SD OIL & LP GAS CHRONICLE NEWS

October 2014 Newsletter

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Thank You for Supporting the Convention

I would like to extend a “thank you” to all of those who supported the 2014 Convention and Expo.

To all the sponsors and exhibitors - a big thank you for your continued support of the association. The convention can’t happen without all of you participating.

Also, to all those exhibitors who hosted an educational seminar. I had so many positive comments. Your knowledge is so valuable to all members and convention attendees.

To those who took time away from your business to journey to Deadwood, a thank you. I know that your time is very valuable and it is hard to find time to get away from your business to join us at the convention.

I hope each of you found benefit from the many activities, educational seminars, speakers, exhibits and networking time. Mark your calendars for 2015 - September 22-23, 2015 at The Lodge in Deadwood.

South Dakota
Petroleum & Propane
Marketers Association™

PMAA News
Update from Washington, DC

WHITE HOUSE WANTS EMV CHIP-AND-PIN

On October 24, President Obama signed an executive order announcing a program called, "Buy Secure," which expands and expedites the use of secure "Europay MasterCard Visa" (EMV) chip-and-pin technology for federal government credit and debit cards. It also applies to federal facilities to accept chip and PIN-enabled cards at retail terminals. PIN technology is 700 percent more secure than transactions that only use a signature as verification. The EMV microchip on payment cards generates a unique code for each transaction which makes it harder for hackers to steal information compared to the classic magnetic stripe.

Retailers have until October 2015 to upgrade in-store POS software to EMV technology and at pump islands by October 2017. After that date, the liability shift will go into effect which places the costs of a security breach on any entity in the transaction process that doesn't use EMV chip cards; however, liability would not include PIN.

U.S. APPEALS COURT DISMISSES LATEST E-15 LAWSUIT

The U.S. Court of Appeals for the District of Columbia this week dismissed a lawsuit challenging the U.S. EPA's dispenser label requirement for E-15 gasoline blends. The court ruled the plaintiffs lacked legal standing to sue. The two judge panel said the plaintiff's suit failed to demonstrate present or future harm from the labeling rule, a key requirement to prove legal standing in a court of law. The suit was brought by the American Petroleum Institute and others claiming the EPA had not done enough research to prove that dispenser labels alone would be sufficient to prevent misfueling by consumers and that warranty claims, product liability lawsuits, recalls, and reputational injury would result. The court didn't address the substantive arguments in the petition since the plaintiffs could not meet the procedural requirements for legal standing. The EPA finalized the dispenser labeling as part of the E-15 waiver process in 2011. The ruling was another setback for ethanol foes.

In 2012, the same court dismissed a lawsuit seeking an injunction to prevent the EPA from approving the E-15 waiver. The plaintiffs in that case argued the fuel could leave manufacturers and retailers open to liability should vehicle damage result from using E-15 blends. The court also dismissed that lawsuit due to lack of standing.

GAO DETERMINES LIFTING OIL EXPORT BAN WOULD DECREASE FUEL PRICES

On October 20, the General Accountability Office (GAO) reported that allowing for crude oil export would raise domestic crude prices while the injection of U.S. crude would increase world supplies which would lower overall crude prices and decrease fuel costs.

The GAO Report "Changing Crude Oil Markets" prepared at the request of Sen. Lisa Murkowski (R-AK), the ranking member of the Committee on Energy and Natural

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Resources, provides estimates on how much U.S. production could rise from the current nine million b/d ranging from 130,000 b/d to 3.3 million b/d from 2015 through 2035 if the export ban is lifted.

GAO also reviewed the levels of the Strategic Petroleum Reserve (SPR) program and encouraged agencies to reexamine their programs to be sure that the SPR is sized appropriately. If there is excess crude, it should be sold to provide funding for other priorities.

The U.S. holds reserves of crude oil well above its requirement for a minimum of 90 days of net imports. In May 2014, the SPR held reserves of 106 days (worth about $73 billion) and private industry held 141 days of reserves.

The report can be viewed here.

REFINERS WANT JONES ACT REFORM

In an op-ed to *The Hill* newspaper, American Fuel & Petrochemical Manufacturers' (AFPM), President Charles Drevna argued for an overhaul to the outdated Jones Act law which requires cargo shipped between two U.S. ports be transported on a U.S. built ship as well as crewed and owned by U.S. citizens. AFPM represents 98 percent of refining capacity in the United States and generally agrees with PMAA's position calling for reform to ensure that crude oil and refined products are being shipped at competitive prices between U.S. ports. It currently costs less to ship oil from the Gulf of Mexico to Canada's refineries than it is to ship to Mid-Atlantic refineries due to the Jones Act.

