



WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Labor and Election Process  
Reform...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                      (**sr** = Senate Resolution)                      (**sfr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

# Senate

## Record of Committee Proceedings

### **Committee on Judiciary, Corrections and Privacy**

#### **Senate Bill 215**

Relating to: regulating the minimum price of motor vehicle fuel.

By Senators Zien and Reynolds; cosponsored by Representatives Wood, Gundrum, Lehman and Wasserman.

May 24, 2005            Referred to Committee on Judiciary, Corrections and Privacy.

June 1, 2005            **PUBLIC HEARING HELD**

Present:    (5)    Senators Zien, Roessler, Grothman, Taylor and Risser.  
Absent:    (0)    None.

#### Appearances For

- Dave Zien, Madison — Senator
- Jeff Wood, Madison — Representative
- Tom Reynolds, Madison — Senator
- David Clark, Waukesha — Coalition for Lower Gas Prices
- Ernie Stetenfeld, Madison — AAA Wisconsin
- Craig Thompson, Madison — Wisconsin Counties Association
- Robert Collison, Brookfield — Americans for Prosperity
- Casey Coats, Blanchardville

#### Appearances Against

- John Kruepkr, Jackson — Jim Ltd
- Rick Lambrecht, Chippewa Falls — Consumers Cooperative Association
- Dane Hegenbarth, Galesville — Hegenbarth Food Group Inc.
- Todd Van Zeeland, Appleton — Van Zeeland Oil Company.
- Jim Goetz, Madison — Goetz Companies
- Ron Counsell, Watertown — Borderline BP
- Chuck Van Zeeland, Appleton — Petroleum Marketers
- Ed Francois, Belleville
- Ed Huck, Madison
- Richard McDonald, Manitowoc
- Richard Blatter, Lake Mills
- Keith Yelverton, Oconomowoc
- Tony Huppert, Spring Valley
- John Manske, Madison — Wisconsin Federation of Cooperatives
- Randy Meffert, Waunakee — Wisconsin Petroleum Marketers & Convenience Store Association
- Bob Bartlett, Madison — Wisconsin Petroleum Marketers & Convenience Store Association

### Appearances for Information Only

- None.

### Registrations For

- Mike Furgal, Madison — Veterans of Foreign Wars
- Marc Bentley, Madison — Schneider National
- Michael Theo, Madison — Murphy Oil USA
- Nate Elias, Madison — Wal-Mart

### Registrations Against

- Scott Stenger, Madison — Tavern League of Wisconsin
- Bill Smith, Madison — National Federation of Independent Businesses
- Mary Ann Gerard, Madison — Wisconsin Auto & Truck Dealers Association
- Jolene Plautz, Madison — Kwik Trip
- Rick Genin, Madison — Genin's Mobil
- Marian Kruepke, Jackson
- Brandon Seltorz, Madison — Wisconsin Grocers Association
- David Becker, Windsor — Windsor Travel Center Inc.
- Gary Manke, Madison — Midwest Equipment Dealers Association
- Michael Seversin, Madison — Seversin's Service Center
- Peter Thacker, Middleton
- James Lund, Middleton — Jim's Amoco LLE
- Ferron Havens, Blue Mounds — Wisconsin Agribusiness Council
- Fred Goetz, Madison
- Gary Pivotto, Madison
- W.B. Hollenbeck, Hartland
- Eric Jensen, Madison — WBDA
- Sabrina Gentile, Madison — Wisconsin Farm Bureau
- Kathi Kilgore — Outdoor Advertising Association
- Michelle Kussow, Madison — Wisconsin Grocers Association
- Matt Hauser, Madison — Wisconsin Petroleum Marketers & Convenience Store Association

September 13, 2005 **EXECUTIVE SESSION HELD**

Present: (4) Senators Zien, Roessler, Grothman and Risser.

Absent: (1) Senator Taylor.

Moved by Senator Zien, seconded by Senator Roessler that **Senate Amendment LRB0970** be recommended for adoption.

Ayes: (3) Senators Zien, Roessler and Risser.

Noes: (2) Senators Grothman and Taylor.

