

THE NEW COMPONENT

NORTHEASTERN WEIGHTS AND MEASURES ASSOCIATION

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Newsletter Editor, Bob McGrath

Since 1972

ISSUE 31

NEWMA NEWSLETTER

August 2009

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2009 NEWMA INTERIM MEETING

October 14-15, 2009

Springfield Sheraton Monarch,

One Monarch Place, Springfield, MA 01144

Phone: (413) 781-1010

Room Rate \$96.00 plus tax per night (10/13-15/2009)

Reservation Cutoff Date, 9/24/09

Parking \$9.95 per day (self)

<https://www.starwoodhotels.com/sheraton/index.html>

Interim Meeting Registration

The registration fee this year is only \$25.00. As meeting costs (meeting space, breaks & Chairman's Reception) have risen, it has become necessary to defray some of the cost(s).

NEWS FROM THE NORTHEAST

SHRIMP SUIT DOESN'T HOLD WATER

By BRUCE GOLDING, New York Post

A Manhattan attorney picked a king-sized fight over a platter of shrimp. Marc Verzani claimed a box-store giant was being a little fishy with its one-pound "shrimp tray with cocktail sauce," including only 13.5 ounces of the crustaceans in a platter he bought in February, according to a class-action suit filed in Manhattan federal court. He was apparently so incensed over the purchase at the New Rochelle store that he had his lawyer conduct a coast-to-coast investigation, which found that not a single \$9.99 tray was heavy enough.

Judge Colleen McMahon slammed the complaint as "simply ridiculous" because the weight "took into account both the shrimp and the sauce, never mind the lemon wedges and lettuce also included in the package." "A reasonable consumer would understand that purchasing a ready-to-serve, prepackaged convenience item is different than purchasing shrimp at a fish counter, cocktail sauce in a jar and a lemon at the produce department," McMahon wrote in the July 31 decision turning down a preliminary injunction.

Verzani claimed that the store was stiffing its customers of up to \$40 million a year with the labeling. His attorney said he would appeal the ruling.

ATC? Where do we go from here?

Ross Andersen, New York

I believe people on both sides of the ATC issue were dissatisfied with the L&R Committee's decision to withdraw the item in July. While I supported the Committee's decision, it appears that we may not have reached closure on the issue. We are now faced with questions of where to go from here. Some will continue to tilt at windmills to push the ATC agenda. I'd like to suggest that we look at this from the perspective of identifying the real problems that need fixing now and look to solve only those.

Hot fuel was a trumped-up problem! The retail petroleum industry has repeatedly told us that temperature is a non-factor in competitive pricing schemes. There is no evidence that retailers in hotter climates made any more money than retailers in cold climates. The economists have deduced that ATC will have virtually no impact on the marketplace. The economists' conclusions suggest ATC is a great way of increasing measurement costs while not increasing product delivery or reducing total fuel costs for consumers. The challenge for the ATC supporters is to prove otherwise! They have a difficult task ahead of them.

The barrier for ATC is that net and gross gallons cannot coexist fairly in the retail marketplace. They can and do fairly coexist in the wholesale marketplace, because the wholesale market has informed buyers and sellers. Thus for retail, and for what I term uninformed buyers, we are forced to pick one or the other. The fact is that retail buyers will pick the lower advertised price even if it is a lesser value. Thus to protect value comparisons, we must have only one method of sale available at retail. Even in Canada where ATC is voluntary, the market forced the issue quickly to go one way or the other. In the colder areas it went net and in the milder areas it stayed gross. The problem for the US is that our climate ranges from very hot to very cold and the dividing line spits our country across the middle.

If we were to agree for the moment that ATC won't pay off, or at least that we are not going to change anytime soon, what are the real problems that remain? I see three, hot spots, artificial heating, and regulatory confusion. A hot spot is a geographic area where heated products are delivered directly to retailers from a refinery before the products have had time to cool to ambient temperatures. We have heard of a few isolated hot spots in NCWM testimony. To the extent that these heated products are competing with products delivered through pipelines, barges and tankers, there may be significant price advantages to the sellers of the heated fuel. Our challenge with this problem is that there don't appear to be a lot of

these hot spots in the US fuel distribution network. Do we make massive changes everywhere to fix these isolated and localized problems? I think we need to live with this problem for a while longer.

