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September 2012 **Number 617**

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From the President ...

To say that we are thrilled with our **"new digs"** is an understatement. Board Chairman Jim Oppe and his wife, Becky, Board Members Pat Graney, Mike Graney and Jim Linsenmeyer have all stopped by and were very pleased with the renovations and work that has been done. It's been a nearly overwhelming project that began early in June. We've replaced 69 windows, 7 exterior doors, added a driveway in front, added five fire doors in the interior, stripped paper, painted, refinished wood floors, remodeled the kitchen and added an entertainment area plus much, much more. It was originally built in 1925 and has so much character and many wonderful features.

The work isn't complete yet but as they say, "We are close enough for government work." We still have the fencing to replace, lines to be put on the parking lot, signage added out front and lots of pictures to hang and decorating to do.

The close proximity to the Capitol is a real asset. We are certain that this new location will serve us very well in the years to come. I hope you will come and visit. An Open House will be held later in the year once we get the finishing touches added. We'll post some photos on the Web site as well in the next few weeks.

We appreciate your patience during our move.

Our **Make-Wish Charity Golf Outing** is less than two weeks away at Stonewall Resort! The outing will be held on September 26th and the Awards Banquet will be held the evening prior to golf. If you have not signed up to be a sponsor of this event, please call the Association Office and do so today. A full list of sponsors for this event is listed on page 26. If you sold stars in your stores during the month of August, we need your sales totals into the Association Office ASAP.

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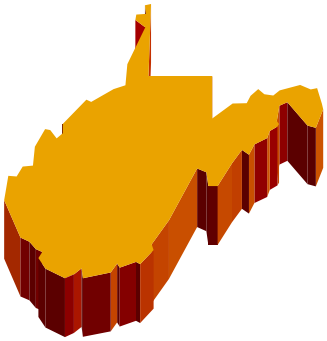

West Virginia News

Governor Tomblin's Blue Ribbon Highway Commission to Host First Meeting

Governor Earl Ray Tomblin has scheduled the first meeting of the Blue Ribbon Commission on Highways for Friday, September 14, 2012 at 10:00 a.m. in the Governor's Conference Room. The group is tasked with examining the condition and needs of the state's transportation system and developing a long-term strategic plan of action, including recommendations on funding. The Governor's Executive Order sets February 1, 2013 as the due date for the committee's recommendations.

Those appointed to service on this Commission are:

West Virginia Blue Ribbon Commission on Highways
Governor Earl Ray Tomblin

State Senate
Senator Bob Beach (D)
Senator Bob Plymale (D)
Senator Mike Hall (R)

House of Delegates
Delegate Margaret Staggers (D)
Delegate Josh Stowers (D)
Delegate Ron Walters (R)

Secretary of the Department of Transportation
Paul Mattox, P.E.

Secretary of the Department of Commerce
Keith Burdette

West Virginia Association of Counties
Commissioner Rick Handley
Mason County

West Virginia Municipal League
Mayor Richard Callaway
City of St. Albans

County Commissioners' Association of West Virginia
Commissioner Mike Taylor
Randolph County

West Virginians for Better Transportation
Joseph T. Deneault

Contractors Association of West Virginia
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Kenny Perdue

Affiliated Construction Trades Foundation
Gary Tillis

American Council of Engineering Companies of West Virginia
Gary Facemyer, P.E.

West Virginia Trucking Association
Fred C. Burns, Jr.

West Virginia Hospitality and Travel Association
Carol Fulks

Academic Community
Professor Tom Witt, Ph.D.
Professor Andrew Nichols, Ph.D.

Citizen Members

1st Congressional District
David Satterfield
Morgantown

2nd Congressional District
Mark Baldwin
Martinsburg

3rd Congressional District
Wally Thornhill
Chapmanville

The group's duties are clearly defined in the governor's Executive Order. They include:

- Analyze the overall structure and long-term needs of the state highway system;
- Research and analyze overall funding mechanisms;
- Actively involved the public to get their input in determining the adequate structure and financing of highway needs; research and define and equitable and adequate system to properly finance improvements to the state highway system; and
- Formulate a comprehensive West Virginia Highways Action Plan addressing the issues.

The final directive is to propose and recommend legislation for the 2013 Regular Session of the West Virginia Legislature.

The New Business Court

A Business Court created by the state Supreme Court is scheduled to start up soon. The plan was announced by Justice Robin Jean Davis on September 11th and is scheduled to go into effect October 10. The Business Court idea was first thought of in 2010.

The court will handle specialized cases in which the principal claims" involve matters of significance to the transactions, operations or governance between business entities" and the dispute involves "commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution."

Complex tax appeals will also be eligible to be heard by the Business Court. Any party or judge involved in a case can seek referral to the Business Court.

A judge will be assigned to each case that is sent to the court and will do his best to conclude business disputes within 10 months from the date the case management order was entered.

Circuit Judge Christopher Wiles of Berkeley County will serve as chairman of the new business court. Circuit judges James Rowe of Greenbrier County and Donald Cookman of Pendleton County also will serve on the court, starting Oct. 10. Circuit Judge James Young of Wayne County will take a seat on the new court on January 1. Eventually a total of seven active or senior status circuit court judges will serve on the Court.

State Revenue Collections Lagging

Coal production in West Virginia is down as much as eight percent when compared to this time last year. The reduction is impacting the state's revenue collections.

State Deputy Revenue Secretary Mark Muchow says state tax collections for August were approximately $14 million below estimates. He says collections for the state severance tax were $10 million below estimates.

Muchow says less coal is being mined for a variety of reasons and the price of coal has actually dropped.

"That's a little bit of a double whammy that way," Muchow said.

Most other taxes exceeded estimates for the month but there was one surprise according to Muchow.

"The personal income tax collections missed estimates by 13-point-9 million (dollars) and we believe there might be some one time factors there relating to a storm (the June 29th derecho) ," Muchow said.

It's believed there were a number of residents who didn't go to work for a few days following the results of the storm and the statewide power outages. Muchow says that would contribute to less revenue from state withholding taxes.

After two months of the new fiscal year the state now finds itself $16 million below revenue collection estimates. Muchow says the collections for September will say a lot about how the rest of the fiscal year will play out.

"In September we'll have the quarterly estimated payments on both the personal income tax and the corporate income tax....and it will be a better indicator of where we stand for the year," Muchow said.

State agencies will hand in their budget requests for next fiscal year to Gov. Earl Ray Tomblin's office this week. Tomblin has already asked the agencies to trim those requests by 7.5 percent in anticipation of state revenue shortfalls.

West Virginia Wrapping Up 2012 State Budget

The director of the state Budget Office reminded state lawmakers recently made a presentation to an interim committee that the Budget Office has made some recent decisions to spend one-time money to meet ongoing costs in the state budget. Director Mike McKown says it's good to have the one-time money but it's not the best of practices to spend it for a cost that's around every year.

McKown was before lawmakers to wrap-up the 2011-2012 budget year. He reported a $101 million surplus in the general revenue fund. McKown says $65 million went to Medicaid and $28 million to the Rainy Day Fund. He says the state has $6.4 million left from general revenue and another $81 million left from Lottery funds.

