

Michigan



**Department of
AGRICULTURE
Laboratory**

Consumer Protection Section
Annual Report
2005

10/01/2004 through 09/30/2005

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**MICHIGAN DEPARTMENT OF AGRICULTURE
LABORATORY DIVISION
CONSUMER PROTECTION SECTION**

Michigan Department of Agriculture Key Priorities and Programs

- ◆ Food Safety and Security
- ◆ Environmental Stewardship
- ◆ Animal, Plant Health and Protection
- ◆ Viable Agriculture Development
- ◆ Consumer Protection
- ◆ Homeland Security

Consumer Protection Section Mission Statement

- ◆ Prevent economic fraud and deception concerning weights and measures, motor fuels quality, labeling and advertising of all commodities.
- ◆ Be responsible for environmental issues as they relate to the distribution of gasoline products.
- ◆ Provide National Institute of Standards and Technology (NIST) traceability on the state's standards and measures.
- ◆ Provide regulatory resource expertise to the public, industry, and government.

Michigan Department of Agriculture
Mitch Irwin, Director
Keith Creagh, Deputy Director

Laboratory Division
Stephen Reh, Division Director
Michael Pinagel, Section Director

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GENERAL INFORMATION AND STATISTICS

Establishments Licensed

Gasoline Retail Outlets	5,076
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Certificates Issued

Livestock Weighmasters	6
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Service Agencies and Personnel Registered

Servicepersons	315
Service Agencies	100

Formal Complaints Investigated

Weights and Measures	1,482
Gasoline (Quality)	311
TOTAL	1,793

Motor Fuels Quality Hotline (1-800-MDA-FUEL)

Complaints Received and Responded	1,984
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Note: Complaints outside of the program's responsibility were forwarded to the appropriate agency.

Freedom of Information Act

Requests Received and Processed	45
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ENFORCEMENT ACTIONS

Hearings and Compliance Meetings

	<u>Compliance Meetings</u>	<u>Hearings</u>	<u>License Revocations</u>
Violation of P.A. 44 of 1984, as amended, Michigan Motor Fuels Quality Act	36	0	0
Violation of P.A. 283 of 1964, as amended, Michigan Weights and Measures Act	5	0	0
TOTAL	41	0	0

By Violation

	<u>Warning Letters</u>	<u>Administrative Actions</u>	<u>Prosecutions</u>
Violation of P.A. 44 of 1984, as amended, Michigan Motor Fuels Quality Act	735 *	107 **	0
Violation of P.A. 283 of 1964, as amended, Michigan Weights and Measures Act	34	10	0
TOTAL	769	117	0

**This number includes 70 warning letters sent for distributor related violations.*

***This number includes 37 administrative fines due to delinquent licenses and 18 administrative fines against distributors.*

Fines/Costs for Prosecutions and Administrative Fines*

Violation of P.A. 44 of 1984, as amended, Michigan Motor Fuels Quality Act	\$49,050
Violation of P.A. 283 of 1964, as amended, Michigan Weights and Measures Act	\$47,000
TOTAL	\$96,050

**Administrative fines are authorized under both P.A. 44 of 1984 and P.A. 283 of 1964.*

Seizure and Stop Sale Information

<u>Reason</u>	<u>Seizures</u>	<u>Amount(Lbs)</u>	<u>Value</u>
Short Weight/Measure	24	484,912	\$235,129
<u>Reason</u>			<u>Stop Sales</u>
Excess Water in Underground Storage Tank			68
Failure to Meet Quality Standards			7
TOTAL			75

SECTION PHOTOGRAPHS - STAFF IN THE FIELD



As part of the Motor Fuels Quality Program outreach efforts, Enforcement Specialist Bill Spitzley conducts a “hands-on” water detection demonstration at the State Fair. Staff was on-site each day during the Fair to conduct demonstrations, answer questions, and promote program awareness.

Weights and Measures Inspector David Bliss prepares connections on a state prover to test a Liquefied-Petroleum Gas (LPG) gas meter. Michigan residents consume over 700,000 gallons of LPG annually.



A Weights and Measures Inspector conducts training for new staff. On-the-job training is an important facet for transferring knowledge to new staff.



Weights and Measures Specialist Dennis Johnson and Weights and Measures Inspector David Crowley present case findings during an Informal Hearing. These hearings are an important part of the enforcement process as it provides a forum for communication and case resolution with the operator.