The second and third problems can be fixed with little cost and only a little regulatory effort. Artificial heating takes the form of heating products in various ways solely to increase the gross volume between the time you purchase the product and the time you sell it, e.g. painting above ground storage tanks dark colors to absorb solar energy. Some states already have provisions prohibiting artificial heating in statute and this seems like a very simple fix to the problem.

The confusion surrounding the method of sale only exists because there is no specific method of sale regulation people can point to. Even though the NCWM actions in the late 60's clearly carved out special exemptions from gross sales for propane and wholesale transactions, there is confusion because those changes were made to Handbook 44, a technical standard. Some misunderstand that it is in fact a regulation. The provisions that created specific exemptions from gross sales in Handbook 44 were not mirrored in Handbook 130 in all cases. When the NCWM made ATC mandatory for propane, a section was added to Handbook 130. Why not do the same for gasoline and other fuels?

We can fix the artificial heating problem and clear up the confusion by enacting a gross gallon regulation like the one that NEWMA endorsed last May. That proposal specifically prohibits artificial heating of fuels in retail sales by gross gallons and would not otherwise change what we have in place now in the US. It provides a mechanism for a state to either permit or mandate ATC for specific sales of specific products or permit or mandate ATC for all products if desired. Thus those states that permit ATC for vehicle tank meters may continue to do so. New York will be preparing a proposal for action at our Interim Meeting in October based on our action last May.

Most important to me is that a regulation is written for now. A regulation is not cast in concrete but rather written on the sand. We are talking about the ATC issue because technology exists to make the corrections. However, it is too costly to implement at present. At the point the cost benefit ratio becomes favorable to implement ATC, we can always change the regulation as we did with propane. I think it is just good policy to be clear and correct for the here and now. A gross gallon regulation clarifies where we are today and where the economics force us to be.

Editors Note:

The NEWMA "Gross Gallon" proposal will be formally introduced at the October Interim Meeting and subsequently sent to the NCWM Laws and Regulations Committee.

New York Announces Construction Plans for New Metrology Laboratory

Ross Andersen, New York

On August 7, 2009, New York State Agriculture Commissioner Patrick Hooker and New York State Office of General Services Commissioner John C. Egan announced that a new \$40 million laboratory facility will be constructed at the Harriman Research and Technology Campus in Albany. The new state-of-the-art laboratory is the first new structure to be built on the 3330-acre campus in decades and will replace an outdated facility, and will house the New York State Weights and Measures Laboratory and the State Food Laboratory, both divisions of the New York State Department of Agriculture and Markets. Funding for the project was appropriated 4 years ago in the form of a bond. Construction is slated to begin in the spring of 2010 and occupancy is planned for 2012.

This Weights and Measures Laboratory certifies the standards used to verify the accuracy of all grocery store scales, gas pumps, fuel meters, and a host of other devices used in commerce. This lab also is accredited to calibrate standards of mass, volume, length and time under International Organization for Standardization standard, ISO 17025. These calibration services are provided to both the private and public sectors on a fee basis and the services are important to companies involved in international trade.

The Food Laboratory provides expert analytical testing for all food safety and security programs in New York State with expertise in food chemistry, food microbiology, and pesticide and chemical residue testing. The new laboratory will provide the added capability of testing food, beverages, and animal feed for select agents through Biosafety Level (BSL) 3 and chemical terrorism laboratory programs, which are lacking in the current facility.

Both of the existing laboratories are now in older buildings not far from the designated construction site. The existing facilities were designed for 20 year service that has now grown to over 42 years. The labs are crowded and there is strong need to modernize the facilities to meet the demands of today and the future. The new Metrology and Food Laboratories will incorporate sustainable strategies to meet the green building standards of LEED® Silver Certification. Sustainable measures include use of a previously developed site, use of high performance façade systems, and installation of a reflective roof. Energy recovery systems will be considered for the lab spaces; in addition to HVAC systems which respond when a space is occupied. Sustainability and energy efficiency will be a major factor influencing every decision regarding how the lab is constructed and operated.

