

# NEW YORK STATE ASSOCIATION OF SERVICE STATIONS & REPAIR SHOPS, INC.

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## **Good News**

On April 14<sup>th</sup>, the Association received the following communiqué from its lawyers in the tobacco registration fee case.

*The Appellate Division just called to inform us that they are granting a preliminary injunction pending a determination on the appeal. We view this as a very favorable determination against the backdrop of the merits of the case.*

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## **Tobacco Fee Update – Timeline For Lawsuit**

We have just been advised by the Appellate Division Clerk that the Court wants to expedite this appeal. We have to perfect the appeal (file a brief and the record) with the Court by May 6, 2010. The AG's office has to submit its brief by May 27, 2010 and we have to file a Reply Brief by June 3, 2010.

In all likelihood the appeal will be argued before the end of June. In most cases, the Court takes 30 days to issue a decision which would take us into the Court's summer session with a decision in September; however, given that this is an expedited appeal we may get a decision in early July. There is no way of knowing at this time whether they will decide the case before or after the summer recess.

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## **Right to Repair Legislation Gains Support in Congress, Massachusetts Battle Continues to Heat Up**

The Motor Vehicle Owners' Right to Repair Act, H.R. 2057, reached 60 co-sponsors last week. Reps. Loretta Sanchez, D-Calif.; Barney Frank, D-Mass.; and Michael Arcuri, D-N.Y., added their names

to the pro-consumer, pro-small business legislation introduced by Rep. Edolphus Towns, D-Calif.

In addition, Right to Repair legislation, S. 2268, now under consideration in the Massachusetts State Senate, continued to be the subject of extensive debate. Car companies, new car dealers and the United Auto Workers (UAW) have been strongly opposing the bill, hoping to keep it from a vote in the Senate. However, the Massachusetts Right to Repair Coalition recently launched a series of radio ads in the Boston area discussing the fact that the car companies are not fully releasing all safety-related technical service bulletins to the public.

The Massachusetts Right to Repair Coalition is asking all companies with locations in the commonwealth to contact their state senators asking them to bring the legislation to a vote as soon as possible. You can hear the radio ads and send a message to your state legislators by visiting [www.massrighttorepair.com](http://www.massrighttorepair.com).

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## **Oil Imports Could Be Reduced By Use Of Natural Gas In Trucks, Buses**

According to a report entitled "Developing Natural Gas for Heavy Vehicles," released on April 14 by the Center for American Progress, national petroleum consumption could be cut by 1.2 million barrels a day if half of the country's trucks and buses were replaced with models fueled by natural gas. The amount of oil saved would be more than the U.S. imported from Saudi Arabia or Venezuela in 2009. The report states that 9.5 million medium- and heavy-duty trucks and buses, consuming 2.1 million barrels of oil per day, were in service in 2009. By 2035, 15.8 million such vehicles are expected to be on the road, consuming 3.1 million barrels

of oil. If half of these larger vehicles were run on natural gas, oil consumption would be reduced to 1.9 million barrels per day, a savings of 1.2 million barrels.

The Center for American Progress also said in a statement that road transportation is responsible for nearly two-thirds of U.S. oil consumption, and that companies should continue to pursue electric and plug-in hybrid options for cars and light-trucks. However, they cautioned that such technologies “are unlikely to be efficient or cost effective for heavier vehicles.” As many buses already run on natural gas, the technology could be more easily incorporated in other large vehicles. The Environmental Protection Agency announced greenhouse gas limits on April 1 on cars and light trucks. The agency is currently considering a petition to establish greenhouse gas emissions limits for heavy-duty trucks.

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### **Industry Groups Contend EPA's Lead Standards Stronger Than Necessary**

The Coalition of Battery Recyclers Association and Doe Run Resources Corp. argued last week before a federal appeals court that the Environmental Protection Agency (EPA) had relied on flawed methodologies and a flawed study in publishing new air quality standards for lead in 2008, leading to standards that were more stringent than necessary to protect public health.

In an oral argument before the U.S. Circuit Court of Appeals for the District of Columbia Circuit, industry attorneys argued that EPA had improperly tied its national air quality standards for lead to lower intelligence quotient scores in children, while earlier standards had been linked to concentrations of lead found in the blood.

The industry groups further alleged that EPA improperly calculated lead standards in using annual exposure data in reaching quarterly air quality standards. The original lawsuit was filed in December 2009.

Specifically at issue were the primary and secondary lead standards for lead established in 2008 – both set at 0.15 microgram per cubic meter ( $\mu\text{g}/\text{m}^3$ ) over a three-month rolling average that may not be exceeded over a three-year period. Both the primary and the secondary air quality standards were within the recommended range of EPA's Clean Air Scientific Advisory Committee.

