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On The Road

The Official Communication of the New Jersey Gasoline C-Store Automotive Association

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The Year in Review

NJGCA On the Road
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Message From Executive Director Sal Risalvato

Looking back and moving ahead!

The first OTR issue of the year is always a look at what occurred in the past year and a look ahead. While reviewing all of the news items that I have written about last year, I surprised myself at how much we reported to you and how much activity the NJGCA staff had. Of course there were a few items that stood out and require more attention. In fact several prominent stories that affected you deserve their own separate articles; Hurricane Sandy and the Exxon Divestiture. I am not going to give either a separate article, but I will give some extra attention to both in this write up.

I will start with a quick review of other activities and accomplishments first.

We began 2012 with a 25 cent jump in the price of gas. January's increase proved to be only a fraction of what came over the course of early spring. This early year phenomenon has occurred as a new trend and I expect we will see similar market conditions this year. That means higher prices as we head in to May and June, and then declining prices as we move toward the end of 2013. Why? Speculation. Investors will gamble the price upwards anticipating either a rise in demand or some kind of freak supply interruption…or both. Once the demand doesn't rise, they will re-think their strategy and prices will decline.

Last year found NJGCA holding two very useful and different workshops. We held our first ever workshop to introduce members to the upcoming boom in natural gas vehicles, and we sponsored another workshop for NJDEP to guide Exxon dealers thru the maze of permits and regulations that they would encounter as new owners of their property and USTs.

I can not dismiss discussion of two huge dividends that were paid to NJGCA members from both our Workers Compensation program and our Health Coverage program. Members in our Workers Comp program received 7% of the premiums they paid in 2011 for the third consecutive year as a result of good safety practices. Members participating in our AMT Health Coverage received 3.4% of the previous year's premiums also as a good claims experience by our group as a whole. Some members received over $5000 from AMT. NOBODY…let me repeat that….NOBODY else will return these savings to you.

The year ended with a flurry of critical issues being introduced in Trenton. Mandatory Generators for gas stations has been proposed by 8 different proposals as a result of the fallout from Hurricane Sandy. Internet Lottery is becoming a larger threat to our convenience store members, and dumb legislation that will cost you lots of money if you give your customers plastic bags is on a fast track.

I want to touch on one more item before paying attention to the two bigger issues I mentioned above. Through the first 6 months of 2012, I had many Lukoil dealers contacting me pleading for help because their DTW had made them so uncompetitive that many were handing in their keys and forfeiting their investments in their franchises.

I had already been tracking and graphing Lukoil's DTW since the fall of 2011 so I was well aware of the serious disadvantage they faced. Several Lukoil dealers agreed to act as leaders and helped me organize the others. We began meeting and soon over 30 Lukoil dealers from Pennsylvania asked if they too could participate since they were faced with similar circumstances in their state. I agreed.

Together we organized almost 60 Lukoil stations in NJ and PA to hold a one day 24 hour price protest. Although prices were never coordinated or agreed to, each dealer agreed raised their pump prices to an attention-grabbing level, which resulted in them being between $7 and $10 per gallon for a 24 hour period. We held a press conference and received media attention around the country and even back in Russia where Lukoil is headquartered.

I was interviewed by many Russian TV and radio stations. It did not take long before I received a phone call one evening on my cell while eating dinner in a restaurant with my wife. I recognized the number as a Moscow number and thought it was another Russian reporter. It turned out to be the CEO of Lukoil North America. That call began a dialogue that has continued in to the New Year, and I expect will eventually achieve some relief for Lukoil dealers. I will report to you in my weekly Road Warrior communications as things progress.

Ok, now for the two big stories.

At the end of 2011 Exxon dealers received proposals to purchase their properties as a requirement of the NJ Right of First Refusal law that NJGCA had passed in 2009. I said back then that the legislation was truly historic since only California has a similar law. Industry insiders and media had been acknowledging just how historic our efforts were in NJ, and the results became obvious last year. Exxon offered real estate to 236 Exxon dealers. By February 197 dealers had exercised their rights under the new law. However, less than 180 were actually able to receive financing and ultimately purchase the dirt that their gas station occupied. It was historic.

I should not dismiss the fact that a few months earlier about 50 Shell dealers also exercised their rights under the law and purchased their property. More history!

I expect to have a further report soon entitled “Exxon and Shell Divestiture…One Year Later”

Hurricane Sandy…Wow! This story is going to live on for many of you and all of NJ for a long time. As the storm approached I recognized the deep poop that we were going to be in. Being both a Jersey Shore Freak for the past 37 years, and a boating maniac with a captain’s license, I have followed every hurricane since I was in high school. I had been evacuated several times over the years from summer homes and even captained a boat to Florida 3 weeks after Hurricane Hugo in the midst of incredible devastation. I knew that NJ had not had a direct hit from a hurricane in about 75 years. I know the devastation that was caused then, and I knew we were in trouble now.

I tried desperately to get messages to NJGCA members warning of the expected State of Emergency. If the situation was going to be as bad as I expected, I knew that my members would be faced with power and supply outages and the dreaded “Price Gouging” law.

As the storm unfolded my worst fears where realized when all power and internet were out at NJGCA headquarters. I had NO access to member information or any way to communicate to them. God looked favorably on us when my power at home in Barnegat was restored in only 24 hours. NJGCA Communications Director Nick DePalma had his laptop at home and access to both electricity and internet. We communicated non stop almost 24 hours a day for over a week with NJ State officials in the Governor’s Office, NJ State Police, NJ Office of Homeland Security, NJ National Guard, FEMA, US Department of Defense, and most critically…. PSE&G!

I was in constant contact with our good friend and my counterpart Eric DeGesero from the Fuel Merchants of NJ. Eric did a heroic job taking time away from his family to camp out in Trenton with officials from the agencies I just mentioned.

The aftermath of the hurricane left many NJGCA members without electricity or gasoline, or both. A picture began developing that was ugly. In an effort to communicate with members without power, phones, or internet, I instructed Nick DePalma to send a text message to all cell numbers that he had stored on his laptop. The list was stale, but it was better than nothing.

We began identifying locations that had gas in the ground but did not have power. Working with the Governor’s Office and PSE&G we were quickly able to restore power at most of these locations with gas in the ground. Our hearts sank when these locations ran out of gas as quickly as we got them power.

At one point Governor Christie DEMANDED that the contact information of EVERY owner of EVERY gas station leading to and from the Holland Tunnel be identified. He DEMANDED their power be restored immediately and that gasoline be delivered to them immediately and he didn’t care where the gas came from. He just DEMANDED it and no one including me was going to argue. I still did not have any access to location or member information because NJGCA headquarters was still crippled.

I telephoned trusted NJGCA board member Meer Fazaldin who owns an Exxon station going in to the Holland Tunnel. He was closed because of no electricity, but had gas in the ground. Meer was at home in Bergen County and agreed to drive to Jersey City and walked in and out of every gas station on both sides of the tunnel to collect the information that Governor Christie wanted. I am grateful to Meer for his help!

Michele Brown who is one of Governor Christie’s most trusted advisors, Eric DeGesero, and I began constant phone contact. Eric and I were elated to learn that Governor Christie had helped arrange for the US Department of Defense to send gasoline to NJ and distribute the product thru the National Guard. I spent the next 4 days coordinating with the Defense Logistics Agency to deliver both gasoline and generators that were at a site in PA. It was non-stop.

It was heartbreaking to make this effort and not have any control over who received gasoline or when. So many of you kept emailing that you still did not have any gas, and I felt powerless to select your location to receive a delivery, yet I was fueled by those of you who emailed to say “Thanks” that gasoline had been delivered or your power was restored.

The ordeal lasted almost two weeks and I hope none of us ever have to experience anything like this again!

It is hard not to encourage those who remained safe and did not suffer any losses to give thanks for our good fortune, and it is hard to see the devastation and suffering of so many.

I feel a little better today having watched my parish St Mary’s in Barnegat come together to provide comfort to those who needed it. I helped collect food and warm clothing and on Christmas Day I helped feed Christmas dinner to families that still had nothing. My effort is still not nearly enough, and I hope that all of us fortunate people will continue our efforts until every single family can sit around a dinner table and enjoy a meal without assistance. I hope you all feel the same. ■

DEAR NJGCA...
Letters to the NJGCA Editor

Dear NJGCA:

I wanted to write sooner. You may print this letter for other NJGCA members to read.

This past spring I ordered inspection stickers as usual. No problem right? Wrong! I had changed my corporation from an Inc, to an LLC to save about $4,000.00 a year in taxes.

MVC said this was officially a 'new business' and now required new application and a new license to be issued.

As requested I filled out the paper work and mailed it to MVC, only to receive it back a week later requesting an additional form be completed. Once again I complied and mailed it.

Another week passed and once again I received the application back in the mail. MVC wanted a city official to sign another document indicating the town's acknowledgement that my business existed. I've been here since 1962!

I had the zoning officer and the city clerk sign the form, and 10 days later mailed it to MVC, and once again it was mailed back to me. Now MVC required both me and my wife to be finger printed. I made the appropriate appointment only to get to the fingerprinting office and find it closed. Why did they give me an appointment if the office was going to be closed?

Now my story gets more frustrating. MVC claimed that my wife and I showed up at the wrong time and was charging me for two missed appointments, which of course made me freak out. They backed off.

Another week passed and MVC showed up at my location to confiscate my license, stickers and stamp. They claimed that they were tired of fooling with us.

My wife asked, "Why haven't you called NGGCA for help"? Especially since they have helped you every other time you requested their assistance over the years. (We would not even be here if NJGCA didn't help us fight Exxon).

So in order to quiet her down a bit, I called NJGCA and spoke to Debbie Hill. As the Director of Member Services, Debbie handles problems like this all the time and she knew how to solve my problem.

A few days later, a very nice gentleman called me and said that he was now handling this matter, and from here on any info that was required could be transmitted by fax to speed up the process.

My previous license and stickers were returned until the new license and stickers were processed. I was back in business!

Thanks NJGCA! And Bless You Debbie Hill!

NJGCA members take my advice; when you have a problem and your wife says call NJGCA, just do it and ask for Debbie

Frank Tomasello
Tomasello's Auto Repair, Ventnor, NJ

From: Derrick Weng
Sent: Friday, October 19, 2012 5:47 PM
To: debbie@njgca.org
Subject: Thank you

Hi Debbie,

I'd like to thank you for your help with my inspection issue. You made the process a lot easier. Knowing you are very familiar with these types of situations put my mind at ease. I can assure you that my lesson has been learned and I'll never have to make a trip with you again to Trenton. Inspections will be performed correctly from now on and we won't make the same mistake twice. Once again, thanks for taking the time to help me. I appreciate all of the efforts made by NJGCA to help their members.

Sincerely,
Derrick Weng
Prospect Exxon, West Orange, NJ

U. S. Department of Labor Q&A

Your Questions, Their Answers!

Member questions are submitted to Debbie Hill who is the NJGCA Director of Member Services, and then forwarded to Joseph Petrecca of the USDOL. Joe's answers are published below.

