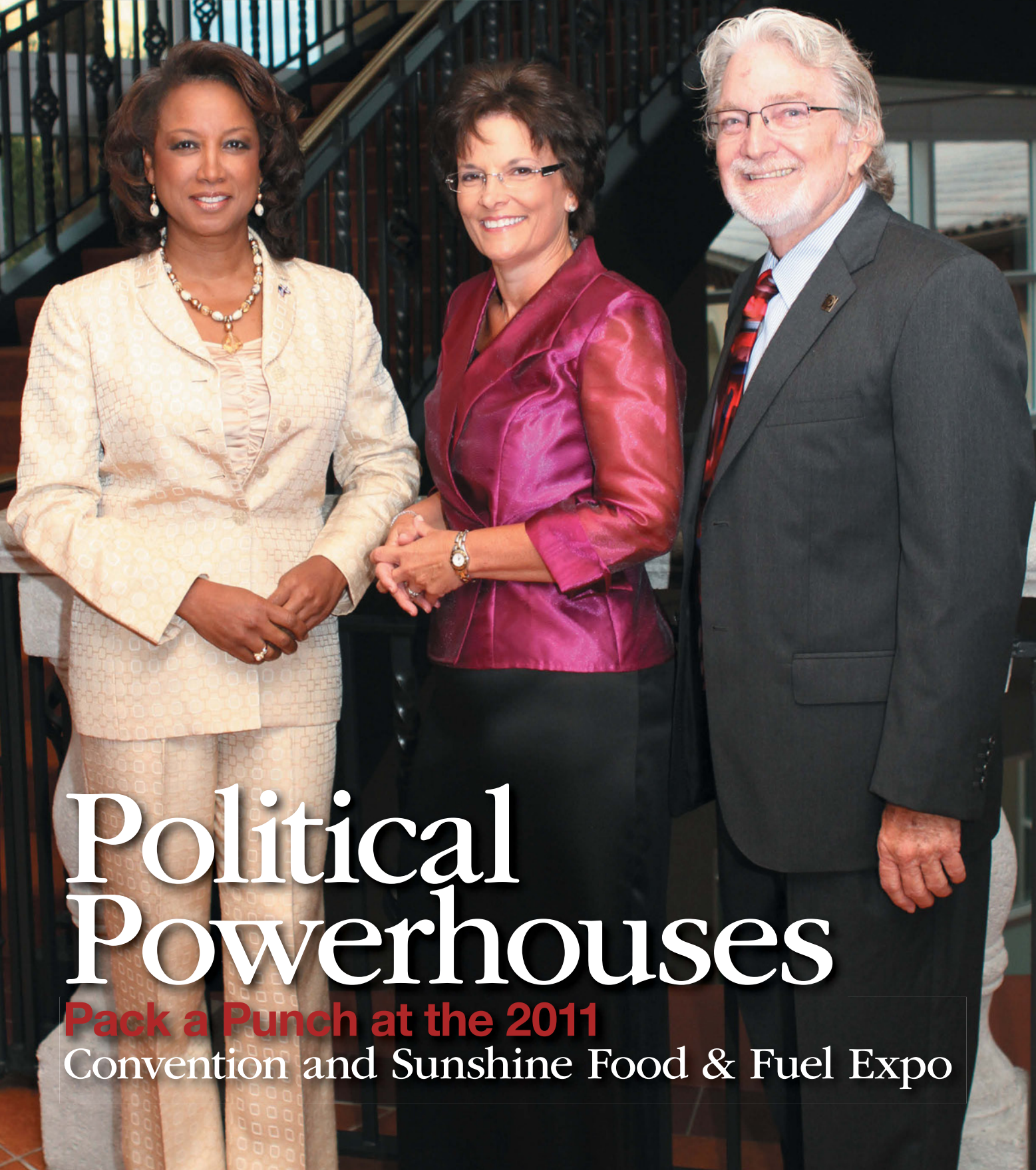


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News for Florida's Petroleum and Convenience Store Industry

Florida Petroleum Marketers & Convenience Store Association, Inc.

