

SOGGDA NEWS

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Southwestern Ohio Garage & Gasoline Dealers Association, Inc.



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Legislative Update By Paul Fiore

At this point, you may gather that healthcare reform has taken over the entire political landscape and you would not be far from the truth. Roy Littlefield's editorial covers the topic and we are going to keep this overview short because we are printing a letter that was sent to Senate leadership addressing small business worries (that's putting it mildly). You will see that the letter is from the Small Business Coalition for Affordable Healthcare.

SSDA-AT, as a member of the coalition, is a signatory on this letter that concisely details our concerns. The U.S. Congress is committed to finishing this reform by the end of 2009 (before we publish) but if that hasn't happened you will still have an opportunity to join our opposition.

After a thorough examination of the scientific evidence and careful consideration of public comments, the U.S. Environmental Protection Agency (EPA) announced today that greenhouse gases (GHGs) threaten the public health and welfare of the American people. EPA also finds that GHG emissions from on-road vehicles contribute to that threat... EPA's final findings respond to the 2007 U.S. Supreme Court decision that GHGs fit with in the Clean Air Act definition of air pollutants. The findings do not in and of themselves impose any emission reduction requirements but rather allow EPA to finalize the GHG standards proposed earlier this year for new light-duty vehicles as part of the joint rulemaking with the Department of Transportation.

SSDA News

SOGGDA SCHOLARSHIP

Southwestern Ohio Garage & Gasoline Dealers will be offering Scholarships this year. SOGGDA member's families and employees will be eligible to apply.

Information will be published in the next SOGGDA NEWS, by mail and email. Don't miss this opportunity to help SOGGDA families further their education.

THE SOGGDA NEWS

Official publication of Southwestern Ohio Garage Gasoline Dealers Association is published 12 times yearly and dedicated to the betterment of the position of independents in the automotive and petroleum industry.

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Are you online?

SOGGDA is able to send you this newsletter via e-mail for those who wish to receive it electronically rather than US Mail. If you would like to be added to the list, call today at 937/890-9670 or send an email request to soggda@aol.com

Ohio Next-of-Kin Notification

A new state law is helping hasten the notification process in emergency situations. The law requires the Ohio Bureau of Motor Vehicles (BMV) to provide a voluntary Next of Kin registry. With this database, police officers and firefighters will only have to search a few minutes, instead of a few hours, for information following an accident.

Licensed Ohio drivers can provide names and contact information for loved ones through the bureau's Web site at www.bmvohio.gov, or in person at a BMV office.

Beyond Ohio: A National Next of Kin registry, used by first responders in many other states, can be accessed through www.nokr.org.

SSDA-AT Applauds Passage of H.R. 4154

SSDA-AT applauds the passage of H.R. 4154, the *Permanent Estate Tax Relief for Families, Farmers, and Small Businesses Act of 2009* and considers it a step in the right direction. H.R. 4154 freezes the estate tax rate at the 2009 top rate level of 45% and provides an exemption on the first \$3.5 million of an estate.

SSDA-AT has been aggressively pursuing estate tax relief as part of both the Family Business Estate Tax Coalition and the Permanent Estate Tax Freeze Now Coalition. The coalitions are working for a permanent top estate tax rate of 35% and an exemption of \$5M with indexing. H.R. 4154 now moves on to the U.S. Senate, where there is cause for some optimism.

JANUARY

Glaucoma Awareness Month People ages 60 and older are at increased risk of developing glaucoma, a group of eye diseases that can cause blindness when left untreated. If you're 60 or older, talk with your doctor about glaucoma screening. To find out if you have other risk factors for glaucoma, visit www.nei.nih.gov/glaucoma.

What Is Glaucoma?

Glaucoma is the second largest cause of blindness in the United States. When you have glaucoma, pressure within your eye damages the optic nerve—the nerve that transmits information from your eyes to your brain. This can destroy patches of vision, often taking peripheral vision first. In time, glaucoma can impair your central vision, too.

The most common form, called open-angle glaucoma, causes no symptoms before permanently damaging vision. But regular eye exams can help find glaucoma early. Screening often includes looking inside the eyes through dilated pupils. A doctor might also check for loss of peripheral vision and optic nerve damage. Experts suggest an eye exam every five years for people 40 and older, and more frequently for those at high risk.

High-risk groups include adults 60 and older, African Americans 40 and older, and people with a family history of glaucoma. People with diabetes, or a history of eye problems or steroid use, also have higher risk.

Sources include: National Eye Institute, U.S. National Library of Medicine.