"That gives you about 87, 88 million dollars in unappropriated money," McKown said. "That's on the table today, cash in the bank, there available to be appropriated." That money could be gobbled up quickly considering the budget challenges the state faces in the current budget year and those beyond. McKown told lawmakers there are many unanswered questions. McKown says the state's two Rainy Day funds have a total of 883 million dollars. There have been no expenditures there since a flood in 2008. He says other states have already gone through their Rainy Day funds. McKown says the money wouldn't last long though if the state had to spend it.

State agencies recently turned in their requests for next budget year. Gov. Earl Ray Tomblin told the agencies to cut those requests by 7.5 percent.

FDA Announces New Compliance Check Inspection Notice

The FDA early in September hosted a compliance training webinar for retailers and announced the use of a new Compliance Check Inspection Notice if a minor was able to enter a retail store and purchase a regulated tobacco product. You can review the power point from this webinar at http://www.cspnet.com/sites/default/files/FDA%20Webinar%20Slides%20(Compliance%20Inspectioin%20Notifications).pdf.

Currently, the FDA has contracted with 37 states and the District of Columbia to conduct retail compliance inspections. **West Virginia is one of those states.**

The FDA conducts two kinds of retail inspections. One type of inspection involves the use of a minor under the supervision of a trained inspector who enters a retail store and attempts to purchase cigarettes, roll-your-own (RYO) cigarette tobacco or a smokeless tobacco product. For this type of inspection, the retailer is not informed prior to the inspection that an inspection will occur and the retailer may not be informed that an inspection occurred at the time the inspection takes place.

The second kind of inspection may not involve a minor and is conducted to determine whether a retail establishment is complying with all of the other FDA tobacco regulations. In this type of inspection, a FDA inspector may announce himself or herself to the store manager at the time the inspection occurs and the store personnel may be asked questions by the inspector.

If a minor is able to purchase a regulated tobacco product during the compliance inspection, the FDA will now send to the retailer a "Compliance Check Inspection Notice" after the inspection occurs. The FDA will be sending these new notices out to inform a retailer that a potential violation occurred at their store due to the sale of a tobacco product to the minor and to inform the retailer of the date and approximate time that the inspection occurred.

The notice will also indicate that the FDA's Center for Tobacco Products will review the inspector's report and determine whether the retailer violated the federal tobacco regulation prohibiting the sale of tobacco products to a minor. If so, the FDA will follow up by sending either a warning letter to the retailer or a notice that the FDA is seeking a fine. The warning letter or fine notice will explain how a retailer may respond to such a warning letter or fine notice.

As we reported in our August Newsletter, while the nation's violation rate has decreased. West Virginia's has INCREASED. In 2010, our violation rate was 11.4%. In 2011, 14.6%. This is not acceptable. We are not doing a good job. We must do a better insuring we are not selling tobacco products to minors.

Free Equipment and Resources for Healthier Choices

KEYS 4 HealthyKids is partnering with the Kanawha Charleston Health Department (KCHD) Community Transformation Grant (CTG), to assist in increasing community member's access to healthy food and beverage options. The goal is to increase the number of community retail venues that provide healthy food and beverage. KCHD CTG will work with local grocery and convenience store owners to expand Healthy Checkout Aisle Initiatives to support healthy food and beverage options, especially fresh fruits and vegetables availability in local grocery and convenience stores. Together, we are looking for locations within Kanawha County, West Virginia to participate in our Healthy Corner Store Project.

CTG is looking to increase their present partnerships with convenient stores, grocery stores, super markets and gas stations. These stores play a key role in our grant's initiative to improve access to fresh fruits and vegetables and we are looking for innovative ways to increase access to healthy items. Our partnership efforts will strive to improve the healthy choice being the easy choice with these healthy items being strategically placed in convenient stores, supermarkets and gas stations.

KEYS 4 HealthyKids is one of 49 communities nationwide to have been selected to participate in the Healthy Kids, Healthy Communities Program, sponsored through the Robert Wood Johnson Foundation. The Robert Wood Johnson Foundation hopes to reverse the trend of childhood obesity by year 2015 by increasing children and families' access to healthy, affordable foods and places to play and be physically active.

KEYS 4 HealthyKids does not conduct programming. Instead we focus on changing the environment where people live, work, learn and play, to make it easier for residents to make healthier choices. We have learned from our conversations with families here in Kanawha County that their food choices are sometimes dictated by "what is on the shelves" at their local market. And some families do the majority of their grocery shopping at their local corner store since it is within walking distance from their home.

KEYS 4 HealthyKids hopes you'll consider joining us in an effort to put healthy food and beverage options within easy reach of our citizens---your customers. To help make this possible, we have five small refrigerator units just waiting to find a home in your check-out areas! The units are small enough to save valuable space but big enough to make a bold statement to "choose a cold, refreshing bottle of water" as a healthy alternative to quench their thirst. There is no cost for the units, just an agreement to use them for healthy options only--- at a price point that would encourage purchases.

The healthy check-out project is intended to help spread our healthy lifestyles message for children, parents and families---- a simple daily formula of 5-2-1-0. This means that each day children should have 5 servings of fruits and vegetables, no more than 2 hours of screen-time (TV, video games, computer), at least 1 hour of physical activity, and 0 sugar-sweetened beverages! Each refrigerated unit will be marked with this 5-2-1-0 message.

The collaborative efforts between Keys 4 HealthyKids and the KCHD CTG will encourage and promote children making healthier choices. When children make healthier choices, those choices lead to healthier lifestyles, which lead to longer life.

This initiative offers a variety of store displays. We offer refrigerator units, metal basket spinner racks, 5-tube (wicker) displays and signage (5-2-1-0 and Healthy choice the easy choice). Additional funds may be available. If your store is interested in learning more about this "healthy check-out" opportunity, please contact Mark Newland at the KCHD Division of Health Promotions at 304-348-6489 x-2021.

WV Golden Mountaineer Card

The West Virginia Bureau of Senior Services is preparing to reintroduce the WV Golden Mountaineer Card. They are extending the opportunity to retailers to participate in this valuable program for seniors.

If you are interested in participating, an application is available on our Web site at www.omegawv.com or for more information, please contact the Bureau at 304.558.3317 or visit their web site at www.wvseniorservices.gov.

UST Worker Certification

The DEP UST Section has sent letters out reminding certified workers who are scheduled to expire this year of the process and deadline date for removal. If you haven't received your letter, please let me know and we can get another out to you if you need it. In the meantime, here is the information.

Applications for certificate renewal and payment of the $50.00 renewal fee must be submitted to the attention of Debbie Peters (UST Section) by November 1 of the year in which the certificates expires. You must submit documentation of your participation in at least one (1) job in the prior certification periods that is applicable to the class of certification you are seeking (if you are seeking certification in A and B, then you would have to provide information that you did both installing (A) and removing work (B)). You must complete 16 hours of continuing education training courses from an approved training vendor. Only 8 of the 16 hours can be in the field of safety and health. The continuing education courses must relate to the class of certified worker you are (i.e. a class on tank removals would not be acceptable for a person who is only seeking to renew their Class A installer certification). Eight hours of safety can apply towards any certification category.