DATES TO REMEMBER

2010 NCWM Interim Meeting – January 24 - 27
Hilton Nashville Downtown, Nashville, TN
Contact: NCWM HQ (info@ncwm.net)

NEWMA Annual Meeting 2010

Groton, CT May 10-13, 2010
Mystic Marriott Hotel and Spa
625 North Road (Route 117)
Groton, CT 06340
(860) 446-2600, Toll-free (866) 449-7390
Room Rate \$105.00 plus tax per night or current per diem rate

Parking: (Self) N/C, (Valet) \$5.00 per day.

www.mysticmarriott.com

2010 NCWM Annual Meeting

July 11 - 15 , 2010
The Crown Plaza, St. Paul Riverfront, St. Paul, MN
Contact: NCWM HQ (info@ncwm.net)

2009 NEWMA ANNUAL MEETING RECAP

Our 2009 Annual Meeting was held in South Portland, ME (5/11-14) and it was both successful and well attended. Seth Bradstreet, Commissioner of the Maine Department of Agriculture, gave an excellent “welcome to Maine” address to the group. NIST Representatives Dave Sefcik and Steve Cook gave very good technical presentations. Dan Newcombe of the State of Maine gave a practical presentation on “Improper Pour/Drain Time” and Kevin Mikoski of Irving Oil presented an “Industry Perspective on ATC. Old friend Lou Straub gave an informative presentation on the Scale Manufacturers Association and their efforts to promote uniformity. NCWM Chairman Jack Kane, NCWM Chair-elect Randy Jennings as well as Carol Hockert of the NIST WMD all gave very interesting reports during the “opening ceremonies. The NEWMA “outing” to Foster’s in York, ME for a true Maine Clambake was enjoyed by all. Steve Giguere of Maine did a great job during his year as NEWMA chairman. Thank you Steve for your service. Jack Walsh has been elected to serve as the new NEWMA Chairman.

The NEWMA “business meeting” included a unanimous motion for NEWMA members who planned to attend the NCWM Meeting in San Antonio to seek a meeting with the NIST Representative who would be delivering the Conference Presidents Address. Incoming Chairman Jack Walsh proceeded to arrange a meeting with Dr. Belinda Collins, who heads the Technology Group which oversees the NIST Weights and Measures Division. A summary of that meeting is located in the NCWM Annual Meeting Recap.

Massachusetts Amends Gasoline Pricing Regulations and adopts Clean Fuel Regulations

By Bob McGrath

The Massachusetts Division of Standards (DOS) adopted new regulations relating to the sale of “bio-fuels”, particularly labeling requirements. The DOS also amended and added language to the regulation to address the cash/credit sales practice, “street advertisements” and the “grade terminology”. As gasoline dealers reverted back to the practice of dual pricing for cash & credit sales, the disclosure of the “terms of sale” were severely lacking in many locations. The Division promulgated clear requirements for the dealers to adhere to and this should certainly assist gasoline consumers in their “purchasing decisions”. Also, the Division amended and added language to address the seemingly misleading practice of dealers defining their “87 octane” gasoline as “economy grade”. This “practice” only is found at certain “full service” locations utilizing blending meters with 4 or 5 grades. The station offers “87 octane” gasoline as “economy” and sells a “88 octane” blend as “regular”. The station advertises the lower priced economy grade via street signage. Unsuspecting consumers, familiar with calling “87 octane” gasoline “regular”, order “regular” although they actually want the cheaper so-called “economy”, end up being sold “88 octane” gasoline at a much higher price. For that added octane, some stations have charged up to 60 cents more per gallon. The amended regulation should eliminate this apparent practice to mislead consumers. The regulations can be found on the Massachusetts Division of Standards Web-site www.mass.gov/standards. Click on the 202 CMR 2 Clean Motor Fuel Regulations link.