Volume 7, No. 3 • Fall 2011



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(Left to right) Lt. Gov. Jennifer Carroll, Rep. Denise Grimsley and Chairman Bruce Mitchell at the 2011 Convention and Sunshine Food & Fuel Expo, July 31-Aug. 3, 2011



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Adam Selvidge, FPMA Tradeshow Director, busy signing up 2012 expo booths



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Scholarship winner Chrissy Ann Gonzalez with Scholarship Chairman Marc Gomes



Scholarship winners with their families and Scholarship Chairman Marc Gomes

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Chairman Bruce Mitchell's induction into the FPMA Hall of Fame



Hide a Dagger Behind a Smile, by Kiahna Krippendorff



Ned Bowman, FPMA Executive Director, with his wife, Jane Bowman

Exhibitor photos and phone numbers are available at www.fpma.org

Outstanding Recruiter Contest Winners

Christine McKnight Wiles, APEC, again recruited the highest number of new members and receives a free full registration and free lodging at the 2012 Convention and Expo. Congrats, Christine! Frank Capitano, The Radiant Group, recruited members who paid the highest amount of dues and received a check for \$500 in appreciation for his efforts. Our thanks to both Christine and Frank!

Thanks to the 2011 Convention Sponsors for Their Support!

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Legislative Redistricting: A Time for FPMA to Refocus Its Political Objectives



J. Michael Huey,
Esq.



Todd C. Steibly,
Government
Consultant

Redistricting is the legislative process of drawing geographical districts for Congress, state legislators and local elected officials. Every 10 years following the decennial census, all states must engage in redistricting to account for increases or decreases in population. According to the latest census data, Florida has grown by 23.5 percent during the last 10 years—seventh fastest in the country. Consequently, Florida's congressional, state legislative and local districts will be redrawn to reflect population changes that have occurred throughout the state.

As it attempts to prepare and pass a redistricting plan, the Florida Legislature has embarked upon a series of public hearings across the state to receive public comments and suggestions regarding the appropriate manner in which to redraw the House and Senate districts—120 House and 40 Senate. We urge you—as involved community leaders—to attend and participate in these hearings. After conducting the 26 public hearings around the state, the Legislature will convene in January 2012 to consider specific legislation adopting new geographical districts.

Once approved by the Legislature and becoming law, the new districts must go through approvals by the Attorney General and the Florida Supreme Court. If the past is an indicator of the future, there will be many challenges by various interest groups before the new districts are ultimately approved by the Florida Supreme Court.

We, as citizens, have survived the redistricting process before and we will survive it again. At the end of this process, we will elect new legislators in each of the 40 Senate and 120 House districts in November 2012. Consequently, from today until November 2012, FPMA and its members must fully engage in order to assure that we elect responsible leaders who are informed about your businesses and sensitized regarding how government affects you. With all legislative seats “up for grabs,” our grassroots legislative efforts and our PetroPAC fundraising efforts must be hitting on all cylinders.

FPMA has been in the process of retooling its management, its processes, etc., during the past year. This retooling also needs to take place in our legislative efforts and in our PetroPAC fundraising. Marketers, suppliers, contractors and FPMA's other members, consistently, have major issues before the Legislature that require constant time and attention in order that the industry—and your families—can be adequately protected. We must use this historic upcoming election period to get to know candidates, educate them and then support those candidates who are qualified for these important offices and who have the best ability and motivation to address the needs

According to the **latest census** data, **Florida** has grown by **23.5 percent** during the last 10 years—**seventh fastest** in the country.

of the industry. We will be conducting regional meetings for members so that you may interact with the candidates and recommit yourselves to active representation of FPMA and your industry. We will be calling upon you to commit your time and money and to network within the industry and with outside groups in order to ensure that the best candidates are elected in each district. That said, do not wait for a call from us or a regional meeting to get involved. Support PetroPAC and let us know of your willingness to help at the grassroots level by emailing us today. Never has it been more important for you to be involved.

For those of you who desire more information regarding the 2012 redistricting process, you can visit the legislative website at www.floridaredistricting.org. ○

Mike Huey is general counsel for FPMA. He has been engaged in the area of petroleum marketing law for over 30 years. Mike is a partner in the statewide law firm of GrayRobinson and practices in the Tallahassee office. His phone number is 850-577-9090 and his email address is mike.huey@gray-robinson.com. Todd Steibly is a Government Consultant in the Tallahassee office of GrayRobinson. His phone number is 850-577-9090 and his email address is todd.steibly@gray-robinson.com.

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Lien On Who?!