Before the new air quality standards were published in 2008, both the primary and secondary standards were 1.5  $\mu\text{g}/\text{m}^3$ , averaged annually. The shift from an annual to a three-month averaging time has led to a more stringent than necessary standard, according to industry. EPA argued that the standards were well within the zone of reasonability. EPA's Clean Air Scientific Advisory Committee had recommended that the agency set the lead standards in a range between 0.05  $\mu\text{g}/\text{m}^3$  and 0.20  $\mu\text{g}/\text{m}^3$ . There has been no decision as yet from the court.

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### **IRS Posts FAQs Regarding Health Care Tax Credits for Small Business**

The Internal Revenue Service (IRS) posted new frequently asked questions to its Web site on March 31 intended to provide transition relief for tax years beginning in 2010, making it easier for taxpayers to meet the requirements needed to qualify for the new small business health care tax credit.

According to the FAQs, during the period of transition relief, an employer that pays at least 50 percent of the premium for each worker enrolled in coverage that the

employer offers will not fail to maintain a qualifying arrangement just because the employer does not pay a uniform percentage of the premium for each covered employee.

The 50 percent requirement applies to single coverage for the employee. Thus, if an employee were to opt for more expensive coverage (such as family coverage), the employer would satisfy the requirement as long as they paid more than 50 percent of the would-be premium for single coverage for that employee, even if less than 50 percent of the actual coverage taken by the employee. The FAQ contains other information about the tax credit, including calculations of full-time equivalent employees for health care tax credit purposes.

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### **AfterMarket News – Lang Report**

#### *Dealer Closings Not All Roses For Non-Dealer Repair*

“With over 2,000 Dealer closings during 2008 and 2009 (and more closings on the way) the Dealer population in the U.S. is plunging.”

“While most ramifications of Dealer closings are positive for independent (non-Dealer) repair facilities, the shrinking Dealer population could increase competition among Service outlets in some aftermarket segments.”

-- Jim Lang

#### *2,800 Fewer Dealers Over Three Years*

The Dealer population in the U.S. will fall below 18,100 by the end of 2010, down more than 2,800 since the beginning of 2008.

#### *Closings Mostly Among Domestic Dealers*

Over 95% of Dealer closings are domestic nameplate outlets. Some foreign automakers have suffered outlet losses as a result of dual-franchise Dealer closings. Conversely, several foreign carmakers are substantially expanding their Dealer bases, particularly Hyundai and KIA.

#### *Foreign Vehicle Aftermarket*

The foreign vehicle aftermarket (imports and transplants) will generate virtually all light vehicle aftermarket product growth for the foreseeable future.

During the next five years, foreign vehicle product sales will increase over \$7 billion; while domestic cars and light trucks will struggle to generate aftermarket product growth.

#### *Dealers Strong In Foreign Aftermarket*

Since virtually all reduction in Dealer outlets is concentrated among domestic carmakers, the fast growing foreign vehicle aftermarket will continue to be well-served by Dealers. This means Dealers are in a strong position to expand their foreign vehicle aftermarket share over the next several years.

This will be prompted by their need to fill service bays that will lack business from foreign cars and light trucks three years and younger, as a result of the general decline in new vehicle volume.

Consequently, foreign Dealers will aggressively expand the age mix of vehicles they attract to their service bays. This will increase competition for independent outlets in the foreign vehicle aftermarket.

#### *OE Brand Preference*

Manufacturers and distributors of domestic

aftermarket product brands could see growing competition from OE brands as a result of mechanics migrating from closing Dealers (particularly domestic outlets) to independent (non-Dealer) repair facilities.

These Dealer-trained mechanics will likely show a preference for OE products and could increase OE product demand among the independent service outlets to which they relocate.

#### *Domestic Dealers Hungry For Service*

Like their foreign Dealer counterparts, surviving domestic Dealers will aggressively seek service bay business from an older mix of vehicles in order to compensate for the loss of volume from vehicles three years and younger. This will lead to increased competition from Dealers for domestic vehicle repair in some markets.

#### *Changing Competitive Environment*

While the independent Service market will gain repair volume as a result of closing Dealers, strength of Dealers will remain high in the foreign vehicle sector, and OE brand use by mechanics for some products in the independent aftermarket could increase as a result of mechanics migrating from Dealers to independent service operations.

*'From Aftermarket Insight™ by Jim Lang, President of Lang Marketing Resources, Inc., www.langmarketing.com*

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#### **NACS Asks For Elimination Of Stage II Vapor Recovery**

In January, the U.S. Environmental Protection Agency (EPA) proposed regulations to tighten the standards

controlling ozone emissions into the atmosphere. This proposal is expected to push a significant number of counties into an environmental designation of severe non-attainment with ozone standards.

The implications for petroleum retailers could be significant: severe non-attainment designations trigger a requirement that retailers install stationary Stage II Vapor Recovery Equipment—a project that can cost a retailer more than \$50,000 per location.