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General Counsel Corner

By: *Peter H. Gunst, Esq.*
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Is the Temperature Compensation Controversy Full of Hot Air

It is no secret that heat causes gasoline to expand and cold causes it to contract. In the past two years, this elementary scientific fact has ensnared the courts, legislators and The National Conference of Weights and Measures in a major controversy - the "hot fuel" dispute.

In the United States, a gallon of gasoline contains 231 cubic inches based upon a standard temperature measure of 60 degrees Fahrenheit. As the temperature increases, however, that same 231 cubic inches of gasoline no longer amounts to a full gallon, although it is sold as such at the pump. That's the problem.

According to a 2002-2004 study conducted by the National Institute of Standards and Technology, the average dispensed temperature of a gallon of gasoline throughout the United States was 64.7 degrees Fahrenheit, almost 5 degrees above 60 degrees standard.

According to a series of articles printed by the Kansas City Star in 2006, this temperature disparity translated into a \$2.3 billion loss to consumers, assuming an average sale price of \$3.00 per gallon

This caused consumer activists, lawyers and legislators to leap into action.

Presently, there are dozens of lawsuits that have been transferred by the Juridical Panel on Multi-District Litigation to the United States District Court for the District of Kansas. Those lawsuits claim that the sale of "hot fuel" constitutes a misleading and fraudulent practice in violation of the consumer and protection laws enacted by various states. Class action treatment has been sought against numerous defendants, which include the major oil companies, independent suppliers and large retailers like Costco, 7-11, Wal-Mart and WaWa.

Legislators have also weighed in Senator McCaskill of Missouri introduced a Senate bill that would require all new and upgraded fuel pumps to be equipped with automatic temperature compensation equipment.

Industry participants generally oppose any attempt to require the installation of automatic temperature compensation equipment. They argue that the equipment is very expensive, its effectiveness is unproven and that, in any event, the temperature changes roughly even out between winter and summer.

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Typical is the critique given by the Missouri Petroleum Marketers and Convenience Store Association to the proposed federal statute. Its statesperson said, "Senator McCaskill's bill while well-intentioned, is a solution in search of problem"

The Association's statement emphasized that consumers may be hurt in the long run because the cost of installing the expensive equipment will be passed on to them in the form of higher fuel prices.

Another forum for the dispute is the National Conference of Weights

and Measures. In July 2007, it rejected by a close vote a resolution that would have allowed states to permit retailers to in-stall and operate automatic temperature compensation equipment to compensate for pump temperature. The National Conference is presently reconsidering the issue.

A coalition of trade associations called the 'Partnership for Uniform Matting Practices' ('P.U.M.P.'), of which SSDA is a member, raises some interesting arguments against precipitate action requiring installation without careful study.

P.U.M.P. suggests that any product shrinkage occurring in cold weather may have no real competitive impact. Independent dealers will continue to compete aggressively against each other, with the result that consumers will be charged a competitive price, regardless of how the volume of product may be measured.

Even so, P.U.M.P. appears to agree that comprehensive scientific and economic studies should be undertaken to study the real impact, if any, of temperature change in the marketplace.

Obviously, this issue will not go away quickly, at least not as long as the proposed class action suits continue. We will by to keep abreast of further developments in the courts, in the legislature and elsewhere that could impact the consumer or the independent dealer.

pgunst@agtlawyers.com

To access the latest articles by the Service Station Dealer's legal counsel, please visit the "Service Station Dealers: Legal Issues" section of the Astrachan Gunst & Thomas P.C. website at: <http://www.agtlawyers.com/resources/petroleum.html>.

Gulf Oil Acquires Brand Rights for Entire U.S.

Gulf Oil, L.P., a wholly owned subsidiary of Cumberland Farms Inc., today announced its intentions to execute a significant geographic brand expansion. Effective January 12, Gulf Oil LP acquired all rights, title and interest to the Gulf brand in the United States.

For the last 20 years, Gulf-branded gasoline in the continental United States has only been available in an 11-state region in the Northeast through a licensing agreement between Gulf Oil's parent company and Chevron USA Inc.

Gulf Oil now controls the right to market the brand throughout the United States and its territories. This acquisition enables Gulf Oil to expand its use of the Gulf brand throughout the United States for the first time since it first acquired certain rights to the brand in 1986.

Gulf Oil, based in Framingham, Mass., is one of the Northeast's largest wholesalers of refined petroleum products. Gulf Oil distributes motor fuels through a network of more than 2,000 branded gasoline retail centers, 12 proprietary oil terminals and a network of more than 50 other supply terminals. Gulf Oil supplies gasoline, heating oil, diesel fuel, jet fuel and kerosene through its Gulf Oil terminal network. Through its unbranded subsidiary, Great Island Energy, Gulf Oil L.P. also supplies petroleum products as well as risk management and financial services to industrial, commercial, and independent retail firms.

