Convenience Store Association (OPMCA)
Oklahoma Petroleum Marketers & Convenience Store Association (OPMCA)
Petroleum & Convenience Marketers of Alabama (P&CMA)
Petroleum Marketers & Convenience Stores of Iowa (PMCI)
Petroleum Marketers and Convenience Store Association of Kansas (PMCA)
Petroleum Marketers Association of America (PMAA)
Service Station Dealers of America and Allied Trades (SSDA-AT)
Society of Independent Gasoline Marketers (SIGMA)
South Carolina Petroleum Marketers Association (SCPMA)

South Dakota Petroleum & Propane Marketers Association/

South Dakota Association of Convenience Stores SDP2MA-SDACS)

Tennessee Oil Marketers Association (TOMA)

Texas Petroleum Marketers & Convenience Store Association (TPMCSA)

Utah Petroleum Marketers & Retailers Association

Vermont Fuel Dealers Association (VFDA)

Virginia Petroleum, Convenience and Grocery Association (VPCGA)

Western Petroleum Marketers Association (WPMA)

West Virginia Oil Marketers and Grocers Association (OMEGA)

Wisconsin Petroleum Marketers & Convenience Store Association (WPMCA)



RECEIVED

JAN 11 2007

COMMITTEE ON SCIENCE
& TECHNOLOGY

December 20, 2007

The Honorable Bart Gordon
Chairman, Committee on Science and Technology
House of Representatives

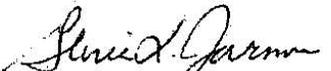
Dear Mr. Chairman:

Thank you for your letter of November 1, 2007, asking the Government Accountability Office to review issues concerning the impact of temperature variations on fuel distribution.

GAO accepts your request as work that is within the scope of its authority. As discussed with Mr. Louis Finkel, GAO will initiate an engagement as soon as staff with the required skills are available. Your request has been assigned to Mr. Robert Robinson, Managing Director, Natural Resources and the Environment. After the team has conducted some preliminary work, they will again contact Mr. Finkel to discuss options for helping meet your needs. As applicable, we will also be in contact with the cognizant Inspector General's office to ensure that we are not duplicating efforts. If an issue arises during this coordination, we will consult with you regarding its resolution.

If you have any questions, please contact Mr. Robinson at 202-512-3841 or Ms. Rosa Harris, Assistant Director for Congressional Relations, on my staff at 202-512-9492.

Sincerely yours,


Gloria L. Jarmon
Managing Director for
Congressional Relations

Ref: CCAR 08-0161

this issue is key to many I wanted to make sure.
Thanks -
Rob

Robert DeRubeis, Program Manager
Michigan Dept. of Agriculture
Weights and Measures
517-655-8202, ext. 312

Return-Path: <griffin@mpamacs.org>
MIME-Version: 1.0
Content-Type: multipart/mixed;
boundary="=_NextPart_002_01C856B0.A7D44B80"
X-Mailer: Microsoft Office Outlook 11
X-MimeOLE: Produced By Microsoft Exchange V6.5
X-OriginalArrivalTime: 14 Jan 2008 13:23:27.0668 (UTC) FILETIME=[A5D79120:01C856B0]
X-Imss-Result: Passed
X-Imss-Settings: Baseline:4 C:3 M:3 S:3 R:3 (1.0000 1.0000)
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X-Imss-Version: 2.049
X-Authenticated-User: griffin@mpamacs.org
X-Imss-ScanInfo: M:B L:E SM:3
X-Imss-TraceResult: TT:1 TS:-51.5911 TC:1F TRN:73 TV:5.0.1023(15666.003)
Content-Class: urn:content-classes:message
Subject: FW: Your state weights and measures official
Date: Mon, 14 Jan 2008 07:23:12 -0600
Message-ID: <001401c856b0\$9d909430\$d201a8c0@mpa.local>
X-MS-Has-Attach: yes
X-MS-TNEF-Correlator:
Thread-Index:
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From: "Mark Griffin" <griffin@mpamacs.org>
To: "Robert DeRubeis" <derubeisr@michigan.gov>
Reply-To: <griffin@mpamacs.org>

Robert,

On a few occasions at the NCWM regional meetings, some state WM officials complained that they did not receive industry position papers prior to the meeting. We certainly do not want this to be an issue at the NCWM national Interim meeting in Albuquerque.

