NYS ASSOCIATION OF SERVICE STATIONS & REPAIR SHOPS, INC.

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OPIS Survey: Huge Volume Drop Seen Post-Labor Day Week

An exclusive OPIS survey of nearly 5,000 retail gasoline stations nationwide last week showed that stations volumes were off by 6% for the week ending Sept. 6

The weekly demand drop of 6% puts an emphatic exclamation point on the summer driving season. Not only was there a sharp week-to-week drop in gasoline stations volumes, but the amount of stations in the survey that reported lower demand was an eye-popping 75%. A little more than 26% of the participants in the survey said that volumes were down between 5%-9.99%.

While the OPIS data does show a sharp week-to-week drop, the gasoline demand decline was not quite as drastic as the figures provided by the EIA, which reported a 9.2% slide.

Both the monthly and yearly comparisons for gasoline demand also show declines. Compared to last month, gasoline volumes were down by 2.81% with about 59% of the stations participating in the survey reporting volumes being down. The most common change per site month-to-month was a drop of 2.4%.

For a year-to-year comparison, average store volumes were down 1.65% with 55% of the stations reporting a year-to-year drop. For comparison, the DOE data says that year-on-year gasoline demand is slightly higher at 0.07%.

For more details on volume analysis by state, please contact Brian Norris at 301- 287-2413.

--Denton Cinquegrana, dcinquegrana@opisnet.com

INSIDE THIS ISSUE

Gasoline Use Up Two Billion Gallons In Past 10 Months

The U.S. Energy Information Administration's (EIA) short-term forecasts of gasoline consumption, which cover the current and upcoming calendar year, have risen over the past year.

The latest Short-Term Energy Outlook (STEO), released on Tuesday, expects 2014 gasoline consumption to be 8.82 million barrels per day (135.2 billion gallons), 0.13 million barrels per day (2 billion gallons) higher than last November's forecast.

The STEO forecast of 2014 gasoline consumption was generally declining between January 2013 and September 2013, but has risen over the past year. The gasoline consumption forecast reflects changes in a number of key factors, such as gasoline prices, economic and employment trends, weather, demographics, changes in consumer behavior patterns, as well as new data on actual consumption.

EIA reports that during the first quarter of 2013, gasoline consumption increased by only 6,000 barrels per day (bbl/d) over the same period during 2012. By Q4 2013, the year-over-year increase in gasoline consumption had risen to an average 320,000 bbl/d.

This increase in consumption did not last long. During Q1 2014, consumption averaged 66,000 bbl/d higher than the same period in 2013. (The Federal Highway Administration reports a similar increase of 62,000 bbl/d for the first quarter of 2014.) During the Q2 2014, consumption began to show year-over-year declines in May and June, with an average increase for the period of 20,000 bbl/d. EIA expects continuing year-over-year declines during the second half of 2014, averaging 79,000 bbl/d.

EIA says that the general outlook for gasoline is for declining consumption as average new vehicle fuel economy continues to improve. As new cars replace less-efficient older cars, the increase in the average fleet fuel economy is expected to outpace the growth in the driving age population and vehicle miles traveled and put continuing downward pressure on gasoline consumption

Researchers Call E-Cigarette Critics 'Alarmists'

University College London (UCL) researchers called recent claims made against electronic cigarettes by the World Health Organization (WHO) "alarmist" and "bizarre," reports BBC News.

The researchers said that increasing e-cigarette use among smokers could actually save lives, noting that for every one million current smokers who switch to the devices, more than 6,000 lives a year could be saved.

WHO has made claims about the risk of e-cigarettes acting as a gateway for non-smokers to start smoking nicotine cigarettes. However, the UCL team found that the number of non-smokers using e-cigarettes amounted to less than 1% of the population, according to the Smoking Toolkit study, a monthly survey of smokers in England, reports the BBC.

Professor Robert West added that even though some toxins were present in e-cigarette vapor, the concentrations were very low.

"You have to be a bit crazy to carry on smoking conventional cigarettes when there are e-cigarettes available," he told the BBC, adding, "The vapor contains nothing like the concentrations of carcinogens and toxins as cigarette smoke. In fact, concentrations are almost all well below a twentieth of cigarettes."

Researchers at the National Addiction Centre and the Tobacco Dependence Unit at Queen Mary University agreed, adding that some of WHO's assumptions are "misleading" and based on "little hard data."

