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Our File No.: 194-2

January 5, 2009

Via PDF and Federal Express

Mr. Gordon Schremp, Project Manager
Fuel and Transportation Division
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

DOCKET

07-HFS-1

DATE JAN 05 2009

RECD. JAN 05 2009

Re: AB 868 Fuel Delivery Temperature Study
Docket No. 07-HFS-01

Dear Mr. Schremp:

We are counsel for the putative classes of consumers of motor fuel in what has been characterized as the "hot fuel" litigation pending against major motor fuel retailers in the State of California (*Klein et. al v. Chevron USA Inc. et. al*, Los Angeles County Superior Court, No. BC367812) and in United States District Court in Kansas (*In Re: Motor Fuel Temperature Sales Practices Litigation*, USDC, Kansas, MDL No. 1840, Case no. 07-MD-1840-KHV).

We write to address arguments made by litigation counsel for Valero Marketing and Supply Company, Chevron USA Inc., Pilot Travel Centers, LLC, Circle K Stores, Inc. 7-Eleven, Inc., and Terrible Herbst, Inc. (the "Oil Companies") both at the California Energy Commission's ("CEC") hearing on December 9, 2008 and in subsequent written submittals to the CEC, asserting that automatic temperature compensation ("ATC") is not permitted under California law.

For the reasons set forth below, we urge the CEC to reject the Oil Companies' arguments as without basis in law or in fact. As the CEC noted in its Staff Report "Fuel Delivery Temperature Study" ("Staff Report"), ATC currently is permitted in California. Indeed, in full compliance with all applicable laws, the California Department of Agriculture approved an ATC device for "use in commerce" in California. The California Department of Agriculture did so only after finding that the ATC device met the "requirements" of the Business & Professions Code "and the tolerances and specifications thereunder." Consistent with that certification and California law, in a 2007 national survey by the National Institute of Standards and Technology ("NIST") of state weights and measures officials regarding the legality of temperature correction on

retail sales, California responded that temperature compensated retail motor fuel sales were permissive at California retail stations.¹

Given the California Department of Agriculture's approval of ATC for "use in commerce", as reinforced by the aforementioned NIST survey, there can be no question that ATC is now permitted in California, and thus, no basis for the Oil Companies' assertion that ATC is not permitted in California. We believe that permissive use should continue until mandatory implementation of ATC. Any alleged issues attendant to permissive use are either non-existent or easily addressed, and clearly preferable to an inaccurate, inequitable scheme for the retail sale of motor fuel, grounded upon the continued deception of the consuming public and attendant substantial losses to consumers.

Price transparency, accomplished through accurate weights and measures standards, is the very heart of our system of commerce. ATC furthers this objective, providing simple standardization for the many billions of gallons of motor fuel sold each year in California. Without ATC, there is no standardization, no price transparency, and no way for any of California's tens of millions of consumers to ever make an informed purchasing decision in one the most common and costliest commercial transactions – the retail purchase of motor fuel.

For these reasons, we respectfully urge the CEC to reject in full the arguments of the Oil Companies.

**I. California Law Does Not Prohibit the Use of ATC at Retail;
Permissive Use Is Authorized**

California Business & Professions Code §§ 12100 and 12103.5 vest authority for supervision and enforcement of weights and measures standards and devices in the California Department of Agriculture (the "Department") as follows:

§12100. General supervision

Where not otherwise provided by law, the Department of Food and Agriculture has general supervision of the weights and measures and weighing and measuring devices sold or used in the state.

Cal. Bus. & Prof. Code § 12100.

¹ See, http://www.ncwm.net/events/atc2007/States_Survey_On_ATC.doc. Relevant portion of survey attached as Exh. 1.

In accordance with its regulatory authority, the Department will approve a weighing and measuring device only where the device meets the requirements of the Business & Professions Code:

§12500.5. Submission of devices; certificate of approval; prohibited sales or uses

The director by rules and regulations shall provide for submission for approval of types or designs of weights, measures, or weighing, measuring, or counting instruments or devices, used for commercial purposes, and **shall issue certificates of approval of such types or designs as he shall find to meet the requirements of this code** and the tolerances and specifications thereunder.

Cal. Bus. & Prof. §12500.5 (emphasis added).

While it is “unlawful to sell or use for commercial purposes any weight or measure, or any weighing, measuring or counting instrument or device, of a type which has not first been so approved by the [D]epartment... (Cal. Bus. & Prof. § 12500.5), **once approved and certified**, an instrument or device “**may be used** within the state without any further test for such period as is authorized” Cal. Bus. & Prof. § 12511 (emphasis added).

On May 17, 2007, in accordance with the authority conferred by such statutes, the Department issued its California Type Evaluation Process (“CTEP”) certificate approving for use in commerce a retail dispenser pump developed by Gilbarco, Inc. (“Gilbarco”) having automatic temperature compensation capability:

This device was evaluated under the California Type Evaluation Process (CTEP) and was found to comply with the applicable technical requirements of the California Code of Regulations for “Weighing and Measuring Devices”. Evaluation results and device characteristics necessary for inspection **and use in commerce** are on the following pages.

/s/ Dennis Johannes, Director

See Ex. 2 (emphasis added). By the terms of both the aforementioned enabling statutes and the certification by the Department charged with responsibility for, and most knowledgeable of, weights and measures issues, immediate use of the ATC function in the Gilbarco fuel dispenser is permitted at retail stations in California.

Further, the Department’s approval of Gilbarco’s ATC dispenser is consistent with its own testing devices, or “Provers”, which, in accordance with National Institute of Standards and Technology Handbook 105-3, tests motor fuel dispensers on a

temperature-compensated basis based on international standards. This section provides:

4.2 Reference Temperature

The temperature at which test measures and provers are referenced during calibration and during use for testing petroleum products is generally 15.56 degrees C (60 degrees F). **International standards reference petroleum products to 15 degrees C.** Provers may be used for applications other than petroleum products; in such cases the appropriate reference temperature should be used.

NIST Handbook 105-3, ¶4.2 (emphasis added).

Significantly, a "standard", as defined by NIST, incorporates external physical conditions, **such as temperature:**

A **standard** is a physical realization or representation of a unit. In general, it is not entirely independent of physical conditions, and it is a representation of the unit only under specified conditions. For example, a meter standard has a length of one meter when **at some definite temperature** and supported in a certain manner. If supported in a different manner, it might have to be at a different temperature to have a length of one meter.

NIST Handbook 44, Appendix B at B-1 (emphasis added).

As is clear from both NIST handbooks and the industry's own practices from wellhead up to, but not including, retail sales, that standard for motor fuels is 231 cubic inches at 60 F. That NIST standard for petroleum products, 231 cubic inches at 60 degrees F, is also established by numerous other governmental and industry organizations:

- The United States Department of Treasury's Bureau of Customs requires imported petroleum products to be declared in gallons of 231 cubic inches at 60° F.
- The American Society for Testing and Materials ("ASTM") has adopted D-1250 as the recommended industry standard, defined a gallon of petroleum as 231 cubic inches at 60° F.
- The American Petroleum Institute has adopted API 2540 which defines a gallon of petroleum as 231 cubic inches at 60° F.
- The American National Standards Institute has adopted ANSI 711.83, which defines a gallon of petroleum as 231 cubic inches at 60° F.

- The Federal Trade Commission, in 16 C.F.R. 500.8(b), defines a gallon of petroleum as 231 cubic inches at 60° F.

