GASDA EST. 1931 – LIPDRA DISS. 1999

GASOLINE & AUTOMOTIVE SERVICE DEALERS ASSOCIATION
372 DOUGHTY BLVD., SUITE 2C, INWOOD NY 11096
(516) 371-6201 – fax : (516) 371-1579 – gasda1@cs.com – www.nysassrs.com

September 2015

ATTORNEY'S CORNER

I've been alerting members about the pitfalls of performing improper inspections since I started working with your Association. As you know, not only are proper emissions and safety inspections required by law, but it gives the Dealer an excellent opportunity to earn money by performing needed repairs, the need for which are brought out during the inspection procedure. Your inspection license is valuable and in limited supply -- you know it and I know it, or you wouldn't be paying $30,000+ for inspection machines, which is often the going price these days. But even I had not realized the exposure you could face if you perform an improper inspection.

In Vermont, recently, a woman had her vehicle inspected and then drove her car from the shop. Two months later she was killed due to an allegedly faulty brake that should have been detected during the inspection procedure. Steven Jalbert, one of 5,900 technicians in the state licensed by the Vermont Department of Motor Vehicles, failed to test the brakes, remove a wheel, put the vehicle on a lift or test it on the road. AJ's Sunoco in Barre, VT, where Jalbert is employed, was using an out-of-date manual. "When you go in an you pay the fees to have your vehicle inspected, you're depending on that inspection mechanic to take the time to go through and examine that vehicle and tell you 'yes that vehicle is safe to drive", Glen Button, director of enforcement at the Vermont DMV stated. The prosecutor has now charged Jalbert with manslaughter! States copycat each other. How long do you think it will be before some D.A. in New York will similarly charge an inspector with manslaughter if an accident ensues after an inspection? Would you like to bet your own freedom from a prison cell on that? My standing advise is: DO INSPECTIONS RIGHT OR DON'T DO THEM AT ALL! So, how lucky do you feel today?

On another matter involving inspections, please be advised that if you become aware of any missing inspection stickers, immediately report this to the Police. You are required to do this by the Commissioner's regulations. If you fail to do so and the loss is later discovered you could be charged by the DMV for selling the missing stickers. In addition, mail any damaged or even almost wholly destroyed stickers to the DMV so you can get a credit on the damaged or destroyed stickers. Why pass up good money? If you don't need that money please donate it to your Association. We'll use it to protect you.

The contents of this column are not intended as legal advice. I give no legal advice without an appointment and interview with a client.

INSIDE THIS ISSUE

1	*Attorney's Corner*
2	*Technician Arrested For Manslaughter After Lax Inspection*
2	*Workers Get $18 Million Back*
2	*Indiana Refiner Breakdown Sends Midwest Gas Prices Soaring*
2-3	*Credit Card Fraud Liability Shifting From Banks To Retailers*
3	*Fuel Dispenser Orders Surge Before EMV Deadline*
3	*Few U.S. Consumers Have New Chip Cards*
3-4	*Oil, Gasoline, Diesel Slide To Post-Winter Lows; Chinese Fears Tantamount*
4	*Consumers Taking Notice Of Falling Gas Prices*
4-5	*Gas Prices May Make Another Run to $2 a Gallon*
5	*The ACA Is Here To Stay*
5-6	*Lawyer Emails May Affect Swipe Fees Cases*
6	*Judge Throws Out American Express Settlement*
6	*Transportation Extension Bill Goes To President*
6-7	*Senate Bill Would Raid Federal UST Funding*
7	*US Dept Of Labor Takes On Employment Practices*
7	*Dept Of Labor Issues FLSA Employee Misclassification Guidance*
7-8	*New EPA Policy Expanding Protected Waters Could Affect Retailers*
8	*Congressional Transportation Saga Continues Due To Policy Conflicts*
8-9	*Senate Committee Holds Hearing On Technology In Transportation*
9	*Question Of The Month*
9	*DMV Record Retrieval*
9	*Attention Inspection Stations*

Technician Arrested For Manslaughter
After Lax Inspection

A Vermont technician was arrested on charges of manslaughter and reckless endangerment after his failure to properly inspect a vehicle contributed to a woman's death, according to a report by WPTZ NewsChannel 5.

Steven Jalbert of Barre, Vt., inspected a 1992 Chevrolet Corsica, owned by Donald and Elizabeth Ibey, in May 2014. Elizabeth, 83, died in a car crash two months later. A death, investigators say, could have been avoided.

Jalbert, one of 5,900 technicians in the state licensed by the Vermont Department of Motor Vehicles, failed to test the brakes, remove a wheel, put the vehicle on a lift or test it on the road, according to WPTZ. AJ's Sunoco in Barre, where Jalbert is employed, was using an out-of-date manual.

"When you go in an you pay the fees to have your vehicle inspected, you're depending on that inspection mechanic to take the time to go through and examine that vehicle and tell you 'yes that vehicle is safe to drive'," Glen Button, director of enforcement at the DMV told WPTZ.

It is vital that technicians follow the most current model for annual safety inspections, Button says. "It really is critical. They're examining the suspension of the vehicle, the steering mechanism of the vehicle' they're looking at the exhaust. Any of those systems, if there is a problem, it could really be tragic," he said.

Workers Get $18 Million Back

Albany- State officials are on a pace to set a new record for recovering wages for short-changed workers, the Daily News has learned.

During the first six months of 2015 the state Labor Department recovered more than $18.1 million for nearly 19,000 workers who were not paid the proper minimum wage, overtime or fringe benefits, officials reported.

The recoveries represented a 6% increase from the same time period in 2014 and put the sdtate on a pace to surpass last year's record of $30.2 million.

"New York has a zero tolerance for those who seek to deny an honest day's pay for an honest day's work," Gov. Cuomo said.

The recovered wages include $11.6 million distributed to 7,598 city workers. The city workers received an average payout of $1527.11.

The recoveries were made by the state Labor Department's Worker Protection Division, which investigates cases of wage theft. The division has about 2,500 active investigations.

Indiana Refiner Breakdown Sends
Midwest Gas Prices Soaring

Leaking tubes on a piece of equipment at a BP refinery in Whiting, Indiana, forced a shutdown of the largest crude unit at the Chicago-area refinery earlier this week. According to news reports, the unit could be down for at least a month, and the Midwest region is already feeling the effects, with wholesale gasoline prices in Chicago at the highest level since 2013.

"It's such an important refinery smack in the middle of the Midwest," Phil Flynn, senior market analyst at Price Futures Group in Chicago, told Bloomberg news. "It's like dropping a bomb in Chicago and watching the shockwaves ripple out to the rest of the country."