Drevna contends that the shipping industry cannot hide behind the national security argument anymore since the U.S. allows international companies to build and operate military equipment and civilian aircraft, and thus, the shipbuilding industry should not be treated any different. Drevna is hopeful that Congress will realize the Jones Act is outdated and needs urgent reform.

PMAA MEMO ON IRS LEVY'S

Because many petroleum wholesalers must annually issue 1099Ks to their dealers, IRS agents have become more aware of how credit card settlements are processed from jobbers to dealers. As a result, when dealers become delinquent on federal taxes, we are seeing unprecedented efforts by IRS agents to place levies on dealer credit card settlement monies held by wholesalers. In some cases, these dealer settlement monies are collateral held by jobbers for future fuel deliveries. In other cases, the settlement accounts are debited when fuel is delivered; therefore, the monies are not the dealers but are the jobbers.

Last week, PMAA published a memorandum on the issues. To view the memo, click here.

Do Petroleum Marketers Pay Federal Excise Tax

PMAA Attorney Alphonse Alfano

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October 21, 2014

MEMORANDUM

Via Email (dgilligan@pmaa.org)

To: Daniel Gilligan
Petroleum Marketers Association of America

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

From: Alphonse M. Alfano

Re: **Do Petroleum Marketers Pay Federal Excise Taxes?**

At the Motor Fuels Committee meeting in Las Vegas, I was asked to prepare a brief memo on whether petroleum marketers actually pay federal excise taxes or whether the federal taxes paid by a terminal operator or refiner are simply passed on to the marketer in the form of a higher price for gasoline. The confusion is caused by the line item that appears on all major oil company invoices to marketers that show the per gallon tax. For the reasons stated below, the line item simply indicates the per gallon amount of tax that has already been paid. It does not indicate that the purchaser (the marketer) is actually paying a tax.

The legal incidence of the federal gasoline tax is on the party that is required to remit the tax to the Internal Revenue Service. The only "taxable event" with respect to motor fuel taxes is on the removal of gasoline at the terminal rack and, in certain cases, where gasoline is removed from a refinery or when it enters the United States. Normally, the person liable for the federal gasoline excise tax is the "position holder" who stores product at a terminal, or the terminal operator if it is also a position holder. When the person liable for the tax fails to the pay the tax, the IRS cannot obtain the tax payment from the person that purchases the product from the position holder or terminal operator, such as a distributor/wholesaler.

The United States Supreme Court has made it clear that the persons who remit the tax to the IRS often pass the tax burden on to the purchaser in the form of a higher price for gasoline. Even though the economic burden of the tax has been shifted to the purchaser, the legal incidence of the tax has not. In short, when a marketer pays for product purchased from a supplier, no part of the price for the product is legally a tax.

In *Gurley v. Rhoden,* 421 U.S. 200 (1975), a gasoline chain retailer challenged the collection of a gross receipts tax by the State of Mississippi. The tax was imposed on the total gross receipts of businesses in Mississippi, and an exclusion was applied to any part of the gross receipts that were a form of tax. The case was decided in 1975, before the collection of federal

gasoline excise taxes was moved to the rack. At that time, the incidence of the federal gasoline tax was on "producers," which included distributors who remitted the tax periodically to the IRS. When a distributor in Arkansas sold the gasoline to the Mississippi retailer, the amount of the tax was passed on to the retailer in the form of a higher price for the product. The retailer passed along the tax burden to consumers in the form of a higher pump price. The retailer argued that the tax was passed along to the consumer, and that the gross receipts from retail sales included the federal and state excise taxes.

The Supreme Court disagreed, stating that the producer is under no legal obligation to pass through the burden of the tax, and if he does so, the added cost is no different than the pass through of other costs of the producer in bringing the product to market. While the retailer may have incurred the economic *burden* of the tax, and then passed it on to the consumer, the Supreme Court held that the legal incidence of the tax is on the person "to whom the [government] looks for the payment of the tax," although "the amount of the tax may ultimately be borne by the vendee . . ." Thus, the gross receipts collected by the retailer did not include any tax.