In late March, the Association found an ally in the battle against the Ongoing requirement of Stage II Vapor Recovery. NACS asked EPA to take action to eliminate this requirement. The Clean Air Act provides for removal of the Stage II program once vehicles that are equipped with onboard vapor recovery systems are in “widespread use.” The definition of “widespread use” is left to the discretion of EPA, which has not yet finalized this definition.

Consequently, Stage II remains in effect even though the overwhelming majority of vehicles in the United States are equipped with onboard systems. In fact, onboard systems were required to be phased-in to the vehicle pool beginning with 40 percent of vehicles manufactured in 1998 and 100 percent of vehicles manufactured in 2000.

NACS urged EPA to make its declaration of widespread use as part of any final rule changing the ozone standards.

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#### **A.10431 – S.7247 Schimminger – Johnson Loosens Requirements For Beer Licenses**

A favorable bill has been introduced in both the Senate and the Assembly that markedly

changes the requirements for convenience stores holding beer licenses. The bill, A.10431 -- S.7247, was introduced by Assemblyman Robin Schimminger and by Senator Craig Johnson.

Recently, the New York State Law Revision Commission released its “Report on the Alcoholic Beverage Control Law and its Administration” in which the Commission made several recommendations to improve upon the Law and streamline its management and enforcement. One of these recommendations was to change the products that grocery stores, including convenience stores, must carry in order to maintain a food license.

The bill would replace the old law with the requirement that stores have 50% or more of the shelf space devoted to consumer commodities as defined in Sec 2a of the Agriculture and Markets Law. Consumer commodities are defined to consist of foods, both liquid and solid, for humans and domestic pets, paper products and food wrappings, soaps and detergents, non-prescription drugs and toiletries.

The Association has testified in favor of such a change, and will work towards the bill’s passage.

The State Liquor Authority also supports such changes. SLA Chairman Dennis Rosen has indicated he is considering adopting the consumer commodity requirements administratively, which would negate the need for legislation. *However, the SLA is still fining stores who meet requirements at application time, but fail to meet its antiquated standards during an inspection.* The association has requested a meeting with the SLA at the highest level over the issue.

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### **A Tiresome Situation**

*Details are offered on how New York State went about attacking its scrap tire stockpiling problem.*

*By James Gilbert*

An estimated 18-20 million waste tires are generated each year in the Empire State, equating to approximately one tire per New Yorker, per year. And, though that’s less than the 44.4 million tires being generated each year in California, it’s still a lot of tires to handle. In 2003, to combat the growing issue of in-state post consumer tire waste, the New York State Legislature passed, and then-Governor Pataki enacted, the Waste Tire Management and Recycling Act which created the Waste Tire Management and Recycling Fund and established a recycling fee of \$2.50 per new tire sold, including tires on new motor vehicles.

Money generated from the fee, and taken from the fund, was to be used for two purposes. First, the New York State Department of Environmental Conservation (NYSDEC), responsible for overseeing the management of waste tires, was charged to abate illegal stockpiles. Second, Empire State Development (ESD) was to create additional markets for recycled tires.

From 1989 to 2003, roughly 20 tire stockpile fires in New York were documented – consuming approximately 3.7 million tires – of which started in both unlicensed and licensed facilities.

Documentation shows that, once a stockpile catches fire it emits serious quantities of smoke and creates a pyrolytic oil which seeps into the ground and water, contaminating both the soil and local water table. Tire fires are notoriously difficult to extinguish.

In the early 2000s, West Nile Virus began to spread across the U.S., and one of the first

hotspots was in New York. Medical studies proved that mosquitoes, responsible for spreading WNV, preferred scrap tires as a prime breeding source, as tires can accumulate small pools of water, where adult mosquitoes will lay eggs. The mosquito species most responsible for spreading the virus seemed to prefer the puddles created by old tires left outdoors. This applies to any tire left unattended outside to gather water, including those left by homeowners and tire dealers, not just stockpiles.

The above concerns were just some of the issues addressed with the creation of the state law.

#### *The Stockpile Abatement Plan*

In 2003, NYSDEC officials visited 162 in-state locations identified as potential waste tire stockpiles. Upon investigating, the NYSDEC initially identified 95 sites as being non-compliant waste tire stockpile sites, containing approximately 29 million abandoned waste tires. That initial list of identified sites eventually grew to 146, as the NYSDEC uncovered an additional 51 previously unreported tire stockpiles, bringing the estimated number of tires to 34 million.

The sites were prioritized by size and other criteria including proximity to schools and to the water table. Further, it was found that five of the non-compliant waste tire stockpiles represented approximately 85 percent of all the tires stockpiled in the Empire State. These sites included:

- Fortino, West Monroe: 10 million tires
- Mohawk Tire Recycling, Waterford: eight million tires
- Hornburg Tire, Sinclairville: 3.5 million tires
- New York Tire/Izzo Property, Smithtown: two million tires
- Cycletech, Hudson: 1.2 million tires

Abatement work began on the priority sites soon after the plan was completed. And, in November 2009, the NYSDEC announced that, of the state's 17 largest tire dumps, a dozen had been completely abated.