IRS Announces 2010 Standard Mileage Rates

The Internal Revenue Service recently issued the 2010 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes.

Beginning on Jan. 1, 2010, the standard mileage rates for the use of a car (also vans, pickups or panel trucks) will be:

- 50 cents per mile for business miles driven
- 16.5 cents per mile driven for medical or moving purposes
- 14 cents per mile driven in service of charitable organizations

The new rates for business, medical and moving purposes are slightly lower than last year's. The mileage rates for 2010 reflect generally lower transportation costs compared to a year ago.

The standard mileage rate for business is based on an annual study of the fixed and variable costs of operating an automobile. The rate for medical and moving purposes is based on the variable costs as determined by the same study. Independent contractor Runzheimer International conducted the study.

A taxpayer may not use the business standard mileage rate for a vehicle after using any depreciation method under the Modified Accelerated Cost Recovery System (MACRS) or after claiming a Section 179 deduction for that vehicle. In addition, the business standard mileage rate cannot be used for any vehicle used for hire or for more than four vehicles used simultaneously.

Taxpayers always have the option of calculating the actual costs of using their vehicle rather than using the standard mileage rates.

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SOGGDA SAFETY

Electrical safety

by Warren K. Brown

Introduction

Electricity is at home, at work and in our recreational areas. It provides the energy that makes many of our tasks much easier and life more pleasant. It powers machinery, provides heating and cooling, energizes lights, pumps our water and runs home and office equipment. When used correctly, electricity essentially goes unnoticed. But, if something goes wrong, there may be injuries, death, fires and costly equipment and building damage.

Each year, there are more than 30,000 non-fatal electrical injuries, and more than 411 people die from electrocution. Electrical problems cause approximately 25 percent of fires. People could have avoided most of these incidents.

To organize the efforts of bringing electricity into society, code organizations began writing codes to avoid undesirable consequences. Underwriters Laboratories and the National Fire Protection Association (NFPA) are examples of these code organizations. In addition, they make the use of electricity safer.

Definitions

To understand electricity, it is important to know some basic definitions.

- Current - Measured in amperes, it is the movement of an electrical charge.
- Resistance - Measured in ohms, it is the opposition to current flow.
- Voltage - Measured in volts, it is the measure of electrical force.
- Conductors - They are materials with little resistance to

electrical current flow.

- Insulators - They are materials with high resistance to electrical current flow.
- Grounding - It is a conductive pathway that permits electrical current flow to the earth. This is part of the electrical safety protective system.
- Shocking current - It is an electrical current that passes through a body part. The shock's severity depends on the voltage, amperage and resistance. The greater the current, the greater the shock.
- Arc flash/blast - This is the resulting flash and pressure wave when an electrical fault occurs. The temperature may approach 35,000 degrees Fahrenheit and molten components may cause serious injuries.

When the human body becomes part of an electrical path or circuit injuries may occur. These include shock, burns, nerve/organ damage, loss of vision and death. In addition, other secondary results such as falls may happen.

An electrical shock's severity depends on the quantity of the current, the electricity's path through the body and the length of time the current passes through the body.

Electricity that is out of control may result in fire, explosions and equipment damage. The distance from an arc/blast along with enclosure and personal protective equipment determine how it will affect the body.

Root causes of electrical incidents include unsafe equipment installations, environmentally induced concerns and work practices. Also key electrical safety considerations related to the equipment a facility uses can include the following:

Insulation

Insulation protects workers from direct contact with energized equipment. Check the wiring for intact insulation. Make sure the wiring methods protect the insulating properties from damage. For example, you can use conduit for protection or it could be the

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Electrical safety Continued

wiring that is behind the dry-wall in your house.

Short circuits

Short circuits in equipment may result in electrically energized equipment. The worker who touches this equipment may become part of the path to ground and may suffer an injury or death. If there is damage to an electrical device, have a qualified electrician check it to ensure there are no electrical faults.

Grounding

Grounding is an important safety issue. It ensures exposed metal equipment connects to a low resistance electrical path to ground. If the insulation fails, the fault protection will operate to protect the worker from an electrical shock. You must appropriately enclose exposed current-carrying devices to prevent inadvertent contact and protect from an arc flash/blast. Such a blast could result in bodily injury or equipment damage.

Below is a list of do's and don'ts for electrical safety.

Do's

- The cord plugs should match the receptacle.
- Trained and qualified electricians should do any electrical repairs.