The Supreme Court also stated that the fact that certain purchasers may receive a "tax refund," like farmers and other purchasers for non-highway use, "is not proof that Congress laid the tax upon the purchaser consumer." The refunds "simply reflect a congressional determination that, because the economic burden of such taxes is traditionally passed on to the purchaser-consumer in the form of increased pump prices, farmers and other off-highway users should be relieved of the economic burden of the cost of the highway program."

In short, the only entity that pays the federal gasoline excise tax is the person on whom the legal incidence of the tax lies. It is only those persons to whom the federal government can look to collect the tax. While the burden of the tax is passed through to subsequent purchasers, the tax burden should not be confused with the tax obligation. The tax burden is passed on to subsequent purchasers (and, ultimately, to the consumer) in the same way as other costs involved in bringing the product to market are passed through. When wholesale distributors pay their invoices, therefore, they are not paying any tax within the meaning of the federal excise tax program.

NPGA News

Final Permits Issued for Interior Energy Project Natural Gas Plant on the North Slope

FAIRBANKS — The Interior Energy Project has all the regulatory permits needed to build the natural gas processing facility on the North Slope that would supply a gas trucking project to the greater Fairbanks area.

The Alaska Industrial Development and Export Authority is the state agency heading up the project along with private project development firm MWH, and it announced the development on Friday.

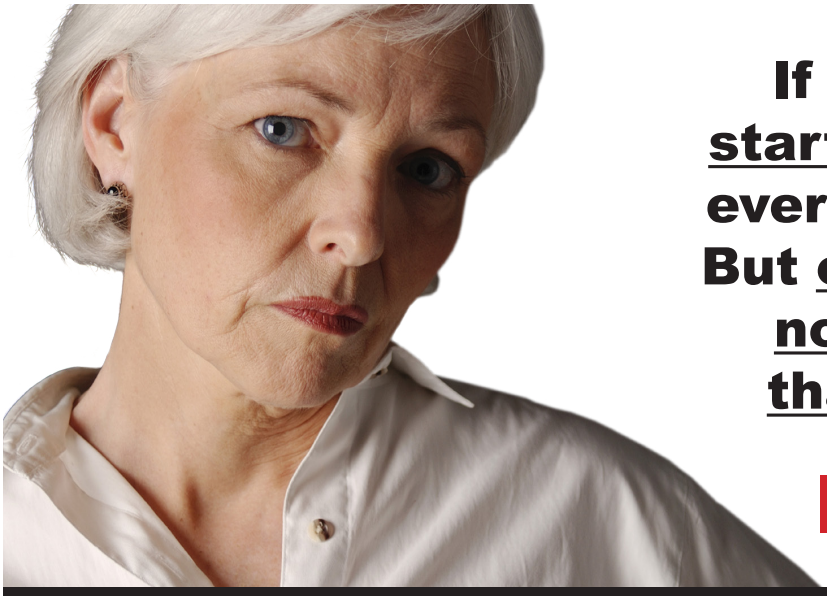
The press release from AIDEA said that the final permits needed were an air quality control permit and technical analysis report to allow the facility to operate. The announcement added that BP Exploration Alaska helped AIDEA expedite the process. “We are grateful for BP’s help on moving this critical part of the Interior Energy Project forward,” said AIDEA Executive Director Ted Leonard. “Their assistance allowed for a thorough and prompt analysis of the air permit application, and meant that AIDEA did not have to expend valuable time and resources on gathering base data for the final permit needed to build the plant.”

The Interior Energy Project was signed off in the 2013 Legislature and approves more than $300 million in low-cost loans, tax credits and grants to help develop the North Slope facility as well as distribution and storage in the Fairbanks area.

Potential buyers of the gas include Golden Valley Electric Association, city of Fairbanks-serving Fairbanks Natural Gas and the municipal Interior Gas Utility.

Despite the announcement that the North Slope project cleared the final regulatory hurdles, the project is still not a sure thing. A price range for gas off the slope is due in early November and will be used to judge the demand for the plant and whether it’s economically feasible in the eyes of the AIDEA board.

Some community leaders as well as GVEA head Cory Borgeson have voiced concerns about the potential price, which estimates are putting it above the target price set by the community when the project was first envisioned. The timeline has also slipped from initial promises of 2015 to mid to late 2016.



If #18 passes, the starting wage goes up every year - FOREVER. But other workers may not get the raises that they deserve.

Is that fair?