Pursuant to Business & Professions Code §§12107, 12107.1 and 12313, California has expressly adopted the NIST **standards**. For example, Section 12107 instructs that the Department shall adopt **“the latest standards”** as published in NIST’s Handbook 44:

§ 12107. Tolerances and specifications; Handbook 44 adoption; regulations; violations

The director shall establish tolerances and specifications and other technical requirements for commercial weighing and measuring. In doing so, the director shall adopt, by reference, **the latest standards as recommended by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 44 “Specifications and Tolerances, and other Technical Requirements for Weighing and Measuring Devices,”** except as specifically modified, amended, or rejected by regulation adopted by the director.

Cal. Bus. & Prof. § 12107 (emphasis added). This statute reflects California’s adoption of all such technical materials, including Handbook 105-3.

Section 12107.1 establishes that the Department may establish **“standards of net weight or net measure, or net count of any commodity”** and, further, that **“it is unlawful to sell the commodity by, at, or for a quantity greater or less than the standard.”** Thus, Section 12107.1 provides:

§ 12107.1. Standard or standards of net weight, measure or count of any commodity; exception; basis for standards; violations

The director, by regulation, **may establish a standard or standards of net weight or net measure, or net count of any commodity**, except any manufactured commodity consisting of four or more staple ingredients. **These standards**, whenever applicable, shall be based upon published, official federal or state specifications and requirements or, in the absence of any such published official specifications, upon established and accepted common usage. . . .

Whenever a **standard**, net weight, net measure, or net count has been established for any commodity, it is unlawful to sell the commodity by, at, or for a quantity greater or less than the standard.

Cal. Bus. & Prof. § 12107.1 (emphasis added).

Chapter 3 of the Business & Profession Code, Division 5, entitled “**Standards of Weights and Measures**” contains numerous additional provisions recognizing and adopting the “National Standards” established by NIST. *See, e.g.*, Cal. Bus. & Prof. §§ 12300, 12303-12305, 12313. *See also* Cal. Bus. & Prof. § 12005 (“Whenever any provision of this division makes reference to the National Bureau of Standards, that reference shall be construed to include the National Institute of Standards and Technology”).

The Gilbarco ATC device approved by the Department employs these standards to deliver to consumers a standardized temperature-compensated gallon in each purchase—one that utilizes the 231 cubic inches (exactly) benchmark, at 60 F. As noted, these are the same temperature-compensated standards utilized by the Department’s own apparatus for testing retail motor fuel dispensers, as well as by the Oil Companies in their intra-industry transactions.

The Oil Companies concede that “**California law contains no express prohibition regarding the installation of ATC-equipped motor fuel dispensers**” at retail.² The Oil Companies contend, however, that, unlike their own transactions, retail sales of motor fuel must be made on a volumetric basis, without any adjustment for temperature.

In order to cobble this argument together, among other things, the Oil Companies first completely ignore the Department’s statutorily-mandated adoption of Handbook 44’s definition of “standard”, which expressly provides for adjustment for temperature variations. Next, the Oil Companies ignore the numerous Business & Professions Code provisions which provide for the sale of commodities according to “standards”. *See, e.g.*, Cal. Bus. & Prof. §§ 12107, 12107.1, 12300, 12303-12305. Finally, the Oil Companies ignore the Department’s use of the same “international standard [for] petroleum products”, 15 degrees C (or **60 degrees F**), in the testing and calibration of retail fuel dispensers. *See* NIST Handbook 105-3, ¶4.2.

Rather than adhering to the Code’s numerous references to standards, the Oil Companies point to Handbook 44’s definition of “unit”, as “independent of such physical conditions such as temperature.” *See* NIST Handbook 44, Appendix B at B-1. The Oil Companies argue that, because a gallon is a unit, defined as “231 cubic inches (exactly)”, NIST Handbook 44, Appendix C, temperature adjustment is not permissible.

² *See* Submission by Valero Marketing and Supply Company and Chevron USA Inc., dated December 11, 2008, at 2 (emphasis added) (“Valero Submission”).

The Oil Companies' argument fails for the following reasons:

1. Handbook 44 clearly distinguishes between "standards" and "units" (See NIST Handbook 44, Appendix B at B-1);
2. The California legislature has, under Cal. Bus. & Prof. §§12107 and 12107.1, expressly authorized the Department of Agriculture to "adopt the latest **standards**" as reflected in NIST Handbooks, and to "establish a **standard or standards** of net weight or net measure, or net count of any commodity" (emphasis added);
3. Handbook 105-3 measures petroleum products at the **standard** of 60 degrees F;
4. Automatic Temperature Compensation equipment applies this standard to the sale of motor fuel to ensure that each gallon of motor fuel contains a standard amount of fuel; and
5. Appendix C to Handbook 44, entitled "General Tables of **Units** of Measurement" does not, in any way, preclude the Department's adoption of **standards** under § 12107.

The Oil Companies simply miss the point. The issue is not whether a gallon container is 231 cubic inches. The issue is whether California law prohibits the implementation of **standards** such that a "gallon" is equal to 231 cubic inches at a **standardized temperature**. The federal district court overseeing a nationwide multi-district case on "hot fuel" recognized precisely this point in a ruling earlier this year, stating:

Handbook 44 defines a gallon as 231 cubic inches, but it **does not expressly prohibit a retailer from adjusting the size or price of a gallon to equal 231 cubic inches at a standardized temperature.**³

In approving Gilbarco's ATC device, the Department has not changed the size of a "gallon" from 231 cubic inches; the Department has merely approved a device that **standardizes** the contents of a gallon to 231 cubic inches at 60 degrees F, thus ensuring that consumers receive the same amount of fuel in every gallon purchased. Contrary to the arguments of the Oil Companies, a gallon is still based upon a 231 cubic inch benchmark.

Nor has the Department "effect[ed] a change in California law."⁴ To the contrary, in issuing its certificate of approval for Gilbarco's ATC device, the Department

³ Memorandum and Order, February 25, 2008, at 16, *In re: Motor Fuel Temperature Sales Practices Litigation*, MDL 1840, U.S. District Court, District of Kansas, 534 F.Supp.2d 1214, 1224 (D.Kan. 2008).

⁴ Valero Submission, at 4.

necessarily found the device “to meet the requirements of this code and the tolerances and specifications thereunder.” Cal. Bus. & Prof. § 12500.5.

California law expressly recognizes the Department’s right and mandate to establish such standards. *See, e.g.*, Cal. Bus. & Prof. §§ 12107 (“the director shall adopt, by reference, the latest standards as recommended by the [NIST] Handbook 44 ‘Specifications and Tolerances, and other Technical Requirements for Weighing and Measuring Devices’) and 12107.1 (“[t]he director, by regulation, may establish a standard or standards of net weight or net measure, or net count of any commodity”).

The Department’s approval of ATC is both permissible and appropriate under the Business & Professions Code. Indeed, in 2007, NIST surveyed weights and measures officials in all 50 states regarding the legality of temperature correction on retail sales of motor fuel; the vast majority, including California, responded that temperature compensated retail motor fuel sales were currently permitted at retail service stations.

The CEC accurately stated in the Staff Report that “Permissive (voluntary) use of automatic temperature compensation (ATC) devices at California retail stations is already permitted under California law as it is not specifically prohibited.” There is no other conclusion possible given the Department’s approval of the ATC device under California law. There is no reason to strike this fundamentally accurate statement from the Staff Report, and the CEC report to the Legislature should disclose the approval of ATC for “use in commerce” by the Department.

II. Use Of ATC Would Not Constitute An “Unfair Practice” Under Business And Professions Code § 17200

In a remarkable twist, the Oil Companies contend that, although “not expressly forbidden”, implementation of ATC at retail would increase consumer confusion and subject retailers to legitimate claims of unfair practices:

Consumer confusion is the hallmark of a deception claim under Section 17200 of the Business & Professions Code as well as under the California Consumer Legal Remedies Act.

