

LOUISIANA WEIGHTS AND MEASURES COMMISSION HEARING
MINUTES

April 29, 2015

9:30 am

Louisiana Department of Agriculture & Forestry
Veterans' Memorial Auditorium
5825 Florida Blvd.
Baton Rouge, LA 70806

I. Call to Order:

Chairman Mike Miller called the hearing to order at 9:35 a.m.

II. Roll Call:

Commission Members present

Mr. Mike Miller, Chairman
Mr. John O'Neill, Vice Chairman
Mr. Dave George
Mr. Joseph Al Moreaux
Mr. Marcy LeBlanc Sr.
Mr. Justin Alford
Mr. Nolan Percy
Mr. Brad Terral
Mr. Frank LoPinto

Members absent

Mr. Larry Terrell

LDAF staff present

Benjy Rayburn, Assistant Commissioner ACS
Stephen O. Sessums, Director of Weight & Measures
Brent Robbins DVM, Deputy Commissioner
Lindsey Hunter, LDAF Legal Counsel
Milton Hunter, Program Manager Weights & Measures
Paul Floyd, District Supervisor Weights & Measures
Tricia Berry, Regional Enforcement Supervisor Weights & Measures
Nicole Kerne, Weights & Measures Inspector
Teri Berken, Weights & Measures Inspector
Nicole Robino, Administrative Assistant
Lisa Sonnier, Administrative Assistant

Also in attendance

Mr. Michael Vallan, Assistant Attorney General Office hearing officer

III. Declaration of Quorum:

Nine members being present Chairman Mr. Mike Miller declared a quorum.

IV. Approval of November 24, 2014 Minutes:

Motion made by Mr. Dave George and second by Mr. John O'Neill to approve the minutes. All members were in favor. Motion carried

V. **Public Comment**
No public comment

VI. **Adjudicatory Hearing:**

(1) **Case No. 14-12-03 (continued case)**
Barksdale Exxon
2264 Barksdale Boulevard
Bossier City LA 71112

18 violations

6 - Overcharges - LA. R.S. 3:4617

A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer.

12- Prices not displayed - LAC 7:35.117

A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing individual commodity or item, or by a placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible.

B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

A stipulated fine of \$1,500 was imposed on the condition that the respondent pays the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination

Motion made by Mr. Marcy LeBlanc and second by Mr. John O'Neill to accept the stipulation and penalty. All members were in favor. Motion carried

(2) Case No. 15-04-01
Dollar General #3480
114 North 8th Street
Kinder LA 70648

4 violations

2 - Overcharges - LA. R.S. 3:4617

A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

2- Prices not displayed - LAC 7:35.117

A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by a placard or card placed on the shelf in front of the commodity or item, which is clearly visible and legible.

B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually Charged by the seller

A stipulated fine of \$2,000 was imposed on the condition that the respondent pays the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination

Motion made by Mr. Marcy LeBlanc and second by Mr. Frank LoPinto to accept the stipulation and penalty. All members were in favor. Motion carried

3) Case No. 15-04-02
Dollar General #13099
6408 LA Highway 3059
Iowa LA 70647

3 violations

3 - Prices not displayed - LAC 7:35.117

- A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible

- B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

A stipulated fine of \$1,500 was imposed on the condition that the respondent pays the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination

Motion made by Mr. Frank LoPinto and second by Mr. John O'Neill to accept the stipulation and penalty. All members were in favor. Motion carried

(4) **Case No. 15-04-03**
Books A Million #577
2934 Ryan Street
Lake Charles LA 70601

5 violations

2 - Overcharges - LA. R.S. 3:4617

A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

3 - Prices not displayed - LAC 7:35.117

A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible

B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

A stipulated fine of \$1,250 was imposed on the condition that the respondent pays the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination

Motion made by Mr. John O'Neill and second by Mr. Justin Alford to accept the stipulation and penalty. All members were in favor. Motion carried

(5) Case No. 15-04-04
Dollar General #6342
2319 Country Club Road
Lake Charles LA 70605

4 violations

4 - Prices not displayed - LAC 7:35.117

- A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible
- B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