Member Question: ***Sometimes my employees use their own vehicles to run and get parts. I am paying them for their time – but do I owe them for mileage and use of their vehicle? Should that be included in their pay or can I add give them a separate payment for reimbursement? How am I supposed to reimburse them fairly?***

Petrecca: You are not required to reimburse employees for use of their own vehicle to perform work if it was clear to the employee that this is a condition of their employment. Not surprisingly, most employees who do use vehicles for other than home to work commuting expect to be reimbursed. If the employer chooses to do so he should separately show those reimbursements for expenses separately on the payroll as they are not wages, not part of the employee's regular rate of pay and not subject to the same deductions. They are however, still income.

If the employer does not reimburse for the expenses the employee may be able to deduct that expense from their tax returns as a work expense. The Internal Revenue Service currently recognizes reimbursement at .55 per mile or the actual expense incurred if there is supporting documentation to substantiate the expense.

Employers who reimburse for expenses are required to keep records to support these expense reimbursements under Section 516.2 (a) (6) of Title 29 U.S.C.

Member Question: ***Recently one of my employees received a notice of proposed suspension from the NJ Motor Vehicle Commission and he has to appear in Trenton for the hearing. He is an hourly employee. I know he uses his license at my shop to perform inspections – but it is "his" license. Do I have to pay him for the hours he will be using to go to Trenton? He will be gone five hours out of a regular day.***

Petrecca: The facts in this instance will determine the answer.

Seeking time off to attend a licensing hearing would be considered much the same as time to attend a meeting or training. If attendance at the hearing is mandatory in that it might result in the loss of his license and that license is a requisite for his job, then attendance at such a hearing is a requisite for employment or continued employment.

Attendance that is voluntary is in general, not compensable. If in fact the employee is given to understand or led to believe that his present working conditions or the continuance of his employment would be adversely affected by non-attendance then it is not voluntary and may be compensable. ■

Horror Highlight

nj motor vehicle hearings

by Debbie Hill

*** Editors Note: One of the benefits of being a member of **NJGCA** is having an organization that stands beside you in any situation that confronts your small business.*

*For many years, **NJGCA** has provided assistance for all of our members who are licensed as Private Inspection Facilities (PIFs). Assistance sometimes includes representation in Trenton at NJ Motor Vehicle Commission hearings. Sometimes a PIF owner or an employee may have made a mistake, usually a human error or an honest oversight, and mostly by accident. Unfortunately and too often mistakes are made knowingly and fraudulently. Since MVC has a complete history on file for both you and your business, there is always a complete review when considering Proposed Civil Penalties, and Proposed Suspensions.*

***NJGCA** assists members by helping to negotiate more favorable suspensions and/or fines. We especially assist members who have a good history with a clean record, and who may have accidentally overlooked proper procedure when performing an inspection. Our experience assisting with hundreds of cases allows us to understand and explain the human errors that are involved and seek more favorable penalties. We are not always successful, but most times we are. To set the record straight we know when a member is less than truthful when responding to complaints set forth by MVC. Even when a member has committed a purposeful act that leads to a fine and suspension, NJGCA will still assist them as long as they tell the truth and do not cover-up their wrongdoing. NJGCA will always try to seek mercy where mercy is deserved.*

*Continuing to set the record straight however; NJGCA will never sacrifice our credibility and the goodwill we have earned in Trenton with MVC officials by knowingly assisting a member who does not come clean about purposeful wrongdoing! We will NEVER support wrongdoing! We do want you to be treated fairly and equally even if you have engaged in wrongdoing, as long as the truth is told. The only way to guarantee that you are being treated fairly is to have representation with experience. **NJGCA has that experience.** In the past 6 years, Debbie Hill has assisted over 200 members and attended more than 150 hearings to be sure that NJGCA members are treated fairly, negotiating penalties far more favorable than originally proposed by MVC. Which brings us to a recent "Horror" that one member experienced. Read on.*

THE HORROR:

I was contacted by a shop owner. (For the purposes of this story I will refer to this shop owner as Bob which is not his real name. Bob is an NJGCA member). Bob contacted me regarding a suspension he received at his Private Inspection Facility (PIF). This was a suspension and NOT a proposed suspension. The notice actually read **"*Order of Suspension and Notice of Proposed Permanent Revocation with a Proposed Civil Penalty of $12,000*"**. In this case – his PIF license was immediately suspended.

NJMVC issued the suspension based on "2 counts of utilizing an alternate vehicle to obtain valid emissions reading", and "2 counts of fraudulently affixing the certificate of approval" and "2 counts of intentionally or willfully passing a motor vehicle for any required portion of the emission test or OBD inspection in violation of rules".

Bob was shocked, how could this happen? Since he performs all of the inspections at his shop and he always follows the rules, there certainly had to be a mistake. After some thought …he realized exactly what happened.

A couple months earlier, Bob was speaking to a neighboring shop owner. Jim across the street (Jim is also not a real name and is also an NJGCA member). Jim did not own an inspection machine but he did possess a valid NJ Emissions Inspector License. So two businessmen, Bob and Jim got together and they agreed that Jim could perform inspections for his own customers using Bob's inspection equipment and therefore Bob's PIF license. He would also make himself available to help Bob out by performing inspections for Bob's customers whenever he was available. They even agreed on how to split the money.

Their arrangement worked for months. That is until Jim performed an inspection on a family member's car and could not get the vehicle to pass the emissions test. Jim then committed one of the dumbest mistakes imaginable. He hooked his own personal vehicle to the inspection machine. It worked, and he never thought about it again.

Several weeks later Jim made the same dumb mistake again with yet another vehicle. Again, he used his own personal vehicle as the "alternate" vehicle.

MVC was watching as they were already aware of and investigating the first incident a few weeks earlier. Once the second incident occurred MVC moved in immediately and suspended Bob's PIF license. Every inspection is monitored remotely by MVC officials, and the very second the inspection equipment transmits a V.I.N. that does not match the car's computer, alarms go off. After the 2nd incident MVC wasn't waiting to conduct an investigation and swooped in.

An MVC officer arrived at Bob's location. The officer interviewed Bob who of course stated truthfully that he had no knowledge of any "fraudulent inspections". Then the MVC officer and Bob realized that the NJ Emission Inspectors License that was used to perform the fraudulent inspections actually belonged to Jim from the shop across the street. The MVC officer went next store to interview Jim. Jim admitted that he inspected his father's vehicle, could not get it to pass, and then used his personal vehicle as an alternate in order to get it to pass. He admitted that he used his personal vehicle on the 2nd fraudulent inspection too.

Bob called NJGCA. Remember, both Bob and Jim are NJGCA members. After speaking with him, and getting all of the details, I called Jim. Jim immediately took full responsibility for everything he did wrong. He was anxious for me to help get everything straightened out as soon as possible.

I called the person who schedules MVC hearings before any notices were sent and made arrangements for both Bob's and Jim's hearings on the same day. My goal was to get Bob's PIF license back as soon as possible and get his business up and running.

The day of the hearing I accompanied both Bob and Jim to Trenton. MVC wanted to take serious administrative action against Bob. Remember, they wanted to revoke his PIF license permanently, and fine him $12,000. MVC firmly believes that all owners should be completely aware of everything that happens at their business and the owner is ultimately responsible. With **NJGCA**'s help we were able to reduce the suspension time to just 30 days with only a $3,000 civil penalty. Jim properly agreed to pay Bob's fine.

Jim rightfully received a more severe punishment. He received a six month suspension and his civil penalty was $2,000 plus restoration fees. Jim was ultimately responsible for both civil penalties and restoration fee's totaling more than $5,000.

I am happy to report that Jim did pay all of the fines including those levied against Bob. Once Jim's suspension ended and his NJ Emissions Inspector License was restored, he asked Bob to resume the previous arrangement they had made and continue to use Bob's inspection equipment and PIF license. Smartly, Bob told him "NO WAY". He learned his lesson and will never again allow another shop to perform inspections using his inspection equipment or PIF license.

Had Bob consulted with NJGCA before making the arrangement with Jim, we would have strongly advised against it. NJGCA still believes that ONLY you and your direct employees should perform inspections using your inspection equipment and your PIF license. Don't let this happen to you. ■

Important Issues impacting your business!

By Eric Blomgren

Please see the updates below for the most recent activity in Trenton and around the state. These issues are important to all NJGCA members

Plastic Bag Tax

In late December the Senate Environment and Energy Committee passed S-812, sponsored by Senator Bob Smith (D-Middlesex). This bill would require you to charge 5 cents for every single plastic and paper bag that your store gives to customers. You would get to keep one of those five cents. Every quarter, you'll have to submit a report that details, in effect, every single disposable bag your store gave out to customers. And, beginning in about 2 years you'll only be able to give out special recyclable bags that are made from at least 40% recycled material and have "please recycle this bag" printed on them.

While a previous version of the bill exempted businesses with less than 1,000 square feet of retail space, this newly amended version removes that exemption, so you will be expected to comply if this bill becomes law no matter how small your store may be. This means you'll have to train your store clerks to count every single bag they give out to customers and then charge a nickel for each one. The effort that would go into record keeping is a major headache. It's as if you don't already have enough regulations and taxes to worry about.

Based on the numbers used in the bill, there are approximately 400 million plastic bags used in the state of New Jersey every single year, and the government wants you to keep track of them all. Now, inconvenience is a bad thing in any industry, but it's a particularly bad thing for convenience stores. Providing fast service at the counter is one of the purposes of this industry, and being forced to track every single disposable bag undermines that.

The bill will likely now head to the Senate Budget Committee. In order for it to become law it would need to pass that Committee, then the full Senate, pass the Assembly Environment Committee, and the Assembly Budget Committee, then pass the full Assembly, and finally be signed by the Governor. It's highly unlikely the Governor would sign as onerous a tax as this one, and it's also doubtful it will even make it that far. Rest assured that NJGCA and the rest of the business community is united and will aggressively fight this proposal every step of the way.

Generator Requirements

In the aftermath of the gas shortage we saw from Superstorm Sandy, there has been a surge of new bills aimed at trying to require gas stations and other businesses to have working backup generators. There are currently eight different proposals from a variety of legislators from both parties. The content of each bill slightly differs. One simply authorizes the state to provide low interest loans to any gas station which would like to use the funds to buy a generator. Others mandate that every gas station in the state must have backup power generation, and then authorizes the state to provide loans to assist stations in buying these generators. A few even simply state that all gas stations must get backup generators, with no mention of how they are to be paid for.

We have been working to educate the Legislature about this situation. For one, everyone needs to understand that these generators are not something that you can just go to the local hardware store and pick up for a few hundred bucks. To fully outfit a gas station with backup power generation would cost between ten and thirty thousand dollars. The other important issue is that even if this legislation had been in place before the storm, it would have made no discernible difference. The gas shortages were a result of a lack of supply, and that was due to storm damage suffered by the refineries and terminals. If all the stations had generators, they would have turned them on, sold all the gas in the ground, and then shut down for a few days until more gas was finally delivered. It took two weeks for some stations to get a fuel delivery. Thankfully, both the Democratic leader of the Senate, Steve Sweeney (D-Gloucester), and the Republican leader, Tom Kean (R-Union), publically stated that requiring stations to have backup generators "makes no sense at all".

