



**Testimony of Fran Freedman, Deputy Commissioner for External Affairs
New York City Department of Consumer Affairs**

**Before the
New York City Council Committee on Consumer Affairs**

**Oversight Hearing on
Gas Stations in New York City: Putting a Premium on Consumer Protection**

and on

Intro Number 702-2011

September 20, 2012

Good afternoon, Chairman Garodnick and Committee members and Council Member Fidler. I am Deputy Commissioner for External Affairs, Fran Freedman, and with me is John Browne, DCA's Director of Petroleum Enforcement. Commissioner Mintz asked me to thank you for the opportunity to appear before you at your oversight hearing on "Gas Stations in New York City: Putting a Premium on Consumer Protection", and your hearing on Intro Number 702-2011, a bill that would require that all signs advertising the price of gasoline and/or diesel motor fuel disclose the total selling price for cash and credit card purchases.

As the Department works directly through our Financial Empowerment Centers with tens of thousands of New Yorkers struggling to stretch their paychecks to make ends meet, we obviously share the City Council's concern about the impact of rising gas prices on our City's residents and visitors. And while, as you know, the City has no control over the price of gas, the Department's inspectors work every day to ensure that New Yorkers and tourists get every drop of gas that they pay for at each and every gas pump at each and every gas station throughout the five boroughs. Thanks to legislation over the decades by City Council and the State, the Department is empowered both to inspect the City's approximately 10,000 pumps across about 800 gas stations for accuracy on average of at least once, and often twice each year, as well as to be able to condemn pumps on the spot that don't meet standards of accuracy. Not only does DCA conduct this high volume of regular inspections, it re-inspects condemned devices that must be fixed before being allowed by the Department to be put back into service. We also deploy our inspectors to respond to consumer complaints received through 311 or our website.

Since 2008, DCA has visited gas stations 6,293 times, inspecting as many as 11,756 pumps in 2008 to 10,248 pumps in 2012. Of those inspections, 2,449 yielded one or more violations with 3,663 separate charges issued. During the five year period, 1,660 pumps were condemned and taken out of service until they were properly fixed.

In 2012 alone, inspectors visited 828 gas stations 1,275 times, inspecting 10,248 pumps and condemning 494 of them. There were 523 inspections yielding one or more violations with 778 charges issued.

Top charges issued since 2008 include 276 for short measure on the pumps; 228 for not painting the ports with proper colors; 224 for not priming the pumps (meaning that the gas station has failed to have the required five gallon test measure on premises for the purpose of priming its pumps properly) and 210 for gas pumps which failed to cut off the flow of gas properly. In addition, those gas stations which sell pre-packaged food items were issued 660 violations for failing to provide customers with scales to confirm posted weights.

Nearly 180 violations were issued over the five years for such deceptive trade practices as:

- Failing to state if a price posted on a curb sign is for cash or credit when there is a price differential between the two
- Failing to have an attendant at a Full Service aisle
- Failing to state that debit card transactions are charged at credit card prices
- Failing to post the sulfur content signage on all diesel pumps

Let me take you on a “virtual inspection” of a gas station. Here’s what DCA’s inspectors check, in addition to some product sampling and other technical items for the State Quality Control Program:

- Posted proper matching signage on pumps and curb signs, including that the unit price on the pump matches the price posted on the station’s main signage and curb signage
- Properly painted and marked fill ports, based on product type and ethanol content. Premium products are red with a white cross; mid-grade products are blue with a white cross and regular gasoline products are white with a black cross. Products which contain ethanol as an extender must have borders in certain colors painted around each fill port.
- Pump dispensing accuracy
- Gas octane at levels advertised and priced
- Proper maintenance of gasoline storage tanks
- Functioning equipment including indicator lights, nozzles, air compressors and valves

Inspectors also check that the gasoline brand name appears on all dispensers, that all internal security seals are in place and that there are proper delivery documents.

Over the past five years we’ve received from 311 a total of about 4,000 consumer complaints. More than half were requests for inspections. In CY 2011, for example, 367 inspections were conducted based on consumer complaints alone. Annually, an average of approximately 450 complaints that come to us from 311 are for overcharging.

The good news for consumers is that over the five-year period, compliance rates for the City’s pumps remain at a high of 97 percent. DCA estimates that compliance is fairly even across the boroughs. In 2012, we inspected more than 430 pumps in Manhattan, with 92 percent compliance; more than 2,000 pumps in the Bronx 92 percent compliance; over 3,000 pumps in Brooklyn with 95 percent compliance; over 3,440 pumps in Queens with 97 percent compliance and more than 1,170 pumps in Staten Island with 97 percent compliance. The Department’s strong working relationship with the New York State Association of Service Stations and Repair Shops, the area’s largest organization of gasoline retailers, has helped ensure such high compliance rates.

At the end of the day, New Yorkers should be reassured that despite high prices for gasoline, they are getting every drop of gas for which they pay so dearly.

Regarding Intro 702, which would require that all signs advertising the price of gasoline and/or diesel motor fuel disclose the total selling price for cash and credit card purchases, the Department supports the legislation. We believes that the enhanced signage will make it easier for consumers to ascertain the cost of fuel before pulling into the gas station.

Thank you again for the opportunity to discuss how the Department protects consumers at the gas pump and to comment on proposed legislation. I will be happy to answer your questions.

**STATEMENT OF AAA NEW YORK, INC.,
BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON CONSUMER AFFAIRS
NEW YORK, NY
September 20, 2012**

My name is Jeffrey A. Frediani, I am a legislative analyst with AAA New York. AAA New York serves more than 1.6 million members residing in the City of New York and adjacent counties of New York State. We support Intro 702.

