



# Virginia Petroleum and Convenience Marketers Association

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January 8, 2021

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TO: Members of the House Transportation Committee

FR: Michael J. O'Connor,  
President, VPCMA

Virginia Petroleum and Convenience Marketers Association is a statewide trade association formed in 1948 representing approximately 350 companies in the petroleum and convenience marketing industries. Our association is guided by a 13 member Board of Directors, each a Virginia resident. VPCMA members operate or supply the overwhelming majority of the 3,474 locations in the state that sell gasoline and diesel to consumers. The Virginia convenience store industry employs 67,560 Virginians collecting \$856 million in motor fuels taxes last year. Additionally, 13,957 Virginians are employed in the fuels sector including distribution, transportation and logistics, bulk storage, and home heating oil distributors.

For over eight decades this association has participated in countless legislative reviews, stakeholder groups and studies. Not once, until today, have we issued our own report on the subject matter under review. We do so because the draft report omits essential information we submitted and presents flawed analysis of the economics of mobile fueling. Never before has a bill that was defeated by a vote of 7-1 in subcommittee received so many efforts at resuscitation by so many. Instead of taking the pandemic-related option presented by Chair McQuinn and issuing a report in 2021, DHCD decided to hold three meetings in 33 days (none of which were properly noticed in the Virginia Regulatory Town Hall). It issued its draft report two days before Christmas and mandated that comments be submitted by the first work day of the New Year.

## Impact on Virginia Consumers

During the second meeting, VPCMA provided a detailed economic analysis of a mobile fueling company's proposal to one of our members, made less than one year ago. Unfortunately, those who authored the draft report either forgot about our presentation or left it out intentionally while at that same meeting allowing one of Booster's many consultants to engage in a 32 minute monologue in support of mobile fueling.

*Virginia Neighbors Serving Neighbors*

Attachment 1 will walk you through the ACME proposal.

- ACME (fictitious name of actual company) proposes filling 257 vehicles per day: 231 with regular; 26 with diesel.
- Gallons per fill: 10; Total gallons per day: 2310; Diesel Gallons: 210; Gallons per day: 2570
- This is where it gets interesting.
- They propose a fee of \$5.15 per fill.
- Who pays? The consumer.
- Currently the state tax is 28.8 cents per gallon.
- Federal tax is 18.2 cents per gallon.
- ACME's 51 cent per gallon fee will make total taxes and fees 98 cents per gallon.
- Will ACME will be advertising those prices in three feet high letters on every corner of Virginia as our members do? Of course not!
- Let us now examine the expense line. ACME says that the distributor who does all the work would take home 15.2 percent of the gross - some \$90,810 per year. That may sound good until you look under the surface.
- ACME says their vendor must complete the fueling in 21.4 hours per day times 30 days. That totals 7,712 hours a month.
- Now we take our annual gross margin of \$90,610 and divide it by the 7712 hours required annually to fulfill the contract. This produces gross revenue to the Virginia based distributor of \$11.74 per hour, which in three years will be below Virginia's minimum wage.
- No wonder the mobile fuelers are spending so much of their venture capital trying to legalize mobile fueling. For the privilege of doing all the work and running trucks 21+ hours a day, seven days a week, Virginia based companies would be paid \$11.75 per hour.
- ACME mobile fueling company would pocket \$505,934. Every month. \$6,071,208 every year.

Let's cut to the chase. That is why we are here and why the venture capital firms have so far opened up the spigots for the mobile fuelers.

### **Fleet Fueling**

Today fleet fueling is being conducted all across Virginia. The difference is that those municipalities, first responders, trucking companies that use it are saving money and becoming more competitive thru fleet fueling. This practice is conducted today at more than 400 card lock locations across the Commonwealth. To access these facilities the driver must have a key card or a passcode to enter the property and turn on the fuel dispenser. In return, the company saves a percent per gallon on the fuel, does not have to wait in line, and is in and out quickly. With few exceptions these customers are fueling at locations not open to the general public. We contrast our members approach with the ACME proposal which would raise the effective gasoline tax rate on consumers by at least 51 cents per gallon.

## **Section 5706 1.1 of the Virginia Fire Code**

In the draft report, the authors fail to mention that during 2017 they presided over a months-long stakeholder process that led to the adoption of this section. This unanimous consensus to also ban mobile fueling in the Fire Code was only achieved after numerous meetings and deliberations between the fire services, fire chiefs, fire prevention association, building officials and the farm bureau. Eventually the 5706 1.1 change was adopted unanimously after several amendments were made to assuage the concerns of all parties.

In December 2019 mobile fueling companies discovered this section of the fire code and, recognizing that it would create a huge obstacle in the path of their effort to pass mobile fueling legislation in 2020, contacted DHCD asking for assistance in drafting an amendment to repeal the section. In response, DHCD fast tracked a policy change as drafted by one of their own staffers to remove 5706 1.1. We, along with fire services, objected to Booster's proposed change. In later stakeholder meetings, opposition was joined by the Fire Prevention Association, fire chiefs, and other first responders. Despite these facts, the DHCD draft report states "the proposal from Booster Fuels was not approved by the state Board of Housing and Community Development because ODMF is currently illegal." That statement is simply not true. It failed because all stakeholders, except Booster, were opposed.