Here's 3 More Reasons You Should Vote No

1. **Prices will go up for goods and services - including for essentials such as food and clothing.**

2. **Some workers may have to be let go. Other workers may have hours cut, or have their benefits reduced.**

3. **Young and unskilled workers will have a harder time getting jobs - and lose the chance to gain valuable work experience.**

NO on 18

NoMoreMandates.org

These family farm and small business groups URGE A NO VOTE ON #18:

South Dakota Farm Bureau
South Dakota Retailers Association
South Dakota Agri-Business Association
National Federation of Independent Business
South Dakota Visitor Industry Alliance
South Dakota Hotel & Lodging Association
South Dakota Association of Cooperatives
South Dakota Petroleum & Propane Marketers Association
South Dakota Chamber of Commerce & Industry
Sioux Falls Area Chamber of Commerce
Brookings Chamber of Commerce
Rapid City Chamber of Commerce
South Dakota Grain & Feed Association

Paid for by the No More Mandates Committee | PO Box 1175 | Pierre, SD 57501

Abandoned Tank Removal Program

Why should I consider getting my tank removed?

Tanks should be removed for two reasons. First, as tanks corrode, any petroleum that may still be in them will leak into our state's ground water. One gallon of gasoline has the potential to render one million gallons of water undrinkable. Leaks from tanks can also contaminate soil around the tanks and cause unhealthy gasoline vapors to seep into basements of private homes and businesses. Since these tanks are buried under several feet of soil, these problems can go unnoticed for years.

Second, the longer these old tanks remain in the ground, the more corroded they become. As the tanks become more corroded, there is an increased risk of the tank collapsing, and someone, or something, falling into the hole or tank.

What tanks will the state remove?

The state wants to remove every out-of-service underground storage tank that was used to store a petroleum product. Examples of petroleum products are gasoline, diesel, fuel oil, aviation fuel, waste oil, etc. The state will not remove petroleum tanks that may be inaccessible, such as beneath a building. The free tank removals do not apply to tanks that were in service for the sale of petroleum fuels on or after April 1, 1988. Also, non-petroleum tanks such as propane tanks, cisterns, and septic tanks are not eligible under this program.

How are the tanks removed?

All you need to do is give the state permission to dig up your tanks and do any necessary cleanup. After you give your permission, the Department of Environment and Natural Resources (DENR) will hire private contractors to remove any remaining product from the tank, remove the tank, and test the soil. The contractor will also remove piping and contaminated backfill around the tank. The contractor then fills the hole. The state pays for all the costs associated with removing the tanks from your property and any additional cleanup that is needed. However, the state does not pay to have the site resurfaced with new pavement, concrete, gravel, or grass.

What does the program cost me?

The best news associated with this program is that with the exception of resurfacing costs, it is free to the landowner! This is an opportunity that you cannot pass up if you own property with eligible underground storage tanks that are no longer in service.

The program is funded by DENR's Petroleum Release Compensation Fund (PRCF). This is a fund created in part to address environmental problems associated with spills from tanks. The money comes from a tank inspection fee imposed on wholesale distributors of petroleum fuels.

Is there a lien placed on my property by the state?

The answer is NO! When the program was first approved by the 2000 Legislature, the state was required to place a lien on the property for five years. However, a bill was introduced during the 2001 legislative session to eliminate the lien. The bill was approved by the legislature and, because of an emergency clause on the bill, went into effect immediately after it was signed.

How do I give my permission to have my tanks removed?

All you need to do is fill out the Tank Removal Form on the reverse of this sheet and return it to the address at the top of the form.

If I have questions, how can I get more information?

- Visit http://denr.sd.gov/TankYank
- Call the Abandoned Tank Removal Program at (605) 773-3296;
- E-mail at DENRINTERNET@state.sd.us; or
- Write to: Abandoned Tank Removal Program, Department of Environment and Natural Resources, 523 E. Capitol Avenue, Pierre, SD 57501

Get Your Abandoned Underground Petroleum Tanks Removed for FREE!!

How Well Do You Know Your UST System

Brian Pottebaum, UST Trainer - Rounds & Associates

If you were asked to locate the ATG, could you do it? How about the overfill alarm? Or an emergency stop switch? Disturbingly many people who operate underground storage tank (UST) facilities do not know what these devices are or where to find them.

One of the main objectives of the recently required UST operator training class is to familiarize the UST operators with the equipment and devices that are common at petroleum storage facilities. It is essential to have at a minimum a general understanding of the UST system to safely operate the facility.

Let's take a look at some common UST terminology. The following definitions came out of the Petroleum Equipment Institute (PEI) - RP900: UST Inspection and Maintenance. http://www.pei.org/

- **Automatic Tank Gauge (ATG)** – An electronic device that measures liquid level and calculates liquid volume in an underground storage tank. By monitoring the liquid level, the ATG can conduct leak tests of the underground storage tank.