A stipulated fine of \$2,000 was imposed on the condition that the respondent pays the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination

Motion made by Mr. Justin Alford and second by Mr. Nolan Percy to accept the stipulation and penalty. All members were in favor. Motion carried

(6) Case No. 15-04-05
Double G Beverage Barn
3920 Highway 27 South
Sulphur LA 70665

6 violations

1 - Overcharge - LA. R.S. 3:4617

- A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

5 - Prices not displayed - LAC 7:35.117

- A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible
- B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

Ms. Lindsey Hunter requested the Charge letter along with the Certified return receipt be presented and submitted into evidence as LDAF exhibit 1

Ms. Lindsey Hunter then called LDAF witness Ms. Tricia Berry, Regional Enforcement Supervisor with Weights and Measure division to the stand, Mr. Michael Vallan swore in Ms. Tricia Berry

Ms. Lindsey Hunter then requested Ms. Tricia Berry to state her name, title and explain her job duties to the Commission. Then Ms. Lindsey Hunter presented the price verification inspection reports dated 02/19/13, 04/25/13, 02/25/14 and 09/24/14 and requested Ms. Tricia Berry to explain each inspection report

Ms. Lindsey Hunter requested the LDAF price verification inspection reports be submitted into evidence as LDAF exhibits 2, 3, 4, and 5

**Mr. Michael Vallan asked the Commission members if they had any questions-
none**

Ms. Lindsey Hunter requested the Respondent letter be submitted into evidence and labeled LDAF exhibit R-1

The Department recommended a fine of \$700.00 be imposed on the condition that the respondent pays the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination

Mr. Michael Vallan asked the Commission if they had any questions

Mr. Marcy LeBlanc disagreed with reducing the fines. He stated they should be fined the max fine and maybe they would take the Department more serious.

Mr. Justin Alford wanted to know why they are a first offender and have four offenses. Mr. Steve Sessums explained

Mr. Marcy LeBlanc wanted Ms. Tricia Berry to explain the procedure in which the Department takes when a company has failed an inspection and needs to be Re-inspected

Mr. Marcy LeBlanc asked the question, if a company wanted the Department to come back in 30 days because they failed an inspection just to check and see how they were doing, would the Department be able to. Ms. Berry replied yes.

Mr. Michael Vallen stated let the record reflect LDAF exhibits 1 through 5 have been accepted into evidence

Mr. Michael Vallan asked the Commission members if there was a motion to find Double G. Beverage Barn in violation of the Weights & Measures Laws for 9 violations as outlined in the charge letter.

Mr. Michael Vallan said the Department is recommending a fine of \$700.00 He asked if the Commission if they opposed the fine or recommended a different amount.

Motion made by Mr. Marcy LeBlanc and second by Mr. Frank LoPinto to find Double G. Beverage Barn guilty as outlined in the charge letter and to accept the recommended fine and penalty. All members were in favor. Motion carried

(7) Case No. 15-04-06
Brother's Food Mart
502 Terry Parkway
Terrytown LA 70056

9 violations

1 - Overcharge - LA. R.S. 3:4617

A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

8 - Prices not displayed - LAC 7:35.117

A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible

B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

Ms. Lindsey Hunter requested the Charge letter along with the Certified return receipt be presented and submitted into evidence as LDAF exhibit 1

Ms. Lindsey Hunter then called LDAF witness Ms. Nicole Kerne, Agricultural Specialist with Weights and Measure division to the stand, Mr. Michael Vallan swore in Ms. Nicole Kerne

Ms. Lindsey Hunter then requested Ms. Nicole Kerne to state her name, title and explain her job duties to the Commission. Then Ms. Lindsey Hunter presented the price verification inspection reports dated 09/09/13, 10/10/13, 07/01/14 and 12/02/14 and requested Ms. Nicole Kerne to explain each inspection report

Ms. Lindsey Hunter requested the LDAF price verification inspections reports be submitted into evidence as LDAF exhibits 2, 3, 4, and 5

Mr. Michael Vallan asked the Commission members if they had any questions- none

Mr. Michael Vallan asked the Commission members if there was a motion to find Brother's Food Market in violation of the Weights & Measures Laws of 9 violations as outlined in the charge letter.