## **Mobile Fueling in Other States**

Contrary to what the other side says, no state has passed legislation authorizing statewide mobile fueling. In fact, in California in 2020, Assembly bill 2792, supported by Booster, did not even receive a hearing. Where mobile fuelers are operating is via approval of the local fire marshal, not under a statewide law. One state, Washington, has passed a bill requiring state regulatory officials to develop uniform statewide rules by May 2021 for the regulation of mobile fueling.

## **Jensen Hughes Report**

Page 10 of the report refers to a report by the Canadian firm Jensen Hughes which was authorized and paid for by the mobile fueler Filld. The conclusion of this report states "These results support the consideration that mobile fueling operations do not increase the fire risk to life and property beyond that already permitted by other fusing operations currently permitted in codes and standards." This is hardly an endorsement and stands in contrast to a letter sent November 10 to Director Johnson stating that mobile fueling, according to Filld's standard operation procedure, and with Filld equipment, "poses materially less risk of fire relative to self-service fueling at a fixed gas station." Based upon what?

## **Environmental Issues**

The DHCD draft report fails to address our strong objection to Filld President Scott Hempy's statement that mobile fueling also eliminates the need for fixed fueling stations "which almost always cause environmental contamination due to leaky underground storage tanks." During the second meeting, we provided substantial detail on environmental protection steps taken by

Virginia petroleum distributors. Unfortunately, this information was disregarded by the authors of the draft report. We also documented the decline in petroleum fueling locations over the past 20 years. This trend reached its peak in 1998 when the final pollution prevention regulations took effect. Those regulations required underground tank upgrades, tank and line maintenance, as well as 24/7 monitoring. The DHCD draft report also chose to disregard our support and affiliation with the Virginia Petroleum Storage Tank Fund. This fund assesses a fee of 6/10<sup>th</sup> cent per gallon of petroleum products sold in the Commonwealth. After expenses, DEQ receives more than \$23 million each year to clean up abandoned underground tanks, home heating oil tanks and closed tanks at state facilities. This has resulted in almost a half billion dollars for Virginia environmental protection since inception.

### **Recommendation**

This entire effort to make mobile fueling of gasoline legal stands as perhaps the preeminent example of why Virginia's statute 2.2-3104 related to a revolving door for state employees needs to be amended. Virginia needs to mandate that executive agency employees are to wait at least two years after departure before they are allowed to lobby their former agency. Non-profit trade associations such as ours simply do not have the resources to compete on an even playing field when former high-ranking agency staffers are allowed to reach back into their former agencies to lobby and/or seek favors from their former subordinates.

In conclusion, the DHCD draft report was rushed without reason. Never before have we seen so much activity by a state agency focused on a bill that was defeated 7-1. We know why that has taken place, but remain disturbed that the draft report serves to promote an alternate form of business that will have a significantly negative impact on Virginia based petroleum marketing firms while also increasing prices on consumers. It should not be the job of any state agency to help speculative investors receive a return on their investment in undercapitalized businesses. That is not the Virginia way.

ACME Mobile Fueling Model - Anywhere, VA

Fleet Vehicles Filled Per Day	257	Minutes per fill while onsite	3.50
% Diesel Vehicles	10%	Driver % Fueling Time Shift Utilization	70%
Vehicles Filled /w Reg.	231		
Vehicles Filled w/ Diesel	26	Trucks - Small Truck	1
		Trucks - Mini Tanker	2
Gallons Per Fill	10	Total No. of ACME Trucks	<u>3</u>
Gallons Per Day, Reg	2310		
Gallons Per Day, Diesel	<u>260</u>	Driver Hours	21.42
Total Gallons Per Day	2570	Driver Cost/Hour (burdened)	\$26
Fee Per Fill	\$5.15	Driver Cost/Day	\$565
Fee's Per Day	\$1,324		
		Monthly Truck Lease Cost - Small Truck	\$1,250
Margin Per Gallon, Reg	\$0.15	Monthly Truck Lease Cost - Mini Tanker	\$6,500
Margin Per Gallon, Diesel	-\$0.05		
		Total Monthly Truck Lease Cost	\$7,750
Average unbranded rack price	\$2.50	Driver Cost/Month	\$16,962
		Monthly Truck Insurance Cost	\$2,250
Gross Revenue per Day	\$8,134	Monthly Truck Fuel Cost	\$1,500
Gross Revenue per Month	\$244,022	Monthly Truck Maintenance	\$1,050
		Monthly Truck Licensing/Registration	\$150
Fuel Margin Per Day, Reg.	\$347	Monthly Misc. Costs (Uniforms, etc.)	\$300
Fuel Margin Per Day, Diesel	<u>-\$13</u>	Fuel processor transaction fees (@ 2.95%)	\$7,199
Total Net Fuel Margin Per Day	\$334	<b>ACME Montly Licensing Fee - Total</b>	<b>\$5,000</b>
Days Serviced Per Month	30	<b>Total Monthly Costs</b>	<b>\$42,161</b>
Net Revenue Per Day	\$1,657	<b>Monthly Gross Margin</b>	<b>\$7,551</b>
<b>Monthly Net Revenue</b>	<b>\$49,712</b>	<b>Gross Margin %</b>	<b>15.2%</b>
		<b>Annual Gross Margin</b>	<b>\$90,610</b>