Gas stations in Illinois, Indiana, Michigan, Ohio and Wisconsin get most of their fuel from the Whiting plant, which is the largest refinery in the Midwest. It is currently operating at less than half of its 430,000 barrels-per-day capacity. For now, gas stations in the region are being forced to source their fuel from refineries that are much farther away.

BP's Whiting refinery can process as much as 270,000 barrels a day of heavy crude sent by pipeline from Alberta, Canada, with additional supply shipped up from Cushing, Oklahoma, the U.S. storage hub. BP oil traders have offered to sell a variety of heavy Canadian crudes, according to market participants cited by Bloomberg. Western Canada Select, a proxy for crude from Alberta's oil sands region, fell 20 cents to $19.50 below U.S. benchmark West Texas Intermediate, according to Bloomberg data.

Wholesale gasoline in Chicago jumped by 82.5 cents a gallon earlier this week, to an 80-cent premium to futures and pump prices are expected to follow.

Credit Card Fraud Liability Shifting
From Banks To Retailers

Credit card companies like Visa and MasterCard, along with the banking industry, are poised to shift credit card fraud liability from card-issuing banks to retailers who choose not to make the shift to Europay, MasterCard and Visa (EMV) chip technology by Oct. 1, 2015. According to the Electronic Transactions Association (ETA), the chip technology is meant to provide greater security for consumers as it cannot be duplicated by criminals like a magnetic stripe card can, and it creates a unique code for each individual transaction. In order to incentivize the switchover, retailers who have not made the transition to the more secure systems by October will be liable for all fraudulent credit card transactions carried out at their place of business.

The new liability rules may vary by credit card issuer, but even with the fraudulent use of lost and stolen chip cards that require entering a personal identification number (PIN), the retailer will be responsible if the transaction is processed on a card reader that only takes magnetic strip cards or on a chip reader that does not take PINs.

Retail industry groups have protested the decision by the credit card companies over what they consider an arbitrary date, and are concerned that a significant number of smaller retailers do not even know about EMV chip technology, let alone the new liability rules. Most large retail chains have already made the switch, but it is unknown how many small retailers are yet to purchase the new equipment necessary to process EMV chip cards. The credit card

industry announced the new changes in 2011 and believes that retailers have had plenty of time to acquire the new technology.

Fuel Dispenser Orders Surge Before EMV Deadline

Gilbarco announced this week that the company has seen a record high in automated fuel dispenser (AFD) orders, showing that large, regional retailers are upgrading their dispenser payment platforms to support new EMV standards ahead of the liability shift deadline for AFDs.

According to the company, orders for Gilbarco's dispenser marketing platform, which combines required EMV upgrades with engaging "media at the pump" technology, doubled in June, compared to the month prior.

"We're using the upcoming EMV regulations as an opportunity to grow our business. In addition to enabling us to meet the 2017 deadline, Applause TV will bring incremental inside sales and an improved experience to our customers," said Charlie Edwards, COO of Edwards Oil Company, dba Quik Mart Convenience Stores.

While inside store POS are facing a liability shift deadline of October 1, 2015, fuel dispensers in the U.S. have an October 2017 deadline for instituting EMV-certified payment platforms. Adopting EMV-certified products helps retailers avoid the liability shift from banks to retailers outlined in the EMV changeover from magnetic strip cards. Early upgrades to EMV are also part of a broader business strategy among retailers to avoid operation interruptions by implementing and testing the new transaction processing systems well before the deadline.

"Retailers are using the investment in EMV as an opportunity to differentiate their sites through media," said Andrew Syzek, marketing manager, media, Gilbarco Veeder-Root. "Acting early offsets the cost for EMV compliance. Research shows a 10-34% range increase in sales of convenience drinks and snacks purchased in-store at Applause TV test sites."

Gilbarco's Applause TV is full-motion video and audio experience that provides entertainment and drives customers into the store for high-margin purchases, and includes the connectivity hardware and software required for EMV transaction processing.

According to Gilbarco, retailers who have already committed to rolling out EMV via Applause TV to at least half of their sites include Edwards Oil, Hollingsworth Oil, Sutey Oil, Energy North and McCullough Oil. These Gilbarco partners represent more than 100 Applause TV locations across the United States.

Few U.S. Consumers Have New Chip Cards

Even as the October 1 EMV liability shift deadline approaches, the vast majority of Americans still have not received their new chip-enabled cards and only a small minority are using the chips at all, a new Associated Press-GfK poll shows.

The poll found that only about one in 10 Americans has received the new chip-enabled credit cards. Of those who have received the cards, only one-third said that they've actually used the cards as intended in new specialized credit-card readers.

In an effort to combat mounting credit-card fraud, U.S. banks are making a push to replace the magnetic-stripe credit cards Americans use with new ones that have tiny computer chips embedded in them, which are far more secure. Even though the United States accounts for 25% of all global credit-card transactions, half of all credit-card fraud happens in America, according to a report by Barclays.

The chip cards, which have been used in Europe and elsewhere for more than a decade, transmit a one-time code when they're inserted into a card-reading device to make a purchase. Even if the code is stolen, thieves can't use it to make other purchases.

Digging into the numbers, the poll finds that 41% of Americans have received a new credit or debit card in the past few months. But only 30% of those who have received new cards, or 13% of all Americans, have received a new card with a chip embedded on the front of it. Of those who have received the card, just 35% say they've actually used them as intended.

The new chip-enabled cards also come with magnetic stripes, and many users are still swiping them just like they always have. The new cards require users to insert their card into an ATM-like slot in a card reader for several seconds.

The poll shows that Americans, once given the cards, are figuring out how to use them. Among those who do have a new card, 70% say they know how to use it. But just a quarter of Americans, including a little over a third of those who have received the new cards, say they understand very or extremely well why they're being sent the cards in the first place.

The Associated Press-GfK poll also found that Americans are more likely to say they're very concerned about their personal information being secure when making purchases online (45%) than in stores (38%). However, the new chip cards can't prevent a thief using a person's stolen credit card information to make fraudulent purchases online. (For more on the limitations of EMV, read the NACS Magazine article, "Half Covered.")

Oil, Gasoline, Diesel Slide To Post-Winter Lows; Chinese Fears Tantamount

Fears about the Chinese financial markets and the collateral damage that a slumping Chinese economy might mean to world oil consumption helped push crude oil prices to their lowest levels since midwinter.

Gasoline and diesel prices were also down broadly, and brisk volumes were recorded on this first trading day of August.

September RBOB futures settled at $1.6745 gal, down 9.75cts gal for the day, and December RBOB fell 7.26cts gal to $1.3989 gal. Many of the futures' declines were mirrored in individual bulk markets. Chicago gas prices fell only

7.75cts gal but every other east of the Rockies market for gasoline plunged by nearly 10cts gal. The Pacific Northwest dropped 10.75cts gal and California saw modest losses of 2.75cts gal or so.