"I think any responsible regulator proposing restricting regulation has to balance reducing risks with reducing potential benefits," lead researcher Professor Peter Hajek told the BBC.

The BBC adds that WHO has yet to respond to the criticisms of its work on electronic cigarettes.

BP Found Grossly Negligent In Gulf Spill

A federal judge ruled that of the oil companies involved in the 2010 Deepwater Horizon oil spill in the Gulf of Mexico, BP plc bears the majority of responsibility. U.S. District Judge Carl Barbier cited the company's reckless conduct, which could potentially expose BP to billions of dollars in penalties, the Associated Press reported.

Barbier presided in the 2013 trial to divide blame for the oil spill among three companies. His 153-page ruling states that BP bears 67 percent of the blame, followed by drilling rig owner Transocean Ltd. at 30 percent and cement contractor Halliburton Energy Services at 3 percent.

"Profit-driven decisions" made by BP led to the spill, Barbier wrote in his ruling. "These instances of negligence, taken together, evince an extreme deviation from the standard of care and a conscious disregard of known risks."

BP said it will appeal the ruling, noting the company "believes that an impartial view of the record does not support the erroneous conclusion reached by the District Court."

Last year, Barbier heard eight weeks of testimony to identify the causes of the oil spill and assign percentages of blame for the companies involved, followed by three weeks of testimony to estimate how much oil spilled into the Gulf and examine BP's efforts to seal the blown-out oil well.

The Clean Water Act states that a polluter can be forced to pay a maximum of either $1,100 or $4,300 per barrel of spilled oil, with the higher figure coming into effect if a company is found to be grossly negligent.

Government experts estimated that 176 million gallons spilled into the Gulf, while BP estimated that it was only 103 million gallons, according to the AP report.

AAA: Fuel Prices To Keep Falling

Gasoline prices could fall 10 cents to 20 cents per gallon by the end of October as people drive less and refineries begin producing less-expensive winter-blend gasoline, according to AAA's latest monthly gas price report.

"The big crunch in summer travel is done and most of us can look forward to lower gas prices during the next few months," stated AAA spokesman Avery Ash. "If we can get through September without any major refinery or overseas problems, we should see more gas stations drop below $3 per gallon this fall."

Although dwindling supplies of summer-blend gasoline occasionally leads to short-term localized price increases around the middle of September, overall prices should go down as refineries in many parts of the country begin selling winter-blend gas as of Sept. 15. In 2013, national average gas prices fell by 19 cents per gallon in September, and the price of gas in September declined in four of the past five years at an average of 8 cents per gallon.

The national average gas price during the recently ended summer driving season was $3.58 per gallon, the fourth most expensive on record and only slightly below the 2013 average, AAA said. Recent summer driving season averages were $3.58 (2013), $3.55 (2012), $3.65 (2011), $2.73 (2010), $2.59 (2009) and $3.95 (2008).

"It was truly a summer of contrasts with consumers paying the highest seasonal prices in years to begin the summer, but ending with the lowest prices since 2010," Ash said. "Many drivers lucked out, with it costing significantly less to fill up the car during the busiest part of the summer."

In August, gas prices averaged $3.46 per gallon, the least expensive price for the month since 2010. The averages for August in recent years were $3.57 (2013), $3.69 (2012) and $3.62 (2011).

Most regions of the United States saw gas prices fall during the second half of the summer, bringing the national average price down approximately 25 cents per gallon since June 28. Prices increased unexpectedly in June due to intensified rebel attacks in Iraq, but they stabilized as the threat to Iraqi oil production diminished.

The current national average gas price is $3.43 per gallon, marking the lowest price drivers have paid since late February. This is approximately 16 cents less than one year ago and the lowest average for Sept. 4 since 2010. The

national average price has remained under $3.50 per gallon for 31 consecutive days.

The five states paying the highest average prices are Hawaii ($4.28), Alaska ($4.02), Washington ($3.88), Oregon ($3.87) and California ($3.84), while the five states paying the lowest average prices are South Carolina ($3.17), Mississippi ($3.18), Virginia ($3.18), Alabama ($3.20) and Tennessee ($3.21).

Approximately one-fourth of U.S. gas stations are selling fuel for less than $3.25 per gallon today, while nearly seven in 10 are selling fuel for less than $3.50 per gallon.

The most common price in the U.S. is $3.299 per gallon.