ADOPTION OF SENATE AMENDMENT LRB0970 RECOMMENDED, Ayes 3, Noes 2

Moved by Senator Zien, seconded by Senator Roessler that **Senate Bill 215** be recommended for passage as amended.

Ayes: (2) Senators Zien and Roessler.

Noes: (3) Senators Grothman, Taylor and Risser.

PASSAGE AS AMENDED NOT RECOMMENDED, Ayes 2, Noes 3

November 29, 2005 **EXECUTIVE SESSION HELD**

Present: (5) Senators Zien, Roessler, Grothman, Taylor and Risser.

Absent: (0) None.

November 30, 2005 **EXECUTIVE SESSION HELD**

Present: (5) Senators Zien, Roessler, Grothman, Taylor and Risser.

Absent: (0) None.

Moved by Senator Roessler, seconded by Senator Grothman that **Senate Substitute Amendment 2** be recommended for introduction and adoption.

Ayes: (5) Senators Zien, Roessler, Grothman, Taylor and Risser.

Noes: (0) None.

INTRODUCTION AND ADOPTION OF SENATE SUBSTITUTE  
AMENDMENT 2 RECOMMENDED, Ayes 5, Noes 0

Moved by Senator Zien, seconded by Senator Roessler that **Senate Bill 215** be recommended for passage as amended.

Ayes: (3) Senators Zien, Roessler and Grothman.

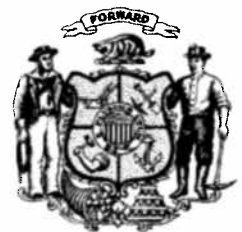
Noes: (2) Senators Taylor and Risser.

PASSAGE AS AMENDED RECOMMENDED, Ayes 3, Noes 2

Brian Deschane  
Committee Clerk



# WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO

2005 Senate Bill 215

Senate Substitute  
Amendment 2

*Memo published:* December 16, 2005

*Contact:* Ronald Sklansky, Senior Staff Attorney (266-1946)

**Current Law**

Section 100.30 (3), Stats., prohibits the sale of any item of merchandise either by a retailer, wholesaler, wholesaler of motor vehicle fuel or refiner at less than cost. Generally, the term "cost" (for merchandise other than tobacco, alcohol, or motor vehicle fuel) is based on the invoice cost of the merchandise to the retailer or wholesaler. [See s. 100.30 (2) (am) 2. and (c) 2., Stats.]

There are special provisions for the determination of cost to those enterprises selling motor vehicle fuel. These provisions vary depending on who makes the sale and where the sale is made, but, very generally, s. 100.30, Stats., provides that:

1. A wholesaler of motor vehicle fuel (or a refiner selling at retail from a place other than a retail station) must sell motor vehicle fuel at a minimum of 3% above the cost of the motor vehicle fuel to the wholesaler (or to the refiner).
2. A retailer of motor vehicle fuel must sell motor vehicle fuel at a minimum of 6% above the cost of the motor vehicle fuel to the retailer or 9.18% above the average posted terminal price, whichever is greater.
3. When a wholesaler or a refiner of motor vehicle fuel makes a retail sale at its own retail station, the motor vehicle fuel must be sold at a minimum of 9.18% above the cost of the motor vehicle fuel or 9.18% above the average posted terminal price, whichever is greater.

[At the federal level, 15 U.S.C. 13 (a) prohibits various forms of predatory or discriminatory pricing.]

The term "average posted terminal price" generally means the average posted rack price at which motor vehicle fuel is offered for sale at the close of business on the determination date. In turn, the term "determination date" is defined generally to mean the day preceding the day of the sale at retail of motor vehicle fuel. However, if a retailer sells the fuel on a day other than the day on which the retailer last purchased fuel and the sale of the fuel by the retailer occurs no later than 10 days after its last purchase by the retailer, the term means either:

1. The day preceding the day of the sale of motor vehicle fuel by the retailer.
2. The day on which motor vehicle fuel was last purchased by the retailer. [See ss. 100.30 (2) (a) and (cg), Stats.]

