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NJGCA NEW JERSEY GASOLINE ▸ C-STORE ▸ AUTOMOTIVE ASSOCIATION

On The Road

The Official Communication of the New Jersey Gasoline C-Store Automotive Association
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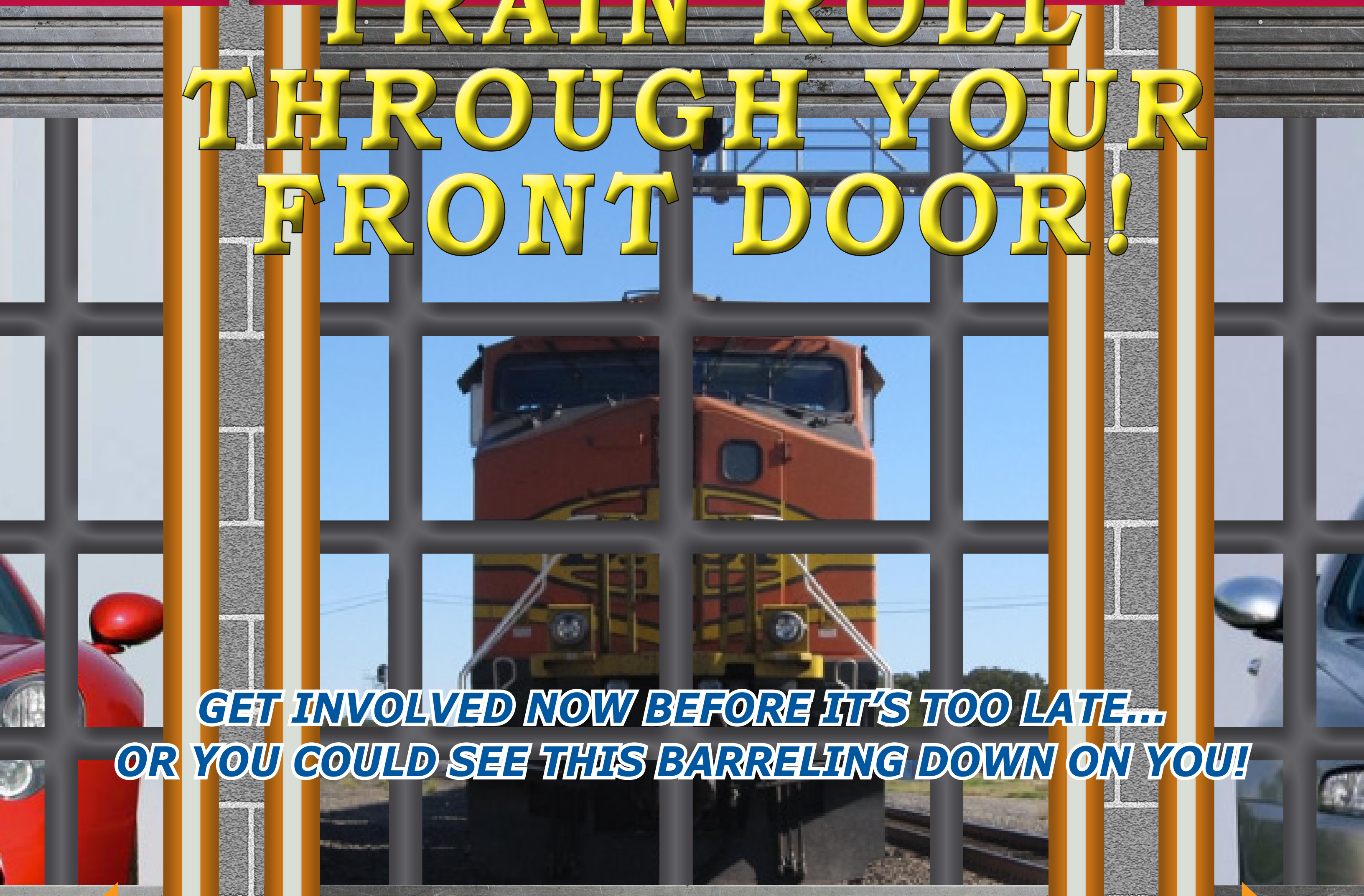

**GET INVOLVED NOW BEFORE IT'S TOO LATE...
OR YOU COULD SEE THIS BARRELING DOWN ON YOU!**

Plus Inside... **NJGCA: A TIMELINE OF TRIALS AND TRIUMPHS**

NJGCA On the Road
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Message From Executive Director Sal Risalvato

NJGCA Timeline of Achievement & Fairness

It is not usually difficult for me to write my section for this publication, however for some reason my brain locked up trying to write this piece. Of course I want to stick with the theme of this issue recounting all that has been accomplished here at **NJGCA** in the past 6 years.

The object of regular communications to our members should be evident – to provide you information that you would not otherwise receive if you were not a member of **NJGCA**. If you were not an **NJGCA** member, wouldn't you just be all alone on an island and unaware of your surroundings? How would you ever learn about issues that affect your business? Would anyone out there care enough to voice your concerns about these issues? Or will issues and problems even matter if you don't know that they exist in the first place?

For this issue I asked the staff here at **NJGCA** to create a timeline of all the important issues that have confronted our members since 2007. I wanted to view the issues myself and reflect upon what would have resulted had **NJGCA** not taken action on behalf of members to mitigate the issues that had developed.

Of course I know what we have done! Of course I am aware of the consequences had these issues been ignored, or worse - gone unnoticed! Frankly, once I viewed the issues timeline, I was a bit shocked myself wondering what the consequences might have been had we not been involved.

If you sell gasoline in NJ you know how razor thin profit margins are and how cruelly competitive our industry is.

But how much worse would it be if bigger competitors sold their gas 5 or 10 cents below the cost that they paid for it? Because as dumb as that sounds, there are marketers out there that want to do just that, so they can then eliminate you quickly. I'll bet you have never given that a thought. I'll also bet that you don't realize that the reason that they don't price below cost is because there are laws that won't let them.

In the last six years alone there have been multiple attempts to repeal the laws that prohibit *Below Cost Selling*. **NJGCA** continually fights proposals to end the ban on *Below Cost Selling* of gasoline. Can you recall how many times I have notified you that *Below Cost Selling* needed to be defended?

There have been numerous times when I have had to rush to Trenton in order to convince legislators that small independent retailers will be pushed out of business if big box retailers were allowed to sell gasoline below cost. And every time I went to Trenton screaming and yelling to defend you, the big box retailers were also there demanding that they be allowed to sell below cost whenever they needed to attract more customers. What would have happened if **NJGCA** wasn't there to stop these attempts? How much is that worth to your business? Is there any way to calculate that?

For the record, I have personally initiated investigations by authorities that are presently being prosecuted for offenders of the *Below Cost Selling* laws. As with any business that violates a law that will harm honest members – I will turn the offenders in to the authorities! I will even turn in an **NJGCA** member and have done so many times in the past 5 years. If you break a law that harms another member then I will take whatever action is necessary to protect my members who obey the law. It is a matter of fairness. Keep reading, there is more about fairness to come.

Do you offer cash/credit pricing? Do you know how many attempts there have been to abolish this practice? Do you know how many attempts there have been to require street sign alterations that could cost you thousands of dollars? Do you know how many times proposals have been made to increase the fines for cash/credit and other Weights and Measures infractions?

As with the defense of *Below Cost Selling*, **NJGCA** has had to make giant efforts to block or defeat an onslaught of insane proposals from legislators and regulators that would have made it impossible for you to offer cash/credit pricing to your customers. How would this be different today if **NJGCA** wasn't there to stop these proposals? Worse – would you even know the regulations had been changed unless an enforcement officer walked in your front door to deliver a summons? How much is it worth to your business to be able to offer cash/credit pricing? Please remember what I asked about being alone on an island.

If you own the real estate that your Shell or Exxon station occupies, then you have received the biggest windfall of all because of the efforts of **NJGCA**. Over 200 dealers have been able to purchase their real estate because in 2010 Governor Corzine signed the most historic legislation to be passed in decades that gave protections to franchise lessee dealers that did not previously exist. That law is called *Right of First Refusal*. Only California has a similar law.

Do a little math. A dealer that was paying $15,000 a month in rent now pays a mortgage with property taxes of $13,000 every month. Hmmmmm…that's a savings of $2000 every month fixed for the next 15 years. Chances are the rent at the location would have gone up thousands in the same period. So is it safe to assume that the dealer that purchased his property will save $500,000 over the next 15 years? Also, is it safe to assume that the same dealer will have an asset worth a million dollars or more when his mortgage is paid off? Would these dealers have had the same prosperous opportunity if **NJGCA** didn't initiate and lead the fight to pass *Right of First Refusal*?

I think you get my point. I haven't written all this to boast. I have written all of this because it is so easy to sit back and let others do all of the heavy lifting. **NJGCA** members already recognize the need to make our little trade association as strong and vibrant as possible. How? They maintain their membership! This allows us to have strength in numbers and keep our association funded.

Others out there that have not joined our organization – well I call them freeloaders. "Hey Sal that is a pretty strong accusation", you might say. I will reply; "think about this, how many non member Shell or Exxon dealers received the same benefit as Shell or Exxon dealers that are members"?

Worse, how many Sunoco dealers will someday benefit by an opportunity to purchase their property when Sunoco finally divests their real estate. I know Sunoco maintains that they don't have plans to sell their stations, but I continue to predict that they are not being completely truthful, and in the not too distant future, they will sell their stations. I have never hidden my displeasure that Sunoco dealers sat on the sidelines during the fight to pass *Right of First Refusal*. They allowed the Shell and Exxon dealers to do all of the lifting. Sunoco, Shell, and Exxon dealers that are *NOT* **NJGCA** members are good examplea of freeloaders. They benefit by YOUR membership and contribute nothing. They are freeloaders. This is what I call the *Freeloader Syndrome.*

I need you to help me strengthen our association. I need you to get your neighbor and maybe even your competitor to join **NJGCA**. Remember what I just said about strength in numbers.

I am making a few policy changes here at **NJGCA** Headquarters that I am calling the ***NJGCA Membership Fairness Doctrine***. Here's how it works:

Many non-members call our office regularly seeking our help or ask for information, and many times they seek our expertise in order to get them out of a jam that they have already gotten in to with MVC, or NJDEP, or maybe their supplier. Recently gasoline retailers and repair shop owners have been calling to seek our help because they have run afoul of the labor laws and USDOL has paid them a visit. Here's how we now respond: We are sorry but you will first have to join **NJGCA** before we can offer assistance. This is fair to **NJGCA** members who have paid their dues and supported the association. This is the ***NJGCA Membership Fairness Doctrine***!

There are some business owners that have been in business for years and just didn't want to pay the annual dues that you have paid. They chose to be freeloaders! They have waited until they were in a jam before joining **NJGCA**. So in order to stop the *Freeloader Syndrome*, we now require business owners to also pay a portion of the dues that were avoided in previous years, depending on how long they have been in business. This is fair to **NJGCA** members who have paid their dues and supported the association. This is the ***NJGCA Membership Fairness Doctrine***!

Wait…there's more! Many times we receive calls for help from previous members that chose to avoid paying dues a year or two earlier. This too is the *Freeloader Syndrome*. They figured that they weren't in need of any assistance so they would let others carry the ball and support **NJGCA** for them. Not anymore! Now when a past member calls for assistance we will require that all past dues be paid up in order to receive our assistance. This is fair to **NJGCA** members who have paid their dues and supported the association. This is the ***NJGCA Membership Fairness Doctrine***!