Lottery Changes

In December the Assembly Budget Committee held a hearing on the proposed changes to the state's lottery program. It has been described as a lottery "privatization"; however the only aspect that will be handled by a private contractor is the marketing. Ownership of the lottery and the collection of the revenue will stay with the state. NJGCA is not opposed to the concept of having a private company run the marketing. During a meeting with state Lottery executives, they admitted that a lack of funds from the state has long held them back from growing the lottery to meet its potential. A private company with the same profit motive you operate with could be successful in growing the number of lottery ticket sales made from your store.

We do however have some serious concerns about the proposal. Mainly, that this private company will push to sell lottery tickets online as a way to increase its revenue. We strongly feel that if people can just buy lottery tickets from a computer or smartphone, they won't walk into your store and buy a cup of coffee or a bag of chips. We all know that it's the sale of those products that keep you in business, and any policy that would reduce those sales is one we oppose. We also had some concerns that a private company may raise fees for retailers; however we now know that the private vendor will not have

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the power to do that.

Minimum Wage Increase

Despite the devastation done to businesses throughout the state as a result of Sandy, the Legislature is still pushing to increase the minimum wage and establish automatic yearly increases. The Governor continues to refuse to sign any bill that institutes automatic increases, and rather than compromise for an immediate increase, they are attempting to go around him. Both chambers have approved a constitutional amendment that would raise the minimum wage to $8.25 an hour and then increase it annually according to inflation. If they pass it again in 2013, which they have to support to do, it will be placed on the ballot next November. If a majority of voters approve it, then there will not be anything that can be done to prevent these automatic increases going forward. NJGCA stands alongside the rest of business community in opposing this annual increase in costs, which will certainly work its way up the chain and force wages up for most employees, not just those earning minimum wage.

Inspections

It has now been a year since the new emissions inspection program was originally supposed to be announced. We still do not know exactly what the program will consist of, in fact we do not even know for sure if the Administration has decided yet. The state's contract with Parsons is set to expire in May; however the contract also provides room for an extension if the state wishes, which at this point it almost certainly will ask for. NJGCA continues to support the state completely privatizing the inspection process and closing down the central lanes for good. Hopefully the future of this program will be announced soon.

Whatever the new program looks like, it will almost certainly not involve bringing back safety inspections. Speaking of which, a recent report by the state auditors says that New Jersey did not actually save the amount of money the government projected it would by eliminating safety inspections, further proving that the state should have left safety inspections alone and simply privatized the entire inspection program, which would have saved millions of dollars more than they did by eliminating safety inspections (not to mention the damage it did to thousands of repair shops in the state).

Zone Pricing

While it had once been our plan for this bill to have already passed the Assembly Consumer Affairs Committee and perhaps the full General Assembly, nature had other plans. What we had hoped to be a meeting to finalize the language of our bill to outlaw zone pricing had to be canceled since it had been scheduled for early November—days after Sandy hit. The Committee meeting we had wanted it to be heard in was also cancelled, preventing us from getting a hearing in before the close of 2012. We hope to get this moving again early in 2013, so please pay close attention to your email if you're station is one of the hundreds still affected by zone pricing, we will need your support in Trenton.

Right to Repair

Right to Repair saw a big win on Election Day in Massachusetts. You'll recall the movement to put Right to Repair on the ballot pressured the auto manufacturers into accepting a compromise bill back in August. However, at that point it was too late to remove the question from the ballot. The public support for Right to Repair was so massive that there was no hope in asking them to defeat it. It wound up not only passing, but doing so in historic proportions. It received over 2.3 million votes in favor versus less than 400,000 against, meaning it won 86% of the vote, the largest landslide ever for a public question in Massachusetts history!

This is ultimately good news because the provisions of the ballot initiative were stronger for auto repair than what was in the bill. Right to Repair in Massachusetts doesn't make auto repair any easier in New Jersey today, but we are confident it is the start of something bigger. Now that Right to Repair is the law, Pandora's proverbial box has been opened and the auto manufacturers' arguments that their intellectual property will be completely ripped up will soon be proven as little more than a scare tactic.

Before what happened in Massachusetts this year, New Jersey was the state where Right to Repair had come closest to passing. One of our first meetings in the New Year will be with Assemblyman Reed Gusciora (D-Mercer), who has been the Legislature's biggest advocate and the sponsor of the Right to Repair bill. We plan an aggressive push to ensure that New Jersey is the second state to give its motorists the Right to Repair. Massachusetts has shown that there is clearly broad support among the public, but unfortunately New Jersey does not allow the public to put questions on the ballot, so we cannot follow their path exactly. We will need your help in order to make this law, so stay tuned and prepare to be active; the future of your business depends on it!

HealthCare

President Obama's reelection in November essentially eliminated any more doubts that the Affordable Care Act (ObamaCare) would be repealed. The reforms are to be fully implemented in 2014. One of the major components of the bill was state based health insurance exchanges. These exchanges were meant to be "one stop shops" for people or businesses looking for health insurance. It sounds pretty good in theory, although there has been criticism that the market will not be open enough because of restrictions and mandates the government would put in place.

While the original plan was for each state government to set up and run its own exchange, the Governors of half the states have vetoed that plan, including Governor Christie. He said that the federal government was unable to provide information on how much running this exchange will cost, so instead the federal government will set it up, run it, and pay for it.

The exchanges are scheduled to go online next year, although it is possible that will be delayed due to the fact that the federal

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government will now be responsible for many more state exchanges than previously thought. Some of the bill's taxes are scheduled to go into effect on January 1st, including the controversial tax on medical devices, the cost of which will almost certainly be passed on as higher premiums.

Election 2012 Update

Despite all the talk and polling saying that Americans are very unhappy with our government, Election Day proved to be a great day for incumbents. President Obama was reelected by an approximately 51%-47% margin, although he is one of the few people to be reelected with less support than he was first elected with. Nationally, Democrats expanded their majority in the Senate and now hold a 55-45 edge. In the House, Republicans retained a comfortable majority despite losing a handful of seats. New Jersey saw some of the lowest voter turnout in a presidential election year that we have ever seen, due to the confusion resulting from Superstorm Sandy. Senator Bob Menendez was reelected in a landslide, and all 12 of our House members were reelected for another 2 year term. None of the three General Assembly members facing special elections were defeated.

2013 is a big election year in New Jersey. The Governor and all 120 seats in the Legislature will be on the ballot this November. Governor Christie has officially announced that he will seek another term in office to continue the work he has done to better the lives of the citizens in this state and the health of the business community.

As of this writing, only state Senator Barbara Buono (D-Middlesex) has announced her intention to challenge Christie. Sen. Buono has a following among the activists in the Party, and will likely be to the left of most of the other candidates, a positioning that will help in the primary but may hurt in the general election. Newark Mayor Cory Booker, the biggest name in the NJ Democratic Party, has officially ruled out a run against Christie. There are several other Democrats considering a run against Christie, including Senate President Steve Sweeney (D-Gloucester), Assemblyman Majority Leader Lou Greenwald (D-Camden), former Governor Dick Codey (D-Essex), and Elizabeth Mayor Chris Bollwage. The primary will be held in June.

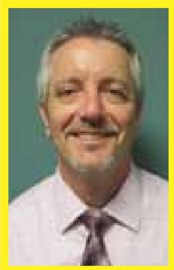
Democrats have control of both the state Senate and the General Assembly, but Republicans are hoping a strong enough landslide by Governor Christie will allow them to win in enough swing districts to take power in one or both houses.

NJGCA PAC

2013 promises to be a big year for the state and for our organization. We hope to be more aggressively involved in supporting allied candidates than we ever have been, and we will need your support to do it! Please pay attention for more information about upcoming fundraisers for the NJGCA PAC. With your support, we will make our voices heard louder than ever and get passed some of the most beneficial legislation your businesses have seen in a long time! ■

Membership Memo

by Greg Cannon, Membership Director



Year in Review:

• The epidemic of non-members calling when they are in trouble.

• Multi-location owners only registering 1 site as a member but calling for help with a non-registered site.

• What is the value of NJGCA?

• Membership dues for AMT Healthcare participants must now use credit card auto-bill beginning 4/1/13.

• Membership dues payment options are now offered.

• Members must invest a small amount of time to investigate how Member Benefit Partners can help them save money.

I hope you have recovered from the devastating Hurricane, and I also hope you and your families had a wonderful holiday season. Best wishes for a healthy and prosperous 2013. I've had 7 months at NJGCA to settle in helping members and I have made some observations. So here's what I've observed for my half year in review:

- Since May there seems to have been an exponential increase in the number of calls our office receives from former, or non-members when they are in dire need of help. The same is true for multi-location owners that only pay dues for one site but call us with problems at another site that is not registered as a member, and does not pay dues. Sal and I have been grappling with the fairness issue. Providing advice or assistance to those who do not pay dues is just not fair to our registered dues paying members. Several times I have asked myself; "Would AAA tow your car if you weren't a member?"

- Our AMT Health Care benefit is popular among many members. As you all know, NJ State law requires that anyone enrolled in an AMT Health Plan must be a member of one of the 15 associations that comprise AMT. The state carefully monitors this thru constant auditing of AMT books. When NJGCA members pay their dues late it causes a nightmare of increased administrative work with follow-up letters and coordination between NJGCA and AMT. This all must be done to avoid a termination letter that will leave members without health coverage. In order to eliminate this problem, NJGCA has established a policy that requires all members participating in the AMT program to be on automatic billing via credit card. Of course members can still select a payment option of their choice (annual, semi-annual, quarterly or monthly). This new policy is scheduled to take effect on April 1, 2013. All enrolled members will receive a letter with the details.

- Often times I hear the question, "What value do I get from my NJGCA membership?" Well, frankly that makes me nuts and here's why! I am only here for 7 months, yet I am amazed at the work Sal and Debbie have done to help members who seem to find themselves in a pile of poop. Actually what amazes me is the work that no one ever sees or hears about in Trenton that prevent the poop from ever showing up at your doors in the first place. Certainly the person asking the "value" question has never been confronted with a citation issued by Weights & Measures, or NJDEP, or NJMVC, or the U.S. Department. Of Labor. Everyone assumes that they will never be in one of those situations, but it seems that even the best run businesses run in to situations that require NJGCA assistance. "I'm not gonna have a problem, it's gonna be THAT other guy" syndrome. It may not be you today, but it could be you tomorrow and that's when the phones ring at NJGCA.

  Government agency problems aside, the information that is communicated to you weekly in our Road Warrior emails, and quarterly in our On The Road Newsletter are invaluable.

  The easy way to calculate value comes when you participate in NJGCA Member Benefit Programs designed specifically for our members to help them save money. But, if time isn't invested in at least calling me to inquire, then the savings can never be realized. Many of these programs actually pay you more than your $450 annual dues.

