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Mr. Mike Cleary
Director, Division of Measurement Standards
6790 Florin Perkins Road, Suite 100
Sacramento, CA 95828

Regarding: Certification of temperature compensation fuel dispensing equipment.

Dear Mike:

After a recent meeting with a number of your staff members, CIOMA is compelled to voice concerns regarding a recent application by a company to certify temperature compensation metering equipment for a certain brand of fuel dispensing equipment in this state. It was clear from the meeting that the Division believes it must issue a certification for equipment if it is accurate, durable, does what the manufacturer claims, and meets certain technical standards. We are fully supportive of certification of equipment, in general, as it provides protection for our members when purchasing and installing certified devices.

However, in this particular case we believe there are unique circumstances which should create pause in the certification of such devices. These include:

- Consumer confusion – if temperature compensation devices are installed only on certain types of equipment, the average consumer will likely become confused as to what her or she is actually getting from any given pump. Furthermore the consumer may believe that temperature compensating devices are saving them money, when the opposite may be true.
The state has a well-defined system for measuring accuracy of fuel delivery pumps and that provides consumer confidence in their fueling practices and needs. Haphazard installation of temperature compensation devices will create confusion and possibly misleading claims by equipment manufacturers and salespersons, or others. We believe issuing a certification, especially one that will operate on only one brand of dispenser, will create more problems and loss of consumer confidence than it allegedly solves.
- Testing of temperature-compensating devices – it is our understanding that new accuracy testing methods and protocols will need to be instituted for this equipment. That means a significant effort will need to be made by your Division in training local inspectors on new testing requirements. In addition, we believe the new testing will take longer to perform. Our members are charged for the time it takes to inspect their equipment for accuracy. As you know legislation was recently passed that allows local agencies to significantly increase their fees for accuracy testing. Although the increase is capped, we believe it is highly likely that more agencies will move to the cap limits thereby covering uncertainty in new testing requirements and the time it takes to perform them. This will, in turn, create a significant economic impact to service station owners, especially the small independent businesses CIOMA represents. There is apparently no consideration of such tangential problems in the certification process.

We also strongly believe the equipment manufacturer should be held fully accountable for all additional costs arising from use of their equipment.

- Interagency review prior to certification – Another problem we see is that the Air Resources Board and the State Water Resources Control Board have not been contacted during this review process. We do not know, and apparently no one does, if this equipment will interfere with vapor recovery or underground storage tank monitoring/performance equipment. Two years ago we had to pass legislation forcing the Water Board and the Air Board to share certification information to assure that the equipment purchaser did not have to become arbitrator in cross-certifications issues. We strongly believe that the Division should contact the Air Board and the Water Board to determine if there are any issues, or not, prior to certification. There are many new requirements for dispensing systems and a careful analysis of add-on equipment is imperative.

Beyond the specific certification issues, we believe there are larger issues that should be taken into account when considering this certification. In conversation with your staff, they were all aware of the controversy that has arisen from certain media articles about the alleged value of temperature compensation devices and of recent lawsuits on this topic. We would like to offer additional concerns why hasty certification of temperature compensation equipment is ill-advised.

- Is there a problem? – We have no factual, statistically significant information that concludes there is a problem in dispensing fuels absent temperature correction equipment. We understand the Division is going to launch a study of dispensing temperatures and we fully support that effort. Please let us know what assistance we might provide in that effort. Without actual information, the value of such equipment is of unknown value, positive or negative.
- Mechanical dispensers – A key issue involved in application of temperature correction equipment is whether the pump is mechanical or digital. If the pump is mechanical, it will need to be replaced with a digital pump – an extremely expensive proposition. We have no idea how many mechanical pumps there are in the state, and believe the Division should make this assessment prior to certification of any device. It is highly likely that mechanical pumps will be operated by small businesses, with the least ability to afford major upgrades.
- Costs to small businesses – Beyond the mechanical pump issue, additional expense to small business in meeting this state's complex and highly expensive regulatory mandates needs to be considered. For fuel dispensing equipment, alone, requirements such as new UST installation and testing requirements and vapor recovery requirements can involve ten's to hundred's of thousands of dollars of retrofit expense. As referenced earlier, local agencies are charging significantly higher fees for dispenser accuracy tests. Every additional expense makes it more difficult for small, independent businesses to remain competitive in this state.
- Potential for additional costs related to dispensing systems – There has been no exploration on whether the installation of this equipment may trigger other requirements such as retrofit of underground storage tanks or installation on newly mandated vapor recovery requirements. We believe such considerations should be evaluated and disclosed prior to certification. In addition, local permitting requirements and costs should be evaluated.
- Pending lawsuits – As you are aware recent lawsuits have been filed alleging there has been consumer harm due to the absence of temperature correction equipment. If the Division certifies this equipment it could easily lead to a court-ordered installation, by-passing careful


analysis, economic impact assessment and public participation elements of the regulatory process.

- Alternatives to temperature correction equipment – There may be alternatives to necessitating equipment installation. For example, if it is shown after your analysis that the standard temperature for fuels is higher or lower in California, then the state’s standard temperature average could be changed. This may result in a much simpler adjustment than installation of new equipment. There may be other alternatives available as well – they should be explored and compared.
- National consideration – Your staff is participating a national weights and measures conference in February where this issue will be addressed in depth. We recommend that you consider the value of that discussion prior to any certification.

We have always maintained a positive and constructive relationship with your office. We believe in your value and importance to both our members and the consuming public. We hope to keep that positive relationship and offer to work with you and your Division to assure the highest possible level of public confidence in petroleum marketing activities. CIOMA asks that you seriously consider whether certification of temperature compensating metering equipment, at this time, is in the best public interest. We also offer any assistance the Division needs in the evaluation of fuel temperature dispensing in this state.

Please contact me at your earliest convenience regarding the Division’s intent to certify the above-referenced temperature correction equipment. If you need further discussion on this issue we would welcome that opportunity.

Sincerely,



Jay McKeeman,
Government Relations Director/CIOMA

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