OMEGA will host a two-day UST Re-Certification Training Class for A, B & C Licensees on October 23rd and 24th at the Charleston Civic Center. Please let us know if you need additional information.

Get Out the Vote!

November 6th

What Will the Elections Mean to Your Business?

On Election Day, voters will cast ballots for the president, House of Representatives and the Senate as well as Governor, Attorney General, Two members of the Supreme Court, 17 members of the WV State Senate, 100 Delegates and more. Please be an informed voter…if you need information on candidates please feel free to call the OMEGA Office.

Many people think the National Labor Relations Board only polices employer/union relations. They are wrong. The Obama Labor Board has mounted an increasingly aggressive agenda targeted at non-union workers in order to expand organized labor's influence with non-union employees.

For example, the Board's agenda has included the notice posting requirement. The Board also has gone on the attack in scrutinizing employer attempts to control social media activity or employees. The Board has even taken the position that it is unlawful as a matter of course to ask employees interviewed as part of an internal investigation not to discuss the matter with coworkers.

The latest example of the Board's proactive non-union agenda involves at-will disclaimers, frequently found on employment applications and in employee handbooks, and often acknowledged in writing when an employee joins a non-union workforce. The intent of these disclaimers has always been to inform employees that no employment policy or handbook constitutes a contract of employment, and that no job should be construed as permanent or lifetime in nature. Typically, the at-will disclaimer states that there must be a written document signed by an officer of the company in order for an employment contract to exist. These disclaimers are very useful in defending employers against various types of state and common law claims.

Now the Board has decided that these disclaimers are unlawful if they are drafted in such a way that they arguably chill concerted, or union, activity. In American Red Cross Arizona Blood Services Region, the Board took issue with a statement in the disclaimer that "the at-will relationship cannot be amended, modified or altered in any way." Obviously, if the employees voted a union in and a collective bargaining agreement is subsequently negotiated, the at-will relationship would be modified. That obviously was not the situation the disclaimer contemplated. Nonetheless, the Administrative Law Judge concluded that the disclaimer was unlawful as it may be construed by employees to represent a promise or commitment not to make any effort to obtain union representation.

In Hyatt Hotels Corp., the Board's General Counsel again attacked the lawfulness of the at-will disclaimer signed by an employee when he received his copy of the employee handbook. A complaint was issued alleging that the disclaimer interfered with the employee's right to engage in concerted activity. The case settled before it was tried, but the Board's position echoed its approach in the Red Cross case.

So what are the takeaways for employers from American Red Cross and Hyatt?

- Employers need to be aware that the Board will carefully scrutinize disclaimers - and other employer policies - to determine whether they have the potential to chill employees interest in concerted activity – e.g., talking about or advocating for a union;
- While disclaimers are still too valuable to employers to abandon because they serve a legitimate purpose, having nothing to do with collective action, it is worthwhile to review, and if necessary revise, your at-will language to make clear that an employee's right to engage in concerted activity are not affected. One way to accomplish this is to avoid attempts to secure from an employee an affirmation of his or her "at-will" status while at the same time specifically setting forth limitations on the employee's ability to change that status; and
- It remains lawful merely to inform employees that their employment is at-will, and that no personnel policies or other employment-related documents create any type of contractual obligation.

In light of the Board's continuing attempt to get involved in non-union settings, all employers would be well advised to review their employee communications – including, but not limited to, their at-will disclaimers – and exercise caution when drafting or applying them in a way that could be interpreted as restricting an employee's right to organize and bargain collectively.

Federal Issues

Cost Study Says Business Taxes Are Up Again

The Council on State Taxation has issued its tenth annual report, Total State and Local Business Taxes, tabulating the taxes that businesses in general pay at the state and local levels. Overall, those taxes increased by 4.5 percent in fiscal year 2011 over the year before, to a total of some $644 billion. In both FY '09 and FY '10, this total had dropped on account of the recession. But the study shows quite a discrepancy between state and local tax collections last year. State taxes, with sales taxes the largest part, were up nearly 10 percent, while local taxes paid were down about 1.5 percent. This is due to the drop in taxes on business property – which forms the largest component of all taxes on business – and the heavy reliance of most local governments on the property tax. Adjustments in property tax administration and collections lag those of other taxes in bad economic times, and local governments are now feeling the consequences.

U. S. Chamber of Commerce Issues State Lawsuit Climate Rankings

The Institute for Legal Reform of the U.S. Chamber of Commerce has issued its ninth ranking of the civil liability systems of the fifty states. The ranking was determined by a poll of senior business attorneys and executives, who were asked to rank state tort systems as a whole. Each was also asked about the relative merits – or lack of them – of the states when it comes to various topics of tort litigation and tort reform, and which localities were the worst in which to face litigation. Overall, the executives regarded the nation's tort system as significantly better than in earlier years, with fully half the states graded A or B. The worst states this year (from the bottom up) are **West Virginia,** Louisiana, Mississippi, California, Illinois, and Montana; while the best (from top down) are Delaware, North Dakota,

Nebraska, Indiana, Iowa, and Virginia. All of the worst states were also the worst in the Institute's last ranking two years ago, except that Alabama has risen out of that category, and been replaced by Montana. On the other end, Delaware is perennially number 1. The worst locality to be sued is still Cook County, Illinois (Chicago), with Los Angeles still second, both by large margins over anywhere else. Local rankings are apparently on the basis of respondents' impressions that these forums issue biased judgments. Aside from the rankings themselves, the major conclusion from the study appears to be that corporate counsel believe a state's tort system affects business decisions such as whether to locate or expand a facility there. The full study may be found here.

Proposal to Curtail Pre-Employment Criminal Background Checks Introduced in the House

Just prior to Congress breaking for the August recess, lawmakers introduced legislation (H.R. 6220) that would make it unlawful for an employer to ask job applicants whether they have ever been convicted of a crime until after a conditional offer of employment is made. The measure, entitled the Ban the Box Act, was introduced by Rep. Hansen Clarke (D-MI). H.R. 6220 would provide a limited exception for employers' reliance on criminal background checks if offering an applicant a job "may involve an unreasonable risk to the safety of specific individuals or to the general public."

The bill would direct the Equal Employment Opportunity Commission (EEOC) to issue regulations defining the categories of employment applicable to the limited exemptions and factors that employers would consider in assessing whether an individual's past criminal history poses an unreasonable risk. H.R. 6220 has been referred to four House committees (Education and the Workforce; Administration; Oversight and Government Reform and Judiciary), though it remains doubtful that the proposal will see any consideration.

Most Americans Oppose Raising the Gas Tax

A majority of Americans believe new transportation projects should be paid for with user-fees instead of tax increases, according to a new national Reason-Rupe poll of 1,200 adults on cell phones and land lines, says the Reason Foundation.

- The Reason-Rupe poll finds 77 percent of Americans oppose increasing the federal gas tax, while just 19 percent favor raising the tax, which is currently 18.4 cents a gallon.
- The public thinks the government wastes the gas tax money it already receives.
- Sixty-five percent say the government spends transportation funding ineffectively, and just 23 say the money is spent effectively.