Motion made by Mr. Dave George and seconded by Mr. Marcy LeBlanc to fine Brother's Food Market guilty as outlined in the charge letter. All members were in favor. Motion carried

The Department recommended a fine of \$1,075 be imposed on the condition that the respondent pays the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination.

Mr. Michael Vallan stated let the record reflect LDAF exhibits 1 through 5 have been accepted into evidence

Mr. Michael Vallan asked the Commission if they had any questions

Mr. Justin Alford wanted to know if this was their first time, Mr. Steve Sessums asked Mr. Milton Hunter, Program Manager for Weights and Measures to explain more about the ongoing problems they have had with Brothers Food Mart

Motion made by Mr. Brad Terral recommending the **maximum fine of \$ 4,500.00**, second by Mr. Macy LeBlanc. All members were in favor. Motion carried

(8) Case No. 15-04-07
Dollar General #13034
12232 Highway 105
Melville LA 71353

4 violations

4- Overcharges - LA. R.S. 3:4617

- A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

A stipulated fine of \$2,000 was imposed on the condition that the respondent pays penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination

Motion made by Mr. Justin Alford and second by Mr. Dave George to accept the stipulation and penalty. All members were in favor. Motion carried

(9) Case No. 15-04-08
Family Dollar #655
1216 Texas Street
Natchitoches LA 71457

2 violations

1- Overcharge - LA. R.S. 3:4617

- A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

1- Price not displayed - LAC 7:35.117

- A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible
- B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

The Department recommended a fine of \$125.00 be imposed on the condition that the respondent pays the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination

Motion made by Mr. Dave George and second by Mr. Nolan Percy to accept the stipulation and penalty. All members were in favor. Motion carried

(10) Case No. 15-04-09
New 2 U Discount
6200 Westbank Expressway
Marrero LA 70072

11 violations

1 - Overcharge - LA. R.S. 3:4617

- A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

10 Prices not displayed - LAC 7:35.117

- A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible

- B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

A stipulated fine of \$1,325 was imposed on the condition that the respondent pays the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination

Motion made by Mr. Justin Alford and second by Mr. John O'Neill to accept the stipulation and penalty. All members were in favor. Motion carried

(11) Case No. 15-04-10
Family Dollar # 5483
5723 Highway 14
Lake Charles LA 70607

5 violations

2 - Overcharges - LA. R.S. 3:4617

- A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

3 - Prices not displayed - LAC 7:35.117

- A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible
- B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

A stipulated fine of \$450 was imposed on the condition that the respondent pays the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination

Motion made by Mr. Marcy LeBlanc and second by Mr. Justin Alford to accept the stipulation and penalty. All members were in favor. Motion carried

(12) **Case No. 15-04-11**
In and Out Mini Mart #8
3900 Broad Street
Lake Charles LA 70601

9 violations

1 – Overcharge – LA. R.S. 3:4617

- A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

8 – Prices not displayed – LAC 7:35.117

- A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible
- B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

Ms. Lindsey Hunter requested the Charge letter along with the Certified return receipt be presented and submitted into evidence and as LDAF exhibit 1

Ms. Lindsey Hunter then called LDAF witness Ms. Teri Berken, Agricultural Specialist with Weights and Measure division to the stand, Mr. Michael Vallan swore in Ms. Teri Berken

Ms. Lindsey Hunter then requested Ms. Teri Berken to state her name, title and explain her job duties to the Commission. Then Ms. Lindsey Hunter presented the price verification inspection report's dated 02/07/13, 04/18/13, 10/31/13 and 09/30/14 and requested Ms. Teri Berken to explain each inspection report

Ms. Lindsey Hunter requested the LDAF price verification inspections reports be submitted into evidence as LDAF exhibits 2, 3, 4, and 5

Mr. Michael Vallan asked if the Commission members had any questions- none

Ms. Lindsey Hunter requested the Respondent letter be submitted into evidence as LDAF exhibit R-1

Mr. Michael Vallan stated let the record reflect LDAF exhibits 1 through 5 have been accepted into evidence

Mr. Michael Vallan asked the Commission members if there was a motion to find In and Out Mini Mart # 8 in violation of the Weights & Measures Laws for 9 violations as outlined in the charge letter.