In general, 2014 gas prices have averaged less than recent years due to an increase in domestic petroleum, according to AAA. The national average price for the first eight months of the year was $3.52 per gallon, which is the lowest average through the same period since 2010. In 2013, the January-August national average was $3.57 per gallon.

Four NY Fuel Retailers Penalized for Storage Tank Violations

Owners and operators of four gasoline stations in the Buffalo, N.Y., area have been ordered to pay the U.S. Environmental Protection Agency a total of $287,100 in penalties, according to EPA on Thursday.

In August 2012, the EPA issued a complaint to owners and operators of gas stations in Buffalo, Amherst and Tonawanda, N.Y., alleging violations of numerous federal regulations aimed at protecting water from petroleum contamination.

One of the companies, Amerimart Development Co., agreed to settle alleged violations regarding underground storage tanks at gas stations it owned and operated. Three other companies named in the complaint, Qual-Econ Lease Co. Inc., MJG Enterprises Inc., and Clear Alternative of Western NY Inc. (d.b.a. G & G Petroleum), chose not to resolve the problems despite numerous attempts by the EPA and an administrative law judge to resolve the cases.

The three companies have now been ordered by a judge to bring their gas stations into compliance with federal law and to pay the penalties within 30 days.

All gas station owners are required by law to regularly monitor their underground storage tanks to prevent petroleum leaks.

--Edgar Ang, eang@opisnet.com

U.S. Electric Drive Vehicle Sales Stall

Sales of electric drive vehicles have "surprisingly" stalled, according to Jessica Caldwell, a senior analyst with auto research site Edmunds.com.

The lackluster sales figure includes electric vehicles, hybrids and plug-in hybrids. Sales of all electric drive vehicles have made up 3.6% of all new car sales so far in 2014, a hair below the 3.7% market share electric drive vehicles had for full-year 2013.

"With the success of the auto market this year, this is a story that's flying under the radar," said Caldwell. "Everyone reasonably assumes that the electric drive market will continue to grow incrementally, but we're just not seeing any growth this year. Stable gas prices likely have a lot to do with it, but there's also the possibility that the prestige of owning an EV or hybrid has died down, especially as new generations of traditional gas guzzlers transform into fuel sippers. And as summer months wind down, we're approaching a time of the year when sales of these vehicles tend to be slower, so a late-year surge is not very likely."

--Donna Harris, dharris@opisnet.com

California Lottery to Pilot 'Play at the Pump'

The California State Lottery is considering becoming the third state to implement "Play at the Pump" -- a setup in which consumers who are gassing up their vehicles at gas stations may also buy lottery tickets from the pump. Two states already have implemented such programs -- Minnesota, followed by Missouri.

California officials stated that the pilot will kick off this fall at about 100- 150 existing lottery retail fuel locations in Los Angeles and Sacramento.

At a June 26 Lottery Commission meeting, Deputy Director of Sales David Cole told the commission the sales would be in $5, $10, and $20 increments, with a maximum of $50 a week, according to a transcript of that meeting.

Purchasers would have to use a credit card or an ATM card that was verified with an ID. No gas cards would be accepted, he said.

The purchaser would have to buy gasoline from the pump in order to buy a lottery ticket from it.

In response to a question from a commissioner about stolen credit cards, Acting Director Paula LaBrie said prizes over $599 need to be claimed in person. That process also calls for the winner to fill out a claims form, show an ID, and show the payment card that was used to make the purchase, she said, according to the transcript.

Prizes under $500 can be claimed at the dealer, but the winnings get credited back to the card.

Cole said the pilot would last for five months.

The Play at the Pump technology has been provided by the company Linq3.

--Vincent Taylor, vtaylor@opisnet.com

EPA Announces Public Workshop for Proposal to End Use of 134a in New Motor Vehicles and Consumer Products

The U.S. Environmental Protection Agency (EPA) published in the Federal Register on Aug. 6 a proposed rule that, if finalized, would prohibit the use of 134a as a refrigerant in new motor vehicles beginning in model year 2021. Further, beginning in 2016, EPA is proposing to no longer permit the use of 134a as an aerosol in consumer products some of which are automotive products.

Pointing to the high global warming potential (GWP) of 134a, the agency is seeking to list the substance as an unacceptable substitute for an ozone depleting substance (ODS) under the Significant New Alternatives Policy (SNAP).

Under SNAP, EPA reviews alternatives to ODS to find substitutes that pose less overall risk to human health and the environment.