Some members own multiple locations but only join **NJGCA** in one. Should we provide assistance for a location that is not signed as a member just because the owner has joined in another? Not anymore. When a member requires assistance in a location that has not paid the proper annual dues and is not in good standing as an **NJGCA** member, then the same rules will apply when assistance is requested. Once again, this is fair to **NJGCA** members who have paid their dues and supported the association. This is the ***NJGCA Membership Fairness Doctrine***!

Not every issue that we have confronted has been a success, but we have confronted them and fought like junk yard dogs to defend our members. Sadly one of the issues that we lost and yet fought the hardest to stop was Governor Christie's proposal to eliminate safety inspections. That one issue has terribly hurt members who operate private repair shops. In the 30 plus years that I have been advocating on behalf of small businesses, I have never had so much compelling evidence to bolster my side of an issue, yet failed to prevail. However, at least **NJGCA** was in the trenches trying to stop it from happening, and we still continue to work to have all of the Parsons run Central Lanes closed and SOLD, and then have ALL emissions inspections performed in Private Shops. This is an issue I get up every day to fight for. We fight because this is what our members expect, and this is fair to **NJGCA** members who have paid their dues and supported the association. This too is the ***NJGCA Membership Fairness Doctrine***!

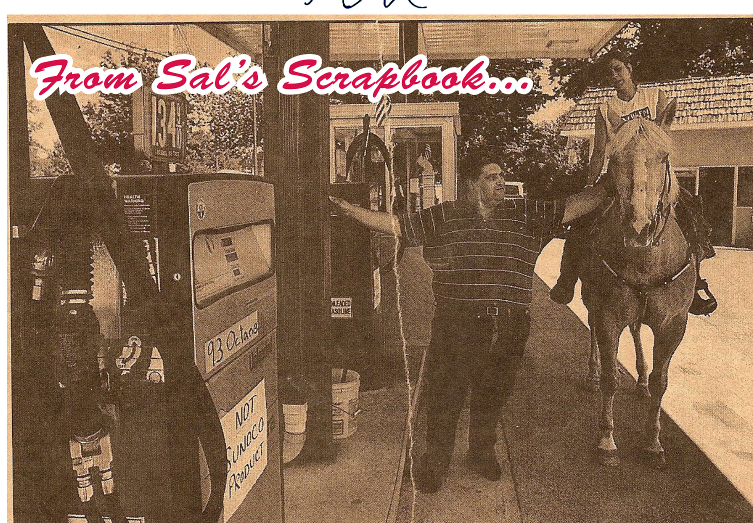
I keep thinking of all the calls I received during Hurricane Sandy begging for our help to receive a load of the emergency gasoline that was secured by Governor Christie. I keep thinking of all the dealers that called begging for help to get their electric turned on. It broke my heart that we were unable to help more of you, but if we weren't there then no help whatsoever would have been had by anyone.

Since Sandy has passed there has been an enormous amount of noise in Trenton demanding that gas stations be required to install emergency generators or else face fines up to $1000 a day during a state of emergency. The efforts that **NJGCA** has made to block these proposals have been miraculous. This is one instance that failure is not an option because if **NJGCA** fails to stop any of these ridiculous proposals, then each of you will be forced to spend as much as $30,000 in each of your locations. Unfortunately even non-members will benefit by our efforts. That is the *Freeloader Syndrome*. I need you to help me end the *Freeloader Syndrome* by recruiting other members and keeping **NJGCA** strong and influential. I need you to help me help you!

This is fair to **NJGCA** members who have paid their dues and supported the association. This is the ***NJGCA Membership Fairness Doctrine***!

Membership in a Strong Trade Association is One of the Best Investments That You Can Make! ■

Sal



KLAUS-PETER STEITZ/THE RECORD

Fill 'er up?

Lisa Brugaletta of Bloomingdale is riding a lot of horsepower these days, but it isn't fueled by gasoline. She and her horse, Sugar Daddy, were merely paying a visit to gas station co-owner Sal Risalvato.

U. S. Department of Labor Q&A

Your Questions, Their Answers!

Member questions are submitted to Debbie Hill who is the NJGCA Director of Member Services, and then forwarded to Joseph Petrecca of the USDOL. Joe's answers are published below.

Member Question: I think I am recording my employee's time correctly but I am concerned about any loop holes that I may be missing. I do not use a time clock. I use the shift sheet that records the sales activity for each shift to record who worked and the hours that they were on the shift. Each day the shift manager marks the shift sheet recording who worked and the time they begin their shift. My employees record the time their shift ended.

A usual late shift begins at 4PM and ends at 10PM. Most times workers begin and end on time. My manager will record a worker's 4PM start time, but occasionally a worker may record his ending time at 10:05PM. The same employee also on occasion arrives late and begins his shift at 4:05PM but my manager ignores the minor tardiness and simply records 4:00PM.

Will I be held responsible for the extra 5 minutes that my worker recorded on the shift sheet even though my manager ignores the fact that the same employee occasionally arrives for his shift 5 minutes late?

How does this work? Should I as an employer be held accountable for five minutes? Would I be subject to paying overtime? Would the USDOL issue a penalty?

Thanks for taking time to review this question. I look forward to reading your response in the next issue of ***On The Road***.

Petrecca: *There is no prescribed manner in which time records must be kept under the Fair Labor Standards Act (FLSA). The regulations promulgated pursuant to the law do require however that records be kept of the daily and weekly hours worked along with the start and ending times each day. The regulations also require that those records be accurate and that they be maintained for at least a period of two years.*

When determining whether an employer is complying with the recordkeeping requirements of the law the Wage and Hour Division will look at all the facts. Although a time clock is not required, whatever means used to record the time worked by individual employees must be accurate. Though it is possible to have a manager or other person accurately record the hours an employee works, hours recorded by anyone other than the employees themselves can be suspect. A better way to record hours might be to have each employee sign a sequential sign-in sheet where they record their starting and quitting times and sign their names after each entry.

When examining whether the documen[illegible] are accurate, we would look to see if those hours accurately reflect the times an employee starts and stops work each day. This might be verified by the times logged in at the gas pumps, timecards, observations and via interviews from the workers themselves. Thus, if an employee were to begin work at 4:05 PM and stop at 10:02 PM that would be 5 hours and 57 minutes of work. The employer could round off the hours of work and pay for 6 hours provided rounding off occurs equally both at the start of the day and at the end. An employee who is scheduled to start a 4:00 PM and is 10 minutes late can be docked for that time and rounded to 15 minutes. However he must not be permitted to work during any of the time he is docked. If he starts 10 minutes late and the employer permits him to work 10 minutes past the schedule end of the shift all the time in between must be paid for. Arriving late or leaving early is a discipline problem to be dealt with in whatever the employer deems appropriate, but remember that employees must be paid for all the time they are "suffered or permitted to work".

Finally, let me say that the law does not contain "loopholes" as you refers to in your question. The FLSA has been around since 1938 so every conceivable scheme to evade its requirements has been tried and exposed. Employers should understand that the records they maintain, be they time or pay records, are their side of the story. The better those records are - the better evidence of compliance they likely suggest.

*I hope this satisfactorily answers your question and I am glad that you read the USDOL questions and answers section of the NJGCA **On The Road.*** ■

Legislative Roundup

The important issues impacting your business!

By Eric Blomgren

Please see the updates below for the most recent activity in Trenton and around the state. These issues are important to all NJGCA members.

Generators

In the aftermath of Superstorm Sandy, there was a rush among legislators to attach their names to any piece of legislation that made it sound like they were a part of preventing another gas crisis like the one we saw after the storm. Eight different bills were introduced within a few weeks of each other, all dealing with generators for gas stations. Most of these bills mandate that all gas stations must install generators or be fined, with no provisions on how these small businesses would actually pay for it. All of the bills ignore the fact that the cause of the gas crisis was not electricity related, but was rather caused by supply interruptions related to storm damage at the refineries and distribution terminals in North Jersey. Tanker trucks were unable to be loaded and make gasoline to the retail market.

Assemblywoman Annette Quijano (D-Union), the Chair of the Assembly Homeland Security & State Preparedness Committee held a fact-finding hearing on the subject of generator requirements for gas stations as well as retirement homes, supermarkets, and other businesses. The positive, cooperative dialogue eventually led to A-3930. This bill would establish a pilot program in which gas stations located within a half mile of state evacuation routes would qualify to receive a zero interest loan to install the appropriate wiring to make the station 'generator ready'. The wiring typically costs around $7,000 and would allow the station to function if FEMA or someone else with a powerful enough generator were to drop one off during a prolonged power outage. What's most important about this program is that it is completely voluntary; no small business will be mandated to make the investment. NJGCA supported this measure and it passed the Assembly Homeland Security Committee 4-0. It now moves on to the Assembly Appropriations Committee. We will keep you informed as the bill progresses.

Credit Card Surcharges

Early this year there was a change to longstanding credit card policies as a result of a multibillion dollar lawsuit settlement. As a result of the settlement, Visa & MasterCard, which have never permitted merchants to add an additional surcharge to a customer's purchase in order to recoup the high cost of credit card fees, now give retailers the option of adding these fees when customers use their credit cards. There are several rules a retailer would have to follow if they wanted to institute this surcharge. Retailers are required to have a sign on their door saying they charge extra for credit purchases, they must tell the customer at the register that they will be charged extra for a credit purchase, and the receipt must include the cost of the surcharge. Debit and prepaid cards are exempt from the surcharge. Stores also must give Visa and MasterCard 30 days notice before they implement these regulations.

NJGCA advises you NOT to implement these surcharges. There are a variety of reasons to skip out on the surcharges. The main one is that the option might not be around for long. This settlement itself may not last long. Most retail groups, including NJGCA, oppose this settlement because it does nothing to fix the problem of high credit card processing fees. This settlement is only preliminary and the court has yet to issue its final ruling in the case, so there may be significant modifications to these rules.

The rule change allowing surcharges only applies to Visa and MasterCard, not to American Express. And since the agreements you have with Visa and MasterCard say that you can't discriminate and put the surcharge on one brand of credit card and not others, and since the agreement with American Express says you are still not allowed to institute surcharges; this means that if you accept AmEx, you essentially don't even have the option to add the surcharge.

The main reason these surcharges might go away is action in the Legislature. Almost immediately after news broke that these surcharges were now an option, there was a rush of legislators to get their name attached to a bill that would outlaw them. Surcharges are already against the law in 10 states including New York and Connecticut. S-2533/A-3758 were pushed through the Legislature with record speed. It would have been literally impossible to move these bills any faster than they were. NJGCA and our allies from other small business groups were afraid that the language of these bills would unintentionally result in a ban on the practice of providing discounts for customers who pay with cash. This practice is almost exclusively used by gas stations (although many furniture stores offer it as well). Thankfully, we were able to convince the sponsors to agree to amend the bill to specifically protect the right of motor fuel retailers to offer discounts for cash. The bill has passed the Senate and now waits to be voted on in the Assembly, where they are working to determine whether to expand the protection and allow all retailers to offer cash discounts.

Continue on next page...

Credit Card Interchange Fees

Everyone in the retail business knows how expensive credit card interchange fees have become over the past ten years. Visa and MasterCard have created a virtual monopoly and are able to do business by charging whatever rate they want without negotiating with the businesses who accept their cards. They adopt this 'take it or leave it' approach because they control approximately 80% of the credit card market in the United States. They also know that no business in their right mind would choose not to accept credit cards. The service these companies provide has become so fundamentally ingrained in the nature of our 21st century economy that they are essentially a new form of currency. To turn down Visa or MasterCard as a form of payment is almost as unacceptable as a gas station turning down cash and only accepting payment in gold coins. Credit card fees are now the largest expense for retailers after the cost of product and the cost of labor.

