

OREGON DEPARTMENT OF JUSTICE'S REPORT ON FUEL PRICES: 2004-2005

I. INTRODUCTION

Beginning in 2004, and throughout the first quarter of 2005, motor vehicle fuel prices rose to record-setting heights. Over 120 Oregonians complained to the Oregon Department of Justice's (DOJ) Financial Fraud/Consumer Protection Section. While Oregonians throughout the state have voiced concerns, consumers living on the Oregon Coast, particularly in the Coos Bay/North Bend areas, lodged many of the complaints in 2004. During the summer of 2004, high prices were reported throughout the coastal region, particularly in comparison to prices in the Willamette Valley. In response, DOJ initiated an investigation to determine whether these price increases were due to market conditions or were the product of anticompetitive behavior in violation of state or federal laws. DOJ also opened an inquiry into certain business practices of the petroleum industry, such as zone pricing¹ and redlining.²

On the basis of this investigation, insufficient evidence exists to conclude that high prices consumers experienced on the Southern Oregon Coast during the period examined resulted from illegal anticompetitive behavior. High gasoline and diesel prices on the southern Oregon coast in 2004 appear to have been the result of national and local market factors rather than local unlawful collusion.

II. THE PETROLEUM MARKET AND THE LAWS ABOUT PRICES

Many factors affect retail motor vehicle fuel prices, including supply and demand. Gasoline is a commodity and its price may rise and fall based upon various and sometimes subtle market conditions. In Oregon, even in natural or manmade disasters,

¹ Zone pricing describes the practice whereby refiners set wholesale prices and supply branded motor vehicle fuel directly to their company-operated and open dealer stations within a small but distinct geographic area called a "price zone."

² Redlining includes the refiner's practice of prohibiting gasoline distributors, known as "jobbers" from competing to supply branded motor fuel to independent dealers. Refiners often restrict the ability of jobbers to supply within a given territory or price zone and restrict the jobbers from shipping low-priced motor fuel by specific site restrictions.

gasoline and diesel prices are unregulated. Crude oil prices, seasonal demands, restricted refinery and pipeline capacity, foreign political instability and speculation in the futures market all influence the market and contribute to the price consumers pay for motor vehicle fuel. Even the relative strength or weakness of the U.S. dollar impacts the price of crude oil. Federal and state taxes, and the profits and costs embedded in the refining, distribution and retail sale of motor vehicle fuel all contribute to the price paid by consumers at the pump.

The West Coast and the Oregon market in particular, differ from the rest of the United States in terms of supply, demand, and production of gasoline. Oregon itself has no refineries. Almost all the motor vehicle fuel sold in Oregon is refined at one of five refineries located in the State of Washington. This fuel is delivered primarily through a single pipeline with distribution points in Portland and Eugene. Gasoline and diesel fuel reaching Southern Oregon Coast consumers comes mainly from the Eugene terminal.

In contrast, the majority of crude oil in the United States is delivered, refined and transported from the Gulf States. The West Coast possesses limited capacity and receives little oil or products from the Gulf Coast Region. The attached graphs obtained from the U.S. Energy Department web site demonstrate the restricted refinery capacity in the West, and the small amount of petroleum sent to the West from other regions within the United States.

Despite a slight decline in the estimated population of Curry and Coos Counties between 1990 and 1995,³ the population on the West Coast has grown since 1990. For example, between 1990 and 2000, Washington's population increased by 21%; Oregon's population by 20%; and California's by 14%. Arizona's population increased by 39%. The populations of Idaho, Utah and Nevada expanded even faster. Demand for motor vehicle fuels increases as the number of consumers increase.

³ Population Research Center, Portland State University, *2005 Annual Oregon Population Report*, http://www.pdx.edu/media/pr/prec_2005completed.pdf

Conversely, overall refinery capacity on the West Coast has decreased since the 1970's. Once a net exporter, California has become a net importer of refined gasoline. Despite the increased demand, no existing manufacturer has publicly announced any plan to increase the number of refineries on the West Coast. Increasing demand and constricted supply help create a volatile market for motor vehicle fuels in Oregon. Major oil companies benefit from this combination of high demand and tight supply. The companies have publicly reported that earnings rose in 2005 and are expected continue rising.⁴

Because the major oil companies are publicly-owned corporations, their earnings are periodically published. And unlike many goods, the retail price of motor vehicle fuel is posted prominently and accurately on displays visible to passing motorists.⁵ Consumers thus readily are able to observe profits and retail prices. Prices and profits are as transparent to competitors in the motor vehicle fuels markets as they are to consumers.

