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September 12, 2014

The Honorable Howard Shelanski  
Administrator, Office of Information and Regulatory Affairs  
Office of Management and Budget  
New Executive Office Building, Room 10202  
725 17th Street N.W.  
Washington, D.C. 20503

Dear Administrator Shelanski:

On behalf of the Petroleum Marketers Association of America (PMAA), enclosed you will find up-to-date graphs and data from the North Central region of the country concerning E85, a mixture of 85 percent ethanol and 15 percent gasoline. As the blend wall approaches, PMAA is concerned that obligated parties may cut back production, export production and/or be required to buy expensive Renewable Identification Numbers, called RINs, to comply with the Renewable Fuels Standard (RFS) which could ultimately lead to price spikes at the pump. Today, weak consumer demand and liability concerns exist for higher ethanol blends and it is important that our policy makers understand that the RFS's corn-based ethanol mandate will not be achieved until these concerns are addressed.

PMAA is a leading national trade association in the petroleum industry representing 8,000 independent petroleum marketing companies. Organized as a national federation of 48 state and regional trade associations that represent wholesalers and retailers of gasoline, diesel, heating oil, lubricants and renewable fuels, PMAA companies own 60,000 retail fuel outlets such as gas stations, convenience stores and truck stops. Additionally, these companies supply motor fuels to 40,000 independently owned retail outlets and heating oil to over eight million homes and businesses.

We are not "Big Oil." Over the last decade, major oil companies have exited the retail motor fuels marketplace. The vast majority of PMAA companies qualify as small businesses under U.S. Small Business Administration size categories. Approximately 94 percent of U.S. gas stations are owned by independent retailers, many of which are represented by PMAA.

Enclosed you will find information from North Dakota and Minnesota regarding E85 station count. North Dakota saw a significant drop in stations offering E85 between 2012 and 2013, from 223 to 104 stations. In Minnesota, stations offering E85 dropped from 377 in 2013 to 250 in 2014. For instance, 13,054,109 gallons of E85 were sold<sup>1</sup> at 377 Minnesota locations which is approx. 34,626 gallons per year/per location – 95 gallons per day/per location. If a gas station sold 95 gallons per day, it would go out of business which again highlights why retailers are reluctant to market E85. In addition, the Petroleum Marketers and Convenience Stores of Iowa submitted information regarding the challenges it faces in a pro-ethanol state.

Some of the main reasons why stations are no longer offering E85 can be blamed on weak consumer demand because there are relatively few flex fuel vehicles (FFVs) on the road to make a modest return on investment. Only 10.7 million FFVs existed in the US in 2012, representing just 4.7 percent of the light duty vehicle market. These 10.7 million vehicles averaged fewer than 20 gallons of E85 per vehicle for the entire year.<sup>2</sup> In some cases, FFV motorists might not even know that their vehicle can run on E85. E85 must also be priced at least 30 percent lower than conventional gasoline for motorists to receive similar energy content at a competitive price given that ethanol has a lower BTU energy content compared to conventional gasoline. Finally, the real issue with FFV's is that they are disbursed in non-predictable patterns among the vehicle population. Gas station owners do not have the resources to find out how many FFVs are in their market area and then follow up with education communications to those FFV owners. Putting in E85 is a gamble that many station owners are unwilling to take the risk.

<sup>1</sup> Petroleum Taxes in Minnesota -- Petroleum Tax Unit of the Minnesota Department of Revenue  
[http://www.revenue.state.mn.us/businesses/petroleum/Documents/petroleum\\_annual\\_with%20cover\\_13.pdf](http://www.revenue.state.mn.us/businesses/petroleum/Documents/petroleum_annual_with%20cover_13.pdf)

<sup>2</sup> <http://www.nacsonline.com/magazine/PastIssues/2013/October2013/Pages/Feature15.aspx>

Finally, PMAA member companies still have concerns over potential liability and consumer misfueling. Currently, gasoline retail infrastructure is certified to dispense and store up to 10 percent ethanol (E10) by Underwriters Laboratories (UL). Although UL has expressed "confidence" that most retailers can safely sell higher ethanol blends, they have not actually "certified" existing dispensers, piping or underground storage tanks for such use. This is a major obstacle because several federal regulations, state laws, local ordinances and insurance policies require UL certified equipment. Federal OSHA regulations require retailers to use equipment that has been listed by a "nationally recognized testing laboratory" as compatible with the fuel being stored.

Additionally, many retailers may be unable to identify the type of adhesives, gaskets and connectors used in their underground storage tank (UST) systems in order to make a reliable determination of higher ethanol blend compatibility. Fire codes require UL listed equipment and very little existing infrastructure is listed for E10 plus blends. Finally, the cost to replace existing equipment with higher ethanol blend certified tanks and dispensing equipment (approx. \$200,000) along with the expense associated with increased liability for potential releases and consumer lawsuits are far beyond the means of small business petroleum marketers.