Valero Submission, at 6.

The Oil Companies’ argument appears to be premised on the notion that, for California consumers, “ignorance is bliss” and that Californians simply will not be able to absorb the same level of information provided at the pump as Canadian consumers. Any such notion should be rejected on its face, as it has been in Canada **by virtually all motor fuel retailers there**, where ATC has been embraced and funded because it works to the motor fuel retailers’ economic advantage.

Indeed, what could conceivably be more deceptive than the present situation in California? California consumers reasonably believe and expect that, when they purchase motor fuel, they get the same amount of fuel and energy in every gallon

purchased, regardless of where and when they purchase it. In fact, due to the Oil Companies' failure to compensate for temperature variations in the fuel, California consumers do not receive a standardized amount of fuel in every gallon purchased. Furthermore, those few consumers who do have some understanding regarding the effects of temperature on fuel are not provided with the information necessary to make an informed purchasing decision.

In addition to their obvious insult to California consumers, the Oil Companies' argument flies in the face of the entire course of commerce in human history, and the reasons behind the development of weights and measures standards for transactions of fungible commodities, all of which unequivocally demonstrate that the implementation of **standards**, such as ATC, **reduces confusion** in the marketplace, increases legitimate competition, and allows the commercial sale and purchase of fungible goods to flourish. The Staff Report highlights these very concerns at pages 76 through 78, and underscores the benefits from ATC of price transparency, information symmetry and confidence in the accuracy of measurement standards.

The current situation in California offers a perfect example, again, as noted by the Staff Report at page 77. Due to variations in fuel temperature, not only from station to station but even within a single station from day to day, consumers do not receive a standard amount of fuel in every gallon purchased. As a result of these temperature variations, fuel sold for \$2.47 per gallon may, in fact, be a **better** value than the same grade sold across the street for \$2.45, depending on the relative temperatures of the fuels. Because the Oil Companies do not post fuel temperatures, explain to purchasers the effects of temperature on the amount of gas being purchased, or adjust prices to compensate for temperature variations, in the absence of ATC, there is simply no way for California consumers to make an informed purchasing decision based on the advertised fuel price.

Californians are entitled to receive the same information that motor fuel retailers provide every day – without confusion -- to Canadian consumers.

It is also noteworthy, that as both the CEC Report and the Canadian weights and measures governmental organization acknowledge, ATC is a more accurate and equitable method of measuring motor fuel because it removes the inequity of temperature variations from the retail sales financial transactions.⁵ Frankly, it is inconceivable that use of a device approved by the Department, and capable of such objectives, could be unlawful.

III. California Law Does Not "Implicitly Prohibit" The Use of ATC At Retail

California Bus. & Prof. Code §13520 requires that all motor fuel sales in excess of 5,000 gallons be offered to the purchaser on a temperature compensated basis. The statute obviously is intended to address purchases of motor fuels by the retailer from the wholesaler. The Oil Companies argue that, in expressly authorizing temperature

⁵ Staff Report at 1, 77-78.

compensation on sales of motor fuel in excess of 5,000 gallons, the California legislature has **implicitly prohibited** temperature compensation in retail sales. Thus, the Oil Companies argue, the legislature has provided an implied “safe harbor” for their non-temperature compensated retail sale of motor fuel because the legislature permitted temperature compensation for certain wholesale transactions. Again, if this were so, the Department could not have and would not have lawfully approved the ATC device for “use in commerce” in California. More fundamentally, decisional law is clear: there are no implied safe harbors from legislation not specifically and directly addressing the conduct at issue – here, retail sales of motor fuel to consumers.

In addition, in June 2008, the Superior Court of Los Angeles County, California expressly rejected this very argument of an “implied” safe harbor, made by Chevron in its Demurrer to Plaintiffs’ Second Amended Complaint.⁶ In permitting Plaintiffs’ claims under Business & Professions Code § 17200 to proceed, Judge West’s Ruling and Order explained that the “safe harbor doctrine” applied only where the specific conduct of the defendant (*i.e.*, the non-temperature compensated retail sale of motor fuel) was **expressly** authorized by statute:

The Court is not satisfied that the “safe harbor” doctrine applies in this case. Under the “safe harbor” doctrine, “where the allegedly unfair business practice has been authorized by the Legislature, no factual or equitable inquiry may be made, as the court can decide the matter entirely on the law....[T]he legislature’s mere failure to prohibit an activity *does not prevent a court from finding it unfair.*”

Klein, Ruling and Order, June 5, 2008, at 12, *quoting Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.*, 20 Cal. 4th 163, 184 (1999)(emphasis by Judge West).

The *Klein* Court then applied the doctrine to find that nothing in § 13520 expressly permitted Defendants’ non-temperature compensated sale of hot fuel at retail:

By its terms, this statute applies only to the requirement for temperature-corrected gallonage as to sales of 5,000 or more gallons. For purposes of the safe harbor doctrine, **the Court cannot infer that for sales of less than 5,000 gallons, it is not a UCL violation for gasoline retailers to fail to temperature-adjust the fuel to 60 degrees Fahrenheit.** To do so would be to find an express legislative mandate where none exists.

Klein, Ruling and Order, June 5, 2008, at 13 (emphasis added).

⁶ *Klein, et al. v. Chevron USA, Inc.*, Superior Court of Los Angeles County, California, Case No. BC367812 (“*Klein*”).

Other California decisions have held that a party's conduct is only protected by specific legislation where there is an express, specific and direct statement by the legislature that the challenged conduct is either required or permitted; there are no implied safe harbors. *See, e.g., Krumme v. Mercury Ins. Co.*, 123 Cal.App.4th 924 (2004) ("a safe harbor statute must explicitly prohibit liability for the defendants acts or omissions") and *Aron v. U-Haul Co. of Ca.*, 143 Cal.App.4th 796, 804 (2006). In *Aron*, the court considered whether Civil Code §1936 provided a safe harbor against Plaintiffs' UCL and CLRA claims as to U-Haul refueling policies. Finding that §1936 was limited by its statutory language to *passenger* vehicle rental companies, the court held:

While there are similarities between passenger vehicle and motor truck rental companies, **we cannot infer that the Legislature authorized the conduct at issue. . . . Courts thus may not create "implied safe harbors."** (*Krumme v. Mercury Insurance Co.* (2004) 123 Cal.App.4th 924, 940, fn. 5, 20 Cal.Rptr.3d 485.) Because U-Haul is a motor truck rental company, section 1936, subdivision (n)(2) does not apply to its rental operations. (*See Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.*, *supra*, 20 Cal.4th at pp. 182-183, 83 Cal.Rptr.2d 548, 973 P.2d 527 [the "safe harbor" found in legislation must clearly bar the action or permit the challenged conduct]; *Krumme v. Mercury Insurance Co.*, *supra*, 123 Cal.App.4th at p. 940, fn. 5, 20 Cal.Rptr.3d 485 ["a safe harbor statute must explicitly prohibit liability for the defendant's acts or omissions."].)

Id. (emphasis added; notes omitted).

Similarly, *In re: Motor Fuel Temperature Sales Practices Litigation*, MDL 1840, U.S. District Court, District of Kansas, in refusing to dismiss any of the 39 counts in Plaintiffs' complaint, Judge Vratil reached the very same conclusion:

Defendants assert that California courts recognize a "safe harbor" for practices which the state legislature or regulatory bodies specifically permit. . . .

"The rule does not, however, prohibit an action under the unfair competition law merely because some other statute on the subject does not, itself, provide for the action or prohibit the challenged conduct. To forestall an action under the unfair competition law, **another provision must actually "bar" the action or clearly permit the conduct.** There is a difference between (1) not making an activity unlawful, and (2) making that activity lawful. . . ."

