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## **IDAHO RETAILERS DEFEAT PRICE-GOUGING CLAIMS**

A fight in Idaho over price-gouging claims brought forth by the state Attorney General's office has ended with a victory for convenience retailers. On March 17, Gov. Brad Little signed into law legislation that clarifies fuel margins cannot be used as the basis for a price-gouging claim against businesses. Only actual price increases can result in a legal claim of price gouging.

During the pandemic, the state AG investigated three convenience retailers operating in Idaho in 2020. The state AG claimed that their profit margins were excessive, despite the average price per gallon being among the lowest in the United States. To counter the claim and bring clarity to state law, Senate Bill 1041 was brought before the state legislature.

Legal counsel Hawley Troxell Ennis & Hawley LLP, Givens Pursley LLP and Stoel Rives LLP noted in a letter to Suzanne Budge, executive director of the Idaho Petroleum Marketers & Convenience Store Association, that during the early months of the pandemic, "convenience stores were considered essential and remained open to serve their communities even though most of the State of Idaho simply shut down because of COVID-19."

The firms wrote that at a time when the demand for fuel dropped 50%, the state AG arbitrarily selected companies "to investigate for no other reason than they were prominent convenience store retailers and even though their price of gas at the pumps was not unique."

After receiving the requested business and financial records from the three convenience retail companies, "the Attorney General's Office wrongfully accused the convenience stores of charging excessive prices. Its sole basis for accusation was that the margins had increased despite fuel prices dropping—in some weeks—to historic lows. Frankly, their reliance on margins instead of price increases was contrary to the plain language and legislative intent of Idaho Code Section 48-603(19)," wrote the firms.

Idaho Senate Bill 1041 clarifies that the language in Idaho Code Section 48-603(19) is consistent with its intent: "While the pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, when a declared state of emergency or disaster results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices" of essential consumer goods and services—the price of fuel, as well as food, medicine and water for human consumption—be prohibited, noted the firms.

Therefore, the firms said that the state AG's action "based only on margins and without consideration of actual price decreases, ignored the plain language and the intent of the statute."

Ultimately the state legislature agreed and passed Senate Bill 1041, which Gov. Little signed into law.

"On behalf of all our members, the hundreds of convenience stores across Idaho, and the thousands of essential employees at those stores, we'd like to thank the Idaho Senate," said Matt Berry, president of the Idaho Petroleum Marketers & Convenience Store Association.

## **NPM&CSA PARTICIPATE IN ANNUAL NACS DAY ON THE HILL**

This week, members of the Nevada Petroleum Marketers and Convenience Store Association (NPM&CSA) participated in the annual NACS Day on the Hill. Marketer and board member Kyle Call of Maverik lead the way supported by our own Peter Krueger and Alli Dean from NACS. We met with all but one of Nevada's delegation to discuss federal efforts on liability protection, EV charging and swipe fees reform. Kyle did a great job outlining marketer's concerns with these and other federal issues. Kyle now joins Chris Kemper of Terrible Herbst as members of Nevada's NACS government relations team.

## **EMA HIGHLIGHTS TRANSPORTATION PRIORITIES TO CONGRESS**

This week, EMA sent a [letter](#) to the House Transportation and Infrastructure Committee as well as a [letter](#) to the Senate Environment and Public Works Committee outlining energy marketers transportation and infrastructure priorities. EMA emphasized the importance of creating safeguards to ensure small business marketers can access vital federal funds to advance alternative energy goals. EMA also voiced concerns over rest area commercialization and utilities using ratepayers to unfairly build out EV infrastructure. In addition, EMA voiced support for the Drive-Safe Act which would establish an apprenticeship program for the legal operation of a commercial motor vehicle in interstate commerce by CDL.

holders under the age of 21.

Congress and the Biden Administration are considering potential vehicles for a broad infrastructure package. However, battle lines are forming due to disagreements regarding potential tax increases. Democrats and the Biden Administration would prefer to pay for a package by raising corporate taxes, however, this is a non-starter for the GOP. While senior Senate Democrats and President Biden would prefer a bipartisan package, fundamental disagreements over the scope of a package and how to pay for a package may force Democrats to pursue a smaller package through budget reconciliation – the same process used to pass the most recent COVID-relief package.

Alternatively, Democrats could negotiate a tailored bipartisan package with Republicans, likely focusing on surface transportation, and passing additional provisions through a partisan budget reconciliation process. This effort is supported by more moderate Senate Democrats such as Sens. Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ). However, finding ten Republicans to sign off on a bipartisan proposal to get to 60 votes faces an uphill climb for Democrats especially given news reports that the White House is considering advancing some infrastructure components with bipartisan support, while moving a democrat only social welfare program bill through the budget reconciliation process, which would avoid being subject to a Senate filibuster. "If this is what they decide to employ, it's a pretty cynical ploy to try and appeal to Republicans to vote for all that stuff, and then do reconciliation to do all the other hard stuff," Senate Minority Whip John Thune (R-SD) said this week.