- Due to the economy some members have indicated a temporary struggle to pay their dues at renewal time. Ladies and gentlemen I get it! We are all faced with financial challenges at some level from time to time. Here's the good news. We have 4 payment options (see bullet #2 above). The easiest is $40 per month by credit card. There are several other options too, and they are all easier than finding $450 in one lump sum.

- On the upside, I've also seen an increase in members who do take advantage of our programs, and I've received a bunch of emails and phone calls expressing appreciation. Hey, the bottom line is that you have one of the premier associations in the State of New Jersey watching your back, and helping you save your hard earned money. If you have suggestions that you think will improve how we can help members, then please send me an email greg@njgca.org Write "Feedback" in the subject line. I'll be interested to hear from you. We have a lot of exciting things in the pipeline for 2013 and we'll keep you posted with details as they develop. In the meantime, stay healthy, be safe and rock steady.

Talk to ya soon.

Greg

Gas cans and natural disasters become the new face of legal reform

AnnMarie McDonald,
NJ Lawsuit Reform Alliance

The chaos and heartache brought about by Hurricane Sandy forced New Jerseyans to appreciate the utilities and shelter we often take for granted, and incidentally, renewed our appreciation for gasoline and the containers which store it.

You may not realize it, but if you used a gas can during Hurricane Sandy and its aftermath, it was likely manufactured by Blitz, a company in a small Oklahoma town. And sadly, it's now a relic of the pre-lawsuit abuse era.

Blitz sold more than 14 million cans per year for the last decade, which translates to 75 percent of all gas cans sold in the United States. Fewer than two incidents per million cans sold were reported, and most involved obvious misuse. Pouring gasoline from the container onto an open fire was a common theme.

Of the 62 cases filed since 1994, only two made it to court and only of those cases was successful. The rest were settled or dismissed, notes a New York Times report. Nevertheless, it still cost the Oklahoma-based company $30 million in legal fees, and presumably, higher insurance premiums to cover the additional $30 million paid by their insurance companies. Sadly, these costs of doing business in America forced the leading manufacturer of gas cans in the United States to close its 117-person operation for good. Buying domestic also just got a bit harder.

For New Jerseyans who retained their homes but lost their power, gasoline offered somewhat of a lifeline for those with generators to fill. And as shelters and motels filled to capacity, generators were able to keep more people in their homes even as temperatures dropped. A not-so-small silver lining during a catastrophic storm.

Of course we hope we never see a storm of Sandy's magnitude ever again. But if we do, the absence of Blitz in our markets may make generator-powered electricity a difficult commodity to deliver. ■

AnnMarie McDonald is the Director of Communications at the New Jersey Lawsuit Reform Alliance. She can be reached at amcdonald@njlra.org.

Breaking Down Obamacare

by Harvey Mishkin, Association Master Trust

Obamacare is really known as the Patient Protection and Affordable Care Act (PPACA) and it contains many changes as to how healthcare will be delivered and paid for mostly beginning in 2014.

President Obama signed the healthcare reform bill into law on September 23, 2010, and the Administration has been in the process of issuing rules and guidance on implementation. PPACA maintains the employer-based healthcare system and also maintains state regulation, but now under a federal framework of rules. Parts of the law have already been implemented; however most of the major provisions of the legislation will begin in 2014. The goal is to reduce the number of uninsured, but at an estimated cost that may be in excess of $1.1 trillion over the next 11 years.

Key components in the law include or will effect:

●Individual Mandate for Healthcare Coverage and Subsidy Eligibility
●Employer Mandates
●Health Insurance Exchange
●Expansion of Medicaid
●Medicare

The Individual Mandate for Healthcare Coverage

The core of the law requires that most every US citizen have affordable health care coverage beginning in 2014. Individuals must obtain minimum essential coverage for themselves and their dependents or they will pay a penalty. This requirement can be met in different ways:

●by obtaining coverage through your employer
●by purchasing coverage through a state exchange
●by purchasing coverage directly from a carrier in the individual market.
●By enrollment in a government program, i.e. Medicare or Medicaid

Individuals who do not purchase qualified healthcare coverage will be required to pay a penalty on their income tax return. In 2014, the penalty is 1% of an individual's income or $95 whichever is greater. By 2016 the penalty increases to 2.5% of income or $695 again, whichever is greater. The maximum penalty for a family is three times the individual flat dollar penalty.

Individuals, whose household incomes are between 133% and 400% of the federal poverty level, may qualify for a **federal subsidy** to help them pay their insurance premium or cost-sharing obligations, provided they purchase coverage through the healthcare exchange. The amount of subsidy is based on household income, reducing the cost of coverage to a percentage of household income. For example, a household with earnings at 133%-149% of the federal poverty level would pay between 4% - 6.33% of household income towards the cost of coverage.

The premium assistance subsidy sliding scale allows people with lower income levels to pay less for coverage than those with higher income levels. Once again, the cutoff level for subsidy eligibility is a household income equal to 400% of the federal poverty level, or in 2012, approximately $44,680 for a single person or $92,200 for a family of four.

Employer Mandates

Large Employers are defined as one with **more than** 50 full-time *equivalent* employees during the preceding calendar year.

Both full-time and part-time employees are included in the calculation;

"Full-time" employees are defined as those working 30 or more hours per week; **please note: The hours**

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worked for full time employment status is different under the federal law than current New Jersey small employer requirement of 25 hours or more per week.

"Full-time" excludes seasonal employees who work less than 120 days during the year;

Part-time employees' hours as a group are included in the calculation also. Hours worked by part-time employees (those working less than 30 hours per week) are included by, on a monthly basis, dividing their total number of monthly hours worked by 120 to calculate a full time equivalent employee number.

Small Employers are defined as one with **less than** 50 full-time *equivalent* employees during the preceding calendar year. **Remember** as noted above, **both full and part-time employees are counted towards the employee limit** to determine whether or not the employer is considered large or small.

PPACA does not require that employers offer health insurance coverage to their employees. However, **large employers** may be assessed a penalty if they do not offer qualified health coverage to full-time employees or if the coverage is deemed to be unaffordable and at least one employee receives subsidized coverage through the health exchange.

There is no penalty for Small employers that do not offer health coverage to their full-time employees. The law encourages certain small employers to provide coverage by offering a small business tax credit to help offset employer premiums.

The Healthcare Exchange

The health insurance exchange is a "storefront" or marketplace where multiple insurers will offer individuals and small-business health plans that provide **essential benefit coverage**. These plans are commonly referred to as the "metal" plans. They offer standardized covered services and cost sharing (i.e. deductibles, coinsurance or co-pays and out of pocket limits) to make comparisons across plans easier for consumers. The minimum level of coverage (Bronze plan) will offer benefits, with at least 60% actuarial value. Silver offers 70%, Gold 80%, and Platinum 90%. There will also be a catastrophic plan offering made available to individuals that are less than age 30.

In addition to its service as a plan offering site, the exchange will have multiple roles and complex duties. It must manage relationships with regulators, insurers, consumers and employers. Among its many duties and responsibilities is to review insurance products and minimum loss ratios, protect consumers, coordinate with employers and manage Medicaid and subsidy eligibility.

How we pay for Healthcare Reform

About half of the cost of subsidies and benefit increases are covered by reducing projected Medicare spending. The other half is covered by tax increases, including new excise taxes on health insurers, medical device makers, drug companies and indoor tanning parlors; the levy on employers and individuals who failed to obtain health insurance and higher Medicare taxes on the wealthy.

The Health Reform Timeline

Many provisions of the law have already been implemented such as:

●dependent coverage to age 26
●no pre-existing condition limitation for children under the age of 19
●100% preventive care
●guaranteed renewability
●medical loss ratio requirements for insured plans
●required internal and external appeal mechanisms
●small business tax credit

In 2012, healthcare reform required:

●preventive care to include specific services for women
●voluntary W-2 (informational only) reporting of the value of the health benefit plan provided by large

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employers
●issuing at least 250 W-2s in the preceding year
●SBC's providing for a uniform explanation of coverage
●funding for the patient centered outcome research trust fund
●HSA tax for nonqualified withdrawal was increased to 20%
●60 day notice of material changes

In 2013, we will see:

●$2500 cap on healthcare FSA's
●the Medicare tax increase begins
●exchange and subsidy informational notice to employees
●the outcome research trust fund fee increase
●annual reporting on benefits that improve health
●end the Medicare Part D employer deduction

In 2014:

●the individual mandate to obtain health insurance begins
●tax penalty start for those who don't have coverage
●the exchange becomes operational, and is available to individuals and small employers (up to 50 employees)
●subsidies become available to those who qualify
●the employer mandate "play or pay" begins
●pre-existing condition limitations are eliminated
●new employee waiting periods in excess of 90 days are eliminated
●qualified health plans, offering at least minimum essential coverage

In 2016:

●the exchange is open to employers with up to 100 employees

In 2017:

●the exchange is open to all employers

In 2018:

●the Cadillac tax
    ●40% excise tax on plans with higher benefit levels, resulting in premiums that exceed cost limits

PPACA has certainly added to a business owner's decision-making process when evaluating employee healthcare benefits. For small employers in particular, many questions remain about continuing to offer health insurance. For some it will solely be a financial decision, and for others it will be a mixture of cost and their ability to hire and retain staff, and also satisfy their own coverage needs. NJGCA is here to help you answer the questions you have concerning your current coverage as well as the impact of the new law on you and your business. Please let us know what questions you have and we will get you answers that will allow us to move forward on a path that solidifies your future health care needs. ■

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THE FISCAL CLIFF

By: Eric Blomgren

On January 2nd the United States Congress managed to successfully save the entire country from itself. The only reason we had a “fiscal cliff” was because of previous actions (or inactions) by the Congress.

Back in 2010 President Obama and Democrats compromised with Republicans in Congress to extend all of the Bush Tax Cuts as well as a payroll tax cut. That extension meant they were set to expire on January 1, 2013.

In 2011, Congress passed the Budget Control Act. This bill raised the debt ceiling which is the maximum amount the Federal Government is permitted to owe, and tried to set the table for a meaningful effort to reduce the nation’s massive deficit and debt. It created a Super Committee that would find a bipartisan agreement to cut at least $1.2 trillion over 10 years from the deficit. As incentive to force the Congress to find something, the bill provided that if no agreement was passed, there would be huge automatic across the board cuts made to both defense and non-defense spending. These cuts, known as the “sequester” would also go into effect January 2013.

These two problems were collectively referred to as the “fiscal cliff” and it was widely felt that the shock of these budget cuts combined with tax increases would seriously hurt the economy.

The reason they picked 2013 for all of these deadlines was to wait until after 2012 elections. This also meant they wouldn’t even begin discussing a solution until December, after the smoke from the November election had cleared. They debated, argued, dug in, and otherwise procrastinated until they literally could not wait a moment longer and finally came to a compromise hours before the start of 2013.