MDL, Memorandum and Order, February 21, 2008, at 28-29, [534 F.Supp.2d at 1231] quoting *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Company*, 973 P.2d 527, 541-42 (Cal. 1999)(emphasis added).

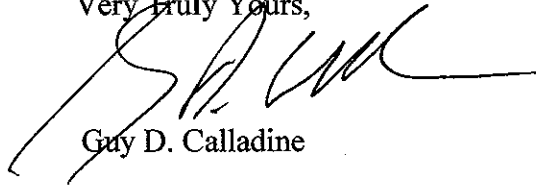
In sum, Business & Professions Code § 13520 does not in any way prohibit use of automatic temperature compensation devices at retail stations in California. Indeed, Section 13520 does not deal with temperature compensation at retail stations for sales to consumers and, thus, Section 13520 cannot in any way impact temperature compensation for consumer purchases of motor fuel in California. Further, the Department has approved the ATC device for use in California as meeting all the "requirements" of the Business & Professions Code. Under these circumstances, there is no question that Section 13520 has no impact whatsoever on any issues before the CEC.

IV. Conclusion

Reliable and accurate weights and measures standards in the sale of fungible products form the foundation of commerce. ATC establishes such standards in the retail sale of motor fuel and, for the first time, will allow California consumers to know what they are paying for at the pump and to make informed decisions in order to obtain the best value for their purchasing dollar.

The Department has properly and appropriately certified the Gilbarco ATC-ready fuel dispenser for commercial use. As correctly noted by the CEC in its Staff Report, use of ATC is permissive in California and, we respectfully submit, should become mandatory.

Very Truly Yours,

A handwritten signature in dark ink, appearing to read 'Guy D. Calladine', is written over the typed name.

Guy D. Calladine

cc: James D. Boyd, Commissioner and Vice-Chair
Karen Douglas, Commissioner

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Exhibit 1

		Is Temperature Compensation Permitted on:				Law, Regulation or Comment
Jurisdiction		Wholesale Meters (e.g., loading rack meters)	Vehicle Tank Meters (e.g., home heating fuel)	Engine Fuel Dispensers - High Speed (e.g., truck refueling)	Engine Fuel Dispensers - Other (e.g., retail service stations)	
1	Alabama	Yes	Yes	Yes	Yes	Alabama adopts NIST Handbooks and applies the applicable criteria to devices using temperature compensation at the wholesale level. No companies have asked to use temperature compensation at the vehicle-tank level or at the high-speed engine fuel level. Nothing in Alabama's law, regulation, or policy specifically prohibits temperature compensation.
2	Alaska	Yes	Yes	Yes	Yes	
3	Arizona	Yes	Yes	Yes	Yes	ARIZONA REVISED STATUTES TITLE 41 CHAPTER, 41-2082. Sale, delivery or consignment of motor fuel; temperature compensation - For the purpose of any sale, offer to sell, delivery or consignment of motor fuel in a quantity of five thousand gallons or more, the volume of the motor fuel for the purposes of calculating the price of the motor fuel is considered to be the volume that the quantity of the motor fuel would equal at the time of loading for sale, delivery or consignment if the temperature of the motor fuel was sixty degrees Fahrenheit. Any correction or adjustment required by this section shall be calculated on the basis of American Society for Testing and Materials (International) D1250-80, table 6B.
4	Arkansas	Yes	Yes	Yes	Yes	
5	California	Yes	Yes	Yes	Yes	
6	Colorado	Yes	Yes	Yes	Yes	
7	Connecticut	Yes	No	No	No	The "no" answers represent the state's interpretation of NIST Handbook 44. ¹ The state does not have a law or regulation prohibiting temperature compensation for these devices.
8	Delaware	Yes	Yes	Yes	Yes	
9	Washington, D.C.	Yes	Yes	Yes	Yes	

¹ NIST Handbook 44, 2007 Edition, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" as adopted by the 91st National Conference on Weights and Measures in 2006.

	Jurisdiction	Survey Respondent
		Little Rock, AR 72209 (501)570-1159 tom.pugh@aspb.ar.gov
5	California	Dennis Johannes Director CA Div of Measurement Standards 6790 Florin Perkins Road #100 Sacramento, California 95828-1812 (916) 229-3000 DJohannes@cdfa.ca.gov
6	Colorado	Maresh Albuquerque, P.G. Petroleum Inspection Program Manager Division of Oil and Public Safety 633 17 th Street, Suite 500 Denver, Colorado 80202 303-318-8533 Maresh.Albuquerque@state.co.us
7	Connecticut	Frank Greene Director Connecticut Dept of Consumer Protection 165 Capitol Avenue Hartford, CT 06106 (860)713-6168 frank.greene@po.state.ct.us
8	Delaware	Steve Connors Administrator of Weights & Measures Delaware Department of Agriculture 2320 South Dupont Highway Dover, DE 19901 (302)698-4602 Steven.connors@state.de.us
9	Washington, D.C.	Jeffrey X. Mason Supervisory Code Compliance Inspector Office of Consumer Affairs Division, Weights and Measures Section 1110 U Street S.E. Washington, DC 20020 (202) 698-2130 jeffrey.mason@dc.gov
10	Florida	Matthew D. Curran, Ph.D. Chief, Bureau of Petroleum Inspection Florida Department of Agriculture and Consumer Services

Exhibit 2

State of California
Department of Food and Agriculture
Division of Measurement Standards

Certificate Number: 5510(a)-07

Page 1 of 13

California Type Evaluation Program
Certificate of Approval
for Weighing and Measuring Devices

For:

Retail Motor Fuel Dispenser
Electronic Computing
Model: Nxx Series*
Generic Name: Encore 300, Encore 300S, Encore 350,
Encore 350S, Encore 500, Encore 500S,
Encore 550, Encore 550S
Capacity: \$999.99 Total Sale
999,999 Total Volume
\$9.999 Maximum Unit Price

Submitted by:

Gilbarco Inc.
7300 West Friendly Avenue
Greensboro, NC 27420-2087
Tel: (336) 547-5375
Fax: (336) 547-5516
Contact: Gordon Johnson

Standard Features and Options

* The specific model designations of devices covered by this Certificate are listed below and on Page 2.

Meter Model Numbers	T19976 GX	T19976 GX	M02950A001	Murray 989	P9XXX Series
Used in Dispenser	Standard	Super hi	Standard	Alternate Fuels	Ultra Hi
Name	"C +" Meter	"C +" Meter	Smart Meter	Murray	LC M5 Series
Minimum Flow Rate	1.5 gpm	6 gpm	0.5 gpm	1.5 gpm	12 gpm
Maximum Flow Rate	12 gpm	30 gpm	30 gpm	12 gpm	60 gpm

All units have the electronic totalizer as a standard feature.

Back-lighted liquid crystal displays (LCD)

Battery back-up for up to 72 hours

Electronic totalizer with volume and sales up to 9 999 999.99 units

Nozzles lane-oriented and high-hose attachment

Down loadable software

Category 1 device (see Sealing)

Stand-alone or console controlled

Options:

Lever-activated nozzle

Cash/credit

CRIND (card reader in dispenser)

TRIND (transmitter/receiver in dispenser)

Full vapor recovery balance (booted)

Brand lighting/Light conduit

10.4 inch "Soft Key" display

Electrical mechanical totalizer (up to 999 999.9 units)

Alternate fuels (Up to 100% Ethanol and 100% bio-diesel)

Automatic Temperature Compensation (ATC) (See Note under Identification on Page 3.)