There has also been some discussion over a per-mile tax on commercial trucks, however, singling out trucking is a non-starter for conservatives unless the left agrees to repeal the EV tax credit and impose fees on EVs to shore up the Highway Trust Fund. EMA will be addressing the truck tax issue in a future letter to the House Ways and Means Committee and Senate Finance Committee which are tasked with finding pay-fors to fund the Highway Trust Fund.

Meanwhile, the House Transportation & Infrastructure Committee summoned Department of Transportation Secretary Pete Buttigieg to discuss the Administration's transportation priorities. Chairman Peter DeFazio (D-OR) touted the previous year's infrastructure bill, H.R. 2, that the House passed last year. He indicated that he would work with Buttigieg to put more decision-making power in the hands of local governments rather than state and federal agencies. Rep. Sam Graves (R-MO) reiterated his call for the Committee to focus on highways and bridges rather than turning the legislation into a "multi-trillion dollar catch-all" known as a hybrid Green New Deal. Buttigieg also reiterated that policy marketers should take advantage of low interest rates to pay for infrastructure without going into details on additional payfors such as user fees. "I've heard loud and clear from members of Congress, Republican and Democratic, that an infrastructure proposal needs to have at least a partial funding source," he said, acknowledging that it's a "challenging conversation." Additionally, on Wednesday, the Administration plans to unveil a package worth as much as \$3 trillion in a long-term economic program to address infrastructure and climate change. Bottom line: Expect more partisan fights over the next several months over transportation policy.

### **SBA TRIPLES THE AMOUNT SMALL BUSINESSES CAN BORROW THROUGH THE EIDL DISASTER LOAN PROGRAM**

Small businesses harmed by the coronavirus pandemic can soon borrow up to \$500,000 through the U.S. Small Business Administration's emergency lending program. The SBA is more than tripling the maximum amount small businesses can borrow through its COVID-19 Economic Injury Disaster Loan (EIDL) program. Beginning April 6, 2021, the SBA is raising the existing loan limit of \$150,000 for 6 months of economic injury to a maximum loan amount of up to \$500,000 for a period covering 24 months of economic injury.

The SBA is implementing the increase in order to distribute the remaining \$270 billion in EIDL funding earmarked for small businesses suffering economic harm due to COVID-19. The increase is good news for energy marketers who have been frustrated by the low loan cap limit currently allowed under existing SBA regulations. Unlike Paycheck Protection Program (PPP) loans, EIDL loans must be paid back, but are offered at a below market interest rate over an unusually long repayment period. The SBA is offering the loans at a 3.75 percent interest rate for small businesses with a 30-year repayment period. Borrowers who have already received EIDL loans but who qualify for more are not required to request an increase. Instead, the SBA will email eligible borrowers directly with more details as the April 6 implementation date approaches.

The boost in the maximum loan amount came less than a month after the SBA deferred the scheduled start of EIDL monthly repayments until 2022 to give businesses more time to build back. SBA will extend the first payment due date for disaster loans made in 2020 to 24-months from the date of the note and to 18-months from the date of the note for all loans made in the calendar year 2021. The SBA has approved \$200 billion in EIDL disaster loans to 3.8 million borrowers since the program began last year. Additional information on the EIDL disaster loan program can be found at: [SBA EIDL Program](#).

### **SENATE APPROVES PAYCHECK PROTECTION PROGRAM (PPP) EXTENSION**

In good news for the country's small businesses, Congress passed the PPP Extension Act of 2021 – which will extend the time for businesses to apply for, and the Small Business Administration (SBA) to grant, Paycheck Protection Program (PPP) loans. The President is expected to sign the bill into law.

While the latest COVID relief package signed into law by President Biden on March 11 included an additional \$7.2 billion for PPP loans and opened the program up to additional tax-exempt entities and online news organizations, the SBA was still facing a looming March 31, 2021 deadline for approving PPP loans.

The PPP Extension Act of 2021 extends the deadlines and provides businesses until May 31, 2021 to apply for a first or second PPP loan and allows the SBA until June 30 to review and approve loan applications submitted before June 1.

