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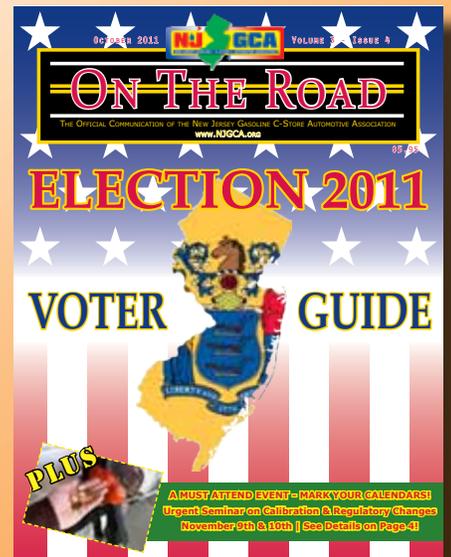
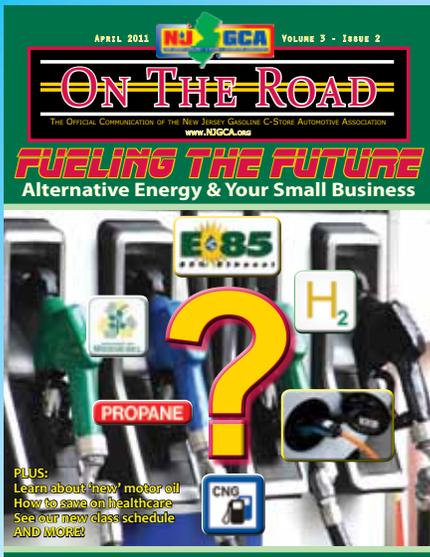
ON THE ROAD

THE OFFICIAL COMMUNICATION OF THE NEW JERSEY GASOLINE C-STORE AUTOMOTIVE ASSOCIATION
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THE 2011 YEAR IN REWIND



A LOOK FORWARD TO 2012



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QUOTE FOR THOUGHT

*I am a firm believer in the people.
If given the truth, they can be de-
pendent upon to meet any national
crisis. The great point is to bring
them the real facts.*

-Abraham Lincoln



Message From Executive Director Sal Risalvato

The Successes and Challenges of 2011

It makes sense to give a recap of events from last year in my column. Last year was eventful, busy sometimes chaotic, productive, successful, and bittersweet.

Eventful and successful because an effort that NJGCA started back in September 2008 finally began to bear some fruit. A historic and dramatic piece of legislation known as **Right of First Refusal (ROFR)** was passed in 2009, but paid off in 2011.

Last spring Shell Oil announced that it had made a deal to sell about 140 of its remaining retail locations, however, because of **ROFR** Shell was obligated to first offer the properties it was selling to the lessee dealers that operated the franchises. Even though about 40 of the locations were company operated and did not qualify under the new law, Shell offered retail locations for sale to approximately 100 dealers. Happily about half of the dealers were able to purchase their properties. Sadly, the remaining dealers have probably been issued a death sentence, as the distributor that purchased the locations from Shell is now the new landlord and supplier. This distributor is evil and has a track record of destroying dealer's lives in previous similar transactions.

Briefly, I will touch on Lukoil dealers and their experience with **ROFR**. In November of 2009, 5 months after Governor Corzine signed **ROFR** in to law, Lukoil made a cash purchase of their branded properties from their subsidiary Getty Petroleum Marketing. Under the law, Lukoil was required to first offer the properties to the lessee dealers who operated them. Lukoil ignored the law and prompted me to organize the Lukoil dealers, who quickly filed a lawsuit that is now progressing in Federal Court. Lukoil lawyers even deposed me this past summer and I am confident that the dealers will prevail handsomely. I am usually not very confident in most matters that dealers take to court, but this case has me feeling giddy. I will expand on this at a later date as developments occur. It is always fun poking a finger in the eye of a big bad evil supplier! In fact when pressed by Lukoil lawyers about my motivation to pass **ROFR** and ultimately sue Lukoil, I simply replied, "Because Lukoil sucks!"

In early December the long awaited announcement from Exxon finally came. Exxon handed out **ROFR** packages to over 230 lessee dealers that will enable each of them to purchase their location if they choose. Presently the dealers are evaluating their options for financing and determining environmental concerns. I am sure to have more news in the next OTR, but I am hopeful that a good percentage of Exxon lessees will in fact purchase their locations. Happily this should make many dealers very prosperous, but again sadly, those dealers who opt not to purchase their properties, will probably suffer a horrible fate, as the distributors that will become their new landlords are sure to destroy them in the future.

The year was productive and chaotic because we here at NJGCA were kept scrambling to put out fires in Trenton that could have had terrible consequence to you. Countless bills that limited your ability to utilize Cash/Credit Pricing were introduced by legislators. Below Cost Selling legislation sprouted like weeds, and an ugly Sign Bill

would have forced many of you to spend thousands of dollars to re-make your street signs.

I am always up for a good fight, and thankfully we prevailed on all battle fronts. Did we get 100% of what we wanted? NO...but we successfully negotiated far less harmful laws than we were likely to see passed had we not put up a fight. It seemed all year long I received alerts from a very valuable service called GovNet late at night. These messages alerted me when harmful legislation was being heard in committee or being posted for a vote.

In between all of the scrambles in Trenton we had to deal with covert surveillance of gas stations and repair shops by the USDOL. Last year USDOL assigned a task force to NJ in order to uncover improper employment practices. Details are in this issue.

The bittersweet part of this column is what made everything so chaotic.

First the sweet. **After 54 years of a care free and playful bachelor life, I was married to a beautiful woman who must be an angel.** Had I not remained single all of these years I never would have found her. It paid to wait! Antonietta supports me in my work here at NJGCA and she knows how important what I do is for you. Mostly she knows how much I love my job, and is becoming a bit of a political monster these days.

I will end with the bitter, but know that it comes with a warning and a plea. **Exactly a year ago at the beginning of January I developed a small wound on my left foot.** The wound probably developed because I have diabetes. On February 17th, one month before my wedding, I had surgery to amputate part of my left foot. Luckily doctors were able to save me from a much worse fate, and yes...I did walk down the isle...albeit with the help of a cane. I underwent a second surgery and further amputation several months later and I spent much of last year in a wheelchair and fighting the battles I described above from home. Those of you that attended hearings and efforts in Trenton saw the wheelchair and knew of my problems, but most members never knew.

I end with this warning. Losing part of my foot was my own fault. Amputation was completely avoidable had I paid more attention to my diabetes and taken care of myself. It was easy for me to ignore my problem over a 10 year period, thinking that someday I will pay attention should I develop any signs of complications. Unfortunately it doesn't work that way and I never had any signs of trouble. It was like running in to a brick wall. I am starting this year off with both a warning and a plea. If you have diabetes...**DO NOT IGNORE IT!** Change your diet and take the proper medications. **DON'T LOSE YOUR LIMBS!** Just like Lukoil....amputation sucks! ■

ACKNOWLEDGEMENT & APPRECIATION

NJGCA THANKS TERRITORY MANAGERS FOR YEARS OF LOYAL SERVICE AND FAITHFUL DEDICATION TO OUR MEMBERS.



Henry
Darden



Jack
Leli



Bob
Quirk



Frank
Stewart

The Association has recently bid a sad, but fond farewell to our field staff.

For many years NJGCA has relied on our team of Territory Managers to deliver news, materials, and information to our members. These professionals would often meet you face-to-face, offer advice on issues plaguing your establishment, and check in to see if any assistance or services were needed. In short, they weren't just our ambassadors to your business, but in many cases, your friends.

However, as our communications have greatly improved, and as the dynamics of the industry have changed considerably over time, so have the needs of the Association and our members. While years ago a large field staff was needed to compliment our office personnel, today this is no longer the case. Rather, the Association is now adequately able to handle just about everything from our office headquarters without the need for a field staff to deliver the same news, materials, and information you've come to depend on.

Streamlining and downsizing has become an important adjustment in normal business operations. You experience this everyday in your business and NJGCA is not exempt from these realities either.

Though this news may bring a period of adjustment for some, it is important for all members to know that this changes nothing other than the fact that someone will not be visiting your station regularly. You will still get information and materials directly from NJGCA headquarters, and we are still able to respond to your requests and issues just as quickly.

If you have any questions or concerns regarding these changes, please feel free to reach out to us at your convenience at 973-376-0066.

Finally, we ask you to join with us in thanking **Henry Darden, Bob Quirk, Jack Leli, and Frank Stewart** for their years of dedication to NJGCA and loyal service to each of you.

They deserve our sincerest appreciation and we wish them well in all their future endeavors.



THE ENERGY EXAMINER

FROM TRADITIONAL RESOURCES TO ALTERNATIVE ENERGY INNOVATIONS

By Nick De Palma

Since its inception, NJGCA *On The Road* has brought you updates and timely information on changes in the energy industry. From ordinary, everyday sources of energy like coal and oil; to renewable resources like solar and wind; to advancing alternative energies like hydrogen. We have focused – and will continue to focus – on all of these technologies and how they affect the transportation industry. As recent technologies, such as hybrid and electric cars continue to affect the energy/transportation landscape, NJGCA will bring you this information through our new, consolidated report, the Energy Examiner.

Each new issue of *On The Road* will offer our readers news from around the energy/transportation industry, how it may affect the automotive landscape, and 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.

PLEASE NOTE: NJGCA and our allies in the alternative/contemporary energy industries are hoping to host a conference this year to showcase many of these innovations and more! Please stay tuned for details. If you are interested in selling alternative fuels and wish to attend the event, please contact NJGCA with your interest!

FOSSIL FUELS | *The long-reigning king of the energy/transportation industry, fossil fuels such as gasoline and diesel are the fuel of choice to power American automobiles. However, rising governmental regulations for efficiency and emissions, environmental standards, and volatile energy markets are making gasoline and diesel fuel less attractive for many consumers. Though it will undoubtedly play a huge role in our transportation energy needs for years to come, new technologies and innovations are making the internal combustion engine cleaner and more efficient to meet today's demands. Furthermore, these discoveries are also being partially driven by geo-politics, surges in supply and demand, an increasing consumer appetite in emerging markets such as China and India, as well as new drilling and extraction technologies.*

UPDATE: EFFICIENCY OF GASOLINE ENGINES ON THE RISE, CUT INTO HYBRID SALES

As fuel economy and environmental standards become more stringent, advances in gasoline internal combustion engines (ICE) are on the rise, making models sold with traditional fossil-fuel powertrains more attractive to consumers and cutting into more expensive hybrid car sales.

While there has been an enormous focus in recent years on alternative forms of propulsion, world automakers have been quietly investing significant resources into ICE development. The results, though not heavily hyped, have nevertheless been considerable and are plainly reflected in recent retail sales. By adapting technologies such as forced induction (turbo-charging, supercharging), direct injection, using more efficient transmissions, and advanced electronics over a wider array of engines, automakers are making a major impact on efficiency. Most significantly, this has been achieved by incorporating these and other technologies while reducing the size of a vehicle's motor.