On March 7th the Assembly Consumer Affairs Committee held a historic hearing on these fees. NJGCA testified, as did our allies from the Fuel Merchants Association, Food Council, and Retail Merchants Association. We also jointly brought in Doug Kantor, an expert on the issue from Washington DC, to testify. His testimony was very convincing and enlightening, you can read the full testimony at http://goo.gl/XIzUw. We thank Chairman Moriarty (D-Gloucester) for agreeing to hold this meeting, and we hope to work with him to soon introduce legislation that would allow for more competition in the credit card world to bring down interchange fees for businesses.

Tobacco Update

In February NJGCA testified in support of A-3278/S-2516 sponsored by Assemblymembers Handlin (R-Monmouth), Barnes (D-Middlesex), Bucco (R-Morris) and Senators Norcross (D-Camden) and Oroho (R-Sussex). The bill would increase fines and penalties for cigarette smuggling in the state. The state's high cigarette taxes create a juicy incentive for less reputable merchants to bring in cigarettes from nearby states, mainly Virginia, which have significantly lower taxes. Even accounting for the cost of transport, these smuggled cigarettes can be sold at prices much cheaper than any retailer could sell them by following the law. Some studies have even said that the profit margins for organized crime on smuggled cigarettes are about the same as they are cocaine and other hard drugs, but the potential penalties if they're arrested for trafficking cigarettes are a fraction of what they would be for trafficking narcotics. A report completed by the NJ Treasury Department in 2008 found that as a result of the state's incredibly high cigarette tax, the demand for smuggled cigarettes has become so huge that approximately 40 percent of all cigarettes smoked in New Jersey were smuggled here illegally. Your ability to do business is undercut by individuals with no compunction against circumventing the law to gain an unfair advantage; at the expense of the state and at the expense of honest business owners. The bill has bipartisan support and has already passed two Committees; it must pass two more before it can be voted on.

NJGCA has updated you in the past about the ongoing court battle over graphic cigarette warning labels. The FDA tried to mandate that every pack of cigarettes have the top half of the box covered by a very graphic picture of the side effects of smoking and also display a quit smoking help line phone number. Tobacco companies sued and said the packaging requirements were violations of their 1st Amendment freedom of speech because they went beyond mere factual warnings and into the realm of advocacy. The courts agreed with the manufacturers, and recently the government officially decided to accept the ruling and not take the matter to the Supreme Court, where they likely would have lost. This means that these unfair packaging requirements will not become law.

Following the failure of his attempt to ban the sale of large sugary drinks (a judge overturned it just before it was scheduled to go into effect) New York City Mayor Michael Bloomberg is again trying his hand at social engineering. He wants to ban all retailers from publically displaying any tobacco products. We've reported previously about a small town in upstate New York named Haverstraw that recently attempted to do this but backed down under the threat of a lawsuit. NJGCA remains opposed to any attempts to keep retailers from marketing legally permitted products of any kind including cigarettes. Bloomberg also intends to ban any kind of discounts on cigarettes and to set a minimum price for all packs of cigarettes sold in city limits that will be both prohibitive and obscenely high. That is, if people even know that a business sells cigarettes since they won't be able to display them. The main threat of this legislation is that if it goes into effect in NYC, some likeminded crusading legislator in Trenton may think to introduce similar legislation.

Minimum Wage

In late January Governor Christie attempted to reach a compromise with the supporters of the plan to raise the minimum wage. The Governor's compromise plan would raise the minimum wage gradually, over three years. Most importantly, it would not include the provision calling for automatic increases. While this plan isn't ideal (ideally the minimum wage wouldn't rise at all) it is a reasonable compromise between businesses and low income workers. Unfortunately the Leadership in the Legislature has rejected his plan. They formally passed a provision that will send the question to the voters this November. If voters approve the ballot question, the state constitution will be amended to set the minimum wage at $8.50 an hour with automatic yearly increases. While the public at large appears to be supportive, businesses are not. A recent poll by the NJ chapter of the National Federation of Independent Business showed that 93% of its members oppose the increase.

Earlier this year, President Obama called on Congress to have the federal minimum wage increased from $7.25 an

Continue on next page...

hour to $9.00 an hour. The chances that it will actually pass Congress, particularly such a significant increase, seem slim however.

Sandy Response Bills

There have been several proposals introduced as a reaction to Sandy other than generator bills; some positive, some negative. A-3549 from Assemblyman Greenwald (D-Camden) would create a government database, updated monthly, listing every motor fuel retailer in the state and whether they are equipped with backup generation equipment. Had this sort of database been available in the midst of the Sandy gas crisis, it would have been a great help in getting more stations efficiently resupplied with the emergency gasoline that Governor Christie secured from the Department of Defense. Originally the bill was introduced with provisions that may be considered burdensome for gasoline retailers, however NJGCA successfully lobbied to have these provisions removed from the bill prior to a committee vote. NJGCA supported this measure as amended when it passed Committee.

S-2581 from Senators Gordon (D-Bergen), Beck (R-Monmouth), and Bateman (R-Somerset) simplifies the process for bringing in more fuel during a state of emergency. In the aftermath of the storm, when it became apparent that gas was not getting to retailers, Governor Christie issued an executive order waving a provision of the law that prevented fuel merchants from importing fuel from other states unless they had a license to do so. This bill would eliminate the need for a separate executive order and remove that restriction automatically during a state of energy emergency. It was passed 40-0 in the Senate and now awaits action in the Assembly.

S-2582, also from Senators Gordon and Beck, falls in the category of the completely unnecessary. In the event that a station sells out completely of regular gas, but still has premium grades remaining in the tanks, you would be permitted to sell the premium grade gas at the cost of regular gas without violating the state's "Below Cost Selling" laws. This would apply only during a State of Energy Emergency. NJGCA doesn't believe that retailers will take advantage of S-2582 should it be passed in to law. In the event of a fuel emergency motorists are happy to pay the extra cost to fill up with premium if the alternative is not being able to fill up at all. Nevertheless some legislators thought this was a good idea, and it passed the Senate 40-0.

S-2391 from Senators Weinberg (D-Bergen) and Holzapfel (R-Ocean) would prohibit gas retailers from refusing to sell gas to motorists based on where they live. This bill was in response to a station owner in Bergen County who in the midst of the post-Sandy chaos required customers to show ID that proved they live in the same town the gas station was located in. Because of that rather pointless and foolish action, another regulation restricting your freedom to do business as you please (for better or worse) has passed the Senate. It still needs to be passed in the Assembly and signed by the Governor before it becomes law.

Plastic Bag Tax

In January we told you about a plan, S-812, being moved that would require you to charge 5 cents for every single plastic and paper bag that your store gives to customers. The bill would require that at the end of every quarter, businesses will have to submit a report that details every single disposable bag a store gave out to customers. Also, beginning in 2 years stores will only be able to give out special recyclable bags that are made from at least 40% recycled material and have "please recycle this bag" printed on them. The bill passed the Senate Environment Committee back in December, but because of fierce opposition and tireless efforts by NJGCA and a coalition of other business organizations, the bill has not seen any action since. NJGCA, representing New Jersey's convenience stores, has joined forces with various business groups, including the NJ Food Council which represents supermarkets, and the NJ Retail Merchants Association which represents department stores, to form a coalition to oppose this onerous requirement and will continue to monitor it closely. ■

AGGRESSIVE ADVOCACY
A TIMELINE OF TRIALS AND TRIUMPHS

2007 · 2008

MAY 5, 2007
NJGCA negotiates with the Department of Weights & Measures to formulate the regulations governing proper display of street signs for cash/credit pricing of gas. The regulations that are agreed on protect retailers from having to spend thousands of dollars to install new signs and are fair for both gasoline retailers and motorists. The agreement that was reached says that retailers **must display BOTH the cash AND credit price of regular grade only, and DO NOT have to display prices for other grades.**
SUCCESS

JANUARY 29, 2008 & JANUARY 30, 2008
NJGCA holds all-day seminars conducted by NJDEP to educate members about how to comply with newly and strictly enforced regulations that are resulting in fines being levied as high as $100,000. Members learn how to avoid penalties and begin the process of bringing their locations in to compliance resulting 3 years later in NJ being recognized as one of the best states for gas station compliance with the number of locations being penalized greatly reduced.
SUCCESS

FEBRUARY 25, 2008
Assemblywoman Bonnie Watson Coleman (D-Mercer) introduces a bill requiring every gasoline dispenser used by a retailer must pump in 'Temperature Adjusted Gallons'. Assemblywoman Watson-Coleman says that gasoline expands under hot temperatures resulting in retailers getting rich off the backs of motorists by pumping less gas into vehicles during the summer months. Pumps that measure temperature adjusted gallons would always dispense gasoline at 60F. NJGCA argued that 60F is the average temperature for the whole year in the state of New Jersey anyway, so while customers may get less gas in the summer, they get much more during winter months. The cost of installing these pumps would be tens of thousands of dollars per location and be unaffordable for small business owners, and would certainly be passed on to consumers leading to higher prices.
BLOCKED

MAY 12, 2008
The *Smart Container Act* was heard in Assembly Environment Committee. This proposal would have **required convenience stores throughout the state to become mini recycling centers** for plastic bottles and also would have forced them to charge a deposit fee to every drink purchase which would then be refunded to customers when the empty bottles are returned for recycling. Some legislators thought this would be a painless way of increasing the amount of bottles that are recycled. NJGCA made it clear that this would be nothing more than a huge, unnecessary, and costly burden on thousands of convenience stores and create unsanitary conditions at checkout counters.
BLOCKED

AGGRESSIVE ADVOCACY
A TIMELINE OF TRIALS AND TRIUMPHS

JUNE 5, 2008
Assemblyman John Burzichelli (D-Gloucester) introduces and pushes through Committee a bill that would repeal the state's *Below Cost Selling Law*. Defending this law has been one of NJGCA's top priorities. By preventing the sale of gasoline below cost, big box retailers are less able to force a small retailer out of business. Assemblyman Burzichelli believed that by eliminating the law, it would allow motorists to pay less for gas. NJGCA argued that once the big chains have driven independent retailers out of business, they'll be free to raise their prices as high as they want once smaller competitors have been eliminated.

(see 12/15/08 for conclusion)

JUNE 16, 2008
Senator Jeff Van Drew (D-Cape May) introduces a bill that would prevent gas retailers from changing the price of gas even after the 24 hour period has expired. Retailers would be forced to wait until the next delivery arrived in order to raise the price regardless of what the market price may have risen to on the street. NJGCA argues that retailers must have the freedom to make profits **where they can** and **when they can** to make up for losses when the market is on a downswing. This bill would have prevented stations from responding to the competitive forces around their business.
BLOCKED

JUNE 12, 2008
ExxonMobil announces they will divest all of their retail properties and sell hundreds of gas stations in large bundles to mega distributors. This would have denied the dealers who operate the stations, many for years or even decades, the opportunity to own the property for themselves. NJGCA calls a meeting of Exxon dealers on 9/18/08 to plan what to do to protect their business. **This meeting leads to the eventual passing of historic legislation called *Right of First Refusal* 6 months later.**

(see 06/10/09 for conclusion)

JUNE 19, 2008
Gas prices are skyrocketing to all time highs and consumers are outraged. NJ Attorney General Anne Milgram orders all Weights & Measure officers to engage in a three day investigation of over 1,000 gas stations. At a press conference Millgram States "***over 350 retailers were caught scamming motorists***". After publishing the names of the accused stations, NJGCA struck back on behalf of retailers, charging the Attorney General with grandstanding. NJGCA denies that retailers engaged in these practices and sues Millgram in order to obtain the Weights and Measures field reports that ultimately would vindicate retailers. This lead to an NJGCA press conference 6 months later calling on Milgram to resign.