Motor Fuels Quality Enforcement Specialist Dianne Naggar performs a quantity inspection at one of the 5,076 licensed retail gasoline outlets. Each year staff responds to consumer complaints by conducting either unannounced inspections or "undercover" purchases.



Motor Fuels Quality Senior Enforcement Specialist Ernest Tolbert samples a terminal bulk storage tank. Staff randomly procure samples from both the State's terminals and gasoline distributors throughout the year in order to ensure that gasoline meets standards.



Motor Fuels Quality Senior Enforcement Specialist Gary Titus collects a sample of gasoline to be tested to ensure it meets the state-established performance and environmental standards. Motor Fuels Quality staff collected over 2,800 samples from licensed retail gasoline outlets in FY05.

Weights and Measures staff utilizes motorized “weight carts” to conduct tests on vehicle scales. This equipment allows staff to efficiently move up to 35,000 pounds of certified test weights from one section of the scale to another. This large amount of weight is often required as these heavy scales have capacities in excess of 200,000 pounds.



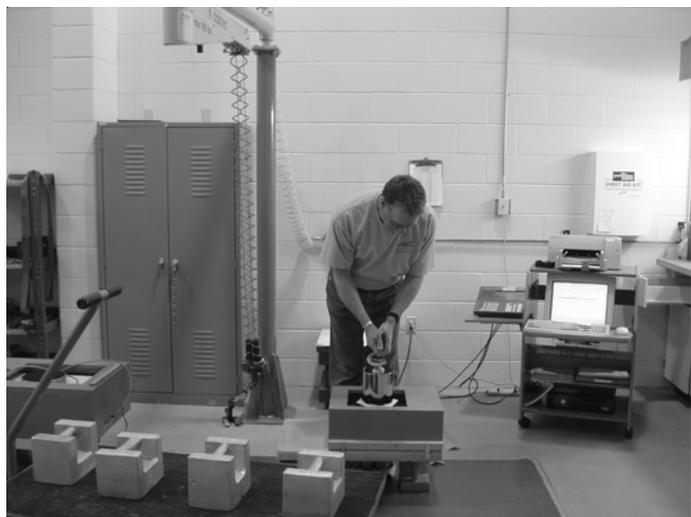
Motor Fuels Quality Enforcement Specialist Leon Steinbrecher detects and measures water at a retail gasoline storage tank. During this fiscal year, staff issued 68 “Stop Sale” orders to gasoline retailers due to violative water levels in storage tanks.

Metrology Laboratory Manager Craig VanBuren works on setting up the process for calibrating small volume provers. During FY05, the E.C. Heffron Metrology Laboratory gained recognition for the certification of small volume provers.



Metrology Laboratory Manager Craig VanBuren and Metrology Specialist Bill Erickson conduct a gravimetric comparison to be used in a small volume prover calibration. These provers are utilized at high volume petroleum delivery facilities such as terminals.

Metrologist Terry Gawel places the State's 50 lb secondary standard on a mass comparator. This is part of the process in calibrating a set of industry's 50 lb weights. Many manufacturers depend on the Laboratory's services to maintain required ISO and other accreditations.



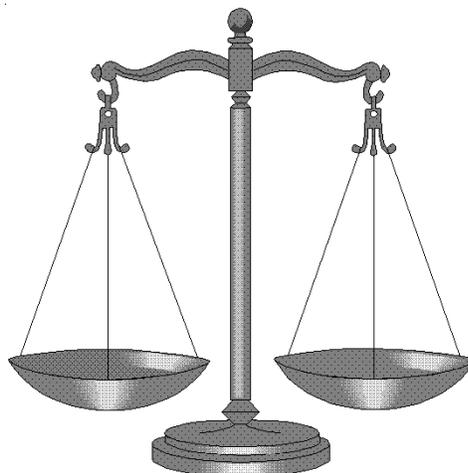
METROLOGY LABORATORY

The E.C. Heffron Metrology Laboratory calibrated over 9,500 artifacts in Fiscal Year 2005. This included standards for the Metrology Laboratory and field staff as well as for 156 outside sources. These included: other state laboratories, registered service agencies, the automotive industry, pharmaceutical manufacturers and a host of other companies. The laboratory also participated in four "round-robin" inter-laboratory comparisons where all test data is reviewed against other states data within the mid-west.