Don'ts

- Don't use cords in water; hot or exposed mechanical environments could damage the insulation.

Here are some examples of types of emergencies that could occur as a result of an electrical incident and examples of the actions one should take.

- If there is a fire, call trained firefighters before you attempt to extinguish it. Only attempt to extinguish a fire if you have fire-extinguisher training.
- If a person is hurt from electrical contact, summon medical help first. Then, perform the levels of first aid your training allows you to do.

Safety Leader's Discussion Guide 2010

Did You Know...?

Only 3% of the water on earth is drinkable. Less than one gallon of gasoline can pollute one million gallons of water.

You can avoid contaminating your source of drinking water by properly disposing of chemicals that have the potential to cause ground water contamination.

The following chemicals are common ground water contaminants:

Cleaning Products
Automotive Products
Fuel Oil
Furniture Strippers
Lawn & Garden Products
Oil based paints

Improper disposal methods include:

Pouring chemicals on the ground
Pouring chemicals down a sink or toilet connected to a septic system,

Pouring wastes down a storm drain because many storm drains lead directly into the ground or to a nearby stream.



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Plastics

Reduce use for better health, environment

Plastics are everywhere! They are a very helpful part of our everyday life and we use them without much consideration. A majority of the plastics that we consume are in the form of one-time use, disposable items such as plastic bags, plastic bottles, food containers, packaging, etc.

While plastic is a great material with many uses, these disposable items are taking up a great amount of precious space in our landfills. Once a landfill is full, it is covered and a new one is dug. The quicker we fill them, the quicker new ones are built. We all know that living things cannot thrive when living in their own waste. Finding ways to reduce what we consume and throw away helps to prolong the life of these much-needed sanitary landfills and keep them far away from our homes, jobs and places of recreation.

Recycling plastic is one solution. Even better is to reduce the amount of disposable plastics we consume in the first place. This also saves those precious petroleum resources for other uses. Many communities offer curbside or other recycling facilities. Plastics that are most typically accepted through these services are labeled as 1s or 2s inside the triangle recycling symbol. Check with your local provider to learn which of the seven different plastics are accepted in your area.

Not only are plastics taking up space in our landfills, the chemicals of which they are made are also becoming a concern toward our health.

While we are not necessarily making a hearty meal out of our plastic water bottles quite yet, the chemical compounds that make up the variety of plastics found in items from food containers to cosmetics are making their way into our bodies.

There have been many scientific studies on the impacts these chemicals are having on the various systems of our bodies. Many of the chemicals found in plastics are considered endocrine disruptors. These are artificial chemicals that mimic human hormones and disrupt the natural balance of the body's hormonal system. Because plastics are now very commonplace in everyday items, the levels found in humans are being found at higher concentrations and are having more of an impact.

Two of the more known chemicals found in plastics that are of concern are:

- * Bisphenol A - This substance is found in drink and food containers, lined tin cans, baby bottles,

dental sealants and plastic wraps. Endocrine disruptor. http://www.cdc.gov/exposurereport/pdf/factsheet_bisphenol.pdf

- * Phthalates - Man-made chemicals used to make plastics flexible. Found in some cosmetics and hygiene products. (Also, known as dialkyl or alkyl aryl esters of 1, 2-benzenedicarboxylic acid.) Studies have indicated an association between phthalate exposure and effects on the male reproductive system of children. http://www.cdc.gov/exposurereport/pdf/fact-sheet_phthalates.pdf

Plastics to avoid in food packaging and containers:

- #3:** Poly Vinyl Chloride or Vinyl - May contain phthalates
- #6:** Styrene - A potentially toxic chemical found in Styro-foam and other similar brands. May leach into food and beverages at temperatures above 80 degrees.
- #7:** Catch-all category and includes polycarbonates, which include BPA. Look for items labeled "BPA free."

What to do:

Choose a reusable water bottle. Look for a water bottle that is labeled "BPA free." Avoid plastic bottles that are labeled as plastics 3, 6 or 7. These are the plastics that contain more of the harmful chemicals that may leach into your food or beverage. There are now plastic bottles labeled as 7 that are labeled "BPA free" and are considered the safer alternative.

You may also use stainless steel bottles. There are many options available and many are even fashionable! Remember, water is necessary for your body to work properly and thrive. Be sure that you are drinking wisely! Save money and resources by drinking from the tap and using a reusable water bottle.

Do not microwave food items in plastic containers or using plastic wrap.

Opt for canned goods that are not lined. Many of these linings contain BPA.

Use glass or a safe plastic for food storage containers.

Hand-wash plastic food and drink containers. Many

Continued on the next page...