The survey shows Americans believe new roads and highways should be paid for by the people driving on them:

- Fifty-eight percent of Americans say new roads and highways should be funded by tolls.
- Twenty-eight percent say new road capacity should be paid for by tax increases.
- The Reason-Rupe poll finds broad support for user-fees.
- If a toll road would save drivers a "significant" amount of time, 59 percent of Americans say they would pay to use it.
- And 57 percent favor converting carpool lanes, or high-occupancy vehicle (HOV) lanes, into high-occupancy toll (HOT) lanes.
- Voters are much-less supportive of variably-priced toll lanes, however -- half of those surveyed oppose, and 39 percent favor, variably-priced tolls that rise and fall with traffic levels.

As governments at all levels look for ways to pay for transportation projects, public officials should note that 55 percent of Americans support using public-private partnerships to build critical infrastructure projects. Just 35 percent oppose using public-private partnerships to fund highways, airports and other infrastructure.

Bureau of Labor Statistics Update

The U.S. Bureau of Labor Statistics (BLS) reported that in June private employers spent $1.02 per hour worked for employee retirement benefits. Private industry employers spent an average of $28.80 per hour worked for employee compensation in June 2012. Wages and salaries averaged $20.27 and benefits averaged $8.52, of which retirement and savings plans averaged $1.02 per hour worked.

The BLS recently released survey data that shows 90 percent of wage and salary workers during 2011 had access to paid or unpaid leave in their primary jobs. BLS further reported that twenty-one percent of wage and salary workers took paid or unpaid leave during an average week while fifty-six percent of workers were able to adjust their work schedules or location instead of taking leave or because they did not have access to leave.

Other key findings in the BLS survey found that men and women were equally likely to have access to paid or unpaid leave in their main jobs. According to BLS, ninety percent of men had access to paid or unpaid leave compared with 91 percent of women. By occupation, workers in management, business and financial operations were the most likely to have access to paid leave, the BLS reported. The BLS survey also showed that seventy-six percent of workers in the public sector had access to paid leave, compared with 57 percent of private-sector workers.

Administration Releases Important Notices to Implement Affordable Care Act (ACA) Employer "Shared Responsibility" Provisions

Recently The Department of Treasury, in coordination with the Departments of Labor and Health and Human Services, released two important Notices (both attached) related to implementing the employer "shared responsibility" provisions of the Affordable Care Act (ACA):

- Notice 2012-58 outlining safe harbor methods that employers may use in determining which employees are considered as full-time and therefore required to be offered employer-sponsored health insurance. Notice 2012-58 also provides a safe harbor for demonstrating a plan's affordability to employees based on Form W-2 wages.
- Notice 2012-59 providing guidance on the application of the ACA's 90-Day Wait Period Limitation for providing health coverage benefits
- The Notices' guidelines are to be in place through at least the end of 2014. Comments are requested by September 30, 2012.

For reference, under the Patient Protection and Affordable Care Act (ACA; PL 111-148), beginning in 2014, "large employers" (50 full-time + full-time equivalents) must offer coverage to their full-time employees (averaging 30 hours/week) that is "affordable" and of a "minimum value" or pay tax penalties for those employees who receive tax credits for Exchange coverage.

From an initial reading and conference call with Administration officials, we have learned the following:

Notice 2012-58 allows employers " to use a look-back measurement period of up to 12 months to determine whether new variable hour employees or seasonal employees are full-time employees" without being subject to a penalty. Employers are expected to then offer health coverage to eligible full-time employees for a "stabilization period," a length of time that matches the time used under the look-back period. The look back period is also to be used to make an initial determination of current employees' status for health coverage required to be offered, effective January 1, 2014, as well as on a subsequent regular basis. The Notice also allows for an "Administrative Period" between the completion of the look-back period and effective coverage. For new employees who are reasonably expected to work full-time (30-hours/week), an employer is required to offer health coverage within the first three months of employment. An employee is considered a "variable hour employee if, based on the facts and circumstances at the date the employee begins providing services to the employer (the start date), it cannot be determined that the employee is reasonably expected to work on average at least 30 hours per week." Further clarification and examples of variable hour employees and seasonal employees is provided in the Notice and subject to comments. The 30-hours-per-week average reflects the statutory definition of full-time employee in § 4980H(c)(4) of the ACA and is the definition of "full-time employee" as used in this notice.

Notice 2012-58 also provides a safe-harbor under the ACA's "affordability" requirements for employer offered health coverage. Employers who can demonstrate that self-only coverage offered to employees does not exceed 9.5 percent of an employee's Form W-2 wages will not be subject to a penalty. Subject to comment, the Notice's guidelines will be in place through at least the end of 2014. Comments are requested by September 30, 2012.

Notice 2012-59 provides guidance on the ACA's limitation of up to a 90-day waiting period upon providing health coverage to an employee. The Notice clarifies that the 90-day waiting period does not begin until an employee is considered eligible for employer-sponsored health coverage. Therefore, if an employer were to use the "look-back" period referenced in Notice 2012-58 for variable hour employees, health coverage would not be required to begin until up to 90-days after the employee is considered full-time or eligible under some other work requirement but no longer than 13 months from the date of hire. The Notice also provides further guidance and examples. Example 4 on Page 4 of the Notice provides guidance for how the waiting period applies to employers offering coverage to part-time employees by allowing for up to a 1,200 cumulative hours of service requirement. The guidance is expected to remain in place through at least the end of 2014. Comments are requested by September 30, 2012.

While we will review both Notice 2012-58 and Notice 2012-59 more thoroughly for further clarification and comments, please note that these Notices are very responsive and incorporate much of the comments filed and raised in meetings over the past 18 months by FMI through the Employers for Flexibility in Health Care. FMI is an Executive Committee member involved in the drafting of comments and strategy decisions for the EFHC. We

have also attached a brief summary provided by Washington Counsel Ernst & Young, which administers the EFHC. Again, we strongly encourage you to review the Notices with the appropriate Benefits staff.

Food Marketing Institute (FMI) issued the following statement by Senior Vice President of Government and Public Affairs Jennifer Hatcher on important employer guidance released last week by the Administration under the Affordable Care Act (ACA). The White House and Departments of Treasury, Labor and Health and Human Services offered guidance to employers on how to determine which of their employees are considered full-time and eligible for employer-sponsored health coverage, as mandated by ACA.

"While food retailers' compliance costs associated with ACA's employer mandates will still be very significant, Notice 2012-58 and Notice 2012-59 are positive steps for food retailers within the scope of health coverage law. Still, with ACA's employer mandates effective in less than 18 months and many other aspects to employer-sponsored coverage yet to be released, FMI members need a transition period without being subject to penalty in order to evaluate all of ACA's coverage rules in their entirety and to properly adjust plan designs to comply with the law's regulations. We will continue to work with the Administration and Congress to address food retailers' concerns with implementation of the ACA's employer coverage mandates. We also remain concerned that ACA's defining full-time employees as those averaging 30-hours per week could have far-reaching consequences to how food retailers manage their workforce and employee benefits well beyond health care, and we wish to work with Congress to address this issue."

U.S. Health-Care System Wastes $750 Billion a Year

A new report by the Institute of Medicine reveals how inefficiencies, an overwhelming amount of data, and other economic and quality barriers are threatening the nation's economic stability and global competitiveness.

Don't discount the health-care discussion anytime soon. Long after the November 6 elections, the pains of health-care costs will continue.