The result has allowed carmakers to develop smaller 4 cylinder engines with comparable V6 power and the efficiency of a small displacement motor. For example, manufacturers are using forced induction and electronically controlled accessories (which sap less power from the engine) on engines under 2.0 liters to create powertrains that allow consumers to enjoy both potency and economy.

Furthermore this approach is also being used by some automakers to offer V6 engines in vehicles that normally offer only V8 power, but with significantly better economy.

The results have been surprising. Not only are consumers responding in a positive fashion by opting for smaller, more efficient engines, but they are generally satisfied with their vehicle purchases. In fact, in many cases, the more efficient (and more expensive) powertrains are outselling traditional offerings. For example, the Ford F-150 pickup truck was traditionally offered with a mix of V8 engines. Ford recently made the truck available with an "EcoBoost" V6 powertrain that combines turbo-charging and other

technologies to deliver V8 power in a smaller, efficient package. The result has been a runaway sales success.

Though many environmental policy groups have pushed to increase alternatives over ICE, the rising fuel economy of vehicles equipped with traditional motors has slowed the pace of alternative sales. In fact, automakers have discovered that adding expensive technology to gain better fuel efficiency on ICE powerplants is far more inexpensive than selling many hybrid and alternative models, which must use costly parts and components. Some experts believe that this is making it harder for consumers to justify the price of hybrids and other alternative-powered cars since the cost differential is so extreme. In fact, in 2011 hybrid auto sales fell to 2.2% of all new vehicles sales, from 2.4% in 2010.

Is this a permanent decline in alternatives? No. However, increased fuel economy in traditional ICE only underlines that there is still considerable life left in engines which burn fossil fuels and will be part of the market for some time.

*** ENERGY EXAMINER ***

ETHANOL/BIOFUELS/BIODIESEL | *Currently a fixture in the transportation energy market, ethanol, biofuel, and biodiesel are widely available and used by consumers around the country. Ethanol is now used in ordinary gasoline in the form of E10 (and soon E15) which is a motor fuel blend made up of 90% gasoline and 10% ethanol (though that mixture may soon rise to 85% gasoline and 15% ethanol). Ethanol is also found in E85, a motor fuel composed of 85% ethanol and 15% gasoline, though this is found in limited locations throughout New Jersey. At its most basic level, ethanol is a form of biofuel; that is it is a liquid primarily composed on alcohol derived from biomass. The alcohol can be created from almost any plant or organic material, but such applications are typically limited by cost. As such, most biofuels – such as ethanol – are typically made from price-conscious and production-efficient crops such as corn, sugar cane, beets, and similar plant-derived substances. Similarly, biodiesel – another form of biofuels but closer in chemical composition to diesel fuel than gasoline – can be similarly made from organic material like algae and even consumer products like used fry oil from your local fast-food restaurant. While seemingly an obvious solution to our energy needs, ethanol also has some drawbacks, including the fact that it attracts moisture making it difficult to transport and store effectively.*

UPDATE: ALLIGATOR FAT USED TO MAKE BIOFUEL, POWER VEHICLES

Currently, the biofuel industry has placed a great deal of focus on using organic plant biomass to create biofuels. Crops such as sugar and soybeans have even become foundational staples in the biofuels/biodiesel industries.

However, researchers are now turning to animal fats in an effort to create biofuels from a wider array of sources. Much like how fisherman in the 1800s would harvest whale blubber to make a fuel for oil lamps, today's researchers are exploring the use of alligator fat for use in motor vehicles.

Every year, 15 million pounds of alligator fat is sent to landfills after the animals are grown and harvested for their meat and skin. Researchers have been able to reclaim some of that lost fat-waste and convert over 60% of it into useable biofuels. The resulting product has an energy content that is nearly on par with petroleum-based diesel fuel. Even more intriguing is that a by product of the process creates glycerol, which is a valuable chemical in the fuel industry.

Could biofuel and biodiesel created from alligator fat be an abundant source of fuel and replace fossil fuels – or even other biomass crops such as soybeans? It is not likely. Having an “alligator” in every gas tank may not be possible, but it certainly may be part of an all-encompassing energy strategy. Developing biofuels that can be created from multiple sources should become part of any multi-faceted plan to solving our energy needs, and may lead to even further discoveries.

*** ENERGY EXAMINER ***

ELECTRICITY & ELECTRIC POWERED VEHICLES | *Since the earliest days of the automobile, electric powered vehicles have existed. In fact, many of the initial “horse-less” carriages were driven by electric motors hooked up to batteries. As technology at the time limited the efficiency and power of a vehicle battery, internal-combustion motors eventually became the engine of choice in powering the automobile. However, thanks to advances in battery design and innovation, automakers are allocating serious resources to developing new electric vehicles. Though battery technology still has a long way to go before it can be on-par with gasoline/diesel powered cars, they are improving. Also being considered are new ways to generate electricity and how long a vehicle will take to recharge without overly-taxing the current American electrical infrastructure grid (which many feel is woefully outdated and in need of modernization before full electrification of the automobile can be realized). As such, electricity may one day be widely produced not only from coal, petroleum, solar panels, wind power, and nuclear sources, but geothermal and ocean wave generation. Lastly, the incorporation of electric charging stations throughout the national landscape will also become a major factor in the*

acceptance of electric vehicles as anything more than a niche product. This could potentially create great opportunities for service stations to add an additional “fuel” to their locations and service a new breed of customers profitably. All of these issues will continually need to challenge electricity production and electric-vehicle development in the years ahead.

UPDATE: BATTERY TECHNOLOGY ADVANCES, MAY DOUBLE EV DEMAND

As the number of automakers offering plug-in electric vehicles is expected to rise in the coming years, battery makers are gearing up production to meet demand.

Recent reports illustrate that car manufacturers have committed to constructing over 800,000 plug-in electric vehicles annually by 2013. Battery suppliers are investing in production capacity in order to keep pace with auto-industry expectations, including new technologies which will increase battery performance and reduce costs.

Currently, battery costs amount to roughly \$800 to \$1,000 per kilowatt-hour for suppliers to produce. The increase in volume and new developments in battery technology may reduce the price to \$350 per kilowatt-hour. Experts anticipate that such a cost reduction and technology investment would help to make electric-powered cars more appealing to the car buying public, who often suffer from “range anxiety” when deciding to purchase an electric vehicle.

The projected rise in popularity in plug-in electric vehicles will have an important effect on the US economy, which is set to control 40% of the world’s electric car battery manufacturing capacity by 2015.

Will service station retailers be able to meet the demand of a new generation of motorists who need to purchase electricity and have their electric vehicles serviced by technicians?

*** ENERGY EXAMINER ***

HYBRIDS | *Vehicle powered by a hybrid-powertrain are becoming more common. In fact, the number of hybrid powered cars has increased dramatically since the end of the 1990s. That is because hybrid vehicles offer a relatively inexpensive alternative to many consumers who wish to increase their fuel economy while still having the convenience of an internal combustion engine. In pairing a traditional motor-fuel powered engine to an electric motor with a battery, a motorist is able to reduce fuel consumption and lighten the load on the vehicle’s internal combustion engine. What’s more, Plug-in Hybrid Electric Vehicles (PHEV) are an additional intermediate step in the spectrum, blurring the lines between traditional vehicles and electric cars even further. PHEV run as electric vehicles for a short distance, but then revert back into full-hybrid mode once the onboard battery is depleted. With hybrids and PHEV becoming ubiquitous, many mechanics will need to stay informed and knowledgeable on how these vehicles can be repaired in order to better serve their customers. In addition, with both hybrid cars and conventional vehicles becoming more and more fuel efficient, the total volume of gasoline sold in the United States will stabilize and contract. Will you be ready to refocus your business on other, alternative technologies as your patrons shift to other sources?*

UPDATE: PLUG-IN HYBRIDS TO GROW, BRIDGE GAP TO ELECTRIC CARS

Despite a decline in hybrid sales over the last year, and as gasoline-powered vehicle efficiency is on the rise, the hybrid vehicle segment has nevertheless remained popular with the US car buying public.

Still, as automotive technology evolves; “ordinary” hybrids are slowly beginning to give way to Plug-in Hybrid Electric Vehicles (PHEV) in the marketplace. While traditional hybrids use a combination of electric motor assist coupled to an ICE motor to increase fuel economy, PHEVs may run solely on electronic propulsion for a distance before activating the onboard ICE motor to operate the vehicle.

The rise in PHEV will undoubtedly continue to change the landscape of alternative powered vehicles. Unlike pure electric vehicles, which must be recharged after the battery is depleted, PHEVs can continue to be driven even after battery life has ended through use of an ICE motor. In marrying an electric vehicle with a suitable “back up” motor, motorists’ concerns that their vehicle will run out of electricity during use is alleviated.

At the present time, mainstream automakers such as Ford, GM, Toyota (as well as niche-manufacturers such as Fisker) are all planning on offering more PHEVs starting in 2013.

*** ENERGY EXAMINER ***

HYDROGEN/HYDROGEN FUEL CELL | *Vehicles powered by hydrogen, among the most abundant elements in the universe, have long been a focus of automotive engineers. Essentially permitting a motorist to power his or her vehicle with water vapor, hydrogen powered cars present both a simple and complex solution to drivers’ expectations. There are two types of hydrogen powered vehicles: an internal combustion engine fueled by hydrogen or a fuel cell powered car*

driven by a hydrogen reaction. In the first example, an engine's powerplant converts the chemical energy in hydrogen into mechanical energy by burning a hydrogen mixture in an internal combustion engine. In this regard, hydrogen essentially replaces gasoline (or diesel or natural gas) as the combustible material in a conventional motor. In the latter example, vehicles with hydrogen fuel cells will create a chemical reaction that is initiated when hydrogen reacts with oxygen to run an electric motor. Hydrogen fuel – whether used for a traditional motor or in a fuel cell – is typically made from fossil fuels, methane, or electricity. In this regard, the hydrogen industry must use abundant energy to create the hydrogen fuel, but this can be mitigated by using solar, wind, nuclear, or other more efficient forms of energy.

UPDATE: FIRST RETAIL HYDROGEN FUEL-CELL CAR COMING?

Hydrogen fuel-cells, though not as close as other alternatives to being mass-market-ready, are still nonetheless evolving and advancing.

Currently a number of automakers are testing hydrogen fuel-cell vehicles in areas around the country. The vehicles, however, are typically in the hands of agencies, local governments, or similar organizations. Other hydrogen fuel-cell applications are being utilized by transportation companies and related industries, which often use fuel-cells in passenger buses and heavy equipment.

Recently, however, Toyota confirmed plans to offer a retail-market ready hydrogen fuel-cell vehicle by 2015 for nearly \$140,000. While the company admits that the product will be very expensive and only a few thousand vehicles will be sold per year, Toyota (and other automakers) strongly believes that hydrogen will eventually offer the best long-term solution to solving our transportation needs.