For motor vehicles, EPA is listing three alternative refrigerants that could be used for new vehicles, including 1234yf, R-744 and 152a, that were determined to have a lower GWP then 134a. For consumer aerosols, there are three alternatives with lower GWPs that meet other environmental regulatory requirements, including HFC-152a, HFO-1234ze(E) and CO2.

In addition to 134a, EPA is proposing to list the following refrigerant blends as unacceptable in new motor vehicles beginning in model year 2017:

R-426A (also known as RS-24), R-416A (also known as HCFC Blend Beta or FRIGC FR12), R-406A, R-414A (also known as HCFC Blend Xi or GHG-X4), R-414B (also known as HCFC Blend Omicron), HCFC Blend Delta (also known as Free Zone), Freeze 12, GHG-X5 and HCFC Blend Lambda (also known as GHG-HP).

It is important to note that the proposal does not impact refrigerants used to service vehicles currently on the road. Therefore, shops and do-it-yourselfers will continue to be able to service their current vehicles with 134.

Comments on the proposal will be accepted by EPA until Oct. 6, 2014 and a public hearing is scheduled for Aug. 27, 2014 in Washington, D.C. A copy of the proposal with details regarding the public hearing can be found here http://www.gpo.gov/fdsys/pkg/FR-2014-08-06/pdf/2014-18494.pdf"

A fact sheet on the proposal can be found here http://www.epa.gov/ozone/downloads/SAN_5750_SNAP_Status_Change_Rule_Fact_Sheet_070714.pdf.

ITC Update

Although it did not have to until August 1st, the U.S. International Trade Commission voted 6-0 to advance the United Steelworkers petition for anti-dumping and countervailing duties on consumer tires imported from China.

Chinese tire producers and importers and outraged with the decision and are complaining that some companies in the U.S. have already begun cancelling orders.

A final decision on countervailing duties is due by Dec. 1, and on antidumping duties by Feb. 17, 2015. Final decisions by the ITC are not scheduled to come until Jan. 15, 2015, on countervailing duties and March 31, 2015, on antidumping duties.

USW International Secretary-Treasurer Stan Johnson said, “While relief was in place, billions of dollars in investments were made by firms producing tires in the U.S. in new plant and equipment. But, China’s targeting of our industry has injured our members. They work hard and play by the rules and all they want is a fair chance to compete. They deserve to have our nation’s trade laws aggressively and faithfully enforced.”

Menu Labeling A Bad Fit For Convenience Stores

Hand-me-downs might work for clothing, but they’re a terrible approach for menu-labeling regulations within the convenience store environment.

This week NACS Chairman Brad Call of Maverik Inc. wrote in Roll Call that “hand-me-down” is the approach being used by the U.S. Food and Drug Administration (FDA) with its proposed menu-labeling regulations required by the Affordable Care Act.

Call’s op-ed in the publication reads, in part: “The agency’s proposed rules are a reasonable, though hardly perfect, fit for the big chain restaurants. These restaurants offer simple, standardized menus at all locations and Congress’s intent was to make sure those menus provide clear, understandable nutrition information.

“But the menu labeling regulations don’t make sense at all for convenience stores, grocery stores, delivery operations and other approaches to foodservice. The FDA rules essentially define a ‘restaurant or similar retail food establishment’ as any business that devotes more than half of its floor space to consumer food sales and also offers restaurant-type items.

“That makes a convenience store a ‘restaurant’ even if 95% of its space is devoted to grocery items, and it sells only one or two prepared items at the counter. And the same rules apply to delivery-only operations — where consumers may never even walk in the door — as to full-service counterparts,” said Call.

He also points out that the regulations “are outrageously expensive for the small businesses that have to comply with them,” noting that NACS estimates an average cost of approximately $20,000 per year, per store, for the additional cost of compliance.

Call also notes that, according to the Office of Management and Budget, the FDA’s menu-labeling rules could take 14 million hours to cumulatively comply with: “one of the largest burdens of any regulation issued the year they came out. The FDA got the size and style all wrong for thousands of small businesses when it tried to fit them with the same heavy-duty menu-labeling regulations as big fast-food chains,” wrote Call. “When it comes to small businesses that just want to offer the convenience of a few

prepared food items, let's hope Congress discovers the common sense to design a solution that really fits."

General Counsel Corner

The Franchise IndustryReceives a Jolt

By Peter H. Gunst , Esquire

On July 29, 2014, the Office of the General Counsel for the National Labor Relations Board gave the franchise industry a real jolt. The General Counsel's brief press release stated that it had instructed regional directors to pursue complaints of unfair labor practices against not only McDonald's franchisees, who were the direct employers involved, but also against their franchisor, McDonald's USA.

