



June 23, 2009

The Honorable Henry Waxman  
Chairman  
Energy and Commerce Committee  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Joe Barton  
Ranking Member  
Energy and Commerce Committee  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Waxman and Representative Barton:

As Congress prepares this week to consider energy legislation designed to reduce greenhouse gas emissions, the National Association of Convenience Stores (NACS) would like to express our sincere concerns with some of the provisions included in the pending legislation. NACS supports legislative efforts to reduce emissions and protect the environment, but we urge Congress to abandon legislation that selects winners and losers from the energy economy. We strongly recommend that Congress instead pursue policies that advance environmental protection, promote technological innovation and reward such investments without burdening consumers and businesses with excessive costs and mandates that may jeopardize economic performance.

The convenience and petroleum retailing industry operates more than 145,000 retail facilities and is dominated by small business entrepreneurs -- in fact, nearly 60 percent of convenience stores selling fuel are owned by companies that operate just one store. NACS members do not produce crude oil or manufacture gasoline and diesel fuel. However, through nearly 115,000 retail outlets located in every state and congressional district, convenience store companies sell approximately 80 percent of the nation's gasoline. In addition, they offer to their consumers a wide selection of daily necessities ranging from fresh coffee, snacks, dairy products, grab-and-go meals and beverages. Understandably, our members are concerned about the long-term consequences of this legislation on their businesses as well as on their customers.

### **NACS Is Concerned About Costs to Consumers**

Our members' customers — your constituents — are extremely sensitive and vulnerable to changes in the price of the fuel they purchase. As the nation witnessed just last year, the increase in gasoline prices to a national average of more than \$4.00 per gallon had a significant effect on the economic well-being of consumers throughout the nation. It likewise prompted a strong reaction from a Congress concerned about the economic effects of elevated fuel prices.

NACS is concerned that certain provisions in pending legislation (such as the allocation of allowances) may result in dramatically higher costs for motor fuels, which will significantly distress our customers. We are further concerned that if these costs materialize, Congress will once again seek to intervene to protect consumers from retail motor fuel costs which are beyond the industry's control.

**The Association for Convenience & Petroleum Retailing**

1600 Duke Street • Alexandria, VA 22314-3436 • (703) 684-3600 • FAX (703) 836-4564 • [www.nacsonline.com](http://www.nacsonline.com)

Rather than establishing a regulatory regime that disproportionately affects the motor fuels market, NACS encourages Congress to establish emissions performance objectives that equally affect all sectors of the economy, enable those sectors to invest in technologies that will achieve compliance with those objectives, and create a market in which businesses may in fact generate an economic return on those investments. NACS believes that environmental stewardship can be achieved while generating a corresponding economic benefit and urges Congress to facilitate this development.

### **Retailers Need Help Transitioning to Alternative Fuels**

Convenience store operators are committed to helping transition to the next generation of liquid transportation fuels. Congress has already taken significant steps in this direction with the renewable fuels standard as amended in the Energy Independence and Security Act of 2007 (EISA). However, there are certain practical and legal challenges standing in the way of achieving the extremely ambitious mandates of that legislation.

The nation's motor fuels distribution and storage infrastructure is currently incapable of accommodating 36 billion gallons of renewable fuels, as required by EISA. Ethanol is, by far, the most abundant renewable fuel in the nation, but even if every gallon of gasoline sold in the United States was blended with 10 percent ethanol, the industry would still be more than 21 billion gallons short of complying with the mandate. Retailers need Congress' help to overcome the real roadblocks to increasing that blend rate beyond 10 percent.

Currently, there is no equipment officially certified by an independent laboratory to sell gasoline containing greater than 10 percent ethanol. Whether such fuels present a safety problem is irrelevant. Until certification is granted, selling such products violates OSHA requirements, tank insurance policies and business loan covenants, and exposes the retailer to gross negligence liability for selling product through non-certified, compatible equipment. In addition, retailers may also be liable for damages to engines and violations of the Clean Air Act if these fuels are dispensed into a non-compatible vehicle.

Congress can alleviate these challenges by protecting retailers from these legal liabilities provided they have a reasonable basis to believe their equipment is safe to sell certain renewable fuels (such as written assurances from equipment manufacturers or public statements by a safety certification laboratory) and ensuring that they properly label their dispensers to inform the consumers of vehicle compatibility. Providing this protection will enable many of the nation's retailers to begin selling fuels with greater renewable content without incurring infrastructure costs that can easily exceed \$100,000 per location. Statutory changes to address these matters will greatly advance Congress' intent to reduce the use of fossil fuels and transition to a more renewable economy. In the absence of such changes, that intent is highly unlikely to be realized.

## Convenience Stores Want to Invest in Green Technologies

In 2008, utility costs represented 6.8 percent of an average store's gross profit dollars—an increase of 25.9 percent since 2000. As a result, many store owners are seeking technologies that will provide exceptional service to their customers while reducing their reliance on electricity. Such investments have included new energy-efficient cooler doors, better facility insulation, higher efficiency heating and air conditioning units, energy-efficient lighting fixtures and other similar advancements.

To acquire many of these technologies and achieve a reduction in electricity usage (and consequently overall emissions) requires a substantial up-front financial investment that is not feasible for many retailers. The average convenience store in 2008 generated a pre-tax profit of approximately \$40,000. To install new cooler doors, for example, may require an expenditure of more than \$8,000 per location — approximately 20 percent of the store's annual pre-tax profit. For the 90,000 single store companies in the industry, this is simply not possible.

NACS therefore encourages Congress to consider programs that will help alleviate the economic burden of these investments. Some programs that might prove beneficial include tax incentives, accelerated depreciation schedules, energy efficiency grant programs or any other mechanisms that will help these business owners promote environmental advancement while reducing their utility expenses. Such programs would simultaneously benefit both the entrepreneur and society.

### Conclusion

The convenience and petroleum retailing industry believes that environmental progress and economic development are not mutually exclusive. The leading proposals in the House and Senate will have a massive impact on virtually every aspect of the American economy. To ensure that consumers and small business owners do not bear an unreasonable economic burden, it is essential that Congress reconsider the direction in which it is currently heading.

The future of America's energy economy can be dynamic, but policies that punish one sector and negatively affect consumers will only undermine the advancements necessary to protect the environment. NACS urges Congress to balance its approach to energy regulations and provide economic tools to help individual businesses contribute to the environmental health of the country.

Sincerely,



John Eichberger  
Vice President, Government Relations

CC: House of Representatives