Key control

Preset cash and/or credit

10.4 inch LCD display

Intercom/overhead speaker

Vapor recovery ready

10.4 inch "Touch Screen" display

Push-to-start (activates pump if nozzle is lifted)

Programmable pump preset

Cash acceptor

InfoScreen

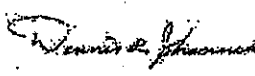
Bar code scanner

"VaporVac"

5.7 inch "Monochrome" display

This device was evaluated under the California Type Evaluation Program (CTEP) and was found to comply with the applicable technical requirements of California Code of Regulations for "Weighing and Measuring Devices." Evaluation results and device characteristics necessary for inspection and use in commerce are on the following pages.

Effective Date: May 17, 2007


Dennis Johannes, Director

Gilbarco Inc.
Retail Motor Fuel Dispenser
Model: Nxx Series

Application: For use in dispensing standard fuels such as gasoline, gasoline with up to 15% ethanol and gasoline with up to 15% methanol blend types and diesel fuel, fuel oil, kerosene and up to 20% biodiesel products as indicated in Section C. "Product Families for Meters" table in NCWM Publication 14, Measuring Devices at retail service stations, attended or unattended, with approved and compatible equipment. Units equipped with the Murray meter are additionally approved for dispensing alternate fuels such as gasoline with greater than 15% Ethanol and diesel with greater than 20% biodiesel (i.e., up to 100% Ethanol and 100% Bio-diesel). These dispensers are approved for use with Phase II vapor recovery equipment and approved booted or bootless nozzles when the system and components are certified and comply with the zero-set-back interlock requirements.

Model Designation: The specific characters in the model designation are represented below:

Position 1	Position 2 and 3	Hydraulics Description	Grade/Hose	Not Part of Model Code
N = Encore	A0	Dispenser	1 Grade	A = Multi-Hose
	A1	Dispenser	2 Grade	
	A2	Dispenser	3 Grade	
	A3	Dispenser	4 Grade	
	B0	Dispenser	1-Grade (Alternative fuel)	B = Multi-Hose
	B1	Dispenser	2-Grade (Alternative fuel; 2 grades)	
	B2	Dispenser	3-Grade (Alternative fuel; 1 grade)	
	B3	Dispenser	4-Grade (Alternative fuel; 1 grade)	
	B4	Dispenser	4-Grade (Alternative fuel; 2 grades)	
	C0	Pump	1 Grade	C = Multi-Pump
	C1	Pump	2 Grade	
	C2	Pump	3 Grade	
	C3	Pump	4 Grade	
	F0	3 Grade + 1	(Alternative fuel, 1 grade)	F = Single hose + 1
	F1	4 Grade + 1	(Alternative fuel, 1 grade)	
	F2	4 Grade + 2	(Alternative fuel, 2 grades)	
	G0	Dispenser Single Hose	3 Grade	G = Single Hose
	G1	Dispenser Single Hose + 1	3 + 1 Grade	
	G2	Pump Single Hose	3 Grade	
	G3	Pump Single Hose + 1	3 + 1 Grade	
	G4	Dispenser Single Hose	2 Grade	
	G5	Pump Single Hose	2 Grade	
	J0	Blender Dispenser	3 Grade	J = Multi-Hose Blender
	J1	Blender Pump	3 Grade	
	J2	Blender + 1 Dispenser	4 Grade	
	J3	Blender + 1 Pump	4 Grade	
	L0	Blender Dispenser X + 1	2 + 1 Grade	L = X + 1 Blender
	L1	Blender Dispenser X + 1	3 + 1 Grade	
	L2	Blender Dispenser X + 1	4 + 1 Grade	
	L3	Blender Dispenser X + 1	5 + 1 Grade	
	L4	Blender Pump X + 1	2 + 1 Grade	
	L5	Blender Pump X + 1	3 + 1 Grade	
	L6	Blender Pump X + 1	4 + 1 Grade	
	L7	Blender Pump X + 1	5 + 1 Grade	
	M0	Blender Dispenser 2+1	(Alternative fuel; 1 grade)	M = X + 1 Blender
	M1	Blender Dispenser 3+1	(Alternative fuel; 1 grade)	
	M2	Blender Dispenser 4+1	(Alternative fuel; 1 grade)	
	M3	Blender Dispenser 3+1+1	(Alternative fuel; 2 grades)	
	N3	Blender Dispenser X + 0	5 + 0 Grade	
	N4	Blender Pump X + 0	2 + 0 Grade	
	N5	Blender Pump X + 0	3 + 0 Grade	
	N6	Blender Pump X + 0	4 + 0 Grade	
	N7	Blender Pump X + 0	5 + 0 Grade	
	P0	Super-Hi Dispenser	1 Grade	P = High Flow
	P1	Super-Hi Master	1 Grade	
	P2	Super-Hi Combo	1 Grade	
	P3	Ultra-Hi Master	1 Grade	
	P4	Ultra-Hi Combo	1 Grade	
	P5	Ultra-Hi Satellite	1 Grade	

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Identification: The identification badge, metal or a self-destructive badge is on the lower base plate below the access panel covering the hydraulics cabinet or located behind the locked main options door. Optional features are indicated on the identification plate.

NOTE: The dispenser and printed receipt will show the volume has been corrected to 15 °C (60 °F) when using the temperature compensation option.

Sealing: The Encore Series device has no remote configuration capability and is classified as a Category 1 device. Access to all metrological features and functions are controlled through the use of a sealable security switch. The security switch has two positions, "normal/sealed" and "calibration/configuration." When the security switch is in the "calibration/configuration" position, sealable parameters including meter calibration, gallon/liter settings, and blend ratio settings can be accessed. Access to sealable parameters is prevented by placing the security switch in the "normal/sealed" position and threading a wire security seal through the cover, which fits over the security switch. The wire security seal must be broken in order to lift the hinged cover and to move the security switch to the "calibration/configuration" position. The security switch and Manager's keypad are located behind the locked main options door. Access to the security switch and Manager's keypad requires opening the options door.

When using temperature compensation the temperature probes have provisions to seal the probes in place.

The alternate fuel dispenser uses Murray Model 989 meters. The meter located in the dispenser's hydraulic cabinet is provided with a calibration wheel located on the top of the meter. The calibration wheel shall be sealed with a physical sealing means.

Encore "S" series may also have a user provided lock that must be accessed. The locked lower hydraulics door must be removed to access the user provided lock. This locks a "tool box" type latch that secures the main door. To access features located behind the main door first remove the lower hydraulics door, then unlatch the main door's "tool box" latch, then open the main door. The main door is secured with a lock/key and the lock is located on the left side of the door. The Manager's keypad is secured to a metal "Vault" that prevents access to the keypad without opening the main door. These changes are required to deter unauthorized access to the unit that may result in undetected fraudulent activities.

Electronic Calibration (E-cal): Access to the electronic calibration feature is through the security switch described above. With the switch in the "calibration/configuration" position, a calibration code and the volume of the volumetric standard are entered into the keypad next to the security switch. Product is then dispensed into the standard, a delivery error is determined in cubic inches, and the error value is entered into the keypad. The security switch is then returned to the normal operating ("normal/sealed") position and the switch cover is sealed with a wire security seal.

Gallon/Liter Setting: Access to the gallon/liter setting is through the security switch described above. With the switch in the "calibration/configuration" position, a conversion factor is used to program all Encore® Series dispensers to indicate in gallons or liters. Gallon/liter setting information can also be viewed without entering the configuration mode. With the switch in the "normal/sealed" position, the number of times that the conversion factor has been changed since the initial installation can be displayed in the main "Volume" display by pressing "ENTER" on the manager's keypad. Press any other key to revert to the normal display. See "examples" shown below.