Quotes for late 2015 gasoline are now in some cases below $1.25 gal. Gulf Coast liquidity is thin, but the swaps market is implying that Gulf Coast CBOB will fetch only about $1.20-$1.25 gal in November and December.

Diesel was not the target of the greatest selling pressure but many markets have reached six year lows. September ULSD futures gave up 5.84cts gal and settled at just $1.5305 gal. Spot markets are approaching the mid-$1.40's at the Gulf Coast.

The big story, of course, was crude where a lot of psychological demand was inflicted. September WTI plunged $1.95 bbl to $45.17 bbl while September Brent eased $2.73 bbl to $49.48 bbl.

Given the sharp drops, many downstream terminals saw little action for gasoline and distillate liftings. The rest of this week could provide a key technical test for markets with a possible test of the lows achieved last January and February.

- OPIS Staff Report

Copyright, Oil Price Information Service

Consumers Taking Notice Of Falling Gas Prices

As gas prices continue to fall from their seasonal high, consumers say they are more optimistic about the economy and will increase their driving in August. However, consumers don't expect gas prices to fall below $2 per gallon, according to the latest NACS Consumer Fuels Survey.

Nearly two in five Americans (39%) say that gas prices are lower than they were this time last month, but there are sharp regional variations. Two in five drivers in the Northeast (43%) and Midwest (44%) reported lower prices, more than double the percentage reporting lower prices in the West (21%). Nationwide, the median reported gas price is $2.64, a 15-cent drop from last month's median.

The decrease in gas prices has led to increased economic optimism. Just about half of consumers (49%) are optimistic about the economy, a 2-point increase from last month. More than three in four consumers (77%) say that gas prices affect their feelings about the economy.

A combination of vacations and lower gas prices will lead many Americans to step up their driving in August. One in three (34%) say they will drive more over the coming 30 days, while only 8% say they will drive less.

Many consumers think gas prices will continue to fall, with one in four consumers (25%) expecting gas prices to decrease over the next 30 days (up from just 10% who thought so last month). However, most consumers are skeptical that prices will eventually drop below $2 a gallon. Only one in five (20%) think that gas prices are likely to fall under $2 per gallon in the next few months. A majority of U.S. fuel consumers (51%) say sub-$2 gas is "very unlikely," including 72% of fuel consumers in the West.

If gas prices were to fall below the $2 per gallon threshold, however, consumers say that it would have a very significant impact on their driving and spending behavior. One in three drivers (32%) say that $2 per gallon gasoline would have a "great impact" on their personal financial situation, including 43% of consumers from households with incomes under $35,000 per year. Two in five consumers (40%) say that they would likely spend more on items other than gas if gas prices fell below $2 per gallon. A similar percentage (41%) say they would drive more frequently if gas prices fell below $2 per gallon.

"There is good news for retailers as consumer optimism picks up during peak vacation season. It could be a good month for anyone serving vacationers, including convenience stores," said NACS Vice President of Strategic Industry Initiatives Jeff Lenard.

Gas Prices May Make Another Run to $2 a Gallon

Gas prices have hit the lowest average price for this time of year since 2009, and AAA is predicting prices could fall to $2 a gallon in many parts of the country by the end of the year.

According to the association's latest monthly gas price report, cheaper oil costs and the resolution of some refinery issues are the key drivers behind the declining prices at the pump, with the national average sitting at $2.66 as of Monday. It marked 16 days in a row of falling prices.

"It feels good to see gas prices drop during the middle of the busy summer driving season. Millions of people are hitting the roads right now and these gas savings should make their trips more affordable," according to AAA.

Gas prices averaged $2.75 per gallon in July, which was the lowest average for the month since 2010. In addition, Monday's average gas price was about 85 cents per gallon less than a year ago. The national average has dropped about 14 cents per gallon since hitting a 2015 high of $2.80 on June 15.

According to AAA, lower gas prices and a growing economy have helped motivate people to drive more this year. U.S. consumers drove 275.1 billion miles in May, which was the highest monthly total on record, according to the most recent report from the Federal Highway Administration. It is likely driving has continued to increase this summer as consumers take long road trips.

July's declining prices followed in last July's footsteps. This is the second year in a row that gas prices dropped in July. Last year, average prices dropped 16 cents per gallon during the month before eventually plummeting by $1.65 per gallon through January.

Diesel is also making headlines. The average price of diesel is only seven cents per gallon more than gasoline today. The difference between gasoline and diesel reached its most narrow point since 2009 in July. The average price of diesel in January was 90 cents more expensive per gallon than gasoline.

And more good news is on tap. AAA said gas prices should continue dropping to catch up with the recent decline

in the cost of crude oil. All things being equal, a $12 decline in crude oil costs could reduce gas prices by as much as 29 cents per gallon.

Given that prices have already dropped about 14 cents per gallon since reaching a 2015 high in June, drivers could see prices drop another 15 cents per gallon in the near term if oil remains stable and refineries operate at current production levels. Gas prices could drop even further if oil continues to fall and gasoline supplies grow larger in August, the association added.

"The recent price declines are hopefully just a precursor of much bigger savings to come at the pump. We could see many parts of the country make another run toward $2 per gallon by the end of the year if everything keeps running smoothly," AAA explained.

The end of the summer driving season often leads to lower gas prices, which may drop more dramatically after Labor Day. In addition, gas stations in many parts of the country can switch over to less expensive winter-blend gasoline on Sept. 15. The Southeastern and Central United States are the two regions most likely to see a large number of gas stations offering prices around $2 per gallon this winter.

However, there are a number of factors that could keep gas prices from falling as expected, such as major refinery disruptions, higher oil costs, a major hurricane or conflict overseas. In addition, all parts of the country may not see prices drop as quickly. For example, refinery problems continue on the West Coast, which raises the possibility of price increases for that region if supplies grow tight.

Looking at specific states, California currently has the most expensive gas prices in the country, with a statewide average of $3.79 per gallon. The state's average is about $1.50 more expensive than South Carolina's average, which is $2.29 per gallon and the nation's least expensive market for retail gasoline.

The five most expensive state averages are California ($3.79), Alaska ($3.48), Hawaii ($3.29), Nevada ($3.25) and Washington ($3.18). The states with the lowest average gas prices are South Carolina ($2.29), Alabama ($2.29), Mississippi ($2.33), Ohio ($2.36) and Indiana ($2.37), according to AAA.

Gas prices remain relatively high across the Western U.S. due to ongoing refinery problems and strong demand. California, which has the largest concentration of drivers in the region, has experienced a number of refinery issues and supply challenges.

A handful of U.S. gas stations across the nation, though, are already selling gas for less than $2 per gallon. By comparison, about 11 percent of stations are selling gas for more than $3 per gallon today.