### **NATIONAL ASSOCIATION OF STATE UST REGULATORS RELEASES ANNUAL STATE TANK FUNDS SURVEY FOR 2020**

The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) released its annual survey of state tank funds for 2020 this week. ASTSWMO is an association of state solid waste managers - including UST regulators - representing 50 States, five Territories and the District of Columbia. The survey is produced each year by ASTSWMO's Financial Responsibility Task Force and provides both national aggregate and state by state data regarding the operation and financial health of UST tank funds nationwide. State tank funds were originally established as mechanisms for UST owners and operators to meet minimum financial responsibility requirements to cover costs of potential releases and third-party claims from petroleum USTs.

The ASTSWMO survey provides both national aggregate data and state by state data across five category tables. The tables include information on annual revenue, current balance, number of claims, active facilities covered, fund coverage, fund deductible, limits of coverage, tank fee, regulatory changes to fund, solvency, etc. Click below to view each table:

For more information on the national state tank fund survey click here: [ASTSWMO Tank Survey](#).

### **SENATORS INTRODUCE LEGISLATION TO GREATLY EXPAND EV CHARGER CREDIT**

Yesterday, Senator Tom Carper (D-DE), chairman of the Senate Environment and Public Works (EPW) Committee, as well as Senators Catherine Cortez Masto (D-NV), Debbie Stabenow (D-MI) and Richard Burr (R-NC) introduced the "Securing America's Clean Fuels Infrastructure Act" which would greatly expand the electric vehicle tax credit which will otherwise expire at the end of this year.

The bill would expand the Alternative Fuel Vehicle Refueling Property Investment Tax Credit (ITC), known as 30C of the tax code. If implemented, Securing America's Clean Fuels Infrastructure Act would do three things:

- State that the 30C ITC can be applied to each charger rather than per location.
- Increase the 30C ITC cap for business investments from \$30,000 to \$200,000 for each item of refueling property.
- Extend the 30C ITC tax credit for eight more years from the December 31, 2021 expiration date, which means the 30C ITC would apply to refueling property that is placed in service by December 31, 2029.

### **JUSTICE DEPARTMENT TO INVESTIGATE VISA'S DEBIT CARD PRACTICES**

This week the Department of Justice notified Visa of plans to open an investigation into Visa's U.S. debit practices. Click [here](#) for the story.

### **FHWA CONSIDERS GUIDANCE TO COMMERCIALIZE REST STOPS**

The Administration's broad-based attempts to fully electrify transportation continued Wednesday, when Federal Highway Administration (FHWA) Acting Administrator Stephanie Pollack reported that the Biden Administration will issue guidance on how states may be able to get around the current prohibition of commercialization of rest stops so that electric charging stations can be installed on the federal right of ways surrounding highways.

Pollack added that the Administration has "got some work to do on changing both regulations and possibly law to reimagine the right-of-way that we own in communities throughout the United States of America, so it can be part of America's green infrastructure." Furthermore, she reported that FHWA plans to work with EPA beyond just the designated alternative fuel corridors, but also on efforts to speed the use of electric vehicles. Energy marketers have fought efforts to commercialize rest stops for over a decade and we will continue to fight these attempts which could destroy some businesses located off exits along the federal highway system.

In addition, this month FHWA awarded \$18.7 million in "Surface Transportation System Funding Alternatives" (STSFA) grants to eight projects, led by six state Departments of Transportation and two transportation coalitions, to test new user-based funding methods for highways and bridges. The "Fixing America's Surface Transportation" (FAST) Act directs the FHWA to establish the STSFA grant program to let states demonstrate new fee-based revenue mechanisms that could supplement the Highway Trust Fund. Among other things, the STSFA program requires applicants to address equity concerns, such as the fees' impacts on differing income groups and geographic areas. Since 2016, the STSFA grant program has provided \$73.7 million to 37 projects. It funds projects that test the design, implementation and acceptance of user-based systems, such as a mileage-based fee.

### **CALIFORNIA SENATORS CALL ON THE U.S. TO AGGRESSIVELY DECARBONIZE THE TRANSPORTATION SECTOR**

On Monday, Senators Alex Padilla (D-CA) and Dianne Feinstein (D-CA) pushed the White House to reinstate California's authority to set greenhouse gas and zero-emission vehicle standards, to restore national standards that set fuel economy standards at the maximum level possible and to "... set a date by which all new cars and passenger trucks sold be zero-emission vehicles."

In a letter to President Biden, the senators wrote, "... Importantly, California and other states need a strong federal partner." Further, "We look forward to the coming proposals from the Environmental Protection Agency and the National Highway Traffic Safety Administration to reconsider federal actions by the previous administration." We support aggressive national standards for greenhouse gas emissions, and ... the United States needs to aggressively decarbonize the transportation sector." The Biden Administration is likely to seek an increase in fuel economy standards. EPA Administrator Michael Regan said this week during a hearing that he plans to impose a stronger tailpipe emissions rule than several carmakers agreed to under their deal with California regulators as well as stringent rules for commercial trucks and buses.

