

California Service
Station &
Automotive Repair
Association

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CSSARA
AUTO\$ENSE

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“WHY THE SBA WON’T LEND TO YOU”

On February 5, 2008, The Small Business Administration sent a notice to its lenders stating that “SBA has determined that an increasing number of franchise, dealer, license, jobber and related agreements (including Grantor Deeds and Deeds of Trust) between major oil companies or jobbers and applicant businesses for the operation of gas stations and mini-marts contain provisions that do not comply with SBA eligibility and/or credit requirements.”

The SBA lists the following examples (though not a complete listing) of unacceptable conditions appearing in the major oil company agreements:

- A condition that gives the franchisor the absolute discretion to approve a transfer of the agreement.
- A condition where the franchisee could not transfer its interest in the franchise without the prior written consent of the franchisor, which could be withheld by the franchisor for any reason in the franchisor’s sole subject judgment.
- A condition where the franchisor had the ability to choose counsel for the franchisee’s defense of legal disputes.
- A condition prohibiting the franchisee from transferring or assigning its rights under the agreement.

Other provisions found to be unacceptable to SBA that has significant impact on the value and marketability of the business real estate collateral, specifically:

- “Repurchase options”: which allow a major oil company or jobber to repurchase the applicant’s primary business asset (e.g., real estate) due to a violation of any condition, covenant or restriction in any agreement between the oil company or jobber and the applicant business.
- Covenants running with the land that require current and future owners to indemnify a major oil company for environmental contamination. In the event participant lenders, CDCs or SBA were to foreclose upon the real estate or accept

in lieu, they could be required to indemnify a major oil company for environmental contamination. SBA concludes by stating, “Subordination of these unacceptable provisions is insufficient to overcome the credit concerns.”

Dealers are forced into signing these contracts of adhesion, as the powerful majors refuse to negotiate the terms of their offerings. It is a “Take it or leave It” proposition. Now even our federal government won’t allow our local lenders to loan to us! This is wrong and we as an industry need to demand more of our elected officials, better representation, better laws to control the powerful self-indulgent oil companies.

The lessee dealer is all but gone; those former dealers’ who have purchased their land and improvements need to associate even more today than ever before with state issues like enhanced EVR/ISD and the Feds turning their backs on small business. We need a louder voice than ever. Associations are failing; dealers are victims of their own inability to stand together. One must ask this question, is it the cultural differences of the many ethnic groups that make up the majority of petroleum retailers creating the division of retailers? The answer is yes. Until this industry once again unites for its common good it will continue to fall victim to corporate power and bad government.

In the past 3 weeks California gas prices have increased by .38 cents per gallon this equates to around \$16,000,000 more per day to big oil in California alone. It also brings in \$1,280,000 in additional sales tax revenues to our state. One must ask is there a conflict of interest occurring between the price at the pump and the only power big enough to control the appetite of big oil? Is the price of it helping both our state and federal government to disguise their incompetence in balancing the budget? What if you put this information on a poster and displayed it in your station or in a flyer and passed it out to your customers? Could it create change?

What if we started giving notice to our customers that on April 1, 2009 the price of a gallon of gasoline will increase by .02 cents per gallon to cover the cost of Enhanced Vapor Recovery a government mandated program. **WHAT IF?**