- **Emergency Stop Switch** – A clearly identified switch (or button) that disconnects all power to submersible turbine pumps, fuel dispensers, and related electrical equipment. The switch may be inside or outside the building.

- **Manhole** – An opening with a removable cover located in a concrete pad or pavement that allows access to the below-grade (UST) equipment.

- **Overfill Alarm** – An outdoor audible and/or visual warning device that alerts a fuel-delivery operator that a storage tank is nearly full and the delivery should be stopped.

- **Spill Containment** – (otherwise referred to as spill bucket or spill basin) A liquid-tight container placed around the fill pipe of an UST designed to capture small spills that might occur when the delivery hose is disconnected.

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UST systems have components located at various functional areas throughout the facility. The different components include gauges for monitoring and controlling the UST system, manholes and fill ports for receiving petroleum into the system, and pumps and point of sale equipment for dispensing fuel from the system. The functional areas include in-store equipment, in-tank or tank top equipment and dispensers.

In-Store Equipment: The in-store equipment includes the components for monitoring and controlling the UST system, and may include the automatic tank gauge (ATG), electronic line leak detector (ELLD), secondary containment (interstitial) monitor, point of sale equipment, and rectifier for the cathodic protection system. The inside equipment will typically be located behind the counter, in the "back room," or somewhere safe to prevent tampering by the general public. The exception to this is the emergency stop switch. This device is intentionally placed in the public's view to make it accessible to them in the event of an emergency, such as a fire of fuel spill.

Spill/Overfill Equipment: Spill and overfill prevention equipment must be installed on the UST system to ensure a safe transfer of fuel from the transport vehicle into the UST. Spill containments must be five gallons or greater in capacity, and must be installed in such a manner that any leaks during the fuel delivery into the UST will be contained. The presence of liquids or debris must be addressed immediately to allow maximum capacity for the next fuel delivery. The installation of an overfill prevention device is also essential to prevent an UST from being filled too full. Overfill prevention equipment may include an external alarm, an in-tank fill pipe shutoff valve, or an in-tank ball float vent valve. These devices must never be disabled or rendered inoperable.

Tank-Top Sumps: UST systems generally have a series of sumps or manholes over the tank, in addition to the fill pipe connection within the spill containment that can be accessed by removing a cover or lid. Removing the covers allows access to various tank-top components, such as a submersible turbine pump (pressurized system) or fuel supply line connection to the tank (suction system), vapor-recovery adaptor, ATG probe, and tank interstitial sensor. Tank-top manholes containing the submersible pump and supply line connection may be open to the surrounding backfill or possibly contained in a secondary containment system, which may include a liquid sensor, sump lid, and flexible or rigid "boots" or collars that seal

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around the product line and conduit entries into the containment. Test boots on the double wall product line must be open to the containment to allow monitoring of the line interstice, and the liquid sensor must be installed at the lowest point in the containment to detect any leaks as quickly as possible. All lids and covers must be properly secured during operation to adequately protect the components from unwanted water intrusion and vehicle traffic over the area.

Dispenser: The dispenser is a device that measures and transfers petroleum via pressure or suction from the UST into a motor vehicle. The dispensing units have several components that hang externally (hose, break-away, swivel, and nozzle) as well as those that are installed inside the cabinet (flex connector, shear/crash valve, solenoid, check valve, meter, and filter). Shear/crash valves located directly below the pressurized dispenser should be properly anchored. Safe suction dispensers must only have one check valve located directly under the suction pump in the dispenser (same position the shear/crash valve is located under the pressurized dispenser). Some dispensers have sumps installed underneath that provide secondary containment for the product line connection to the dispenser as well as the other components inside the dispenser. This is referred to as under-dispenser containment and is installed in the same manner as the tank-top piping containments.

All secondary containment and components of the UST system must be adequately maintained, which should include periodic inspections and cleaning.

For more information on basic UST systems, refer to the EPA document **Operating And Maintaining Underground Storage Tank Systems: Practical Help And Checklists.** http://www.epa.gov/oust/pubs/ommanual.htm

2014/2015 Training Programs

Please email the following address for registration forms for all classes: dawna@sdp2ma-sdacs.com or go online to http://sdp2ma.com and find registration forms in Education and Training.