The Department recommended a fine of \$1,075 be imposed on the condition that the respondent pays the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination

Motion made by Mr. Nolan Percy and second by Mr. Al Moreaux to accept the recommended fine of \$1,075. All members were in favor. Motion carried

(13) Case No. 15-04-12
Smartstyle #1862
925 Keyser Avenue
Natchitoches LA 71457

5 violations

5 – Overcharges – LA. R.S. 3:4617

- A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

A stipulated fine of \$375 was imposed on the condition that the respondent pays the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination

Motion moved by Mr. Al Moreaux and second by Mr. Dave George to accept the stipulation and penalty. All members were in favor. Motion carried

(14) Case No. 15-04-13
Murphy USA # 6897
2510 N. MLK Highway
Lake Charles LA 70601

8 violations

8 – Prices not displayed – LAC 7:35.117

- A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible

- B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

A stipulated fine of \$1,000 was imposed on the condition that the respondent pays the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination

Motion made by Mr. Frank LoPinto and second by Mr. Nolan Percy to accept the stipulation and penalty. All members were in favor. Motion carried

(15) Case No. 15-04-14
Stage 687
2356 South Range Avenue
Denham Springs LA 70726

7 violations

2 – Overcharges – LA. R.S. 3:4617

- A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

5 – Prices not displayed – LAC 7:35.117

- A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible
- B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

A stipulated fine of \$500 was imposed on the condition that the respondent pays the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination

Motion made by Mr. John O'Neill and second by Mr. Nolan Percy to accept the stipulation and penalty. All members were in favor. Motion carried

VII. NEW BUSINESS

Mr. Steve Sessums asked the Commission members for recommendations as to the constant problems with the Dollar General stores.

Mr. Brad Terral had two recommendations first one if the stores are not making any effort to make changes then charge them the max-stipulated fine and the second recommendation would be to have the inspectors visit the stores more often.

Mr. Steve Sessums said part of the problem is also the prices change so drastically the Manager's just do not have time to make the price changes in a timely manner.

Mr. Mike Miller said the problem is also they change Managers so often

Mr. Steve Sessums is also taking an extra step that when he issues a warning letter to the store he also sends one to the legal counsel at corporate headquarters. In addition, when Corporate gets the warning letter they will in turn contact the District Manager of the store to make sure they have received the letter.

Mr. Marcy LeBlanc made a suggestion that there needs to be some kind of guideline for setting the stipulated fines.

Mr. Frank LoPinto wanted to know if the Commission members recommend the maximum fine what can the defendant do if they do not accept the fine. Ms. Lindsey Hunter addressed this question.

Mr. Brad Terral asked Mr. Benjy Rayburn why the Commission does not see much scale or fuel quality violations. Mr. Benjy Rayburn explained if we find a problem with a scale or fuel dispenser, The Department can red tag the scale until it is fixed and tie down the fuel dispenser until the repairs are made without shutting the entire store down.

Mr. Marcy LeBlanc wanted to know why the Department could not red tag the cash register that is ringing up the wrong prices the same way we handle the scales and fuel dispensers that are not working properly. Mr. Steve Sessums explained because the cash registers are part of the same pricing system and you would have to shut down every register, and the store would have to close and that is against the law.

VIII. OLD BUSINESS

No old business

IX. PUBLIC COMMENTS

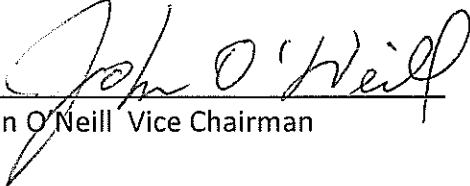
No public comments

X. FUTURE HEARING DATE

Mr. Sessums wanted the next Hearing around the end of June & possibly another one in October 2015

XI. ADJOURNMENT:

Motion made by Mr. Nolan Percy and seconded by Mr. John O'Neill to adjourn.
All members were in favor Motion carried.



Mr. John O'Neill Vice Chairman