Currently there will be about 20-25 industry reps planning on attending the ABQ meeting. I will not be able to attend, due to other commitments here at home. However, if there are any Michigan WM officials attending, could you forward this information to them?

Thanks for helping get these documents distributed.

Mark

Mark A. Griffin

MPA/MACS

7521 Westshire #200

Lansing, MI 48917

griffin@mpamacs.org

(517) 622-3530

(517) 622-3420 fax



ATC Attachment #1.pdf



ATC Attachment #2.pdf

MUCH OF THE TEMPERATURE COMPENSATION DEBATE
IS THE RESULT OF A MISUNDERSTANDING REGARDING
THE DIFFERENCE BETWEEN
HOW THE PRICES OF GASOLINE AND DIESEL FUEL
CHARGED TO A MARKETER MAY BE CALCULATED AND
THE VOLUMES WHICH ARE ACTUALLY DELIVERED TO A MARKETER
AND THEREAFTER TO RETAIL MOTOR FUEL OUTLETS

During recent conversations relating to the Automatic Temperature Compensation (ATC) debate, it has become evident that much of that debate is the result of a misunderstanding regarding the difference between: 1) how motor fuels may be priced to wholesale customers acquiring these products at the “rack,” and 2) the actual physical volumes which are delivered to those customers in the context of a particular transaction. The simple reality is that no one delivers or receives “net (temperature corrected) gallons.” The only thing that is physically delivered and received is “gross (non-temperature corrected) gallons.” Consequently, in physical terms, there is no difference between what the marketer receives, transports, delivers to its retail outlet and sells to the consumer.

As the attached documents demonstrate, a supplier may determine the amount which a customer owes for a load of gasoline based upon the number of net gallons attributed to the transaction. (see invoice-- Attachment 1). The number of net gallons is determined by taking the amount of gross gallons actually delivered and adjusting it, pursuant to a formula, to establish the number of gallons which would have been delivered had the temperature of the product actually been 60 degrees Fahrenheit.(see bill of lading -- Attachment 2; see also common carrier invoice - Attachment 3). However, the supplier clearly recognizes that the number of gallons actually delivered to the customer was different than the number of net gallons used to generate the bill for that volume of product. Whether the number of gross gallons actually received by the customer is larger or smaller than the number of net gallons used to bill the customer, will be dependent upon whether the temperature of the fuel is greater or less than 60 degrees Fahrenheit. Net gallons is simply a factor in the equation which results in the price charged to that customer.

Those who claim that marketers who purchase a number of net gallons and sell a number of gross gallons have, in effect, obtained and sold gallons for which they did not pay are ignoring some very obvious facts. First, as reflected on the documentation, the seller knows precisely how many physical gallons were delivered to a customer, yet establishes the amount which the customer owes to the seller based upon a smaller number of gallons. Both parties to the transaction agree that the customer has stolen nothing from the seller. Both parties also agree that the seller is not an altruist, simply giving away gallons of motor fuel -- remember these sellers are very profitable enterprises, an achievement not usually attributed to the commercially inept. As a consequence, it is clear that “net gallons” is not a term describing the number of physical gallons transferred in a transaction, but rather a mechanism by which sellers calculate the price they will charge for that physical volume, i.e., a price term of the contract.

