

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

<p>AMERICAN SOCIETY FOR TESTING AND MATERIALS d/b/a/ ASTM INTERNATIONAL;</p> <p>NATIONAL FIRE PROTECTION ASSOCIATION, INC.; and</p> <p>AMERICAN SOCIETY OF HEATING, REFRIGERATING, AND AIR CONDITIONING ENGINEERS,</p> <p style="text-align: center;">Plaintiffs/ Counter-Defendants,</p> <p>v.</p> <p>PUBLIC.RESOURCE.ORG, INC.,</p> <p style="text-align: center;">Defendant/ Counter-Plaintiff.</p>	<p style="text-align: center;">Case No. 1:13-cv-01215-TSC</p>
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DECLARATION OF RANDY JENNINGS

Pursuant to 28 U.S.C. § 1746, I, Randy Jennings, declare the following statements to be true under the penalties of perjury:

1. I am over the age of 18 years and am fully competent to testify to the matters stated in this Declaration.
2. This declaration is based on my personal knowledge. If called to do so, I would and could testify to the matters stated herein.
3. I am the Director of Program Operations for the Tennessee Department of Agriculture. In that role, among other responsibilities, I represent the State of Tennessee on ASTM International Committees D02, D03, D15; the National Conference on Weights and Measures and other relevant standards development organizations. I also direct and assist regulatory administrators in assessing and improving their programs; monitor the efficiency and

effectiveness of staff performance; review all enforcement actions that are submitted to the division attorney; and provide direction on enforcement options after discussing with the attorney and consulting with program administrators.

4. I am a member of ASTM International (“ASTM”). I have been a member of ASTM since 1990.

5. I am currently the Chairman of ASTM’s Committee D02, which is the committee that develops standards related to petroleum products, liquid fuels and lubricants.

6. I have been an active member of several D02 subcommittees, including D01.A0 on Gasoline and Oxygenated Fuels, D02.E0 on Burner, Diesel, Non-Aviation Gas Turbine and Marine Fuels, D02.H0 on Liquefied Petroleum Gas, D02.02 on Hydrocarbon Measurement for Custody Transfer and D02.08 on Volatility for many years.

7. I understood since I joined ASTM that ASTM would own the copyright in any standards or materials I helped to develop.

8. I understood since I became a member of ASTM that ASTM sell copies of all ASTM standards and uses the revenue from its sales to support the standards development process.

9. I understood since I became a member of ASTM that if I wanted a copy of any ASTM standard, I would be required to purchase it from ASTM, including standards that I helped to develop.

10. I have renewed my membership with ASTM using ASTM’s online registration system since at least 2007. As part of that process, I indicated my agreement to the following statement: “I agree, by my participation in ASTM and enjoyment of the benefits of my annual membership, to have transferred and assigned any and all interest I possess or may possess,

including copyright, in the development or creation of ASTM standards or ASTM IP to ASTM.”

A screen shot of the membership renewal form is attached as Exhibit 1. I understand this to mean that I have assigned any and all copyrights in standards I helped to develop from 1990 to the present to ASTM.

11. I am not aware of any ASTM member who claims to own the copyright in any ASTM standard.

12. The context of ASTM’s operations, including the membership forms, membership renewal forms, Intellectual Property policy, and the copyright notices on each of the ASTM standards makes it very clear to all members that ASTM owns the copyrights in all ASTM standards.

13. A task group puts together the first draft of a new standard. I have participated in several task groups that have drafted proposed standards that were then revised and voted upon by ASTM subcommittees and committees. In my experience, the task group works collaboratively, with many people, sometimes dozens of people, sharing ideas, suggesting wording and providing comments that contribute to the draft standard.

14. I have also participated in developing standards through the balloting process in subcommittees and committees. Members of the subcommittee and committee that submit ballots on a proposed standard also suggest wording and provide comments on the draft. The suggestions and comments are often incorporated into the draft.

15. I participated in the development of ASTM D975-07.

16. The ASTM standards I have participated in developing were developed based on public demands, industry needs, and public safety concerns and advancements in technology.

They address a technical issue or problem identified by a group of people in the relevant sector that can be addressed with a standard-based solution.

17. Technical committees make decisions about the appropriate content of the standards, including the relevant measurements, values, descriptions, and other specifications, as well as the language with which to express these standards.

18. Since joining ASTM, I was aware that all contributions I made to the process of developing a standard would be merged with the contributions of others and would result in a single standard.

19. The task group, subcommittee and committee structure through which ASTM standards are developed makes it apparent to all participants that their contributions will be merged with the contributions of others and will result in a single standard.

20. For each of the standards I helped to develop, ASTM staff members reviewed the draft standards and suggested editorial changes and added other information required by the Form and Style guide.

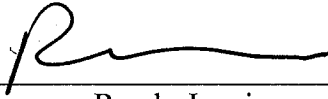
21. The Tennessee Code requires kerosene and motor oils to meet the standards set out in the most recent volume 5 of the ASTM Annual Book of Standards. *See* Tennessee Code § 47-18-1304.

22. One of the benefits of states being able to incorporate by reference the ASTM standards is that it provides different states with a common set of requirements. If each state had to create its own set of standards, there would be a patchwork of requirements, which would make it very difficult for companies to convey products that could be used in multiple states.

23. ASTM is able to convene experts with knowledge of different fuels and their components to develop its fuel standards.

24. The state of Tennessee does not have the resources or expertise to develop the broad array of standards that ASTM develops and maintains related to fuels. If Tennessee was unable to incorporate by reference the ASTM standards, it would not be able to effectively develop standards for fuel products.


Dated: November 18, 2015



Randy Jennings

EXHIBIT 1

Membership Renewal



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