A recent report by Institute of Medicine has revealed that the U.S. health care system "squanders $750 billion a year — roughly 30 cents of every medical dollar — through unneeded care, byzantine paperwork, fraud and other waste," writes the *Washington Post.* "Health care in America presents a fundamental paradox," said the report, which was compiled by an 18-member panel of prominent experts including doctors, business people and public officials. "The past 50 years have seen an explosion in biomedical knowledge, dramatic innovation in therapies and surgical procedures, and management of conditions that previously were fatal ... Yet, American health care is falling short on basic dimensions of quality, outcomes, costs and equity."

The report says that if banking worked like our current health care system, ATM transactions would take days, and if home building were like health care, carpenters, electricians and plumbers would work from different blueprints and hardly talk to each other. For shopping, prices would not be posted and could vary widely within the same store, depending on who was paying. And for airline travel, pilots would be free to design their own preflight safety checks — or not perform one at all.

The report identified six major areas of waste: unnecessary services ($210 billion annually); inefficient delivery of care ($130 billion); excess administrative costs ($190 billion); inflated prices ($105 billion); prevention failures ($55 billion), and fraud ($75 billion). Adjusting for some overlap among the categories, the panel settled on an estimate of $750 billion. And to put $750 billion in perspective, the Post writes: "The one-year estimate of health-care waste is equal to more than 10 years of Medicare cuts in Obama's health-care law. It's more than the Pentagon budget. It's more than enough to care for the uninsured."

"The threats to Americans' health and economic security are clear and compelling, and it's time to get all hands on deck," said committee chair Mark D. Smith, president and CEO, California HealthCare Foundation, in a press release. "Our health care system lags in its ability to adapt, affordably meet patients' needs, and consistently achieve better outcomes. But we have the know-how and technology to make substantial improvement on costs and quality. Our report offers the vision and road map to create a learning health care system that will provide higher quality and greater value."

Convenience Store News

NACS Urges Support for Menu-Labeling Bill

NACS members can help protect against costly and burdensome menu-labeling regulations by asking their representatives in Congress to support the Common Sense Nutrition Disclosure Act.

Foodservice is a significant profit center for many convenience store operators, which is why NACS continues to fight on behalf of the industry against pending regulations that would require convenience stores to label the nutritional content of the foods they sell.

The U.S. Food and Drug Administration FDA has proposed a rule, as mandated in the health-care law, that would require labeling if the food sold in a store — including prepackaged products and products already labeled by the manufacturer — comprise more than 50% of the store's floor space. NACS has been pushing back on the proposal and worked with legislators and other food-related industries to help bring legislation to Congress that would allow the FDA to meet the objectives of the menu-labeling law without unnecessarily burdening retailers that rightfully should be outside of the scope of the law.

Authored by U.S. Rep. John Carter (R-TX), H.R. 6174, Common Sense Nutrition Disclosure Act seeks to limit the provision in the health-care law to establishments that derive 50% or more of their revenue from food that is intended for immediate consumption or prepared and processed on-site. Prepackaged food would not be considered in this equation.

Urge your representative in Congress to add their name as a co-sponsor to H.R. 6174 today. If you have any questions about the legislation, contact NACS Government Relations Director Carin Nersesian.

Federal Court Ruling Allows Wine/Liquor Sales in KY Food and Convenience Stores

The United States District Court for the Western Region of Kentucky has ruled that not allowing food and convenience stores to obtain wine and liquor licenses, while allowing other stores to hold licenses, is unconstitutional. The Court ruled that the ban is in violation of the equal protection clause in the Kentucky Constitution and the 14th Amendment of the U.S. Constitution. This decision will end the decade's old ban on food stores, convenience stores and gas stations from holding liquor and wine licenses in Kentucky. Ted Mason, Executive Director of the Kentucky Grocers Association, commented, "We've been unfairly excluded from being able to obtain and apply for liquor licenses that may be available in an area. And now the grocers will be able to compete in that marketplace."

Kentucky will retain its current three-tier alcohol distribution system. Food and convenience stores which obtain a retail package wine and spirits license will follow the rules currently administered by the ABC.

This decision is the result of a 2011 federal lawsuit filed by Maxwell's Pic-Pac, a Louisville grocery store, and the Food with Wine Coalition, which includes the Kentucky Grocers Association among its members. Kentucky is now one of 36 states that allow consumers to purchase liquor and wine in food stores and convenience stores.

For a copy of the ruling and the Kentucky Grocers Association's press release, see the following link: http://www.kgaonline.org/morenews.cfm?news_id=11786.

Consumer Bank Fees Unrelated to Swipe Fees

The monthly service fees that banks charge consumers are unrelated to debit swipe fees, notes the Merchants Payments Coalition, analyzing data from Moneyrates.com and Bankrate.com.

WASHINGTON – The monthly service fees banks charge consumers are unrelated to debit card swipe fees, according to an analysis of data released by Moneyrates.com and Bankrate.com.

The Merchants Payment Coalition (MPC) conducted the analysis, noting that the findings run counter to claims by banks and card companies, which maintain that the Durbin Amendment has forced them to increase the fees that they charge consumers for services.

"Swipe fees have tripled over the last decade, but that certainly hasn't resulted in consumer checking fees getting cut by a similar amount," said Tom Wenning, executive vice president and general counsel of the National Grocers Association, an MPC member.

Indeed, according to Bankrate.com data, both swipe fees and checking account fees increased for the past six years, from 2005 to 2011. During that time, checking fees increased from a monthly average of $11 to $14 per account, while revenue from swipe fees increased from roughly $30 billion to $60 billion.

Meanwhile, a Moneyrates.com survey showed that big banks did not raise checking fees as much as the small banks that were exempted from debit reform, Wenning said.

According to MPC, the Bankrate.com and Moneyrate.com surveys demonstrate that checking fees are not affected by swipe fees: "Checking fees have their own competitive market dynamics, while swipe fees are centrally price-fixed by credit card companies," the coalition wrote.

Survey data from Moneyrates.com reveal the following:

- Small banks, which were exempt from reform and didn't have swipe fee revenue reduced, raised consumer fees by 5.52% in the first half of 2012 – almost a full percentage point more than large banks whose swipe fees were reduced.
- Large bank checking fees are almost unchanged post-reform.
- More large and medium size banks abolished monthly service fees after debit reform.

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Durbin Amendment Clarification

We had a question in the OMEGA Office regarding when a business could charge a credit price and a cash price at their business. We spoke with NACS who provided the following in formation on the Durbin Amendment:

On July 15, Congress passed the Wall Street Reform and Consumer Protection Act, H.R. 4173 ("the legislation"), which will be signed into law by the President on July 20, 2010. The legislation directs the Federal Reserve Board ("the Fed") to write rules relating to interchange fee rates on debit cards. Historically, interchange fee rates have been set by card companies on behalf of their member banks in cartel-like fashion without any regulation.

In addition to interchange fee regulation, the legislation allows merchants to set a minimum dollar value for accepting credit cards, choose which network will process their transactions, and offer discounts and incentives to customers based on the form of payment they use (for example, a merchant can offer a discount to customers for using a debit card or cash).