The ACA Is Here To Stay

Now that the Supreme Court has, again, upheld a major portion of the Affordable Care Act (ACA), it would behoove employers to ensure that they are in compliance with the regulation, writes attorney Jeffrey Smith of labor law firm Fisher & Phillips LLP. In an article on the firm's website, Smith addresses several relevant issues and related questions for employers to consider. The full article is available, here.

Which Employees Are Full-Time?

To comply with the Employer Mandate portion of the ACA, also known as the Employer Shared Responsibility Payment, employers who have 50 or more full-time equivalent employees must make an affordable and adequate offer of group health plan coverage to their employees. Failure to do so raises the possibility of a stiff penalty. However, under the ACA, "full-time" is defined as 30 or more hours per week. And in fact, employers must use the "monthly measurement" method or the "lookback measurement and stability period" method to calculate the number of full-time employees, which can be particularly complicated when employees work variable hours.

Did You Write It Down?

While figuring out who is eligible for coverage is the first step, the next essential step for employers is to document your full-time employee eligibility policy, clearly communicate it to HR staff, and incorporate it into your Plan Document and Summary Plan Description. Smith points out that this is also a good opportunity to review your Plan Document and Summary Plan Description for compliance with the final, major ACA changes that go into effect by January 1, 2016. His article addresses specific points to look out for when reviewing plans, as well as an action plan to address ACA policies.

How Does This Impact Employee Leave?

Once an employer has decided how to determine the full-time status of employees, and once you've written down those rules, you can tackle an issue that employers face nearly every day: how to treat employees during leaves of absence. In the past, employers subject to the Family and Medical Leave Act (FMLA) would offer COBRA to employees who need additional time off, however that option is no longer available for employers who use the lookback measurement and stability period method to calculate eligibility. That's because workers may be eligible for health-care coverage throughout their leave.

Smith clarifies that these complicated issues should be addressed with both your insurance advisor and your employee benefits counsel.

Lawyer Emails May Affect Swipe Fees Cases

As reported by the Wall Street Journal earlier this week, the recent discovery of email communications between two opposing lawyers who are also close friends is threatening to scuttle a $6 billion class-action antitrust settlement between Visa Inc., MasterCard Inc. and millions of merchants.

The publication cites sources who say that lawyers representing the merchants, including Walmart Stores Inc., Home Depot Inc. and 7-Eleven Inc., will seek to unravel the three-year-old pact, as well as in a similar case involving a pending $79 million settlement involving American Express.

The email communications were discovered between attorney Keila Ravelo, who represented MasterCard in the

antitrust case, and Gary Friedman, who—according to the Wall Street Journal, which reviewed hundreds of pages of court filings in the case—the merchants plan to contend that the communications between them involved confidential information and resulted in the merchants getting inadequate representation.

At a hearing last week, the magistrate who has been overseeing the sharing of the emails among the parties described the situation as "a serious breach," according to a transcript of the hearing. Still, writes the Journal, "It isn't clear if the exchange of documents between Ravelo and Friedman will be grounds for overturning the cases."

Judge Throws Out American Express Settlement

We, along with hundreds of merchants, has long opposed the class action settlement with American Express because in many merchants' view the settlement does nothing to change the anti-competitive restrictions that American Express has placed on merchants. Yesterday, in a strongly worded opinion, Judge Nicholas Garaufis of the U.S. District Court for the Eastern District of New York rejected the settlement in its entirety.

Judge Garaufis did not, however, rule on the fairness of the terms of the settlement itself. Instead, he focused on the misconduct of one of the lawyers for merchants in the case: Gary Friedman. According to the decision, Friedman sent confidential material from the American Express case to one of MasterCard's lawyers, Keila Ravelo, and consulted with her on the case numerous times. The judge found that these communications – numbering more than 1000 – betrayed Friedman's duty to his clients and meant the merchant class was not adequately represented in the case.

The judge wrote that the communications between Friedman and Ravelo were "improper and disappointing" and that they "fatally tainted the settlement process." As a result, the judge not only rejected the settlement but also removed Friedman as counsel to the class and required other counsel to the class to justify why they should be able to continue their representations of merchants in the case.

The opinion was highly critical of the reactions of other class counsel to Friedman's conduct. Rather than condemning his conduct counsel kept him as part of the counsel team and sought to minimize his impact rather than expressing concern and seeking to protect the clients' interests.

Friedman and Ravelo also shared confidential communications relating to the Visa/MasterCard class action. NACS and other merchants have filed a similar motion in that case contending that the settlement should be rejected because of the actions of the two lawyers. While that case is before a different judge, the court is expected to consider Judge Garaufis' decision to reject the American Express settlement when deciding the fate of the Visa/MasterCard settlement.

Transportation Extension Bill Goes To President

The House of Representation legislation that extends Highway Trust Fund authority for 3 months and funding for 6 months, passed the U.S. Senate 91-4 on July 31 and has gone to President Obama for his signature.

Of note, the provision that could have reinstated the mandatory tire registration program was not included in the measure that was sent to the President.

TIA would like to thank retailers nationwide for their overwhelming grass roots effort. You made a difference. You told your story in a very honest and forceful way. Our effort is far from over. We suspect that the effort to pass this provision will continue and the need to reach out to legislators will continue.

The Tire Industry Association opposed a return to the failed paperwork requirements of the past and opposes legislation that could lead to independent dealers being forced to turn over our customer information to product manufacturers. We do agree however, that recall performance can be improved and have non-legislative proposals that we would like to work on with tire manufacturers to achieve this goal. TIA believes that the industry coming together to seek solutions is a better alternative than to legislate for more government as a solution to any industry issue. We can - and should - do better.

Senate Bill Would Raid Federal UST Funding

A Senate-passed, multiyear version of the highway bill would transfer hundreds of millions of dollars from the Federal Leaking Underground Storage Tank (LUST) Trust Fund to the Highway Trust Fund, according to PMAA.

That bill is separate from the measure Congress passed this week that temporarily extended by three months the Highway Trust Fund, which was due to expire July 31.

The association and similar interest groups are strongly opposed to shifting money away from the LUST Fund to the Highway Trust Fund to keep the Highway Trust Fund solvent.

Prior to the Senate's vote on the multiyear bill, PMAA, SIGMA and NACS sent a letter to the Senate's environment and finance committees, urging them to reject the plan. But the Senate approved it anyway.

PMAA and the other groups noted that $485 million is in the LUST Fund, and the Senate's measure "would raid $100 million in 2015, 2016 and again in 2017 to go to the Highway Trust Fund."

"Our member companies have supported the LUST fund and have paid $3.8 billion in LUST fees since its inception," the letter stated.