The cost of developing and manufacturing a fuel-cell equipped vehicle is expected to slowly decline as the technology is refined and a manufacturing supply base is created. Researchers are also trying to find more affordable substitutes for expensive materials used in the current fleet of fuel-cell vehicles, such as platinum.

*** ENERGY EXAMINER ***

NATURAL GAS/PROPANE | *Natural gas vehicles (NGV) are not a new phenomenon. Many company and industrial fleets are powered by natural gas. Most of these vehicles can be fueled by two different versions of this medium: compressed natural gas (CNG) or liquefied natural gas (LNG and also known as propane autogas). Both examples are clean burning and efficient alternatives to gasoline and diesel powered cars. As a motor fuel, natural gas powered vehicles are incredibly popular and account for over 12 million vehicles on the road world-wide. In many instances, NGV cars can burn both conventional gasoline and CNG to ease infrastructure concerns. America's NGV industry has been increasing thanks to a growing infrastructure and abundant sources of natural gas deposits within the continental United States and off the coast in territorial waters. In the United States, NGV variants like LNG and CNG are typically cheaper than gasoline and other motor fuels.*

UPDATE: GARDEN STATE'S USE OF NATURAL GAS TO RISE

A recent panel meeting at Rider University discussed the State's Energy Master Plan and outlined why New Jersey will increase the use of natural gas.

Participants believed that the only way in which the state would be able to implement many parts of the Energy Master Plan, and scale back the use of other fossil fuels, is through expanded use of natural gas. The plan calls for increasing the state's network of interstate natural gas pipelines and switching more fleet vehicles to use natural gas.

With wholesale natural prices around \$5 per million BTU, panelists believe that natural gas is also the most affordable way to fulfill the plan (NOTE: 1 gallon of gasoline contains 125,000 BTU, the equivalent of 65 cents per gallon).

Panel members state that the United States has approximately 100 years of natural gas on hand, with significant natural gas deposits recently discovered in Pennsylvania, New York and other areas. With tougher regulation expected to close many older, coal-fired power plants in the very near future, many experts believe that natural gas would make an ideal bridge fuel between current fossil-fuels and other renewable sources of energy.

Will your business be able to service vehicles running on natural gas?

*** ENERGY EXAMINER ***

NUCLEAR/WIND/SOLAR | *Among alternative energies, sources such as nuclear, wind, solar, and geothermal technologies have accounted for a small, yet growing slice of America's energy landscape. Chief among these sources, both in reliability and impact, is nuclear power. Though not a "new" technology in the general sense, nuclear power*

plants are both incredibly efficient and produce few emissions or waste. Unfortunately, nuclear power has been highly stigmatized in American culture, though other countries such as France and Germany obtain a majority of their electric power needs from nuclear facilities. Wind and Solar technologies have become more popular in recent years. By using renewal sources – namely the sun and the wind – installations are able to generate electrical energy for both commercial and residential needs. However, a significant drawback from this technology resides in costs, limitations in material efficiency, and local conditions. Still, even from a supplemental perspective, solar and wind technology provide an incredible means of generating electricity locally at one's home or business to reduce utility expenses, and by selling power back to local electric companies, a means of generating an additional profit.

UPDATE: SOLAR POWER STARTING TO HIT THE MAINSTREAM

Energy created from solar panels has traditionally been an expensive technology, needing either heavy government subsidies or very deep pockets in order to be implemented.

However, recent reports suggest that a surge in the number of solar panel installations has helped reduce the price of solar power, making it more affordable than it's ever been.

Power produced by solar panels has traditionally been three times more expensive than electricity created from natural gas, though the price disparity is declining. Part of the reason for this drop is due to the fact that installations have doubled in the last year, making subsequent installations more affordable to fund. Solar panel prices have also declined by two-thirds in the last 3 years.

This drop in price has many energy analysts predicting that solar power may soon reach parity with electricity produced from fossil-fuels in the near future. This is especially important since federal subsidies for the solar industry are expected to decline by 2016. ■

Community Right to Know Survey

Due March 1, 2012

The New Jersey Department of Environmental Protection instituted the mandatory electronic submittal of the survey last year.

Use your compliance calendar. The second to last page has instructions on where to go to complete the CRTK survey.

New Users:

- 1) You must request access and set up account
- 2) Go to <http://www.njdeponline.com> and select "new user"
- 3) Create this new myNewJersey Account and link NJDEP online to it
- 4) Remember to write down your user ID, password, and security section
- 5) ****NOTE**** Emailed this information to yourself and keep it in a file in your email account

To Use your NJDEP online:

- 1) Enter your contact information. Click on Add contact number, and add at least one contact number and click "continue"
- 2) The next screen is the "request your certification PIN" (You do not need the PIN to complete the Community Right to Know Survey.
- 3) You should now be ready to complete and submit your Community Right to Know Survey for 2012.

For Help: Call Edward Bakos @ 1-609-292-0958

USDOL: INFORMATION & UPDATE

by Sal Risalvato



In 2011, **Wage and Hour continued to be the number one financial liability for employers.** Wage and Hour investigations and lawsuits continue to be on the rise. Because most employers are not fully aware of and comply with all Wage and Hour regulations they have financial liability.

This was a big story for NJGCA last year. As early as December 2010 news broke about a task force put in place by the U.S. Department of Labor (USDOL). Besides making repeated mention in weekly Road Warrior emails, NJGCA held 2 days of seminars that featured representatives from USDOL to instruct members on the proper way to manage payroll and pay employees. Ugly headlines appeared in the media last April and again last November exclaiming that “Gas Station Owners Were Ripping Off Employees”.

USDOL promises that the task force will continue until every gas station and auto repair shop has been investigated. The reason is because they have found such a low rate of compliance in our industry. **Fines, penalties, and back wages have been found to average \$3500 PER EMPLOYEE!**

It seems that in our industry most employers simply pay a lump sum salary to employees who work many hours beyond the customary 40 hour work week. Unfortunately this method does not comply with the Fair Labors Standards Act (FLSA), although when computed properly, an employee being paid using the proper formula may actually earn less than the lump sum salary that was offered. This applies to both gas pumpers and the technicians that work in your shop.

Here are some easy examples that can be used to demonstrate improperly paid employees:

Example #1. A gas pumper works 60 hours a week and is paid \$600 for the week. This is exactly what USDOL is looking for. USDOL will audit you and claim that the rate of pay that this employee was paid is \$10 per hour. Then they will force you pay him time and a half for every hour over 40 hours that was worked in the work week. USDOL will determine that you owe the employee another \$5 an hour for 20 hours each week, and will audit back up to 3 years to secure back pay for **ALL** of your employees. That’s \$100 a week for as many as 156 weeks! That is just for ONE EMPLOYEE!

Example #2. Two mechanics work Monday thru Friday from 8AM until 5PM. They also work on Saturday from 8AM until 1PM. That is a total of 50 hours worked. The mechanics are paid a SALARY of \$1000 a week. USDOL will determine that that the rate of pay for 50 hours of work at a salary of \$1000 equates to \$20 per hour. Then they will calculate that time and a half be paid for the 10 hours worked beyond the 40 hour work week. USDOL will determine that you owe each of your mechanics another \$10 an hour for 10 hours. That too is \$100 a week owed per employee going back as many as 156 weeks.

This does not include fines, penalties, or additional taxes due to IRS.

USDOL has officially stated that they implement a surveillance process for as long as a week prior to visiting you, and that they already have

a good idea of who is working and when they are working before they set foot on your driveway.

The U.S. Department of Labor **announced the launch of its first application for smartphones, a timesheet to help employees independently track the hours they work and determine the wages they are owed. As such, workers now can keep their own records** and utilize this technology in filing complaints before the Department of Labor.

The U. S. Department of Labor also announced that **service managers, service writers, service advisors, and service salesmen are no longer eligible for the longstanding Automotive 13(b)(10) Exemption.** However, service advisors and service writers can be exempted, from overtime only, under the Retail 7(i) Exemption if all requirements are met to include:

At least 50% of the employee’s total earnings are commissions, not salary or hourly rate.

The employee averages at least time and one-half (1.5) the minimum wage (federal \$10.87 per hour) over a representative period of time for all hours worked.

The representative period of time can be no less than 30 days. It can be longer.

Please call NJGCA for advice to help you understand how to properly comply with FLSA. ■

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NJGCA NOVEMBER SEMINARS A SUCCESS!

When important matters needed to be presented face to face thru demonstration rather than email alerts, NJGCA sponsored two days of seminars on November 9th and 10th last year. Last summer several professionals presented evidence (independent of each other) to NJGCA demonstrating that a serious condition exists at many of the gasoline retail locations that they service. The effect of ethanol has caused amplified problems with meter calibrations that are likely causing dealers to “give away” more gas in to their customers cars than is being displayed on the pump meter.

Members may not have noticed discrepancies that calibration problems caused because it was also discovered that ethanol may be causing inaccuracies with

Automatic Tank Gauge (ATG) systems like VeederRoot. Upon further investigation discoveries were made of improper programming of these ATG systems, and then discoveries were made of what could become a larger problem of incorrect tank data being programmed when ATG systems were originally installed.

The two days of seminars used pictures and data so that members could visually understand what was being discovered in the field and revealed to NJGCA. The seminars also included presentations by the U.S. Department of Labor (USDOL) to instruct members about the proper calculations that must be used to record payroll in order to avoid costly fines and penalties. This presentation was made as a result of an ongoing task force sent into New Jersey to end the culture of improper payroll practices in the Gasoline and Auto Repair industry.

A refresher class was also presented by officials from NJDEP so that NJGCA members can avoid costly fines being issued for improper testing of Underground Storage Tanks and Vapor Recovery equipment. ■

NJGCA NOVEMBER SEMINARS GALLERY



Tax Policy, Anyone?

By Sal Risalvato



When Congress returns we know Congress and the President will be faced with the February expiration of the temporary payroll tax relief. Numerous other tax relief provisions have already expired. In addition, a “boatload” of relief provisions expire at the end of 2012. It sure would be nice if Congress and the President could deal with them in a timely and orderly fashion.

So here’s our primer on the major tax relief items “in play” this year.

As you read this, the acronym TRUIRJCA is going to appear a lot. It stands for the Tax Relief,

Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111-312. It is the law that created the payroll tax relief but it also was the last law to extend and/or modify many of the temporary tax relief provisions that we have been stacking up since 2001.

Payroll Tax Relief

Under “permanent” law, the federal payroll tax consists of two parts. Employees pay a 1.45 percent “Medicare” tax on all wages and a 6.2 percent Social Security tax on all wages earned up to \$106,800 (in 2011) and self-employed individuals pay a 2.9 percent Medicare tax on all self-employment income and a 12.4 percent Social Security self-employment taxes of on all their self-employment income up to the same threshold. TRUIRJCA provided temporary relief, until the end of 2011, which reduced that social security part by two points. This means employees paid only 5.65 on the first \$106,800 of wages and 7.65 on the remainder (The employer share of the tax was not reduced) and self-employment individuals paid only 13.3 percent on the first \$106,800 of self-employment income in 2011 and 15.3 percent on the remainder.