A Briefing on Florida's Construction Lien Law

George W. Hatch & Robert D. Fingar

"The Mechanics' Lien Law has long been recognized as an outstanding example of inept legislative endeavor, perplexing alike the bench and bar, contractors, owners, materialmen and workmen."

—Judge John S. Rawls, *Miller v. Duke*, 155 So. 2d 627, 631 (Fla. 1st DCA 1963)¹

You've had a discharge from one of your underground storage tanks. Fortunately, you purchased and maintained storage tank liability insurance to demonstrate financial responsibility for taking corrective action caused by accidental releases from the operation of petroleum underground storage tanks as required by section 376.309, Florida Statutes and 40 CFR §§ 280.93 and 280.97. In return for the premiums that you've been paying all these years, your insurance company was more than willing to step up to the plate and assume responsibility to pay the hundreds of thousands of dollars in assessment and remediation costs. OK, maybe there was that little matter of the insurance company initially denying the claim, arguing that you failed to timely report the discharge, arguing that you failed to "confirm" the release, arguing that the discharge occurred prior to the retroactive date in your policy and asserting a myriad of other exclusions to coverage. And you did have to file that lawsuit, produce boxes of documents and have your deposition taken. But now the coverage issue is resolved—either by trial or settlement. Problem solved. Same team going forward, right?

The assessment and remediation work will take several years to perform. The average cleanup costs about \$400,000. There will be various contractors and subcontractors performing work on your property. Typically, the site owner will contract directly with the environmental cleanup contractor and will, of course, pay invoices. But, what happens when the insurance



company obligates itself to pay the contractor directly and disputes a bill or otherwise fails to pay some or all of the invoices submitted? Can the contractors and subcontractors file a lien on your property?

Section 713.10, Florida Statutes provides: “[A] lien under this part (the ‘Construction Lien Law’ formerly referred to as the ‘Mechanics’ Lien Law’) shall extend to, and only to, the right, title and interest of the person who contracts for the improvement as such right, title and interest exists at the commencement of the improvement or is thereafter acquired in the real property.”² Under the Construction Lien Law, the term “Improve” means:

Build, erect, place, make, alter, remove, repair or demolish any improvement over, upon, connected with, or beneath the surface of real property, or excavate any land, or furnish materials for any of these purposes, or perform any labor or services upon the improvements, including the

Florida’s Construction Lien Law is complicated, contains many important time deadlines, is frequently **amended** by the **Legislature** and contains penalties for failure to **strictly** comply with its **provisions**.

furnishing of carpet or rugs or appliances that are permanently affixed to the real property and final construction cleanup to prepare a structure for occupancy; or perform any labor or services or furnish any materials in grading, seeding, sodding or planting for landscaping purposes, including the furnishing of trees, shrubs, bushes or plants that are planted on the real property, or in equipping any improvement with fixtures or permanent apparatus or provide any solid-waste collection or disposal on the site of the improvement.

§ 713.01(14), Fla. Stat. The term “Improvement” means “any building,

structure, construction, demolition, excavation, solid-waste removal, landscaping or any part thereof existing, built, erected, placed, made or done on land or other real property for its permanent benefit.” § 713.01(15), Fla. Stat. Since lien rights only extend to the extent of the contracting party’s interest in the real property, care should be taken with the advice of counsel to determine whether it is in your best interest for you or the insurance company to enter into the various contracts to perform the cleanup. A properly drafted contract that is only between the insurance company and the contractor, may preclude a valid lien from being filed on the property.

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Even if the insurance company is the contracting party, what happens if a contractor or subcontractor nevertheless files a claim of lien on your property? A claim of lien continues for an entire year unless an action to enforce the lien is commenced within that time period. The encumbrance on the property could potentially affect your ability to sell or refinance the property. If an action to enforce the lien is commenced, you could incur attorney's fees in contesting the lien. You could potentially shorten the one-year time period by posting a bond or filing a Notice of Contest of Lien or filing a complaint requesting an Order to Show cause as to why the lien should not be vacated and canceled of record. But this would likely also result in you incurring additional costs and attorney's fees.

With the advice of counsel, consideration should be given to whether any settlement agreement with the insurance company should contain indemnification language that the insurance company will indemnify you for any costs incurred in filing a Notice of Contest of Lien and any costs incurred in requesting an Order to Show Cause. Consideration should also be given concerning whether any settlement agreement should also add language that the insurance company will indemnify you for any costs incurred in transferring the lien to a bond or other security.