In fact, of the 146 total sites, 102 of them – representing 26.5 million tires – are completely abated. Nearly all the waste tires removed under the cleanup program were recycled for other uses, such as landfill liners and road construction materials. And, it is anticipated the remaining sites be completed ahead of the act's December 31, 2010 target date to abate all non-compliant waste tire stockpiles.

#### *Tire Recycling Market Development*

Empire State Development's Office of Recycling Market Development (later renamed the Environmental Services Unit) was created in the late '80's as a non-regulatory state agency designated to help create markets for the growing amount of materials generated in state from newly established municipal recycling programs.

Based on its success in the '90s, the department's mission was expanded and continues to help companies with both their recycling and with pollution prevention efforts. Thus it was a natural fit to give ESD the mission to develop tire recycling markets.

In response to the new responsibilities, ESD's first order of business was to assess the status of local tire recycling markets. With the help of consulting firm R.W. Beck, Inc. a 2003 assessment confirmed that, based on a 20-pound passenger tire equivalent, approximately 20 million scrap tires are generated annually in New York State. Taking this into account, R.W. Beck officials then categorized the market for waste tires under six different areas, including re-use, ground rubber, tire derived

aggregate (TDA), tire derived fuel (TDF), “other” recycling and “other” unspecified.

R.W. Beck has conducted three additional annual reports since the initial 2003 effort. And, by 2006, it became apparent the market picture had changed.

Each year, the assessments refined methodologies, and a better understanding of marketplace dynamics helped R.W. Beck minimize the “other unspecified” category. One item quite noticeable in Figure 1 is that, over the four years documented, the TDF market had grown significantly in importance to the state. During that time, international energy prices rose dramatically and two utility boilers in the state started using TDF as a coal supplement.

The other high-growth area was ground rubber. ESD helped several NY companies both start and expand their capacities for producing ground rubber. From 2004 to 2008, nine capital project projects were awarded \$3.9 million in investment from the tire management fund. Most of the companies used the funds to increase capacities for producing ground rubber. Others invested in molding capacity to make ground rubber into new products.

Other ESD investments included partnering with the state Department of Transportation on an education program and demonstration projects that focused on the use of ground rubber in asphalt rubber chip seal applications. Another project, found at the New York State Fairgrounds, demonstrates the use of ground tire rubber as a component of horse show footing. In addition to the above projects, ESD also funded research that helped prove that ground rubber is safe to use as infill material in artificial turf fields and as playground mulch.

Over the four years documented, the growth of TDF and ground rubber usage resulted in

lost market share for TDA. To help keep the tire recycling market diversified, ESD invested in the Tire Derived Aggregate Program at the University at Buffalo, which is helping to develop and promote a diverse number of TDA applications from septic system drain fields to road sub-base and residential basement backfill.

Finally, the R.W. Beck reports demonstrated that tire flows into and out of the state are a result of commercial activity and do not recognize political borders.

#### *Current Market Assessment*

The current market for tire recycling in New York is best described as balanced but fragile. There are several factors at work that could easily upset that balance.

The first of those is the economy, as the economic downturn has affected the demand for ground rubber, making artificial turf projects and rubberized-asphalt paving projects more difficult to justify.

The second issue involves the federal courts’ effort to redefine TDF for the purposes of strengthening regulations under Sections 112 and 129 of the Clean Air Act (a.k.a. the 112/129 issue). Essentially, the courts want to amend the regulations, making it more difficult for plants to burn tires for energy.

If that ruling goes into effect as originally written, it will force many TDF users to have to re-evaluate the economics of their facilities. And from that, many plants will likely close, creating a glut of material in the marketplace.

One ongoing controversy involves the use of ground tire rubber on playgrounds and in artificial turf fields (see “Picking up the crumbs” in the April 2009 issue of Resource Recycling). Over the last several years, communities and organizations from cost to

coast have raised concerns about children coming in contact with the reused material. The federal Centers for Disease Control and Prevention even issued a recent health advisory, claiming that older fields may be at risk for lead exposure as wear kicks up turf dust. All of this despite the U.S. Environmental Protection agency (EPA) releasing numerous studies – the most recent being the November 2009 A Scoping-Level Field Monitoring Study of Synthetic Turf Fields and Playgrounds – addressing the issue, all of which indicate that there is no cause for concern (though the EPA has indicated that some areas do warrant more investigation).

Finally, in September 2009, New York's northern neighbors, Ontario, Canada, agreed to implement a stewardship program to handle the 12 million scrap tires generated in that province.

Unfortunately, the fee structure being used with the program is considered by most standards to be very generous. In fact, it has already forced several New York companies to adjust their business plans and two ground rubber companies have already closed. In addition, the plan creates incentives intended to steer processors away from such markets as TDF and more toward the use of scrap tires in such products as auto parts, flooring, playground surfaces and athletic fields. Some industry experts claim the plan works against creating a balanced market-place for recovered scrap tires.