The Temporary Payroll Tax Cut Continuation Act of 2011 extended the relief until February 29, 2012.

EXPIRED

Alternative Minimum Tax

TRUIRJCA included the latest extension of the temporary increases in the income levels at which the Alternative Minimum Tax (AMT) applies through 2011. This “rolling” extension is referred to as the AMT “patch.”

The law provided that the individual AMT exemption amounts for taxable years beginning in 2011 were \$74,450, in the case of married couples filing a joint return and surviving spouses and \$48,450 in the case of individuals.

In 2012, the exemption amounts have reverted to \$45,000 for married couples filing jointly and \$33,750 for individuals. (*This is one relief fix that can be rectified in 2012 and even in early 2013 with minimal taxpayer harm, since for most, the ramifications occur when tax returns are filed.*)

Research and Development Credit

Internal Revenue Code (IRC) Section 41 provides for a research tax credit equal to 20 percent of the amount by which a taxpayer’s qualified research expenses for a taxable year exceed its base amount for that year. There is also an alternative simplified credit. There was also an alternative incremental credit that has been repealed. While most business owners and Washington policy makers use the phrase “research and development” or “R&D,” Section 41 relies on IRC Section 174 for definitions. IRC Section 174 provides for a deduction for “research and experimentation (R&E)” expenditures

TRUIRJCA extended the credit through December 31, 2011.

As a result, currently there is no credit for 2012. From an incentive perspective, the idea is to have it in place at the beginning of a tax year. For those businesses that take the credit regularly, the day of reckoning will not be an issue until tax time next year, if it is not renewed.

There are some five dozen credits, deductions and other tax items that expired at the end of 2011. The R&D credit and AMT patch are just two of the more visible business items.

EXPIRING AT THE END OF 2012

Individual Marginal Rate Reduction

TRUIRJCA extended the tax relief provided by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) for two years. Under EGTRRA, the top individual marginal income tax rate was reduced to 35 percent.

It will return to its pre-EGTRRA level of 39.6 percent in 2013.

Under the current structure, married individuals filing joint returns for 2012 tax year, if their income is:

- Not over \$17,400, will pay 10 percent of the taxable income;
- Over \$17,400 but not over \$70,700, will pay \$1,740 plus 15 percent of the excess over \$17,500;
- Over \$70,700 but not over \$142,700, will pay \$9,735 plus 25 percent of the excess over \$70,700;
- Over \$142,700 but not over \$217,450, will pay \$27,735 plus 28 percent of the excess over \$142,700;
- Over \$217,450 but not over \$388,350, will pay \$48,665 plus 33 percent of the excess over \$217,450;
- Over \$388,350, will pay \$109,229 plus 35 percent of the excess over \$388,350

Capital Gains Tax Rate

TRUIRJCA extended the capital gains tax rate relief provided by the Jobs and Growth Tax Relief Reconciliation Act of 2003

Continue on next page...

(JGTRRA) for taxable years beginning before January 1, 2013. Generally, (I cannot help but note that when a tax lawyer uses the term "generally" it means there are more exceptions to the rule than you can shake a stick at.) the maximum rate of tax on net capital gain of a non-corporate taxpayer is 15 percent. In addition, any net capital gain which otherwise would have been taxed at a 10 or 15 percent rate generally is taxed at a zero-percent rate.

For taxable years beginning after December 31, 2012, generally the rates on net capital gain will be 20 percent and 10 percent, respectively. Any gain from the sale or exchange of property held more than five years that would otherwise be taxed at the 10-percent rate will be taxed at an 8-percent rate. Any gain from the sale or exchange of property held more than five years and the holding period for which began after December 31, 2000, which would otherwise be taxed at a 20-percent rate will be taxed at an 18-percent rate.

Dividends Tax Rate

Under rules enacted in JGTRRA and extended by TRUIRJCA, dividends received by a non-corporate shareholder from domestic corporations and qualified foreign corporations generally are taxed at the same rates that apply to net capital gain. Thus, dividends received by an individual, estate, or trust are taxed at rates of zero and 15 percent. This treatment applies to taxable years beginning before January 1, 2013.

For taxable years beginning after December 31, 2012, dividends received by a non-corporate shareholder will be taxed at the same rates as ordinary income.

Estate Tax Relief

TRUIRJCA extended the estate tax relief provisions of EGTRRA with modified amounts and created some new provisions. **All of the extensions, modifications, and new provisions expire December 31, 2012.**

EGTRRA phased-out the estate and generation-skipping transfer taxes so that they were fully repealed in 2010, and lowered the gift tax rate to 35 percent and increased the gift tax exemption to \$1 million for 2010. TRUIRJCA set the exemption at \$5 million per person and \$10 million per couple and a top tax rate of 35 percent for the estate, gift, and generation skipping transfer taxes for two years, through 2012. The exemption amount is indexed beginning in 2012 and is \$5,120,000. (As a practical matter, given the new expiration date, the inflation indexing is token, but the theory is having it in place might make it easier to secure as part of a permanent solution.)

Under prior law, couples had to do complicated estate planning to claim their entire exemption. TRUIRJCA allows the executor of a deceased spouse's estate to transfer any unused exemption to the surviving spouse without such planning, effective for estates of decedents dying after December 31, 2010.

Prior to the EGTRRA, the estate and gift taxes were unified, creating a single graduated rate schedule for both. That single lifetime exemption could be used for gifts and/or bequests. The EGTRRA decoupled these systems. TRUIRJCA reunified the estate and gift taxes. TRUIRJCA made it effective for gifts made after December 31, 2010.

The system will revert to pre-EGTRRA status at the end of 2012 instead. The new changes (inflation indexing and the spousal exemption portability) will expire as well. Since the

estate, gift, and generation skipping taxes were unified pre-EGTRRA, they would remain so. The estate, gift, and generation skipping transfer tax provisions of EGTRRA sunset (extended by TRUIRJCA) at the end of 2012, such that those provisions (including repeal of the estate and generation skipping transfer taxes) do not apply to estates of decedents dying, gifts made, or generation skipping transfers made after December 31, 2012. As a result, in general, the estate, gift, and generation skipping transfer tax rates and exemption amounts that would have been in effect had EGTRRA not been enacted apply for estates of decedents dying, gifts made, or generation skipping transfers made in 2013 or later years. A single graduated rate schedule with a top rate of 55 percent and a single effective exemption amount of \$1 million applies for purposes of determining the tax on cumulative taxable transfers by lifetime gift or bequest.

Direct Expensing Allowance

On September 27, 2010, President signed into law the "Small Business Jobs Act" (SBJA) as Public Law 111-240 that increased the allowance and phase out threshold for the direct expensing provision to \$500,000 and \$2,000,000, respectively, for the taxable years beginning in 2010 and 2011.

TRUIRJCA stopped the direct expensing allowance from dropping down all the way to mid- pre-2003 levels at the end of 2011. TRUIRJCA permits taxpayers to use a direct expensing allowance in 2012 of \$125,000. The \$125,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds \$500,000. The \$125,000 and \$500,000 amounts are indexed for inflation. **As a result, for 2012, the adjusted allowance is \$139,000 and the phase out is \$560,000.**

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SPECIALIZING IN GAS STATION TYPE PROPERTIES

Continue on next page...

At the beginning of 2013, the amounts revert to pre-2003 levels of \$25,000 and \$200,000 without inflation indexing.

A Look Back at Developments in 2011

• Since passage of the **Patient Protection and Affordable Care Act (PPACA — better known as “Obamacare”)** in March 2010, there have been several developments providing some relief for employers:

•Employers are no longer required to file 1099 forms for every business and individual that made payments in excess of \$600.

•**The PPACA** provides that employers are required to report the cost of employer-provided health care coverage on the **Form W-2**. An IRS Notice in October 2010 made this requirement optional for employers for the 2011 Form W-2 (furnished to employees in January 2012). A subsequent IRS Notice (2011-28) provided further relief for small employers (those filing fewer than 250 W-2 forms) by making this requirement optional for them at least through the tax year 2012 as well. Furthermore, the notice stated that the optional treatment for smaller employers would be in effect until further guidance is issued from the IRS.

What Employers Can Expect in 2012 and Beyond

• Perhaps the most anticipated development in 2012 will be the **U.S. Supreme Court’s decision** regarding the individual mandate requirement of the **Affordable Care Act**. Several states have filed lawsuits, claiming this provision of the healthcare reform legislation is unconstitutional. The Act would require individuals to purchase health insurance or be subject

to a fine. The Supreme Court has agreed to hear the case this Spring and a decision is expected to be announced in June. A ruling that the individual mandate is unconstitutional could have the practical effect of negating the healthcare reform legislation.

• Employers can expect **continuing scrutiny from external regulatory agencies** such as the EEOC, the Wage and Hour Division of the U. S. Department of Labor, and OSHA. **Employers report that regulatory investigations are at a four-year high.**

• **Wellness programs will become more prevalent** as a way for employers to control health care costs and increase productivity and retention. With no let-up in sight for rising health care costs, employers are increasingly seeing the value of workplace wellness programs as a way to control premium increases and claims costs. Ranging from health screening tools to online nurse services, wellness-related offerings are becoming a bigger part of benefit providers’ value-added services. ■

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MEET YOUR OFFICE STAFFERS!

Eric Blomgren

Government Affairs Assistant



Tell us about yourself and your background.

I was raised and still live in Bloomfield, in Essex County. I graduated with honors from Paramus Catholic High School in 2007 and attended Montclair State University on an academic scholarship. I graduated in May of last year with a double major in political science and history.

Tell us about your past work experience.

During college I spent some time bussing and eventually serving tables at a restaurant in Caldwell. I had been interested in politics for a long time, and got my start interning full-time on the Christie for Governor Campaign in 2009. After our victory, I continued attending school fulltime, but also spent the next year interning part-time at the Department of Intergovernmental Affairs in the Governor's Office, where I helped coordinate and supervise the other interns. I also volunteered my time in late 2010 to help some friends on the successful Jon Runyan for Congress Campaign in South Jersey.

What brought you to NJGCA?

When I worked on the Christie campaign and during my time in the Governor's Office, my boss was Amanda De Palma, the wife of NJGCA Communications Director Nick De Palma. Amanda got her start in politics as an intern working for Sal and they remain close. When this position became available after Jim McCabe moved on, she recommended me for the job. In addition, during my time in Trenton I worked closely with three-year NJGCA veteran Chris Stark, who previously served here as a Government Affairs Assistant before going to work for the Governor. Like the saying goes, it's a small world!

Tell us about your role at NJGCA?

As the Government Affairs Assistant I work closely with Sal in monitoring all the legislation that is introduced or voted on by the state Legislature in Trenton. In the last 2 year session of the Legislature, which just ended on January 10th, over 8,200 bills were introduced by the 120 members of the state Legislature. I'm constantly reading news articles to stay informed and up to the minute on all the issues that affect our members and the politics of this state. I set up meetings with individual Senators or Assembly members and attend them with Sal as he makes the case for or against certain bills. I also do a healthy amount of writing, especially for this magazine.

