COUNTY OF LOS ANGELES

Department of
Agricultural Commissioner/
Weights and Measures

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Richard K. Iizuka
Chief Deputy

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State of California
Energy Resources Conservation and Development Commission
Dockets Office, MS-4
Re: Docket No. 07-HFS-01
1516 Ninth Street
Sacramento, CA 95814-5512

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

Dear Commissioners Boyd and Douglas:

Please accept my appreciation and commendation for the outstanding work of the California Energy Commission (CEC) staff in regard to its conduct of public hearings and workshops regarding the development of the AB 868 Fuel Delivery Temperature Study and the presentation of the related draft staff report. In particular, Project Manager Gordon Schremp has ensured his accessibility and that of his staff throughout the process to answer inquiries, provide clarification, and to facilitate the exchange of information pertinent to this important endeavor.

The findings of the report support a conclusion that automatic temperature compensation at the retail level for transportation fuel sales is both feasible and beneficial to the purchasing consumer as well as for competing dealers. Given the certain premise that liquids do expand and contract with temperature, it is imperative that consumers know, in making purchase decisions, exactly what they are receiving for their money at the time such decisions are made. This is all the more pertinent in considering that the retail fuel market is, indeed, highly competitive and consumers make purchase decisions based upon very slim per-gallon price variances among competitors. The lack of certainty regarding temperature and resulting fuel expansion that exists in the absence of automatic temperature compensation (ATC) technology at retail fuel stations results in the potential obliteration of the ability to compare value among such minimal price variances.

Regarding retail fuel dealers, as the vast majority of wholesale fuel purchases are conducted on a temperature compensated basis, ATC at retail ensures that fuel sellers can both recover their wholesale costs and apply a profit margin that is consistent and reliable, as sales volumes and revenues would be directly proportional to their wholesale fuel purchases. The need to continually monitor fuel tank contents and fuel temperatures and to make continual adjustments to advertised fuel prices to achieve those cost recoveries and profit gains become entirely unnecessary, as delivery adjustments are automatic via the technology's compensation functions.

There are several points of precedence and assumptions that should not be disregarded by the CEC in preparing its recommendation to the Legislature. First is the recognition that temperature compensation has been implemented in the majority of wholesale transactions to ensure consistency and accuracy within that level of motor fuel commerce for at least half a century, as noted in the report. One may only assume that such is due to the benefit it provides to those engaged in the transactions. Secondly, existing State law (Business and Professions Code Section 12608) has required for forty years that all packaged liquid commodities be labeled to express the content quantities at specific reference temperatures (60° Fahrenheit for petroleum products, 40° Fahrenheit for refrigerated liquid commodities, and 68° Fahrenheit for other liquids). These standards have well served both the manufacturing industries and consumers in ensuring that competition is fair and labeled quantities are reliable, facilitating value comparison. Finally, the observations of Canada's voluntary implementation of ATC at a rate exceeding 90% is evidence of Canadian retailers' recognition that fuel sale volumes and maintenance of desired and reliable profitability are successfully facilitated by ATC in a cold weather environment. Certainly, it can be assumed that the same should be true in a typically warm weather environment as exists in California.

In the interest of brevity, I will simply concur with the CEC staff's conclusions that a single gasoline density value close to the annual average is preferable, that a change to the 60° reference temperature is not warranted, and that regionalized reference temperatures are not feasible and present more risks than benefits. These latter two options should be rejected.

The bottom-line goal of the AB 868 Fuel Delivery Temperature Study has been to conduct a cost-benefit analysis to determine whether the cost of ATC implementation at retail is warranted. As a weights and measures regulatory official with twenty-four years of experience overseeing the nation's largest county in which nearly two-thousand retail fuel stations operate over 56,000 dispensers and conduct nearly 25% of the state's annual fuel sales, I submit to you that the answer is "Yes."

