

IN THE MATTER OF

SETTLEMENT AGREEMENT

**Steven Compton d/b/a
Troy BP and Tire Pro**

This Settlement Agreement (hereinafter “Agreement”) is entered into by Roy Cooper, Attorney General of the State of North Carolina (hereinafter “Attorney General”), and Steven Compton d/b/a Troy BP and Tire Pro (hereinafter “Compton” or “defendant”).

I. FACTUAL BACKGROUND

1. At all times relevant to this matter defendant owned and operated the retail gasoline business known as Troy BP or Tire Pro, located at 4 Courthouse Square, in Troy, North Carolina.
2. On September 12, 2008, Governor Michael F. Easley declared the existence of an “abnormal market disruption” pursuant to G.S. § 75-38 (hereinafter the “Declaration”). Such a Declaration is intended to prevent sellers of goods and services from charging “unreasonably excessive” prices for those goods or services under the conditions outlined in the statute.
3. The Attorney General received numerous allegations of unreasonably excessive pricing following the Declaration and undertook an investigation.
4. In the retail gasoline industry, “laid-in cost” means the rack (or terminal) price charged to the retail outlet. The laid-in cost includes the wholesale price of the gasoline, all taxes and fees, and the cost of freight or delivery.
5. On September 11, 2008, defendant received a shipment of gasoline with a laid-in cost of \$3.559 per gallon for regular unleaded, \$3.659 for mid-grade, and \$3.759 for premium. This shipment included 3,988 gallons of regular unleaded gasoline.

6. Prior to September 12, 2008, defendant charged approximately \$3.699 per gallon for regular unleaded gasoline, approximately 10 cents more for mid-grade, and approximately 20 cents more for premium gasoline.
7. Based on defendant's cost of product in the September 11 delivery, at those price levels defendant's gross profit margin per gallon was at about 14 cents per gallon, or a markup of about 4 percent.
8. On September 12, 2008, after the governor's declaration, defendant posted and charged \$5.999 for regular unleaded gasoline, as well as for mid-grade and premium.
9. Defendant increased his prices to these levels notwithstanding that his cost of gasoline had not changed since the shipment he received on September 11, 2008. At those prices defendant's gross profit margin per gallon expanded to at least \$2.44 per gallon for regular unleaded, \$2.34 per gallon for mid-grade, and \$2.24 per gallon for premium.
10. Defendant represents that he sold no gasoline at the higher prices on September 12, 2008.

II. SETTLEMENT PROVISIONS

11. Defendant shall pay to the Attorney General a total of \$7,800.00 to be distributed as follows:
 - a. \$2,000.00 to the Low Income Heat Energy Assistance Program (LIHEAP) for use in North Carolina;
 - b. \$5,000.00 as a civil penalty pursuant to N. C. Gen. Stat. § 75-15.2; and
 - c. \$800.00 for the Department of Justice's attorney's fees and investigative costs.
12. Defendant shall pay this total in installments, as follows:
 - a. \$800.00 by no later than November 6, 2009; and

- b. The remaining \$7,000.00 in installments of \$200.00 each paid by the last business day of each successive month, until completed.

Each of these payments shall be made to the Attorney General via a certified check made payable to the "North Carolina Department of Justice".

13. Defendant acknowledges that he is fully aware of the terms of N.C. Gen. Stat. § 75-38, a copy of which is attached hereto as "Attachment A," and agrees to abide by the statute in all future business transactions in North Carolina.
14. Defendant acknowledges that this Agreement is based upon information that he has provided to the Attorney General. If any of the information provided to the Attorney General by defendant is shown to be false or incomplete, the Attorney General retains the right to pursue legal action concerning price gouging based on additional information.
15. Should defendant fail to comply with any of the provisions of this Agreement, he agrees to pay a stipulated penalty of \$5,000 per violation for each instance of offering for sale each grade of gasoline at the above-noted prices on September 12, 2008. Provided, that if the non-compliance is failure to make timely payment, then the first sentence of this paragraph 15 shall apply to such non-compliance only in the event of one payment that is more than 30 days late, or, alternatively, any 5 payments more than 10 days late.