**Senate Substitute Amendment 2**

The substitute amendment accomplishes the following:

1. The general requirement that the wholesale price of motor vehicle fuel be increased by a minimum of 3% over cost to the wholesaler is eliminated.
2. The general requirement that the retail price of motor vehicle fuel be increased by a minimum of 6% over the cost of the fuel to the retailer is reduced to a minimum markup of 4%.
3. In addition to the 4% retail minimum markup, the retailer must add at least three cents per gallon in a sale to a consumer.
4. When a retailer sells motor vehicle fuel at a price below the defined cost to the retailer in order to meet a competitor's price, the "determination date" lookback period is reduced from 10 days to seven days.
5. A retailer, wholesaler, or a refiner may not sell motor vehicle fuel at a price equal to or less than cost to one of those providers.

**Legislative History**

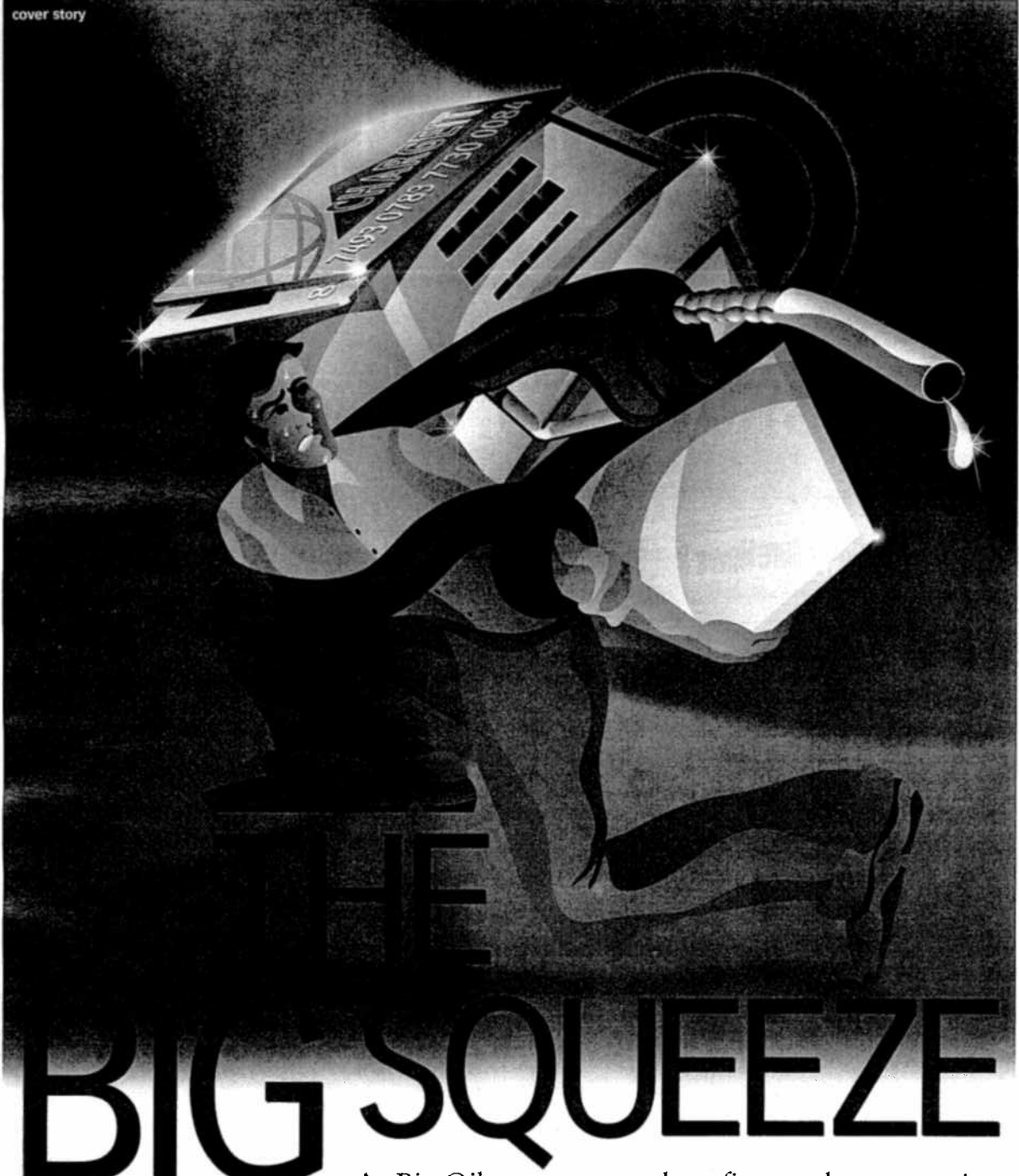
On December 2, 2005, the Senate Committee on Judiciary, Corrections and Privacy introduced and adopted Senate Substitute Amendment 2 on a vote of Ayes, 5; Noes, 0. On the same date, the committee recommended the bill, as amended, for passage on a vote of Ayes, 3; Noes, 2.