Because every competitor can easily observe the price charged for motor vehicle fuels by his or her competition down the street, it is not surprising that the retail price of gasoline in any region of Oregon, including the south coast, may seem to be nearly uniform. Parallel and nearly simultaneous movement in the retail price of motor vehicle fuels in a region or neighborhood is not necessarily evidence of unlawful conduct; indeed, it is to be expected in a market in which the goods offered for sale by every competitor are essentially identical and where those competitors can readily know the price charged the public by any other competitor.

For example, in a private antitrust lawsuit filed in California against a number of petroleum companies for fixing prices, the California Supreme Court explained that

⁴ For example, Royal Dutch Shell PLC, London-based BP PLC, and Exxon Mobile reported increases in profit of between 34 and 75 percent for the third quarter of 2005 as compared to the third quarter of 2004. *Exxon Mobil Profit Soars 75%*, Washington Post, Friday, October 28, 2005; Page D01, <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/27/AR2005102700449.html>

⁵ Many websites now expand consumers' ability to shop for the lowest price fuel beyond their immediate eyesight. See, e.g., American Automobile Association's *Daily Fuel Gauge Report*, <http://www.fuelgagereport.com/ORavg.asp>

parallel pricing conduct alone, without proof of collusion, is not illegal.⁶ The court said this:

“The evidence shows defendants increased prices. However, the fact of price increases is a legally neutral fact. Price increases are as consistent with permissible independent conduct as with an illegal conspiracy, and there is no evidence that makes it more probable than not that the price increases were the product of an unlawful agreement rather than legitimate business conduct.”

Oregon law does not generally prohibit companies from unilaterally setting the price for their goods or services. Oregon’s Antitrust Act,⁷ which is similar to federal antitrust provisions, prohibits certain anticompetitive conduct. The purpose of these laws is to keep markets open and competitive. Antitrust laws do not authorize the Oregon Attorney General to regulate, control or fix prices for any commodity, including motor vehicle fuel, nor do Oregon’s consumer protection laws give the government authority to regulate the price of motor vehicle fuels. Statutes regulating vehicle fuels⁸ address fuel standards and marketing, but contain no price restrictions. Oregon’s Unlawful Trade Practices Act (UTPA)⁹ prohibits certain unlawful conduct, such as false or misleading representations, but the UTPA does not prohibit a merchant or manufacturer from unilaterally setting the price for goods or services,¹⁰ provided the merchant or manufacturer does not exploit customers by unfairly taking advantage of the customers’ unique vulnerabilities.¹¹

III. CHANGING NATIONAL CONDITIONS IN 2004

⁶ *Aguilar v. Atlantic Richfield Company, et al.*, 25 CA 4th 828 (2001).

⁷ ORS 646.705-.836

⁸ ORS 646.905-.963

⁹ ORS 646.605 - 646.652

¹⁰ Attorney General Myers has supported legislation that would authorize state government to moderate the rise of the price of critical goods and services such as motor vehicle fuels during emergencies. *See, e.g., SB 201 (2005)*.

¹¹ The UTPA does prohibit “unconscionable conduct.” To date, DOJ has not received any price-related complaints about motor vehicle fuel pricing that would be actionable under this provision of the UTPA.

The price of crude oil in the United States is the single biggest factor affecting the retail price of motor vehicle fuel.¹² In November 2003, crude prices began to rise, reaching over \$35.56 per barrel by May 2004.¹³ In September, 2005, the price reached \$59.84 per barrel.