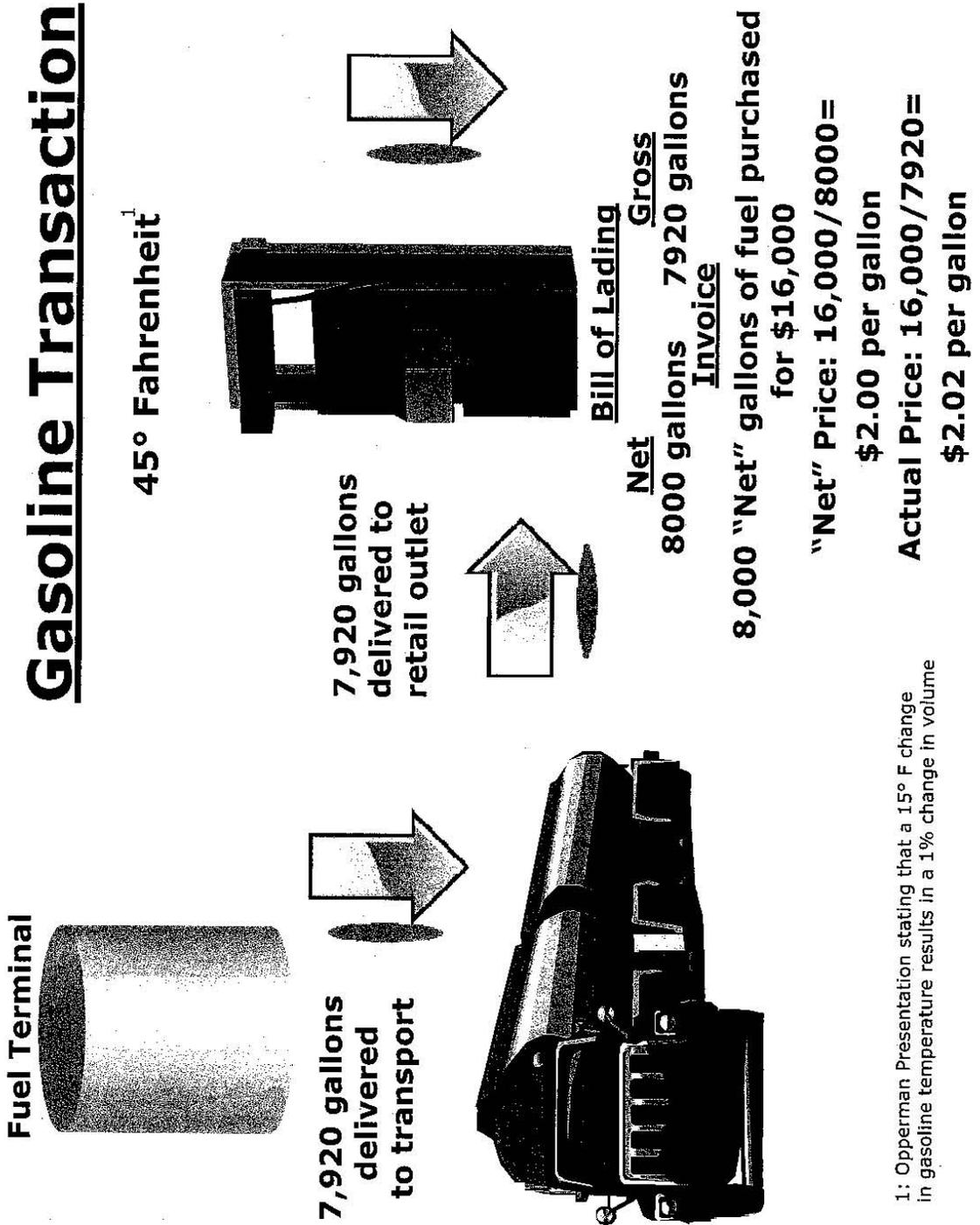
In short, there are no free gallons, missing gallons, or gallons of which consumers have been cheated. Those who believe in those types of gallons are deluding themselves and others.