2009 NCWM ANNUAL MEETING RECAP, San Antonio, TX July 12-16, 2009

(I'll begin this “recap” with an “op-ed”) If I had a quarter for every time someone in San Antonio said “Boy, its hot out there”, you would be reading my farewell address, because I would surely be a rich man planning his early retirement. Of course, no one was handing out quarters, only bottles of water to minimize the amount of people “passing out” due to heat exposure. I love our colleagues in the Southern Region, they're a great bunch of dedicated people and fun to be with, but the time has come to take the “south” out of the rotation. My involvement with the NCWM has seen Annual Meetings held in New Orleans, Richmond, Orlando (should I count Washington D.C. for NIST's 100th anniversary too) and now San Antonio. I've also heard horror stories about other places (like Little Rock) in the south from some of our seasoned veterans. On each occasion the weather was brutally hot. Why do we do this to ourselves? No one wants to be there and I truly believe our Southern friends don't want to be there either. Hey, I'm all for holding every Interim Meeting in the South, but not another Annual. Let's face it, there is a chance it can be very hot anywhere in July, but in the South it is a “sure thing”. Think about it people! We got a little time to act before we find ourselves “back in the oven” again. Just my opinion!

Well, the meeting was once again dominated by ATC. Facing overwhelming opposition, the Committee withdrew the item with the added stipulation that it is “off the L & R agenda”. For this item to reappear, “as is” or in any other fashion, it will be required to begin the process anew, by way of being proposed to a regional association. The NEWMA alternative (gross gallon) did not need to be applied at this time. Many attendees, armed with the various ATC reports recently release, were prepared to “vote this item down” and some members were disappointed to be denied the opportunity to vote. Overall, the meeting featured plenty of lively debates beyond ATC, including the NTEP “software” issue.

The new NCWM management, headed by Don Onwiler did a great job organizing their first Annual Meeting. Jack Kane did a swell job as Chairman. Several well done presentations were given, including Mike Cleary's technical session on “Investigation Techniques” and Gordon Johnson's technical session on “DEF Marketing and Enforcement”. The outing was pretty good despite the heat, capped off by a nice boat tour of the Riverwalk canals.

Our Northeastern Region met with Dr. Belinda Collins of NIST on July 15th prior to our regional meeting. NEWMA requested the meeting to voice our deep concerns relating to the resources (lack of) dedicated to the National Measuring System, particularly WMD. The meeting went well. Dr. Collins listened, mostly agreed and hopefully will seek to improve upon the glaring inadequacies we pointed out. (Post meeting letter from Dr. Collins attached to mailing). We will discuss this and what our next action should be at the Interim Meeting.

NEWMA was well represented at the Annual Meeting. I won't try to mention all the names. However, it was disheartening to not see representatives from several NEWMA states that were once very active. Lets hope their absence is just temporary.

**INTERIM MEETING AGENDA
NEWMA
OCTOBER 14TH AND 15TH, 2009**

Wednesday, October 14th

- | | | |
|------|--|---|
| 1:00 | Call to Order and Introductions | NEWMA Chairman Jack Walsh, Framingham, MA |
| 1:10 | S&T Committee Open Hearing | Chairman Steve Giguere, State of Maine |
| 3:00 | Break | |
| 3:15 | L&R Committee Open Hearing | Chairman John Gaccione, Westchester Co., NY |
| 5:00 | Adjourn | |
| 6:00 | Chairman's Reception - Location (on site) to be announced at meeting | |

Thursday, October 15th

- | | | |
|-------|--|---|
| 9:00 | Professional Development, Open Hearing | Chairman Ross Andersen, NY |
| 10:00 | Break | |
| 10:15 | Executive and NTEP Open Hearing | Mike Sikula, NY & Mark Coyne, MA |
| 11:00 | Old Business
Secretaries Report
Treasurers Report
Correspondences | Secretary Jim Cassidy, Cambridge, MA
Treasurer Charles Carroll, MA |
| 11:30 | New Business
2010 Meeting and nomination of next Chairman, 2010 Interim Site selection & Beyond | Open discussion |
| 12:00 | Working Lunch | |
| 1:00 | Adjourn | |