Because crude oil is the primary ingredient in diesel and gasoline fuels, it is normal for increases in crude oil prices to be reflected in the wholesale cost of fuel and the resulting price at the pump. Motor vehicle fuel retailers understandably seek to sell their products for more than they pay at wholesale. Because the wholesale price of these products will rise when crude oil prices rise, retail price changes also will rise. While margins - the difference between pump prices (at the consumers' end of the distribution system) and crude oil costs (at the producers' end of the system) - can fluctuate, retailers often attempt to keep their margin within a certain range above the wholesale cost of fuel. Our investigation confirmed that this generally occurs in Oregon and throughout the nation, with the Federal Trade Commission estimating that approximately 85% of retail market price changes may be due to variations in crude oil prices.¹⁴

IV. COMPLAINTS TO THE OREGON DEPARTMENT OF JUSTICE CONCERNING COASTAL MOTOR VEHICLE FUEL PRICES

In 2004, DOJ received over 100 written complaints about fuel prices on the Southern Oregon Coast. Of these complaints, most involved high prices, while a few alleged potential collusion or price-fixing among suppliers or retailers.

In response, the Attorney General began a review of the complaints. DOJ pursued a further investigation to determine whether market participants had engaged in

¹² The United States Energy Information Administration tracks the price of crude oil per barrel. Data in this report about the price per barrel of oil is drawn from <http://tonto.eia.doe.gov/dnav/pet/hist/wtotusaw.htm>.

¹³ For example, during March 2004 some prices in California exceeded the average national prices by more than 30 percent.

¹⁴ Federal Trade Commission, "Gasoline Price Changes: The Dynamic of Supply, Demand Competition

collusion or other improper conduct. Dependent upon the nature of the complaint, DOJ staff contacted consumers regarding with specific complaints in order to determine whether any unlawful practices may have occurred. DOJ requested information from participants in the industry, who were generally quite cooperative. DOJ's information requests were made under the Attorney General's authority to conduct investigations into possible antitrust violations. Such requests, and any information provided in response, must remain confidential under Oregon law and are not subject to disclosure. Because of this, some details of the investigation must remain confidential.

Through its investigation, DOJ confirmed that from March to May 2004, the average price for regular unleaded gas in Oregon climbed from approximately \$1.80 per gallon to a peak of \$2.25 per gallon. Retail prices began to fall throughout Oregon in mid to late June, and by August 2004 the average price had fallen below \$2.00 a gallon. In comparison, after the first peak in May 2004, retail prices on the Southern Oregon Coast remained higher during the summer and did not fall as rapidly as in some other areas of Oregon. To put another way, the retail margin on the coast beginning in the summer of 2004 remained higher than the state average. Appendix D provides a comparison of retail gas prices in Coos Bay versus the Portland area. It shows that prices on the coast generally were higher, with the spread dramatically increasing to over \$.30 per gallon after prices in the Portland area dropped from June through August of 2004.

During the fall of 2004, coastal prices remained higher than those generally found in the state, though the difference decreased. For example, by early November, the average price for unleaded in Oregon was approximately \$2.03 per gallon. During this time stations on the coast ranged from \$2.12 to \$2.19 per gallon. To many consumers on the coast, these prices appeared higher, as areas of Salem and Eugene were experiencing some of the lowest prices in the state.

This trend continued into 2005, with prices on Oregon's Southern Coast often higher than the state average, and prices in Salem and Eugene generally lower. During

2005, other locations in the state, particularly in the south end of the state such as Klamath Falls, Grants Pass and Medford have posted equal or sometimes even higher prices than found on the coast.

The Department determined that several factors contribute to higher motor vehicle fuel prices on the coast, in comparison to the state average:

- (1) Additional transportation costs. Because the nearest pipeline terminal is in Eugene, retail stations along Highway 101 incur additional transportation costs to obtain fuel.
- (2) Lack of a readily available supply. Delivery of motor vehicle fuel can take considerable time and can be delayed. Typically, stations on the coast serve a much smaller customer base in comparison to the Willamette Valley or the Portland metropolitan area, as there are many more stations per capita on the coast.
- (3) Fluctuating demand. In addition to lower yearly volumes, demand on the coast fluctuates dramatically with the season, peaking during the summer months. During the winter season, many stations experience substantially decreased volumes.

Fuel prices at both wholesale and retail levels generally move upwards together, rising quickly and falling slowly. Nevertheless, as long as price increases are instituted independently, the fact that there is little variation in price among competitors does not establish illegal anticompetitive behavior. In any challenge to the lawfulness of the behavior of participants in the motor vehicle fuels market, the government has the burden of proving agreements between competitors to restrain trade. On the basis of this investigation, insufficient evidence exists to conclude that the high prices consumers experienced on the Southern Oregon Coast during the period examined resulted from illegal anticompetitive behavior.