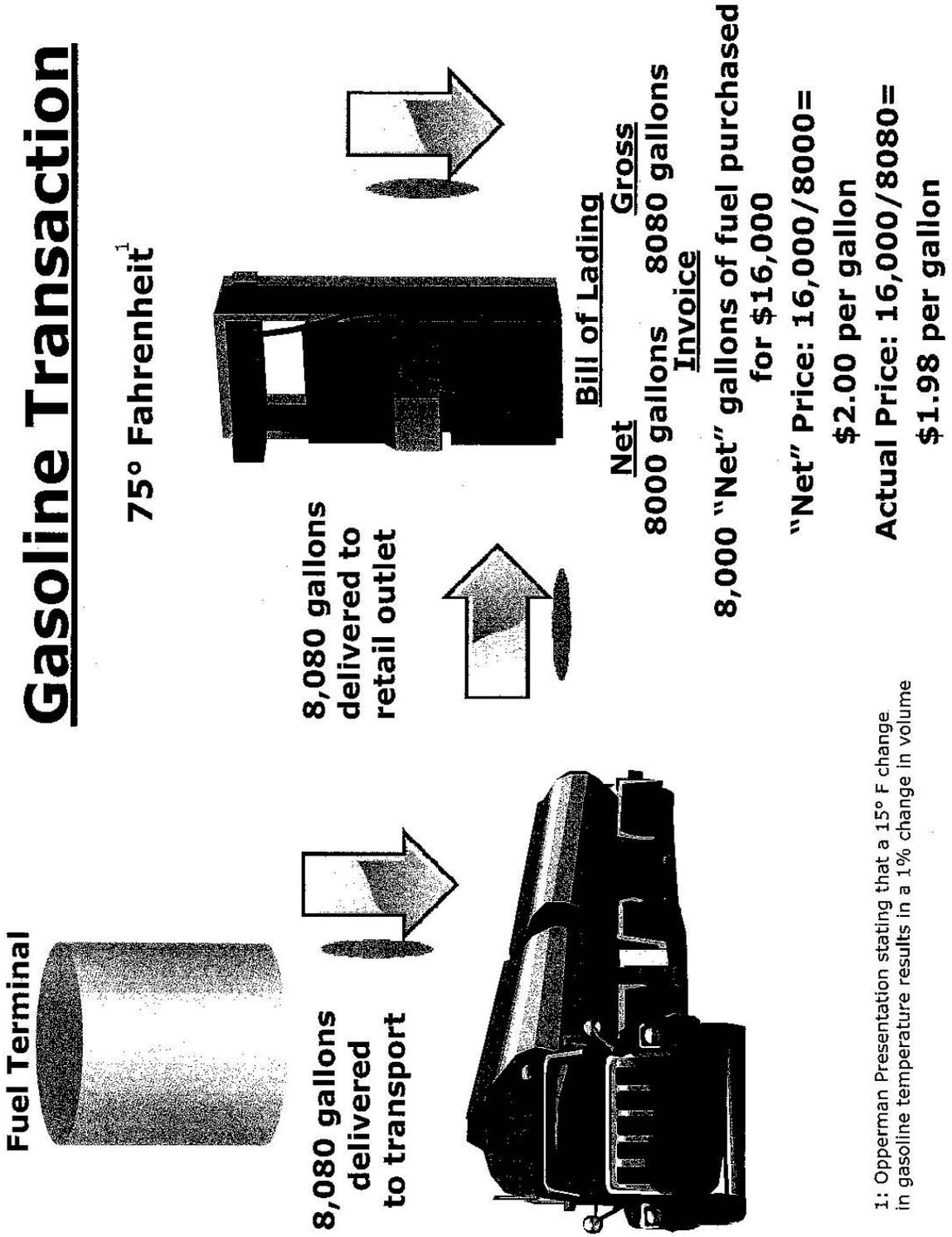
PRINCIPLES AND REALITIES RELATED TO RETAIL MOTOR FUEL PRICING

Over the past several months, there has been considerable controversy over certain wholesale price terms, such as “net” gallons, and the affect of such terms on retail prices for motor fuel. Specifically, some allege that different wholesale price terms, if different from the terms imposed on retail sales, can result in the retailer’s ability to cheat the consumer of product or money. These allegations ignore the most important single reality relevant to retail motor fuel prices: changes in wholesale prices, while having a definite affect on retail market prices over a period of time, have little if any direct connection to retail prices on a day-to-day basis.

In economic terms, retailers of motor fuel are “price takers.” The price that any such particular retailer can achieve is severely limited by prevailing market prices in that retailer’s relevant geographic market. Specifically, price takers are generally unable to raise, on a unilateral basis, the price of the product they are selling. The proof of this proposition with respect to fuel retailers is the significant fluctuations in retailers’ per gallon profit at anyone time. Specifically, over a period of weeks a retailer’s per unit profit can swing from a negative number to very substantial per unit profit and back to breakeven levels. If fuel retailers were “price setters” as opposed to “price takers” then they would quite literally never be required to incur sustained periods of loss.

Simply stated, retail price levels in a particular market for a particular fuel are established by competitive market forces. Those prices reflect the inclusion over time of all costs (product and other) as well as all savings. Immediate changes in cost, such as rapid increases in wholesale costs or decreases in such costs, are rarely transmitted in real time to the retail market. Lower cost retailers restrain retail price increases sought by higher cost competitors as these different competitors struggle for share of market. Only when an entire market has absorbed higher costs or enjoyed lower costs do retail prices move to any real extent. Thus, the concept that a fluctuation in cost per unit as small as that which would result from changes in product temperature would move a market is inconceivable. All such costs are included in the market’s overall process of establishing price levels. There is no immediate correlation on a “one-to-one” basis of increases or decreases in a retailer’s daily cost of product acquisition and its retail price at that particular moment. All such costs, and all ultimate profits, are recovered or achieved over time.