THE UNDERSIGNED, WHO HAVE THE AUTHORITY TO CONSENT AND SIGN ON BEHALF OF THE PARTIES IN THIS MATTER, HEREBY CONSENT TO THE FORM AND CONTENTS OF THE FOREGOING SETTLEMENT AGREEMENT.

This 21 day of Oct, 2009.

**Steven Compton d/b/a Troy BP
and Tire Pro**



Steven Compton
[address]



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ROY COOPER
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By:



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Attachment A

§ 75-38. Prohibit excessive pricing during states of disaster, states of emergency, or abnormal market disruptions

(a) Upon a triggering event, it is prohibited and shall be a violation of *G.S. 75-1.1* for any person to sell or rent or offer to sell or rent any goods or services which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being of persons or their property with the knowledge and intent to charge a price that is unreasonably excessive under the circumstances. This prohibition shall apply to all parties in the chain of distribution, including, but not limited to, a manufacturer, supplier, wholesaler, distributor, or retail seller of goods or services. This prohibition shall apply in the area where the state of disaster or emergency has been declared or the abnormal market disruption has been found.

In determining whether a price is unreasonably excessive, it shall be considered whether:

(1) The price charged by the seller is attributable to additional costs imposed by the seller's supplier or other costs of providing the good or service during the triggering event.

(2) The price charged by the seller exceeds the seller's average price in the preceding 60 days before the triggering event. If the seller did not sell or rent or offer to sell or rent the goods or service in question prior to the time of the triggering event, the price at which the goods or service was generally available in the trade area shall be used as a factor in determining if the seller is charging an unreasonably excessive price.

(3) The price charged by the seller is attributable to fluctuations in applicable commodity markets; fluctuations in applicable regional, national, or international market trends; or to reasonable expenses and charges for attendant business risk incurred in procuring or selling the goods or services.

(b) In the event the Attorney General investigates a complaint for a violation of this section and determines that the seller has not violated the provisions of this section and if the seller so requests, the Attorney General shall promptly issue a signed statement indicating that the Attorney General has not found a violation of this section.

(c) For the purposes of this section, the end of a triggering event is the earlier of 45 days after the triggering event occurs or the expiration or termination of the triggering event unless the prohibition is specifically extended by the Governor.

(d) A "triggering event" means the declaration of a state of emergency pursuant to *G.S. 166A-8* or Article 36A of Chapter 14 of the General Statutes, the proclamation of a state of disaster pursuant to *G.S. 166A-6*, or a finding of abnormal market disruption pursuant to *G.S. 75-38(e)*.

(e) An "abnormal market disruption" means a significant disruption, whether actual or imminent, to the production, distribution, or sale of goods and services in North Carolina, which are consumed or used as a direct result of an emergency or used to preserve, protect, or sustain life, health, safety, or economic well-being of a person or his or her property. A significant disruption may result from a natural disaster, weather, acts of nature, strike, power or energy failures or shortages, civil disorder, war, terrorist attack, national or local emergency, or other extraordinary adverse circumstances. A significant market disruption can be found only if a declaration of a state of emergency, state of disaster, or similar declaration is made by the President of the United States or an issuance of Code Red/Severe Risk of Attack in the Homeland Security Advisory System is made by the Department of Homeland Security, whether or not such declaration or issuance applies to North Carolina.

(f) The existence of an abnormal market disruption shall be found and declared by the Governor pursuant to the definition in subsection (e) of this section. The duration of an abnormal market disruption shall be 45 days from the triggering event, but may be renewed by the Governor if the Governor finds and declares the disruption continues to affect the economic well-being of North Carolinians beyond the initial 45-day period.