SOGGDA News

Plastics Continued

dishwashers use high temperatures to sanitize dishes. High temperatures cause some plastics to break down faster, allowing chemicals to leach more readily into foods and beverages during future uses.

It is very important to lessen our use of disposable products and packaging to reduce the impact on our natural resources as well as the life of local landfills and to work for a high quality of life for our children and grandchildren. Learning more about plastics and the items we use on a daily basis is also very important to our health and the health of future generations.

Stephanie Hays-Mussoni is executive director of Cope Environmental Center, 4910 Shoemaker Road, Centerville. Learn more by calling (765) 855-3188 or visiting www.copeenvironmental.org.

MaximumLiving

7 TYPES OF PLASTICS

According to this table provided by the Center for Science in the Public Interest (CSPI) <http://www.cspinet.org/new/pdf/nahbpa.pdf>, the seven types of plastics are:

- 1. Polyethylene Terephthalate (PET, PETE):** Many soda bottles, water bottles, vinegar bottles, medicine containers. The easiest plastic to recycle.
- 2. High Density Polyethylene (HDPE):** Many milk and water jugs; containers for laundry and dish detergents, fabric softeners, bleach, shampoos, conditioners and motor oil. Can be recycled into more bottles or into bags.
- 3. Polyvinyl Chloride (V, PVC):** Many meat wraps, cooking oil bottles, baby bottle nipples, shrink wraps, coffee containers. Difficult to recycle.
- 4. Low Density Polyethylene (LDPE):** Many wrapping films, grocery bags, sandwich bags. Can be recycled into more of same.
- 5. Polypropylene (PP):** Tupperware and many other food storage containers, syrup bottles, yogurt and margarine tubs, diapers, outdoor carpet. Can be recycled into fibers.
- 6. Polystyrene (PS):** Some take-out food containers, Styrofoam cups and containers, disposable cutlery and cups, bakery shells, meat trays, packing peanuts. Recyclers don't want it because it's bulky and light weight.
- 7. Polycarbonate (PC) or others (0):** Food can liners, Nalgene-type water bottles, disposable cutlery, sippy cups. Recyclers don't want it.

The price of Gas versus Printer Ink

All these examples do NOT imply that gasoline is cheap; it just illustrates how outrageous some prices are...

Compared with Gasoline...

Think a gallon of gas is expensive?

Diet Snapple 16 oz \$1.29...\$10.32 per gallon
Lipton Ice Tea 16 oz \$1.19...\$9.52 per gallon
Gatorade 20 oz \$1.59...\$10.17 per gallon
Ocean Spray 16 oz \$1.25...\$10.00 per gallon
Brake Fluid 12 oz \$3.15...\$33.60 per gallon
Vick's Nyquil 6 oz \$8.35...\$178.13 per gallon
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And the REAL KICKER...

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(Evian spelled backwards is Naive)

Ever wonder why printers are so cheap?

So they have you hooked for the ink.

Someone calculated the cost of the ink at...(you won't believe it...but it is true...)

\$5,200.00 a gallon. (five thousand two hundred dollars)

So, the next time you're at the pump, be glad your car doesn't run on water, Scope, or Whiteout, Pepto Bismol, Nyquil or God forbid, Printer Ink!

Just a little humour to help ease the pain of your next trip to the pump!

Skimming scams: How to prevent crooks from stealing your money at the ATM

Ron Dicker

Thieves don't need sticky fingers anymore to take your hard-earned cash. They're getting your ATM to spit it out for them. And they're doing it a rate that might make hiding your loot under the mattress is the smartest move you can make.

ATM skimming, in which crooks gain access to the PIN encoded on the magnetic stripe of your debit or credit card and withdraw at will, is going to be one of the top forms of fraud this year, according to a BankInfoSecurity report published in Consumer Reports.

It was last year, too. Remember that RBS WorldPay debacle in which hackers made off with \$9 million by withdrawing from ATMs worldwide at the same time? And, according to BankInfoSecurity's report, officials in Maryland, Illinois and Georgia are investigating skimming schemes that have netted at least \$120,000 from consumer's accounts.

Robert Siciliano, the security consultant to Intelius.com and a frequent TV guest expert, offers up some tips on keeping your money yours when you withdraw it from a machine. The number one rule, he says, is don't feel safe.

"Recognize that this is a major problem that will keep getting worse before it gets better," says Siciliano. The following should be practiced at all times when you approach an ATM. Your savings depend on it.

Scan the machine to look for any devices on the face of it where you slide your card through. If anything looks out of place, says Siciliano, "grab it, pull on it, see if you can pull the face of the card slot off. If it's protruding, chances are it's

an ATM skimmer."