### *Moving Forward*

The Waste Tire Management & Recycling Act of 2003 is scheduled to sunset in 2010, though a proposal has been submitted to the legislature to extend the fees, and allow proceeds be used to fund other environmental projects.

If some of the funding is made available for

tire recycling, ESD's analysis indicates that, since New York has basic processing capacity in place, future focus should be on creating additional demand for tire-derived products. Included would be additional funding for the manufacture of rubberized asphalt and molding with ground tire rubber, and investigating any further concerns raised regarding the markets for artificial turf infill and playgrounds.

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### **General Counsel Corner**

*By Peter H. Gunst, Esquire, SSRA*  
A Morality Tale

Equilon Enterprises trading as Shell Oil Products ("Shell") had a problem with a service station that it owned in Riverside California. The local watershed project authority informed it of a significant groundwater contamination problem at the station that could require extensive remediation, and threatened to cause a spill that would result in millions of dollars of liability to Shell.

When the authority demanded that it enter into an indemnification agreement, Shell concluded that it would cost it between \$300,000 and \$500,000 to install a containment system; that it would be required to spend \$40,000 a year to maintain the system; and that a spill could result in a liability to Shell of between twenty million

and fifty million dollars.

What to do? Shell was already in negotiations to sell the station to its dealer, Elias Atallah, for a sum of \$759,575. So why not unload the environmental landmine on its unsuspecting dealer?

It is undisputed that Shell never told Mr. Atallah about the groundwater problem, the cost of remediation or the potential environmental liability. It also failed to advise Mr. Atallah that Shell had allowed the conditional use permit for the station to lapse.

After the sale to Mr. Atallah had closed, he learned that the permit had lapsed when he started to install new underground storage tanks. When he sought to obtain a new permit, its issuance was opposed successfully by the watershed authority, which revealed the site's significant environment problems. Mr. Atallah then learned that the station was inoperable.

Mr. Atallah sued for fraud in state court, and Shell adamantly resisted his right to obtain any remedy even though it conceded that it had concealed from him obviously significant information concerning the station's environmental problems.

Ultimately a jury ruled in Mr. Atallah's favor, awarding him \$1,700,000 in damages attributable to his inability to operate the station. Mr. Atallah's claim for punitive damages, however, was dismissed by the court for technical reasons.

Rather than let things ride, Shell appealed citing technical arguments that only a lawyer could love. Mr. Atallah countered by appealing the trial court's dismissal of his request for punitive damages.

In a non-published opinion released in late 2008, *Atallah v. Equilon Enterprises*, the

California intermediate appellate court affirmed the jury's finding of liability and remanded the case to permit Atallah to present his case for punitive damages.

Rejecting Shell's contention that there was "no evidence of any intent to conceal" the station's true condition, the appeal courts found its argument to be "remarkable" given the "campaign of deception" that Shell had pursued against Mr. Atallah.

The appeals court concluded:

In many ways, this case is a paradigm fraudulent concealment case. There is no doubt about what was concealed, no doubt that what was concealed was not merely material but crucial – a literal deal-breaker – and no doubt that [Shell] intended to deceive Atallah. There simply was no other way of unloading the gas station as a gas station, especially for the sum of \$759,575.

The subsequent trial of Mr. Atallah's punitive damage claim in March, 2010 resulted in the award of an additional fifty million dollars in punitive damages.

In a statement released after the trial, Mr. Atallah's attorney described his client as "the quintessential little guy fighting for his rights." And indeed he is, having to pursue his claim through a legal battle that lasted many years.

But what of Shell? Why did it embark upon what the appeals court labeled a "campaign of deception" intended to exact \$759,575 from Mr. Atallah? That sum does not even amounting to a rounding error on Shell's massive multi-billion dollar financial statement.

Is it surprising that Shell engaged in behavior more befitting a cheap con artist than a major corporation? Given what we have learned about corporate morality over

the past year and a half, maybe it is not so surprising at all.

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### **From the DEC – Penalties For Failing To Remove Single Walled Tanks**

1/1/10. All single walled tanks must be removed. Due to backlog, facilities showing a good faith effort to replace tanks will be given an extension of time to have tanks removed. Facilities that have not removed tanks but submitted a complete Permit to Construct application package prior to 12/1/09 will not receive an upfront fine. A complete package consists of an application form, registration form, proper fees and detailed plans prepared by a professional engineer or architect licensed in New York State. Facilities that have not removed tanks and did not submit a complete package to upgrade prior to 12/1/09 have not demonstrated a good faith effort to comply with the code and will receive an immediate fine of \$1000/tank (effective 1/1/10).

5/1/10. All single walled tanks must be removed. Facilities that have not removed tanks will be required to pay penalties of \$0.0025/gallon/day, to be paid on a monthly basis.

8/1/10. Facilities that have still not removed their tanks will be subject to a \$1000/tank monthly penalty in addition to the \$0.0025/gallon/day penalty.