Once again, the laboratory received continued recognition and traceability from the Office of Weights and Measures at the National Institute of Standards and Technology and was one of only a handful of states to receive a two-year certificate, a first for the State Of Michigan. As part of its program to encourage a high degree of technical and professional competence in such activities, the National Institute of Standards and Technology (NIST) Weights and Measures Division (WMD) has developed performance standards and formalized procedures for recognition of state legal metrology laboratories on a voluntary basis. Certificates of Measurement Traceability are issued upon evaluation of the laboratory's ability to make reliable metrological measurements (principally mass, volume, length, and temperature).

In addition, the laboratory also maintained its National Voluntary Laboratory Accreditation Program (NVLAP) accreditation. NVLAP provides third-party accreditation to testing and calibration laboratories. NVLAP's accreditation programs are established in response to Congressional mandates or administrative actions by the Federal Government or from requests by private-sector organizations. NVLAP is in full conformance with the standards of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC), including ISO/IEC 17025 and Guide 58. Michigan's scope of accreditation can be found online at <http://ts.nist.gov/ts/htdocs/210/214/scopes/2004080.pdf>

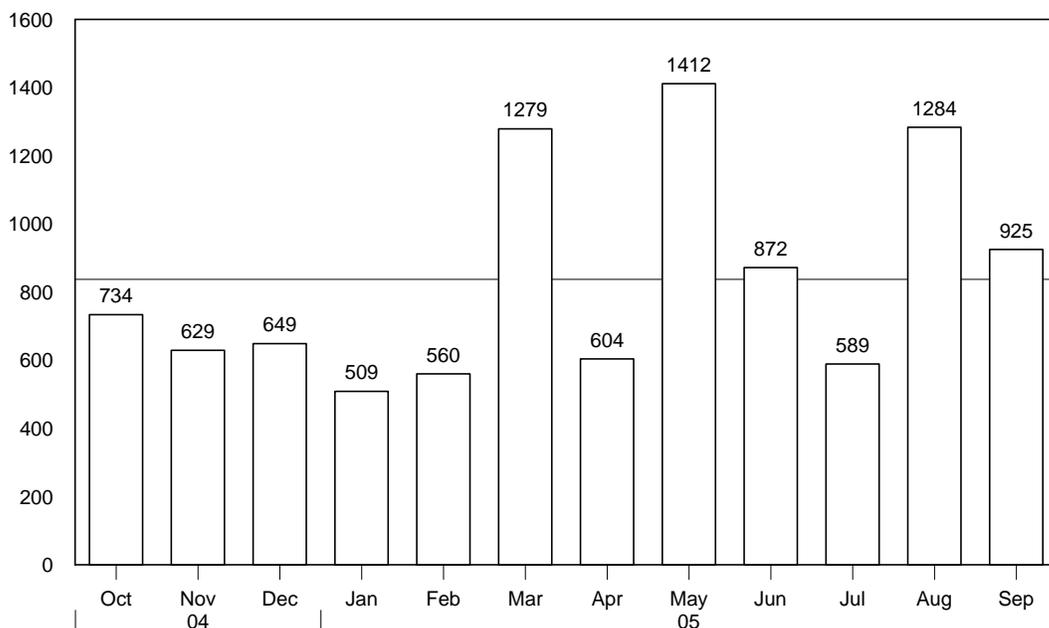
Some benefits of the laboratory's services include: ensuring accuracy and stability in the commercial measurement system and in supported state agencies, facilitating high tech and precision manufacturing, protecting Michigan's roads from overweight vehicles through the use of portable wheel load scales, promoting safety and lowering maintenance costs.



LABORATORY ACTIVITIES

Mass standards are test weights used by industry, service companies, and enforcement programs to determine the accuracy of weighing devices. They vary in size from 6,000 pounds to 1 micropound and from 500 kilograms down to 1 milligram.

