



July 9, 2009

The Honorable Barbara Boxer  
United States Senate  
Washington, DC 20510

Dear Senator Boxer,

As the Environment and Public Works Committee develops legislation to reduce greenhouse gas emissions, the members of National Association of Convenience Stores (“NACS”) caution you against including provisions – such as those passed by the House of Representatives – that will likely result in elevated gasoline and diesel fuel prices for your constituents.

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.

NACS supports legislative efforts to reduce emissions and protect the environment, but we strongly oppose legislation that selects winners and losers from the energy economy. We strongly recommend that Congress 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. Specifically, NACS asks the following of the Committee:

- **Do not burden consumers with higher gasoline and diesel fuel prices.** H.R. 2454, the American Clean Energy and Security Act of 2009, included an unbalanced allocation of emissions allowances that deliberately disadvantages the oil and gas industry at a time when we do not have a suitable alternative fuel infrastructure in place to meet demand. This policy will undoubtedly lead to higher fuel prices for your constituents. As we saw 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.
- **Facilitate the introduction of renewable fuels to the market.** The nation’s fuel retailers are incapable of accommodating the 36 billion gallon renewable fuels standard (“RFS”) established by Congress in 2007 because there is no equipment legally certified to sell certain renewable fuels, such as gasoline containing greater than 10 percent ethanol. Until certification is granted, selling such products violates OSHA requirements, tank insurance policies and business loan covenants, and

**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)

exposes a retailer to gross-negligence liability for selling product through non-certified, incompatible equipment. In addition, retailers may also be held accountable for damages to engines and face violations of the Clean Air Act if these fuels are dispensed into an incompatible vehicle.

Congress can help overcome these hurdles by protecting retailers from unfair vulnerabilities, provided that retailers can demonstrate a reasonable belief that their equipment was compatible with the renewable fuel they were selling. Such belief could be based upon written assurances from equipment manufacturers or statements by a safety certification laboratory such as Underwriters Laboratories. In addition, retailers should be protected if consumers misfuel their vehicles provided that retailers comply with labeling requirements that could be developed by the Environmental Protection Agency. NACS has prepared draft language to address these issues, and is eager to work with the Committee in ensuring that they are appropriately addressed.

- **Help retailers invest in green technologies.** Many convenience store owners cannot currently afford the capital investment necessary to install green technologies such as energy-efficient cooler doors, better facility insulation, higher efficiency heating and air conditioning units, energy-efficient lighting fixtures, and other similar advancements, which can require an investment of up to and beyond \$10,000 per location. The average pre-tax profit per convenience store in 2008 was only \$40,000. For the 90,000 single-store companies in our industry, this investment is simply not affordable. Congress can help promote installation of green technologies by alleviating the associated economic burdens through tax incentives, accelerated depreciation schedules, energy efficiency grant programs or any other mechanisms that will help these small business owners promote environmental advancement while reducing their utility expenses. We would be happy to provide you with additional details at your request.

H.R. 2454 will have a massive effect on virtually every aspect of the American economy. To ensure that consumers and small business owners do not bear wholly unreasonable economic burdens, it is essential that the Senate pursue a different direction in its legislation. 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. Please do not hesitate to contact me if we can be of any assistance to the Committee as it works its will on climate change legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "John Eichberger". The signature is fluid and cursive, with a large loop at the end.

John Eichberger  
Vice President, Government Relations