HOTEL INFORMATION

Sheraton Springfield Monarch Place Hotel
One Monarch Place · Springfield, Massachusetts 01144
Phone: (413) 781-1010

<http://www.starwoodhotels.com/sheraton/property/overview/index.html?propertyID=989>

MEMBERSHIP & MEETING REGISTRATION FORM

FIRST NAME:

MIDDLE NAME:

LAST NAME:

TITLE:

ORGANIZATION:

MAILING ADDRESS:

CITY:

STATE:

ZIP:

TELEPHONE:

OFFICE

OTHER

FAX

EMAIL

REGISTRATION:

- 2009 NEWMA MEMBER - \$25.00**
- NON-MEMBER - \$50.00**

Make Check Payable to: Northeastern Weights & Measures Association

**Mail to: Charles Carroll
Division of Standards
One Ashburton Place, Room 1115
Boston, MA 02108**

If you wish to pay the registration fee at the door, please register by phone, fax or e-mail in advance

Phone: (617) 727-3480, ext. 21131

Fax: (617) 727-5705

E-mail: Charles.Carroll@state.ma.us

Appendix A

NEWMA “GROSS GALLON” PROPOSAL

Proposal to Amend NIST Handbook 130, Method of Sale Regulation to create a method of sale for fuels.

2.XX. Engine Fuels and Heating Fuels

2.XX.1. Definitions.

2.XX.1.1. Engine Fuel. – any liquid used for the generation of power in an internal combustion engine. This does not include any substance that must be kept under pressure or maintained at cryogenic temperatures to maintain in the liquid state.

2.XX.1.2. Non-engine Fuel. - – any liquid matter used for the generation of heat, power, or similar uses. This does not include any substance that must be kept under pressure or maintained at cryogenic temperatures to maintain in the liquid state.

2.XX.1.3. Gross Volume. – the volume of a liquid at the conditions at the time of sale.

2.XX.1.4. Net Volume. – the volume of a liquid after correction for temperature expansion/contraction to the reference temperature.

2.XX.2. Declaration of Quantity.

2.XX.2.1. Retail Transactions. - Engine fuels and non-engine fuels shall be sold or offered for sale at retail in units of gross volume, except for individual transactions of 6,000 liters (1,500 gallons) or more where the buyer may request to purchase in units of volume corrected to 15.56 C (60 F).

2.XX.2.2. Wholesale Transactions. – Engine fuels and non-engine fuels shall be sold or offered for sale in units of gross volume or in units of volume automatically corrected to 15.56 C (60 F). Factors for correction shall be those in ASTM D1250 Table 6b or other suitable reference source.

2.XX.2.X. (Optional permissive use of temperature correction) Specific Retail Transactions.

– (Describe the specific product or type of retail transaction here) shall be sold or offered for sale in units of gross volume or in units of net volume automatically corrected to 15.56 C (60 F). The following density factors shall be used in automatic temperature compensating equipment for all transactions under this subsection.:

(a) (Name or type of fuel for each fuel) and (density factor in API gravity, kg/m^3 , or g/cm^3). (Add additional items (b), (c), etc to this list as necessary)

2.XX.2.Y. (Optional mandatory use of temperature correction) Specific Retail Transactions.

- (Describe the specific product or type of retail transaction here) shall be sold or offered for sale in units of volume automatically corrected to 15.56 C (60 F). The following density factors shall be used in automatic temperature compensating equipment for all transactions under this subsection.:

(a) (Name or type of fuel for each fuel) and (density factor in API gravity, kg/m³, or g/cm³). (Add additional items (b), (c), etc to this list as necessary)

2.XX.3. Receipt, ticket, or sales invoice.

2.XX.2.1. Retail transactions, gross volume. – If the seller provides the buyer a receipt, ticket or sales invoice, it shall declare the gross volume delivered and the appropriate unit of volumetric measure used (liter, gallon, barrel, etc).