What would you say to perspective members about joining NJGCA?

I would talk about the importance of having an advocate for you in Trenton. The members of the Legislature have enormous potential to dramatically alter the business climate in the state at any given time. Worse, they may change things for the worse and not even realize it. For example, last year some legislators thought it would be a good idea to allow the sale of lottery tickets online, not thinking about what the tremendous negative consequences would be for convenience stores. Another example was the bill which would have mandated every gas station post a separate price for cash and credit of every grade of fuel. That bill was scheduled to be voted on and likely would have passed overwhelmingly simply because most legislators didn't know that provision was in it. Because NJGCA is your advocate in Trenton, the bill was pulled from a vote and that disastrous provision was eventually removed. If there was no one there for you, many stations would right now have to buy new signs to accommodate the altered pricing laws. It's not just about preventing bad legislation; it's also about getting helpful legislation passed. No one but an association dedicated to this industry would have fought for and gotten passed the historic Right of First Refusal law. We bring important issues to the attention of Legislators that they never would have found out about otherwise, such as zone pricing and below cost selling. Besides, you can bet that the big oil companies have their advocates walking the halls of the state house; you should have someone there on your side!

What do you do in your spare time?

Outside of my responsibilities for NJGCA, I follow the political world closely and love the horserace of it. I also love watching movies and catching up on great TV shows. Like anyone, I always look forward to hanging out with the friends I've made from all aspects of my life.

What advice can you give the small business owners reading this?

Just be involved and keep up with the latest news and trends. We only get listened to in Trenton if they know we are speaking for over 1,500 small businesses in the state. Sometimes the best way for us to make our case is to pack a committee room with members, or bring one or two people with us to a meeting with a legislator. Other times it just means providing us with data on a regular basis. Contributions to the NJGCA PAC are also a tremendous help in spreading our message. Helping us help you is one of the best things you can do for business. ■



Meeting Motorist Expectations: Installing Electric Car Charging Stations



By Phil Apruzzi

With our nation's commitment to reduce our dependency on foreign oil, the electric vehicle has emerged as a possible solution to our long-term needs. However, whenever a new technology is introduced, with it comes the means for technologic support. What we will address in this article is the basic guidelines to install one or more electric charging stations.

Whether you are an individual looking to purchase a plug-in electric vehicle (PEV) for your residence or a public or commercial establishment looking to provide a charging facility to your customers, the following steps should be taken to successfully install a charging station. The process is essentially the same for residential, public or commercial installations but we will separate each process for clarity.

Public/Commercial Installation

There are many issues to consider prior to installation, such as:

1. Site Selection
2. Power Source
3. Permitting – Town Requirements
4. Proper Contractor Selection - Experience
5. Proper Equipment Selection – Charging Station

Installation Process

1. Trenching
 - Identify Location of Underground Utilities
 - Digging by hand or machinery depending on the location
2. Electrical Panel Box
 - Location, Adequate Power Supply
3. Installation of Conduit
 - Proper Depth by Code
4. Inspection of Groundwork
5. Inspection of Bracket Footing & Bollards
 - Check with Building Dept. for Proper Pedestrian & Wheelchair Access
6. Installation of Charging Stations on Mounting Brackets
7. Testing of Charging Units
 - Factory Acceptance Testing by Manufacturer's Representative
8. Final Electrical Inspection
 - Adherence to NEC 625 Requirements for Electric Vehicle Charging Stations

Note: To see a step-by-step installation, visit the following website: <http://www.youtube.com/watch?v=jvPLvsg9y2o>



Residential Installation

The following steps should be taken to successfully install a charging station for a plug-in electric vehicle (PEV) in a single-family residence.

1. **Consult with the PEV dealer to determine which home charging station is best for you.**
 - Is a level 1 (120v) or 2 (240v) charging station needed?
 - What type of charging station would work best?
 - Are permits required?
2. **Contact JCP&L (800-662-3115), PSE&G (800-436-7734) or ACE (800-642-3780)**
 - For information about electrical service requirements, metering and the right price plan for you.
 - Will you need home electrical upgrades?
 - What is the impact on your energy usage?
 - What program incentives are available?
3. **Hire a licensed electrical contractor to plan the installation and determine the best location for your home charging station.**
 - Will your need to upgrade your electric panel?
 - Is ventilation required?

- What is the charging level?
 - How much does the installation cost?
4. **Submit required permitting documents and plans to town officials.**
 - Do not begin installation until all permits are issued.
 5. **Install the charging station and any utility service components required.**
 6. **Notify city and utility inspectors that the installation is complete and ready for inspection.**
 7. **Comply with inspector's change orders if any are issued.**
 8. **Charge and drive your Plug-in Electric Car!**

Note: To view a typical home installation process, visit the following websites:

<http://www.youtube.com/watch?v=Nj9Ee0FnhsI>

<http://www.youtube.com/watch?v=s-t6VYevmno>

DEPARTMENT OF LABOR Q&A

YOUR QUESTIONS. THEIR ANSWERS!

By Debbie Hill

This new segment of the *On The Road* will feature a question from a member regarding payroll and the answer from the Department of Labor on the best way to handle the situation.

Original Question: I own a gas station. One of my employees, our manager, is paid a weekly salary of \$1,050.00 per week. He works set hours of 50 hours per week. The employee can hire other employees, he can fire employees. He also answers phones, handles customers, and manages the front office when I am not present. We also share responsibilities when I am there and both of us will work in the bay if needed. We negotiated the pay scale when he began. Am I paying him properly?

Original Answer: The DOL wanted to know how much time was the owner present? Certainly the employee is getting a salary that is high enough to suggest the firm is making a distinction between him, gas attendants and mechanics, he has more responsibility commensurate with higher pay. If this salaried employee is normally in charge, and the owner is only there occasionally, we'd say he's probably an exempt supervisor and the pay would be correct. However, on the other hand, if the owner is there 30-40 hours per week, it would be harder to claim "management" is the person's primary duty.

Follow-Up Question in response to DOL's Original Answer: Although I understand your answer, I think a salary of \$1,050.00 a week should not be questionable. If I only paid him \$400 or \$500 a week I would agree with your answer. If both parties agreed on the amount of salary when I hired him for 50 hours a week, than how could this be misconstrued by the DOL?

Follow-Up Answer: The amount of salary is not determinative. A patrolman in your home town may get paid \$75,000 a year base pay. He or she is still a rank and file police officer and legally entitled to overtime premium pay. Two parties cannot agree to violate the law. An employee cannot agree that his salary includes all of his overtime if he is not exempt. By definition, a salary is only straight time. There are tests for each exemption. To be a bonafide supervisor, among other tests, **the worker must have management as his primary duty.** If I pay someone \$500 or \$1,000 a week to run my station AND I AM SELDOM THERE, the person is "in charge" and his primary duty, his most important task, is running the station.

So again, if the owner is physically present and running his station only an hour or two a day, we would allow the exemption for the person paid \$1,050, even though the nature of retail necessitates managers doing a lot of the same work as their staff. On the other hand, if the owner is there 7-8 hours a day working alongside this salaried worker, than the salaried worker is due additional half-time for his hours over 40 and time and half once he goes over 50 hours in a week.

OTHER KEY FACTS--WHAT RECORDS ARE REQUIRED TO BE KEPT BY EMPLOYERS?

- | | |
|--|---|
| • Employee's full name and Social Security Number | • Regular hourly pay rate |
| • Address, including zip code | • Total daily or weekly straight time earnings |
| • Birth date, if younger than 19 | • Total overtime earnings for the work week |
| • Sex and occupation | • All additions or deductions from the employee's wages |
| • Time and day of the week when employee's workweek begins | • Total wages paid each pay period |
| • Hours worked each day | • Date of payment and the pay period covered by the payment |
| • Basis on which employee's wages are paid | |

THESE RECORDS MUST BE KEPT FOR AT LEAST THREE YEARS. ■

2011: THE YEAR IN GAS PRICES

By Eric Blomgren



If there was one way to describe gas prices last year, it's high. The average price for a gallon of regular gas at the refinery in 2011, tax included, was \$3.20. For comparison, the average price in 2010 was \$2.45, in 2009 it was \$2.05, in 2008 it was \$2.80 and in 2007 it was \$2.44. That's a 75 cent jump from last year to this year and 40 cents higher than the previous all time high price.

The highest single price in 2011 was recorded on May 10th when a gallon of gas was sold at the refinery for \$3.93 from one rack. That was the highest a gallon of gas had been since September 12, 2008 when one rack sold for \$4.05. While 2008 also had incredibly high prices, the big difference between that year and 2011 was the economic collapse. After hitting that high point on September 12th, the price began collapsing alongside the stock market. By December 5th the highest price at the rack was down to \$1.38 per gallon.

This year the prices were consistently high. As events in the world have started to calm and demand has continued to stay flat, prices in the last few months of the year have started to trend toward what they were at the start of the year. December 2011 was the first time since February the average monthly rack price was below 3 dollars a gallon. The worst month of the year was April, when gas prices at the rack + tax averaged \$3.54 a gallon.

Unfortunately, it looks like the consistently high prices of gas are here to stay. While in the past spikes were often temporary, geopolitical forces seem destined to ensure that high prices are the "new normal". Demand is flat in the US but is continuing to increase around the world as the 2 and half billion people living in China and India continue to develop economically. It's very possible that prices will go down at some point in the future, but those drops will be the anomaly, whereas in the past it was the price spikes that were abnormal. For years now, the trend has been that gas prices increase, then fall back down but always stop falling at a higher price than when they started. It is impossible to tell the future, but it very likely that overall gas prices will be higher next year than they were this year, and the average price in January 2013 will be higher than it was in January 2012. ■

Average Price of Regular Gas at Rack + Tax





New Jersey Environmental Update & Information

By Debbie Hill

In November 2011 NJGCA hosted seminars and the New Jersey Department of Environmental Protection (NJDEP) was there to present information on how to pass an Underground Storage Tank (UST) Compliance Inspection. A central point in the presentation was focused on how to avoid receiving a violation and having to pay a fine. Among the items discussed were:

•**Tank Registration:** All tanks must be registered with the NJDEP. Tank Registration is for three years and the fee is \$150.00. There is now a new address for Registration and Billing:

Division of Remediation Support
UST Program – Registration and Billing Unit
P.O. Box 420, Trenton, NJ 08625-0420

Keep a copy of the registration that you complete and send in.

•**New ownership of tanks:** Registration must be completed within 30 days of purchase.

•**Tank Insurance:** All Regulated tanks must have insurance for “the purpose of remediation and for compensating third parties for bodily injury and property damage”. You must have proof of insurance available for a compliance inspection.

•**Release Detection Monitoring (RDM):** At least one form of detection is required for your tanks and product piping.

TANKS:

ATG/Monitoring
Interstitial (double wall only)
Statistical Inventory Control (SIR)
Tank Test (limited liability)
Manual Tank Gauging (only tanks 2000 gallons or less)

Most forms of RDM require at least one passing test every 30 days. Make sure you have documentation for your method of leak detection.

