



GENERAL COUNSEL CORNER

By Peter H. Gunst, Esquire

Is the Temperature Compensation Controversy Full of Hot Air?

It is no secret that heat causes gasoline to expand and cold causes it to contract. In the past two years, this elementary scientific fact has ensnared the courts, legislators and The National Conference of Weights and Measures in a major controversy – the “hot fuel” dispute.

In the United States, a gallon of gasoline contains 231 cubic inches based upon a standard temperature measure of 60 degrees Fahrenheit. As the temperature increases, however, that same 231 cubic inches of gasoline no longer amounts to a full gallon, although it is sold as such at the pump. That’s the problem.

According to a 2002-2004 study conducted by the National Institute of Standards and Technology, the average dispensed temperature of a gallon of gasoline throughout the United States was 64.7 degrees Fahrenheit, almost 5 degrees above 60 degrees standard.

According to a series of articles printed by the *Kansas City Star* in 2006, this temperature disparity translated into a \$2.3 billion loss to consumers, assuming an average sale price of \$3.00 per gallon.

This caused consumer activists, lawyers and legislators to leap into action.

Presently, there are dozens of lawsuits that have been transferred by the Juridical Panel on Multi-District Litigation to the United States District Court for the District of Kansas. Those lawsuits claim that the sale of “hot fuel” constitutes a misleading and fraudulent practice in violation of the consumer and protection laws enacted by various states. Class action treatment has been sought against numerous defendants, which include the major oil companies, independent suppliers and large retailers like Costco, 7-11, Wal-Mart and WaWa.

Legislators have also weighed in. Senator McCaskill of Missouri introduced a Senate bill that would require all new and upgraded fuel pumps to be equipped with automatic temperature compensation equipment.

Industry participants generally oppose any attempt to require the installation of automatic temperature compensation equipment. They argue that the equipment is very expensive, its effectiveness is unproven and that, in any event, the temperature changes roughly even out between winter and summer.

Typical is the critique given by the Missouri Petroleum Marketers and Convenience Store Association to the proposed federal statute. Its

statesperson said, “Senator McCaskill’s bill while well-intentioned, is a solution in search of problem.”

The Association’s statement emphasized that consumers may be hurt in the long run because the cost of installing the expensive equipment will be passed on to them in the form of higher fuel prices.

Another forum for the dispute is the National Conference of Weights and Measures. In July 2007, it rejected by a close vote a resolution that would have allowed states to permit retailers to install and operate automatic temperature compensation equipment to compensate for pump temperature. The National Conference is presently reconsidering the issue.

A coalition of trade associations called the “Partnership for Uniform Marketing Practices” (“P.U.M.P.”), of which SSDA is a member, raises some interesting arguments against precipitate action requiring installation without careful study.

P.U.M.P. suggests that any product shrinkage occurring in cold weather may have no real competitive impact. Independent dealers will continue to compete aggressively against each other, with the result that consumers will be charged a competitive price, regardless of how the volume of product may be measured.

Even so, P.U.M.P. appears to agree that comprehensive scientific and economic studies should be

undertaken to study the real impact, if any, of temperature change in the marketplace.

Obviously, this issue will not go away quickly, at least not as long as the proposed class action suits continue. We will try to keep abreast of further developments in the courts, in the legislature and elsewhere that could impact the consumer or the independent dealer.

pgunst@agtlawyers.com

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