Look for small wireless cameras that are hidden. "If there's a brochure holder protruding from the face of the ATM machine, see if there's a camera in there. It could be recording your keystrokes."

Watch out for a side view mirror that looks out of place. Mirrors are required by law so you can spot if someone is peeking over your shoulder, but an extra mirror can reflect your key strokes into the eyes of a thief.

Be mindful of disguised gizmos, such as an apparent stereo speaker that actually serves as a camera or mirror for the crooks.

Like a poker player protecting his hand, cover your PIN and type with your free hand to prevent spying. "Ninety-five percent of the time you're going to be in good shape," says Siciliano.

He also recommends checking your statements online at least once every few weeks (more often is better) to ensure that you're not stuck with the debt. Many credit

card companies put you on the hook if fraud is not reported after 60 days. Some banks charge you debit card withdrawals after just a week of being undisputed, he said.

Withdrawing from ATMs at convenience stores and other unregulated places also poses more risk, he said, because the owners and others have access to pin codes and can sell them or take out the cash themselves.

But one convenience store owner took issue with the warning. Mike Odal, the owner of Prospect Park Deli in Brooklyn, said he has not had a problem in 15 years with the ATM in his store.

"Nobody has talked to me and said a transaction was missing," he told WalletPop. Odal said he watches out for suspicious customers and throws out all the PIN information stored in the machine. He said he never lets the bank or the ATM company see the electronic (and printable journal) information either.

When was the last time your insurance agent showed you how to **SAVE** Money

Think about it...then contact

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Pollution: Does It Have to Be a Dirty Word? By Zurich

Pollution sounds like such a dirty word, and can cost your business millions of dollars without good risk management and insurance coverage. Is your business exposed to pollution liability risks? Are you covered? Can you sleep comfortably at night knowing you have taken all the necessary steps to control this exposure? If you know the meaning of "Environmental Due Diligence," you probably can. First let's look at three fact-based scenarios related to pollution liability that have actually occurred at automotive-related businesses:

'Automobile Dealership - Drainage piping associated with a wash bay released a substantial amount of cleaning solvents into soil and groundwater.

'Service Station - A waste hauler hired by a service station to carry used motor oil, overturns and spills its cargo into a stream.

As the waste originator, the service station is required to contribute to the clean-up costs. Remember that as the "originator" of the waste, you have "cradle to grave" responsibility for it. 'Body Shop - A solvent recycling facility, used by the insured body shop, is the source of contamination to a local aquifer. As the generator of the waste, the body shop is designated a "responsible party" by the local environmental regulatory agency.

Costs associated with pollution incidents

Clean up and remediation costs call into the hundreds of thousand of dollars. Bear in mind, these costs do not include possible lines levied for non-compliance of local, state, and federal regulations. In addition, have you considered the cost of Natural Resource Damages? The effect of a pollution incident on your business call even more profound from a public relations standpoint. Just think

of other large corporations who have been forever associated with major environmental disasters.

What can you do?

Perform an audit of your facility and thoroughly analyze your pollution exposure:

Most importantly, ensure you are in compliance with all local, state and federal environmental protection laws and regulations.

Develop a list of all chemicals stored or used on site.

Make a list of all waste materials generated or stored at your facility including lead acid batteries, anti-freeze/coolant, transmission fluid, waste oil, paints, solvents, used shop rags and mercury containing devices (light bulbs, mercury switches, etc.).

Determine where and how leaks and spills could occur

Have emergency procedures set up in advance to deal with spills. This includes designating an emergency coordinator and training personnel in how to handle the spill.

Review how and ill manner you store and dispose of waste material.

If you have underground tanks, take time to review regulations specific to Underground Storage Tanks (USTs) and ensure your tanks are in compliance.

Other practical control measures

Deal only with reputable companies for waste transport and disposal.

Investigate your waste haulers and disposal facilities by checking with your state or federal Environmental

Protection Agency (EPA) to ensure that they hold the proper permits and licenses, and whether they have any violations.

Obtain certificates of insurance from third parties who pick up and handle your waste products. Make sure to talk to your agent about this expo-sure.

Convert hazardous waste to non-hazardous through incineration (waste oil heaters can be utilized). Check with your local code official prior to installing any new system to handle waste.

Use "spill containment" pallets for storage of .55-gallon drums containing new and used oil, anti-freeze, brake cleaners, paint thinners, etc.

Install double-walled tanks and diking for above ground storage tanks containing waste oil, gasoline, etc. Install canopies over outside storage tanks and drum storage areas to control run-off and spills.