1: Opperman Presentation stating that a 15° F change in gasoline temperature results in a 1% change in volume

L&R Committee 2008 Final Report
 Appendix A – Automatic Temperature Compensation Presentations and Letters

Attachment 1

Vendor Name - Invoice - 046365
 Date - 8/08/07 Due - 8/17/07
 Gross - \$17,319.02 Disc - \$.00 Net - \$17,319.02
 Edi File - 1000075855 Image - A000335360

Seller's address Shipped from
 TPS/DORAVILLE, GA (PIEDMONT)
 12374
 2636 WOODWIN ROAD
 DORAVILLE GA 30360

Remit to

Bill to Ship to
 "Rack" VARIOUS GA 00001 5000

Boi 104882 #2 DF ON-HWY ULTRA LO-SUL Delivered 8/08/07
 #2 DF ON-HWY ULTRA LO-SUL KEYJ Tmp Grv
 Gross 0 Net 0 Billed 7,414 2.0908000 15,501.19
 FET DIESEL FUEL FD 0000 1,801.60
 OIL SPILL SF 2000 8.82
 FET LUST TAX FL 0000 7.41
 FET DIESEL FUEL FD 0000 1,801.60
 OIL SPILL SF 2000 8.82
 FET LUST TAX FL 0000 7.41

Boi 104882 #2 DF ON-HWY ULTRA LO-SUL Delivered 8/08/07
 #2 DF ON-HWY ULTRA LO-SUL KEYJ Tmp Grv
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 OIL SPILL SF 2000 8.82
 FET LUST TAX FL 0000 7.41
 FET DIESEL FUEL FD 0000 1,801.60
 OIL SPILL SF 2000 8.82
 FET LUST TAX FL 0000 7.41

MA 104882
 MA 104882

Attachment 2

Order Number: **Bel # 164882** Order Date: 04/09/07 Order Status: **DELIVERED**
 Retailer: **WINDY ROAD** Retailer Address: **2500 WINDY ROAD** Retailer Phone: **800-368-7000**
 Retailer City: **BRUNSWICK, GA 30109** Retailer State: **GA** Retailer Zip: **30109**
 Retailer Email: **SALES@WINDYROAD.COM** Retailer Website: **WWW.WINDYROAD.COM**

Ship To: **WINDY ROAD** Account Number: **557066** Product Code: **1000000000**
 Ship To Address: **2500 WINDY ROAD** Ship To City: **BRUNSWICK, GA** Ship To State: **GA** Ship To Zip: **30109**

Product Description: **42 DIESEL (15PPM) BY (SD 250)** Gross Weight: **7501.71** Net Weight: **7114** Volume: **29.2** Message Number: **1242, 103, 1000, 1178**

Remarks: **UNLEADED DIESEL FUEL - FEDERAL TAX INVOICES, LOW SULFUR DIESEL FUEL SUPPLIER DOES NOT CONTAIN VISIBLE EVIDENCE OF PPE...**
YOU THIS FUEL COMPLIES WITH THE 15 PPM LOW SULFUR STANDARD FOR RAILROAD DIESEL FUEL OF 1500 LOW SULFUR DISTILLATE COMPLIES WITH FEDERAL STANDARDS CONSUMER USE. DOES NOT CONTAIN VISIBLE EVIDENCE OF PPE.
15PPM LOW SULFUR DIESEL MEETS OR EXCEEDS ALL APPLICABLE CONSUMER COMPLIANCE STANDARDS AS PER THE SPECIFICATIONS.

Customer Signature: *[Signature]*
 Date: **04/09/07**

May # **110261**
 PO # **2708041**
 Central Transport Southern
 Corley GA

S.H.A.H.
 W.S.D.
 38
 102

L&R Committee 2008 Final Report
Appendix A – Automatic Temperature Compensation Presentations and Letters

Attachment 3

INVOICE DATE: 8/10/2007

INVOICE NO. 40261

FROM:

PETROLEUM TRANSPORT, LLC

DUE DATE: 8/16/2007

CUSTOMER:

BOL: 104882

BOL2:

BOL3:

BOL4:

Date	BOL	Origin	Consignee	Product	Quantity	Rate	Amount
8/8/2007	104882	DORAVILLE	CENTRAL TRANSPORT SOUT	DSL	7501	0.017	\$127.52
PO No.2708041			1203 MASON DORON LANE, CONLEY, GA	F	127.52	0.24	\$30.60
Total:							\$158.12

If total payment does not equal Invoice total, note discrepancy by Bill Of Lading

This Invoice is due and payable within 10 days of Invoice date.

***** Please return one copy of Invoice with payment *****