It explained that Congress put a provision in the 2012 highway bill that "raided the LUST Trust Fund of $2.4 billion dollars and moved it to the HFT, and raided another $1 billion in 2014."

he letter further argued that a transfer of the remaining funds would violate the spirit of the agreement that

petroleum marketers and Congress had when the federal LUST program was created in 1986.

"Any transfer would not only deny marketers the benefits for which they have paid, it would force governments to impose new tank fees on petroleum marketers and retailers at the state level," the letter stated.

"As of May 2015, 525,095 releases from federally-regulated leaking underground storage tanks had occurred nationwide," the letter continued. "States and EPA have made tremendous progress by cleaning 84.8 percent of the releases. However, EPA estimates there is still a backlog of 72,248 waiting to be completed. Given the backlog of so many sites, it is important for Congress to spend these funds for UST remediation and leak prevention programs."

--Vincent Taylor, vtaylor@opisnet.com

Copyright, Oil Price Information Service

US Dept Of Labor Takes On Employment Practices

The US Department of Labor (DOL) has been busy of late — and convenience store owners should pay attention. Convenience store owners may soon face significant new employment costs relating to overtime, and they now may be liable for substantial penalties related to their employment of independent contractors.

Earlier this month, DOL proposed a rule that would extend overtime protections under the Fair Labor Standards Act (FLSA) to nearly 5 million white-collar workers within the first year of its implementation. Specifically, the proposed rule would raise the salary threshold – that triggers when an employee becomes ineligible for overtime – from the current $23,660 per year level to the 40th percentile of weekly earnings for full-time salaried workers: approximately $970 per week, $50,440 annually.

But DOL did not just stop at overtime. Shortly after proposing the overtime rule, they issued a guidance aimed at curbing the misclassification of employees as independent contractors. Significantly, DOL states that most workers are employees – not independent contractors – under the FLSA. To address this problem, the guidance lays out a six-factor test that should be used to evaluate the worker-employer relationship to assess whether a worker is an independent contractor.

This is a big deal because the possible penalties for misclassification under the FLSA, the tax code and the Affordable Care Act (ACA) could be astronomical.

For example, if misclassified independent contractors (who did not receive offers of health-care coverage under the ACA), are reclassified as employees, then the result is that less than the required minimum number of full-time employees received offers of coverage. This misclassification will trigger a penalty of $2000 times the overall number of the entity's full-time employees on an annualized basis. That's right — the potential fines are staggering.

Separately, both of these DOL actions are cause for concern. The overtime proposal could significantly impact the c-store business model and a retailer's ability to hire full-time employees. Similarly, the guidance may force companies to alter their hiring structure. Taken together, the DOL's actions raise a red flag that the administration is planning to be more active in employment matters. The guidance, in particular, is putting employers on notice that DOL plans to intensify enforcement in this area.

Convenience store owners need to begin preparing for heightened enforcement now by reviewing worker classifications to make sure they are appropriate. Because if they are not, c-store owners may find themselves flooded with penalties so enormous that they threaten store viability.

Dept Of Labor Issues FLSA Employee Misclassification Guidance

David Weil, Administrator of the Wage and Hour Division (WHD) for the Department of Labor (DOL), issued a Guidance dated July 15, on the misclassification of employees as independent contractors. Weil cited ongoing concerns that "some employees may be intentionally misclassified as a means to cut costs and avoid compliance with labor laws."

The Fair Labor Standards Act (FLSA) has historically defined employment as "to suffer or permit work". The definition is typically regarded by experts as vague or ambiguous, and this effort to clarify the definition follows court cases in subscribing to the "economic realities" test.

The test is based on six detailed determinant factors, each with a specific example:

- Is the work an integral part of the employer's business?
- Does the worker's managerial skill affect the worker's opportunity for profit or loss?
- How does the worker's relative investment compare to the employer's investment?
- Does the work performed require special skill and initiative?
- Is the relationship between the worker and the employer permanent or indefinite?
- What is the nature and degree of the employer's control?

The guidance ultimately concludes that "most workers are employees under the FLSA's broad definitions". The WHD has entered into a Memorandum of Understanding with the IRS and twenty-three states to combat employee misclassification.

New EPA Policy Expanding Protected Waters Could Affect Retailers

The Environmental Protection Agency (EPA) and Army Corps of Engineers (Corps) have finalized a rule redefining which bodies of water are protected under the federal Clean Water Act (CWA). Under the CWA, so-called "Waters of the United States" receive heightened protection, and activities that could affect such waters may be subject to heightened permitting and environmental requirements.

Specifically, by changing the definition of "Waters of the United States" (WOTUS), this final rule is likely to impact Spill Prevention, Control and Countermeasure (SPCC) requirements, spill reporting obligations, construction permitting requirements, and effluent discharge monitoring and reporting requirements, among others.

Practically speaking, if you had to comply with CWA permits before now, nothing has changed. However, if you have a store where you previously did not need to comply with CWA requirements, that may have now changed. Even if no obligation is triggered for a particular convenience store you own, you should perform an analysis of your site, especially before building a new site or renovating an old site, to ensure that such activities will not trigger regulatory obligations.

You must be in compliance with the expanded WOTUS rule beginning August 28, 2015.

To ensure compliance with the new rule, ask yourself:

1. Are you already compliant with federal CWA permits because your store impacts what was previously considered a WOTUS?

a. If yes, then you are required to continue complying with the regulations.

b. If no, go to 2.

2. If you have an existing store that was not previously affecting a WOTUS or are planning to build a new store, you need to figure out whether your store is impacting a WOTUS under the revised definition:

a. You can enter your address into U.S. Department of the Interior's Geological Survey online database to see if you are near any streams or bodies of water.

b. You can enter your address into the U.S. Fish & Wildlife's National Wetlands inventory to see nearby wetlands.

c. You can request a "Formal Jurisdictional Determination" from your local Corps Office: See here.

3. If your convenience store is located near a WOTUS, you may need to start addressing EPA CWA permitting requirements.

Congressional Transportation Saga Continues Due To Policy Conflicts

Last week, both the House and Senate continued attempts to stave off the potential crisis looming from the month end's transportation funding deadline by taking the necessary legislative steps to pass a transportation bill. However, each body took two different approaches, creating additional tension in Washington, DC about whether they will be able to reach an agreement in the last weeks of work before both bodies recess for the month of August.

The Senate remained the most hopeful that it would be able to pass the long-term bill that the transportation community has been looking for since 2008. In order to achieve their lofty goal, the Senate Commerce, Science, Transportation Committee introduced their safety, freight, and rail titles under S. 1732. These titles would reauthorize vehicle safety programs. While much of S. 1732 would not have a major impact on the auto care industry, the bill did contain a section on mandatory tire standards, independent sales reporting and a tire recall database called the "Tire Efficiency, Safety, and Registration Act of 2015."