The Senate passed the compromise 89-8 at 2 a.m. on New Year’s Day; the House passed it later that night by a 257-167 vote. House Democrats supported the measure 172-16 but House Republicans, despite being the majority party, opposed it 151-85. I remind you that this isn’t a college student writing a term paper, this is our elected legislative body, responsible for millions of federal employees and trillions of our tax dollars.

The deal results in the first increases in income taxes in nearly 20 years. The federal income tax on individuals making over $400,000 and families making over $450,000 will return to the level it had been during the Clinton Administration—39.6%. Everyone below that income level will not see a change in their federal income tax rate. It also caps some deductions for individuals making $250,000 and for married couples making $300,000.

The tax on capital gains and dividends will be permanently set at 20% for those with income above the $400,000/$450,000 threshold. It will remain at 15 percent for everyone else. The death tax will be set at 40% with a $5 million exemption indexed to inflation.

The Alternative Minimum Tax (AMT) was also permanently patched. The AMT was created in 1969 to ensure that the richest always paid at least some money in tax. However, it was not tied to inflation which meant before long it was threatening to hit the middle class. Congress has been forced to modify it 19 times since its creation; however that is now a thing of the past as the AMT will be indexed to inflation going forward.

The aspect that will likely affect the most people is the expiration of the payroll tax cut, which will rise 2% to return to its traditional level of 6.2% for employees. The sequester has been delayed for two months.

Many Republicans were upset not just because taxes were increasing but because there was very little in cuts being made. Most of those that did support the deal did so unhappily. Because they were at the deadline, they knew that if they even tried to amend the deal it would mean income tax

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increases for every American immediately, instead of tax increases on a few. President Obama didn't get exactly what he wanted either, after having campaigned on raising taxes for those earning over $200,000/$250,000 a year, not $400,000/$450,000.

This deal does not, however, mean the end of the fighting or anything close. The government will again hit the debt ceiling in late February and the first of the sequester cuts are scheduled to hit not long after that. Some Republicans are already threatening the prospect of a government shutdown in order to force President Obama and Democrats to agree to significant spending cuts, including cuts to entitlements. Senator Mitch McConnell, leader of the Senate Republicans, has also said that the tax increases that resulted from the fiscal cliff deal were "the last word on taxes"; meaning further deficit reduction would come from spending cuts.

So while the Congress did manage to solve, at the very last moment possible, the major problem it had designed for itself, it also sets up a series of significant fights to come for the next few months at least. It was also determined to have been the most unproductive Congress since productivity began to be measured back in 1948. Finally, remember 2 months ago when we voted on whether to keep these people in power or throw the bums out? Well 91% of incumbents in Congress were reelected.

2012: The Year In Gas Prices

By: Eric Blomgren

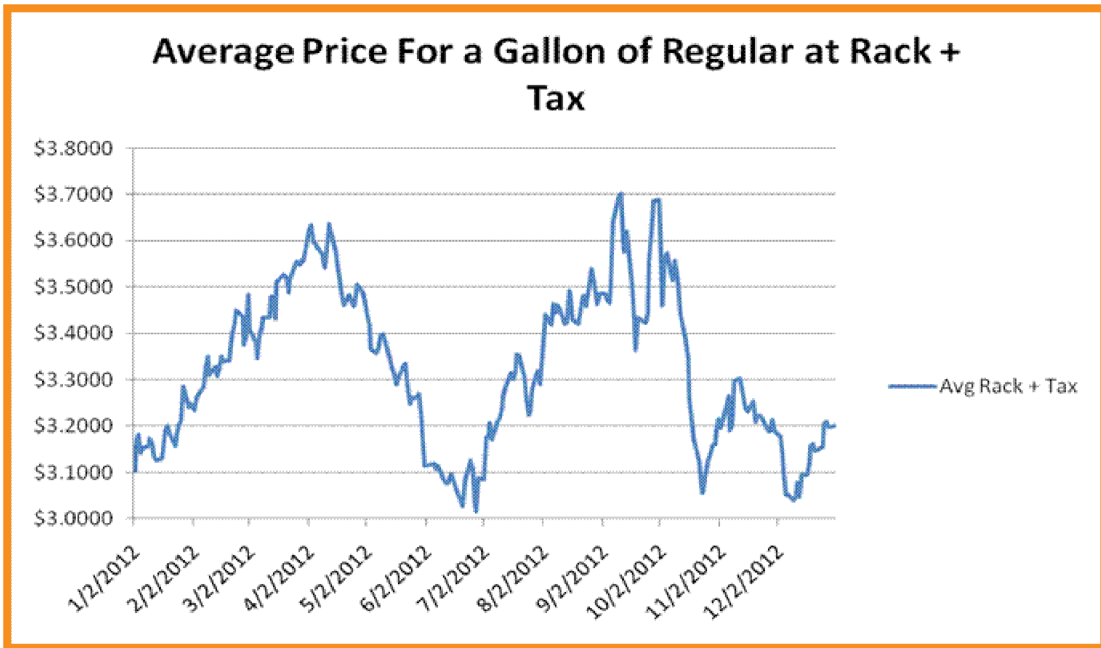
A year ago I wrote that if there was one way to describe the year 2011 in gas prices "it's high". Well I guess that means 2012 can only be described as "higher". 2012 set a new all time record for high gas prices at the rack, where the average price for a gallon of regular gas, plus tax, was $3.32. For comparison, the average price in 2011 was $3.20, in 2010 it was $2.45, in 2009 it was $2.05, in 2008 it was $2.80, and in 2007 it was $2.44.

2012	Average Rack Price + Tax	Change from previous month
Jan	$3.18	$0.19
Feb	$3.34	$0.17
March	$3.48	$0.14
April	$3.54	$0.06
May	$3.33	-$0.21
June	$3.08	-$0.25
July	$3.25	$0.17
Aug	$3.45	$0.20
Sept	$3.54	$0.08
Oct	$3.34	-$0.20
Nov	$3.23	-$0.11
Dec	$3.13	-$0.10

2012 had a smaller gap between the highest and lowest prices of the year compared with the more volatile 2011, but unfortunately that meant prices were more uniformly high. The gap between the highest average monthly price and the lowest in 2011 was 72 cents; in 2012 the gap was 46 cents. As in 2011, the highest average monthly price of 2012 occurred in April, when it hit over $3.54. That was about half a cent higher than April 2011, making April 2012 the most expensive month for gasoline on record. Perhaps the most disturbing thing about 2012 was that there was not a single month in which the average price of gas was below 3 dollars a gallon. In 2011 the months of January, February, and December all averaged less than 3 dollars. The cheapest month of 2012 was June, when the average price was $3.08 a gallon.

The overall trend lines month to month were similar in both 2011 and 2012 for ten out of twelve months. This is important because it may be able to give us some idea of how the market will shift in 2013. We should expect prices to increase in January, February, March, and April, with April being the high point of the year. Then, prices will decline in May and June before increasing a bit in July. August and September were the outliers; prices dropped in 2011 and increased in 2012. Then the year will close out with declining prices in October, November, and December. This scenario presumes that demand trends remain relatively similar to what we have experienced in recent years, and that there are no major supply difficulties such as those that may be caused by geopolitical events, or natural disasters.

You may note it seems strange that May and June, the start of the summer driving season are now months when the price of gas is on the decline, while the first 4 months of the year see prices steadily increasing. That's because of the huge role that speculators now play in affecting the price at the pump. They start making predictions of what supply will be during the summer at the start of the year, forcing prices upward as people predict declining supplies and/or international turmoil. When Memorial Day comes around and the reality of supply and demand doesn't meet the speculators' predictions, prices start to fall again.



Snapshots!





Wednesday, December 5, 2012: NJGCA was in Trenton to testify before the Assembly Budget Committee on the proposed privatization of the lottery. NJGCA Members Ebbie Ashabi and Roger Verma were there to testify along with Sal on the proposal, which would harm convenience store and station owner members.

Horror Highlight

properly written repair invoices

By: Eric Blomgren

In this issue of the OTR we at NJGCA want to a spotlight specific problem one NJGCA member recently faced, so that you won't fall victim to the same scenario.

A customer brought his 1998 Audi into a repair shop because the "check engine" light was illuminated. The shop owner determined that the problem was a malfunction of the right side catalytic converter. The customer was given an option for a NEW OEM converter that would cost $1100, or a NEW Aftermarket converter costing only $700. The customer wanted to do some research on his own hoping to save a buck, and planned to search the internet for a cheaper converter, and then have the shop install it. A few hours later, the customer called to say that he was unsuccessful finding one that was cheaper and requested the shop owner to "just go ahead" and install the less expensive $700 converter. The shop owner followed the customer's instructions and installed the lower-cost aftermarket converter. The car was repaired. The customer seemed pleased and paid his bill.

Three weeks later while the customer was performing an oil change, he noticed that the catalytic converter that had been installed was an aftermarket part and not an OEM part. He called the shop to complain and say that he expected on OEM part and NOT an aftermarket converter. He claimed that he was told by the shop owner that $700 was the cost of an OEM converter. The shop owner who is an NJGCA member explained that the customer misunderstood and then clarified that two prices were originally quoted; an OEM for $1100, or an aftermarket converter for $700. He further explained that the part number listed on the invoice clearly shows that the part installed was an aftermarket part and not OEM. An argument ensued and the customer left filing a complaint with the County Department of Consumer Affairs, claiming that the shop owner defrauded him. The complaint claimed that because the invoice didn't ***specifically state*** that the installed part was aftermarket, that it was not unreasonable for him to assume that it was OEM. (Apparently not questioning why the price had been lowered $400).

The shop owner showed Consumer Affairs the invoice which did not in any way claim that the catalytic converter was an original Audi part. However, as the shop owner himself stated, "it's the Department of **Consumer** Affairs; they say right in their name whose side they are going to be on in a dispute like this, and it's not the small businessman's." Consumer Affairs relied on a clause in the law relating to the requirements that must appear on an invoice in order to punish the member for perceived wrongdoing.

The law states that a customer is entitled to ***"a detailed invoice stating charges for parts and labor separately and whether any new, rebuilt, reconditioned or used parts have been supplied."*** Consumer Affairs determined that because the parts listed on the invoice didn't specifically state that they were new, and only listed the part number, that he had committed an "unconscionable commercial practice", a charge with a fine of up to $10,000.

The shop owner's response was that he'd been in business for 30 years and he had never put the word 'new' in front of sparkplug or air filter or any other item. If a part that was installed is refurbished or rebuilt, of course he makes note of that on the invoice. If 30 parts are listed on an invoice, does the word 'new' need to be written next to all of them?

There is one solution to get around this problem, and that's the main message you should take away from this story. When you print new invoices, print on the work order: **"All parts listed above on this invoice are new unless otherwise listed"**.

Rather than discard 5,000 invoices that had already been printed, our member is labeling existing invoices to have that disclaimer added. If your invoices don't already include the disclaimer, then you should do the same. Certainly, the next time that you have invoices printed, you should have the disclaimer added.