PMAA member companies will continue to support the use of ethanol in our nation's fuel supply, however, until higher ethanol blend barriers are addressed, our members will be reluctant to sell the product.

We would really appreciate a meeting with you to discuss our concerns in detail. We look forward to hearing from you.

Sincerely,

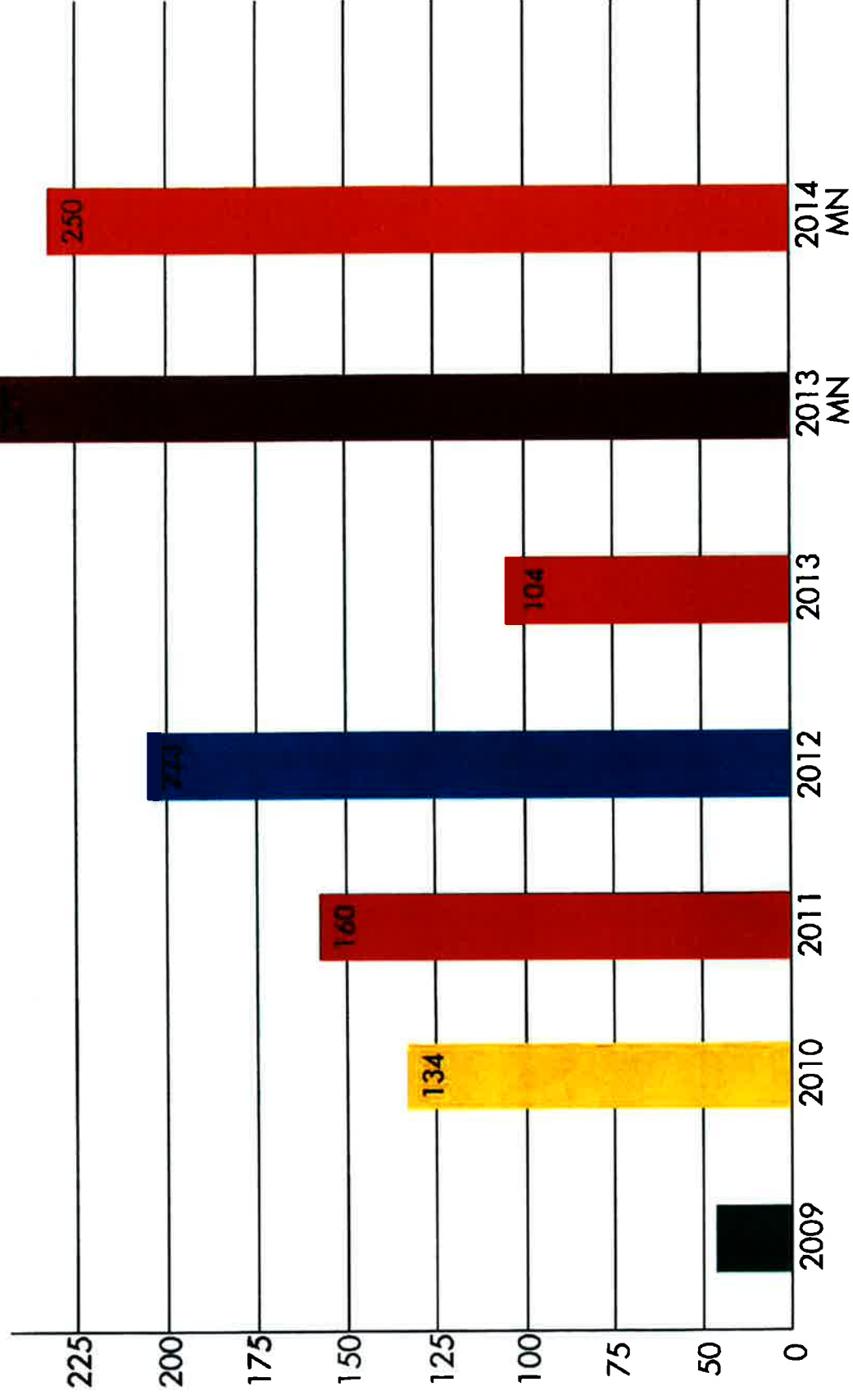
A handwritten signature in black ink, appearing to read "Dan Gilligan", with a stylized, flowing script.

