PTSA
Petroleum Transportation & Storage Association

Weekly Update

News and Information for the Petroleum Transportation and Storage Industry
Washington, D.C., Friday October 14, 2005

1. U.S. HOUSE PASSES REFINERY CONSTRUCTION BILL; SENATE SUPPORT DOUBTFUL:

The House narrowly approved legislation last week to speed the development of new refineries to boost the supply of gasoline. The bill (H.R. 3893) passed by a margin of 212-210 only after Republican leaders held the vote open for 40 additional minutes so they could lobby lawmakers who had voted "no" to switch sides and ensure passage. The bill's sponsor, Rep. Joe Barton (R-TX), chairman of the House Energy and Commerce Committee, said the bill would help avoid gasoline supply problems and price spikes of the kind that followed hurricanes Katrina by significantly reducing the permitting process for building new refineries. The legislation would require the president to designate available federal lands, including closed military bases as potential construction sites for new refineries. The bill would also make it easier to expand existing pipelines and build new ones to maintain supply to areas not located near a refinery. In addition, the bill would create a federal list of 6 gasoline and diesel fuels that States must use in areas experiencing a fuel supply emergency. In the aftermath of hurricanes Katrina and Rita, some States did not follow the federal fuel waiver recommendations to alleviate shortages. Under this provision, States would have no choice. The White House issued a statement in support of the bill. However, chances that the bill will pass the Senate are in doubt. Shortly after the House vote, Senate Energy and Natural Resources Committee Chairman Pete Domenici (R-NM) said there is not much support for Barton's refinery bill in the Senate.

2. U.S. HOUSES PASSES BILL ANTI-PRICE GOUGING BILL AIMED AT RETAILERS:

A provision in the House passed *Gasoline for America's Security Act of 2005,* (H.R.3893) gives the Federal Trade Commission (FTC) the authority to prosecute alleged price gouging by retail petroleum marketers. Under current law, The FTC can only investigate alleged price gouging while prosecution is left up to the States attorney generals. The new prosecutorial power invested in the FTC is in response to the widely held, but incorrect belief that retailers are responsible for escalating fuel prices in the wake of hurricanes Katrina and Rita. The bill requires the FTC to promulgate regulations that set a standard for determining whether price gouging has occurred and makes such violations a federal crime, punishable by civil penalty of $11,000 per violation. The FTC would have prosecutorial powers only in areas where the president declares an emergency. State investigations into gasoline price gouging during federal emergencies would no longer be allowed under the bill. The FTC is also directed to conduct an investigation into nationwide gasoline prices in the aftermath of Hurricane Katrina, including any evidence of price-gouging. In conducting its investigation, the bill requires the FTC to treat as price-gouging any instances where the average price of gasoline sold to consumers in September, 2005, or thereafter, within a state or federal emergency area or other areas where gouging complaints were filed, exceeded the average price of such gasoline for the month of August, 2005. However, the FTC may make a finding of no price-gouging where the price increase is "substantially attributable" to costs in connection with the production, transportation, delivery, and sale of gasoline or to national or international market trends. Passage in the Senate remains in doubt because the price gouging provision is part of a larger refinery construction bill that does not yet enjoy wide support among Senators of either party.

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Cents	Change	Cents	Change				
	Price	Week Ago	Year Ago		Price	Week Ago	Year Ago
U.S.	284.8	-8.0	85.5	U.S.	315.0	0.6	105.8
East Coast	288.3	-7.5	91.8	East Coast	316.0	-3.8	106.0
New England	279.5	-8.2	80.7	New England	294.7	-6.5	73.5
Central Atlantic	284.1	-6.2	84.3	Central Atlantic	299.0	-5.0	79.0
Lower Atlant	294.1	-8.3	100.7	Lower Atlant	325.2	-3.1	120.5
Midwest	276.0	-14.0	81.2	Midwest	312.3	4.0	106.8
Gulf Coast	285.2	-5.8	96.7	Gulf Coast	318.2	-0.3	114.9
Rocky Mountain	284.5	-4.5	89.5	Rocky Mountain	314.3	6.4	101.1
West Coast	293.2	-1.3	69.1	West Coast	316.7	-0.7	89.1
California	296.4	-0.9	63.7	California	324.0	-2.2	91.8

U.S. Average Retail Gasoline Prices: The U.S. average retail price for regular gasoline decreased by 8.0 cents to 284.8 cpg after rising the previous two weeks. This week's price is 85.5 cents higher than this time last year. Prices were down throughout the country, with the Midwest seeing the largest regional decrease of 14.0 cents to 276.0 cpg the lowest price in the country. East Coast prices fell by 7.5 cents to 288.3 cpg. The West Coast averaged 293.2 cpg, the highest in the country.