PRODUCT PIPING:

Interstitial (double wall only)
Pressure or Wireless Monitoring Devices
Line Tightness test (annual)
Mechanical Line Leak Detector (must be used as second method)
American vs. European

•**Corrosion Protection (CP):** If you have steel tank. All metallic structures (tanks and piping) that routinely contain product must be protected from corrosion.

Passive/Sacrificial System: Consists of degradable anodes fitted to the tank ends or anodes wired to the tank shell.

Impressed System: A rectifier converts AC line power to DC which is the distributed to anodes around the tank field; Can be used for tanks and lines.

•**Transitional Piping:** State and County inspectors have found many instances where the piping under the dispensers or the piping in the STP sumps are metallic construction and are in contact with the soil and/or ground water. The piping must be cathodically protected or isolated from the environment. Do you have this type of piping? Most of these problems are commonly found when the piping is registered as single wall fiberglass. (DON'T TAKE THE CHANCE, FIND OUT!)

•**Coated Steel Tanks:** Another issue that can lead to violations and penalties concern coated steel tanks. You must verify if the coating (typically fiberglass) meets UL 1746 Standards for stand alone corrosion protection. Just because the person you bought the tanks from registered them as “coated steel” doesn't protect you -- you must be 100% certain. It is strongly advised that you find out BEFORE an inspection. If the coating fails to meet the UL 1746, the costs may be significant.

•**Tank Lining:** Are your steel tanks lined for your method of corrosion protection? Remember, if you didn't maintain your impressed or sacrificial systems, you must inspect the linings within the first 10 years of service and every 5 years thereafter.

Overfill Protection: All of your tanks (exception waste oil) must have a method of overfill protection.

Continue on next page...

Ball Floats will be phased out – cannot be used with remote fill ports.

Flapper Valves are located in the drop tube at the fill port. Does yours work?

High Level Alarms typically consist of horn and light unit which must be located in the tank field. Have you ever tested it?

- Spill Protection:** Your fill ports must have containment devices fitted to the riser pipe. Tanks such as waste oil that only received less than 25 gallons per fill do not require the devices. They must be clean and free of product, water or debris.
- You must have a **Release Response Plan (RRP)** posted at the facility. RRP should have emergency telephone numbers such as: the local fire department; health department; DEP HOT LINE # 1-877-927-6337; UST owner; telephone number for any contractor retained for emergencies; and the procedures to follow in the event of any emergency.
- Community Right To Know Information (CRTK)** must be completed and submitted to the NJDEP, County, Municipality, Fire Department, and Police Department prior to March 1st of each year. Keep a copy of your survey every year in your records.
- All Fueling Stations are required to have an Air Permit:** General Permit GP-004 has the maximum fuel throughput of 6 million gallons per 12 month period. If you have a Pre-Construction Permit (PCP) you should consider renewing it as a General Permit - you will save approximately \$1,335.00 for changing to the General Permit.
- If transferring Ownership on Air Permits:** You have 120 days to send in the Non-Technical Amendment at a cost \$120.00.
- All vapor recovery equipment located at the facility must be California Air Resource Board (CARB) certified** and operate in accordance with manufacturer's specifications. Copy of the CARB Executive Order for each State 2 Vapor Recovery System shall be maintained on site for the life of the equipment. You can find the certified document at: www.arb.ca.gov/vapor/eo.htm

Simple Instructions to avoid penalties:

- Do not top-off when selling gas as it causes liquid blockage and will result in a fine if the NJDEP finds this at your location.
- Remove pump covers on a daily basis to check for leaks in fill basins.
- Keep spill buckets clean of water and debris
- Test release system and keep records every 30 days
- Overfill Protection: Do you have an alarm? Is it working?
- Dispenser, hoses, nozzles and breakaways must be inspected DAILY. Keep a Log Book for daily records and repairs.
- Dispenser Sumps and Piping – Keep Monthly records

TOP ADVICE FROM NJDEP ON HOW TO AVOID PENALTIES: Know what tank equipment you have and how to operate and maintain it. Ignore this and you risk expensive penalties and the possible imposition of a delivery ban. ■

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THE LEGISLATOR SPOTLIGHT

By Eric Blomgren

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.



Senator Gerald Cardinale

The Honorable Gerald “Gerry” Cardinale was first elected to the New Jersey state Senate in 1981 as a Republican. He, along with Sen. Dick Codey, has more experience in the Senate than any other member. He represents the 39th Legislative District in Northern New Jersey, which currently consists of the towns of: Bloomingdale, Closter, Demarest, Dumont, Emerson, Harrington Park, Haworth, Hillsdale, Mahwah, Montvale, Norwood, Oakland, Old Tappan, Park Ridge, Ramsey, Ringwood, River Vale, Saddle River, Upper Saddle River, Wanaque, Washington, Westwood, and Woodcliff Lake. Before being elected to the Senate, he served one term in the General Assembly and was mayor of Demarest, Bergen County. This November he was reelected to the Senate, receiving over 63% of the vote.

Senator Cardinale serves on the Senate Commerce Committee and the Senate Judiciary Committee. In the private sector, Sen. Cardinale is a longtime dentist, one of three dentists who currently serve in the NJ state Senate.

Senator Cardinale has been a fighter on a wide variety of issues over his years in government. He was a prime sponsor of the state’s mental health bill and was the prime sponsor and author of Megans Law. Most importantly to you though, is his sponsorship of the historic Right of First Refusal

Law. He is one of the legislators most responsible for guiding this bill into law, which went from introduction to near unanimous passage in less than 6 months -- an extremely short amount of time by Trenton standards. Many of you reading this newsletter are or will be station property owners specifically because of this law. That’s why we wanted to spotlight Senator Cardinale this issue. With the recent Exxon selloff, all of the major oil companies in NJ with the exception of Sunoco will have divested themselves of their stations. This was the year when the fruits of our labor for this legislation bloomed. NJGCA will never be able to adequately thank Senator Cardinale for his tireless effort in seeing this legislation made law. There are hundreds of small businesses that owe him thanks.



In addition to the Right of First Refusal Law, Senator Cardinale was also a co-sponsor of the New Jersey Right to Repair Act, which fell just short of being enacted into law in 2009. Senator Cardinale also stands with us in opposing Below Cost Selling, the sale of lottery tickets online, and an increase in the gas tax. NJGCA again thanks Senator Cardinale for all his hard work, and we look forward to continuing to work with him. ■



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THE HORROR HIGHLIGHT

Don't let this happen to you!

Business Insurance Policy: *Is your coverage correct?*

By Debbie Hill

An NJGCA member, Mr. X, recently came to my office for help with a confusing lawsuit that he was named in.

This small businessman owns the property under the name XYZ company, but owns and operates the business under the company name ABC.

During winter last year, ice accumulated on his property in front on one of his bays. His supply of sand and salt ran out, so he was unable to put any down in front of the area. While he went to purchase additional sand and salt, Mr. X put down orange cones to block off the area where ice had accumulated.

While he was gone, someone pulled up to the icy area in front of the repair bay. The station attendant called out to the patron to be careful and not walk in the blocked off area since it was slippery. Unfortunately, the customer did not heed the warning and walked through the blocked off area.

While the attendant was seeing to other customers, he looked over to see the patron getting up off the ground from the coned off area. Apparently the person had fallen and insisted that the police and ambulance be called.

A report of the incident was filed, but the customer did not go to the hospital and he was never heard from again.

A few months later, Mr. X received lawsuit papers naming his business (ABC Company) and his property (XYZ Company) as defendants in a million dollar lawsuit. Mr. X called his insurance agent who initially advised him that he was covered with his Business Package Policy. Later, however, the insurer stated that they would only cover the named insured on the policy, which was ABC Company. It appeared that when his policy was written, the agent only named the business company, not property owner XYZ.

Obviously Mr. X purchased the insurance policy thinking that both his business and his property would be covered under building, property, liability, and auto insurance – but he was wrong and was now only partially covered for the accident. The result was that Mr. X was forced to hire legal counsel to defend his establishment in the million dollar lawsuit. Though the attorney is diligently working on getting the insurance company to defend both parties as one, the outcome is still unknown and the parties continue to litigate.

There is an important lesson to be learned here. Many small business owners probably have a similar situation where the

property and the business are registered under different names. Making sure that all entities are mentioned in insurance policies or official documentation may seem like a small matter, but it can make an enormous difference when such incidents arise.

In the case of Mr. X, the insurance agent has since amended the policy to include both of the property owner and the company names. However it has cost him additional money, stress, and complications to get the matter resolved.

To avoid any future complications, Mr. X has also decided to move his insurance portfolio to the Amato Agency, an NJGCA Member Benefit Partner, once his policy is up for renewal. As an insurer that deals almost exclusively with small business owners in the service station and convenience store industries, the Amato Agency is well suited to foresee any potential pitfalls or problems that could arise from such a small administrative lapse.

If you are a small business owner that has a similar insurance situation between your property and your business, you would be well advised to take a moment and review your policy to make both entities are on the policy. Making such an amendment should be straightforward and simple: You can either add one company as an additional insured or you may have the policy rewritten with both entities listed as the insured.

As a final thought, it would be wise to obtain an umbrella policy of one million to five million written over and above your business package for both the business entity and the property owner to prevent any possible problems.

Avoid this Horror Highlight and don't let this happen to you! ■



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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!

Rebate Bill

A-3133 is a bill that NJGCA has been working on since July of 2010. It started out as a way for the supermarkets and big box chains to institute back door Below Cost Selling through the use of rebates and loyalty cards. After months of negotiation with the sponsors and supporters of this legislation, we and our allies at the Fuel Merchants Association (FMA) came to an agreement that would allow supermarkets to provide their customers with rewards that are redeemed on gasoline, but they would be responsible for paying for those rewards, not the retailers. In late June of 2011, it passed the state Assembly unanimously. At the last minute, officials from the Big Banks became afraid that somehow stations will be able to use this legislation to avoid paying credit card fees. NJGCA feels that their concerns are unwarranted and there is nothing in the bill that negatively affects them. They pushed to have it amended so that the retailer can agree to accept the cost of the loyalty program. This would mean that your supplier could force you to participate and bear the cost of the program instead of them. Thankfully, the state Senate agreed with us and passed A-3133 unanimously. Just as this issue was going to print it was signed by the Governor and is now law. We will be watching in the next session to see if anyone tries to alter this legislation, if they do we will need your help to stop them.

Signage Bill

This is another bill that we have been telling you about for almost 2 years. In February 2010 Senator Turner (D-Mercer) introduced S-847. That bill mandated that stations which engage in cash/credit pricing must advertise the different prices on their street signs. This is already an official regulation; the bill would make that regulation an official statute, something NJGCA does not oppose. It had sought to levy an additional \$1,000 fine on top of the \$1,500 fine on stations with the incorrect signage; however NJGCA and our allies at the Fuel Merchants Association convinced the Senate Committee to delete this section from the final bill, which went on to pass the Senate almost unanimously.