In the end our member agreed to give the customer a partial refund, and the customer agreed not to sue. Once the customer was satisfied, the Department of Consumer Affairs also agreed not to issue a fine. What is especially frustrating about this whole situation is that the Department of Consumer Affairs threatened to fine our member for an issue that was unrelated to the customer's original complaint. They found a technicality in the law to threaten an action that would force the shop owner to concede a refund to the customer. There was no fraud. The aftermarket part number was clearly displayed indicating that NO DECEPTION was intended.

Regardless, all is not always fair and you need to protect yourself. Make sure this doesn't happen to you. Have all of your invoices printed to specifically state that "all parts are new unless otherwise specified." Then be very clear with your customers whether they are getting an aftermarket or OEM part and what the price difference is. The time you invest upfront can save a lot of headaches and stress and probably even a few bucks. ■

ANOTHER NJGCA/TMP ENERGY SUCCESS STORY!

Each issue of the NJGCA newsletter *On The Road* will feature a member who has taken the time to compile the data in order to present a testimonial and share their success with you. We want you to see just how easy it is to save REAL $$!! As an added bonus TMP has agreed to contribute a small portion of their revenues to a Scholarship Fund for NJGCA members. That's YOU!

Below is an actual side by side comparison that has been compiled by NJGCA member Craig Copeland of Craig's Service Center in Middletown, NJ. The savings below can belong to you too!

JCP&L Bills vs. TMP/Hudson Energy Bills- Craig's Service Center, Inc.

YEAR	AVERAGE MONTH
2007	$705
2008	$804
2009	$762
2011 (thru May)	$809
TMP SERVICE STARTS JUNE 2011	
2011 (June thru December)	$582
2012 YTD	$523

Pre TMP: 4 year average = $770/month

Post TMP: 18 month average = $546/month

Average savings **$224/month**
Projected Annual Savings: **$2688 every year** (7 years NJGCA dues)

We would like to publish YOUR SUCCESS STORY HERE TOO!

PRESERVING HISTORY: A SMITHSONIAN REQUEST

To All NJGCA Members:

NJGCA was recently contacted by Kirk McCauley of our sister association WMDA. WMDA represents gasoline retailers and auto repair shops in Washington DC, Maryland, and Delaware. Kirk was contacted by The Smithsonian Institute. The Smithsonian is seeking artifacts and objects that are reminiscent and representative of the gasoline shortages of 1973-1974 and 1979. Retailers and others, who may have kept signs reading NO GAS, or LAST CAR IN LINE, (hand made or purchased) or notices about odd-even rationing are asked to contact Roger White, automotive history curator at Smithsonian.

Roger White, Associate Curator
Road Transportation - Division of Work & Industry
National Museum of American History
Smithsonian Institution
PO Box 37012, MRC 629
Washington, DC 20013-7012
202-633-3925 office
202-633-3427 fax

DO'S AND DON'TS

By Debbie Hill

Gasoline Supply Agreements: NJGCA receives numerous phone calls regarding Supplier Agreements. Unfortunately folks don't call us BEFORE they sign their agreement. They call after they sign a contract and then encounter a problem. Many dealers entering a new contract often use their personal attorney who may have assisted them with previous real estate closings or setting up their corporation. We recommend that you use an attorney who understands gasoline industry contract law and is knowledgeable with the Petroleum Marketing Practices Act (PMPA). Many times an attorney that has experience with environmental matters is required as well.

Don't Sign a Dealer Tank Wagon (DTW) Supplier Agreement! We never recommend a Dealer to sign a DTW agreement. Why not? Often a supplier makes a deal look attractive that can later turn out to be very unattractive. Suppliers may offer financial assistance for a new canopy, or new dispensers, and sometimes even offer cash as an enticement for you to sign their DTW agreement. Unfortunately we see it over and over that once the DTW agreement is signed the dealer ends up with financial struggles. Your new supplier may take advantage of the "take it or leave it" pricing that you are obligated to pay. No, not all suppliers will take advantage of you, but too many already have. Once a supplier makes you uncompetitive in the marketplace, you are on a slippery slope and may never recover. There are methods of receiving incentives from a supplier that will allow for a fair return on the suppliers investment that will not obligate you out of business! DTW is not one of those methods!

Don't OVERSTATE your gallons! Supply agreements are based on two major components: Gallons and Term (time). If your business pumps between 65,000 gallons a month – don't enter a contract which obligates you to pump 70,000 gallons or more. You may find yourself "married" to your supplier longer than you intended or would like. There may even be charges to you for not meeting the minimum gallons per month. Gasoline volume is down compared with only 5 years ago. Unless you have an extraordinary location, there is no reason to believe that you will all of a sudden double your volume. There could be many reasons why gasoline volume can be less in the future as there are reasons that may cause your volume to increase. Examine all the possibilities before you commit to any contractual volume guarantees. Unless you wish to be an indentured servant for an unknown period of time to your supplier, Don't over state the amount of product you will buy as a means of enticing your supplier to sweeten the deal. You will regret it later.

Do have an attorney who is experienced in the Gasoline and Repair Business, and also understands environmental matters review your contract. Our Board Attorney; Richard Szemiot has helped many NJGCA members navigate the terms and conditions for leasing or purchasing gas stations, repair shops and supply agreements. We also have other lawyers that specialize in PMPA and environmental matters.

Do call our office and Do send us a copy of the contract you are considering. Speak with Sal or Debbie to discuss your personal situation. We can recommend suppliers that other members have had positive experiences with. We will be able to recognize any lurking dangers in the contract that you are considering and advise you accordingly. ■

TRAINING CLASS SCHEDULE

-ALL CLASSES WILL BE HELD AT NJGCA HEADQUARTERS-

66 Morris Avenue - Springfield, NJ 07081 (Union County)

TWO CLASS OPTIONS AVAILABLE

OPTION 1: NEW JERSEY EMISSION INSPECTOR TRAINING

In order to be licensed as a Motor Vehicle Emission Inspector, you must complete this course and pass a "Written Exam" given by the State of New Jersey. NJGCA offers this training in a one day State approved training program that will provide a understanding of inspection related issues including EPA, Regulations, Safety, Diesel, Customer Service and the New Jersey State Specific Curriculum. This specially tailored NJGCA Inspector course fulfills all State requirements.

Class Date: Wednesday, January 23, 2013
Arrive: 7:00am
Lunch Served: 12:00pm (Pizza and Soda will be served)
NJMVC test: 1:00pm

Class Fee:
NJGCA Members - $250.00
Non-members - $300.00
"Manuals Included" - Payment is due upon registration. We accept credit cards.

PLUS: License Fee of $50.00 - Bring a check made payable to NJMVC to satisfy the State's licensing fee.
PLEASE NOTE: If you live out of state, you must bring 6 points of ID with you, such as a license, passport, healthcare card, utility bill, etc.

OPTION 2: ENTIRE EMISSION TECHNICIAN EDUCATION PROGRAM (ETEP) COURSE

This is the initial ETEP Certification Course; the Entire Program, sections 1- 7 and NJ State Specific Course. This is everything you need to become a licensed Emission Repair Technician. Tests are given through out the course and students that pass will receive a certificate to demonstrate they passed the New Jersey Emission Technician Education Program (ETEP). NJGCA has a state approved course and NJGCA has provided this program to the NJ Department of Transportation, UPS and NJGCA Members and Non-Members through out New Jersey. Our Pass rate on this class is 100%.

OUR CLASS INCLUDES:

- Section 1 through 7 ETEP Training and NJ State Specific.
- No additional cost for Manuals. We include them.

CLASS COST:

- NJGCA Member Rates: $1,495.00 (save $200.00 as a Member of NJGCA)
- NON-Member Rates: $1,695.00

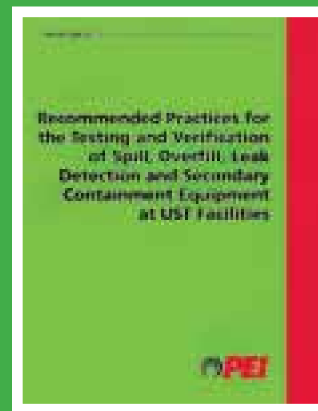
CLASS SCHEDULE:

- Eight (8) Full Days of Training: Wednesdays:
- February 20 & 27
- March 6, 13, 20, & 27
- April 3 & 10
- Time: 8:00 am to 4:30 pm

To register, contact Debbie Hill at debbie@njgca.org or 973-376-0066

Knowledge is Power. The RP 1200

by Eric Dana, Dana Tank Insurance



Knowledge is power. This phrase will be very, very important in 2013. Knowledge is power in French is “savoir, c’est pouvoir”. Knowledge is power in Arabic is المعرفة قوة.

Knowledge is power - and it will translate into dollars. New standards for underground tanks have been developed; simply knowing about “RP 1200” can save you money, time, aggravation and a whole lot more over the next few years. It’s easy to check out – do an internet search for “PEI RP 1200” and you’re there.

PEI, the Petroleum Equipment Institute, and many other groups contributed to a booklet (with a very long name): ***Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities***. Most folks just call it RP 1200. You’ve learned something already. RP 1200. Knowledge is power.

Of particular value to the book are the descriptions of double wall (DW) tank systems. Since the space between the two tank walls can be dry or liquid filled, the leak testing methods differ. Which test is better? Which method is easier? And watch out - the difference in construction between a DW *Tight Wrap Tank* and a DW *110% Containment Tank* could be significant! Which type of double wall tank will YOU install in the future?

Other subjects addressed in RP 1200 are Component Testing and Verification, which can apply to Electronic Monitoring Systems and Automatic Line Leak Detectors. Simply put: Test and verify. Standard procedure. After all, if a sensor isn’t functioning as it should be, what usually happens next?

Lastly, we also understand that knowledge isn’t free. This RP 1200 book costs less than a college education, but at $95, it may not find its way into every gas station dealer’s office either. So where is the balance? Knowing *who* to call. Start with the NJGCA. Your Association wants everyone to benefit from this information - so a copy of RP 1200 is in the office for members to review.

And get the advice that supports good decision making. As the tank insurance specialist for NJGCA members, we at DANA Insurance do our best to monitor trends in the petroleum industry. We use this information everyday to help service stations and c-stores that operate gasoline and diesel tank systems.

You can expect more from us than just tank insurance. You now know that a PEI Recommended Practice (RP 1200) can be a valuable resource, especially to owners, *and future owners*, of double wall tank systems. And you know what they say about knowledge; c’est pouvoir or فمن السلطة.

BY PETER H. GUNST, ESQUIRE

Franchise, Franchise, Who Has the Franchise?

When Congress passed the Petroleum Marketing Practices Act, it differentiated between the franchise relationship, which refers to the continuing supply relationship between a branded supplier and its reseller customer, and the franchise agreement, which will normally be signed by the supplier and reseller. A reseller qualifies for PMPA protection, said Congress, even in the absence of a signed franchise agreement so long as the franchise relationship continues.

Congress' distinction between the franchise relationship and the franchise agreement necessarily follows from the Act's structure. Congress intended to protect the continuing relationship between supplier and reseller, which survives the term of any franchise agreement having a definite duration.