(continue to 12/4/08 for conclusion)

AGGRESSIVE ADVOCACY
A TIMELINE OF TRIALS AND TRIUMPHS

NOVEMBER 2008
After several months attempting to acquire documents from Attorney General Anne Milgram relating to her statements slandering gasoline retailers, NJGCA files suit under the Open Public Records Act. **NJGCA demanded that all information regarding these investigations be turned over immediately**, thereby forcing her to hand over the documents.

DECEMBER 4, 2008
After examining the documents that were successfully gained from the lawsuit against Attorney General Anne Milgram, it becomes clear that the statements she made 6 months earlier were false. An audit of the documents shows only one retailer was found to have (unknowingly) shorted the amount of gasoline being dispensed at his pumps - and by only a minimal amount. **NJGCA holds a press conference and calls on Milgram to resign over her false and misleading statements.**

2008

OCTOBER 27, 2008
Reacting to years of car manufacturers' refusal to share the technical information necessary for repair shops to fix their customer's cars, NJGCA orchestrates a victory in the NJ General Assembly on legislation that was introduced called ***Right to Repair.*** After efforts in other states failed miserably, NJ became the first state to finally take action. ***Right to Repair*** was developed as a national movement to force manufacturers to sell codes and technical information to independent repair shops so that they would no longer have to send their customers back to car dealers for service. On this date, after months of effort, **NJGCA succeed in convincing the NJ General Assembly to pass Right to Repair by a wide margin 49-22-8.** This marks the first time that Right to Repair passes a legislative body anywhere in the country. **Efforts stalled in the NJ Senate and continue today.**

DECEMBER 15, 2008
With the clock running out and the Legislative session set to expire in less than a month (and all unpassed bills with it) NJGCA stages a rally that includes over 100 members in uniform inside the Statehouse. The overwhelming show of force convinces Assembly Speaker Joe Roberts to **pull harmful legislation that would repeal NJ's *Below Cost Selling Law* off of the Assembly Board List** where it was scheduled for a vote that day. The bill dies.
BLOCKED

AGGRESSIVE ADVOCACY
A TIMELINE OF TRIALS AND TRIUMPHS

2009

FEBRUARY 9, 2009
Senator Bob Gordon (D-Bergen) introduces legislation to modify the *Predatory Towing Act* to remove the most egregious requirements from the original law. Originally passed in 2007 in response to a handful of unscrupulous towers, this legislation targeted every tow truck operator in the state and created a huge series of unfair burdens, including costly fees to be paid to the NJ Department of Consumer Affairs, a requirement that they report to the government their entire fee schedule so that it can be published online, and a cap on the fees they charge for towing. NJGCA lobbied for changes to the previous law that would ensure that the law would only affect unethical towers that created the problem, and not affect the hundreds of other honest small businessmen. The modifications were passed by the Assembly 78-0, and in the Senate 38-0, and signed into law by Governor Corzine 2 months later.
SUCCESS

FEBRUARY 10, 2009
NJGCA calls a meeting of all Shell dealers to discuss imminent plans by Shell to divest their retail property in NJ and sell them in bundles to mega distributors. Shell dealers agree to join the effort of Exxon dealers to help pass *Right of First Refusal*

FEBRUARY 26, 2009
The journey through the legislature begins for ***Right of First Refusal.*** On this day it passed in the Senate Commerce Committee where it was sent on to be voted by the full Senate on 03/16/09, passing 30-3. Right of First Refusal passed the Assembly Transportation Committee on 03/12/09 and then amended in the Assembly Appropriations Committee on 05/18/09. A dramatic vote was taken in both houses on 05/21/09 when it was passed in the Assembly **71-3**, and then passed a few hours later as amended in the Senate **37-0.**

JUNE 10, 2009
Governor Corzine signs *Right of First Refusal* into law. The journey comes to a historic conclusion after moving through the Legislature in a near record amount of time, making New Jersey the nation's leader in protections given to motor fuel retailers, and one of only two states with a similar protection. California is the only other state that has Right of First Refusal. NJGCA especially thanks the strongest supporters of the legislation, Assemblymen Pat Diegnan (D-Middlesex) and Jon Bramnick (R-Union), and Senators Gerald Cardinale (R-Bergen) and Paul Sarlo (D-Bergen).
SUCCESS

AGGRESSIVE ADVOCACY
A TIMELINE OF TRIALS AND TRIUMPHS

JUNE 28, 2010
Elimination of safety inspections narrowly passes the Senate 21-17 and the Assembly 41-37. NJGCA fought hard against this measure. NJGCA proposed an alternative plan that would require all re-inspections be performed at private shops, but this plan was rejected by Governor Christie despite the fact it would save the same amount of money as eliminating safety. The sheer political force of the newly elected Governor was so great that even legislators who privately agreed with us were not willing to stand against his Office. NJGCA remains optimistic that this was the first step in a longer plan to make the complete privatization of inspections more palatable to the public. **NJGCA continues to lay the groundwork to close the Central Inspection Facilities and have all motor vehicle emissions inspections performed in private repair shops.**

SEPTEMBER 16, 2010
Assemblyman Charles Mainor (D-Hudson) introduces a bill to prevent retailers from having more than 5 cents per gallon difference between cash and credit prices for gasoline purchases. NJGCA effectively convinced Mainor that retailers do not make extra profit by offering cash discounts, but in fact save motorists money. After several months of negotiations with Assemblyman Mainor, and also gathering support from other legislators to oppose his plan, the legislation was halted. The legislation is not dead or buried as similar proposals continue to surface regularly. NJGCA continues efforts to stop them.
BLOCKED

2010

JULY 1, 2010
Another attempt to eliminate the *Below Cost Selling Law* is introduced by Assemblywoman Celeste Riley (D-Cumberland) and Assemblyman Burzichelli. The bill would force branded stations into accepting rewards and loyalty programs, and effectively be a back door way to allow Below Cost Selling, costing retailers a lot of money and forcing them to sell at a loss. NJGCA immediately and strenuously voices an objection and begins negotiations with the sponsors, supermarkets and suppliers that support this legislation.

(see 5/19/11 for conclusion)

DECEMBER 9, 2010
The Assembly Regulatory Oversight & Gaming Committee narrowly passes a bill that would result in lottery tickets being sold over the internet and cell phones. NJGCA meets with the sponsor of the bill, Assemblywoman Annette Quijano (D-Union) and provides her with evidence gathered from members who own convenience stores showing that this proposal would hurt the state's small businesses. To prove our argument that lottery ticket sales are directly associated with the sale of other, higher profit margin items, NJGCA organizes several members to keep logs of lottery ticket purchases. The logs have also been used to provide other legislators with compelling evidence that lottery ticket purchases are indeed often accompanied by other purchases. Although Assemblywoman Quijano is receptive of our concerns and is adamant about not wishing to harm small businesses, she continues to work on the bill but will not push for it to advance until an agreement can be reached to protect retailers.
BLOCKED

AGGRESSIVE ADVOCACY
A TIMELINE OF TRIALS AND TRIUMPHS

MARCH 7, 2011
Assemblyman Vincent Prieto (D-Hudson) amends the sign bill proposed by Senator Turner to require the posting of BOTH cash and credit prices for ALL grades of motor fuel, which would have destroyed the negotiation worked out with Weights and Measures in May 2007 for the proper display of cash/credit prices on street signs. Since no one has a sign capable of displaying up to 8 different prices that would be legible from the street, Prieto's amendment would cause retailers implementing cash/credit pricing to spend thousands of dollars on new signs. NJGCA was successful having the bill held. Finally on 12/15/11 after months of pressure, Prieto agrees to remove his amendment and allow the original bill as proposed by Senator Turner to be voted by the full Assembly. The final bill, identical to the NJGCA backed Turner bill, passes the Assembly 72-0. It was then signed in to law by Governor Christie on 1/5/12.
SUCCESS

MAY 19, 2011
A compromise bill passes the Assembly Regulatory Oversight & Gaming Committee that would allow rebates and rewards to be redeemed for the purchase of gasoline. The amended bill allows rewards card programs but forces the big company offering the promotion, be it a supermarket or oil company, to pay the cost of the reward and not retailers. It expressly forbids rewards for the purchase of gasoline and continues to forbid any reward that would result in ***Below Cost Selling***. The compromise bill passed the Assembly 77-0 a month later on 6/23/11 and then on 12/15/11 it passed the Senate 38-0. It was signed in to law by Governor Christie 6 months later on 1/5/12.
SUCCESS

2011

JANUARY 20, 2011
Senator Shirley Turner (D-Mercer) Proposes legislation to impose additional fines for sign violations related to improper or deceptive cash/credit postings on street signs. In testimony given to the Senate Transportation Committee, NJGCA points out that existing regulation already carry increased fines that are higher than the current law on the books. NJGCA proposes to simply convert the existing regulation into official statute thereby avoiding a double increase in penalties. Senator Turner's bill was amended as suggested by NJGCA and passed out of committee and then passed by the full Senate 34-1. Attempts were made in the Assembly to amend the Turner bill that would require **ALL** products be displayed on street signs with **BOTH cash and Credit prices**. The attempts in the Assembly were blocked by NJGCA.

(see 3/7/11 for conclusion)

JUNE 10, 2011
The Assembly Transportation Committee held a hearing on a bill introduced and sponsored by its chairman Assemblyman John Wisniewski (D-Middlesex) to once again try to repeal the NJ law that bans selling gasoline below cost. NJGCA brings out the troops and fills the committee room with members to testify against it. Big Box retailers like Costco show up and testify in favor of Wisniewski's bill but committee members from both parties express strong support for NJGCA. Committee members express strong opposition to allowing big box retailers to push smaller retailers out of business and also express their desire to keep the current ***Below Cost Selling*** law intact. The bill was held without a vote.
BLOCKED

AGGRESSIVE ADVOCACY
A TIMELINE OF TRIALS AND TRIUMPHS

DECEMBER 7, 2011
NJGCA holds a meeting for all the Exxon dealers who have been formally offered the opportunity to buy their station as a result of Right of First Refusal. Because of the historic law that was passed in 2009, Exxon was compelled to offer a total of 236 stations to the dealers who operated them. Over 180 Exxon dealers were able to capitalize on this opportunity.
SUCCESS

SEPTEMBER 12, 2012
Over 50 LUKOIL dealers protest LUKOIL North America's uncompetitive pricing policies, particularly their use of zone pricing. NJGCA orchestrated a protest, that had many Lukoil dealers change their street price to an 'unconscionable level', some as high as $9.99 a gallon. News organizations from the entire country and even as far away as Moscow (where Lukoil is headquartered) cover the story. Assemblyman Diegnan also issues a press release standing with the dealers against zone pricing. The protest results in Lukoil CEO and top officials opening a dialogue with NJGCA and Lukoil dealers to improve Lukoil competitive strategies. **Talks continue today.**

2012

MARCH 12, 2012
Assemblyman Pat Diegnan (D-Middlesex) introduces A-2729, to ban the practice of zone pricing by oil companies and distributors. Zone pricing has been used for years to unfairly discriminate in the DTW prices paid by gasoline retailers. Companies have been known to charge as much as thirty cents per gallon difference for the exact same product to their dealers only a few miles away from each other. Many retailers are forced to pay wholesale prices that are higher than their competition across the street may be selling at retail. Because of contractual obligations they have no choice but to buy at a huge competitive disadvantage forcing many dealers to hand in their keys and forfeit their franchises. This legislation is expected to move and be passed before the end of 2013.
PENDING

SEPTEMBER 20, 2012
Senate Health, Human Services and Senior Citizens Committee hears testimony introduced by Senator Vitale (D-Middlesex) **that would eliminate tax loopholes permitting tobacco shops to dramatically undercut other gas stations and convenience stores that sell cigarettes.** Tobacco shops can install self serve machines which allow smokers to input pipe tobacco (which has a much smaller excise tax placed on it than cigarettes) and then manufacture their own cigarettes, undercutting other businesses that sell cigarettes and pay higher taxes. NJGCA testifies in support of the bill and it was passed by the committee unanimously.
SUCCESS PENDING

AGGRESSIVE ADVOCACY
A TIMELINE OF TRIALS AND TRIUMPHS

NOVEMBER 12, 2012
NJGCA begins the process to oppose legislation requiring that all gas stations install emergency generators and writes letter to the entire Legislature clarifying that the gas crisis after Sandy was related to the inability of gas stations to receive gasoline deliveries because of storm damage, and not because of a lack of power.