However, the autos are pushing back. Last week, the AP reported that a coalition of automakers told the Biden administration it would agree to raise fuel economy standards but with tradeoffs and at rates lower than those brokered by California with five other car manufacturers. The autos argue that they would rather have a nationwide fuel economy standard than having a California standard that several liberal leaning states would match.

Background: The Trump Administration finalized a rollback of the standards last year to require a 1.5 percent annual increases in fuel efficiency through 2026, far below the Obama Administration's 5 percent requirement. The 1.5 percent improvement requirement matches auto manufacturers historic efficiency rate achieved by voluntary technological advancements. However, Ford, BMW, Volkswagen and Honda, reached an agreement with California on emissions standards during the Trump Administration which would increase the average fuel economy of their fleets to around 50 miles per gallon by the end of the 2026 in order to appease environmentalists. Given this week's news, it is apparent the Biden Administration may attempt to go even further with aggressive CAFE standards which will likely end up in federal court.

### **MONTANA AND TEXAS LEAD STATES IN SUING BIDEN ADMINISTRATION OVER KEYSTONE**

Texas, Montana and 19 other states are attempting to sue the Biden Administration over the rejection of the Keystone Pipeline. According to the suit that was filed in Texas, President Biden does not have the authority to stop the project through Executive Order, only Congress can regulate interstate commerce. Click [here](#) for the story.

### **EMLI (PMLI) REGISTRATION IS OPEN NOW**

We are excited to announce that registration is open for the Energy Marketers Leadership Institute (EMLI)!

EMLI is new and improved and is designed to make it easier and more affordable for WPMA members to attend. The EMLI programs will be delivered online via Zoom video conference and will include breakout rooms so that the leaders who are attending can interact and learn together.

Special thanks to Lea McCullough for her leadership in working with Meridian to design and deliver the EMLI programs. For more information on how to register go to: <https://emamasters.com/energy-marketers-leadership-institute/>

### **WPMA COVID-19 - CRITICAL REFERENCES FOR MEMBERS**

Please visit our web site for up-to-date information related to your business and the COVID-19 pandemic. You will find the link on our home page at [www.wpma.com](http://www.wpma.com).

## **MEMBERS AND ASSOCIATES - YOU CAN CONTRIBUTE!**

WPMA welcomes industry-related articles for publication in the WPMA News magazine. All members and associate members of WPMA are eligible to submit items for publication. Articles will be included as space allows, and no self-promoting articles or editorials will be accepted. WPMA reserves the right to edit and make adaptation of such contributions to accommodate the magazine's space and style. Please submit articles or content to Jan Roothoff, WPMA Administration/IT Director at [janr@wpma.com](mailto:janr@wpma.com), or mail to Jan Roothoff, Western Petroleum Marketers Association, PO Box 571500, Murray, UT 84157-1500. Submissions for the Winter edition of WPMA News magazine are due before November 1<sup>st</sup>. Later submissions will be considered for the Spring issue.

## **MARK YOUR CALENDARS FOR UPCOMING EVENTS**

**May 6-7, 2021** - Nevada (NPM&CSA) Big Dogs - Red Rock Hotel & Casino - Las Vegas, NV  
**June 7-9, 2021** - Montana (MPMCSA) Convention -Fairmont Hot Springs Resort - Fairmont, MT  
**June 21-24, 2021** - Washington (WIED) Convention - Suncadia Resort - Cle Elum, WA  
**June 24, 2021** - Utah (UPMRA) Summer Golf Classic - Bountiful Ridge GC - Bountiful, UT  
**July 17-19, 2021** - Oregon (OFA) Annual Conference - Sunriver Resort - Sunriver, OR  
**August 4-6, 2021** - Idaho (IPM&CSA) Convention - Sun Valley Resort - Sun Valley, ID  
**August 23-25, 2021** - New Mexico (NMPMA) Convention - Sandia Resort & Casino - Albuquerque, NM  
**September 15-17, 2021** - Utah (UPMRA) Convention - Sheraton Park City Hotel - Park City, UT  
**February 22-24, 2022** – WPMA Convention & Expo – Mirage Hotel– Las Vegas, NV

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**Petro Pete: *"I've reached the age where my train of thought often leaves the station without me."***

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If you do not wish to receive information via fax or e-mail, please contact WPMA at: (801) 263-9762, Fax: (801) 262-9413, or e-mail: [janr@wpma.com](mailto:janr@wpma.com). Thanks.