The problems started when this bill came up in the Assembly. It was expected that the Assembly version of this bill, A-3862, would be identical to the Senate version and pass without opposition. However, Assemblyman Vincent Prieto (D-Hudson) slipped in an amendment at the last second which added a disastrous proposal to force the cash/credit pricing for all grades to be shown on the station's street sign. This would have forced you to post up to 8 different prices on your sign. This added a significant, costly and onerous regulation that would force most

retailers to spend thousands of dollars on a new sign or make the listed prices so small that motorists would be unable to see them from the road. For months NJGCA has fought this proposal. We spent the summer visiting with legislators building opposition to this legislation, and that work paid off in the end. Assemblyman Prieto agreed to drop his version of the legislation and instead pass the Senate version that we support. The bill was amended on the floor to be identical to the Senate version, and was passed by the Assembly unanimously. The Governor signed this bill into law just before this issue went to print.

Cash/Credit Bills

In September and October 2010 Assemblyman Charles Mainor (D-Hudson) introduced two bills which would have severely restricted your ability to provide a discount for customers who are able to pay with cash. One bill, A-3191, limited the difference in price to 5 cents, while A-3427 outright banned the practice. NJGCA was able to keep either of these bills from advancing. We have also learned that Assemblyman Mainor will not be reintroducing these pieces of legislation when the next Legislature convenes. We will remain ever vigilant of any attempt by any other legislators to try and restrict your freedom to use cash/credit pricing.

2012-2013 Legislature

January 10, 2012 marks the start of a new two year session of the state Legislature in Trenton. Every bill that has not been passed by both houses and signed into law by the Governor when the new session starts will expire. This will mean the end of bills such as A-2676, which allows for the sale of lottery tickets online, as well as A-2932, a Below Cost Selling bill. However, it is possible that the sponsors of these pieces of legislation will reintroduce them. As always, we will monitor every piece of legislation introduced in Trenton to watch out for you and your business.

Election 2011 Update

The elections held on November 8th for the state Legislature resulted in no surprises. Only 27% of registered voters came out to vote. The recent changing of legislative district lines ensured there were only a handful of reasonably competitive races. Once the ballots were counted, almost nothing had changed. The Democrats will continue to have a 24-16 majority in the state Senate, and they gained one seat in the Assembly due to redistricting, leaving them with a 48-32 majority. Senator Steve Sweeney (D-Gloucester) will continue as Senate President and Assemblywoman Sheila Oliver (D-Essex) will remain Speaker of the Assembly. On the Republican side, Senator Tom Kean, Jr. (R-Union) will remain leader of the Republicans in the Senate and longtime ally, Assemblyman Jon Bramnick (R-Union), was selected as the new Leader in the Assembly after the death of former Assemblyman Alex DeCroce.

Continue on next page...

Every incumbent who ran for reelection in their district was reelected. In addition, 3 members of the Assembly won election to the state Senate and 15 new individuals will be joining the Assembly.

We are also pleased to report that every candidate who received a donation from the NJGCA PAC was reelected. NJGCA congratulates all the winners and looks forward to working with them.

Redistricting and Election 2012

Last year a commission redrew the borders of the 40 state legislative districts to conform to the new population figures reported by the 2010 Census. Now, they have done the same for the state's congressional districts. Because New Jersey's population grew much slower than many of the other states, the state will now only have 12 congressmen instead of 13. On December 23rd, the commission decided to eliminate one district in North Jersey, combining Republican Congressman Scott Garret and Democratic Congressman Steve Rothman into a district that stretches along the northern border of the state. Congressman Rothman has chosen to move and challenge fellow Democrat Bill Pascrell in the 9th District. Each of the twelve districts will now have a population of around 732,000 people.

Election 2012 promises to be a significant one. In addition to the presidential election, New Jersey will also see a competitive Senate election between Senator Bob Menendez and a Republican opponent. The entire congressional delegation will be up for election too. Finally, there will be a special election in Central Jersey to fill the Assembly seat formerly held by Assemblyman Peter Biondi, who passed away last November. ■

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SPECIAL ALERT ON FUEL HOSE BREAKAWAYS

By Nick De Palma



In December, NJGCA learned that fire inspectors in Somerset County began to visit gasoline stations to inspect breakaways and handout citations.

The reason behind this new inspection is because in 2004 manufacturers began to stamp their breakaways with "best if used by" dating. Fire inspectors, in reinterpreting existing language in the Fire Code, are now handing out fines to force station owners to replace these breakaways or pay hefty fines, regardless of whether or not the breakaways are still functioning properly and safely.

The NJ Fire Code states that, in inspecting breakaways, "***Such devices shall be installed and maintained in accordance with the manufacturer's instructions***". When inspectors go to a facility and see that a breakaway is past-dated, they now believe this is a citable offense, even if the breakaway is in good working order and hasn't failed.

Even more confusing is that the NJDEP comes out yearly to check breakaways and inspects them for fuel and vapor leaks during compliance testing. In doing so, NJDEP clears the breakaways for continued service, despite whatever their "best if used by" dating says. Breakaways are required to be inspected daily as part of routine inspections of all hanging hardware vapor equipment.

There is an obvious clash of regulations and a pointed disconnect between what NJDEP is certifying and what fire inspectors are fining.

NJGCA has met with top fire officials in the State's Department of Community Affairs to make our concerns known. Stay tuned for more details. ■



Exploring the Boundaries of Mac's Shell



In rejecting the dealers' constructive termination claim in *Mac's Shell Service, Inc. v. Shell Oil Products Co.*, 130 S.Ct. 1251 (2010), the Supreme Court unanimously held that a cause of action for wrongful termination under the Petroleum Marketing Practices Act could only be pursued if a franchisee has been deprived of one or more of the three key elements of the franchise relationship: (1) the continued use of the franchisor's trademark; (2) the ability to purchase the franchisor's fuel; and (3) the right to occupy the service station premises.

Mac's Shell represents the Supreme Court's first and only effort to determine the extent of the PMPA's applicability to franchisor/franchisee disputes. Two recent decisions considered how Mac's Shell's holding should be applied in gray area factual situations.

Previous articles have considered aspects of the all-out battle waged in *Atlantis Petroleum, LLC v. Getty Petroleum Marketing, Inc.*, 2011 U.S. Dist. LEXIS 42767 (E.D. Pa. 2011), which resulted in a ruling that the distributor had been properly terminated for nonpayment of fuel purchases through termination letters dated March 25, April 11 and June 3, 2011.

The further issue existed, however, of whether the distributor had been prematurely terminated in violation of the PMPA in February 2011, when the supplier immediately curtailed fuel shipments after its senior executive told the distributor's principal during the course of their telephone call that "we can't supply you product anymore."

The supplier argued that this did not constitute termination within the meaning of the PMPA, but only constituted a temporary suspension of product delivery because of the distributor's payment defaults, and pointed out that the distributor itself had likewise suspended deliveries to dealers in similar circumstances.

Refusing to grant summary judgment dismissing that PMPA claim, the court emphasized that the PMPA "covers the termination of an agreement for the purchase of motor fuel, regardless of the franchisor's acts with respect to the other statutory components," citing the Supreme Court's Mac's Shell holding.

In so ruling, the court also relied on testimony indicating that the supplier as of the earlier date already desired to rid itself of its wholesale business, which included its relationship with Atlantis Petroleum.

This ruling by the court is significant, even though the court ultimately approved the franchisor's subsequent efforts to end the parties' franchise relationship. It suggests that, at least in some circumstances, the mere suspension of deliveries may constitute an illegal termination under the PMPA, even if it has no impact on the franchisee's continued occupancy of the service station premises.

The other recent decision, *Poquez v. Suncor Holdings – COPII, LLC*, 2011 U.S. Dist. LEXIS 57344 (N.D.Cal. 2011), involved a complex contractual relationship among the subtenant dealer, her supplier landlord and the property owner. Under the parties' agreements, the dealer possessed the right to purchase the service station premises under certain conditions.

In her PMPA complaint, the dealer alleged that shortly after she had entered into a three-year PMPA renewal agreement with her supplier, the service station premises had been sold out from under her to a national real estate developer in violation of her right of first refusal option. She complained that the real estate developer intended to evict her from the station as soon as the underlying lease expired, midway through her three-year sublease term.

Relying upon the Supreme Court's Mac's Shell decision, the court dismissed the dealer's PMPA claim.

The court emphasized the Supreme Court's absolute requirement that a PMPA termination claim be based on the loss of at least one of the three key elements of the franchise relationship. The mere possibility that the dealer might face eviction at some future date was, in and of itself, insufficient to support a PMPA termination claim. The court concluded that "[w]hile Defendants' alleged breach may be actionable under state law, it cannot support a cause of action brought under the PMPA."

The lesson of these cases appears to be that courts will interpret Mac's Shell as requiring an actual interruption of a key element of the franchise relationship to support a PMPA termination claim, although the interruption may fall significantly short of a classic termination scenario, where the franchisee is totally deprived of his or her rights under the parties' franchise 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>



Common Cents by Debbie Hill

Breakaways, PIF Reminders and More!

1. Check your Breakaways! You may have recently read the report in our weekly emails (as well as mentioned above) that Fire Officials are out inspecting your gas station. While the official is out doing a normal check of your property, they are now including “breakaways” on your dispensers. In 2004 breakaway manufacturers started including a date of manufacture and a best used by date of only five years. Fire Officials are now inspecting the dates on this equipment. If the time has passed, they may issue you a violation for up to \$2,500 per breakaway. You will either have to get a letter from the manufacturer stating that it is in good working condition or you will have to replace them. Sal is fighting this issue with the Fire Officials and we are meeting with the New Jersey Community Affairs to discuss this topic.

Stay tuned!

2. A warning to PIFs on MVC Covert Cars: As you know, the Motor Vehicle Commission (MVC) continues to send covert vehicles to repair location to observe how PIFs are conducting their inspections.

Due to a high number of violations, I have recently needed to accompany a number of NJGCA Members to Trenton when they were cited or fined. These violations often stem from employee-mechanics who make mistakes while conducting an inspection or procedural mishaps by business owners that result in a fine.

When I go to Trenton to defend a member, my success or failure hinges on your behavior and action in your shop. For example, I recently was at a hearing for a member who knew that a vehicle was missing a catalytic converter, but accidentally checked off that it was fine. Why did he do this? Because of habit and repetition; he had done so many before that he instinctively filled in the wrong answer.

This mistake cost him money because proper MVC procedures weren't followed. Even when we produced paperwork that proved he had caught the catalytic converter failure in the notes section of the form, it didn't matter since the work order was missing the right information.

Ultimately we were able to get the penalty amount reduced, but not eliminated altogether, costing him a few dollars that could have been better spent elsewhere.

We've also had a number of members who have received fines for equipment failures. While this may seem unfair, the fines were levied solely on following improper procedure. In one recent example, an NJGCA Member knew he was inspecting a covert vehicle and proceeded to conduct the inspection. However, his SGS equipment was malfunctioning, and despite trying multiple times, he was unable to complete the inspection. The inspector had listed the failed items on his work order, but the malfunctioning analyzer did not produce the VID report with the proper outcome. In hindsight he should have brought the Covert Inspector into his station and shown him the problem he was having with the machine or called SGS for help, but in the end, it cost him time and money.