The General Counsel stated that McDonald's USA should be viewed as a "joint employer" bearing responsibility in at least forty-three cases in which complaints had been authorized against franchisees. Traditionally, the law has treated franchisors and franchisees as independent entities, both in the context of employment law and otherwise.

Beyond question, franchisors and franchisees are separate legal entities, each responsible for managing separate businesses. Many franchisors have blurred the line, however, by micromanaging various aspects of their franchisees' businesses in order to protect their brand image.

The theory behind the General Counsel's directive was that McDonald's had so involved itself in its franchisees' employment practices that it should be deemed to be a "joint employer," with potential liability for its franchisees' labor law violations.

The General Counsel's directive immediately set off a firestorm, eliciting fiery rhetoric not only from franchisors but from franchisee groups as well.

Criticizing the directive, a spokesperson for the International Franchise Association complained that "the livelihoods of hundreds of thousands of independent franchise small businesses are now at risk due to the radical and unprecedented nature of this decision."

That spokesperson predicted that adoption of a "joint employers" standard would diminish the ability of franchisees to make employment decisions, and as a result "the value of [their] businesses" would be deflated."

The triumphant press releases issued by some supporters of the General Counsel's directive reveal why opponents of the directive are so concerned by its potential impact. One pro-labor commentator pointed to the potential impact for union organization. He wrote:

> Until now, employees at each franchise were limited to organizing only the workers at the franchise. This made the long, hard and expensive process of forming a union nearly impossible because it would have to be repeated for each individual franchise.
>
> Now unions have a single target in the parent McDonald's corporation and can launch a unified organizing campaign.
>
> In addition, that commentator said that adoption of a "joint employer" rule would make it easier to file national class-action lawsuits to attack employment law violations. The commentator also emphasized that adoption of a "joint employer" standard should extend beyond the fast food industry, and gave as examples of franchisors at risk Dunkin Donuts, 7- Eleven stores and H&R Block tax preparers.

So how might this affect franchisees in the service station industry? To begin with, all the fuss may be premature. The General Counsel's directive to its regional offices is merely that. It does not have the force of law, and the proposed standard has not been adopted by the NLRB itself, much less by the courts. The General Counsel has merely thrown down the gauntlet on the issue.

Further, this issue might have had considerably more relevance to the petroleum industry fifteen years ago, before the majors mostly removed themselves from direct supply.

Then there were detailed operating requirements and regular station examinations and evaluations, making franchisors like Exxon and Shell tempting union organization and class-action targets.

The jobbers who have largely replaced refiners as franchisors are less likely to be impacted. Because of their relatively small size they are less likely to be tempting unionization and class-action targets. Moreover, with some very notable exceptions, jobbers are often not as involved in micromanaging as were their predecessors, and thus less likely to be branded as "joint employers." In any event it will be interesting to see where, if anywhere, all of this leads.

DMV Record Retrieval

DMV record retrieval is available to association members and affiliates at a cost of $12 per record. Additionally, you may order DMV certified paper abstracts of driver's license, vehicle registration, and vehicle title records for an additional fee of $2 per abstract. Please call 518-452-4367.

Attention Inspection Stations

The association has received a flurry of requests for legal representation for violations of the DMV commissioner regulations known as "clean scanning." that is when a vehicle other that the one to be inspected is substitute for the OBD-II part of the test. We have no defense for these violations. DMV has the ability to trace the OBD-II inspection to the vehicle used for the inspection.

If you cannot pass a vehicle for any reason, get help. That help could come from DMV. This violation almost always results in revocation..

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With a Financial history like this you have lots of reasons to smile.

Dividend History		Discount History	
35%	2010-2011	25%	2012
35%	2009-2010	25%	2011
35%	2008-2009	20%	2010
35%	2007-2008	20%	2009
30%	2006-2007	20%	2008
30%	2005-2006	25%	2007
25%	2004-2005	25%	2006
22.5%	2003-2004	25%	2005
17.5%	2002-2003	20%	2004
10%	2001-2002	20%	2003
15%	2000-2001	20%	2002
30%	1999-2000	20%	2001
40%	1998-1999	30%	2000

Current Group Management took over for the 04-05 policy year
2008 20 % Discount due to 18% rate decrease

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