RS:jal





SB 215



# THE BIG SQUEEZE

As Big Oil reports record profits, marketers continue

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BY BARBARA GRONDIN FRANCELLA

**W**hile Big Oil executives were explaining to Congress this past fall how they were spending their record third-quarter profits, the average gas retailer on the street was watching his ever-slimmer margins get eaten up by credit-card fees as well as seeing consumption drop or, at least, his customers scowl at the pump and leave without buying anything in the store.

As the profit figures rolled in — \$9.92 billion for ExxonMobil, \$9.03 billion for Shell, \$6.53 billion for BP, \$3.8 billion for Conoco Phillips and \$3.6 billion for ChevronTexaco — many independent gasoline retailers had to wonder: “What’s in it for me?”

Jeff Morris, president and CEO of Alon USA, a refiner/marketer based in Dallas that operates more than 160 7-Eleven stores, illustrated the point. If gasoline costs \$2.50 per gallon, consumers would pay \$105 for each barrel of oil refined, Morris extrapolated. Retailers making 10 to 15 cents per gallon would take \$5 or \$6 per barrel of that sum. It costs \$3 to \$5 per barrel for refiners to run their pipelines and terminals. The government receives about \$16 per barrel. “Thus, at \$2.50 per gallon, we are left with almost \$80 per barrel for the refiners and oil producers to share,” he said. “Unbelievable! At these numbers, Exxon makes \$15 billion per quarter, not \$10 billion. Thus, I think we have a fair amount of adjusting to do.”

The oil companies, on the other hand, defend their earnings. “For the third quarter, Big Oil earned on average 8 cents on the dollar,” said Rayola Dougher, manager, energy market issues, American Petroleum Institute, Washington, D.C. “The rest of the U.S. manufacturing industry made 7.3 cents. People see the billions of dollars,

and the 8 cents on the dollar is misunderstood. They are spending hundreds of billions bringing product to market. And today’s earnings are being poured back into tomorrow’s energy needs.



“REPUBLICANS ARE FACING A LOT OF HEAT ON A LOT OF ISSUES — IMMIGRATION, IRAQ, ENERGY. THEY MAY BE TEMPTED TO DRIVE SOMETHING IN THE ENERGY FIELD.” Dan Gilligan, PMAA

The energy we consume today is brought to us by investment made many years ago.”

“There is certainly some ill will [between the majors and independent marketers],” admitted Dan Gilligan, president of the Petroleum Marketers Association of America, based in Arlington, Va. “But we meet and air our grievances and see how we can address some of those frustrations.”

As pump prices went higher than ever and retailers’ margins fell while expenses increased, retailers were making little — and in many cases losing — money

on each gallon sold, noted Jeff Lenard, a spokesperson for the National Association of Convenience Stores. Yet much of the public’s anger was directed at the guy selling gas on the corner, and some state attorneys general went searching for price-gougers.

“When you have certain segments of the oil industry taking out full-page ads saying, ‘We won’t tolerate gouging’ and pointing fingers, it is critical that c-store operators can say, ‘We want to be an open book. We have nothing to hide and we want full transparency throughout the entire industry.’ When others try to avoid such transparency, the first question is, ‘Why?’

