



PATRICK MORRISEY
ATTORNEY GENERAL

January 12, 2022

The Honorable Stephen Baldwin
Minority Leader, 10th District
West Virginia Senate
State Capitol
Charleston, WV 25305

The Honorable Richard Lindsay
8th District
West Virginia Senate
State Capitol
Charleston, WV 25305

The Honorable Bob Beach
13th District
West Virginia Senate
State Capitol
Charleston, WV 25305

The Honorable Robert Plymale
5th District
West Virginia Senate
State Capitol
Charleston, WV 25305

The Honorable Mike Caputo
13th District
West Virginia Senate
State Capitol
Charleston, WV 25305

The Honorable Mike Romano
12th District
West Virginia Senate
State Capitol
Charleston, WV 25305

The Honorable Hannah Geffert
16th District
West Virginia Senate
State Capitol
Charleston, WV 25305

The Honorable Ron Stollings
7th District
West Virginia Senate
State Capitol
Charleston, WV 25305

The Honorable Glenn Jeffries
8th District
West Virginia Senate
State Capitol
Charleston, WV 25305

Dear Senators:

I am in receipt of your letter dated December 15, 2021 requesting me to investigate gasoline pricing in West Virginia. You have requested that I report any findings and conclusions of the investigation to the Legislature and the public.

Thank you for this opportunity to address your concerns.

To begin, the West Virginia Legislature enacted the West Virginia Antitrust Act in 1978. As part of the act, the Legislature requires the Attorney General to keep all investigations and information learned from such investigations confidential unless and until there is an enforcement proceeding. W.Va. Code §47-18-7(d). Thus, if my office is currently investigating or would commence an investigation, I could not inform you of that investigation nor the public without violating the statute.

Your letter suggests price gouging may be occurring. West Virginia's price gouging statute, a part of the Consumer Credit and Protection Act, was enacted in 2002. The statute only becomes effective after there has been a declaration of a State of Emergency by the Governor or the Legislature or the declaration of a State of Preparedness by the Governor or the Legislature. W.Va. Code § 46A-6J-3. With no declaration of a State of Emergency or State of Preparedness, businesses are generally free to price their products without government intervention.¹

Your letter compared the peak price of crude oil in 2008 with the average price of gasoline. However, if you recall, when the price of oil surged to stratospheric levels, the retail price of gasoline also followed, peaking at more than \$4.00 per gallon in West Virginia and higher in other parts of the country. Similarly, in 2011 again when oil peaked at around \$113.00 per barrel as noted in your letter, the prices of gasoline also peaked again at prices approaching, and sometimes exceeding \$4.00 per gallon. After reaching such high prices in 2008, the economy fell into a recession that took years for a recovery. During much of that time, the prices for oil and gasoline were comparatively low.

If you will review information located on the U.S. Energy Information Administration's website, you will see that long term, prices for gasoline generally follow the prices for crude oil. There are periods of time when the prices diverge, but they are usually short lived.

<https://www.eia.gov/petroleum/gasdiesel>. See also, <https://www.macrotrends.net/2501/crude-oil-vs-gasoline-prices-chart>.

There are multiple factors that affect the price of gasoline at retail stations. In addition to the price of oil in the world market, prices are also affected by

- Wholesale or rack prices
- Taxes
- Reserve levels
- Distribution bottlenecks
- Weather events
- News events (both domestic and international)

¹ The Governor's Proclamation of April 30, 2021 limited the price restrictions in effect under the current State of Emergency to only cover medical supplies necessary for treatment of illness caused by COVID-19, and specifically excluded motor fuels.

Some of these issues could be addressed by the West Virginia Legislature such as the taxes that are levied on motor fuel in West Virginia. As you know, taxes on gasoline in West Virginia are significantly higher than in neighboring states such as Virginia and Kentucky. If the Legislature lowered the tax burden on gasoline in West Virginia, it would make retailers more competitive with their counterparts across the border in Virginia and Kentucky.

Gasoline prices also have not been helped by President Biden effectively killing the Keystone XL pipeline extension that could have transported up to 830,000 barrels of Canadian oil daily to refineries in the U.S. to further increase supplies of gasoline and other fuels. Nor did the Biden Administration's ban on drilling for oil on federal lands and waters help. The 11-month moratorium kept U.S. production of crude oil from expanding as quickly as it could to satisfy the surging demand for refined products. Fortunately, through our legal action, and those of other states, we have obtained a preliminary injunction of this harmful policy.

Moreover, the Biden administration's release of 50 million barrels of oil from the U.S. strategic reserves does little to ease the burden on West Virginia consumers when the country consumes about 20 million barrels of oil a day. More could be done by the Biden administration both in actions and policy to ease the supply crunch which causes prices to increase when demand surges. For example, the administration has proposed new methane regulations on oil and gas producers that would inevitably cause prices to increase at the pump. These regulations should not be implemented if Biden is committed to reducing gasoline prices.

Prices are also affected by the volume of gasoline sold in West Virginia. Because West Virginia's population is lower than surrounding states, not coincidentally, less gasoline is sold in West Virginia. As with any commodity, higher volumes bring lower prices. Lost sales to border states could be minimized through lower taxes.

West Virginia also suffers from a lack of wholesale supply points. There is one refinery operating in West Virginia in the northern panhandle and it is a relatively low volume operation. Otherwise, all other gasoline sold in West Virginia flows in from other states. Thus, West Virginians are paying more for transportation costs, causing prices to be somewhat higher. If an additional refinery were located in the State, that would also be beneficial.

Regulations enacted by the Legislature also discourage potential investment in West Virginia by pipeline operators and operators of refineries. Due, in part, to regulations, it is apparently unprofitable for pipeline operators to extend pipelines running along the east coast from Louisiana into West Virginia. Because pipelines are typically more efficient in delivering product, wholesale prices obtained at pipeline distribution points are usually lower than prices obtained from products delivered via truck or barge. Similarly, no new refineries have been opened in the United States for many years. In fact, since 2019 six more refineries have been closed. The number of refineries in the United States peaked in the early 1990's at nearly 300. Today, there were only 129 refineries operating at the beginning of 2021. According to the Energy Information Administration, refining capacity is now just approaching the levels that were available in 2019.

All of these factors weigh into the normal supply and demand for gasoline that causes prices to change on a daily basis. We are currently experiencing a surge in demand for gasoline products while the supplies have been less than anticipated. Thus, prices go up. As the economy continues its recovery, and supply chains return to normal patterns, short term swings in the available supply of gasoline for the demand will likely reach an equilibrium.

In conclusion, although I wish I could be more specific about the office's activities, as you know I'm prevented from disclosing such activities publicly due to statutes enacted in 1978. You can rest assured that if unlawful, anti-competitive activity is detected in the retail gasoline industry, my office will take appropriate action.

Sincerely,



Patrick Morrissey
Attorney General

cc: The Honorable Craig Blair, WV Senate President
The Honorable Randy E. Smith, Chair, WV Senate Committee on Energy, Industry and Mining
The Honorable Eric J. Tarr, Chair, WV Senate Committee on Finance
The Honorable Charles S. Trump, IV, Chair, WV Senate Committee on the Judiciary