Florida's Construction Lien Law is complicated, contains many important time deadlines, is frequently amended by the Legislature and contains penalties for failure to strictly comply with its provisions. It has been referred to as the most "confusing statute in Florida," "coupled with ill conceived, confusing, patchwork amendments," and "topped off by conflicting appellate decisions," which have "combined to make life miserable for judges, lawyers, legislators and the vitally affected construction and lending industries." *American Fire & Cas. Co. v. Davis Water and Waste*

Industries, Inc., 358 So.2d 225 (Fla. 4th DCA 1978). Professional legal advice should be sought for guidance with respect to any particular question concerning the lien law. ○

Authored by George W. Hatch and Robert D. Fingar, with special thanks to Alan Elwell and Jack Milholland, Atco, Inc. & Merit Petroleum Co., for their insightful questions that inspired this article.

¹Interestingly, it appears that there was even confusion early on with respect to the meaning of the name, "Mechanics' Lien Law." In 1989, the Mechanics' Lien Study Commission appointed by the Governor to suggest changes to the law, reported that the general public understood a mechanic's lien to be something that a mechanic obtained for fixing an automobile or a piece of machinery. On January 1, 1991, the legislature changed the name from "Mechanics' Lien Law" to "Construction Lien Law."

²Section 713.10, Florida Statutes was recently amended with respect to contracts to furnish labor, services or materials for improvements being made by a lessee. Laws of Fla. Ch. 2011-212, Section 1, effective October 1, 2011.




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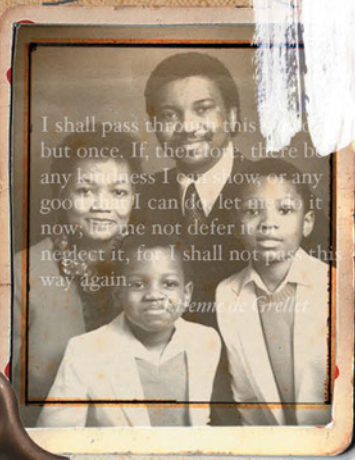


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Mark Radosevich,
PetroProperties &
Finance, LLC

What Are We Going to Do With All These Center Island Marketers?

During a recent statewide trip conducting foreclosed store analysis work for a lender client, Marc Gomes, our Florida region vice president, was compelled to call me and ask: “What are we going to do with all these center island marketers?” A Center Island Marketer is Mobil Oil-speak for a c-store configuration where the store is under the canopy with dispensers on either side of the building.

These “fuel focused” oil-company-created and not-yet-extinct dinosaurs now litter the highways and byways of America. Viewed against modern c-store designs, they look as obsolete as 1960 Caddies with big rear fins. When built in the early 1980s, the Mobil design was entitled Pegasus 21, the modern answer to the original Pegasus design of the late 60s or early 70s. Even these original Pegasus sites still occasionally crop up here and there with their round Frisbee looking canopies.

In the 1980s I worked on the Exxon retail conversion from traditional bay facilities to the “new” convenience retail transformation; creatively christened Food Shops, or maybe it was Food Marts, I can’t remember. Featuring a nifty design with steel reinforced, concrete poured Presidium Arches, cantilevered spreaders, and P1 and P2 grey-toned colors; these future Stonehenges were sure to survive their economic life as well as any global warming-induced natural disaster or nuclear blast. Proper implementation of the Food Shop retail program was insured by an equally sturdy 50-pound retail standards and guidelines manual. Oh the thought of this makes me yearn for the good old days in convenience store marketing.

Another oil company called their mart-design the “Flying Wing.” But no matter what they were called, 25 years later our industry is overrun with them; and it begs the question:

What are we going to do with all these center island marketers?

The state of Florida and its recently adopted UST regulations probably spurred their demise ahead of other places, as the cost to make needed tank upgrades was deemed uneconomical and unwise. But the fact remains that these small 800- or 900-square-foot facilities were probably dead upon arrival and will increasingly struggle to survive against ever-expanding store designs and offerings. Probably the only places that they can continue to make it are in very rural or heavy urban locations where larger store offerings are prohibitive.

After some analysis, we’ve concluded that many marketers are still hanging onto some of the worst performers for reasons including:

- **Sentiment:** It’s been part of our company for years and we hate to sell our real estate.

