



IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

PATTY JUDGE
SECRETARY OF AGRICULTURE

To: Senator Jerry Behn
Senator Jack Kibbie
Senator Daryl Beall
Senator Steve Kettering
Representative Jack Drake
Representative Bob Kressig
Representative Linda Upmeyer

From: Ron Rowland, Director ^{RR}
Consumer Protection and Animal Health Division

Date: November 4, 2005

Re: Motor Vehicle Fuel Study

I. Introduction

I want to thank you for inviting the Iowa Department of Agriculture and Land Stewardship and me to address the Committee. As many of you know, I am the director of the Department's Consumer Protection and Animal Health Division. I also serve as the Department's in-house legal counsel. With me today are Jamie Cashman, the Department's Legislative Liaison, and Steve Pedersen, the Bureau Chief of the Weights and Measures Bureau.

I have been asked to address three topics:

1. To provide a description of the Iowa Department of Agriculture and Land Stewardship's current activities relating to motor vehicle fuel

2. To address the Department's position regarding minimum pricing legislation.

3. To identify resources the Department would need to implement minimum pricing legislation.

II. Existing Department Program Regarding Motor Vehicle Fuels

Currently, the Department's regulatory activities relating to motor vehicle fuels are located within the Weights and Measures Bureau. This is a small bureau located within my division whose main function is to inspect and license commercial weighing and measuring devices within the state. This function is aimed at protecting both the consuming public and merchants from having inaccurate or poorly functioning meters and scales operating in Iowa's economy.

The Weights and Measures Bureau consists of twelve individuals—Mr. Pedersen as the bureau chief, his secretary, a state metrologist who operates the metrology laboratory, and nine inspectors. The nine inspectors are divided into two groups. There are three large device inspectors who primarily inspect livestock scales, grain scales, and other large capacity scales. There are six small device inspectors. These inspectors inspect a variety of small capacity scales and meters. I will focus primarily on the small device inspectors.

A. Gas Pump Meter Inspections.

The small device inspectors are challenged each year to inspect the more than 34,000 licensed gas pump meters in 2665 locations across the state. They also inspect 1150 licensed moisture meters located in 1035 locations and to the degree time allows 3881 small capacity scales or counter scales. Most of the inspectors cover approximately 16 counties.

As you can tell by the numbers, the majority of the inspectors time is spent checking gas pump meters. We try hard to get to each location once each calendar year and inspect the gas pump meters for accuracy and check the labeling on the pump. When time allows, the inspector also does a quick safety check of the pump. Typically, the inspector will be at the location only once a calendar year. If there are problems with one or more meters during the inspection, the inspector will order the meter to be serviced or, in extreme cases, will take the meter out of service until it can be fixed. In those cases, a return trip is usually required.

B. Labeling and Pricing.

While doing the gas pump meter inspections, the inspector will check the labeling on the gasoline dispenser. In this area we primarily look to see whether products containing a renewable fuel are properly labeled. Most of you are familiar with the labels for ethanol which inform consumers that a fuel contains ethanol. In addition, there will be a check to see that the gasoline's price is properly being advertised. One of the main items that is checked is to make sure that the price posted on the street sign is consistent with the price posted on the

pump. This is not intended to be a minimum price check but rather to make sure that the consumer is not misled by the street price to come into a station to buy gas only to find that the price on the pump is different.

C. Fuel Quality.

The Department does have a very small fuel quality program.

Approximately twenty-five years ago, the Department had staff and equipment to check fuel quality. Today we have very little. There is a decision package that will be presented to our appropriation subcommittee this session that would commence a small fuel quality testing program. When the metrology laboratory was located in the Wallace Building, it did not accommodate a fuel testing program. Now that the laboratory has its own building at the laboratory complex in Ankeny we are able to establish such a laboratory if we get the resources to do so.

Currently, we collect about fifty samples a year, either as a result of consumer complaints or as a result of an inspector becoming suspicious during an inspection. We send or deliver those samples to the State of Missouri's Fuel Quality Laboratory for analysis. In the past few years, we have investigated situations where the amount of ethanol contained in the fuel is not properly labeled.

We have also prosecuted two cases relating to fuel quality. One of these cases involved a wholesaler violating the State's ban on MTBE in gasoline. This

resulted in the company paying a \$45,000 fine. The other case involved a retailer selling gasoline where the octane level in the premium gasoline being sold was significantly below the octane level posted on the pump. In this case, we worked with the Attorney General's office and received a judgment from the Court that the individual had violated the State's consumer fraud statute. A penalty of \$20,000 was levied against this individual.