Certified Employee Training

2014 Class Schedule

Basic Principles
November 4-5 Mitchell

Bobtail Delivery
December 2-4 Mitchell

2015 Class Schedule

January 6-7	Basic	Pierre
February 3-5	Delivery	Pierre
March 3-4	Basic	Watertown
March 31- Apr 2	4.1	Mitchell
April 7-9	Delivery	Watertown
April 28-30	Plant	Aberdeen
May 5-6	Basic	SF
June 2-4	Delivery	SF
June 9-11	4.2	Mitchell
June 23-25	Plant	SF
June 30-July 2	Plant	Mitchell
July 7-8	Basic	Aberdeen
August 4-6	Delivery	Aberdeen
September 22-23	Basic	Deadwood
October 6-8	Delivery	RC
November 3-4	Basic	Mitchell
December 1-3	Delivery	Mitchell

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UST Owner/Operator Training

2014 - Locations

November 18	Rapid City Ramkota
November 19	Sioux Falls Ramkota

All other seminars 8 am to noon.

To register: http://denr.sd.gov/des/gw/tanks/TankOperatorTraining.aspx

Fuel Supply: Then & Now

Guest Column: Robert Renkes, PEI Executive Vice President

Like all of you, I get many emails everyday at my office. And also like you, there are ones you read and ones you delete. I have always found ***The Tulsa Letter*** a great read. Executive Vice President/General Counsel Robert Renkes is one of those individuals (in my opinion) who has a gift of putting his thoughts and ideas into well written articles. The article in ***The Tulsa Letter*** from October 28, 2014 took me back to those days when all the US was struggling with a shortage of gasoline (and brought back some strong memories of living through this time).

I felt it was something I wanted to share with all my members and with Robert's permission, here is his article. I hope you enjoy as much as I have.

Dawna Leitzke, Executive Director

SD Petroleum & Propane Marketers Assn

The Tulsa Letter

October 28, 2014

Dear PEI Member:

I started work at PEI in 1979. Two weeks into my new job in the oil industry, the Shah of Iran was overthrown and the Ayatollah Khomeini came into power. He cut Iran's oil production, which reduced shipments of crude oil to the United States. Gasoline prices soared, and the American economy plunged into a recession.

The threat of a gasoline shortage and rationing created traffic jams at gas stations, much like it had in 1973-1974. Drivers frequently faced around-the-block lines when they tried to fill up. Some would go to stations before dawn or late at night, hoping to avoid the lines.

Odd-even rationing was introduced. For example, if the last digit on your license plate was even, you were only allowed to get gas on even-numbered days. PEI members reported that some stations took to posting flags—green if they had gas, yellow if rationing was in effect and red if they were out of gas.

The maximum speed limit was cut to 55 miles per hour. President Jimmy Carter described combating the energy crisis as the "moral equivalent of war," and many Americans—including me—feared that oil shocks and shortages would be a recurring theme/nightmare.

It was also a rough time for PEI members. Retail station construction stopped—nobody wanted to build a gasoline station if they weren't certain if or when they could get access to product. Commercial and governmental customers wanted to put in their own storage to better control supply and price but they had a difficult time finding reliable petroleum supply sources. Gas clubs formed to avoid the odd-even rationing dilemma but faced a public relations backlash from motorists "playing by the rules."

Fast forward to 2014. Information from the U.S. Energy Information Administration (EIA) provides compelling evidence that the United States is on track to become a net exporter of gasoline—defined as exporting more gasoline than it imports—for the first time since 1959. (Be aware that this is just an increase in refined products. The U.S. is still a colossal net importer of crude oil, in part because overall U.S. oil production has sharply plunged from its peak in the 1960s, despite the surge in shale oil production in the States.)

Our refiners are now doing big business abroad, and that's one reason why overall exports have been ticking upward lately. There are other reasons as well. In the United States—as with other mature industrialized economies—liquid fuel demand has leveled off and is projected to slowly decline. The combined effects of several factors have slowed or even reversed the growth in liquid fuels use. These factors include sustained high oil prices, efficiency standards for vehicles and equipment together with high taxation of motor fuels, government mandates (i.e., ethanol), price-driven fuel switching toward non-oil fuels outside of transportation, vehicle saturation, economic growth in Central and South America that is pulling additional volumes south of the border, and structural changes in factors such as demographics and consumer behavior.

The United States now has a more secure gasoline supply than most of us can remember. The customers of PEI members have grown accustomed to a steady flow of refined product and, thankfully, can make plans for the future with confidence.