Specifically, the bill would set two new mandatory standards for tires. The first would be a tire fuel efficiency standard for passenger car tires capable of a maximum speed either up to or above 149 MPH. The second, a wet traction performance standard, would apply to new pneumatic tires. Exemptions were included for light truck tires, deep tread tires, winter-type snow tires, space saver or temporary use spare tires, or tires with nominal rim diameters of 12 inches or less under both new standards.

Additionally, under the committee passed bill independent tire sellers would be required to record information on tire sales, including customer information that could then be used to notify customers of tire recalls. The bill further establishes a new tire recall database to assist customers in knowing whether they are driving on recalled tires. Supported by the Rubber Manufacturers Association, the section is strongly opposed by tire retailers which will absorb the full burden of this proposed requirement.

Other sections of the bill included mandatory new car dealer checks for open recalls when a vehicle is brought in for service and an update to the tire pressure monitoring system rule that would prohibit overriding, resetting or recalibrating the TPMS to an unsafe pressure. The Auto Care Association pushed for this requirement to not apply to independent service providers that often did not have timely access to this information.

S. 1732 passed the Senate Committee by a true party-line vote of 13-11, but must now be woven together with a previously passed infrastructure and environments bill and a transit bill that is still not public.

The House pushed back on the Senate multi-year bill, instead passing on July 15 a 5-month extension of the current transportation program. The funding source for that extension would be mandatory repatriation of foreign-earned revenues by US-based businesses, an approach opposed by the business community, including the National Association of Manufacturers.

The Senate, being pushed by Majority Leader Mitch McConnell, R-Ky., will take its first vote on their long-term bill on July 21. With time short it is unclear how both sides of the Hill will find a way to reconcile their differences in order to meet the July 31 funding deadline.

Senate Committee Holds Hearing On Technology In Transportation

On July 7, the Senate Commerce, Science, Transportation subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety and Security held a hearing on how technology is transforming the transportation space and whether the government is equipped to keep up with innovation. The hearing was mainly focused on freight-adopted technologies, however it

did take a turn toward the spectrum-sharing issue that both transportation and cellular companies continue to battle over.

Witnesses from Volvo Group North America, Amazon, BSNF Railway and the Port of Long Beach provided testimony regarding freight efficiency improvements, such as tracking programs, and safety-critical elements such as positive train control and truck electronic braking. Witnesses generally agreed that innovation in these tech spaces is far outpacing the abilities of government to legislate or regulate the space. Therefore, witnesses urged that any actions taken by government should continue to allow for innovation and not bind companies to specific processes or technologies.

During witness questioning, the controversial issue of sharing the 5.9 GHz portion of the communications spectrum emerged. The Volvo Group clearly stated they were against sharing the spectrum, while multiple Senators on the Committee, most notably Senator Cory Booker, D-N.J., have introduced legislation that would do just that. The 5.9 GHz spectrum is currently being limited to the development of intelligent transportation system technologies, like those used to help vehicles communicate with each other. However, cellular companies would like access to at least part of this spectrum which vehicle manufacturers claim could inhibit the development of the connected car.

Technology hearings will continue to be at the forefront of transportation discussion in Congress, particularly with the developing national transportation bill.

Car Companies Announce New Program
To Address Cyber Security Threat

Concerned about the vulnerability of connected vehicles being hacked, the Alliance of Automobile Manufacturers and the Global Automakers announced on July 14 that they were launching an Auto Information Sharing and Analysis Center (ISAC). According to the Alliance, the Auto ISAC "will serve as a central hub for intelligence and analysis, providing timely sharing of cyber threat information and potential vulnerabilities in motor vehicle electronics or associated in-vehicle networks."

The announcement purports that the program will permit automakers from around the world to receive threat information distributed by the Auto ISAC. Although the program will initially only include the automakers, the Alliance anticipates that the Auto ISAC "will eventually expand to include auto suppliers and over time, could also include strategic partners, such as telecommunications providers and technology companies."

In announcing the new initiative, the Alliance stated that "the Auto ISAC will allow automakers to more effectively counter cyber threats in real time and further enhance the industry's ongoing efforts to safeguard vehicle electronic systems and networks."

Question Of The Month

Each month we will publish questions received from the membership and the answer to those questions.

Question:

Are hold open latches permitted to be used at the dispenser of a motor fuel service station in New York?

Answer:

Yes, no and maybe. Hold open nozzles at the full service island dispensers are permitted, they are not at the self-service island dispensers.

Exception:

A listed automatic-closing-type hose nozzle valve with a latch-open device is allowed to be used on overhead-type dispensing units where the design of the system is such that the hose nozzle valve will close automatically in the event the valve is released from a fill opening or upon impact with a driveway.

Note:

There is a proposal that will permit hold open nozzles in New York subject to local fire department approval. The proposal is scheduled to be introduced sometime before the first of the year. Stay tuned.

DMV Record Retrieval

DMV record retrieval is available to association members and affiliates at a cost of $12 per record. Additionally, you may order DMV certified paper abstracts of driver's license, vehicle registration, and vehicle title records for an additional fee of $2 per abstract. Please call 516-371-6201.

Attention Inspection Stations

The association has received a flurry of requests for legal representation for violations of the DMV commissioner regulations known as "clean scanning." that is when a vehicle other that the one to be inspected is substitute for the OBD-II part of the test. We have no defense for these violations. DMV has the ability to trace the OBD-II inspection to the vehicle used for the inspection.

If you cannot pass a vehicle for any reason, get help. That help could come from DMV. This violation almost always results in revocation.

CreditFirst
NATIONAL ASSOCIATION

NEW YORK STATE ASSOCIATION OF SERVICE STATIONS AND REPAIR SHOPS, INC
WE DO BETTER TOGETHER!

Who is CFNA?

- ✓ **Credit First National Association (CFNA)** is a limited purpose federally chartered private label credit card bank, wholly owned by Bridgestone Retail Operations, LLC.
- ✓ CFNA issues private label credit cards for thousands of automotive retailers throughout the United States.

AutoPass For Tire & Service Centers Credit Card:

- ✓ Exclusively accepted at AutoPass shops
- ✓ Instant credit decisions at point of sale
- ✓ Process credit card sales on your computer running Windows 7, Vista, 8, or 8.1
- ✓ Your shop's name is embossed on each credit card opened creating a portable billboard in your customer's wallet
- ✓ The credit card is a dedicated line of credit, allowing you to close more sales and encouraging higher average ticket amounts
- ✓ Allows you to build a loyal customer base. It's been proven AutoPass cardholders buy more . . . more often!
- ✓ 6-Month Promotional Credit Plan available:

  No interest if paid in full within 6 months*

  $299 Minimum purchase required. Interest will be charged to your account from the purchase date if the purchase balance is not paid in full within 6 months or if you make a late payment.