III. The Department's position regarding Minimum Pricing Legislation

In the past, the Iowa Department of Agriculture and Land Stewardship has not taken a position on pending minimum price or unfair competition bills relating to motor vehicle fuel. This was our position with the most recent bill **House Study Bill 282** during the last session and it remains our position. This bill provides that the Department, in conjunction with the Attorney General's office, will be the enforcing agency. If we are to be given the task of enforcing the bill, then our concerns are two-fold.

A. First, we must be given adequate financial and staff resources to implement the bill.

B. Second, the bill must be clear and workable so enforcement is not burdensome.

I will address both of these matters in the final part of my presentation regarding the needs of the Department to enforce minimum pricing legislation.

IV. Department's Needs to Enforce Minimum Pricing Legislation

A. Funding. The drafters of H.S.B. 282 attempted to provide a funding mechanism for the program. I appreciate this. As a state agency we frequently see new requirements passed or new programs created with only a promise of future funding that may or may not ever come. My reading of H.S.B. 282 indicates that there are two funding mechanisms. One is a \$10 increase in the licensing fee of gas pump meters. The other is a provision to allow the Department to retain 45% of the penalties collected for violations. I want to address problems I see in the license fee increase that I believe need to be fixed if this bill or a similar proposal is to be advanced.

There are two problems. First, the language of the bill increases the licensing fee from \$9 to \$19. This should raise approximately \$300,000 annually for enforcement of the program. Unfortunately, there is a technical problem with the bill that will prevent this from happening. While the licensing fee for a gas pump meter is indeed \$9, another provision of the Code provides that if the fee is paid within 30 days of its due date, then the fee is only \$4.50. The \$10 fee increase was not added to this provision of the Code. Most people who license a gas pump meter do pay within the 30 window and thus pay only \$4.50. By not increasing this fee to \$14.50, most individuals would bypass the extra \$10 cost and thus funding for the program would be substantially reduced. After talking to architects of the bill, I believe this problem was merely an oversight and could easily be corrected.

The other problem is that while the bill raises the fee, presumably to fund this program, there is no mechanism in the bill to assure that the money would in fact be appropriated to the Department. As a result, it is entirely possible that the fee could be increased, the duties given to the Department, but the money not appropriated. This would be extremely frustrating to both the industry and to the Department.

B. Staffing.

At this juncture, it is impossible for us to say how much staff and how big of a budget is needed to operate this program. We have too sketchy of an understanding of the program and how other programs in other states work to answer those questions. There will need to be more detailed discussions before I can provide those answers. The moneys raised by the proposed licensing fee increase if directed to the Department should be adequate to cover most budgetary needs.

I assume that one reason that the Iowa Department of Agriculture and Land Stewardship was proposed as the enforcing agency is because of our gas pump inspection activities in the Weights and Measures Bureau. I can tell you that it is impossible for the existing staff within the Weights and Measures Bureau to absorb this additional workload. They are stretched far too thin already to undertake this duty. Similarly, Mr. Pedersen is fully occupied in his existing duties and would be unable to spend significant time on this activity.

Finally, I believe that the background and expertise needed to enforce this program is very different from the background and expertise of our weights and measures inspectors. While the staff are good, hardworking people, I believe that it would be necessary to have staff with more computer knowledge and the knowledge and understanding of accounting to adequately enforce the program. While it is quite possible that this function would be assigned to the Weights and Measures Bureau, it would require a separate, properly trained staff to implement it, although the two staffs would undoubtedly work together to some degree.

C. Enforcement issues. Finally, there are some practical enforcement issues that would need to be addressed.

1. Access to Records. One such issue is the right or ability of any enforcing agency to obtain access to necessary financial information, invoices, and other documents in order for the Department to make a determination of a violation. Related to this, I think it would be helpful to have a section of the bill which enumerated the Department's power vis-à-vis enforcement of the bill. It would also be helpful to clarify what documents obtained by the Department are public documents as opposed to being confidential documents.

2. Penalties. I believe in most cases that civil penalties are preferable to criminal penalties. However, there are times where criminal penalties are necessary when civil penalties are inadequate or the violator merely considers the penalties to be a cost of doing business. I think it would be preferable for the

enforcing agency and the Attorney General's office to decide in a particular case to pursue a criminal option rather than a civil penalty option. Finally, I would suggest that research be done to determine whether locking or tagging of pumps is a realistic option. While it certainly might have a deterrent effect, such tagging could probably not be done until the alleged violator had an opportunity to contest the violation and was accorded due process. Thus, it is likely that such an enforcement remedy would be late in being applied.

3. Effective date. Finally, I would suggest that, if this or similar legislation is passed, the effective date be delayed for six to twelve months in order for the enforcing agency to have an opportunity to structure its program, adopt rules, and hire the necessary staff. Without this time, chaos can ensue with a clamor for a need to start enforcing before the enforcing agency has the capacity to effectively do so.

Again, thank you for the opportunity to address the committee. I would be willing to answer questions if you have any.