VI. CONCLUSION

The Attorney General will continue to monitor the petroleum industry and is prepared to take enforcement action if the facts support action under existing law. In addition, DOJ will continue to work with other state Attorneys General and the federal government to review the factors influencing the price of petroleum products in the West. The focus of this work will be to ensure that petroleum prices and industry practices are competitive.

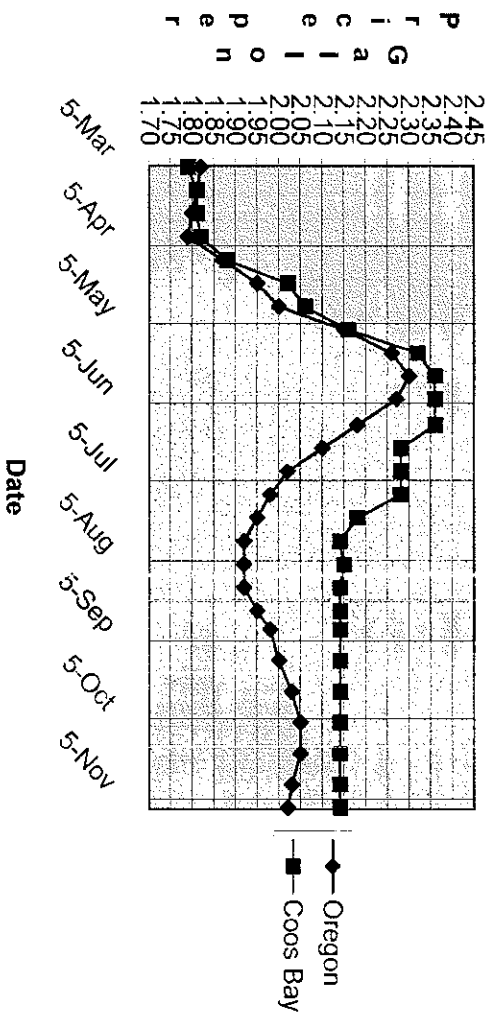
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Approximate Date Oregon Coos Bay Cost Difference