  ***MINIMUM MONTHLY PAYMENTS REQUIRED.** Applicable to purchases made January 1 through December 31, 2015. APR: 22.8%. Minimum Finance Charge: $1.00. CFNA reserves the right to change APR, fees and other terms unilaterally.

- ✓ Monthly payments as low as $19 or 4% of balance, whichever is greater
- ✓ No annual fee

How Do I Get Started?

- ✓ CFNA Phone: 800.527.6770, prompt 2
- ✓ CFNA Email: sales@cfna.com
- ✓ Contact the:

  New York State Association of Service Stations and Repair Shops for additional information at 516.371.6201

GAS STATION FOR SALE

Branded Gas Station In Freeport, Long Island
Large C-Store On A Busy Intersection

Long Established Business
With A Large Loyal Customer Base.
Lotto Beer And Cigarette License

Fuel Sales: 70,000 Gallons Per Month
C-Store $30,000 Per Month
Rent $8,500 Per Month. Includes All Taxes.
Long Term Lease Available.
$180,000

CALL 917-854-7277
FOR INFORMATION

** Do not contact with unsolicited services or offers.

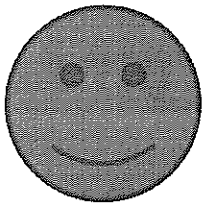
PROPERTY FOR SALE!!

LOCATED ON AVENUE U IN MARINE PARK, BROOKLYN

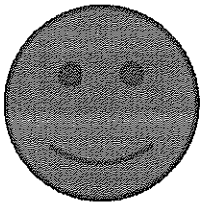
60' X 100' CORNER PROPERTY

ZONED R-4 WITH A VARIANCE FOR AUTOMOTIVE REPAIRS

ASKING $1.795 MILLION



GREAT BUY!!



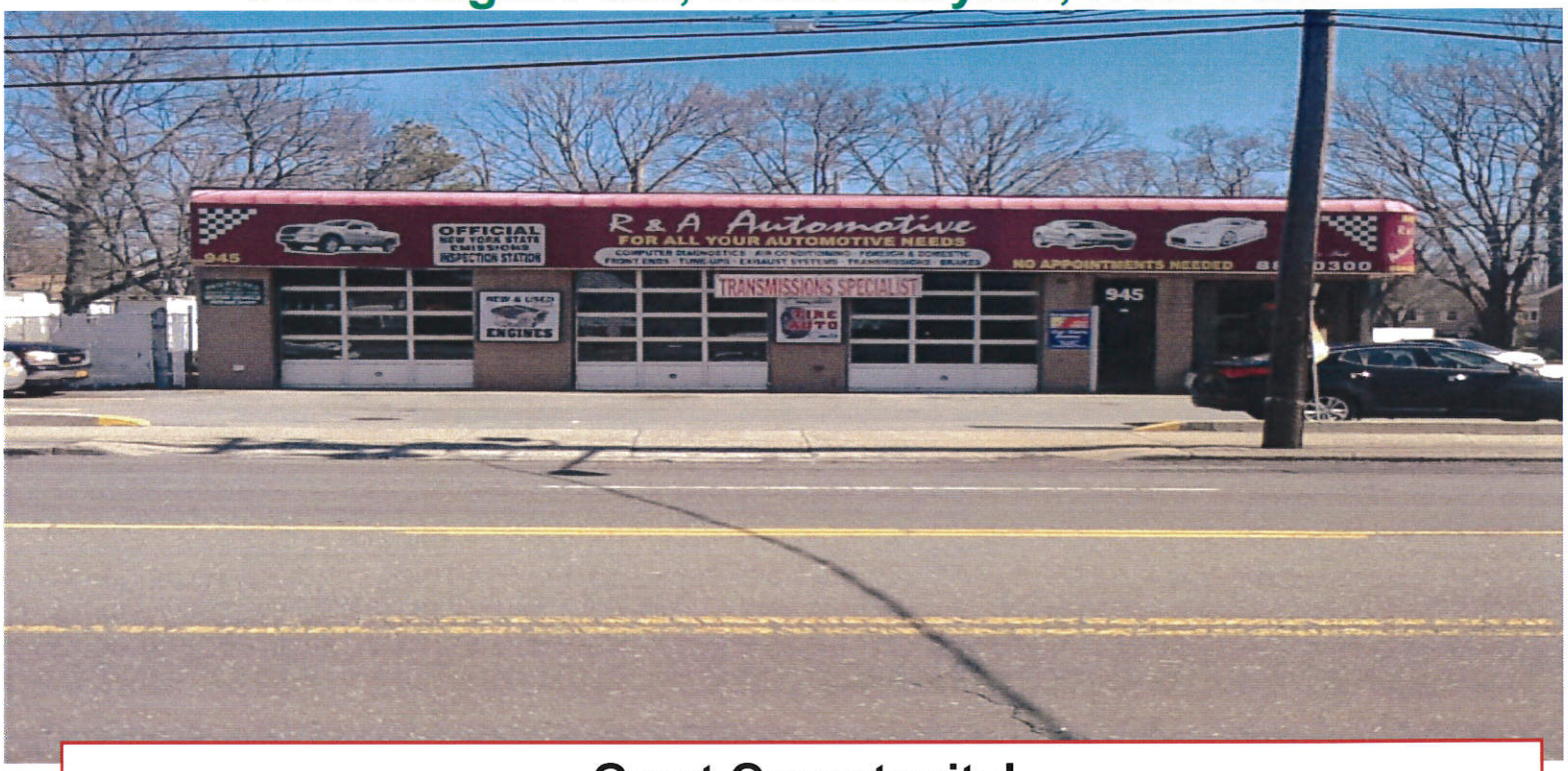
IF YOU HAVE ANY INTEREST IN THIS PROPERTY PLEASE CONTACT WAYNE AT THE GASDA OFFICE

1-516-371-6201 EXT. 101

IndustryOne.com

Specialists in Office, Industrial, & Commercial Real Estate • Since 1985 • Industry One-Gets it Done

For Sale: Auto Service Center
945 Straight Path, West Babylon, New York



Great Opportunity!
All inclusive turnkey BUSINESS and PROPERTY.
Call to schedule a visit.