11/1/10. Facilities that have still not removed their tanks will be subject to a \$2000/tank monthly penalty in addition to the \$0.0025/gallon/day penalty.

1/1/11. Facilities with single-walled underground tanks will be subject to a \$500/tank/day fine.

All facilities with single walled tanks will be

required to sign an Order on Consent which will contain the terms of this guidance document in order to continue operating beyond 1/1/10.

Facilities that do not sign the Order and operate single walled tanks will be subject to fines of \$1000/day/tank beginning 1/1/10.

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### **Get the Most Out of Your NYSASSRS Membership with Energy Plus™!**

The New York State Association of Service Stations and Repair Shops has made a unique electricity program available to their members! Through Energy Plus™, one of the fastest growing energy supply companies in New York State, NYSASSRS members may be eligible to receive a waiver of the sales or other tax charges on the delivery portion of their bill AND earn Cash Back on their supply charges!

NYSASSRS members who switch to Energy Plus will receive a \$50 activation bonus for signing up their business, a sales tax savings of up to 9.75% on the delivery portion of their bill, and a 3% Cash Back rebate on the supply portion of the electricity bill for their business. If members enroll their homes, they will receive a \$25 activation bonus, a 2% Cash Back rebate, and the same tax savings benefit.

Switching to Energy Plus™ is easy and risk-free! There are no changes to your service - your utility company will continue to deliver your electricity, mail your bill, read your meter, and handle any power outages. Also, there are no sign-up fees, cancellation fees, or long-term commitments.

Once you enroll with Energy Plus™, you'll be receiving a market-rate product that fluctuates from month to month according to the market price of electricity. The market

rate may not exactly match that of your current supplier in any given month, but you'll be earning a sales tax waiver AND Cash Back - something unique to the Energy Plus™ program.

To be eligible you just need an address within the Energy Plus™ service area, which covers all of New York State, except areas covered by the Long Island Power Authority (LIPA).

To enroll today and start earning Cash Back and Tax Savings, Call Energy Plus™ at 866-964-5672 and mention Offer Code "0059" or visit:

[www.EnergyPlusRewards.com/NYSASSRS59](http://www.EnergyPlusRewards.com/NYSASSRS59).

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### **Minimum Age For Cashiers Who Sell Alcoholic Beverages**

The regulations for clerks who sell alcoholic beverages taken from page 7 of the State Liquor Authority Handbook are as follows:

1. Clerks and cashiers who handle and receive payment for alcoholic beverages in drug stores, grocery stores and convenience stores must be at least 16 years old and must be supervised by someone who is at least 18 years old.
2. Clerks and cashiers in liquor and/or wine stores must be at least 18 years old.

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Policy Give You 35%  
Of Your Premium Back  
Last Year?**

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To Receive A Price Quote**

### **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 drivers license, vehicle registration, and vehicle title records for an additional fee of \$2 per abstract. To use this service, please call 518-452-4367 or 716-656-1035

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### **We Have Changed Our Web Address**

The Association is pleased to announce a new web site. The old website has been completely revamped to provide you with easier faster access to the information you need. The new address is

**[www.nysassrs.com](http://www.nysassrs.com)**

Our e-mail address has changed to:

**[state@nysassrs.com](mailto:state@nysassrs.com)**

In addition to being able to read back issues of newsletters, and providing you with links to important sites we have added a bulletin board to keep you better informed as stories break.

## **WARNING**

**YOU CANNOT DO  
INSPECTIONS IF ANY OF YOUR  
EQUIPMENT IS MISSING OR  
INOPERABLE.**

**PERFORMING AN INSPECTION  
UNDER THESE CONDITIONS  
CAN RESULT IN REVOCATION  
OR SUSPENSION OF YOUR  
INSPECTION LICENSE.**

# FORM 1099 NIGHTMARE COMING IN 2012 SSDA-AT WANTS YOU TO HELP STOP IT

As a result of the Patient Protection and affordable Care Act signed this year, beginning with payments made in 2012 every business will be required to issue to any vendor of services OR property to which the business has paid more than \$600 a year for those services or property, an information reporting form known as Form 1099. The Form 1099 must also be sent to the Internal Revenue Service. In addition to issuing the forms, a business will have to get Taxpayer Identification Numbers (TINs) from all of those vendors and withhold payments to any such vendor until it receives the TIN. Penalties apply if you fail to issue the Forms 1099.

Under the existing law, businesses issue the Form 1099 only to individuals who provide services to a business. The new law makes two changes: the Form 1099 must be issued to corporations of all sizes and shapes as well as to individuals AND a Form 1099 must also be issued to individuals and corporations that provide property to a business.