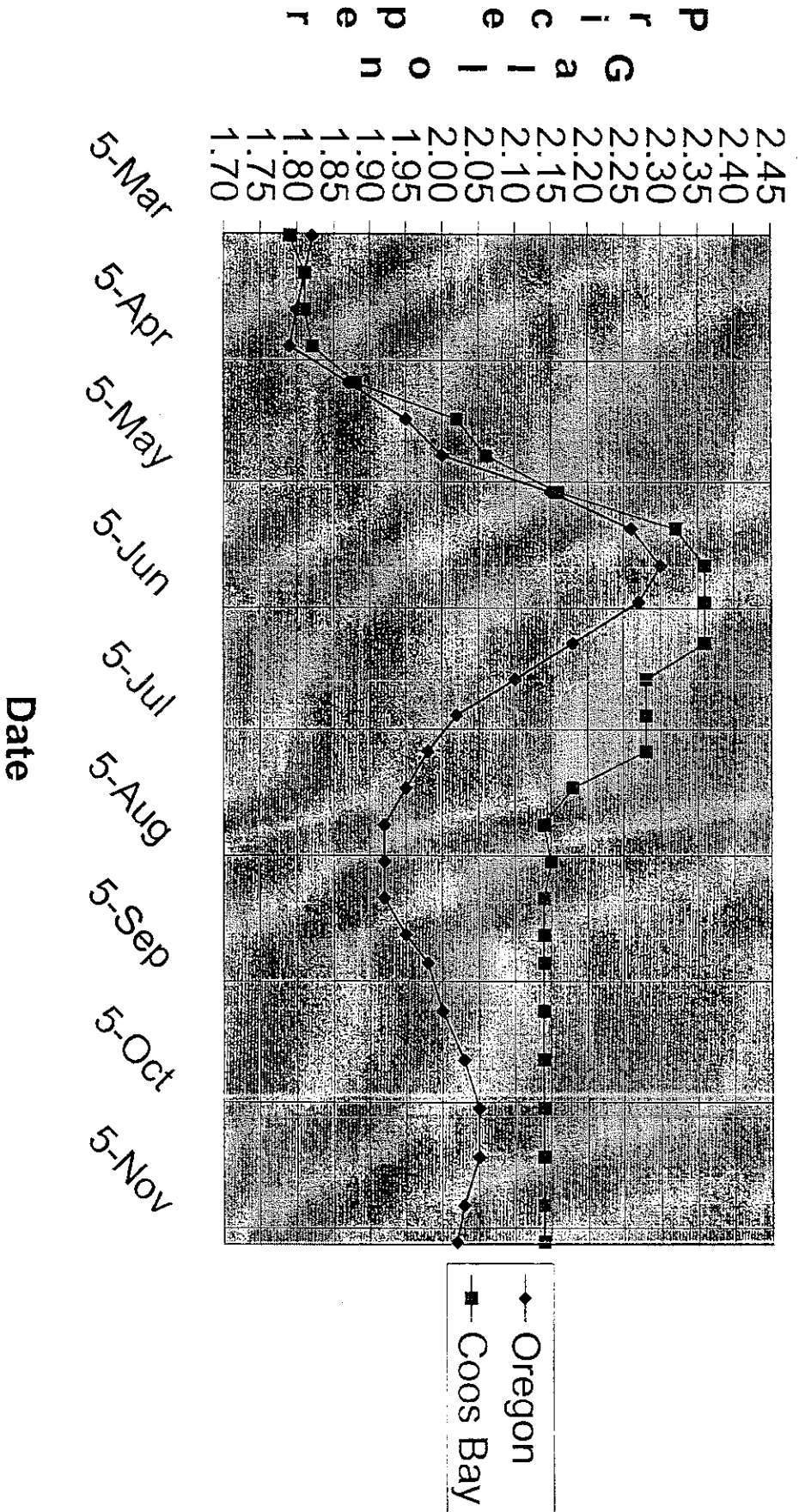
Approximate Date	Oregon	Coos Bay	Cost Difference
5-Mar-04	1.82	1.79	-0.03
14-Mar-04	1.81	1.81	0.00
23-Mar-04	1.80	1.81	0.01
1-Apr-04	1.79	1.82	0.03
10-Apr-04	1.87	1.88	0.01
19-Apr-04	1.95	2.02	0.07
28-Apr-04	2.00	2.06	0.06
7-May-04	2.15	2.16	0.01
16-May-04	2.26	2.32	0.06
25-May-04	2.30	2.36	0.06
3-Jun-04	2.27	2.36	0.09
13-Jun-04	2.18	2.36	0.18
22-Jun-04	2.10	2.28	0.18
1-Jul-04	2.02	2.28	0.26
10-Jul-04	1.98	2.28	0.30
19-Jul-04	1.95	2.18	0.23
28-Jul-04	1.92	2.14	0.22
6-Aug-04	1.92	2.15	0.23
15-Aug-04	1.92	2.14	0.22
24-Aug-04	1.95	2.14	0.19
31-Aug-04	1.98	2.14	0.16
12-Sep-04	2.00	2.14	0.14
24-Sep-04	2.03	2.14	0.11
6-Oct-04	2.05	2.14	0.09
18-Oct-04	2.05	2.14	0.09
30-Oct-04	2.03	2.14	0.11
8-Nov-04	2.02	2.14	0.12