Weights and measures laws and regulations are intended to facilitate value comparison. This premise is reflected in the preamble to the Federal Fair Packaging and Labeling Act (Title 15 CFR Chapter 39 §1451) and in that of the National Institute of Standards and Technology (NIST) Handbook 130 Uniform Packaging and Labeling Regulations adopted by reference as California regulations (Title 4 California Code of Regulations [CCR], Division 9, Chapter 1, Article 1, §4510). Assurance of accurate measurement and commodity delivery in non-packaged commodity sales is of equal importance and is accomplished through enforcement of comprehensive requirements for commercially used weighing and measuring devices set forth in NIST Handbook 44 and adopted by reference as California regulations (Title 4 CCR Division 9, Chapter 1, Article 1, §4000). The requirements established in these regulations have evolved dramatically over decades as improvements have been made to measurement technologies. Many measuring devices that were previously implemented for commercial use are no longer permitted, as technology has advanced, become available at reasonable cost, and has proven to provide greater assurance of accuracy than that of the preceding equipment. Similarly, newer and improved accuracy tolerances and device specifications have been required and implemented in their place as they became available, even though higher costs were incurred, as they provided greater protection to commerce. Such should be done in the case of automatic temperature compensation technology.

The issue of monetary benefits from ATC to California consumers is, admittedly, a convoluted issue. As reflected in the CEC staff study report, sales of gasoline and diesel fuel in California amounted to approximately 15.625 billion gallons and 3.056 billion gallons, respectively, during the study period. Had ATC been in use, California consumers would have paid for a total of 136 million fewer gallons amounting to a value of $438 million. Opponents of ATC will argue that this value is presented in error, as it is to be presumed that cost savings to retailers (fuel not actually delivered) is reflected in the per-gallon prices offered to consumers and they, therefore, did not incur the actual expense. Facts supporting such a presumption, though, have not been presented or documented in any way by the opponents. Opponents will also argue that, if ATC were to be implemented, costs would need to be passed on to consumers, resulting in no net benefit to them. This brings the matter to its bottom-line question: Is there a net benefit? I again submit, "Yes."

There can be no assurance, under current non-ATC retail fuel sales practices, that temperature variables have been taken into account in establishing retail per-gallon prices. There is a demonstrated recurring problem of uncertainty amounting to over $400 million that can be remedied by a one-time $123 million solution, using the CEC's high-end calculation of implementation costs. Even if passed through to consumers in its entirety, this solution will be offset by a one-year increase in retail fuel prices of less than a penny per gallon (7/10 of a cent) over the course of a single year, with ongoing costs (at the high-end) of seven-hundredths of a cent per gallon. By any reasonable standard, such a cost is negligible.

To put the above in perspective at an individual consumer level, assume that a driver purchases 20 gallons of fuel in each of the 52 weeks of the year, amounting to 1,040 gallons. The 7/10 cent pass-through charge in the initial year will amount to $7.28 in cost to that consumer and 73 cents per year thereafter. As fuel temperatures have been demonstrated in the statewide temperature survey to reach, at times, nearly 100 degrees, the fuel expansion variance from a 60° F reference temperature would amount to about a nickel per gallon at $2.00 per gallon prices, creating an uncertainty of $52.00 for that consumer in comparing prices among competing fuel retailers with 5-cent per-gallon pricing differences. As with the global perspective, this is a 52 dollar problem remedied by a 7 dollar solution in the first year and by a 73 cent solution for evermore.

In regards to the implementation timelines described in the report, the five to six-year implementation schedule provides sufficient time for retailers to evaluate their equipment and to plan any renovation activities to accomplish either retrofitting or replacement of their dispensers. It is worth noting that the 7/10 cent per gallon cost could be spread over those years, making any immediate impact to consumers even more negligible if all costs are passed through by retailers.

Accuracy and reliability in measurement standards is critical to the maintenance of a fair marketplace and to facilitate value comparison, benefiting consumers and competitors, alike. The costs projected in the CEC study are entirely reasonable to accomplish this goal and fulfill the longstanding practice of embracing new and improved technologies to ensure appropriate consumer protection and fair competition. I urge your Commission to recommend to the Legislature that a law requiring mandatory ATC implementation be pursued.

Respectfully,

KURT E. FLOREN
Agricultural Commissioner/
Director of Weights and Measures
County of Los Angeles