U.S. Average Retail Diesel Fuel Prices: Retail diesel fuel prices rose 0.6 cent to reach 315.0 cpg, the highest price on record. Prices were mixed throughout the country, with the Rocky Mountains seeing the largest increase of 6.4 cents to 314.3 cpg. Regionally, Gulf Coast prices were the highest in the nation, down 0.3 cent to 318.2 cpg. California prices averaged 324.0 cpg, a decrease of 2.2 cents. West Coast prices fell 0.7 cent to 316.7 cpg.

Residential Heating Fuel Prices: Residential heating oil prices decreased for the period ending October 10, 2005. The average residential heating oil price dropped 4.4 cents from last week to reach 264.8 cpg, an increase of 74.0 cents from this time last year. Wholesale heating oil prices decreased 15.5 cents to reach 208.5 cpg, an increase of 58.5 cents compared to the same period last year.

Residential Propane Prices: The average residential propane price increased 2.0 cents, to 193.6
cpg. This was an increase of 33.2 cents over the 160.4 cpg average for this same time last year. Wholesale propane prices decreased 2.5 cpg, from 124.0 to 121.5 cpg. This was an increase of 25.4 cents from the October 11, 2004 price of 96.1 cpg. Meanwhile, U.S. inventories of propane dropped by 1.2 million barrels last week. As of October 7, 2005, the nation's primary stockpile of propane totaled 67.4 million barrels, a level near the upper boundary of the average range for this time of year.

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REGULATORY ALERT

LUST FUND TAX APPLIES TO DYED FUELS

ISSUE: Many questions are being raised about the 1/10 of a cent per gallon federal Leaking Underground Storage Tank trust fund tax that was imposed on all ***dyed*** fuels including dyed diesel fuel and ***dyed*** kerosene and heating fuel beginning October 1, 2005. Tax-exempt end users are complaining to their suppliers that they should not be paying the tax. In fact, they are ***not*** paying the tax, but only the increased cost of the fuel that is being passed down by the remitting party as a business cost.

BACKGROUND: The LUST tax has been imposed on gasoline and clear diesel fuel since the late 1980s. The 1/10th of a cent per gallon LUST tax was added to clear kerosene when Congress imposed the 23.3 cents per gallon federal excise tax on kerosene several years ago. However, dyed fuels were exempt from the LUST tax ***until now.***

COMPLIANCE:
- The LUST tax is imposed at the terminal rack on dyed fuels beginning 10/01/05.
- The 1/10 of a cent per gallon LUST tax is *paid by refiner/suppliers* and often passed down to petroleum marketers in the form or a surcharge or price increase.

- The LUST tax ***may*** appear on supplier product transfer documents as a separate line item to explain the 1/10 of a cent per gallon price increase, but petroleum marketers are ***not required*** to list the LUST tax on invoices to customers.
- The LUST tax is ***non-refundable*** (except for export out of the country) even for sales made to tax exempt users.
- IRS tax rates for claims involving sales to tax exempt users (state and local governments) are as follows:

    - 24.3 cents per gallon for clear diesel fuel and clear kerosene, and
    - 18.3 cents per gallon for gasoline.

- Do not add the 1/10 of a cent per gallon LUST tax to IRS claims. The LUST tax is ***non-refundable*** and the IRS will reject your claim.

BOTTOM LINE: Tax-exempt purchasers are resisting payment of the LUST tax when they see it as a separate line item on their invoice. Their concern is unwarranted because the tax is paid by another party well up the distribution chain and becomes nothing more than a business expense related to the cost of the fuel once it passes the terminal rack. Tax-exempt purchasers ***are not*** the remitting party. Petroleum marketers may avoid these common complaints from their tax-exempt customers by simply removing any reference to the LUST tax from product invoices and adding the 1/10 of a cent cost onto the price of the fuel. **REMEMBER**: the LUST tax is not a tax below the rack, it is only a business cost to be passed along like any other cost to the end user.

Got Questions? Contact Mark S. Morgan, Esq. at mmorganptsa@cox.net or (202) 364-6767