- **Environmental Fear:** Maybe it's better to keep them than run the risk of some expensive problems.
- **It's Leased:** It's easier to hold on and collect low rent from a struggling dealer. The risk is that you unexpectedly get it back.
- **Salary Operation:** Marketers that only operate stores and have no dealers will have to expand their business model to include dealers. Not going to happen in many cases, so their stuck with the store.

For pragmatic, forward-thinking marketers who are willing to put these stores out of their misery, following are a few general thoughts and considerations. These ideas may not be the end all, but may spur some new and creative divestiture ideas, which I hope you will share with me.

- **Cultivate Dealer Relationships:** For stores that still have some life left in them but don't warrant directly operating, consider leasing (with a purchase option) to a dealer. Look for dealers with a successful operational track record and who are financially strong. Offer additional stores once they prove themselves over the course of a couple of years.
- **Assess the Real Estate:** Make a pragmatic assessment of the sites looking

for solid Raze and Rebuild candidates. Property size, location, traffic counts, competition and other factors will guide the decisions. Once candidates are determined and before making any investments, conduct comprehensive site studies to confirm volume and profitability assumptions.



- **Consider Alternate Uses:** Do the locations and property sizes indicate possible alternate uses beyond petroleum?
- **Shutter the Real Bleeders:** Bite the bullet and close the real losers that can't be leased or sold in or out of the industry. As a last resort, they may be a good place for weekend farmers' markets in the summers!

With the advent of the convenience store, the petroleum business was changed forever. It saw the convergence of grocers expanding into fuel, and oil companies and fuel wholesalers expanding into groceries. History, with the Center Island Marketer design as its poster child, has proven that operators that migrated from the grocery side have done a better job in store design and operation. For historically fuel-oriented marketers that persist in direct store operations, now may be a good time to rethink their retail commitment and consider returning to their roots and a more fuel-oriented business emphasis.

What are we going to do with all these Center Island Marketers? The answer to that question lies with hundreds of petroleum marketers within our industry and their tolerance of continued retail and operational mediocrity. To my readers, please take a moment and share with me some of the things that you are doing to rationalize marginal center island marketers from your retail chains.

On behalf of everyone at PetroProperties & Finance, we wish all of our petro-friends a safe, happy and prosperous autumn of 2011. ○

Mark Radosevich serves on the board of FPMA and is a strong advocate for the retail petroleum industry. He is president and COO of PetroProperties & Finance, LLC, offering confidential mergers and acquisition representation and growth financing services exclusively to the wholesale petroleum sector. Contact him at 423-442-1327 or at mark@ppandfbiz.

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Defining Denial



Dan Gilligan,
President, Petroleum
Marketers Association
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What Exactly Is the World Willing to Do About CO₂?

Over 30 years ago, a *Newsweek* magazine cover page focused on new science projecting the next “Ice Age” for planet earth. Scientists were concerned that climate patterns were trending towards global cooling and the ramifications could be catastrophic. In the 1980s, the concern reversed and the focus turned to global warming. Now, in the 21st century, the concern is both about global cooling, global warming and climate change in general. The most recent science now shows that the earth has cooled some in the past 10 years. No wonder the non-scientists are starting to ask questions.

While the earth has cooled over the past 10 years the rhetoric has really heated up and, today, any person that questions climate science is called a “denier.” Using the term “denier” frames the debate in a context similar to the fight over evolution, where Clarence Darrow squared off against William Jennings Bryan in a Tennessee court room. Actually, it’s a little ironic because the people who fully embrace climate science are more “religious” and unwavering in their view than those who have questions.

I, for one, am not a denier but, because I’m not a scientist, I doubt if my opinion matters. It seems logical to me that

excessive amounts of CO₂ in the earth’s atmosphere could affect the earth’s climate. What appears to get fuzzy is the science calculating just how much CO₂ and fossil fuels affects global climate change. Recently, the EPA projected that its new GHG Tailpipe regulations would reduce the earth’s temperature somewhere between .006°C and .014°C by 2100. Now stop and think about this for a minute. Can scientists really predict the temperature of the earth to a one hundredth of a degree 89 years from now? I guess they can; and who am I to question scientists?