Mass Standards Calibrated by Month

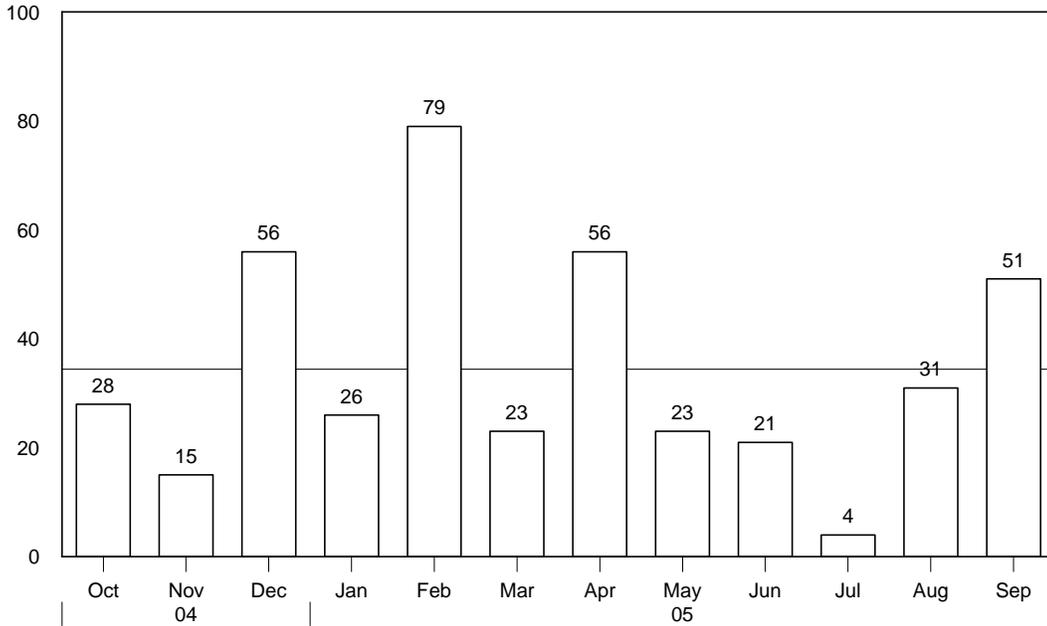


Mass Standards Testing Results

	<u>Approved</u>	<u>Adjusted</u>	<u>Condemned</u>
October	681	50	3
November	567	59	3
December	581	67	1
January	484	22	3
February	533	25	2
March	1,163	110	6
April	590	10	4
May	1,323	88	1
June	825	46	1
July	550	33	6
August	1,197	83	4
September	833	86	6
TOTAL	9,327	679	40

Volumetric standards are provers used in the testing of liquid measuring devices such as gas pumps, fuel oil, and liquefied petroleum gas (LPG) measuring meters.

Volumetric Standards Tested by Month



Volumetric Standards Testing Results

	<u>Approved</u>	<u>Adjusted</u>	<u>Condemned</u>
October	16	12	0
November	10	5	0
December	40	16	0
January	16	10	0
February	44	34	1
March	15	8	0
April	35	21	0
May	12	9	2
June	12	9	0
July	2	2	0
August	18	13	0
September	30	21	0
TOTAL	250	160	3

In addition, the laboratory calibrated several internal standards totaling: 142 mass, 5 volume, and 25 thermometers. The laboratory also calibrated two linear standards and 703 wheel load weighers used in primary and secondary road load enforcement for state and local jurisdictions.

WEIGHTS AND MEASURES PROGRAM

During FY2005, over 1,000 consumer complaints involving weights and measures were received. These complaints were wide ranging, and involved inaccurate deliveries at the gas pump, short measure deliveries of home heating fuels, short weight packages, product misbranding or deceptive advertising, item pricing violations and scanner errors at the retail store checkout. While investigating consumer complaints is the number one priority for the Weights and Measures Program, our responsibilities extend throughout Michigan to include conducting random or risk based inspections and audits involving commercially traded products sold by weight, measure or count.

Increasing consumer costs have brought a greater focus to this well respected program. Even small errors can have a negative impact on the budgets of Michigan residents and businesses. Consumers count on Weights and Measures Program staff to ensure that they are getting what they pay for; and businesses count on us to ensure that they can compete fairly and on a level playing field. When one considers the sheer volume of goods and services bought or sold on the basis of weight, measure or count, W&M oversight reaches into virtually every area of commerce taking place in Michigan. This daunting task is undertaken by civil servants who are versed in multiple technical disciplines where they apply sound judgment and skill to inspect, test, and evaluate all manner of commercial activity. These experts face ever increasing challenges due to the rapid expansion of new technologies used in commerce and the potential presented for fraudulent activities.