PROPERTY DETAILS:

NYS inspection machine onsite
Building located south of Southern State Parkway
Private office and customer waiting room
Waste Oil heater for warehouse (natural gas also on site)
Nicely stocked store room
3 bay repair shop (one can easily be turned into a spray booth)
2 bathrooms
3 lifts (two hydraulic, one electric)
Rear and side fenced in outdoor storage for vehicles
All tools, lifts, compressor, and parts included in purchase
Ample power

Priced to sell at $ 850,000.00

For Information Contact either:
Bob Misa
Office: 631-694-3500 ext. 2
Cell: 631-742-3642
rmisa@industryone.com
Jason Tempio
Office: 631-694-3500 ext. 8
Cell: 631-882-5698
jtempio@industryone.com
Industry One Realty Corp
95 Broadhollow Rd, Suite 201
Melville, NY 11747

Industry One Realty is a member of: LIREG Long Island Real Estate Group · CIBS OFFICE · INDUSTRIAL · RETAIL · BROKERS · LIA Long Island Association · LIMBA Long Island Metro Business Action · MELVILLE CHAMBER OF COMMERCE · HIA

All Information submitted is subject to errors, omissions, change of price or rental, change and other conditions, prior sale, lease or withdrawal without notice, All areas and dimensions are approximate

Garage Insurance Survey

Name of Business:			
Street Address:			
City:	State:	Zip:	
Phone #	Fax #	E-Mail:	
Contact Person:		Phone # (if different from above)	
Are you happy with the cost and service provided by your carrier/agent?		Yes	No
If yes STOP here… If NO or NOT SURE you may want to look at the following			
Is your coverage insufficient?		Yes	No
Is the service poor to non-existent?		Yes	No
Is the cost too high?		Yes	No
Are you satisfied with your current coverage?		Yes	No
Are you interested in a quote from another insurer?		Yes	No

Is so please check each that apply:

		Property & Casualty
		Workers Comp
		Disability
		Health

If you checked one or more of the above please provide the following information:
Name of Current Insurer:
Type of Insurance:
Renewal Date:
When/How is the best time to contact you?

If you are interested in learning how you may save on insurance costs
Please fill out and fax to your local association at 518-452-1955

Lawley

Lawley Declares Dividend for 23rd Year

NEW YORK STATE ASSOCIATION OF SERVICE STATION & REPAIR SHOPS, INC

Declared Dividend is 20%

In 2015* the New York State Association of Service Stations & Repair Shops, Inc. is proud to declare a dividend for the Workers Compensation Group #536 of **20%** . This will be the 23rd consecutive year that the group will pay the dividend.

This dividend is in addition to the up front 20% discount that all members could enjoy.

Checks will be processed on 4/17/2015 and mailed directly to your address by The State Insurance Fund.

** Applies to Policy Term 5/1/13 - 5/1/14*

Further Details

Please contact:

Bill Adams at 716.849.8641 or by email at badams@lawleyinsurance.com if you have any questions or concerns.

NYSASSRS & Lawley Partnership

GASOLINE & AUTOMOTIVE SERVICE DEALERS ASS'N, LTD.

SERVING THE INDUSTRY FOR OVER 70 YEARS

372 Doughty Boulevard • Inwood, NY 11096 • (516) 371-6201 • Fax: (516) 371-1579

OFFICERS

Chairman of the Board
JORDAN WEINE

President
FRED BORDOFF

First Vice-President
CARMIE ELMORE

Second Vice-President
PHIL MENNA

Third Vice-President
LARRY YADER

Treasurer
DAVE THOMPSON

Secretary
AVI MORDEKOVICH

BOARD OF DIRECTORS

JOHN DEMEO
ASH GAIED
STEVE GLAZER
WALTER KASTELL
STEVE KESHTGAR
NEIL MACDONALD
ANTON PARISI
JOHN PARISI
PAUL RUBENFELD
AVI STEIN
MICHAEL VERARDI
DAN YAROM

RALPH BOMBARDIERE
Executive Director

KENNETH GELLER, ESQ.
General Counsel

N A P A PROGRAM

FREE MONEY

Name of Your Business:		
Business Address Street:		
City:	State:	Zip:
Phone:	Fax:	E-Mail:
Name of NAPA Dealer:		
NAPA Street Address:		
City:	State:	Zip:
Phone:	Fax:	
Additional NAPA Dealer(s) you do business with:		
Name of NAPA Dealer:		
NAPA Street Address:		
City:	State:	Zip:
Phone:	Fax:	
Name of NAPA Dealer:		
NAPA Street Address:		
City:	State:	Zip:
Phone:	Fax:	

FAX this form to: 518 452-1955

GASDA
Legal Service Plan

GASDA'S legal plan provides for consultation services and representation at hearings. The following are included:

- Representation at one small claims proceeding or one administrative hearing per year. Requests for representation must be received at the association's office 20 days prior to the hearing date.

- One-hour consultation on any single issue relating to a member's business.

- Small claims proceeding ONLY. The first two court appearances are covered under the plan. The third and all subsequent appearances are not covered. If the member wants continued representation, the appearance fee is $375 per appearance.

- The legal service attorney will provide legal representation or consultation to GASDA members at the rate of $185 per hour for any issue not included in the legal service plan.

In order to be eligible for Group Legal Service representation, a member's dues in full and all obligations to the Association must be current. For additional information, please call the GASDA office at:

516-371-6201

CIGARETTE SALES TO MINORS
CLERK CERTIFICATION

COMPLIANCE .WITH THE NEW STATE CERTIFICATION OF CLERKS WHO SELL TOBACCO PRODUCTS

CERTIFICATION OF A CLERK WHO SELLS TOBACCO PRODUCTS
POINT REDUCTION CLASS

NEW YORK STATE AMENDED ITS POLICY OF ENFORCEMENT FOR RETAILERS WHO SELL TOBACCO. UNDER THE NEW LAW A POINT SYSTEM HAS BEEN ESTABLISHED. EACH VIOLATION OF A TOBACCO SALE TO A MINOR WILL GENERATE A FINE AND TWO POINTS. THREE POINTS AND THE RETAILER'S LICENSE TO SELL CIGARETTES WILL BE SUSPENDED. HOWEVER, IF THE CLERK HAS RECEIVED A CERTIFICATION BY TAKING AN APPROVED SEMINAR, THE VIOLATION WILL RECEIVE ONE POINT.

THE STATE IS ENFORCING THIS LAW
IN ORDER TO ACCOMMODATE OUR MEMBERS,
WE ARE CERTIFIED TO PROVIDE THIS TRAINING.
PLEASE NOTE DATES, TIME, AND LOCATI0N OF THE NEXT SEMINAR

WHERE:

ASSOCIATION OFFICE
372 Doughty Blvd, Suite 2C
Inwood, New York 11096

WHEN:

The First Monday of every month at 2:00 PM
The Second Wednesday of every month at 10:00 AM

COST:

MEMBERS: $15.00 - NON-MEMBERS $30.00

PLEASE CALL FOR RESERVATIONS AT (516) 371-6201

SPONSORED BY: GASDA/LIPDRA