Putting aside the science, to me the bigger question is: “What exactly is the world willing to do about CO₂?” The United States currently relies on fossil fuels for 80 percent of its energy needs. While we can reduce our fossil fuel consumption, is it realistic to think we can reduce enough to significantly change earth’s climate without costing U.S. jobs? If the U.S. Treasury was flush with cash, I suppose lawmakers could dramatically subsidize alternative energy sources but we all know Uncle Sam’s cupboard is now bare. It’s starting to look to me like lawmakers are going to crimp fossil fuel use, but really not enough to make any real difference in global climate projections.

It’s akin to a weight-conscious person ordering the half-pound cheeseburger, with large fries and a *diet* soft drink. Just exactly who is the real denier?

Recently, I was watching a spokesman for an environmental group doing a TV interview. To paraphrase his comments,

he said that the U.S. has amassed its great wealth by polluting the planet with CO₂ and that the U.S. needs to now pay reparations and voluntarily give up some of its wealth by reducing fossil fuel consumption. Huh? I had to check and make sure I was not watching the comedy channel.

These kinds of anti-American sentiments, as they relate to energy, are rarely heard or understood by Americans. I can assure you that there are members of Congress who agree with the sentiment but package it differently. The public discussion is never about U.S. austerity, but about clean energy and going green. Americans love clean energy and going green until they see the price tag. The cap and trade bill that passed the House of Representatives in 2007 was specifically designed to increase the cost of gasoline, diesel and heating oil by \$300 billion over 10 years. We were going to voluntarily raise the price of gasoline to combat global cooling/warming. Thankfully, that measure died in the Senate. The true beneficiaries of that law would have been countries in Asia and Africa who have no plans to reduce CO₂ and would gladly consume the oil while the U.S. diets.

PMAA believes energy conservation is a very good thing and should be pursued aggressively within the context of a comprehensive national energy policy. When the alleged deniers and the actual deniers put down their swords, significant energy conservation measures will be adopted as part of a realistic national energy policy. ○

How FPMA Can Continue to Lead the Industry



James D. Hirsch

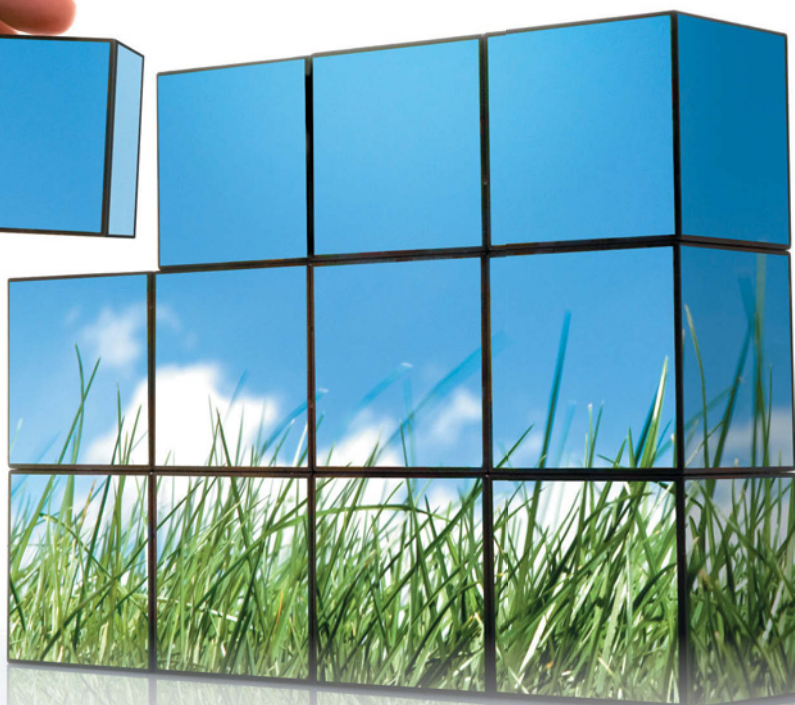
Environmental stewardship is an ethic that embodies cooperative planning and management of environmental resources to facilitate their long-term sustainability.

Since its inception, the FPMA has led the industry in protecting the state's natural resources through cooperative planning, management and judicious use of its financial assesses. This stewardship attitude was essential in the development of the Florida Petroleum Cleanup Program (Program) administered by the Florida Department of Environmental Protection (FDEP). The Program is funded by the Inland Protection Trust Fund (IPTF), which collects a tax on each barrel of petroleum oil sold in our state.

