



March 13, 2007

Dennis R. Johannes, Director
California Department of Food and Agriculture
Division of Measurement Standards
6790 Florin Perkins Rd, Suite 100
Sacramento, CA 95828
United States of America

Via Overnight Mail

Dear Mr. Johannes:

I am writing to you on behalf of the American Trucking Associations (“ATA”) to express concern over the California Division of Measurement Standards’ (“Division”) recent determination that authorizes diesel fuel retailers to install automatic temperature compensation equipment in retail fuel dispensers.¹ ATA recently became aware of the Division’s stated position that Handbook 44, as incorporated into the California Code of Regulations, does not prohibit automatic temperature compensation at the retail level. Based upon this interpretation, fuel retailers will be able to choose whether to install this technology.

Diesel fuel is the lifeblood of the trucking industry. This year the trucking industry will consume more than 38 billion gallons of diesel fuel. As the largest diesel fuel consumer, ATA has a vested interest in ensuring that the sale of diesel fuel does not disadvantage the end-user.

One of the primary functions of the Division is to ensure that consumers are treated fairly in the purchase of fuel from retail establishments. Indeed, the Division’s own mission statement provides that it will preserve and defend “the measurement standards essential in providing the citizens a basis of value comparison and fair competition in the marketplace.” As discussed in more detail below, a permissive temperature compensation framework is contrary to the Division’s primary mission and would most certainly disadvantage consumers.

While we recognize that differences in the temperature of fuel sold (above and below the baseline 60 degree temperature) affects its energy content, we have seen no evidence that those fluctuations on the whole either advantage or disadvantage consumers.² It may well be that over

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.

² According to the Technology and Maintenance Council’s Recommended Practice 109 and the American Society of Testing Materials Petroleum Measurement Tables, an increase in temperature of 15 degrees results in a corresponding decrease in the energy content of diesel fuel of 0.76%.



a period of time, temperature at purchase averages out to be at or near the 60 degree level. However, a permissive adjustment system will eliminate that leveling affect by resulting in adjustment only when the fuel is expected to be sold below the 60 degree baseline. This one-way adjustment will work to the disadvantage of consumers.

Permissive temperature compensation leaves the decision on whether to install temperature compensation equipment to the fuel retailer's discretion. California's recent interpretation, permitting retailers to choose whether to install automatic temperature compensation equipment would allow retailers to game the system by installing the equipment where the average temperature of the fuel dispensed is below the 60 degree reference temperature and refrain from such installations where the average temperature of the fuel dispensed is above 60 degrees.

Permissive temperature compensation also 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 the ability to determine the most economical place to refuel. Compensating and non-compensating retailers would no longer be selling comparable volumes of product, making it impossible to make an educated purchasing decision.

To ensure that fuel retailers do not take advantage of consumers, ATA respectfully requests that the Division issue an interpretation prohibiting the installation of temperature compensation equipment on a voluntary basis.

If you have any questions concerning the issues raised herein, please contact the undersigned at (703) 838-1910.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Moskowitz", written in a cursive style.

Richard Moskowitz
Assistant General Counsel and
Regulatory Affairs Counsel