



NJ Gasoline, C-Store, Automotive Association
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To: Occupational Safety and Health Administration

From: Eric Blomgren, Executive Director, New Jersey Gasoline, Convenience Store, Automotive Association (NJGCA)

Re: Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings, Docket No. OSHA-2021-0009

On behalf of the small businesses in the motor fuel retail and auto repair industries, we must respectfully oppose this regulation as currently drafted. It overly regulates small facilities in ways that will bring disruptions and cost increases.

Gas stations are one of the most essential services. Unlike every other state, there remains a legal mandate in New Jersey that gasoline cannot, under any circumstances, be purchased by consumers unless a station employee pumps it for them. The law is structured such that it is the legal responsibility of the owner of the station to ensure that motorists do not pump their own gas, and they are the one fined if a customer does service themselves. In fact, under state law an attendant is supposed to engage the emergency shutdown button for the entire station if they cannot otherwise stop a motorist from pumping their own gas.

Most stations, particularly the vast majority operated by an independent or small owner, only have one attendant working at a time, either because of availability or cost. If that employee, doing light work in the shade, is on the mandatory break required by this regulation, then gasoline will no longer be available for sale at that location for that time period, much to the annoyance of the motoring public who could perform the basic service themselves.

The authority for this proposal rests on the idea that it is economically feasible, defined as “if industry can absorb or pass on the costs of compliance without threatening its long-term profitability or competitive structure”. For many New Jersey motor fuel retailers, this proposal does threaten them. About 70% of the stations in the state have between two and four gasoline dispensers, which means they are staffed by a single attendant. Any other employees on-site are working inside the accompanying business, which is either an auto repair shop or a convenience store (about 45% of stations have a repair shop and 45% have a convenience store, while the remaining 10% have at most a small kiosk manned by the pump attendant). Any employee(s) working in those businesses cannot leave their work to pump gas for the 15-20 minutes that the attendant is on their mandated break, at least not without closing down that section of the business (which is the more profitable part). In a growing number of situations, the fuel retail and the auto

repair shop are now different businesses, with the fuel side leased out to another company who is responsible for the attendants.

Under these rules, during times when the attendant is mandated to take a rest break, the employer is forced with a choice of either not selling their main product during the period of time when the attendant is on their mandated break (which would be longer than 15 minutes since in order to comply with state law they would need to shut down the pumps in order to ensure that customers do not pump their own gas), or hire a second attendant for those days, effectively doubling their labor costs for very limited added value (and exposing a second person to the high heat). Their ability to pass on that added cost would be extremely limited, however. New Jersey law only allows the retail price of gasoline to be changed once every 24 hours, and station owners must also account for fluctuating wholesale prices of gasoline when changing their price. New Jersey law also ensures that motor fuel cannot be sold below cost, which is another factor operators must consider when making their once-daily change in price. The current minimum wage is \$15.49 an hour in New Jersey, and many attendants are paid more than that because it continues to be a challenge to find enough people willing to do the job. Adding in that extra attendant could translate to increased gas prices of five to ten cents a gallon per day, depending on pay rates and how much fuel is sold at the location.

Beyond the burdens placed by state law, there are the burdens of the marketplace. Gasoline is arguably the most price-sensitive product there is, with almost all stations having giant signs advertising their current retail price down to the penny. Motorists will go out of their way to make their fuel purchase at another location because of just a few cents difference in retail price. The 30% of stations that have five or more gasoline dispensers, and therefore often already have two attendants working, will likely not need to bring on additional staff and therefore not need to increase their price. These stations will therefore see a significant advantage as their competitors are forced to either increase their retail price or reduce availability of fuel sales, which over time may prove lethal for the smaller location. The largest stations are also generally owned by the largest corporations, such as Costco and Wawa, while smaller locations are owned by independent dealers and franchisees; many are still owned by individuals who only own that single location. These large corporations can already use their profits from the sale of other items in their stores to undercut the prices of small businesses, pushing them out of business and then charging whatever price they want once they control the local market. This regulation will assist them in doing that.

Decades of experience among thousands of attendants working on any given day also shows there is no current problem that needs to be addressed. We are not aware of health issues among employees that have resulted from even the hottest of days in the state. At almost all locations, the employee works exclusively in the shade and is often sitting for long periods waiting for customers. Their mandated break in the shade would look little different from much of their working experience.

At minimum, this regulation must have an exemption for motor fuel retailers located in jurisdictions in which motorists are legally prohibited from pumping their own motor fuel.

While the disruption to be caused by mandated paid breaks for gas attendants is our biggest concern, we are also concerned by the added costs that will fall on auto repair shops, whose technicians are paid well and may need an extra 30-45 minutes per day of paid rest, a not insignificant cost for these small businesses that will need to be passed on to the consumer.

Tow truck drivers could also be a challenge to manage for employers, as under the regulation the employer would need to ensure that on hot days the driver, alone out on the job, is stopping their work every two hours to take their 15-minute break. If the driver decides to work through the break or is not paying close enough attention to the time, perhaps because they are trying to clear an emergency situation on the side of the road, then it would be the employer who is liable for a fine. The employer would also be responsible for ensuring that the driver leaves with 32 ounces of water per hour they will be gone for, and that the water is kept sufficiently cool to meet the standard of the regulation.

We are also concerned by the amount of administrative burden that will be put on small businesses in order to comply with this regulation. The business owners we represent mostly have fewer than ten total employees, and therefore do not have some kind of dedicated HR staffer who can simply add this to their workload. These regulations require training programs, prevention plans for every job, active monitoring of employees, specific reminders before every shift, tracking the exact amount of water to be provided (2 gallons for an eight hour shift per person) and that the water is constantly kept “suitably cool”, tracking the forecasted and actual weather conditions on a daily and even hourly basis, and then keeping records of all of it for years.

While we can see how there may be some industries/work environments that would benefit from some additional protections; the current language is too broad to cover small businesses. The proposal should exempt businesses with fewer than twenty-five employees on a jobsite working in non-climate controlled conditions.

We ask that you not move forward with this proposal in its current form at this time, thank you. Should you have any questions about these comments, please feel free to contact me at Eric@njgca.org or 732-256-9646.