Over the next nine to twelve months, the Fed will issue a series of rules that will clarify how the new law will work. This memorandum explains the provisions of the legislation and how the legislation will affect your business.

Regulation of Interchange Fees

Under the new legislation, the Fed will write rules regarding interchange fee rates. Card issuers will only be allowed to charge interchange transaction fees on debit card purchases that are "reasonable and proportional" to the cost of processing the transaction. Within the next nine months, the Fed will issue regulations that establish specific guidelines for determining whether a fee meets the "reasonable and proportional" standard. These regulations will become effective one year after the legislation is signed into law.

There are several open questions for the Fed to resolve during this rulemaking. For example, the Fed will need to provide guidance regarding the issuer's cost of processing a transaction, determine which costs may not be considered, and explain how to determine when an interchange fee rate is "reasonable and proportional" to the transaction costs.

The Fed may adjust the interchange fee rate for a particular card issuing bank if the bank can demonstrate that the adjustment is reasonably necessary to cover its fraud prevention costs. The Fed will issue additional rules on fraud prevention that clarify how a bank can attain certain adjustments to the interchange fee rate. Adjustments will only be available to issuers that follow the Fed's forthcoming rules on fraud prevention. These rules will require issuers seeking an adjustment to take steps to reduce the occurrence and costs of fraud in electronic debit transactions. The steps will include using cost-effective fraud prevention technology. As with the overall regulations regarding debit card interchange fees, the regulations regarding adjustments for fraud prevention are scheduled to be published within nine months of the date of enactment of the legislation.

There are several exemptions from the new regulation of interchange fees. Small issuers with assets valued at less than $10 billion will be exempt from the rules on debit card fees. Additionally, the legislation exempts debit and prepaid cards issued as part of a federal, state or local government benefits program. Privately issued prepaid cards will also be exempt so long as they meet certain requirements limiting the types of fees they charge consumers. The Fed will issue an annual report on government pre-paid cards and the fees charged with respect to those cards, which may provide a factual basis for re-examining these exemptions in the future.

The legislation also provides the Fed with the explicit power to get information it needs to write these rules. The Fed may request necessary information from the banks that issue cards and the card networks. Further, every two years the Fed will publish a report on the relevant charges and costs of interchange fees to ensure that this information is available to the public.

Network Fees
Under the new legislation, the Fed will be able to regulate network fees charged on debit card transactions – that is, the fees charged by Visa, MasterCard and Discover as opposed to those charged by card issuing banks – but will only be able to do so for limited purposes. The Fed's regulations will ensure that network fees are not, in any way, used to compensate issuers or otherwise circumvent its regulations relating to interchange fees. The Fed will have nine months from enactment of the legislation to write regulations regarding network fees, and those regulations will become effective twelve months after enactment.

Routing of Debit Transactions
Within one year of enactment of the legislation, the Fed will also write rules regarding the networks over which debit transactions may be routed. Networks and issuers have with increasing frequency entered into deals limiting the number of networks over which debit card transactions can be routed to a single network. The new rules will address this practice by doing two things. First, the Fed will prohibit networks and issuers from limiting the networks over which a debit card can be routed to only one network (or multiple networks that are affiliated as part of the same corporate family). This will ensure that debit cards do not have exclusive arrangements and that some competitive choice exists in routing all debit transactions. Second, the Fed's rule will ensure that merchants will be able to choose the network over which their transactions will be routed (from among the choices available for each card).

There are many issues for the Fed to contemplate and address as it implements these two requirements, but having this type of pricing competition on every debit transaction will be of tremendous benefit to merchants.

Network Restrictions
As soon as the legislation is signed into law, networks will no longer be able to penalize merchants for offering discounts or in-kind incentives to customers who use the form of payment preferred by the merchant. That preferred form of payment may be debit cards, checks, cash, or even credit cards, depending on an individual merchant's preference. It is important to note that networks will be able to require that the discounts be neutral with regard to the card network or card issuer. That means, for example, that a merchant could offer a certain percentage or dollar discount for using any debit card, but likely will not be able to limit that discount only to Discover Cards (to take one example) or to debit cards issued by a particular bank. Retailers should also be aware that discounts will have to comply with state and local pricing laws, many of which require discounts to be generally offered to all customers, and be clearly and conspicuously disclosed.

Another provision that takes effect as soon as the legislation is enacted will end the card networks' rules that prevent merchants from setting minimum dollar amounts for credit card purchases. Therefore a retailer can set a minimum dollar amount for credit card purchases, so long as the minimum amount is $10 or less. The Fed can, however, increase that dollar amount in the future. As with the discounting provisions, this provision does not guarantee merchants the right to have minimums for some credit cards (for example, those of a particular network or bank issuer) and not for others. It is expected that, due to card network rules, the minimum will need to apply equally to all credit cards or not apply at all.
Enforcement

The new legislation will be enforced by the Federal Trade Commission, but criminal penalties will not be available.

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Oil Marketers Update

Lawsuit Against Confusing Shipper Safety Guidance

A lawsuit filed this summer in a U.S federal appeals court by shippers and small carriers argued that the Federal Motor Carrier Safety Administration's (FMCSA) Compliance Safety, Accountability (CSA) program is seriously flawed and needs to be removed from public view. Shippers argue that the shipper guidance under the CSA program is confusing and places the burden of liability on them because FMSCA's guidance tells them to rely on CSA safety data but, at the same time, tells shippers to evaluate other safety factors before choosing a carrier. Small carriers argue that the guidance places them at a disadvantage because the confusing regulatory guidance may unfairly make them look unsafe for business and potentially force shippers to not use them.

According to FMCSA, CSA's data is used by the agency when they need to visit a carrier with a compliance problem rather than issuing an overall safety fitness determination (SFD) which is a more serious violation. FMCSA doesn't use the CSA program to issue a SFD to determine whether carriers are safe to hit the roads. FMCSA issues a SFD when determining what course of action the agency will take against the carrier/driver, based on the carrier/driver's score, when compared to predetermined thresholds. Shippers are concerned that, even though carriers might receive a satisfactory or conditional SFD, it doesn't mean the carrier is safe and could leave shippers liable in accident lawsuits.

CSA uses two years worth of data to analyze carriers and drivers in several areas including inspection violations and crashes. Small carriers believe CSA program's facts are unreliable, and, in many cases, not factual, which unfairly labels them as unfit to haul goods and services. All parties in the lawsuit agree FMSCA needs to return to the drawing board and submit shipper guidance to the federal rulemaking process to establish a fair and transparent record.

E15 Lawsuit Tossed by Federal Appeals Court

Recently a federal appeals court dismissed an E15 lawsuit sought by several big name trade associations including American Petroleum Institute (API), the American Fuel & Petrochemical Manufacturers (AFPM), Alliance of Automobile Manufacturers (AAM), the Outdoor Power Equipment Institute and a host of food industry associations. The petitioners claimed that EPA's E15 approval would harm their members. However, Chief Judge David Sentelle wrote, in his opinion, that the groups lacked legal standing because they didn't prove that E15 would cause injury or immediate harm to their operations. AAM said that E15 would damage engines subjecting them to liability while API and AFPM argued that the Renewable Fuels Standard (RFS) would eventually force their member companies to supply E15 to avoid hitting the "ethanol blend wall."