With gasoline prices at increased and steady levels, many consumers are coping with the reality of higher prices. One year ago, the average price for a gallon of regular in New York City was \$3.98; today it averages \$4.23. With hurricane season now upon us, and because fuel prices now seem to be significantly higher with each passing year, many consumers now believe that increased gasoline costs have become a permanent fixture in their lives.

They are rightly concerned because this year's price increase will cost a typical family about \$2,700 per year in gasoline expenditures, or about \$325 more per year. AAA calculates this increase on the assumption that the average vehicle, according to federal figures, consumes over 650 gallons of gasoline each year and that nationally, the average household owns more than two vehicles.

While an extra \$325 per year may not sound like much to some people, it is important to note that, according to recent figures in TIME Magazine, an estimated two in five – or 40% - of American households live from paycheck to paycheck. With that reality in mind, it is easier to understand why sharp and steady increases in fuel prices

are a significant financial setback for many citizens and why consumers need more protection from misleading prices at gas stations.

Unfortunately, some gas stations are engaging in a deceptive advertising practice whereby they post the lower, cheaper price for cash sales on the marquee signage near the road, only to charge the driver a much higher price for using a credit card once they pull into the station. In 2008, AAA New York partnered with then-Attorney General Andrew Cuomo in the fight against this practice, and the Attorney General's investigation revealed that approximately one-third of gas stations in the Long Island region were engaging in this deceptive practice.

This legislation, by requiring a more prominent street side advertising of "cash" versus "credit" prices, will allow drivers to see the advertised price of gasoline from the road more easily and help stop this deceptive bait and switch tactic. Accordingly, we strongly support enactment of Intro 702 as a welcome relief to drivers who desperately need relief at the gas pump.

Thank you for the opportunity to comment.

FOR THE RECORD

Comments prepared by the Gasoline and Automotive Service Dealers Association
372 Doughty Boulevard
Inwood, New York 11096

Re: Intro 702. Local Law to amend the Administrative Code of the City of New York in relation to requiring that all signs advertising the price of gasoline and/or diesel motor fuel disclose the total selling price for cash and credit card purchases.

Please accept the following comments.

The Gasoline and Automotive Service Dealers Association (GASDA) represents service stations and repair shops throughout the metropolitan area. It was originally started in Brooklyn, New York in 1931. We represent 1500 business in that category throughout New York City, Long Island and the adjoining counties.

Intro 702 is not timely. For years the New York State Department of Agriculture and Markets regulated cash and credit by permitting discount for cash and regulating the signs that had to be posted at the pump. Due to an aggressive and angry dealer on Long Island, publicity has resulted in counties and the state to introduce legislation to clarify the signage so that the customer can be assured of each price of motor fuel at the pump. However, things have changed. Originally there were two product prices, cash and credit. Each one would be assigned to any grade of motor fuel that was sold at the station. However, the debit card has now entered the picture and there is no procedure for advertising the debit card sign price, as it may be a lesser cost than a credit card. Also, the proprietary card may not carry a cost. Some of these are on wands known as "Speed Pass" and you are unable to tell what credit card is assigned to that wand. Needless to say this entire matter needs to be revisited.

Add to that, a California federal court decision in an antitrust case has cleared the way for service station operators to charge separate prices for cash and credit card payments which had been flourishing throughout the country. This decision may remove the requirement that New York dealers can only discount for cash. The state, city, federal government, and even taxi cabs charge a fee for credit. The only business that appears to be discounting for cash is motor fuel. We have heard that the court decision has addressed this issue, which will force New York City and New York State to rewrite its regulations.

Currently we advise the service station dealers of the regulations that are currently issued by the New York State Department of Agriculture and Markets.

The state agency follows the National Institute of Standards Technology Handbook 44; the widely recognized bible for weights and measures standards.

As we understand the regulations to date; the customer must be able to select cash or credit using the controls on the dispenser, or they must be on separate pumps and the dispenser windows display must display the correct price when the customer selects cash or credit.

The service station, to be in compliance with the state law, also needs pump topper signs displaying both the cash and credit price.

Currently there is no mandate for off premises signage for the display of prices on motor fuel. We were advised by Ag and Markets that we don't need to post both the cash and credit card prices, but, whichever price you advertise on those signs must be clearly and correctly labeled as either the cash or credit price, in letters large enough to read from the road. If consumers feel they are being misled they can complain to the local consumer affairs office on a state or local level. However street side signs are not mandated.

We also advise our dealers to check their master card and visa agreements to make sure they are not in violation with any contractual obligations.

This entire matter has to be placed under review and a standard set of regulations be issued, hopefully by the state. We are suggesting that the New York City Council join with the state in developing these regulations with input from the industry. Service stations having to comply with regulations that differ from county to county, or from city to state, are difficult to comply with.

On another matter, the law already in effect that precedes Intro 702, was passed several years ago, which prohibits a service station from changing the price more than once in one day? This is a terrible oversight. Neither the sponsor, nor the members of the committee, would listen to the industry when we told them that the prices could change to us more than once a day, and that there should be a change to that regulation that would require the supplier not to be able to change the price more than once a day, just like the retailer.

If you have any questions or wish to discuss this matter further please contact Ralph Bombardiere, Executive Director, Gasoline and Automotive Dealers Association, 516 371-6201 ext. 108.

Also, forgive me for not attending the hearing as I had prescheduled a medical procedure for 4:00 on that date.

Thank you for the opportunity to participate in this forum.

Yours truly,

Ralph Bombardiere
Executive Director

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 702 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Jeff Friedman

Address: 1415 Kellum Pl., Garden City, 11530

I represent: AAA New York

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Fran Freedman, Dep Commish

Address: DCA

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 9/20/12

(PLEASE PRINT)

Name: John Browne

Address: _____

I represent: DCA

Address: _____

Please complete this card and return to the Sergeant-at-Arms.