

STATE OF CONNECTICUT
OFFICE OF THE ATTORNEY GENERAL

IN THE MATTER OF:

INDEPENDENT CONNECTICUT PETROLEUM ASSOCIATION, INC.
10 Alcap Ridge
Cromwell, CT 06416

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance (“Assurance”) is entered into by the Attorney General of the State of Connecticut, Richard Blumenthal, and the Independent Connecticut Petroleum Association, Inc. (“ICPA”). This Assurance follows an investigation by the Attorney General of conduct engaged in by the ICPA regarding the Connecticut Energy Assistance Program (“CEAP”) for the 2007-2008 heating oil season in Connecticut.

I. Introduction

1. The ICPA is a nonprofit corporation established in Cromwell, Connecticut. It is a trade association whose membership includes licensed Connecticut heating oil dealers. The ICPA has approximately 542 members who work within the petroleum industry in the State of Connecticut. The ICPA is organized into seven regional chapters. It provides legislative and regulatory information to its members and operates a private, vocational technical school for heating technicians.

2. The CEAP is a heating assistance program and is designed to provide heating oil to qualified low-income households in Connecticut using government funds. The CEAP is administered through the Connecticut Department of Social Services (“DSS”) by regional Community Action Agencies (“CAA”). CEAP is a voluntary program that home heating oil dealers may elect to join. These dealers sign up with the DSS each heating season. Once

qualified by the DSS, the vendors receive authorization from the local CAA to deliver oil. The vendors are then paid by the CAA with government funds.

3. Pursuant to Conn. Gen. Stat. § 35-32, the Office of the Attorney General (“OAG”) conducted an antitrust investigation into allegations that the executive staff of the ICPA was urging its membership, and other non-member heating oil dealers, to conspire to restrain competition by, among other things, encouraging and facilitating agreements, express or implied, among its members and others to boycott the CEAP in order to cause an increase in the prices paid for heating oil to dealers participating in CEAP (hereinafter, the “Investigation”).

4. In September 2007, DSS released information on how to participate in the CEAP. At the ICPA’s annual Chapter meetings, which were held in September and October 2007, the 2007-2008 CEAP was an important topic discussed among the attending heating oil dealers. The OAG’s Investigation concluded that the ICPA sought to influence heating oil dealers not to participate in the CEAP because of dissatisfaction with the low rate of reimbursement to the dealers. Certain heating oil dealers elected not to participate in the CEAP for the 2007-2008 heating oil season. Others delayed signing on to CEAP in order to pressure the DSS to raise the rate of reimbursement.

5. The OAG contends that the nature of the conduct engaged in by the ICPA was anticompetitive and may have constituted a violation of relevant federal and state antitrust law, including, *inter alia*, Conn. Gen. Stat. §§ 35-26 and 35-28.

6. The ICPA contends that its conduct is entirely consistent with all applicable State and Federal laws permitting trade associations to petition government and to engage in legitimate efforts to influence government policy on behalf of its members, and that it did not engage in an unlawful boycott nor encourage others to engage in an unlawful boycott of the CEAP.

II. Agreement

A. Relief

As a means of resolving their differences without recourse to litigation, the parties have entered into this Assurance and hereby agree to be bound by the provisions of this Assurance as follows:

1. The ICPA shall not, directly or indirectly, enter into any contract, agreement, combination or understanding with any person which has the purpose or effect to restrain competition, by among other things, encouraging or facilitating agreements, express or implied, that have the effect of increasing the reimbursement paid for heating oil to participating dealers under the CEAP.

2. The ICPA shall establish and maintain an antitrust training and education program, completion of which shall be required for all officers, members and employees of the ICPA on an annual basis. Within thirty (30) days of the Effective Date of this Assurance, the ICPA shall submit to the OAG a draft of the intended training and education program for review and approval by the OAG prior to implementation. The ICPA antitrust training program shall be designed to cover, at a minimum, compliance with federal and state antitrust and consumer protection laws.

3. The ICPA shall provide a copy of this Assurance to all current officers, directors, employees and members of the ICPA within thirty (30) days of the Effective Date of this Assurance.

4. The ICPA shall provide a copy of this Assurance to all new officers, directors, employees and members of the ICPA within thirty (30) days of the date that the person assumes such position or becomes affiliated with the ICPA.

5. For each of the next ten (10) years after the Effective Date of this Assurance, the ICPA shall notify the OAG that it has complied with the terms and conditions of this Assurance on or before its anniversary date.

6. The execution of this Assurance by the ICPA does not constitute an admission of any violation of law, and is made solely for the purpose of settling this matter without litigation. The ICPA has cooperated fully with the OAG in this investigation.

B. General Provisions

1. ICPA and the OAG agree that this Assurance constitutes the entire agreement between the Parties, supersedes any prior negotiations, understandings, representations and agreements, and it may not be amended orally, but may be amended only by a written instrument signed by both Parties.

2. The acceptance of this Assurance by the Attorney General shall not be deemed approval by the OAG of any of the ICPA's business practices, and the ICPA shall make no representation to the contrary.

3. Nothing in this Agreement shall be construed to prevent the ICPA from exercising rights permitted under the First Amendment to the United States Constitution to petition government, participate in any governmental proceeding, or engage in lawful efforts to influence government policy in the future.

4. The OAG shall not institute any proceeding or take any action against the ICPA under antitrust statutes for any conduct prior to the Effective Date of this Assurance based on any practice that is addressed in this Assurance, except as allowed by law to enforce this Assurance in the event of a violation.

5. The ICPA agrees that this Assurance constitutes an obligation of the ICPA legally enforceable by the OAG in accordance with its terms.

6. This Assurance shall be governed by and construed in accordance with the laws of the State of Connecticut without regard to conflicts of laws principles.

7. The Effective Date of this Assurance shall be the date upon which all of the parties below have executed this Assurance.

8. Any notice or other writing required or permitted to be given under this Assurance shall be sufficient if made as follows:

To the OAG:

Michael E. Cole, Assistant Attorney General
Chief, Antitrust Department
Office of the Connecticut Attorney General
P.O. Box 120
Hartford, CT 06141-0120

To the ICPA:

Eugene A. Guilford, Executive Director
Independent Connecticut Petroleum Association, Inc.
10 Alcap Ridge
Cromwell, CT 06416

David R. Purvis, Esq.
Purvis Law Group, LLC
56 Arbor Street Suite 325
Hartford, CT 06106


9. The provisions of this Assurance shall apply to the ICPA and to each of its officers, agents, employees, successors and assigns, and to any other person in active concert or participation with any of the above and who has received actual notice of this Assurance

by personal service or otherwise.


STATE OF CONNECTICUT

INDEPENDENT CONNECTICUT
PETROLEUM ASSOCIATION, INC.

RICHARD BLUMENTHAL
ATTORNEY GENERAL

By: 

Michael E. Cole, Assistant Attorney General
Chief, Antitrust Department
55 Elm Street
Hartford, CT 06106

By: 

Eugene A. Guilford
Executive Director
10 Alcap Ridge
Cromwell, CT 06416

Dated: 12/3/08

Dated: 11/24/08