The appeals court dismissed their arguments on the basis that EPA's E15 approval is not a mandate, but simply permits them to offer the fuel. Additionally, food groups have long argued that E15 would require more corn crop to be diverted to ethanol production which would increase the cost of corn, and, ultimately, the cost of food.

NatGas a Bridge to Fuel Cells?

Members of the American Gas Association (AGA), America's Natural Gas Alliance (ANGA), Honda and Chrysler are arguing that EPA should provide the same credit for natural gas vehicles (NGV) as it has proposed for electric vehicles (EV) in the vehicle greenhouse gas (GHG) rule for model years 2017-25. They argue that reducing NGV lifecycle GHG emissions is more cost-effective than other strategies. Further they argue that NGV will bridge the "gap" between petroleum-fueled vehicles and zero emission hydrogen fuel cell vehicles by leveraging petroleum infrastructure to build out refueling capacity for compressed natural gas (CNG) and hydrogen-powered vehicles. Because the Obama Administration has misgivings about all fossil fuels, it is expected that some in the White House oppose giving natgas vehicles more credits. The upcoming rule is expected to be released in the next few weeks and then we will know if the natural gas industry arguments prevailed.

Court Overturns Graphic Warning Mandate for Cigarette Packaging and Advertising

A divided U.S. Federal Court of Appeals invalidated a Food and Drug Administration (FDA) rulemaking requiring tobacco companies to place graphic images on their products warning of the dangers of smoking. The majority opinion stated that the requirements were a violation of free speech. The FDA rule, mandated by the Family Smoking Prevention and Tobacco Control Act of 2009, would have required nine written warnings such as "Cigarettes are addictive" and "Tobacco smoke causes harm to children" on product packages along with alternating graphic images designed to shock smokers into quitting. These written and graphic warning labels were scheduled to begin appearing next month. The images would have covered half the cigarette packaging sold at retail outlets and 20 percent of all cigarette advertising.

Shortly after the rule was published, tobacco manufacturers sued in federal court saying that the graphic images would dominate the packaging and damage the promotion of their brands. The 2-1 split U.S. Court of Appeals for the District of Columbia means that the FDA must now revise its rule.

"The First Amendment requires the government not only to state a substantial interest justifying a regulation on commercial speech, but also to show that its regulation directly advances that goal," wrote Judge Janice Rogers Brown. "FDA failed to present any data — much less the substantial evidence required under the federal law — showing that enacting their proposed graphic warnings will accomplish the agency's stated objective of reducing smoking rates. The rule thus cannot pass muster."

PMAA submitted comments opposing the graphic warnings during the initial rulemaking and will closely monitor and respond to the FDA's court-ordered revised rulemaking.

Alcohol and Tobacco Tax and Trade Bureau (TTB) to Begin Immediate Enforcement on RYO

The Alcohol and Tobacco Tax and Trade Bureau (TTB) will now enforce the law and require that any retailer who makes an RYO machine available to consumers must first obtain a permit bond, and pay a special (occupational) tax, comply with recordkeeping, reporting and inventory requirements, and pay all applicable taxes. If these conditions are not met, the retailer risks civil and criminal penalties.

PMAA Comments on Gas Can Litigation

Earlier this month, PMAA sent a letter to the House Energy and Commerce Committee in support of legislation, H.R. 6065, to minimize costly product liability lawsuits which have plagued the gas can industry in recent years. The legislation, introduced by Rep. Tom Cole (R-OK), would amend the "Children's Gasoline Burn Prevention Act" (CGBPA) to make all voluntary product ASTM standards mandatory six months after the date of enactment. The bill would enable portable container parties as well as retailers to defend themselves against costly trial lawyer lawsuits.

Trial lawyers found a quick pay-day by filing lawsuits against Blitz USA, which was the largest gasoline can manufacturer in the country before it went bankrupt, when consumers misused containers. Suits were filed for consumers who poured gasoline on fires to rekindle the flame, and in some cases, causing the gasoline to ignite causing severe burns and even death. Blitz was blamed for manufacturing a defective product. Other portable fuel container companies are likely to resist expanding to fill the market because of concern over being the next victims of the trial lawyers. It's imperative that these products stay afloat especially during natural disasters. If a shortage ensues and consumers start using other methods to store gasoline in portable containers, such as coolers and milk/detergent containers, PMAA is concerned that trial lawyers may attempt to go after retailers because consumers will be using the gasoline dispenser to fill a portable container not suitable to hold gasoline.

EPA Announces New 54.5 MPG Standards for Cars and Light Trucks by 2025

The Obama Administration finalized strict new automobile fuel economy standards designed to dramatically reduce consumption of gasoline nationwide. The new fuel economy standards will result in a 54.5 mpg average standard for cars and light-duty trucks by model year 2025. When combined with previous standards set by the Administration, the move will nearly double the fuel efficiency of those vehicles compared to new vehicles currently on the road today. The new standard will lower costs at the gas pump by $1.7 trillion and reduce U.S. oil consumption by 12 billion barrels by 2025.

The new fuel economy standards were issued jointly by the U.S. Department of Transportation (DOT) and the U.S. Environmental Protection Agency (EPA) and build on standards for cars and light trucks for Model Years 2011-2016 which will raise average fuel efficiency to the equivalent of 35.5 mpg.

The new fuel efficiency standards were endorsed by Ford, GM, Chrysler, BMW, Honda, Hyundai, Jaguar/Land Rover, Kia, Mazda, Mitsubishi, Nissan, Toyota, and Volvo as well as the United Auto Workers. The State of California and other key stakeholders also supported the announcement and were integral in developing this national program.

In achieving these new standards, EPA and NHTSA expect automakers to use a range of efficient and advanced technologies already in development to meet the new standards. The program also includes targeted incentives to encourage early adoption and introduction into the marketplace of advanced technologies to dramatically improve vehicle performance, including:

- Incentives for electric vehicles, plug-in hybrid electric vehicles, and fuel cells vehicles;

- Incentives for hybrid technologies for large pickups and for other technologies that achieve high fuel economy levels on large pickups;

- Incentives for natural gas vehicles;

- Credits for technologies with potential to achieve real-world greenhouse gas reductions and fuel economy improvements that are not captured by the standards test procedures.

Make Your Hotel Reservations Now to Join PMAA and NACS in Las Vegas in October

PMAA will hold its Fall Meeting in conjunction with the NACS Show on October 6-7 at the Las Vegas Hotel & Casino in Las Vegas. Please view the Conference Schedule for PMAA's Fall Meeting. The final date to make any changes to your reservation is September 5, 2012.

The PMAA meeting will begin with a Board Orientation for new Directors mid-afternoon on October 6 followed by a Board Briefing. A welcome reception with NACS for State Association Leaders will follow. On the morning of October 7, there will be a Buffet Breakfast followed by Region and Committee Meetings. The PMAA Board of Directors meeting is scheduled after honoring Bill Herdrich during the Distinguished Service Award Luncheon.

Visit www.pmaa.org for registration information. For more information on registering for the NACS Show, visit www.nacsonline.org.