In order to maximize the Program's efficiency and effectiveness, special projects will continue to focus on areas not commonly involved with consumer related complaints in order to help ensure Michigan consumers and businesses are getting what they pay for. Focused projects may include everything from surveying bulk deliveries of commodities to businesses - such as retail gasoline outlets, farms and processing plants - or for much smaller deliveries typically made directly to one's home - such as landscaping supplies, liquefied-propane gas (LPG) and fuel oil. Such projects - while limited in scope and duration - can have an overall positive impact on the marketplace, increase industry cooperation with inspection efforts and helps to provide confidence for buyers and sellers.

Such cooperation was illustrated when prior "focused inspections" and the resulting enforcement actions by the W&M Program led to increased industry efforts to improve their commercial enterprises. This resulted in an 80% decrease in the number of firms issued monetary penalties. A great result ultimately for the consumer. The W&M Program will work to maintain this positive trend in FY06 through our industry outreach programs and initiatives.

As one of the nation's oldest Weights and Measures Programs, great pride and effort goes into the education and guidance of all parties regarding weights and measures compliance related issues. Looking to the future, the Weights and Measures Program will continue its "Compliance through Cooperation" efforts, promoting Michigan businesses - while protecting the consumer - and offering assistance to those marketing their products in the global economy. Program information can be found on the Web at www.michigan.gov/wminfo

GENERAL WEIGHTS AND MEASURES INFORMATION AND STATISTICS

* * * * *

Weights and Measures Undercover Activities

Consumer Protection Section employees are equipped with unmarked vehicles holding calibrated false tanks which are used to conduct unannounced dispenser accuracy checks. Following are the results of these unannounced purchases during FY05:

Number of Purchases	340
Number of Shortages \geq 1.0%	18
Percentage of Purchases \geq 1.0% Short Measure	5.3%

Weights and Measures Complaints Investigated

Item Pricing and Accuracy	185
Retail Motor Fuels Dispensers	1,241
Short Weight/Measure	42
All Other Complaints	14
TOTAL	1,482

Disposition of P.A. 283 Violations

Compliance Meetings	5
Warning Letters	34
Consent Agreements	10
Prosecutions	0
Seizures	24
Fine Amounts	\$47,000

REGISTERED SERVICEPERSON ACTIVITIES

Registration Activities

Agencies Registered*	100
Technicians Registered*	315
Service Tests Administered	401

** Currently, 143 agencies and 464 technicians are successfully registered under the Serviceperson program.*

Devices Placed-In-Service by Registered Agencies

Retail Motor Fuel Dispensers	1,132
All Other Meters	131
Small Capacity Weighing Devices	2,794
Large Capacity Weighing Devices	240

Audit of Serviceperson Activities

	<u>Number Conducted</u>	<u>Compliance Rate</u>
Internal	2,058	95.5%
Field	427	83.6%

STATE OFFICIALS' INSPECTIONS

Net Content Inspections

	<u>Surveys</u>	<u>Packages Approved</u>	<u>Packages Rejected</u>	<u>Compliant</u>	<u>Lots Approved</u>	<u>Lots Rejected</u>	<u>Compliant</u>
Field	366	3,164	457	87.37%	51	76	40.16%

Devices Inspected

<u>Commercial Device Type</u>	<u>Approved</u>	<u>for Repair</u>	<u>for Use</u>	<u>Compliant (%)</u>
Agri Chemical Meter	48	4	1	90.57
Animal/Livestock Scale	1	0	0	100.00
Belt Conveyor Scale	8	0	0	100.00
Counter Scale	640	6	1	98.92
Crane Scale	13	1	5	68.42
Fuel Truck Meter	119	15	12	81.51
Gasoline Blend Meter	2,533	248	384	80.03
Gasoline Meter	3,153	296	371	82.54
Hopper Scale	0	0	6	0.00
LPG Meter (25 GPM or less)	27	3	2	84.38
LPG Meter (over 25 GPM)	96	9	5	87.27
Mass Flow Meter	1	0	0	100.00
Monorail	13	0	0	100.00
Person Weighing Scale	25	7	1	75.76
Platform Scale (1,500 lbs or less)	62	0	0	100.00
Platform Scale (over 1,500 lbs)	35	2	1	92.11
Railroad Track Scale	4	0	0	100.00
Single Product Meter (over 25 GPM)	174	8	23	84.88
Terminal Meter	31	0	1	96.88
Vehicle Scale (2 section)	49	0	6	89.09
Vehicle Scale (4+ section)	483	65	52	80.50
TOTAL	7,515	664	871	83.04