Dan Gilligan  
PMAA President

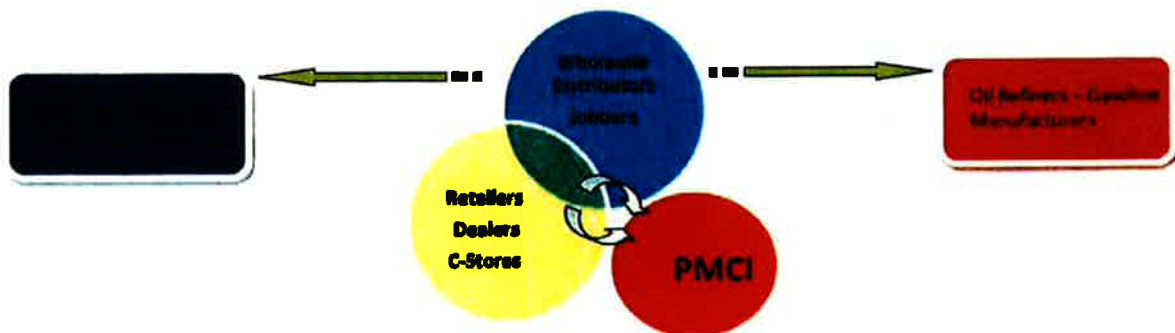
(data from Minnesota Pollution Control Agency)

## **NORTH DAKOTA BLENDER PUMPS DISPENSING E85 AND MID LEVEL ETHANOL BLENDS**

(data from North Dakota Department of Commerce & North Dakota Petroleum Marketers Association)



## Pétroleum Marketers' and Convenience Stores' Role in Marketing Ethanol



**WHO** – Members of the Petroleum Marketers and Convenience Stores of Iowa (PMCI) are independently owned and operated businesses marketing liquid forms of energy and convenience items...Neighbors serving neighbors.

**WHAT** – Selling safe and legal liquid fuels that consumers want is the mission of our marketer members. For nearly 20 years, PMCI has advocated for infrastructure programs and sales incentives to help marketers store and dispense homegrown biofuels. The initial RFIB program is a product of PMCI's lobbying efforts. The funding stream for this program is a direct diversion from the underground storage tank cleanup fund that PMCI authored.



**WHEN** – In the early 1970's PMCI members were the first to invest in ethanol manufacturing (many start-up plants failed) and first to go up against the oil refiners in offering a 10% ethanol-blend, known as gasohol.

- 1937 – Marketers asserted their independence and separation from oil refiners by forming PMCI. Members of PMCI are customers of the manufacturers of gasoline and ethanol.
- 1973 – Members invest in ethanol start-up plants.
- 2001-2012 – PMCI lobbies for sales incentives to market renewable fuels.
- 1999 – PMCI on road paying consumers to try ethanol
- 2007 – PMCI forms RINAlliance to help marketers continue selling renewable fuels.
- 2013 – PMCI members again went up against the oil refiners and successfully lobbied for a "Right to Blend with Homegrown Fuels" law that ensures a marketers' right to blend with locally grown ethanol.
- 2015 – Advocacy efforts to focus on fuel storage system infrastructure.

**If You Build It,  
Will They  
Come?**

2,200,000,000 total gallons gasoline sold in Iowa/yr  
 1,182,300,000 gallons E10 sold  
 11,200,000 gallons E85 sold  
 5,400,000 gallons E15/E20 sold  
 36,479 total licensed gasoline meters  
 300 licensed meters blender dispensers

82.2 % of total gasoline contained ethanol  
 17.8% of consumers ask for "no ethanol"

**Infrastructure Assessment:**

- Approximately 95% of Iowa's retail gasoline infrastructure was designed for and listed by an independent third party testing laboratory for compatibility with E10.
- The average lifespan of an underground storage tank system is approaching an average of 25-30 years (Replacement cost: \$70,000 - \$100,000 per system)
- Dispenser's lifespan is closer to 15-20 years (Replacement cost: \$20,000 - \$25,000).

**40 CFR 280.32 – Compatibility and 40 CFR 280.93 – Financial Responsibility:**

- Owners and operators must use an Underground Storage Tank system made of or lined with materials that are compatible with the substance stored in the UST system.
- Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks...

**Equipment Compatibility and Financial Responsibility Tied Together:**

- Insurance companies will require a complete system compatibility evaluation encompassing all components of an underground tank system.
- The burden for proving compatibility is placed on the insured, licensed equipment installer, and the equipment manufacturer.
- Equipment manufacturers and licensed installers are reluctant to sign off on statements of compatibility for E10 listed systems to store and dispense E15.
- This barrier leaves E15 to make its way into the marketplace exclusively through the installation of a new UST system and dispenser which are specifically listed for higher blends of ethanol.

**Additional Challenges:**

- 40 CFR Part 80.27 Controls and Prohibitions on Gasoline Volatility
  - Reid Vapor Pressure restrictions make marketing E15 a challenge during the summer control period. This regulation makes E15 an 8.5 month fuel.
- Penalties for Misfueling
  - \$37,500 per day per violation for as long as the violations occur plus any unjust enrichment.
- Consumer Demand
  - Storage space is extremely limited at retail facilities. Consumer demand for E15 will need to rise to a level that justifies displacing E10 (currently 75% of the gasoline market) or straight gasoline (currently 25% of the market).

**Solutions:**

- Infrastructure Investment
- Engine Manufacturer Support
- Retailer Liability Protection
- Build Consumer Awareness
- Collaboration vs. Condemnation