Average \$0.12

2004 Gas Prices - Oregon Average Vs. Coos Bay



2004 Gas Prices - Oregon Average Vs. Coos Bay

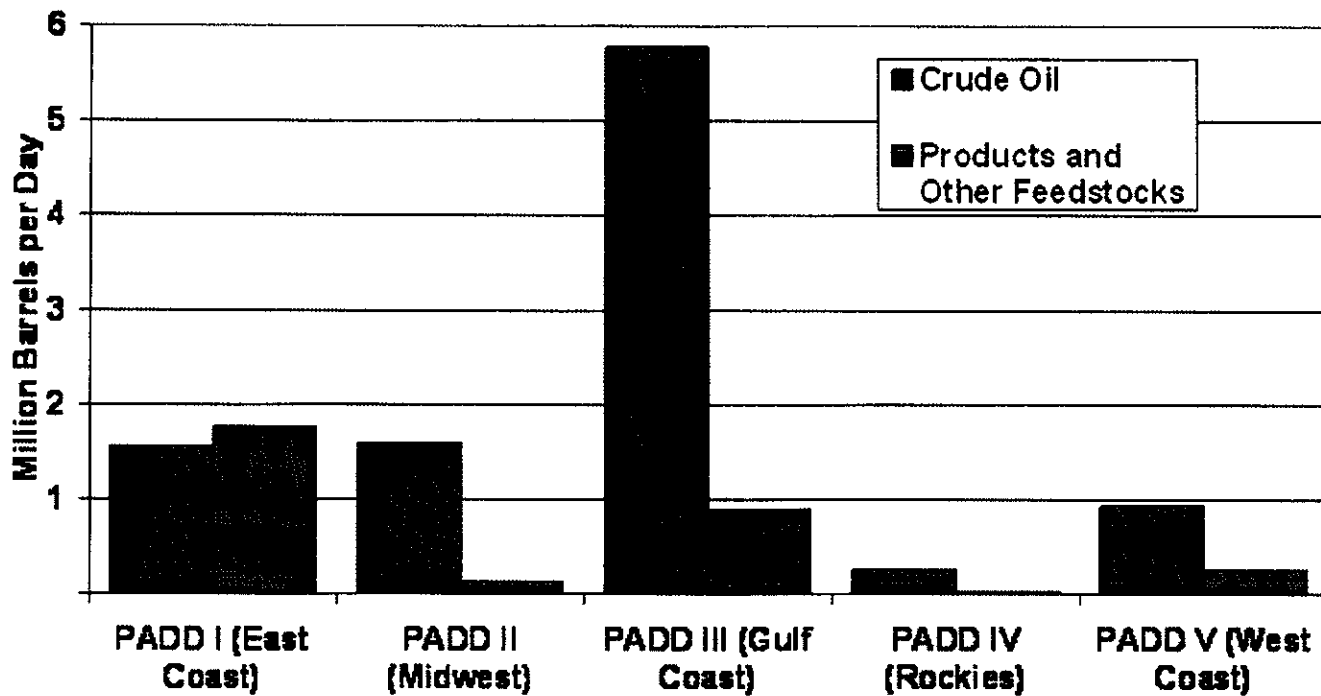


U.S. Oil Imports by Region, 2004

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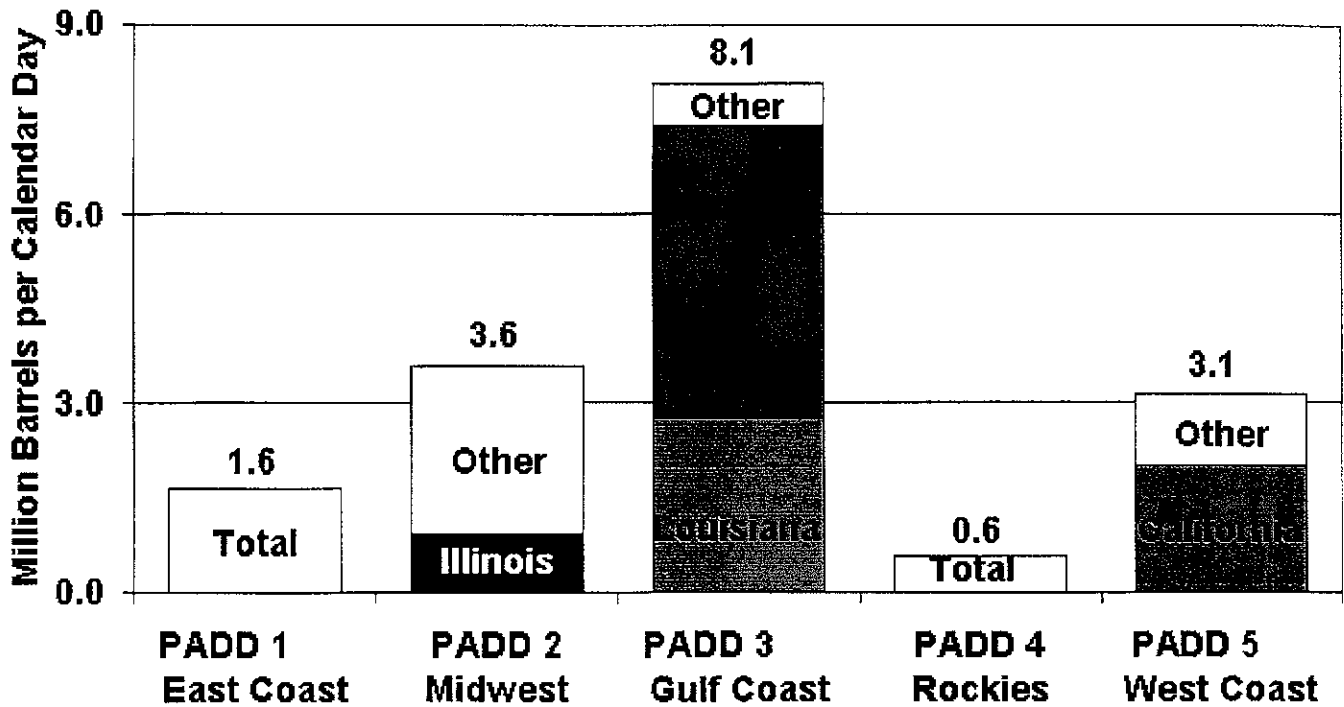
U.S. Oil Imports by Region, 2004