DECEMBER 5, 2012
NJGCA testifies before the Assembly Budget Committee with reservations that the privatization of the NJ Lottery may lead to internet lottery sales. NJGCA will oppose any effort by any administration or a contractor to permit lottery sales on the internet.
PENDING

OCTOBER 29, 2012
Superstorm Sandy hits New Jersey, interrupting power for millions of residences and businesses. The storm surge also damaged refineries and terminals throughout North Jersey, preventing them from supplying gasoline to retailers. **This causes a gas crisis in which many stations are unable to be resupplied with gas for days.** NJGCA works around the clock for 2 weeks with officials from the Governor's Office, State Police, FEMA, National Guard, Office of Homeland Security, U.S. Department of Defense, and PSE&G throughout the crisis, in order to have power restored quickly to gas stations, and direct emergency supplies of gasoline to many locations. On 11/2/12 Governor Christie institutes even-odd gas rationing for North Jersey for the first time in decades and it proves to be successful to end gas lines and stop the panic buying experienced at gas stations. Outcry from motorists prompts eight different bills to be introduced in the Legislature that would require all gas stations to spend as much as $30,000 to install emergency generators.

DECEMBER 17, 2012
Senator Bob Smith (D-Middlesex) pushes through the Senate Environment & Energy Committee a bill that would force retailers to collect a 5 cent tax on every single plastic and paper bag given to a customer, and also phase out the use of all plastic bags and require the use of reusable and biodegradable bags only. NJGCA has joined a coalition of business groups opposed to this proposal which would also implement a costly record keeping burden as well as drive up costs for consumers.
PENDING

AGGRESSIVE ADVOCACY
A TIMELINE OF TRIALS AND TRIUMPHS

2013

FEBRUARY 4, 2013
NJGCA testifies to the Senate Commerce Committee opposing S-2533, a bill introduced by Senators Jim Whelan (D-Atlantic) and Bob Gordon (D-Bergen) to ban surcharges on credit card purchases. There are concerns that the vague wording of the legislation could lead to a ban on cash/credit pricing at gas pumps. The bill was successfully amended to specifically exempt motor fuels and protect the ability of gas retailers to provide cash discounts. The bill passed the committee and was passed by the full Senate only 3 days later on 2/7/13 by a margin 31-4.
SUCCESS PENDING

FEBRUARY 7, 2013
NJGCA testifies to the Assembly Financial Services Committee opposing A-3758, introduced by Assemblyman Gary Schaer (D-Bergen) which is the Assembly version of S-2533 to ban surcharges on credit card purchases. NJGCA is successful having the same amendment passed in the Senate that exempts motor fuel sales and protects cash/credit pricing passed in the Assembly committee too. The bill was scheduled for a vote in the full Assembly but has been stalled there.
SUCCESS PENDING

FEBRUARY 11, 2013
Assemblywoman Annette Quijano (D-Union) who chairs the Assembly Homeland Security & State Preparedness Committee called a special hearing on what actions the government should take in preparation for a future major storm similar to Sandy. The committee needs to determine which of the 8 legislative proposals that require gas stations to install emergency generators make the most sense. NJGCA opposes mandatory requirements for gas stations to install emergency generators and provides in depth testimony specifically referencing evidence obtained during Hurricane Sandy demonstrating that generators would not have alleviated the long gas lines that were experienced in New Jersey and New York. The committee indicates agreement and takes no action.
SUCCESS PENDING

FEBRUARY 21, 2013
NJGCA testifies to the Senate Law & Public Safety Committee in support of a bill that would increase the fines for cigarette smuggling. Cigarette smugglers sell cigarettes cheaper by avoiding the higher taxes charged in New Jersey. Cigarette trafficking hurts thousands of responsible, law abiding gas stations and convenience stores who sell cigarettes by undercutting their ability to compete. The bill passed the committee and now needs to be heard in several other committees and voted on in both houses before moving to Governor Christie for his signature.
SUCCESS PENDING

MARCH 7, 2013
Assemblyman Paul Moriarty (D-Gloucester), chairman of the Assembly Consumer Affairs Committee, called a historic hearing investigating the incredibly high fees charged by Visa and Mastercard. At the urging of NJGCA, FMANJ, Food Council, and the NJ Retail Merchants Association, and as a result of the fallout from legislation recently introduced to ban surcharges for credit cards, the committee is considering legislation that will lower the fees paid by merchants to Visa and MasterCard. Such legislation would be the first of its kind if successfully passed.
PENDING

MARCH 14, 2013
Assembly Homeland Security Committee holds a hearing on legislation introduced by Assemblywoman Annette Quijano (D-Union). **A-3930 would establish a voluntary pilot program providing zero interest loans up to $10,000 to gas stations** located within a mile of the Garden State Parkway, NJ Turnpike, AC Expressway, or along evacuation routes, that wish to install "generator ready" hookups. This bill was introduced in recognition that all other proposals requiring mandatory generators would not be feasible. NJGCA testified in support of this bill and it passed out of committee unanimously. This bill must now move on to several other committees before being voted on in both houses and signed by Governor Christie.
SUCCESS PENDING

FINANCIAL FOLLIES & THE FISCAL CLIFF

Congress has passed legislation to turn the nation away from the tax cliff. From a pure tax perspective, small business obtains the certainty it wanted and in some cases, we have improved our status. We can embrace the positives and small business can turn its attention to creating economic growth and jobs.

INCOME TAX RATES

Prior to the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the rate brackets were 15, 28, 31, 36, and 39.6 percent. The 2001 Act created a new 10-percent regular income tax bracket for a portion of taxable income that was previously taxed at 15 percent. The EGTRRA also reduced the tax rates in excess of 15 percent to 25, 28, 33, and 35 percent, respectively.

Effective January 1, 2013, the rates and brackets will be configured something like the following with a new 39.6 bracket for incomes over $400,000 for individuals. The lower brackets are adjusted for inflation and the top bracket fixed by the new law (in later years it is indexed as well). Since the income levels are adjusted for inflation, the exact numbers are not yet available so consider these estimates only. The IRS will be releasing official brackets soon.

For an individual, if taxable income is: Then income tax equals:

- Not over $8,900: 10% of the taxable income
- Over $8,900 but not over $36,150: $890 plus 15% of the excess over $8,900
- Over $36,150 but not over $87,550: $4,978 plus 25% of the excess over $36,150
- Over $87,550 but not over $182,600: $17,828 plus 28% of the excess over $87,550
- Over $182,600 but not over $397,000: $44,442 plus 33% of the excess over $182,600
- Over $397,000 but not over $400,000: $115,194 plus 35% of the excess over $397,000
- Over $400,000: $116,244 plus 39.6 of the excess over $400,000
- There is a phase out of itemized deductions based on hitting a certain income threshold.

CAPITAL GAINS RATES

Under long time "temporary" law, the maximum rate of taxation on the adjusted net capital gains of an individual was 15 percent. Any adjusted net capital gains which otherwise would be taxed at a 10- or 15-percent rate was taxed at a zero rate. For taxable years beginning January 1, 2013, the maximum rate of taxation on the adjusted net capital gains of an individual is 20 percent for individual taxpayers with taxable income over $400,000 ($450,000 for married couples). It remains at 15 percent for incomes below that level except any adjusted net capital gains which otherwise would be taxed at a 10- or 15-percent rate are taxed at a zero rate.

DIVIDENDS RATES

Under long time "temporary" law, an individual's qualified dividend income was taxed at the same rates that applied to net capital gains. This treatment applied for purposes of both the regular tax and the alternative minimum tax. Thus, an individual's qualified dividend income was taxed at rates of zero and 15 percent. The zero-percent rate applied to qualified dividend income which otherwise would be taxed at a 10- or 15-percent rate if the special rates did not apply.

Effective January 1, 2013, the dividends rates link to the capital gains rates continues, so for taxable years beginning January 1, 2013, an individual's qualified dividend income is taxed at rates of zero, 15 percent or 20 percent depending on income levels.

ESTATE TAX

The temporary estate tax provisions enacted in 2010, except for the top rate, have been made permanent. The exemption is $5 million inflation adjusted (It was $5.12 million for 2012). Spousal portability of the exemption (unused exemption of a deceased spouse can be used by the surviving spouse) and other revisions made by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 continue except the top marginal rate is 40 percent.

Effective January 1, 2013, the tax schedule for the estate tax is:

- Not over $10,000: 18 percent of such amount.
- Over $10,000 but not over $20,000: $1,800, plus 20 percent of the excess of such amount over $10,000.
- Over $20,000 but not over $40,000: $3,800, plus 22 percent of the excess of such amount over $20,000.
- Over $40,000 but not over $60,000: $8,200 plus 24 percent of the excess of such amount over $40,000.
- Over $60,000 but not over $80,000: $13,000, plus 26 percent of the excess of such amount over $60,000.
- Over $80,000 but not over $100,000: $18,200, plus 28 percent of the excess of such amount over $80,000.
- Over $100,000 but not over $150,000: $23,800, plus 30 percent of the excess of such amount over $100,000.
- Over $150,000 but not over $250,000: $38,800, plus 32 percent of the excess of such amount over $150,000.
- Over $250,000 but not over $500,000: $70,800, plus 34 percent of the excess of such amount over $250,000
- Over $500,000 but not over $750,000: $155,800, plus 37 percent of the excess of such amount over $500,000.
- Over $750,000 but not over $1,000,000: $248,300, plus 39 percent of the excess of such amount over $750,000.
- Over $1,000,000: $345,800, plus 40 percent of the excess of such amount over $1,000,000.

DIRECT EXPENSING

Internal Revenue Code Section 179 allows business to write off small amount of annual investment in capital assets such

Continue reading on next page...

as machinery in the year of purchase in lieu of depreciating the investment over a number of years. While it commonly referred to as a small business provision, there is no size limitation on business eligibility. The allowance is reduced and eliminated completely the more capital assets a business buys during the year.

The bill “saved” the provision from reverting to pre-2001 levels of $25,000 as the amount that can be written off and $200,000 as the purchase amount “cap”. Unfortunately, the amounts will revert to those pre-2001 levels without indexing, in 2014.

For 2012 and 2013, the amounts are increased back to what they were in 2011, $500,000 as the amount that can be written off in a year and a taxpayer cannot use the provision if more than $2,000,000 of equipment and machinery is purchased in the year. Neither amount is inflation indexed. (In effect, this is a retroactive increase for 2012 when the indexed amounts were $139,000 and $560,000.)