Store lead acid batteries off the ground and on suitable pallets or containers.

Use flammable liquids storage cabinets for smaller quantities of liquids for inside storage.

Use new materials that are not hazardous in place of hazardous substances - water based parts washers, "green" solvents and cleaners, etc.

Bottom line, pollution may be a dirty word, but exposures to pollution risks can be controlled and managed.



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General Counsel Corner

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Arguments for State Right of First Refusal Legislation

Facing the plans of major refiners - especially Exxon- Mobil and Shell - to assign station leases and supply agreements to branded distributors, independent dealers have sought relief in several state legislatures to obtain a right of first refusal providing them an opportunity to purchase their stations.

The legislation that the dealers purpose generally follows the model of the ground-breaking California right-of-first-refusal law found in §20999.25(a) the California Business and Professions Code.

In arguing their case to state legislators, dealers point to the disastrous result of far too many previous assignments of franchise agreements to branded distributor increased rents and uncompetitive pricing policies that have forced numerous dealers to turn in their keys.

Generally, legislators have sympathized with the dealers' contention that it is only fair that they - who have built up their businesses over many years or decades and now face the prospect of seeing their businesses destroyed - be given an opportunity to acquire their stations before they are turned over to branded distributors.

Opponents of the bills have raised several legal objections, which appear to be complete red herrings. Following are the principal legal objections opponents have raised

along with brief rejoinders.

1. Independent dealers already are fully protected by the PMPA. **NOT SO.**

The purpose of state right-of-first-refusal laws is to plug a hole in the protections provided the federal Petroleum Marketing Practices Act ("PMPA"). 15 U.S.C. §2801-2807.

The PMPA applies only when a dealer's franchise is ended through termination or nonrenewal, while the proposed state legislation is directed to situations where the franchisor intends to sell the service station premises

to a third party and then assign (but not end) the dealer's franchise. The PMPA provides the dealer with no direct protection in that circumstance.

It is true that dealers occasionally have attempted to argue in court that the effects of a particular assignment would be so dire as to be tantamount to termination. Generally, however, courts have been unreceptive to such "construction termination" claims, concluding that the injuries feared by the dealers are too hypothetical to provide a basis for relief under the PMPA.

Dealers are told to come back to court only after they have been driven out of business, when they no longer possess the financial means to pursue expensive federal court litigation. Some remedy!

Moreover, assigning refiners have argued that *all* claims of constructive termination are barred by the PMPA's termination or nonrenewal requirement. Indeed, Shell is presently pursuing a petition to the Supreme Court seeking a determination that the PMPA includes no remedy whatsoever for constructive termination. It is two-faced for them to argue that dealers are fully protected by the PMPA.

2. The proposed legislation is preempted by the PMPA. **NOT SO.**

One of the attacks commonly launched against state legislation intended to protect independent dealers is that the entire field is preempted by federal legislation, the PMPA. The argument runs that - as a matter of law - proposed state legislation like the right-of-first-refusal bills improperly interferes with the operation of **super**-seding federal legislation.

Upholding the California right-of-first-refusal **law and** rejecting just such a preemption **argument. a California** state appeals court recognized the **valid and independent** purpose of the California law. *Forty-Niner Truck*

Plaza, Inc v. Union Oil Co., 58 Cal. App. 4th 1361 (1997).

In so ruling, the California court emphasized that the state statute "foreclose[s] a franchisor from impermissibly using an assignment ... to skirt the termination or nonrenewal requirements of the PMPA." 58 Cal. App. 4th 1274-75.

The California law, the court said, is not preempted because its reach is

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Arguments for State Right of First Refusal Legislation

limited to instances where a dealer's lease and supply agreement is merely assigned to a third party, and does not address instances where a supplier expressly terminates or nonrenews a dealer's franchise.

Indeed, the reason why major oil companies like ExxonMobil and Shell are utilizing the assignment device is to **avoid** the protections against termination and nonrenewal conferred upon dealers by the PMPA. Once again, it is two-faced for the oil companies to argue that right-of-first-refusal provisions are preempted by the PMPA, even while they structure their assignments to eliminate dealers' PMPA rights.

Moreover, the PMPA contains an express preemption provision which refers *only* to termination or nonrenewal of the franchise relationship, and *not* to assignment. See 15 U.S.C. §2806(a). Rather, the PMPA expressly leaves issues of the validity of assignment to state and not federal law. See 15 U.S.C. §2806(b).

3. The proposed legislation constitutes an illegal impairment of contract. NOT SO.

In the *Forty-Inner Truck Plaza* case, the California appeals court also rejected the argument that the California statute constituted an unconstitutional taking of the franchisor's property rights because it conditioned the supplier's contractual right of assignment upon offering the dealer a right of first refusal.