Blend Ratio Setting: Access to the blend ratio setting is through the security switch described above. On customer-selectable and fixed-blenders, the individual blend ratios for each grade may be programmed at the dispenser. Blend ratio information can also be viewed without entering the configuration mode. With the switch in the "normal/sealed" position pressing "ENTER" on the manager's keypad causes the display at the dispenser to indicate the number of times the blend ratio has been changed as shown below.

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EXAMPLES: The ENTER key is used to display blender information on a unit that is configured for blends. If the unit is not a blender then no action is taken when the ENTER key is depressed. The CLEAR key is used to exit blend info mode. The unit will also exit blend info mode after one minute has elapsed.

Blend information is displayed in the following format:

Sale Display: XXXX - Number of times blend ratios have been adjusted. Example - 0018 would indicate that the blend ratios have been changed 18 times.

Volume Display: XXXX - Number of times volume units have been adjusted. Example - 0019 would indicate that the volume unit has been changed from liters to gallons and gallons to liters a total of 19 times.

PPU Grade Display: XXX - Each PPU grade will display the percentage of the lowest octane pure product portion of the blend. Example: A three-grade blender could show this: PPU 1 100, PPU 2 83, PPU 3 75. This would indicate that grade one was composed of 100% of the low octane pure product, grade two was composed of 83% of the low octane pure product, and grade three was composed of 75% of the low octane pure product.

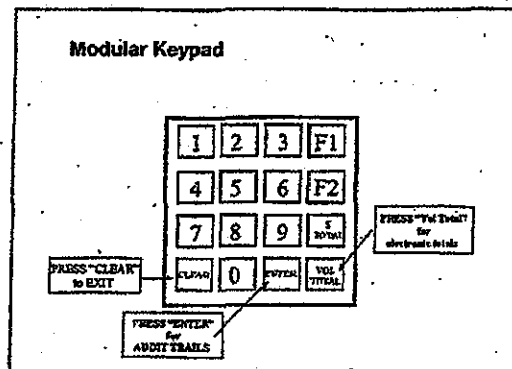
Operation: Gilbarco Smart Meter, Model M02950A001 is an alternate to the Gilbarco C+ meter and the LC M5 series meters and is located in the side column of the dispenser. The Gilbarco "Smart Meter" (is a counter rotating twin turbine inferential meter that accurately meters retail motor transportation fuels. (Diesel fuel, gasoline, gasoline/ethanol, and gasoline/methanol blend types of products. Each meter is equipped with an electronic printed circuit board that contains a "calibration curve" that is unique to that individual's meter's configuration. (Bore size, internal components such as bearings, spacers and rotors including the individual tolerances of all components) Replacement of any internal component changes the metrological characteristics of the meter. The calibration curve data cannot be accessed or changed in the field. The PCB is encapsulated to prevent tampering.

Rotations of the turbines are detected by electronic pick-ups (located on the PCB) through the meter body. This electronic signal is then converted to volumetric display by the dispenser electronics. Traditional Gilbarco Pulsers are not used. The meter is not suitable for field repair.

The vacuum-assist vapor recovery option for the Encore® Series consists of an explosion-proof motor driving a vacuum pump. The motor(s)/pump(s) are in the hydraulic section of the dispenser. The PC board for the electronic vacuum pump-controller is in the electronic section of the dispenser. The PC board monitors the rate at which gasoline is dispensed and then proportionally controls the motor(s)/pump(s) speeds. The rate of vapor recovery is proportional to the product flow rate. Each hose is equipped with an electronically operated vapor valve, which operates without isolating hoses.

Dispensers equipped with the "TRIND" (transmitter/receiver in the dispenser) are authorized by radio frequency communication. The transponder tag, mounted in the vehicle or hand-held unit, communicates to the receiver in the dispenser of the customer's predetermined preferences. The transponder may be overridden by using a credit card or the transaction canceled by pressing the "CANCEL" button. Transponders are not capable of concurrent use at multiple fueling positions or consecutive use at the same dispenser.

For units with electronic totalizers (effective April 1, 1998), you can retrieve totals electronically at the pump or dispenser by using the modular keypad. This keypad sits behind the locked access door on the "A" side of the electronics module. For the Encore® Series, it mounts on a removable magnetic pad that attaches to the inside cabinet behind the left or right option door.

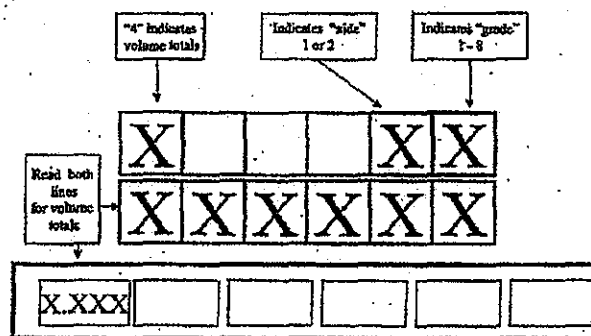


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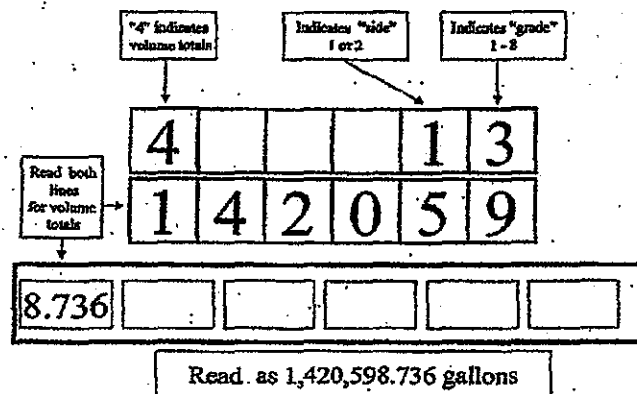
The **VOL TOTAL** key is used to retrieve volume totals for each fuel grade. These key functions do not require a security code to access. Just press the **VOL TOTAL** button. The **CLEAR** key is used to exit volume total or audit trail modes.

Retrieving VOL TOTAL Examples:

Press **VOL TOTAL** - display changes from normal to volume totals
Press **Enter** to change the flashing display location to the first digit
Press **1** for side one or **2** for side two
Press **Enter** - flashing display moves to the second digit
Press **1** or **2** or **3** or **4** or **5** or **6**, etc., for grades
Read electronic totalizer for each side and grade
Press **Clear** to return to normal mode



The sample below shows a volume total of 1 420 598.736 gallons on side 1, product 3. Electronic totalizer can display up to 9 999 999.999 units (gallons or liters).

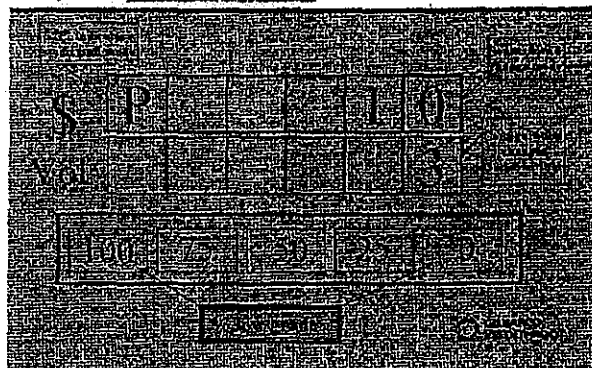


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The Encore is provided with a means to change the multiple meters calibration with one sealable means. As a result, HB 44 regulations were changed to require that a means be provided to determine which meter was calibrated.