ALTERNATIVE MINIMUM TAX

A creation of the 60’s, the alternative minimum tax (AMT) was designed to make sure the wealthy paid taxes. The AMT applied if taxpayers had income over certain levels. The income levels were not inflation indexed. Over the years, Congress applied “patches” to the income levels, adjusting them for inflation. The last patch actually expired at the end of 2011. As a result, the lower income levels were scheduled to apply to 2012 income. The new law applies a permanent patch with inflation indexing. The levels that apply to your 2012 income are $78,750 for married couples filing jointly and $50,600 for individuals.

EXTENSIONS

There were four dozen additional extenders in the law, extending them for various lengths of time including an extension of 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements; an extension of temporary exclusion of 100 percent of gain on certain small business stock. (This is very narrow technical type of stock); an extension of credit for energy-efficient existing homes; and an extension of the deduction for state and local general sales tax.

PAYROLL TAXES

A refresher on terminology is necessary for the first two tax increases for 2013.

Under the Federal Insurance Contributions Act (FICA), employers pay a tax based on the amount of wages paid to an employee during the year. The tax imposed is composed of two parts: the Old Age, Survivors, and Disability Insurance ((OASDI) and sometimes referred to as the (“Social Security tax”) tax equal to 6.2 percent of covered wages up to the taxable wage base ($113,700 for 2013); and the Medicare Hospital Insurance (HI) tax amount equal to 1.45 percent of covered wages.

In addition to the tax on employers, each employee is subject to FICA taxes equal to the amount of tax imposed on the employer (the “employee portion”). The employee portion of FICA taxes is withheld and remitted to the Federal government by the employer. The same wage base rules apply.

SOCIAL SECURITY TAX HOLIDAY OVER

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 reduced the OASDI rate by two percentage points to 4.2 percent for the employee portion of the FICA tax.

Similarly, for taxable years beginning in 2011, two percentage points to 10.4 percent reduced the OASDI rate for a self-employed individual. The Temporary Payroll Tax Cut Continuation Act of 2011 extended that two-percentage point reduction through the end of February 2012. In 2012, the Middle Class Tax Relief and Job Creation Act of 2012 (MCTRJCA) extended the temporary two-percentage point payroll tax “holiday” for employees (and to the same extent, to the self-employed) through the end of 2012.

Effective January 1, 2013 the OASDI tax rate for employees returns to 6.2 percent (and comparable return in the self-employment tax).

NEW TAXES

The health care reform law, the Patient Protection and Affordable Care Act (PPACA) included two tax increases that took effect on January 1, 2013.

NEW HOSPITAL INSURANCE TAX INCREASE

The first of those two is also a “payroll tax” increase. Effective January 1, 2013, the Hospital Insurance (HI) trust portion of the payroll tax increased to 2.35 percent from 1.45 percent (i.e. a 0.9 increase) on the wages or self-employment income over $200,000 for an individual return and $250,000 for a joint return. There is no limit on the amount of wages or self-employment income that is subject to the tax (unlike the social security portion of the FICA tax, which has a wage cap). This is an increase in the employee’s share only. The employer will continue to pay its 1.45 percent rate share on the employee’s wages. In the case of the self-employed, they will pay “only” the additional 0.9 percent on the income above the $200,000/$250,000 threshold.

INVESTMENT TAX

The second new tax effective January 1, 2013 that comes to us courtesy of PPACA, is a bit more complicated. PPACA established a new “Unearned Income Medicare Contribution” (UIMC) tax. The IRS is calling it the “Net Investment Income Tax” or the “NIIT.” This tax applies to “net investment income” which is interest, dividends, royalties, rents, gross income from a trade or business involving passive activities, and net gain from disposition of property (other than property held in a trade or business). The rate is 3.8 percent. The NIIT on net investment income will not apply if modified adjusted gross income is less than $250,000 in the case of a joint return, or $200,000 in the case of a single return. The tax is paid when you file your tax return for the year. Since the tax is effective on January 1, 2013, the first time most taxpayers will include the tax will be in 2014 when they file their returns for tax year 2013. However, if you pay estimated taxes during the year the IRS observes, taxpayers “should adjust their income tax withholding or estimated payments to account for the tax. ■

Membership has it's privileges – Start $aving TODAY!

THE NJGCA MEMBER BENEFIT PARTNER PROGRAM

NJGCA continually updates our Member Benefit Partners (MBPs) program to better serve your small business. Most MBPs offer discounts and special programs exclusively for NJGCA members ONLY – You cannot get these negotiated arrangements anywhere else!!

Here is a list of our current MBPs:

ABLE-TECH – *Industry Specific Business Consulting*
ADP - *Payroll Processing*
AFFINITY FEDERAL CREDIT UNION – *Credit Union*
AMATO INSURANCE AGENCY – *Garage Liability, Auto, Homeowners, Flood, Disability, Income Protection*
ASSOCIATION MASTER TRUST (AMT) – *Health Coverage*
ATS ENVIRONMENTAL SERVICES – *Tank & Vapor Testing, NJDEP Compliance*
C. A. WINKLER, INC. – *Tank and Pump Replacements*
DANA TANK INSURANCE SPECIALISTS – *Tank Insurance*
ENVIRONMENTAL ALLIANCE, INC. – *Environmental Remediation Services*
ENVIRONMENTAL & GEOTECHNICAL SERVICES, LLC – *Environmental Services (LSRP)*
FIRST DATA CORPORATION – *Credit Card Processing & Consulting*
KOPA – *Efficient Energy Lighting Solutions*
MEADOWBROOK INSURANCE GROUP – *Workers Compensation*
MERIDIAN ENVIRONMENTAL – *Tank and Pump Replacements*
PH2 SOLUTIONS – *Quick Diagnostic Emissions Tools*
PRESTIGE ENVIRONMENTAL – *Environmental Remediation*
SALOMONE BROS. INC. – *E UST, Pump, and Tank General Contractors*
SERVICE STATION VENDING EQUIPMENT – *Air & Vacuum Systems*
TMP ENERGY SOLUTIONS – *Discounted Electricity and Natural Gas*
UNIFIRST – *Uniform service and station supplies*

UPDATE: PRESERVING HISTORY AT THE SMITHSONIAN

To All NJGCA Members:

In the January 2013 issue of On The Road, NJGCA included a request from the Smithsonian Institute for artifacts and objects that are reminiscent and representative of the gasoline shortages of 1973-1974 and 1979.

We are pleased to report that many artifacts and signs were submitted to the Smithsonian from NJGCA members, however, they have requested that NJGCA put out an appeal one more time for any others that may still be hidden away in your attics and forgotten. The Smithsonian is still looking for more artifacts and objects if they are out there.

Retailers and others, who may have kept signs reading NO GAS, or LAST CAR IN LINE, (hand made or purchased) or notices about odd-even rationing are asked to contact Roger White, automotive history curator at Smithsonian.

Roger White, Associate Curator
Road Transportation - Division of Work & Industry
National Museum of American History
Smithsonian Institution
PO Box 37012, MRC 629
Washington, DC 20013-7012
202-633-3925 office
202-633-3427 fax
whiter@si.edu

Common Cents *by Debbie Hill*

Attention PIFs: It is time to renew your license!

It's that time of year again. Your Private Inspection Facility (PIF) License will be expiring on June 30, 2013. As you know, the only way to renew your PIF license is to complete the Renewal Application that NJMVC will be sending to you in the mail. NJMVC confirmed that they will be sending the renewal license applications in Mid-April.

NJMVC sends out Renewal Licenses that are individualized for your location. When NJMVC receives your application back in the mail, they contact you and verify your mailing address. However – If you don't receive it, there is no reminder. So MARK YOUR CALENDARS for MAY 20, 2013 – to make sure that you have received NJMVC Renewal PIF Application. If you have not received it, call NJGCA Headquarters 973-376-0066 and ask for Debbie Hill to assist you in securing another Renewal Application.

We also suggest that you send your completed Renewal License Application back to NJMVC via CERTIFIED RETURN RECEIPT MAIL prior to June 1, 2013. To protect yourself we suggest you keep a copy of the entire application for your files.

If your PIF license should expire, NJMVC will require you start the entire process again to become a Private Inspection Facility. "***NO KIDDING***". They attempted to do this to one of our members last year. NJGCA intervened and the member was fortunate to avoid the entire process, but it still took another few weeks before we had him up and running again. This was not as easy as it sounds and we are not sure that we will get the same considerations the next time this happens. In order to avoid this from happening to you, we strongly suggest that you complete your renewal application on time and submit it to NJMVC for processing prior to June 1, 2013.

Some helpful hints to be prepared for your renewal:

●Call your insurance agent and request an Original Certificate of Insurance in the amount of $300,000 bodily injury and $50,000 property damage. The certificate holder should read:

MVC-PIF Section
P.O. Box 170
Trenton, NJ 08666

●Make sure the Insurance Certificate in force date covers the date your of renewal application (June 30, 2013)

●Have your check ready: Make it payable to "NJMVC". The license renewal amount of $250.00.

If you have any questions or need any assistance with your Private Inspection Facility License or your individual Inspector License, feel free to call NJGCA for help, ask for Debbie Hill or email debbie@njgca.org

Another reason why it pays to be a member of NJGCA an organization that helps you and your business! ■

Beware of State Pricing Gouging Laws

In the wake of natural disasters like Superstorm Sandy, some retailers – including service station dealers – have been tempted to offset expenses and increase profits by implementing significant price increases. Such price increases can expose them to liability under state price gouging laws.

According to one recent survey, thirty-four states and the District of Columbia have enacted price gouging laws. Those jurisdictions include every state east of the Mississippi other than Maryland, Delaware, New Hampshire and Ohio.

Although price gouging laws apply to all retailers, service station dealers are particularly vulnerable to enforcement because their prices are so visibly apparent, and because consumers are particularly sensitive to changing gasoline prices.
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Generally, state price gouging laws lack a clear definition of what actually constitutes price gouging. The New York State prohibition, for example, found in §396-r of the State's General Business Law, simply condemns any "unconscionably excessive price," with the court instructed to consider whether the amount of excess is "unconscionably extreme," or whether it constitutes "an exercise of unfair leverage or unconscionable means."

The Virginia prohibition, found in §59.1-527 of the Virginia Code, condemns any "unconscionable price" within an area for which a state of emergency has been declared, and instructs the court to consider whether the price charged "grossly exceeded" market prices during the 10-day period immediately prior to the time of disaster.

The New Jersey price gouging statute, found in §56:8-107 of the New Jersey Statutes Annotated, at least contains a statutory benchmark. It brands as an "excessive price increase" an increase in price that "exceeds by more than 10%" the price at which a product was sold in the usual course of business immediately prior to a state of emergency, unless the price increase is attributable to additional costs imposed upon the seller by reason of the events causing the state of emergency.

Not surprisingly, states have been aggressive in enforcing price gouging laws in response to consumer complaints. Aggressive enforcement allows state enforcement officers to assume the pose of crusaders for consumer welfare. Moreover, enforcement actions are quite easy for the state to pursue.

In the wake of Sandy alone, New Jersey is expected to subpoena pricing records from over one hundred service station dealers. Moreover, fines can be steep particularly because each consumer sale may constitute an independent violation. The New York statute, for example, permits the court to impose a civil penalty of as much as $25,000 and to order that restitution be paid to aggrieved consumers.

In sum, price gouging laws contain real teeth. They should not lightly be ignored. ■

eMail: 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 Rubin, P.C. website at:
http://www.agtlawyers.com/resources/petroleum.html

THE ENERGY EXAMINER

FROM TRADITIONAL RESOURCES TO ALTERNATIVE ENERGY INNOVATIONS

By Nick De Palma

Since our debut in 2007, NJGCA *On The Road* has brought you timely updates on changes in the energy and automotive industries. Today, each new issue of *On The Road* will bring you more update and information in our *Energy Examiner*. The *Energy Examiner* will offer readers news from around the energy/transportation industry and how it will affect your small business. If you have any questions or comments on what you review in these quarterly pieces, please feel free to reach out to NJGCA. You may also visit www.njgca.org/energy-examiner for more details.