The court held that the California legislature properly enacted the law because it "substantially advances a

legitimate state interest" in that it facilitates the purchase of retail service stations by their independent lessee-franchisee in contexts outside franchise termination or nonrenewal, thereby ensuring the motoring public access to service and furthering a more dynamic and full-service oriented retailing atmosphere." 58 Cal. App. 4th at 1273.

Also significant is a decision of Maryland's highest court upholding the constitutionality of state legislation in an analogous context, which decision was subsequently affirmed by the United States Supreme Court. *Governor of Maryland v. Exxon Corp.*, 279 Md. 410 (1977), *affirmed*, 437 U.S. 117 (1978).

In the Maryland case, the courts rejected the oil companies' argument that an act prohibiting major oil companies from opening or operating retail service stations with company personnel imposed an unconstitutional burden on the oil

companies.

In reaching that conclusion, Maryland's highest court noted that oil companies were not deprived of "all beneficial uses" of their properties. Likewise, merely requiring that a right of first refusal be provided to independent dealers does not deprive an oil company of "all beneficial uses" of a service station property.

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To access the latest articles by the Service Station Dealer's legal counsel, please visit the "Service Station Dealers: Legal Issues" section of the Astrachan Gunst & Thomas P.C. website at:

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General Counsel Corner

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Some Reassurance From the

Court

As major refiners are shedding downstream assets, some dealers have been presented with the opportunity - and risk - of acquiring their leased service station properties, subject to long term branding commitments. During those commitment periods, which may last ten years or more, the dealers may only resell the branded products of their erstwhile landlord.

The opportunity to purchase is significant. Once the dealer owns the property, he or she is no longer subject to the uncertainty of remit increases. Also, because the dealer owns the property, a notice of termination or nonrenewable is no long tantamount to all notice.

But the risks are real too. Not only must the dealer pay a substantial purchase price for the real estate, but he or she is also bound to a long term supply commitment.

What call purchasing dealer do if the distributor who steps into the refiner's shoes for purposes of supply does not price competitively? A recent federal court decision in Virginia suggests that the dealer may not be with-out remedy.

In *BP Products North America, Inc. V. Stanley*, the dealer purchased his property subject to a lengthy deed restriction, and a commitment to purchase products from a local BP distributor, Eastern Petroleum Corporation.

When Eastern's pricing proved excessive, the dealer unsuccessfully sought BP's intervention and warned that he would be compelled to sell non-BP fuel unless Eastern's price came into line with the marketplace. BP did nothing, so the dealer began selling unbranded fuel under the "Anlerigo" name.

When Eastern's pricing proved excessive, the

BP responded by filing a lawsuit in federal court, and seeking all to prohibit the dealer immediately from selling un-branded products.

At the hearing on BP's preliminary injunction motion oil 23, 2009, the dealer argued that the deed restriction was overly broad and unenforceable under Virginia law. He protested that BP had long been oil of his plight, and of his intent to go unbranded unless he could obtain branded fuel from Eastern at commercially reasonable prices.

Denying BP's request for relief, District Judge Leonie M. Brinkema found that BP had not met its burden of showing that it was entitled to a preliminary injunction. The court found that BP was not threatened with the sort of imminent harm that was required to justify the extraordinary remedy of a preliminary injunction. Significantly, the judge questioned whether BP's covenant was enforceable at all given it's apparently overbroad scope.

Some caveats need be expressed about the court's decision.

First, it dealt only with BP's request for immediate injunctive relief, and does not constitute a final decision as to the enforceability of BP's branding restriction. If BP ultimately

prevails at trial, the dealer could be liable for substantial liquidated damages or lost profit damages.

Second, Judge Brinkema's opinion was oral, and no formal opinion has been issued by the court. For that reason, the opinion has limited value as precedent in other dealer disputes.

Third, even if a dealer succeeds in defeating a long term branding commitment, he or she may face a trademark claim from the former supplier whose brand has been replaced. A dealer who goes unbranded must ensure that the station's trade dress - its overall look and feel - may not be confused with that of its former supplier. The dealer must also be careful to market unbranded fuel under a name that is not confusingly similar to that of its former supplier.

Even with these caveats, the Stanley decision is important. It highlights the fact that a dealer who owns a service station property has far more freedom of action than a les-see dealer, who can be threatened with eviction. It also demonstrates that, if the dealer's dispute goes to court, the judge may and should consider the commercial real-ities of the dealer's predicament, and not merely blindly apply an overly broad and one-sided long term branding commitment.

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