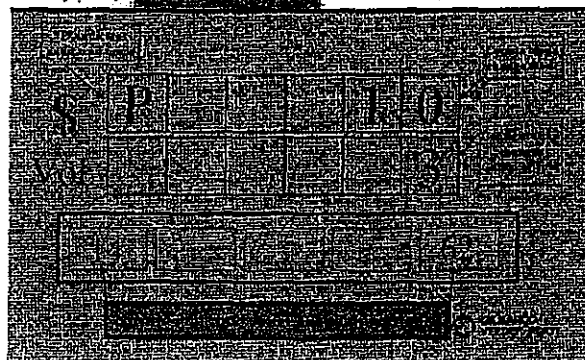
Gilbarco provides a method to determine the number of days, number of times, and number of pulses per gallon/liter for each meter on units manufactured after January 1, 2005. Using the manager's keypad press the "Enter" button. The first time the Enter key is pressed the display changes as shown below.

Encore / Eclipse audit trail Display
press **Enter**



Pressing the Enter key a second time, the display will show the number of days.

Encore / Eclipse audit trail Display
press **Enter**



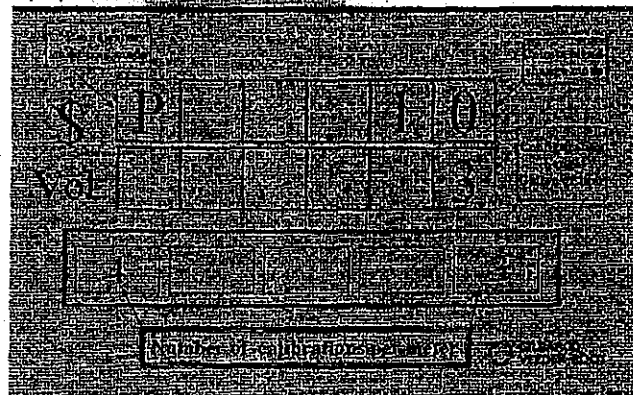
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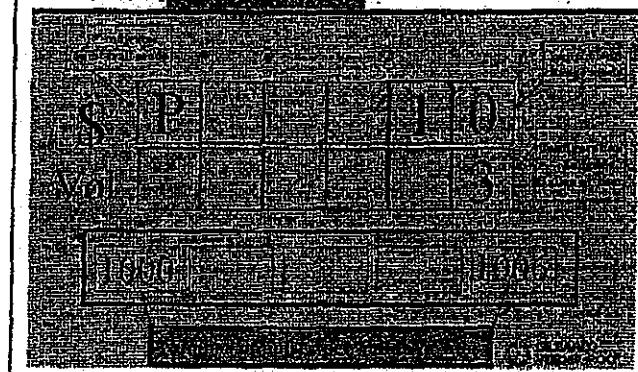
Pressing the Enter key the third time indicated the number of calibrations per meter.

Encore/ Eclipse audit trail Display
press **enter** for time



Pressing the Enter key a fourth time indicated the number of pulses per gallon or liter.

Encore / Eclipse audit trail Display
press



Press the "Clear" key returns the display to the normal mode. Note that the display will return to the normal mode if a key is not pressed within 45 seconds.

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Test Conditions: This certificate supersedes Certificate of Approval Number 5510-07 and is issued to correct the previous test conditions. This certificate is issued to add electronic Automatic Temperature Compensation. A Model NA2 dispenser with a C+ meter was submitted for evaluation. Over 70 five gallon test drafts were conducted with fuel temperatures from 48 °F to 96 °F for accuracy, repeatability, and of temperature compensated (corrected to 60 °F) and non-temperature compensated deliveries. Tests for permanence were repeated 30 days later. An acceptance tolerance of ± 3 cubic inches was applied. Repeatability tolerance applied was 2 cubic inches. A tolerance of 2 cubic inches was applied to the errors between the uncompensated and compensated test results. Previous test conditions are listed below for reference.

Certificate of Approval Number 5510-07: This certificate superseded Certificate of Conformance Number 02-019A7 and was issued to add electronic Automatic Temperature Compensation. A Model NA2 dispenser with a C+ meter was submitted for evaluation. Initially over 70, five gallon test drafts were conducted with fuel temperatures from 48 °F to 96 °F for accuracy, repeatability, and of temperature compensated (corrected to 60 °F) and non-temperature compensated deliveries. Tests for permanence were repeated 30 days later. An acceptance tolerance of ± 3 cubic inches was applied for normal tests and ± 5.5 cubic inches for special tests. Repeatability tolerance applied was 2.4 cubic inches. A tolerance of 0.1% was applied to the meter errors between the uncompensated and compensated test results.

Certificate of Conformance Number 02-019A7: This certificate superseded Certificate of Conformance number 02-019A6 and was issued to add alternate fuels such as E100 (100% ethanol), E85 (gasoline with 85% ethanol), and B100 biodiesel (100% biodiesel) or any biodiesel blend greater than 20%. The alternate fuel dispenser uses a Murray Model 989 meter. The meter located in the dispenser's hydraulic cabinet is provided with a calibration wheel located on the top of the meter. The calibration wheel shall be sealed with a physical sealing means. The dispenser with the Murray meter and console were evaluated and tested at the manufacturer's facility using the 2006 Edition of NCWM Publication 14 as the basis for the evaluation. E100 (100% ethanol) and "Worthpar7" (10 centipoise) were used as the test fluids. Accuracy testing was done at 3 flow rates for both the initial and subsequent test. Each meter was retested after a minimum of 23 days use and having dispensed 30 600 gallons E100 and 30 200 gallons of B100. The device complies with applicable requirements.

Certificate of Conformance Number 02-019A6: This certificate superseded Certificate of Conformance number 02-019A5 and was issued to indicate updated instructions needed to access the unit's event counters due to a change in HB 44 regulations, add "S" to the Encore 300 (new bezel currently used in other Encore models), and update fuels to include the Product Families for meters table in NCWM Publication 14. No additional testing was deemed necessary.

Certificate of Conformance Number 02-019A5: This certificate superseded Certificate of Conformance number 02-019A4 and was issued to indicate updated instructions needed to access the unit's sealable switch and Manager's keypad. See instructions under Sealing Encore "S" series. All switch and keypad functions/features remain the same. This only affects units with the "S" model numbers. The location of the keypad "on a drop down bracket" as noted in 02-019A4 were revised before production started. These changes are required to deter unauthorized access to the unit that may result in undetected fraudulent activities. No additional testing was deemed necessary.

Certificate of Conformance Number 02-019A4: This certificate superseded Certificate of Conformance number 02-019A3 and was issued to indicate a new Generic Name, Encore 350S, Encore 500S, and Encore 550S. The "S" or "Stylized" Series has a new main door that offers customers a "new look" and a larger main display. The manager's keypad is located behind the locked primer door on a drop down bracket. All other functions/features remain the same. The model numbers remain the same. Units with the new main door show an "S" after the Generic Name. No additional testing was deemed necessary.

Certificate of Conformance Number 02-019A3: This certificate superseded Certificate of Conformance number 02-019A2 and was issued to indicate a change in Family names. Encore 550 represents the model containing the Smart Meter and Smart Connect. Smart Meter is detailed under NTEP Certificate of Conformance Number 03-049. Smart Connect is a new PCB that facilitates remote diagnostics capability. This model is identical to the Encore 500 plus Smart Meter. The Family name of Encore 350 is will be used to define models with the standard Gilbarco C+ meter. This series is identical to the Encore 500 series.