“We tried to communicate to the public as much as we could

#### Convenience Store News Online

For the latest news on gasoline price issues, legislation and Big Oil, visit the Petroleum Marketing section of our Web site at [www.csnews.com](http://www.csnews.com)



ers continue

to struggle with the tight margins and high credit-card fees

**"NO OTHER PRODUCT IS ADVERTISED FOR PRICE WITH SUCH INTENSITY [AS GASOLINE] — THE PRICE SIGNS ARE HUGE AND 2 CENTS MAKES A DIFFERENCE."**

Bill Shipley III, Shipley Group

C-store operators have been frustrated by the "verbal shell games" by some sectors of the oil industry and by others who blame them for high gas prices, Lenard said. "Whether that message was inferred or entirely unintentional [by Big Oil], it was laughable to think retailers were the cause of the high pump prices if you understood market dynamics."

According to API's Dougher,

"During the aftermath of the hurricane, our spokespeople spoke to hundreds of reporters and we tried to explain the big supply cut off and how that affected prices the way it did. I think it is very important we work together to help consumers understand the factors affecting gas pricing. It's a very difficult and complex subject to distill in a few sound bites or one ad."

While Big Oil has acknowledged the price-gouging message "was a mistake, it still happened," said Bill Shipley III, president of Shipley Group, the York, Pa.-based operator of 26 Tom's stores and president of the Society of Gasoline Marketers of America, based in Reston, Va.

Even though retailers are not benefiting from higher gasoline prices, "the refiners are still our suppliers — we can't separate ourselves completely from them," he added.

Still, most consumers don't understand the higher gas prices are not benefiting the independent retailer, Shipley said. "Last fall, there was emotional wear and tear on our store people — listening to the frustration and anger of customers. I don't know how to measure that, but you can only take so much of it,

and there is a cost attached to it. It creates stress and makes our job more difficult."

"Retailers just want people to understand the market," said Lenard. "When the credit-card company lobbyists are running around Capitol Hill trying to stop FTC studies on the impact of credit-card fees on gas prices, we wonder, 'Why, what are you hiding?' And when other entities, more upstream, are playing around with numbers, you wonder, 'Why?' It's very important to say 'Here is what is going on with our part of the puzzle.'

"Those looking to enact legislation — particularly some state attorneys general — are increasingly understanding the difference between the guy on the corner and the refiner/marketer. The easiest thing to do is

*(Continued on page 32)*

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	Regular	Mid	Premium	Diesel
Current Average	\$2.327	\$2.471	\$2.561	\$2.574
Yesterday Average	\$2.322	\$2.465	\$2.554	\$2.573
Month Ago Average	\$2.175	\$2.307	\$2.391	\$2.551
Year Ago Average	\$1.784	\$1.894	\$1.963	\$2.016

Prices are in US dollars per gallon  
Source: AAA, January 11, 2006

**HIGHEST RECORDED PRICE**

Regular Unleaded	\$3.057	09/05/2005
Diesel	\$3.239	10/24/2005

SOURCE: AAA, JANUARY 11, 2006

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"IF PROFITS CONTINUE OR INCREASE OVER THE LONGER TERM, THE GOVERNMENT AND PUBLIC COULD DECIDE THEY WANT THEIR SHARE."

Jeff Morris, Alon USA

(Continued from page 28)

to point the finger at the guy selling the gas."

Unfortunately, Gilligan said, many consumers — and citizens who vote — "don't care about the real situation. The country needs to focus on conservation and increased production."

#### Consumers React

Many people believe the magic number is 3 — as in dollars.

At the end of 2004, gas prices averaged more than \$1.80 and as spring 2005 bloomed, so grew retails, averaging more than \$2 a gallon. Still, most drivers continued filling up their SUVs and going on their not-quite-as merry way, with those on the leanest budgets often cutting back on other expenditures.

Then, Hurricane Katrina hit and the average price of gaso-

line topped \$3 and drivers had to pull out \$50 bills to fill their tanks.

"The numbers certainly reveal that consumers will reach a point where they will curtail their consumption of gasoline," said PMAA's Gilligan. "In October, [gallons pumped] fell by as much as 6 percent in some areas. The price really forced people to begin to conserve, carpool and combine trips. In November, consumers were still being more judicious in consumption of gasoline."

Then again, maybe \$3 isn't the magic number. "I don't think you can look at what happened in September and say \$3 gasoline made people change their behavior," said Lenard. "If you look at it on a regional level, you can see variations on the weather alone. Like in September and October, people looking at foliage, a rainy Friday will cut down on tourist traffic.