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UPDATE: FOSSIL FUELS

LOWER SULFUR GASOLINE MAY LEAD TO NEW TECH-LADEN ENGINES

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While government officials continue to ratchet up regulatory pressure on the energy and automotive industries, a new proposal from the Environmental Protection Agency (EPA) could lead to an alternative way of meeting rigid requirements in the years ahead.

Under a new plan put forth by the agency, lower sulfur content gasoline would be mandated for sale in the United States to meet new environmental standards. If implemented, the lower sulfur content in the reformulated fuel could permit auto manufacturers and engine makers to offer higher-technology laden motors for the domestic market. Those engines would run more efficiently and cleanly, reducing fuel consumption and engine pollutants.

In the United States, an overwhelming number of vehicles run on gasoline rather than diesel fuel. This is compared to world markets like Europe, in which diesel-powered engines control roughly 50-percent of the marketplace. In the United States, domestic gasoline has a sulfur content of 30 parts per million (PPM). Regulators seek to have that number reduced to 10 PPM, which would make American gasoline equivalent to that sold in Europe and Japan.

Officials from the EPA state that the lower-content sulfur blend could allow automakers doing business in the United States to import the same ultra-efficient engines used in other world markets. Today, lean-burn, direct-injection gasoline engines are already on sale in vehicles sold in Japan and Europe. These engines offer better vehicle performance and fuel-economy than engines made for higher-sulfur gasoline.

In addition, the lower-sulfur gas would allow car manufacturers to meet future stringent tailpipe standards without adding unnecessary technologies to clean up engine emissions. Currently, automakers take additional steps to "clean" exhaust fumes as they exit the engine in order to meet air pollution standards. When higher-sulfur gasoline is burned in a lean-burning engine, the emissions are "dirtier" and are harmful to a catalytic converter. As such, the pollutants must be "treated" in order to effectively be captured by the converter. Presently, engineers have used regenerating systems that heat up the catalysts to capture these emissions. Though this process does clean up pollutants as they pass through the converter, it also consumes more energy (which drives down efficiency) and adds to a vehicle's total costs. The implementation of lower-content sulfur could help eliminate these steps.

The proposal is being criticized by the oil industry, which states that the lower-sulfur fuel will drive up the cost of gasoline refining. To comply with the proposal, refiners would have to retrofit their plants to remove the additional sulfur and could drive up pump prices as much as 10 cents a gallon. Ultimately that hurts consumers and, refiners believe, it is unneeded.

However, many consumer and industry experts believe that the change is necessary in order to comply with looming regulations by utilizing existing technologies. Currently, automakers must meet the new Tier 3 rules by 2017, which would make federal emission standards match those already in effect in California. Consumer groups also state that, while the EPA's proposal could drive up gasoline prices slightly, it would drive down the total vehicle ownership costs since cars would not need additional, expensive emission treatment and it would run more efficiently.

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The plan will be debated over the next few months, and if ultimately implemented, a lower sulfur fuel mandate would begin in January 2017.

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UPDATE: ETHANOL / BIOFUELS / BIODIESEL
FUNGI FOUND IN HORSE MANURE COULD UNLOCK CHEAPER ETHANOL PRODUCTION

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The use of ethanol in motor fuels is expected to rise significantly in the next decade. Aside from the controversial EPA waiver that all retail dispensers pump E15 (a 15 percent ethanol/85 percent gasoline fuel blend) in the next few years, engine makers continue to invest in motor technologies that use a wide range of ethanol blended fuels.

In order to meet demands and reduce costs, scientists are continually seeking ways of turning cheap, organic waste materials into ethanol (and other biofuels) through inexpensive and reliable means.

Most recently, a chemical engineer from MIT has taken a unique approach to solving this problem. Rather than focusing on new forms of bacteria to ferment organic material into ethanol, researcher Michelle O'Malley has turned her attention to fungi. Her research has led to a potential breakthrough in how to tackle this problem through the use of a fungus found in horse dung.

Herbivores, or animals that derive sustenance from plant material such as grasses, fruit, or foliage, have long been known to turn simple cellulosic material into sugars. These sugars are processed in the intestinal tract of the animal and then turned into energy during digestion. An example of this would be a deer – or a horse, of course – which consumes grasses.

In combining biology, chemistry, and zoology to reverse engineer the digestive process in herbivores, scientists have traditionally focused on the bacteria found in the animals' intestinal tracts. However, O'Malley's research has isolated a fungus that could more efficiently break down the sugars used to ferment ethanol. Unlike many types of bacteria, the fungi can more easily break through the lignins – or the "chemical barrier" found in plant cell walls – to create cellulose. This is significant because breaking down the lignins "walls" around plant cells is among the most time-consuming and expensive part of making ethanol from plant waste. In harvesting specific enzymes produced by fungi found in horse manure, O'Malley hopes to use other organisms (such as yeast) to control the fungi in the ethanol production process.

Discovering a means of breaking down the wall quickly and cheaply could help make ethanol derived from inexpensive plant-based cellulose more attractive for commercial applications.

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UPDATE: ELECTRICITY & ELECTRIC POWERED VEHICLES
NEW ALUMINUM-AIR BATTERY COULD MAKE ELECTRIC CARS MORE PRACTICAL, AFFORDABLE

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In an attempt to produce cheaper and more power-dense batteries for electric vehicle use, scientists are reevaluating "old" technologies in hopes of sparking a breakthrough.

Recently, an Israeli startup company named Phinergy has developed an aluminum-air (Al-air) battery that they claim could power an electric vehicle for 1,000 miles. To appreciate the significance (and potential ramifications) of this development, one has to understand how different today's conventional batteries actually operate.

Contemporary batteries use an internal chemical reaction to produce power. These batteries are very heavy and made of dense materials. By comparison, a "metal-air" battery makes its power through the oxidization of the metal, in which the chemical reaction leads to the loss of electrons. In other words, when the air mixes with the metal, it creates a form of "rusting" that sheds electrons as oxidation increases, thus spurring a reaction.

Metal-air batteries have been around for a long time, but were largely considered a dated technology. However, the latest generation of metal-air batteries oxidizes metals like lithium, zinc, aluminum, rather than iron or lead. These metals react with oxygen from the air surrounding it to create the reaction and deliver a lighter battery.

Companies like IBM are already working on lithium-air batteries to use in motor vehicles. Zinc-metal batteries are a staple in hearing aid devices and could also potentially be used one day in biological implants. Sodium-air, another alternative metal-air battery, also has enormous potential, but the limited number of times that it can be recharged means that this technology is years away from commercialization.

In the case of Phinergy's Al-air apporach, however, the battery is arranged in "layered plates" and consumes the aluminum as a fuel source. This means that the battery is incredibly power-dense and could potentially even rival conventional gasoline and diesel motors for energy-density. As the battery is used up, the aluminum turns into aluminum oxide. Once

Continue reading on next page...

fully consumed, the battery needs to be physically switched out – just like the batteries in a TV's remote control. While that limitation may sound discouraging and complicated, engineers may find a way to make any "switch out" process easy and convenient.

What's more, auto makers and engineers may be compelled to develop an easy-to-operate system once economic factors are considered. While buying a new battery every 1,000 miles may sound like a pain, it may be incredibly cost effective. At today's market prices, one pack of 50 aluminum-air battery plates would cost you approximately $50.00. To drive 1,000 miles on $50.00 is very cost effective, and would be the equivalent of about 90mpg. When you compare that to paying $3.50 per gallon and getting between 25-35mpg, the Al-air battery may make a lot of financial sense, even when switching out a battery is considered.

What's more, though the process is expensive, an aluminum-oxide depleted battery can be recycled into a new battery; which will undoubtedly spark another revolution in technological research to drive down costs.

Phinergy states that it already has assigned an agreement with a world automotive manufacturer to bring this new battery to production by 2017. Details are limited, but don't be surprised if you hear much more about Al-air batteries in the next few years.

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UPDATE: HYBRIDS

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No news to report – Please check back in our next issue!

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UPDATE: HYDROGEN / HYDROGEN FUEL CELLS

NEW HYDROGEN CATALYSTS COULD SOLVE POWER, WATER SHORTAGE PROBLEMS

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As a form of energy, hydrogen has the very probable potential of serving all of our power needs. However, fuel-ready hydrogen is not a naturally occurring substance and making hydrogen can be both expensive and consume lots of power during production.

The most common way of creating commercial-grade hydrogen is to use large amounts of electricity and a catalyst to split water molecules into hydrogen and oxygen. Often, electricity produced from nonrenewable fossil fuels and expensive catalysts must be used during production. Presently, platinum is used as a catalyst during these reactions, and while it's very efficient, it is also very expensive.

A recent discovery in India, however, may spark a new strain of research to combat these limitations. In a study aimed at solving India's power problems and growing water shortages, scientists have developed a process that could enable industrial commercialization of hydrogen and increase water supplies. Water is a byproduct of hydrogen combustion in fuel-cell and hydrogen-burning engines.

In their research, the scientists were able to create hydrogen using large quantities of water and two different metals – cobalt and iron – to speed up the reaction.

In the first experiment, a cobalt catalyst immobilized on a graphite electrode proved incredibly efficient to make hydrogen. What's more, the water was sourced locally without pretreatment; meaning that expensive chemical filtration wasn't needed during the process. That could be an enormous boon for commercialization and help keep costs in check.

In a second experiment, researchers used an iron-based system as a catalyst. Scientists believed that iron would be even more attractive as a catalyst since it is 1,000 times more abundant than cobalt and would be cheaper to utilize in any commercialization. The results were among the highest electrocatalytic generation for an iron-based study and very encouraging to hydrogen-advocates.

Though both results are promising, they are far from being commercialized. Yet either discovery could ultimately help pave the way to a hydrogen-based economy.

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UPDATE: NATURAL GAS / PROPANE
CNG, LNG RECEIVE TAX CREDIT EXTENSION

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No news to report – Please check back in our next issue!

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UPDATE: NUCLEAR / WIND / SOLAR / GEOTHERMAL
FIRST NEW NUCLEAR REACTORS IN THREE DECADES BEGIN CONSTRUCTION

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In March, construction began on two nuclear reactors being built in Georgia and South Carolina. The events are notable since they are the first new nuclear reactors being built in the United States in over thirty years.