<u>Miscellaneous Devices/Standards</u>	<u>Approved</u>	<u>Condemned for Repair</u>	<u>Condemned for Use</u>	<u>Compliant (%)</u>
Weights (Field Tested)	20	3	0	86.96

DETROIT OFFICIALS' INSPECTIONS*

Devices Inspected

	<u>Inspected</u>	<u>Approved</u>	<u>Rejected</u>	<u>Compliant (%)</u>	<u>Re-Inspected**</u>
Taximeter	947	917	30	96.83%	30

**The City of Detroit is the only remaining non-state jurisdiction in Michigan.*

***All re-inspected devices met standards and were approved.*

MOTOR FUELS QUALITY PROGRAM

Gasoline Quality Risk Assessment Project

The Energy Information Administration projected that gasoline prices would remain high for all of 2005. Michigan was projected to use over 4,850.6 million gallons of gasoline in 2005 netting over \$9 billion worth of sales.

The Motor Fuels Quality program reviewed 2004 quality data where 29 percent of the targeted gasoline samples collected for the May Day to Labor Day project failed to meet the state quality standards. The review showed that many of the violations found could have been prevented by the station owners themselves had they been alert and taken proper corrective action. The program developed a risk based inspection method that focuses on areas of greatest risk for consumers. A flyer was developed to show station owners how they could minimize the risk to their consumers. This information was shared with stakeholder groups and posted to the department's website.

Motor Fuels Quality staff visited just over half of all retail locations in the state and obtained samples based upon consumer buying habits. Each retailer was provided a risk assessment flyer with each visit. The flyer focused on the known quality problem areas that the retailer can exert control over to help them evaluate their risk for poor quality gasoline and take corrective action.

GENERAL MOTOR FUELS QUALITY INFORMATION AND STATISTICS

Establishments Licensed

Gasoline Retail Outlets	5,076
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Disposition of P.A. 44 Violations

Compliance Meetings	36
Warning Letters	735
Administrative Fines	107
Prosecutions	0
Fine Amounts	\$49,050

Stop Sale Information

Excess Water in Underground Storage Tank	68
Failure to Meet Quality Standards	7

Complaint and Motor Fuels Quality Hotline Information

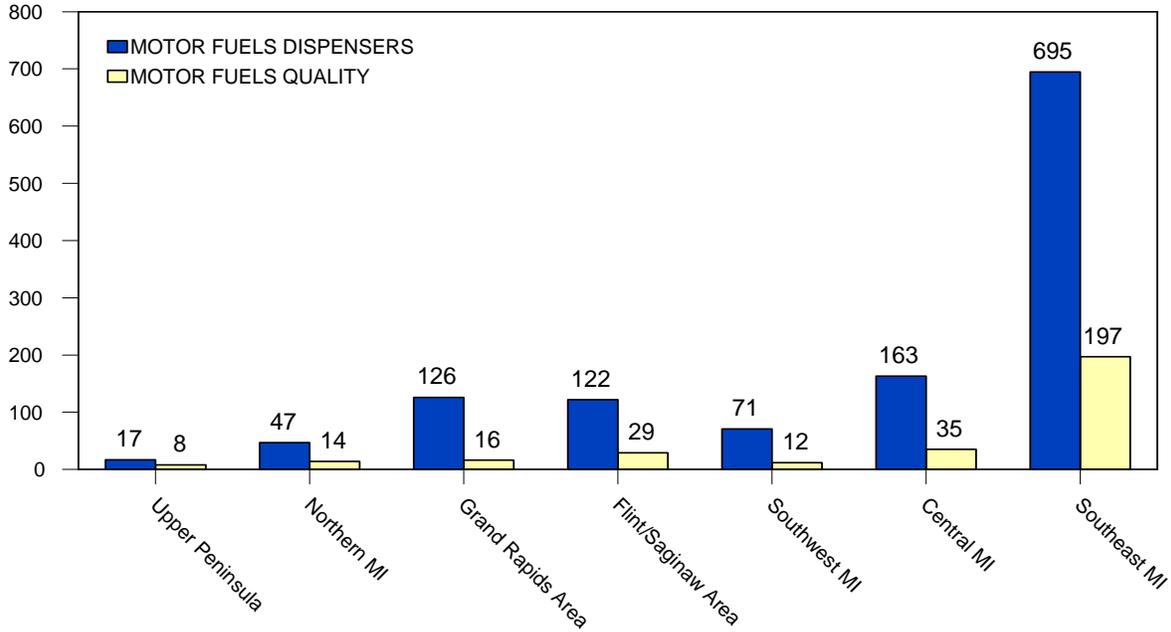
Complaints Received through 1-800-MDA-FUEL	1,984*
Gasoline Quality Complaints Investigated	311