"Also, right after Labor Day, demand historically decreases — August is peak month for gas consumption — and then it declines until the spring. Those high prices came at a time when historically, consumption decreases.

"There certainly was a reduction in demand, but how much was caused by seasonality, the fact people may have had less money, and whole sections of the country that had no gasoline available or people were not driving because of Katrina. We have to factor in there were 8,000 stations in Katrina-affected areas that were impacted."

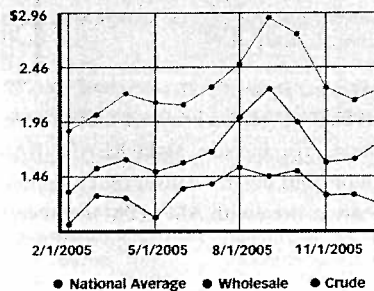
Broad picture, U.S. energy demand remained flat in 2005, despite an economic growth rate of 3 percent, according to the Energy Information Administration. Total U.S. petroleum demand in 2005 was projected to average 0.5 percent less than the 2004 level, because of hurri-

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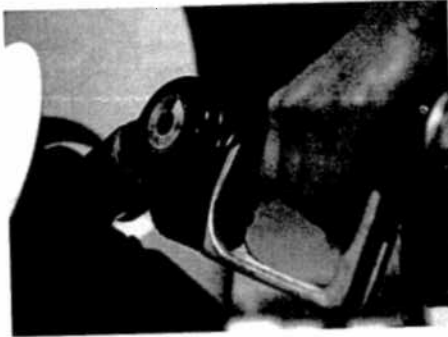
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cane-related disruptions and higher prices. Petroleum demand in 2006 is estimated to average 2.3 percent more than in 2005.

If nothing else, consumers can expect greater gasoline price volatility in 2006, industry experts warn. In late December, after weeks of declining prices, retailers saw prices creep back up to an average of \$2.21 per gallon, according to AAA.

The nationwide average had dropped to a season low of \$2.122 on Dec. 4, before reversing course. At press time, AAA forecast the typical downturn in prices at the beginning of 2006, until late February or March, when the West Coast begins transitioning to summer-grade fuels.

"The price of gasoline has always been too high as far as the consumer is concerned," said



Consumer can expect greater gasoline price volatility in 2006, according to industry experts.

Alon's Morris. "It has always been a front-burner issue. Used to be at least twice per year, the price of gas was the national lead news story. Now, it is a national lead news story 10 times per year. This focus will only increase as the price of gas and Big Oil profits go up. I expect the consumer to continue to complain, but continue to buy our product."

Morris points to Americans' behavior last July, after Detroit suffered miserable truck and SUV sales in fourth quarter 2004 and first quarter 2005. After introducing "employee pricing" discounts — while gasoline was near \$2.50 a gallon — thousands of consumers quickly chose to save thousands of dollars on big cars with lower mileage rather than buy smaller cars with better mileage.

"Now we have all those SUVs in the fleet," he said "It normally takes five years to turn the U.S. fleet. Thus, one could expect consumption will continue to increase! Amazing!"

Even in Pennsylvania, where consumers were not as directly affected by Hurricane Katrina, "there was some real conservation," said Shipley. "It's hard to prove, though, because there is so much movement back and forth between one retailer and another. I heard more people talk about saving in October and No-

vember, and that talk isn't as intense now, as prices fell.

"But I think all the conditions are still there for prices to go back to \$3 a gallon. We are still at capacity for refining and gasoline is still a growth market. As long as we are living on the edge like this, one little disruption will have a big impact."

Making about a 5 percent margin on gasoline, retailers are working in the most efficient, but most competitive business today.

"If you can't operate at those margins, you can't retail," Shipley said. "The competition among retailers for consumers has caused this. You can go to any major corner and have two or three choices. No other product is advertised for price with such intensity — the price signs are huge and 2 cents makes a difference. Retailers, to some extent, have what they created."

Regardless of how high gasoline prices go before they affect demand, Lenard believes Americans will do almost anything they can before they change their driving habits.

"We saw in 2005 that before consumers bought less gas, they were putting more on their credit cards and trading down octanes," Lenard noted. "Anything they could do before they actually bought less gasoline."

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