In the old days of direct supply, the distinction between franchise agreement and franchise relationship was rarely significant in a dispute concerning PMPA protection because the supplier and reseller almost always operated under the terms of a written franchise agreement. As a result, courts were rarely called upon to differentiate between a franchise relationship and the franchise agreement.

These days a supply relationship may be more unstructured, which can create a trap for the unwary. Consider the recent decision by the Supreme Court of Vermont in Evans Group, Inc. v. Foti, 2012 VT 77 (2012).

Foti Fuel thought that it was entering into a PMPA-protected sub-distributorship with Evans Group, when the two entered into an informal agreement pursuant to which Foti supplied Citgo gasoline bought from Evans to Foti's long-time customer, Quick Stop. After almost a decade of operating under this arrangement, however, Quick Stop approached Evans about entering into a direct supply arrangement, which cut Foti out of the picture.

Not at all pleased, Foti sued Evans for wrongful termination in violation of the PMPA. Ruling against it, the Vermont Supreme Court held that Foti had failed to satisfy its burden of showing that a franchise relationship existed between it and Evans. The mere fact that Foti was supplying Quick Stop with branded product that it purchased from Evans was not sufficient, according to the court's majority opinion, to establish that Foti was a branded sub-distributor authorized by Evans to resell branded product.

In a dissenting opinion, Judge Robinson emphasized that somebody must have authorized Quick Stop's sale of branded product, and that somebody must have been Foti, because Evans had had no direct contact with Quick Stop. Foti, therefore, must have been authorized by Evans to license Quick Stop to sell branded product, which made Foti Evans' franchisee under the PMPA's definition.

The dissent explained:

Given the absence of any evidence of contractual privity between Quick Stop and Evans prior to Evans' termination of its arrangement with Foti, and given that Quick Stop's conversion to a Citgo-branded station arose as a result of the Evans-Foti agreement, Quick Stop had to have acquired its rights to use the Citgo mark through Foti. The evidence does not support any other conclusion.

The dissent's logic appears to be correct, but it did not persuade the majority to permit Foti to assert a PMPA claim.

Of interest, both the majority and dissenting opinions cited an earlier opinion issued by the Vermont federal district court, Estate of Handy v. R.L. Vallee, 993 F.Supp. 236, 240 (D. Vt. 1998).

Handy involved a three-party relationship similar to that at issue in Foti. The plaintiff, a branded dealer, was receiving product from a sub-distributor, which in turn purchased the product from a branded distributor under an informal arrangement like that at issue in Foti.

When the distributor terminated the sub-distributor, thereby cutting off the dealer's source of supply, the dealer sued the distributor asserting a PMPA claim. Denying relief to the dealer, the court said that the dealer had no PMPA claim against the distributor because no direct franchise relationship existed between it and the distributor.

What would have happened if the dealer had instead sued the sub-distributor with which it did have a direct supply relationship? Arguably, a court following the Foti decision could find the evidence insufficient to demonstrate a PMPA relationship between the distributor and the dealer's direct supplier, with the result that the sub-distributor itself could not be sued under the PMPA because it was not authorized to resell branded product, and thus was not a distributor within the PMPA's definition. This would leave the dealer without a PMPA remedy against anyone.

The lesson appears to be that, in the absence of a written franchise agreement, the issue of whether or not PMPA jurisdiction exists may be murky, leaving a cut-off dealer out in the cold. The better course, therefore, is to confirm the supply relationship through a written agreement. ■

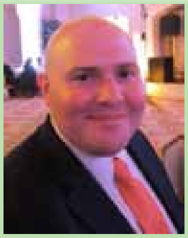
eMail: pgunst@agtlawyers.com

To access the latest articles by the Service Station Dealer's legal counsel, please visit the "Service Station Dealers: Legal Issues" section of the Astrachan Gunst Thomas Rubin, P.C. website at: http://www.agtlawyers.com/resources/petroleum.html

THE ENERGY EXAMINER

FROM TRADITIONAL RESOURCES TO ALTERNATIVE ENERGY INNOVATIONS

By Nick De Palma



Since our debut in 2007, NJGCA *On The Road* has brought you timely updates on changes in the energy and automotive industries. Today, each new issue of *On The Road* will bring you more update and information in our *Energy Examiner*. The *Energy Examiner* will offer readers news from around the energy/transportation industry and how it will affect your small business. If you have any questions or comments on what you review in these quarterly pieces, please feel free to reach out to NJGCA. You may also visit www.njgca.org/energy-examiner for more details.

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UPDATE: FOSSIL FUELS

START-STOP TECHNOLOGY COMING TO NON-HYBRID CARS; 2012 SEES UPTICK IN FUEL SAVINGS

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Gasoline engines will continue to be the world's largest passenger vehicle powertrain for the foreseeable future. In order to extend the viability of gas engines, even as government and environmental regulations rise, automakers will soon adapt a technology originally devised for hybrid powertrains to ordinary internal combustion engines (ICE). Known as a "start-stop system", this feature increases fuel economy by shutting down the engine when the motor is at idle. Automakers doing business in the United States will use this feature in order to meet increasing government Corporate Average Fuel Economy (CAFE) standards.

Start-stop has been used in a handful of passenger cars and various motor-scooters over the last three decades, but was re-adapted for hybrid vehicles in the 1990s. Implementing start-stop in hybrid vehicles was a natural choice for motorists seeking to increase fuel economy and save money on motor fuel. Rather than needlessly burning fuel when sitting at a red light or in traffic, the motor ceases operating, yet restarts immediately when power is needed. Among the first passenger cars to use start-stop included the Toyota Prius and the Honda Insight.

In re-purposing start-stop to non-hybrid vehicles, automakers hope to achieve the same goal without the rest of the hybrid powertrain: helping motorists increase fuel economy during stop and go driving, heavy traffic, or while the engine is idling for a prolonged period of time.

The benefit of such a feature is evident, especially since most vehicles equipped with an ICE will continue to operate in order to keep various features, engine management systems, and accessories running. These may include climate controls (heat and air conditioning), the radio, a satellite navigation system, engine water pumps, or head/tail-lamps. Such features usually operate via mechanical or electric energy generated by a motor's serpentine belts, which function only when the motor is running or draw from the vehicle's battery. What's more, whether the engine is idling in traffic or running at highway speeds, various accessories and features can rob a motor of power and reduce fuel economy. On an ordinary gasoline powered vehicle equipped with start-stop, vehicle engineers have moved these devices from the serpentine belt to an electric motor which can operate when the engine is switched off. If an accessory is draining too much power from the electric motor over a prolonged period of time, the engine will restart itself if additional power is needed.

The technology is very versatile and can be paired to vehicles equipped with a traditional automatic transmission, standard manual transmission, or even a continuously variable transmission (CVTs). Engineers and analysts state that a non-hybrid vehicle equipped with start-stop will increase fuel economy by 10% over a traditional vehicle equipped with only a gasoline engine.

Automakers such as Ford, Mazda, Fiat, General Motors, and others have or will soon have start-stop systems available on non-hybrid vehicles. In fact, Ford is so ambitious that it hopes to offer start-stop on all of its cars and trucks over the next decade.

Despite the onslaught of environmental regulations and government mandates, gasoline engines are proving to be

Continue reading on next page...

quite resilient. Today's innovations and methodologies are breathing new life to this century-old technology with good results. In fact, the most recent data states that the national fuel economy average rose to a record 23.8 MPG in 2012, a six percent improvement. While that number may not seem impressive, critics should remember that this refers to all passenger vehicles sold in the United States – cars, trucks, mini-vans, and SUVs. Experts anticipate that gas mileage will improve annually through 2025, when CAFE standards will mandate that all corporate fleets meet a stringent 54.5 MPG.

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UPDATE: ETHANOL / BIOFUELS / BIODIESEL

NEW SOLVENT WILL HELP REDUCE THE COST OF BIOFUEL PRODUCTION

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As biofuels such as ethanol and biodiesel become more popular, government and private industry groups are investing in new research projects to make fuel from non-food supply sources. Among the latest areas gaining attention is the possibility of making biofuel from lignin – or parts of a plant that are discarded as waste.

Since most U.S. made biofuels are derived from corn, industry and market watchers fear that ramping up production further will lead to greater costs and impact food prices. Deriving biofuels from lignin could help address both concerns since these disposed of parts are cheap and a by-product of other industries, such as in logging plants and paper mills. While there has already been a move to make fuel from other types of plant waste such as switch grass and corn stalks, processes have been expensive.

However, a new process and solvent created at the Wisconsin Institute for Sustainable Technology (WIST) has lead to a new promising development. Using water based solvent, WIST has figured out a way to separate cellulose (which can be used for biofuel production) from the lignin (which gives plants rigidity). The mixture can later be separated so that the water is extracted from the cellulose to create energy-dense biofuel.

Interestingly, any processes developed may ultimately help other industries. The new development can help create paper from plant waste rather than virgin or recycled wood sources. Cellulose derived from the new solvent can also be converted to make sugars for other industries like plastics, pharmaceutical products, and even carbon fiber.

Now that the science behind the process is complete, WIST and private industry groups are seeking a way to create a demonstration-scale plant for investors and commercial applications.

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UPDATE: ELECTRICITY & ELECTRIC POWERED VEHICLES

LITHIUM-ION BATTERIES COULD BE DISPLACED BY NEW, EFFICIENT LITHIUM-SULFIDE UNITS

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One essential element in making electric vehicles both more affordable and practical for everyday motorists is tied directly to the cost and power-characteristics of the car's batteries. The batteries used for electric vehicles are expensive and, like many laptops and electronic devices, are typically made from lithium-ion. Lithium-ion is both power-dense and can recharge rather quickly in consumer electronics. Yet when used in electric vehicles, these batteries have drawbacks: they are expensive and have long recharging times due to the size and number of batteries. These factors are preventing electric cars from gaining a wider audience. Most experts believe that the continuing and future success of electric cars lies with finding cheaper batteries (some say 80% cheaper) that can be recharged quickly.

Thankfully, a recent breakthrough may deliver practical results for real world customers: A new kind of lithium-sulfur battery that can theoretically store five times more power than today's lithium-ion batteries. Researchers and engineers have been weary of adapting them to real-world conditions until now because lithium metal is very reactive to water, creating branch like structures inside the battery. Over time, if these structures were to join, they could create fires or an electrical short. A new experimental battery, however, swaps real metal lithium for a composite lithium-sulfur compound on one electrode and graphite or silicon on the other.

To overcome the inherent slow charging time in a lithium-sulfur compound, researchers plan to develop a low-cost way to make the batteries with high storage capabilities. Doing so would offer a commercially acceptable trade off and still deliver batteries with three times more energy than today's lithium-ion units.

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UPDATE: HYBRIDS

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No news to report – Please check back in our next issue!

Continue reading on next page...

UPDATE: HYDROGEN / HYDROGEN FUEL CELLS
NEW, CHEAP HYDROGEN CATALYST FOUND

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Hydrogen has enormous potential to address our growing energy needs and has been hailed as the fuel of tomorrow. However, it can be expensive to produce and consume large amounts of fossil fuels during manufacturing.