Source: *Petroleum Supply Annual*, Table 20

[To Map of PAD Districts](#)

U.S. Petroleum Refinery Capacity, by Region Crude Oil Distillation, 2004



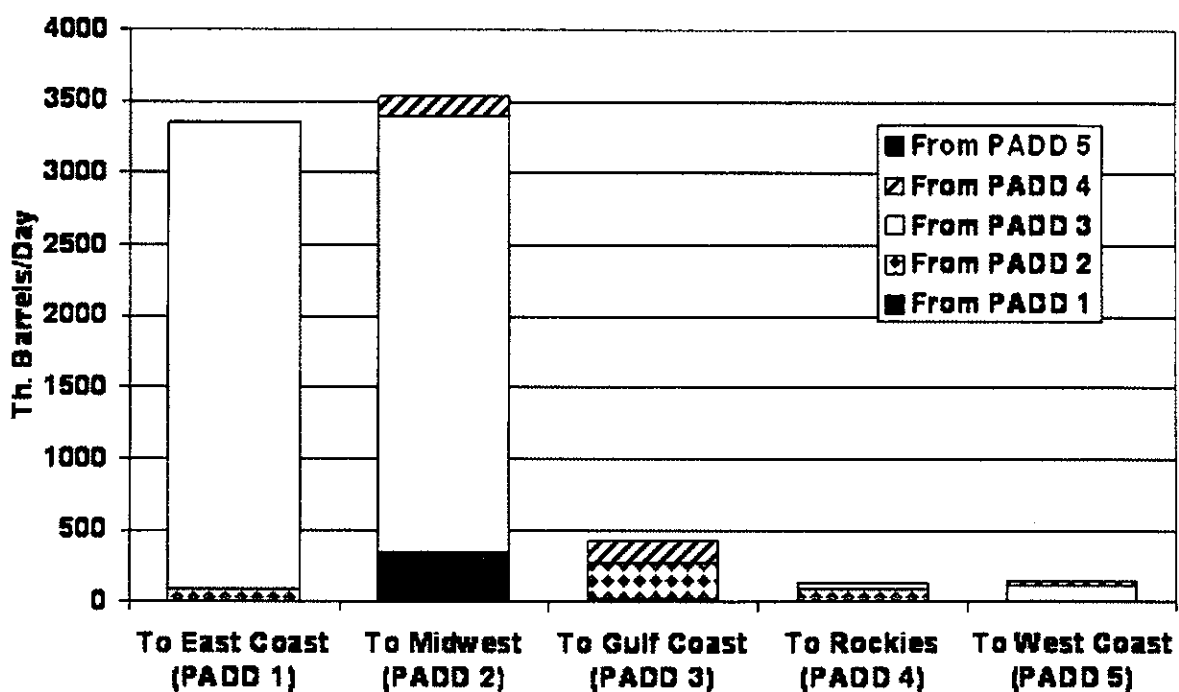
Source: *Petroleum Supply Annual*, Table 36, Biennial Refinery Report

Movements of Petroleum Products between U.S. Regions, 2004

To Trade Chapter To List of Graphs

To Map of PAD Districts

Oil Movements between U.S. Regions, 2004



Source: *Petroleum Supply Annual*, Table 32