New Study Released on Accelerated Corrosion Phenomenon in ULSD UST Systems

A new study involving reports of an unusual phenomenon involving accelerated corrosion in UST systems storing and dispensing ultra low sulfur diesel fuel (ULSD) has just been released. The independent study conducted by Battelle Memorial Institute was funded by PMAA and seven other industry stakeholders who make up the Clean Diesel Fuel Alliance (CDFA). The study was initiated two years ago after a handful of UST operators reported accelerated corrosion occurrences primarily in submersible turbine pumps, drop tubes, sensor probes and dispenser components. The Battelle study sampled six sites nationwide that reported the accelerated corrosion phenomenon in ULSD systems.

The study concluded that corrosion occurring in systems storing and dispensing ULSD is likely due to the dispersal of acetic acid throughout USTs. The acetic acid is likely produced by bacteria feeding on low levels of ethanol contamination. Dispersed into the humid vapor space by the higher vapor pressure and by disturbances during fuel deliveries, acetic acid is deposited throughout the UST system. This results in a cycle of wetting and drying of the equipment which concentrates the acetic acid on metallic equipment causing severe and rapid corrosion.

The source of the low level ethanol contamination present in sampled ULSD tanks is not yet known. Contamination may be occurring in pipelines, terminal systems, cargo tank compartments or manifold vent systems.

It is important to note that this phenomenon is still uncommon and primarily affects system components rather than the tank itself and has not caused any known releases. It is too early to draw definitive conclusions on how ULSD tanks are being contaminated with ethanol or why accelerated corrosion occurs in a very small percentage of ULSD tanks while the majority of ULSD tanks remain largely unaffected.
PMAA and the other stakeholders in the CDFA are currently deciding whether to move forward with further research. Battelle recommends that additional research be focused on samples from a larger and more diverse set of USTs over a longer period of time. The study would sample and monitor ULSD tank systems with and without accelerated corrosion events and investigate the possible source of ethanol contamination.

Grocery Highlights

NGA Signs on to Multi-Industry Letter Regarding America's Impending Fiscal Cliff

Recently a multi-industry letter was sent to all Members of Congress and President Obama urging them to immediately enact legislation that averts America's impending fiscal cliff. NGA along with 297 Chambers and Associations signed on in support of this letter which in summary urges Congress and the President to:

- Extend all of the 2001 and 2003 tax rates (including current marginal rates, dividend and capital gains rates, and estate tax relief) for all taxpayers;
- Extend vital expired and expiring business tax provisions;
- Provide alternative minimum tax (AMT) relief; and
- Find spending cuts to replace a sequestration never intended to go into effect.

Farm Bill Update

The current Farm Bill will expire on September 30th. As you know, in addition to actual farm programs, the bill also authorizes various nutrition programs including SNAP. The Senate passed its Farm Bill earlier this summer, and the House Agriculture Committee has passed its version but the full House has not yet taken up the bill. It is still unclear how Congress will move forward with re-authorizing the bill. Both chambers are in session only a few days in September before they plan to adjourn until after the election.
Menu Labeling Legislation Picks Up Steam as Senate Champion Emerges

Senator Roy Blunt (R-MO) is expected to soon introduce a companion bill to H.R. 6174, the Common Sense Nutrition Labeling Act of 2012 that was originally introduced in the House by Rep. John Carter (R-TX) along with over 30 bi-partisan co-sponsors. H.R. 6174 would, in part, prevent the FDA from expanding chain restaurant menu labeling regulations to grocery stores, including potentially independent retailers who are members of a co-op or operate under other marketing banners. The legislation would require FDA to adopt "option 2" in its final regulations that would exclude retail locations where less than 50% of total revenue come from restaurant type foods.

Beware of Firms Offering Settlement Payout Help in Credit Card in 'Swipe Fee' Lawsuit

NGA has learned that at least one company is soliciting members to sign up for its claims recovery services for a hefty fee in connection with the pending credit card interchange fee class action litigation. As NGA has previously stated, we intend to object to the proposed settlement and are encouraging members to do so as well because of the fundamental inadequacies of the relief and our hope that we can obtain a fairer settlement.

The NGA Board of Directors unanimously rejected the proposed settlement of the lawsuit, brought by a group of merchants and trade groups, including NGA. The lawsuit alleges that Visa and MasterCard and a number of the nation's largest banks engaged in collusive practices by setting credit card interchange fees ("swipe fees") at exorbitant levels and limiting competition.

NGA strongly advises you do NOT have to do business with these recovery firms, both because it suggests a willingness on the part of members to accept the settlement and because these types of companies charge unnecessary and often exorbitant fees. In the event the court ultimately approves the settlement, notwithstanding our objections, NGA, together with our attorneys, will assist members with the recovery process. It is important for retailers to understand that the complete settlement proposal has not yet been submitted to the Court and it could be months before a Court decision is reached on whether or not to approve the proposed settlement.

Make-A-Wish Charity Golf Outing and Awards Banquet

Our Make-A-Wish Charity Golf Outing and Awards Banquet will be held September 25 & 26 at Stonewall Resort.

We would like to take this opportunity to thank our generous sponsors for their support of this endeavor:

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Enviroprobe Integrated Solutions, Inc.

R. T. Rogers Oil Company

Supporter

Dawson-Thompson Oil Co.

J. T. Davenport & Sons

Petersburg Oil Company

Woodford Oil Company

Gorman Sheatsley & Company, LC

H. C. Lewis Oil Co.

Horne Bantam Markets

R. M. Roach & Sons

If you have not signed up to be a sponsor of this event, please call the Association Office to do so today!

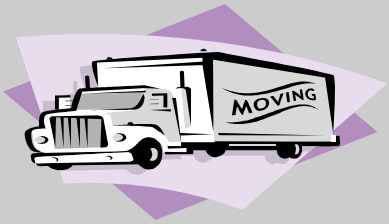
Miscellaneous

Welcome New OMEGA Members

McDowell County Commission
109 Wyoming Street
Welch, WV 24801
Phone: 304.436.8548
Email: franceshale52@yahoo.com
Contact: Frances Hale

Ranger Fas Chek
P.O. Box 312
Ranger, WV 25557
Phone: 304.778.3434
Fax: 304.778.9506
Contact: Brenda Baker

Terracon Consultants, Inc.
912 Morris Street
Charleston, WV 25301
Phone: 304.344.0821
Fax: 304.342.4711
Email: kecandillo@terracon.com
tgisaacs@terracon.com
Contacts: Kate E. Candillo
Tommy G. Isaacs



We've Moved!

Our new address is:

2006 Kanawha Boulevard, East
Charleston, WV 25311

Our phone and fax numbers remain the same.

Calendar of Events

Designated Risk Management Seminar
September 25
Stonewall Resort
Roanoke, WV

MAW Charity Golf Outing & Awards Banquet
September 25 & 26
Stonewall Resort
Roanoke, WV

UST Re-certification Training
October 23 & 24
Charleston Civic Center
Charleston, WV

Trade Expo & Golf Outing
May 13 - 15, 2013
The Resort at Glade Springs

At The Pump & Down the Aisle is a Monthly Publication of

OMEGA
west virginia oil marketers & grocers assoc.

West Virginia Oil Marketers and Grocers Association
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Charleston, WV 25311
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FAX: 304.343.5810

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