**Note: Complaints outside of the program's responsibility, received via the MFQ Hotline, were forwarded to the appropriate agency. All gasoline quality complaints were investigated.*

MOTOR FUELS QUALITY PROGRAM

PROGRAM ACTIVITIES

Complaints Investigated by Region

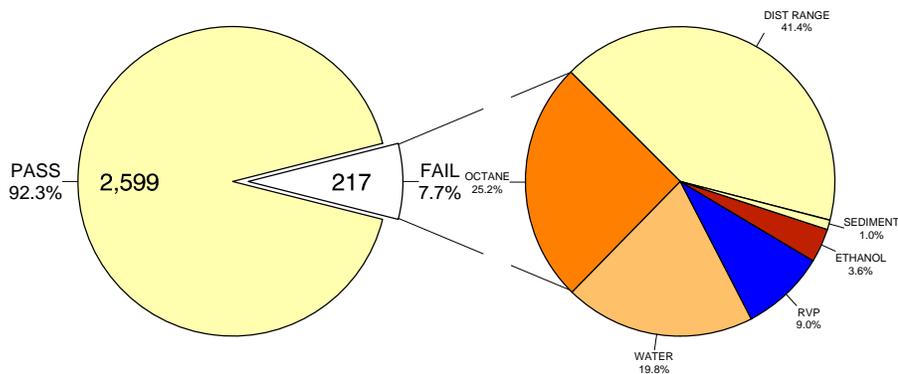


In addition to licensing and inspecting all retail outlets and responding to complaints, Motor Fuels Quality Program staff regularly procures samples. Following are the results for FY05:

Samples Procured

Results	Number
Approved	2,599
Warning Letters	151
Non-actionable	19
Administrative Fines	35
Investigations In Progress	12
Total	2,816

Violation Rate and Breakdown



Samples were procured for the following reasons: a monthly random/stratified program, on-going investigations, consumer complaints, and to assure establishment compliance when there has been a previous violation.

Sample Results by Sampling Method

<u>Sampling Reason</u>	<u>Number of Samples</u>	<u>Number of Violations</u>	<u>Compliant (%)</u>
Routine	70	6	91.4
Complaint	284	49	82.7
Re-sample	205	44	78.5
Investigation	17	6	64.7
Confidential/Undercover	90	6	93.3
Other	32	9	71.9
Delinquent License	53	3	94.3
Quality Risk Assessment	2065	94	95.4
TOTAL	2816	217	92.3

Sample Results by Octane ((R+M)/2)

<u>Octane (AKI)</u>	<u>Number of Samples</u>	<u>Number of Violations</u>	<u>Compliant (%)</u>
86	-	-	-
87	1,898	96	94.9
88	3	0	100.0
89	395	21	94.7
90	3	0	100.0
91	6	1	83.3
92	107	13	87.9
93	367	78	78.7
94	35	7	80.0
Other	2	1	50.0
TOTAL	2,816	217	92.3

Sample Results by Region

<u>Region</u>	<u>Number of Samples</u>	<u>Number of Violations</u>	<u>Compliant (%)</u>
Upper Peninsula	278	19	93.2
Northern Michigan	286	22	92.3
Grand Rapids Area	361	21	94.2
Flint/Saginaw Area	446	38	91.5
Southwest Michigan	138	9	93.5
Central Michigan	401	20	95.0
Southeast Michigan	906	88	90.3
TOTAL	2,816	217	92.3