The Program is one of the leading instruments for protecting and rehabilitating Florida's drinking water resource, groundwater. As important, the Program is the number one tool for cleaning up petroleum-impacted properties so that they can be redeveloped and continue to add to our state's economy through the creation of jobs and commercial growth. Without these things, environmental stewardship becomes increasingly difficult.

Governor Rick Scott has challenged FDEP and the petroleum industry to streamline the Program so that petroleum-impacted sites can be cleaned up faster, better and less expensively, with the ultimate goal of protecting our natural resources and strengthening our economy. In essence, the governor has asked us to be better stewards.

The FDEP has recently reached out to the FPMA Environmental Committee and asked for help in streamlining the Program. As this article is being composed, the FPMA is working with FDEP to improve the Program. In addition, FPMA has agreed to take the lead in conducting this work in a cooperative manner by working closely with other industry organizations such as the Florida Association of Professional Geologist (FAPG), Florida Groundwater Association (FGWA) and the Florida Petroleum Council (FPC).



How to Lead in Environmental Stewardship

For FPMA to continue to lead the industry in **environmental stewardship**, our organization must continue develop and improve in the following areas:

Membership

We need to increase our membership. Strength in numbers is critical to the success of our organization. By expanding our membership this increases our influence throughout our entire state. Expanding membership will also continue to provide us the financial base that is needed to market our organization, provide educational programs and fund legislative efforts important to the organization.

Political Activism

Now more than ever, being politically active is a necessity for getting what you want. This means educating our legislators on the issues that matter most to our members. This can be done through legislative meetings and/or grassroots efforts. This also means financially supporting key political allies, and organizing and attending political gatherings.

continued on page 29

FPMA Conference of Committees

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Controlling Insurance Costs: What Can Businesses Do?



Bo Orr,
Federated
Insurance

All things being equal, two businesses with virtually the same operation may pay the same premium for property, liability and workers compensation insurance—until one makes an insurance claim. That claim could result in higher insurance premiums.

Seven Ways to Keep Insurance Costs Under Control

These guidelines can help you keep your insurance costs under control:

1. Find a trusted insurance advisor.

Select an insurance advisor who really understands your industry and your business and takes the time to properly design an insurance program.

2. Align yourself with an insurance company that specializes in your industry.

Insurance carriers may enter into a market for short-term financial gain. What happens if their venture falters and they pull out? Can you easily find another carrier? At what cost? Insurance companies with a history of commitment to your industry and your association typically are in it for the long haul. Loyalty to your industry does matter.

3. Get serious about safety!

Implement appropriate risk management policies and practices. Introduce an effective safety program to help prevent losses. Look for an insurance provider that makes safety and loss prevention resources available and is able to help with implementation.

4. Review claims.

Review your claims at least annually. Confirm accuracy and discuss any open claims or reserves. Implement practices that help prevent those claims from reoccurring.

5. Be prepared.

Review coverages and services with your insurance representative at least two to three months before renewal to see if they still meet your needs.

6. Don't buy on price alone!

While price is a component, other features—coverages, safety assistance, claims services—can help contribute to significant savings over time. Lower “front-end” premiums may result in more “back-end” costs with claims that are either not covered or have limitations.

7. Consider self-insuring or partially self-insuring some risks.

There are various options available to save on insurance costs and improve your loss record. Some common examples include: increasing deductibles on your policies, selecting a well-designed self-insurance program, or implementing a Workers' Compensation Retrospective plan. ○

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Participating in FPMA

Our organization's success is a direct reflection of its members and their efforts. To date, our members have made FPMA exceptionally successful. However, the competition and necessity for resources and influence is greater than ever. The only sure way for FPMA to maintain its industry edge is for our membership to actively participate in the organization by attending meetings, serving on committees, being politically active and recruiting new members.

Doing Business with other FPMA Members

In addition to membership dues, FPMA members give back to the organization on many different levels. These efforts are often responsible for making our industry a more viable place to conduct business. This extra effort and commitment by our members should be recognized and rewarded by working with other like minded FPMA members.

With a renewed commitment to the fundamentals of our organization, FPMA will continue to lead our industry in environmental stewardship and long-term sustainability of our natural resources. ○

James D. Hirsch, M.S., P.G. is Principal Hydrogeologist/Owner of F&H Consulting, LLC, and is also the chairman of the FPMA Environmental Committee. Contact Jamie at james.hirsch@fandhc.com or 352-214-0903.

