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April 7, 2016

**To:** County Superintendents of New Jersey Department of Weights & Measures  
**From:** Sal Risalvato, New Jersey Gasoline, C-Store, Automotive Association (NJGCA)

Attached to this letter you will find a recent news article from the trade publication *Oil Express*, discussing actions being taken on a nationwide scale by CITGO over the issue of commingling of fuels. What the article does not mention is the key role that New Jersey, including this Association (NJGCA), has played in bringing this issue to light.

I wanted to use the opportunity presented by this situation to reach out to every county superintendent in the state to reiterate and reinforce the Zero Tolerance Policy that NJGCA has for this type of fraud, whether it be the commingling of branded and unbranded motor fuel or the commingling of regular gas and premium gas.

When a motorist shows up to a branded location, they are expecting and paying for a fully branded product. There is a benefit and a cost associated with being a branded motor fuel retailer. To be associated with a brand is to reap the benefits of a certain degree of customer loyalty and customer trust in the quality of the product being sold. One of the main downsides of taking on a brand is that the wholesale cost is usually higher than unbranded products.

When a retailer mingles an unbranded product with a branded product at a branded station, that retailer is getting the benefits of the brand without the costs. Not only is the consumer being lied to, not only is the law being broken, but the honest competitor is being cheated as well.

The same principle applies to the commingling of premium gas with regular and then passing it off as fully premium. Retailers and consumers pay more for premium gas, and when one dishonest retailer decides to dilute the premium gas sold at that location, they may be pocketing as much as 50¢ per gallon. In a business where profit and loss is determined by the individual penny, this can be a tremendous advantage and therefore a tremendous temptation.

Every NJGCA member has been notified on numerous occasions that anyone who practices these methods of cheating consumers and competitors will not be tolerated or defended. NJGCA will stand with the authorities, with the rule of law, and with the basic ideals of decency and fair play whenever someone has been found guilty of cheating.

However, when “evidence” is found of wrongdoing, there must be certainty of guilt and malice beyond the shadow of a reasonable doubt before the retailer’s name and reputation is dragged out for a public lashing in front of the press. The court of public opinion is fickle and petty, and the damage to a business’ reputation cannot be undone easily. Be it from overzealousness or an honest mistake, if a retailer is unfairly accused of a crime I will be the first to vocally and publically insist that the false accusers have the decency to clear their name with the same publicity with which they have besmirched it, as I did in 2008 when I took issue with the conduct of then Attorney General Anne Milgram.

Not all violations are done with malice and the intent to cheat others. If a member contacts me because they have been accused of some form of commingling, the first thing I do is ask for all the sales and inventory reports for the previous 2 months. Reconciliation of these reports is an accurate means to determine if the retailer cheated; a guilty retailer will almost never agree to this level of transparency, an innocent one will eagerly lay everything out on my desk.

NJGCA members know of our Zero Tolerance Policy and that we will not stand with the dishonest. In fact, NJGCA goes further and will actively turn in those who are committing wrongdoing, even if they are dues paying members. To not do so would be to turn a blind eye and stand with them as they hurt the honest members and sully the entire industry. When viewed from this perspective, it is an easy decision to make.

I encourage you, as part of the normal course of your annual inspections and your random surprise inspections, to make a point of investigating for subpar octane and the commingling of unbranded with branded fuel. Dishonest retailers will not like it but I know that honest ones will be enthusiastic to hear you are actively and aggressively enforcing this violation.

In fact when dishonest retailers are found guilty of cheating by commingling either unbranded product in to a branded location, or by dumping regular grade gasoline in to premium tanks, I encourage you to not only seek harsh monetary penalties, but to also invoke closure of the location for a period of time. Closure is perhaps the best deterrent because it signals the motoring public that the proprietor is a cheat. I hope that you recognize the different way I wish cheaters to be treated versus the mercy I may ask from you for my members who have simply made mistakes by virtue of sloppy practices or

unknowingly violated a regulation. There is a difference when a proprietor is knowingly and purposefully deceiving consumers. I have stood on that position since 2007 and will continue to do so.

I would like to circle back to the first paragraph of this letter because the ability to accurately discover commingling of products at gasoline stations relies heavily on the direction that I have requested officials at the State Office of Weights and Measures to follow. Without adding volumes to this letter I will sum up by saying that I began this effort back in February 2013, pointing to suspected violations and the suggested method to uncover them. Because I had suspicions in particular of two specific brands, I asked for an investigation to be implemented.

You may remember that letters were sent to multiple Gulf and CITGO locations in the spring of 2014 requesting both delivery invoices and the corresponding bills of lading for a period that encompassed several months be submitted for inspection.

It is the matching of invoices to bills of lading that provide the trail that will uncover commingling of unbranded product into branded underground storage tanks, and will also enable the tracing of a TRUE invoice displaying the TRUE cost of the product. This will uncover unscrupulous multi-site operators who employ predatory and injurious pricing strategies by selling below their cost. Too often distributors also operate multi-site locations themselves and are able to falsify their own invoices. This is more prevalent among unbranded locations.

These are also the locations that are more likely to commingle regular grade gasoline into their premium grade product to reap as much as 50¢ per gallon in additional profit. Inspection of invoices and bills of lading are the first step to trace commingling of any kind as well as predatory and injurious below cost selling.

I was encouraged last September when I was asked to meet with officials from the State Office of Weights and Measures, Department of Consumer Affairs, and several Deputy Attorneys General. I learned last month that CITGO began de-branding many locations. I learned just last week from a member who owns several locations that were caught up in my effort that he too is now being required to remove the CITGO brand identification from his sites, and is also being forced to pay towards a monetary settlement that has been agreed upon between the State of NJ and CITGO.

Although I feel sad for a member who is now being penalized, he understands the NJGCA Zero Tolerance Policy regarding cheating, and he agrees with my actions that have now proven to be very costly to him. He remains a loyal member.

I appreciate the strong relationship that NJGCA has with the Department of Weights & Measures and with the Division of Consumer Affairs. I have no doubt that we will continue to work together to ensure fairness in the industry and enhance compliance throughout the state, as we have done over the last several years.

If I can be of any assistance in any matter pertaining to the issues I have discussed regardless of whether or not the location is an NJGCA member or is a non-member, please do not hesitate to call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Sal Risalvato". The signature is fluid and cursive, with the first name "Sal" and last name "Risalvato" clearly distinguishable.

Sal Risalvato  
Executive Director