VAPOR RECOVERY AND REDUCTION PROGRAM

HURRICANE KATRINA'S IMPACT ON FUEL AVAILABILITY

Hurricane Katrina hit the gulf coast on August 29 and inflicted substantial damage to both upstream and downstream petroleum infrastructure. This placed tremendous stress on gasoline supplies as refineries and pipelines that supply oil and gasoline to the nation were knocked out or without power. While the hurricane may have hit over 1,000 miles away, it directly impacted on Michigan's fuel supplies as marketers all competed to obtain the limited amounts of crude oil and finished gasoline available. The unavailability of oil and the lack of refining capacity for gasoline drove the cost up as marketers all competed to obtain the limited gasoline supplies still available.

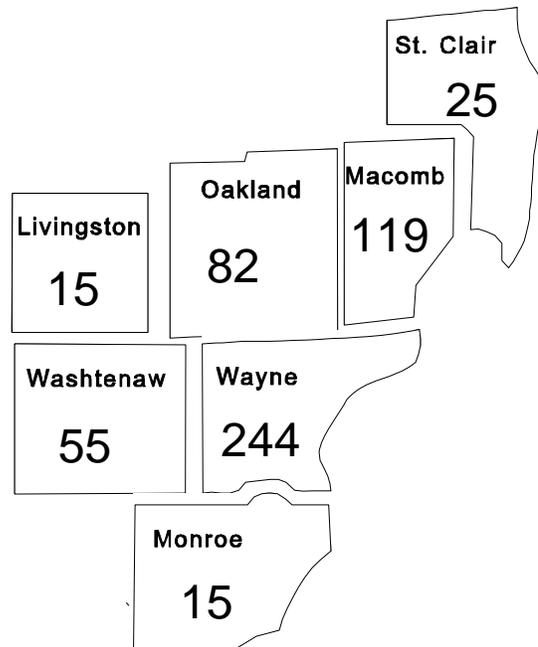
To ease the supply burden, Governor Granholm declared a State Of Energy Emergency and suspended the summertime vapor pressure gasoline requirements on August 31, 2005. This freed up gasoline supplies and allowed marketers to use any suitable summertime or wintertime gasoline that was available. The Motor Fuels Quality staff conducted daily surveys of the marketplace to monitor fuel availability to ensure the state had sufficient product to meet demand and that no further action was warranted to ease supply burdens. While gasoline reached an all time retail high of over \$3 a gallon (not adjusted for inflation) it could have been much higher, or perhaps even unattainable, if not for the fuel waiver.

* * * * *

As part of the Vapor Recovery and Reduction Program, staff performed field audits from June 1 through August 31 on gasoline dispensed in the seven-county ozone attainment area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne counties).

* * * * *

Number of Field Audits and Samples Per County



Field Audit and Sample Results*

	<u>Field Audits</u>	<u>Official Samples</u>	<u>TOTAL</u>
Number of Establishments**	386	106	464
Number of Audits Conducted*	420	135	555
♦ Overall Establishments in Violation:	24		
♦ Establishment Violation Rate:	5.2%		

**On 8/31/05, Governor Granholm, in response to Hurricane Katrina, declared a State of Energy Emergency and issued Executive Order 2005-18 suspending the lower RVP requirements.*

*** When establishments were found in violation, multiple audits were conducted; and at some establishments multiple samples were collected.*

Field Audits and Samples without Ethanol (7.8 psi RVP limit)

<u>Octane</u>	<u>RVP Average</u>	<u>Number Collected</u>	<u>Number of Violations</u>
86	-	-	-
87	7.59	250	17
88	-	-	-
89	7.76	40	5
90	-	-	-
91	-	-	-
92	-	-	-
93	7.94	45	11
94	8.60	1	1
TOTAL	7.66	336	34

Field Audits and Samples with Ethanol (8.8 psi RVP limit)

<u>Octane</u>	<u>RVP Average</u>	<u>Number Collected</u>	<u>Number of Violations</u>
86	-	-	-
87	8.60	172	0
88	8.70	1	0
89	8.62	17	0
90	-	-	-
91	-	-	-
92	8.50	2	0
93	8.54	18	0
94	8.63	9	0
TOTAL	8.60	219	0



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