FPMA Environmental Committee Mission Statement

The mission of the Florida Petroleum Marketers Association (FPMA) Environmental Committee is to gather and facilitate coordination of environmental expertise and advocacy on behalf of the FPMA and to provide the FPMA with accurate information in regard to environmental regulation and environmental legislation in the state of Florida.

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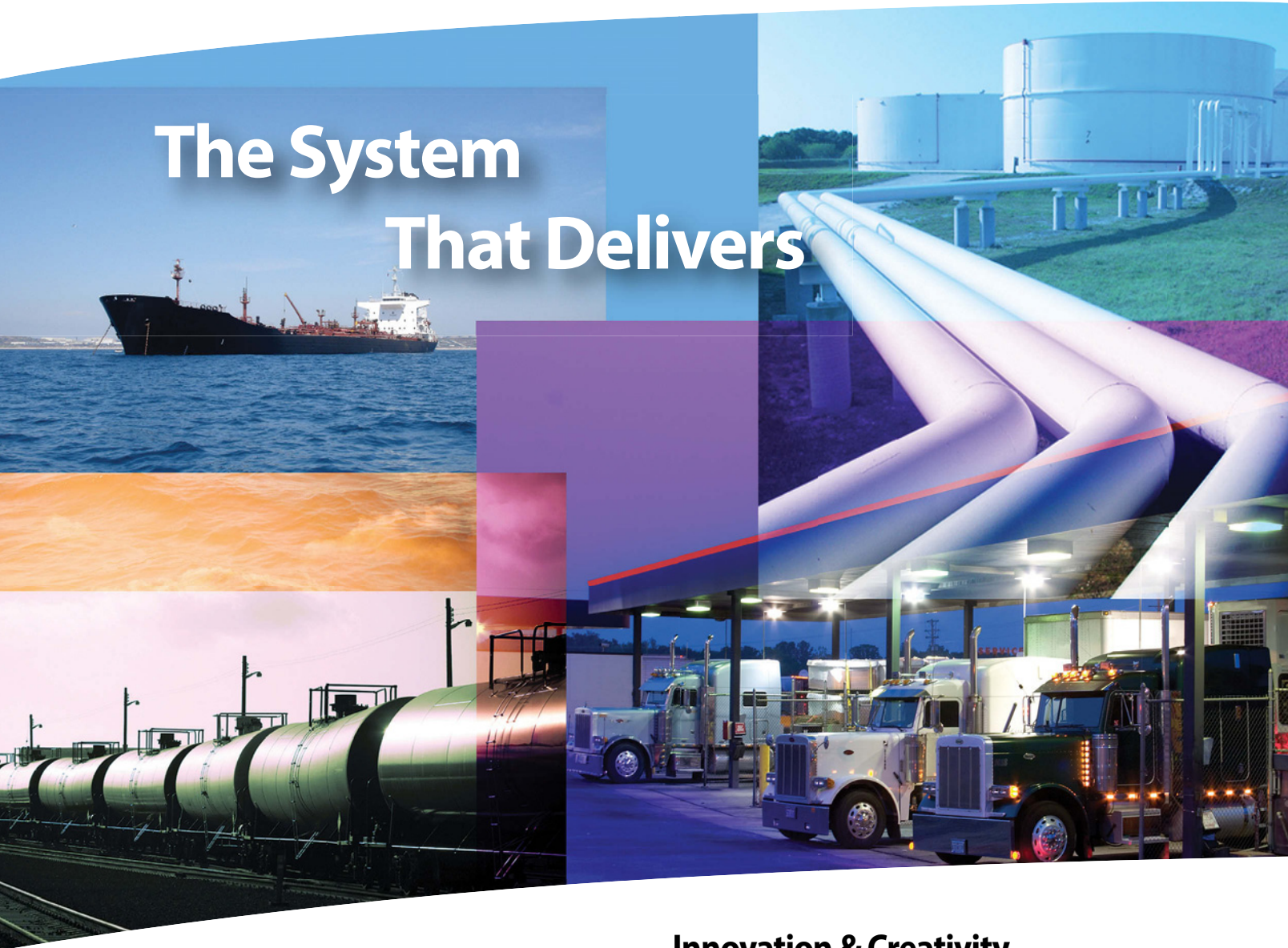
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