The payments that are included under this are not only those made directly by check but also those made by other means such as credit cards, for example. Think about the airlines, hotels, rental cars, and restaurants that appear on your credit card bill. You might not think of them as vendors of goods and services, but that is what they are. Also, if you are in the business of selling or distributing goods, all of your suppliers of products are also vendors under the new law. (Under existing law there are regulations that provide narrow exceptions for some types of vendors (telegrams, telephone, freight, storage) and some individual vendors that accept payment from you by credit card and meet qualifications set forth by the IRS. Even if some regulatory exceptions are carried over under the new law, you will still be the one responsible and liable for issuing the information report and it will not be easy.) And Congress is considering doubling the penalties.

And, of course, any business that pays you more than \$600 will be sending *you* a Form 1099.

Representative Daniel Lungren (R-CA) has introduced legislation to repeal the requirement. The bill is H.R. 5141, The Small Business Paperwork Mandate Elimination Act. SSDA-AT, as well as other organizations, has signed a letter of support to Rep. Lungren.

## TAKE ACTION

If you want to send emails to your Senators and Representative, go to [www.stopform1099.org](http://www.stopform1099.org).

**But do not stop there, call your Senators and Representatives (202-224-3121) and deliver the message you will find at [www.stopform1099.org](http://www.stopform1099.org).**

# RSGDAofWNY

Repair Shop and Gasoline Dealers Association of Western New York

## Member Legal Services Plan

Administered by  
**KENNEY SHELTON LIPTAK & NOWAK, LLP**

Dues paying members in good standing with the Association are entitled to participate in our group legal services plan that provides the following services:

- Five billable hours of legal services for representation and defense at Department of Motor Vehicles or any other New York state Administrative Proceeding or Hearing for repair-shop related issues, and in Small Claims Court, if your business is sued. The Plan does not include representation in any court other than Small Claims or in any matter where the member is charged with a misdemeanor or felony.
- Additional legal services for covered services as listed above, and representation in business-related matters brought in any court other than Small Claims, will be provided at the law firms standard hourly rate (\$200) less 25% member discounted rate (\$150).
- One hour of free consultation per year for business-related transactions, including leases, supply contracts, and franchise agreements.
- Real estate (residential) purchase or sale at a flat fee rate:  
Sale \$400  
Purchase \$400
- Estate planning at a flat fee rate:  
Simple will (single) \$100  
Simple will (husband and wife) \$150

In order to participate in the plan, you must be a dues paying member, in good standing, and must have been a member for at least ninety days prior to the need for legal services.

If you are in need of this service, you must first call the association office at (585) 423-9924 or (716) 656-1035. The association will then contact the law firm to relay your information. You will be contacted by the law firm, personally, to schedule an interview.

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The law firm of Kenney Shelton Liptak and Nowak, LLP was chosen to administer the RSGDAofWNY legal plan based on their knowledge and familiarity with the needs of our industry.

**To become a dues paying member of RSGDAofWNY  
and be eligible for legal services, call (716) 656-1035**

# Enjoy These Great Benefits with Energy Plus™



**Earn 3% Cash Back**  
every year on the supply portion of the  
electricity bill for your business\*

**Save up to 9.75%**  
on your electricity bill\*\*

**Enjoy the same service**  
without risk, fees, or long-term commitments

**Receive a \$50 activation bonus**  
just for signing up a business account\*

**ENERGY PLUS** 

## **Tax Savings every month.**

Skip the sales tax on delivery charges with Energy Plus. You'll save up to 9.75% off the delivery portion of your bill every month because you'll qualify for an automatic New York State sales tax waiver for choosing an alternate supplier. Enjoy the waiver from the very first month you're with Energy Plus.

## **For your business AND home.**

Energy Plus provides electricity to both homes and businesses throughout New York so you can sign up all your accounts. Residential accounts receive a \$25 sign-up bonus check and 2% Cash Back rebate check on annual electricity supply charges. \* Sign up both your business and home and start saving today!

## **Is there any cost to cancel?**

Absolutely not! With Energy Plus, there are no costs to enroll, no monthly fees associated with your account, and no penalties for cancellation. Unlike some fixed-rate products, you can try Energy Plus risk-free!

## **No service changes—service remains with your local utility.**

The best part is that nothing about your service will change. Your local utility will continue to deliver your electricity, read your meter, handle service emergencies, and send your monthly statement. You'll be earning Cash Back and saving money, while still enjoying the safety and reliability of your current service.

## **Act Now!**

Call **866-964-5672** and mention **Offer Code "59"** or visit  
**[www.EnergyPlusRewards.com/NYSASSRS59](http://www.EnergyPlusRewards.com/NYSASSRS59)** to learn more.



**Brought To You By Your**

### **TRAINING INFORMATION**

#### **Class will be held:**

6/14/2010 6:00 PM – 10:00 PM

Holiday Inn Express  
400 Old Loudon Road  
Latham, NY 12110

Class ID: 28612

Class Contact:

Matt Englatt  
(518) 785-3781 x254  
[Matthew\\_englatt@genpl.com](mailto:Matthew_englatt@genpl.com)

Albany DC  
301 Wolf Road  
Latham, NY 12110

## **Pass Through PCM**

### **Reprogramming**

#### **OBJECTIVE:**

Review internet resources as a repair tool. A high speed internet connection is needed at the training site in order to allow hands-on.