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Certificate of Conformance Number 02-019A2: This certificate superseded Certificate of Conformance number 02-019A1 and was issued to indicate a new meter. See Certificate of Conformance Number 03-049 for detailed test information. The emphasis of the evaluation was to assure that the new meter functioned as evaluated in NTEP CC 03-049 and that the dispenser's electronics continued to function with the new meter. An Encore Series dispenser with the Smart Meter installed was connected to the manufacturer's G-Site control console. The dispenser and console were evaluated and tested at the manufacturer's facility using the 2003 edition of NCWM Publication 14 as the basis for the evaluation. Additional meter accuracy testing was conducted at several flow rates.

Certificate of Conformance Number 02-019A1: This certificate superseded Certificate of Conformance Number 02-019 and was issued to indicate an alternate location of the identification badge behind the main options door. The location was changed in accordance with HB 44 S.4.4.2. "Location of Marking Information; Retail Motor-Fuel Dispensers". A key is required to access this portion of the dispenser. Also, under "Sealing" a section was added to better describe the locations of the security switch. The part number of the LC meter used for ultra-hi flow modes was changed from P9550/9560 (M5) to P9xxx (M5). The P9xxx indicates non-metrological changes to the LC M5 meter. No additional tests were considered necessary.

Certificate of Conformance Number 02-019: This certificate superseded Certificate of Conformance Number 00-035A2 and was issued to indicate the transfer of ownership from 00-035A2 to 02-019. The NTEP Certificate of Conformance 00-035A2, though inactive, remains in effect to cover those devices previously sold and installed under the original name. Previous test information and documentation provided by the company was reviewed.

Certificate of Conformance Number 00-035A2: This Certificate superseded Certificate of Conformance Number 00-035A1 and was issued to reflect a change in the model's base electronics options. The new optional electronics in the Encore comes directly from the manufacturer's Advantage Series, Certificate of Conformance Number 99-173. The model with the Advantage Series electronics option will be identified as Encore 300. The manufacturer's current Encore will be renamed Encore 500. For all models, Encore, Encore 500 and the new Encore 300, the Audit trail, Electronic totalizers and Electronic meter calibration remain the same as currently shown in this Certificate. This certificate also adds two new models NG4, Dispenser Single Hose, 2 Grade and NG5, Pump Single Hose, 2 Grade to the model code section of this certificate. These models represent are same as previously evaluated models, minus one hose position, and does not represent a change that requires additional evaluation. This Certificate is issued based upon information provided by the manufacturer, the previous evaluation, and the evaluation of the manufacturer's Advantage series. The units hydraulics section (meters, valves, piping, filters, etc.) have not changed. Due to all components having active Certificates of Conformance, additional type evaluation or field performance testing is not required.

Certificate of Conformance Number 00-035A1: This Certificate superseded Certificate of Conformance Number 00-035 and was issued to correct the method of sealing used in the device, to reflect the elimination of the event logger capability from the device, and to include additional information in the original test conditions. This Certificate is issued based upon information provided by the manufacturer, the previous evaluation, and an evaluation of the sealable features on a recently installed unit.

An Encore Series dispenser was installed in a field site interfaced with a console for the purposes of this evaluation. The emphasis of the evaluation was on the method of accessing the sealable features on the device and the security provided to control access to the features. A summary of the changes to the Certificate as a result of the current evaluation are outlined below followed by the previous test conditions.

The original Certificate incorrectly stated that the blend ratios can be configured at the device or remotely through the console. All sealable features, including the blend feature, are accessed only through a physical switch at the device, which is protected by a physical security seal. Because its sealable features cannot be accessed remotely, the device is categorized as a "Category 1" device. Access to these features is protected by a physical seal as described under "Sealing." The operation of the physical switch to access sealable parameters and the method of sealing that switch were evaluated in the original evaluation of the device. Additionally, the current operation of accessing and securing the sealable parameters was verified as described in the evaluation above.

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The original Certificate listed an "event logger" as a feature for providing information concerning changes to scalable parameters. An event logger is required for devices with unlimited remote access, that is, for "Category 3" devices. While the device originally evaluated included an event logger similar to that required in Category 3 devices, the device did not have unlimited remote access and an event logger was not required; the manufacturer chose to provide the event logger only as supplemental information. The manufacturer has now chosen to eliminate the event logger feature from the device. As a Category 1 device, the device does not have unlimited access to scalable parameters, and an event logger is not required. The deletion of this feature was confirmed during the evaluation described above, and the Certificate has been modified accordingly.

Certificate of Conformance Number 00-035: The emphasis of the evaluation of this device, generically known as the Encore Series, was on the operation and performance of the device. A unit was evaluated at the manufacturer's facility where more than 1 000 000 gallons of product were run through the device. Additionally, a unit was installed in a field installation where it was evaluated initially and again after 20 days to evaluate the operation of the electronics. Tests were conducted at both the field sites and laboratory for all options listed on page 1 of this Certificate. Additionally, the options listed on page 1 are identical to those evaluated in conjunction with Certificate of Conformance Number 90-115A9 for the Marconi (formerly Gilbarco) Advantage Series.

The results of the evaluations and information provided by the manufacturer indicate the devices comply with applicable requirements.

Evaluated by: R. Murdock, J. Butler, W. Scruton (NC) 00-035; R. Murdock, J. Butler (NC) 00-035A1; J. Butler (NC), W. Scruton (NC) 02-019A2, 02-019A3; J. Butler (NC), 02-019A6; J. Butler, Katalinic (NC), 02-019A7; D. Reiswig (CA) 5510-07 and 5510(a)-07

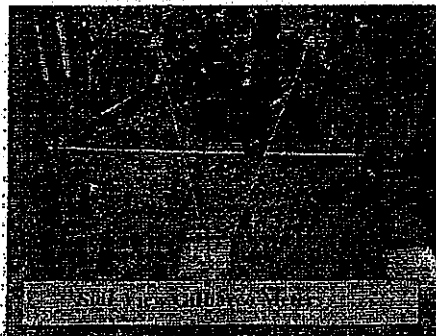
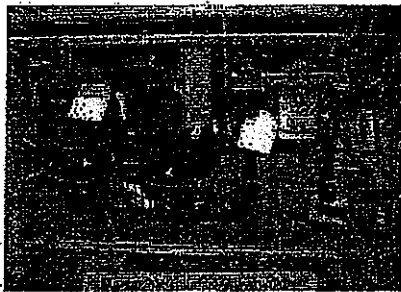
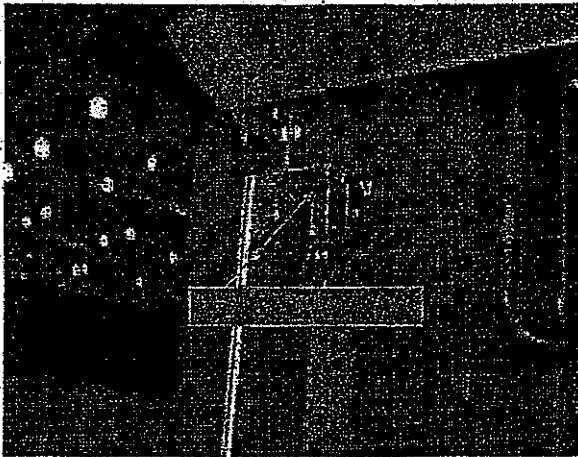
Type Evaluation Criteria Used: Title 4, California Code of Regulations, 2007 Edition

Information Reviewed By: T. Butcher, L. Sebring (NIST) 00-035A1; S. Patoray (NCWM) 00-035A2, 02-019, 02-019A1, 02-019A2, 02-019A3, 02-019A4; L. Bernetic (NCWM) 02-019, 02-019A1, 02-019A2, 02-019A3, 02-019A4, 02-019A5, 02-019A6, 02-019A7

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Examples of Nxx Series



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Two configuration examples of Encore dispensers..