Currently a group of scientists at the University of Cambridge are working on a real world solution to deliver the benefits of hydrogen without the added expense.

Researches have discovered a way to make hydrogen at room temperature with a cobalt catalyst in pH neutral water surrounded by oxygen. Currently the same reaction can be reproduced using platinum, but that material is both expensive and harder to come by. Cobalt, on the other hand, is both abundant and inexpensive.

When used in conjunction with a sunlight-driven water splitting system, using cobalt as a catalyst may create a truly “green” way to produce hydrogen for tomorrow’s energy needs. That hydrogen can then be used to create electricity, power automobiles, and even heat homes inexpensively and with little effect on the environment.

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UPDATE: NATURAL GAS / PROPANE
CNG, LNG RECEIVE TAX CREDIT EXTENSION

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Vehicles powered by CNG and LNG are growing in popularity, especially with fleet customers, municipal governments, and heavy-duty equipment customers. This trend isn’t likely to end anytime soon thanks in part to the extension of certain federal tax credits. Buried within the recently passed American Taxpayer Relief Act – otherwise known as the “fiscal cliff” bill – was a one year extension of tax credits for CNG and LNG vehicles, refueling stations, and equipment.

The tax is welcome news to natural gas advocates who are helping to push this alternative fuel in the transportation industry. Since natural gas is cheaper and cleaner than petroleum based fossil fuels, many are hailing it as an immediate solution to current energy needs. In fact, other nations are also adopting CNG and LNG to power vehicles in their own countries. Recently Iran, China, Russia, India, and various nations in Africa and South America have begun to implement long-term CNG transportation plans to address their own domestic requirements.

Looking ahead to 2013, natural gas industry experts believe that the news will not only help bolster sale of natural gas, but also help deliver new products in the market. New engine and vehicle offerings from truck makers, auto manufacturers, and heavy equipment makers will be released mid-2013. The tax credit extension will only help entice new and returning buyers to make a purchase, as the price gap between CNG- and gasoline- or diesel-powered vehicles shrink. In fact, between the cost of CNG and the price of the vehicle, fleet customers can expect to have their investment paid off within three years.

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UPDATE: NUCLEAR / WIND / SOLAR / GEOTHERMAL

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No news to report – Please check back in our next issue! ■

Continue reading on next page...

$ave TODAY with NJGCA Member Benefit Partners!

THE NJGCA MEMBER BENEFIT PARTNER PROGRAM

NJGCA continues to revamp our Member Benefit Partners (MBPs) program to better serve your small business. Most MBPs offer discounts and special programs exclusively for NJGCA members ONLY – You cannot get these negotiated arrangements anywhere else!!

Here is a list of our current MBPs:

ABLE-TECH – *Industry Specific Business Consulting*
ADP - *Payroll Processing*
AFFINITY FEDERAL CREDIT UNION – *Credit Union*
AMATO INSURANCE AGENCY – *Garage Liability, Auto, Homeowners, Flood, Disability, Income Protection*
ASCENTIUM CAPITAL – *Finance Solutions for the Service Station Industry*
ASSOCIATION MASTER TRUST (AMT) – *Health Coverage*
ATS ENVIRONMENTAL SERVICES – *Tank & Vapor Testing, NJDEP Compliance*
C. A. WINKLER, INC. – *Tank and Pump Replacements*
DANA TANK INSURANCE SPECIALISTS – *Tank Insurance*
ENVIRONMENTAL ALLIANCE, INC. – *Environmental Remediation Services*
FIRST DATA CORPORATION – *Credit Card Processing & Consulting*
KOPA – *Efficient Energy Lighting Solutions*
MEADOWBROOK INSURANCE GROUP – *Workers Compensation*
MERIDIAN ENVIRONMENTAL – *Tank and Pump Replacements*
PH2 SOLUTIONS – *Quick Diagnostic Emissions Tools*
PRESTIGE ENVIRONMENTAL – *Environmental Remediation*
SERVICE STATION VENDING EQUIPMENT – *Air & Vacuum Systems*
TMP ENERGY SOLUTIONS – *Discounted Electricity and Natural Gas*
UNIFIRST – *Uniform service and station supplies*

Only NJGCA members get preferred rates and exclusive pricing!

For an example of how you can save with NJGCA's MBP Program, see Page 22!

THE LEGISLATOR SPOTLIGHT

NJGCA has seen many legislative successes over the past few years. We'd like to take some time to tell you a little bit more about the men and women who have been instrumental in helping your small business prosper.

Assemblyman Upendra Chivukula

The Honorable Upendra Chivukula was first elected to the General Assembly in 2001. Asm. Chivukula, a Democrat, represents the 17th legislative District in Central Jersey, covering the municipalities of New Brunswick, North Brunswick, Piscataway, and Milltown in Middlesex County and Franklin Township in Somerset County.

Asm. Chivukula's star has risen over the last decade he has been in the Legislature. He has been honored as a Deputy Speaker since 2007 and is the Chairman of the Telecommunications & Utilities Committee. He is also Vice-Chair of the Homeland Security & State Preparedness Committee and sits on the Transportation Committee, which deals with many of the issues which affect motor fuel retailers. Before his Assembly service, he served on the Franklin Township Council and was its mayor in 2000. In 2011 he was reelected to the Assembly in a landslide.

Assemblyman Chivukula's life story is an example of the same American dream many of our members or their ancestors came to this country for. He was born in Nellore, India. As a child he would stay up late into the night huddled close to a small lamp trying to get enough light to study his schoolwork. After successfully earning a Bachelor's Degree in engineering, he immigrated to the United States in 1974 to earn his Master's Degree.

Diversity is a great thing to have in any legislative body. Asm. Chivukula was the first Indian-American elected to the New Jersey General Assembly and was only the 4th to be elected to state office in US history. In a Legislature filled with lawyers, Asm. Chivukula is an engineer and chairman of Rangam Consultants, Inc, an information technology firm. Asm. Chivukula also speaks half a dozen languages. He is married and has two children.

Assemblyman Chivukula has been an ally of New Jersey's small businesses since his first election to the Assembly, particularly the gasoline retail industry. Most notably, he and NJGCA share a fondness for the promotion of alternative energy in the state. He has used his engineering background to become one of the Legislature's top leaders in the promotion of alternative power, particularly solar power.

NJGCA Executive Director Sal Risalvato and Asm. Chivukula have been at multiple forums together dealing with issues like natural gas and solar energy. He has also voiced his support for several NJGCA supported proposals including: a ban on zone pricing, no online lottery, Right to Repair, and support for the Below Cost Selling law.

NJGCA again thanks Assemblyman Chivukula for all his efforts on behalf of small businesses. We know that he is always there to respectfully listen to us and always keeps in mind the gasoline retail and convenience store community. We look forward to continuing to work with him for years to come. ■

BY PETER H. GUNST, ESQUIRE

Litigation Arises from Supermarket Gasoline Discount Programs

Two very different judicial decisions recently arose from supermarket gasoline discount programs. One involved dealer participation, the other dealer opposition.

Bimal Enterprises, Inc. v. Lehigh Gas Corp, decided by the federal district court in Philadelphia, involved dealer participation in a sloppily administered coupon discount program that distributor Lehigh Gas put together with the ACME supermarket chain.

ACME customers could earn coupons based on supermarket purchases, and redeem them at participating Lehigh-supplied Exxon stations for discounted gasoline. The program was not automated, and dealers had to keep track manually of the gasoline purchases involving coupons, for which they sought reimbursement.

Both the dealers and Lehigh were overwhelmed by the paperwork, and the accuracy of the dealers' submissions was not sufficiently vetted by Lehigh.

ACME ultimately alerted Lehigh to an unusual increase in coupon redemptions emanating from two locations controlled by franchisee dealer Bimal Enterprises. Lehigh compared Bimal's recap sheets requesting reimbursement over a two-month period with the backup documentation, and determined that Bimal had been overcompensated to the tune of approximately $20,000.

Without consulting Bimal's owner, who was also designated as its key management person in the parties' PMPA franchise agreement, Lehigh filed a theft complaint with the local authorities and delivered a termination notice to Bimal. The notice alleged as grounds for termination a failure to comply with material provisions of the franchise and, more specifically, criminal misconduct.

Bimal sued under the PMPA for wrongful termination, and its case was heard without a jury by Judge Sanchez of the United State District Court for the Eastern District of Pennsylvania. Judge Sanchez found that the fraud was committed by Bimal's manager, without the knowledge of Bimal's principal.

Judge Sanchez found further that Lehigh could not rely upon the claim that it raised at trial that Bimal had not adequately supervised the manager, both because that ground was not specified in the termination notice and because Bimal had no reason to suspect the manager of misconduct. The manager had a good service record; he had been adequately trained on the coupon program; and no "red flags" had been raised to question his conduct before the notice of termination was received.

Judge Sanchez's extensive opinion is significant because it carefully analyzes the extent to which employee misconduct may be attributed to a franchisee in order to justify termination or nonrenewal under the PMPA. The decision also brings home, however, the need to carefully monitor employee behavior in order to avoid long and costly franchise disputes. Indeed, despite Judge Sanchez's opinion Lehigh has instituted yet another termination effort, which remains unresolved by the courts.

The other recent supermarket coupon decision involves California's below cost sales act. California, like many other states, permits dealers to seek damages against competitors who sell motor fuel below "cost", as defined by the applicable state statute.

Cases brought under such statutes are relatively rare, and the statutes themselves are often unpopular because their effect is to prohibit ultra-low consumer prices. Nevertheless, statutes like California's enactment still have considerable bite.

Dixon Gas Club, LLC v. Safeway, Inc., involved several consolidated state court cases that were brought by dealers who challenged two aspects of Safeway's in-house discount for gas program.

Safeway's "Grocery Rewards" program involved coupons that grocery shoppers could earn and redeem at Safeway's own gasoline pumps. It "Club Card" program entitled all Club Card members to receive a three cent per gallon discount on gasoline from Safeway's pumps, regardless of whether they purchased other products.

In ruling on a motion for a preliminary injunction to prohibit Safeway from continuing its program, Superior Court Judge Carvill split the baby in two. Permitting the Grocery Rewards program to go forward, he held that it was intended to further Safeway's "core focus" on increasing grocery sales, rather than to injure Safeway's "fuel-only competitors," such as the dealers.

The Club Card program was something entirely different, however. Because that program involved "no bundling of products but it is a discount available for fuel-only customers," it was not entitled to the same blanket protection that the Grocery Rewards program received.

After receiving evidence that Safeway's Club Card price often resulted in gross margins of between one cent and six cents per gallon, while its overhead cost were between twelve cents and seventeen cents per gallon, the court entered an injunction prohibiting Safeway from setting its fuel price below its fully allocated cost, and requiring Safeway to file quarterly compliance statements demonstrating that it had satisfied the terms of the injunction.

Safeway discontinued its Club Card program weeks before its first compliance report was due, but the litigation will continue nevertheless.

Further developments will be tracked. ■

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