#### **COURSE CONTENT:**

- Resources available on the Internet
  - Free sites
  - For fee sites
  - OEM calibration sites
- Information and reprogramming
- Vehicle programming modules will be used
- Actual PCM reprogrammed in class
- Using flash equipment

**Information is often the most important tool you have. NAPA Autotech's experienced trainers show you how to find the information you need, how to get it and where to get it.**



NAPA Autotech training classes are led by experienced ASE certified training specialists that consistently receive "Excellent" ratings from their students.

**For more information about this class, CALL 1-800-292-6428**



**AUTOTECH™**  
*Training You Can Get Your Hands On*

# Diagnostic Training Series



Brought To You By Your

## MODE 6

## DIAGNOSTICS

NAPA Autotech's instructor-led diagnostic Classes provide techs with ASE established procedures.



### OBJECTIVE:

Equip technicians with the skills to use the Mode 6 as a time saving diagnostic tool.

### COURSE CONTENT:

- Viewing Mode 6 data
- Mode 6 as a diagnostic tool
- Advanced CAT testing
- Misfire diagnostics using Mode 6
- Using Mode 6 to diagnose O<sub>2</sub>, EVAP and EGR systems
- Using Mode 6 to prevent OBD-II repair comebacks

The experienced Autotech Trainers demonstrate the benefits of using Mode 6 on Scan Tools.

NAPA Autotech training classes are led by experienced ASE certified training specialists that consistently receive "Excellent" ratings from their students.

For more information about this class, CALL 1-800-292-6428

### TRAINING INFORMATION

Class will be held:

9/16/2010 6:00 PM – 10:00 PM

Holiday Inn Express  
400 Old London Road  
Latham, NY 12110

Class ID: 28613

Class Contact:

Matt Englat  
(518) 785-3781 x254  
[Matthew\\_englat@genpl.com](mailto:Matthew_englat@genpl.com)

Albany DC  
301 Wolf Road  
Latham, NY 12110



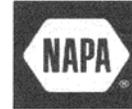
**AUTOTECH™**  
Training You Can Get Your Hands On

## The NAPA Major Account Program

\*\*\* **FREE MONEY GIVEAWAY** \*\*\*



Want to put more money in your pocket  
and do nothing more than you do now?



You already buy parts and supplies for your business so why not buy from NAPA and earn 2% rebate!

The Association and NAPA developed a complete, competitive supply program designed to boost your backroom profits and meet your customer needs. Here's what it includes:

### BENEFITS TO ASSOCIATION RETAILER

<b><u>Quality</u></b> Products that meet or exceed OEM specifications	<b><u>Consistent</u></b> Nationwide Parts Warranty
<b><u>Customized</u></b> Pricing -Reduced Parts Costs	<b><u>Availability</u></b> -Up to 342,000 Part Numbers
<b><u>Improved</u></b> Inventory Turnover	<b><u>Broader</u></b> Inventory Coverage
<b><u>Less</u></b> Downtime -Higher Gross Profitability	<b><u>Obsolescence</u></b> Protection
<b><u>Increased</u></b> Field Contacts -700 Factory Representatives	<b><u>Tailored</u></b> Local Inventories
<b><u>Consistent</u></b> Manufacturers Throughout Our System	<b><u>Recognized</u></b> Consumer Brand
<b><u>More</u></b> Effective Shop Inventory -Reduced Investment and Higher Productivity	
<b><u>Prolink</u></b> Internet based catalog, 24/7 parts availability and pricing	

### PROFIT PLAN

Very competitive pricing on NAPA Premium and Value Line products  
Special quarterly stocking incentives  
Quarterly product discounts to enhance competitive pricing during key selling seasons  
Discount on electronically ordered parts from participating stores  
Prompt payment discount terms (2% 10, Net 20)

### A BRIEF LOOK AT NAPA

Since 1925, NAPA (**National Automotive Parts Association**) has helped businesses expand their parts coverage and maximize turnover and ROI. They offer an unparalleled package for people, products and programs to increase your productivity:

More than 5,800 NAPA AUTO PARTS Stores Nationwide

- Strategically located Distribution Centers servicing all 50 states
- Computerized inventory control linked to your station
- Highly trained Factory Reps.
- Training for you and your employees

(O V E R)

Now...what do you have to do to participate in the NAPA Program? It's easy. You just have to:

- Register in **NAPA** Major Account Program with the Association
- Stock a minimum of four product lines
- Designate **NAPA** as first call supplier, and
- Purchase a minimum of \$7,500 per quarter (Average \$2,500 per month)

It couldn't be easier so why not join today. **No risk**...if you don't meet the quota you just don't receive the rebate, nothing lost....but additional profit could be gained!

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 back to:  
518 452-1955