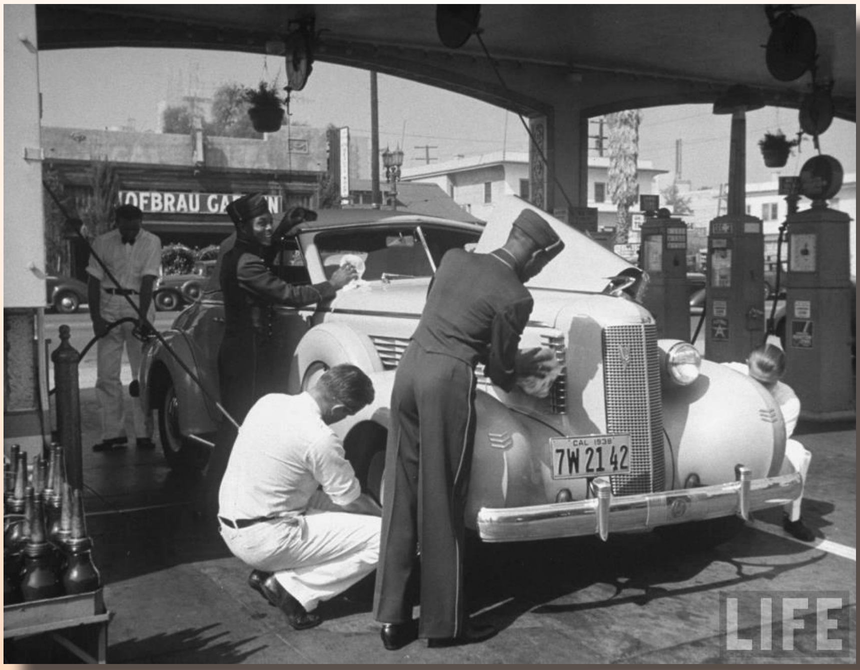
In what is anticipated to be a wave of new construction, these two reactors will use an updated version of a design that dates back to the mid-20th century. Based on the Westinghouse AP600 reactor, the new Westinghouse AP1000 will continue to use a uranium-based fission system. Inside the reactor, water is heated by the uranium, and pumped through piping to a turbine, which generates electricity. Since the fuel source heating the water is radioactive, there is no carbon emissions produced during electrical generation.

The new reactors will come online in 2016 or 2017, will be simpler to operate and build than older designs, and will add updated safety features and shielding. What's more, these two new reactor plants are expected to be the first of fourteen such projects that will be completed in the Southeastern United States.

Though this news is making headlines now, the move back toward nuclear power actually began years ago when funding was put in place by the government. Federal loan funding in excess of $8.3 billion helped spur the projects and spread out the massive capital costs in setting up the reactors.

Once these new plants are operational, however, more sophisticated and novel nuclear reactor proposals are in the works. For example, reactors fueled by thorium are already on the drawing board. Thorium, like uranium and plutonium, can be used as fuel in a nuclear reactor. Unlike the other two fuels, however, Thorium is more abundant, is not easily weaponized, and does not produce as much nuclear waste (and is thus safer for storage and transport).

These reactors, and others like it, are being pushed in order to help the United States cut carbon emissions and catch up with other industrial nations that have long-embraced nuclear power. In fact, to illustrate this point, China is currently building 28 nuclear reactors thanks to massive government backing. Energy experts and nuclear power advocates believe that, once the current domestic plants are ready and have a successful operational history, policymakers will have the confidence to allow additional nuclear power plant projects to move forward. ■



THE LEGISLATOR SPOTLIGHT

NJGCA has seen many legislative successes over the past few years. We'd like to take some time to tell you a little bit more about the men and women who have been instrumental in helping your small business prosper.

Assemblywoman Annette Quijano

NJGCA has seen many legislative successes over the past few years. We'd like to take some time to tell you a little bit more about the men and women who have been instrumental in helping your small business prosper.

The Honorable Annette Quijano was first sworn into the General Assembly in September 2008. Assemblywoman Quijano, a Democrat, represents the 20th Legislative District in Union County, covering the municipalities of Elizabeth, Union Township, Hillside, and Roselle.

Despite her relatively short time in the Assembly, Asw. Quijano is rising fast. She was named a Deputy Majority Leader last year and is the Chair of the Assembly Homeland Security & State Preparedness Committee. She also serves as the Vice-Chair of the Assembly Judiciary Committee and is a member of the Housing & Local Government Committee.

In addition to serving in the state Legislature, Asw. Quijano works as a municipal prosecutor for the city of Elizabeth, New Jersey's fourth largest city. She earned her JD from Rutgers Law School. Previously she had served as an Assistant Counsel to Governors Corzine, Codey, and McGreevy.

She is the first woman and the first person of Hispanic descent to represent her district. Born on the Fourth of July to Puerto Rican parents, she began her career as an advocate in her community at only 15. She successfully organized a grassroots campaign against a cable company's decision to eliminate Spanish language programming. Her campaign ultimately proved successful. She also has a personal connection to small business—her mother had a beauty salon where, like most children of small business owners, Asw. Quijano worked.

NJGCA's relationship with Asw. Quijano didn't start off particularly smoothly. In May of 2010 she introduced A-2676, a bill which would allow the State Lottery Commission to sell lottery tickets online. NJGCA felt that this was a serious threat to all of you who sell lottery tickets. If lottery tickets could be bought online or with a cell phone, that would mean fewer people would be coming into your convenience store to purchase a ticket, and that means they wouldn't be spurred to also pick up a few of the higher profit margin items that keep you in business.

When we met with Asw. Quijano and her staff to inform her of our concerns, she made it very clear that she had no desire to do something that would hurt the small business community in the state. She said she was happy to work with us and other industry groups to try and figure out a way to make this proposal into something that wouldn't damage the small business community. Unless a solution was figured out, she would not push for action to be taken on the bill; and she proved to be true to her word.

Recently Asw. Quijano has impressed us on her quest for accurate information analyzing state policy during and after Hurricane Sandy particularly with regard to the issue of mandating generators at certain businesses. After the post-Sandy gas crisis had passed there was a storm (no pun intended) of politicians more interested in press releases that make it sound like they're doing something good rather than actually doing something good. Several different bills were introduced that simply say "install a generator or get fined", with no mention of how to pay for it, or if it would even solve the problem. Thankfully, Asw. Quijano has used her position as Chair of the Assembly Homeland Security & State Preparedness Committee to take a more thoughtful and responsible approach.

She brought together representatives from all the industries that would be affected from generator legislation for a meeting on how the storm affected them, and what legislation would be best able to solve their problems without creating new ones. The result of this positive dialogue was A-3930, which NJGCA has supported in Committee. (You can read more about the bill on page 7).

NJGCA believes that there is more to politics than just political positions. How you advocate for something can matter almost as much as what you advocate for. We wish more members of the Legislature were as willing as Assemblywoman Quijano to take the time to listen to all sides of a debate and work together to try and craft legislation that balances the various interests in a way that doesn't hurt small businesses. We look forward to continuing to work with her. ■

BY PETER H. GUNST, ESQUIRE

Lehigh Fails to Gut PMPA Notice Requirement

Critical to the dealer protection set forth in the PMPA against unfair termination or nonrenewal is the statute's notice provision, which normally requires that suppliers give franchisees a 90-day notice of termination or nonrenewal.

The PMPA's notice provision is vital because the United States Supreme Court made clear in its Mac's Shell decision that dealers can rarely, if ever, seek protection under the PMPA until they received written notice of termination or nonrenewal. Thus, the statute's 90-day window is essential because it provides what is usually the dealer's only opportunity to seek to reverse an illegal termination or nonrenewal.

A large distributor, Lehigh Gas Corporation, sought to gut that protection in recent litigation, which reached the United States Court of Appeals for the Second Circuit. The court's opinion is found in Jimico Enterprises, Inc. v. Lehigh Gas Corp., 2013 WL 616473 (2d Cir. 2013).

After taking over the operation of gas stations along the New York State Thruway, Lehigh converted the stations' long-time operators to trial franchisees, and then terminated them without providing any notice whatsoever.

The dealers successfully argued in the federal district court that Lehigh had blatantly violated the PMPA by ignoring its notice provision. They were awarded actual and punitive damages as well as attorney fees and costs, and Lehigh appealed.

On appeal, Lehigh argued to the Second Circuit that the dealers had no legal right to challenge the lack of notice because §2805 of the Act – which provides dealers with legal standing to challenge a franchisor violation – failed to identify a notice violation under §2804 as a basis for a dealer claim.

Had Lehigh's technical argument succeeded, the PMPA's notice requirement would have been rendered meaningless. If an impacted dealer could not challenge a violation of the Act's notice provision, then who could? The answer would have been no one.

The three–judge appeals court unanimously rejected Lehigh's argument. First, it identified the argument's linguistic fallacy, pointing out that although §2805 did not specifically identify §2804 in the list of sections giving rise to a right of action, it did expressly provide a right of action to enforce §2802, which explicitly incorporated §2804's notice requirement by providing that a franchisor may only terminate a franchise if "the notification requirements of §2804 of this title are met."

Next, the court rejected Lehigh's fall-back position that even if a right of action existed to enforce the notification provision with respect to a full three-year franchise, no right of action existed for failure to comply with the notification provision in terminating one-year trial franchise because a supplier has an absolute right to nonrenew a trial franchise for any or no reason.

Rejecting that argument, the court pointed out that even if the supplier's right to nonrenew a trial franchise was virtually if not completely absolute, it was still bound by the notice provision if it sought to terminate the trial franchise prior to the expiration of its one-year term. The court explained:

[W]e recognize the coherent and reasonable structure build by the clear text of the PMPA, and understand that a "trial franchise" is just that: a trial. Under a trial franchise relationship, the franchisee is guaranteed a trial period, during which it is free from arbitrary or sudden termination.

The court affirmed the lower court's award of damages for the dealers' losses attributable to the remainder of the one-year trial franchise term, as well as its award for punitive damages, attorney fees and costs. Unfortunately, the award of damages was limited because the dealers had forfeited their full franchise status by agreeing to enter into trial franchise agreements with Lehigh when it took over the Thruway stations. Had they refused to do so , they would have been permitted the full panoply of PMPA rights and remedies. ■

eMail: 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 Rubin, P.C. website at: http://www.agtlawyers.com/resources/petroleum.html

THE NJGCA PAC

www.njgcapac.org

DEFENDING OUR MEMBERS.

PROTECTING YOUR INTERESTS.

NJGCA PAC

ANSWER THE CALL & CONTRIBUTE TODAY!!

Promoting our agenda in Trenton is of utmost importance to NJGCA and our members. However, in order to truly affect the debate, we must ensure our friends in the Legislature are re-elected.

It is for this reason that your Association has established the NJGCA PAC.

For too long, the weight of funding our Political Action Committee, the arm of the Association responsible for political donations, has rested upon a few. This is not only unfair to those few members who have shouldered this burden, but means we are not utilizing our full strength to affect the debate in Trenton.

To truly understand the importance of supporting our allies, consider our successes in Trenton:

We defeated **BELOW COST SELLING**
We made history in getting **FIRST RIGHT OF REFUSAL** signed into law!
We have built large support for **RIGHT TO REPAIR** and got it passed out of the Assembly
We defended your small business against the false accusations of Attorney General Anne Milgram
We gained wide support to move New Jersey to an all PIF Inspection System and close the CIF lanes
...and MUCH MORE!!

In each instance, we achieved these goals with the help of our friends in the Legislature!

If every member contributes just $100 we can help to ensure victory for our allies.

PLEASE SEND YOUR CONTRIBUTIONS TO:
NJGCA PAC
66 Morris Avenue
Springfield, NJ 07081
Please make your donation payable to NJGCA PAC

We have made great progress in Trenton, but more needs to be done-
I hope that you will answer the call and contribute to the NJGCA PAC TODAY!

Great News for NJGCA Members

Group Health Coverage through NJGCA and Association Master Trust

Unless you're a large business with hundreds or thousands of employees, providing and administering a health benefits plan can be a huge burden. However, if you're a NJGCA member, you can now take advantage of a great group offering through the

Association Master Trust

NJGCA member companies are eligible for comprehensive self-funded health and dental benefits through Association Master Trust. The Association Master Trust covers approximately 10,000 participants from thirteen trade and member association benefit trusts.

Qualifying NJGCA member firms can now enjoy all of the benefits of network services and modern claims administration. By being a member of AMT you're part of a large group, and have access the same great health benefits plans the big guys do!

To learn more about AMT's self-funded health benefits plans call today and ask for Joy at 973-379-1090 ext. 229 for further details.

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