2.XX.2.1. Retail transactions, net volume. – If the seller provides the buyer a receipt, ticket or sales invoice, it shall declare the net volume delivered with the appropriate unit of volumetric measure (liter, gallon, barrel, etc), and the statement “volume corrected to ___” with the blank being filled in with the reference temperature, e.g. “volume corrected to 60 F”. In the case of a single transaction exceeding 6,000 liters (1,500 gallons) being sold on a net basis as provided in subsection 2.XX.2.1., the seller shall provide a receipt, ticket or sales invoice as described in this section, and the seller shall also declare the density of the fuel, the fuel temperature at time of sale, and the gross volume with appropriate unit of measure.

2.XX.2.1. Wholesale transactions, gross volume. – The seller shall provide a delivery receipt, ticket or sales invoice to the buyer declaring the volume delivered and the appropriate unit of volumetric measure used).

2.XX.2.1. Wholesale transactions, net volume. – The seller shall provide a receipt, ticket or sales invoice to the buyer declaring the net volume delivered with appropriate unit of measure, the density of the fuel, the fuel temperature at time of sale, and the gross volume with appropriate unit of measure. The net volume shall be clearly designated either “net at ___” or “volume corrected to ___” with the blank filled in with the reference temperature.

2.XX.4. Additional requirements.

2.XX.4.1. All transactions, gross volume. – The seller shall not use external sources of heat to expand the volume of fuels sold on a gross volume basis. This includes any application of heat to the product , using dark colors on above ground storage tanks to increase absorption of solar energy, or similar acts.

2.XX.2.1. Retail transactions, net volume.

(a) All sales at a business location shall be in net volume units on a continuous basis. A “business location” means a single outlet and should not be interpreted to mean all of the outlets or locations that a business or company operates in a jurisdiction.

- (b) The seller shall clearly and conspicuously indicate, “ATC” in association with unit price advertisements to indicate that the sales are being made on a net volume basis.

2.XX.2.1. Wholesale transactions, net volume. - All sales to a particular buyer in net volume units shall be in those units for a continuous 12 month period unless otherwise agreed to by the parties in writing

Justification: The California Energy Commission (CEC) Fuel Delivery temperature Study has shown that mandatory ATC for RMFD’s is an overwhelming net negative for consumers. In keeping with that reality, their fourth recommendation to the California Legislature suggests clarifying the statute. The obvious interpretation of that recommendation would mean mandating gross gallon sales. The proposal above is one attempt to do that in the form of a Method of Sale Regulation.

Because of the number of combinations involved, the regulation is fairly complicated. There are definitions in the first section, methods of sale in the second, requirements for receipts in the third and general requirements for gross and net sales in the fourth. This section includes prohibition on artificially heating product to expand volume when using gross volume sales.

The proposal includes two optional sections in 2.XX.2. that permit states to either permit net sales at retail, or mandate it, for specific types of fuels or applications. This provides flexibility to states that already permit net sales for some products or applications. As the state adopts the optional section of their choice, they fill in the blanks accordingly. For example, if a state wanted to permit net sales of home heating fuels delivered from a vehicle tank meter, they could add that as 2.XX.2.3. to do that and specify product densities for #1 oil or kerosene, #2 oil and #4 oil. They may also wish to include densities for B100 and various biodiesel blends or include them under other product densities.

NEWMA believes this proposal would:

- *Offer clarity of the statute as the CEC recommended*
- *Retain voluntary ATC usage at wholesale*
- *Retain mandatory gross retail sales and prohibit artificial heating*
- *Provide options for an individual state to specifically mandate or permit ATC for specific applications*
- *Permit the S & T Committee to complete its work on ATC specifications and Tolerances*
- *Eliminate the apprehension that NCWM members have towards adopting S & T ATC items because of the concern that their inclusion into HB 44 would constitute a “method of sale”*
- *Permit NTEP to develop test criteria and checklists, and start certifying ATC devices*
- *Erase the void that exists in states that neither allow or prohibit ATC.*

NEWMA also believes the proposal does not close the door on ATC. NEWMA projects that it would facilitate ATC upgrades if and when the economics are feasible to consider ATC. It also would permit manufacturers to include ATC options to NTEP CC’s in anticipation of future regulatory changes.