I was surprised to hear that a member who did not follow the exact procedures with an inspection was going to accept the Civil Penalty and Suspension Time from MVC without attending the hearing. He was embarrassed – but decided to call me last minute. I was able to contact MVC set up a hearing for him with in the week. We prepared our selves and he ended up saving a considerable amount of money and suspension time.

To avoid these problems, an inspector should keep a few things in mind:

- Slow down and take your time! Rushing through an inspection will often result in mistakes being made.
- Is the vehicle that you are inspecting a Commercial Vehicle? Does it have commercial plates? If so, don't forget that a Safety Inspection STILL applies!
- When mistakes are made and citations are handed out, call NJGCA immediately! While we cannot promise any specific results, we can often help get violations dismissed or fines reduced by making a solid argument with the hearing board. Remember, however, that I cannot help anyone who doesn't help themselves first – Proper procedures are still key to avoiding any fines.

If your inspectors are having difficulty remember these (and other) point, I suggest posting a sign on your inspection equipment with a checklist of reminders. It may help you avoid any conflicts with MVC and give you some peace of mind.

3. Workers Compensation Insurance: A member recently contacted me regarding a problem he was having with his workers' compensation company. The company has raised his policy considerably and he wanted to know why. After speaking with the insurance company, it turns out the increase was due to giving himself a raise. Although he does not work in the bays, the workers' compensation company advised him that he is still rated as a mechanic, which is a much higher rate. To combat this problem, he and his accountant have decided to reduce his salary but give him bonuses. Yes he will still be taxed on the money, but the workers compensation charges will be less based on the base salary.

Is this happening to you? You may have to consider another way of paying yourself to lower charges from your workers comp carrier.

4. Call NJGCA for all your Technician Education Requirements: Classes to become New Jersey Emission Inspector and/or Emission Repair Technicians will resume in **February 2012**.

Call or email Debbie Hill at Debbie@njgca.org to find out the next class for your technicians.

If you have any questions or comments, please feel free to call Debbie Hill at debbie@njgca.org or call 973-376-0066. ■

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DANA TANK INSURANCE SPECIALISTS – Tank Insurance
MERCHANT ADVOCATE – Credit Card Processing & Consulting
AFFINITY FEDERAL CREDIT UNION – Credit Union
ABLE-TECH – Industry Specific Business Consulting
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HOW A CHANGE IN HOW SHIPS FUEL THEMSELVES WILL AFFECT YOU

by Eric Blomgren



As the world economy has become more and more interconnected, big changes in one sector of the economy can have ripples which expand out and affect your business. Here is a perfect example of that, and one you're not hearing about from anyone else. Not much attention has been paid by the media, but the results of this information will affect both the supply and the price of diesel fuel in a few years.

The International Maritime Organization (IMO), an agency of the United Nations which regulates worldwide shipping, approved in October 2008 and is now set to implement new rules which severely restrict the sulfur emissions from oceangoing vessels. The IMO has established Emission Control Areas (ECAs) which cover North America and Northern Europe. The North American ECA stretches up to 200 nautical miles off the coast of the US and Canada.

The restrictions put in place by the ECAs require significant reductions in sulfur, the most immediate restrictions go into effect on August 1 and mandate that sulfur emissions fall from 1.5% to 1%, and then fall further to .1% in 2015 (a 93% reduction). Global emissions from the rest of the world will drop from 4.5% to 3.5% in 2012 and to .5% in 2020.

These mandates will require all maritime vessels to either install expensive scrubbers to clean their exhausts of sulfur or switch to using low sulfur fuels, particularly **diesel**. That's where your business gets affected. This new demand for diesel will surely stretch the existing supply and drive up prices of diesel worldwide. Presently oceangoing vessels use much heavier fuels that are much cheaper than diesel.

In Europe, many ships have started to operate using low sulfur fuel oil (LSFO), however in North America a lack of supply of this type of fuel means ships would be forced to use distillate fuels. While some refiners may start producing more LSFO in 2012 to meet this demand, fuel suppliers have already told the EPA they would not provide the fuel in California and some other states, essentially forcing them to use distillates such as diesel.

Some ship operators are looking to switch to liquefied natural gas in order to fuel their ships. The problem they have, as with natural gas cars, is that there are very few places to fill up. It is likely to be used only on vessels operating within limited geographical areas. Another problem with natural gas is that the tank would need to be around two and a half times the size of a traditional fuel tank.

Some in the shipping industry have criticized this plan on both economic and environmental grounds. Low sulfur fuels are more expensive than what is currently used, and forcing their use may drive more shipping to use trucks and trains. The increased use of trucks will of course mean an increase in the amount of diesel fuel used, which has a detrimental effect on the environment as well as the bottom line. Some in Europe are estimating the cost of switching from heavy fuel oil to marine gas oil will represent an average increase in fuel cost per ton of around 80%.

While analysts think that the shipping industry and the refiners will be able to meet the challenges of next year, the mandates that come due in 2015 pose a much bigger challenge. **Global production of gasoil/diesel is not enough to meet the surge in demand that is going to come about.** Scrubbers must become more commercially viable and there may need to be price incentives for refiners to desulfurize Heavy Fuel Oil. Mexico is also seriously considering joining the North American ECA, if so they would need to import diesel in order to meet its requirements, further straining supply.

Supply and demand dynamics aren't the only reason the cost of fuel to you is going to go up. Don't forget that a huge amount of oil is imported into the US by oil tankers. If the cost of fuel for those tankers increases, the cost of shipping will increase which will mean an increase in the already sky high price of oil. In the last year we've already seen how revolutions on the other side of the world can trickle down to influence our daily lives, these mandates from the IMO are just more proof of the effects our rapidly shrinking world can have on the health of your business. ■

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Recent Developments and Wrapups



This column is devoted to bringing up to date some of the legal developments and notable cases that we have discussed over the past year.

One subject we discussed earlier was the liquidated damage provisions too commonly found in supply agreements. Such provisions require a dealer to pay a predetermined sum, whether on a cents per gallon or other basis, to make up for the supplier's loss of sales if the supply agreement terminates prematurely.

As we stated earlier, the general rule is that courts ordinarily will uphold liquidated damages provisions if three conditions are met:

- The potential damages to the supplier must be difficult or impossible to estimate accurately.
- The provision must be intended to guard against a real potential for damages, and not simply constitute a penalty for nonperformance.
- The amount of liquidated damages must constitute a reasonable pre-breach estimate of probable loss.

A recent decision by an Ohio federal judge suggests that, in some cases, those conditions may not be easy for the supplier to satisfy.

In *D&T Oak Creek Station, Inc. v. True North Energy, LLC*, 2011 WL 4543922 (S.D. Ohio 2011), the supplier sought summary judgment on the liquidated damages provision that formed the basis of its breach of contract counterclaim. Denying the motion, the court found that the supplier had not satisfied either the first or last condition.

The court said that supplier had not demonstrated that potential damages were "difficult or impossible to estimate accurately," because the supplier appeared to be able to calculate the amount that the dealer would owe for gasoline and credit card sales.

The court also refused to accept the liquidated damages amount as a reasonable pre-breach estimate because of the supplier's "seeming ability to calculate damages, from its perspective, to the exact penny."

Thus, although a liquidated damages provision continues to constitute a significant legal threat, it may not be determinative or enforceable under the facts of a given case.

We also discussed earlier this year the case of *Jimico Enterprises, Inc. v. Lehigh Gas Corp.*, 2010 WL 2985962

(N.D.N.Y. 2010), in which the court found that Lehigh had violated the PMPA by terminating two dealers' operation of service stations located on the New York Thruway, without providing the dealers the required 90-day notice period.

Unfortunately, the court restricted the dealers damages to the 90-day notice period, because it did not condemn Lehigh's conduct in tricking the dealers into abandoning their full PMPA rights by getting them to sign short-term trial franchise and lease agreements.

The full impact of that reduction in damages hit home to one of the dealers when the federal court subsequently entered summary judgment for Lehigh on its breach of contract claim for unpaid product, which had the effect of converting the dealer's \$51,431.38 judgment into a \$33,458.34 judgment for Lehigh.

All does not come up smelling like roses for Lehigh, however. Not only did Lehigh wind up with a judgment against it in favor of the other dealer for \$120,461.38, but the court's subsequent decision awarded the dealers in excess of \$333,000 in attorneys' fees, expenses and costs. See *Jimico Enterprises, Inc. v. Lehigh Gas Corp.*, 2011 WL 4594141 (N.D.N.Y. 2011).

Finally, we come to the most recent development in the extensive legal struggle between Getty Petroleum Marketing and its distributor, Atlantis Petroleum, which subleased over 70 branded service stations from Getty.

Following Getty's termination of the parties' sublease relationship on less than thirty minutes notice this past April, Atlantis Petroleum secured a temporary restraining order from the federal court in Philadelphia, which permitted it to continue to operate the subleased stations.

Atlantis Petroleum's initial success in court appears to have been short lived. Recently, the same federal court that had provided Atlantis Petroleum temporary relief from Getty held that Getty was entitled to cancel the subleases and take possession of the 75 stations because of Atlantis Petroleum's failure to pay approximately \$6,500,000 for product delivered to it by Getty. So it goes. ■

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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:

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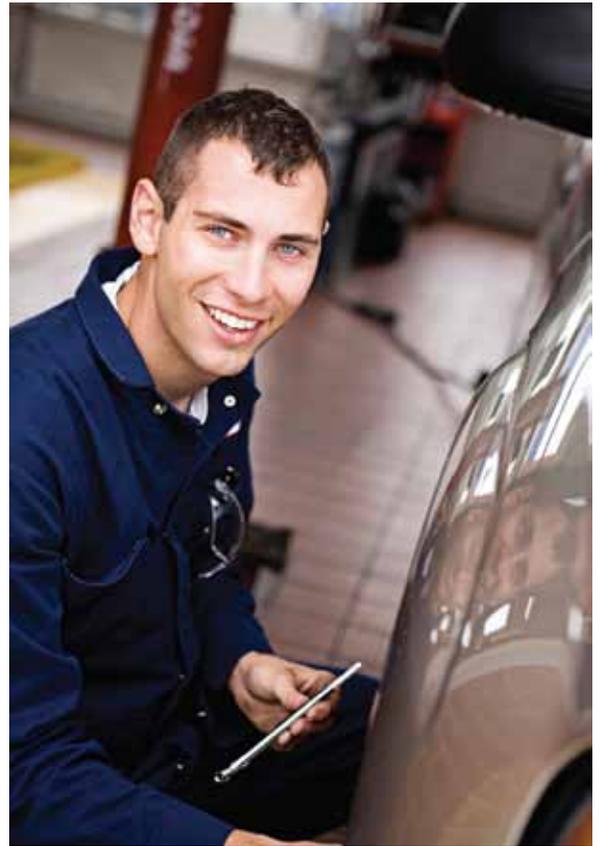
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