Consumer Watchdog

Formerly The Foundation for Taxpayer & Consumer Rights
1750 Ocean Park Boulevard, #200, Santa Monica, CA 90405-4938 • Tel: 310-392-0522 • Fax: 310-392-8874 • www.consumerwatchdog.org

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Dec. 3, 2008

Gordon Schremp
Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

By facsimile 916-654-4753

Dear Mr. Schremp,

The CEC staff has done thoroughly professional work in its months studying the fuel temperature issue. Your draft report of Nov. 26 is clear in stating that the average gasoline temperature in California, 71 degrees on average, is well above the 60-degree presumed "standard," and that consumers receive less gasoline at the pump than they think they are paying for. You describe the economic unfairness in consumer's inability to correctly value a "gallon."

Yet the report does not recommend a corrective measure, denies that consumers would benefit from any remedy and, most shockingly, calls for legislation that would *prevent* retailers from voluntarily selling gasoline in the fairest manner.

You prove there is a pick-pocket at the gas pump, then ask that he be *required* to keep his hand in our wallets indefinitely.

Consumer Watchdog objects strongly to the following conclusions in the report:

- That the state's Division of Measurement Standards (DMS) "lack[s] adequate regulatory structure" and "consumer protection" (pp. 89, 90 and 123) to oversee voluntary temperature compensation of motor fuel by retailers. DMS officials, during our many meetings at the CEC, made it clear that they had long experience with regulated temperature compensation of other fuel, such as propane, and the legal tools to easily manage it with motor fuels. The DMS has long been a regulatory voice in favor of fuel temperature compensation.

- That the state Legislature should pass a law *prohibiting* any voluntary fuel temperature compensation, because of the supposed inability of the DMS to oversee and regulate it. (pp. 90, 123.) Your recommendation, a wholesale acceptance of the fuel industry's argument, is a humiliating slap at the state's own professional and experienced experts, who are confident that they have the tools already to do the job.

- That no matter what method might be used to compensate for "hot fuel," retailers will raise the price of gasoline or other items to recoup any lost profit and the consumer benefit "would be therefore be (sic) zero." (p. 88 and various). Yet you offer no proof of that assertion. It is just as likely that competition would force retailers to absorb some or all of the cost, that oil refiners would adjust their prices to retailers slightly downward, and that major oil companies would help branded stations absorb physical conversion costs.

Throughout the report the CEC staff offers descriptions, choices and data, but refrains from strong, explicit staff recommendations—*except* in the case of legislation to prohibit sale of temperature-compensated fuel.

While your recommendation implies that the legislative ban could be removed if the DMS developed "sufficient" standards, the vagueness of the word "sufficient" would likely keep the ban in place indefinitely. Such a law would fulfill the petroleum industry's every wish regarding temperature compensation of fuel. We have little doubt that once such a law is in place, no state regulatory proposal will be deemed "sufficient" to allow removal of the ban.

If the CEC recommends a legislative prohibition in its final report, which Consumer Watchdog strongly protests, it must recommend adoption of a cost-free but less accurate solution--a statewide reference temperature of 71 degrees. This would require no equipment and little regulatory adjustment. It would offer less benefit to consumers in warmer parts of the state, and be a greater cost burden on retailers in colder parts of the state. But by recommending an outright ban on adjustment at the pump, you leave yourselves no other option. To keep "hot fuel" sales in place is, as your own study confirms, patently unfair to consumers.

Sincerely,

Judy Dugan

Judy Dugan
Research Director

Cc:
Nick Janusch, CEC
Roger Macey, DMS
Ken Lake, DMS