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The Association is pleased to announce that its popular Tobacco Clerk Certification Training Program now is available over the internet. To get this training simply go to our home site, www.nysassrs.com, and click on the menu item "Tobacco Course". In a few simple steps, you, or your employees will be on your way to being certified, protecting you and your business.

Wheel Weight Law

The association has received questions concerning a bill, A8687B – S8020, passed last year that restricts the use of lead wheel weights. The bill which became effective at its enactment is effective September 17, 2010. The last date lead wheel weights can be used is March 31, 2011.

Coalition of Automobile, Engine Makers File Lawsuit Over E15 Partial Approval

The Engine Products Group (EPG) has filed a lawsuit in federal appeals court challenging the U.S. Environmental Protection Agency's (EP) partial approval of E15, Inside EPA reports. The American Petroleum Industry filed a separate lawsuit in the same court weeks earlier relating to the agency's Clean Air Act partial waiver to allow for the sale of E15. EPG, made up of automobile and engine manufacturing companies, has a three-pronged attack: that the air law does not permit partial waivers; that the 2007 energy regulation does not allow fuel sold that might cause engines to fail, increase emissions or other problems; and that the agency did not allow for enough time for "meaningful" comments relating to its testing of E15.

Opponents of EPA's decision to grant a partial waiver say it violates the Clean Air Act by allowing E15 to be sold before research has been fully conducted into the fuel's impact on engines. EPG's members are the Alliance of Automobile Manufacturers, the Association of International Automobile Manufacturers (AIAM), the National Marine Manufacturers Association and the Outdoor Power Equipment Institute. "Our concern is that EPA prematurely granted the partial waiver before critical studies on the effects of E-15 use were completed. We want to be sure that any new fuel will not increase air pollution, harm engines or endanger consumer safety," said Michael J. Stanton, president and CEO of AIAM.

Meanwhile, the makers of power equipment are concerned that more ethanol in the fuel could spell trouble for gas-powered leaf and snow blowers, weed whackers and lawnmowers. "E15 is going to make fuel lines on older equipment turn to mush a lot faster," said Mick Matuskey, co-owner of Power and Lawn Equipment, in the Washington Post. "You've got spillage and environmental issues as well as fire and safety issues."

Gasoline station owners also have expressed concerns over E15 because not all of the existing infrastructure is certified by the Underwriters Laboratories for the fuel.

NACS Files Comments on UST Compatibitity With E15, Biofuel Blends

The Environmental Protection Agency (EPA) Office of Underground Storage Tanks (OUST) proposed new procedures for determining the compatibility of underground storage tank equipment with fuels containing more than 10 percent ethanol, such as E15, and certain volumes of biodiesel. The problem is that unlike E10, underground storage tank system owners are generally unaware if their equipment is compatible with E15. When combined with the fact that independent testing laboratories are unwilling to retroactively certify legacy equipment for E15

compliance, OUST's proposed methods for demonstrating compatibility are of limited significance. Further testing of UST owners' current equipment is necessary to overcome these obstacles, as it would provide them with compatibility information that is currently unavailable.

If retailers were to store E15 in systems that are not certified as compatible with that fuel, they could expose themselves to a multitude legal difficulties, which could threaten the future of their businesses. Absent certification, retailers could be held in violation of:

- State underground storage tank regulations that require UL certification (Massachusetts, for instance, has already announced that storing E15 in a legacy tank will not be permissible);
- Occupational Safety and Health Act regulations;
- State underground storage tank insurance policies;
- Local fire codes; and
- The terms of their mortgage or other loan agreements, which routinely include compliance-with-law provisions.

Moreover, storing E15 blends (and the attendant environmental risks) could expose retailers to a range of state-based common law tort liabilities, such as gross negligence and defective product theories. Lawsuits filed with such claims frequently escalate into class actions, the costs of which no average retailer could ever afford.

The three methods proposed by EPA for demonstrating UST compatibilty must go further. The following improvements to the current proposal have been suggested:

- Equipment Compatibility. EPA should conduct comprehensive testing of all classes of USTs to determine their compatibility with E15. By defining the universe of compatible equipment, EPA can greatly assist retailers' efforts to determine if their systems are compatible with E15.
- Equipment Records – Retroactive. Because many retailers may not know what specific equipment they have underground and are therefore unable to verify its compatibility with E15, EPA should develop a mechanism by which UST owners can obtain manufacturers' sales and installation records. Such data should be kept by EPA and released only to retailers who own the equipment at a particular location.
- Equipment Records – Prospective. EPA should begin mandating the transfer of all relevant equipment documents upon the sale of a facility and require tank owners to maintain such records and present them to the purchaser upon request. This will begin to establish a knowledge base that will benefit retailers in a number of ways.
- Legislation. Because the proposed guidance will not have the force of law to protect retailers from the variety of legal consequences associated with equipment compatibility, NACS urges EPA to aggressively advocate for legislation, such as H.R. 5778 the Renewable Fuels Marketing Act, which provide some retailers with greater regulatory and legal certainty.

Tax Cut Package Should Boost Economy

The National Retail Federation (NRF) applauded the tax cut package enacted by President Obama.

"American families have not only avoided a massive tax hike that would have taken billions of dollars out of paychecks beginning on New Year's Day, but will see those checks grow because of the reduction in Social Security payroll taxes," said NRF President and CEO Matthew Shay said. "That extra money is going to go to satisfy pent-up demand, and will help stimulate activity and job growth as it spreads throughout the economy. In addition, the business expensing provisions of this package are going to provide employers with powerful incentives to invest and create jobs. This is a clear win for our nation's economy."

The legislation extends the income and investment tax cuts from the Bush administration, reduces Social Security taxes, and extends unemployment benefits for a year, among other items.

The package includes a two-year extension of the 2001 and 2003 tax cuts, a two-year extension of an estate tax of 35% with a $5 million exemption, a two-year extension of the 45 cpg ethanol credit, and a two-year extension (one year retroactive) of the $1 biodiesel credit.

Federal Reserve Proposes Cap on Debit Card Fees

A new Federal Reserve proposal would cap debit card fees retailers can charge customers at 12 cents per transaction. The news spurred mixed results: NACS called the proposal "a positive step" with shares of credit card companies took a tumble, with Visa closing down 12.7 percent and MasterCard closing down 10.3 percent Thursday. According to Reuters, the Federal Reserve put the average interchange fees for all debit transactions in 2009 at 44 cents per transaction. The proposal also calls for comment on requiring debit cards to offer multiple networks which will allow the same debit card to be processed over Visa, MasterCard, or rival payment networks like NYCE.

The Federal Reserve has set a 60-day comment period on the proposal. It is required by the Dodd-Frank financial industry reforms signed into law in July to put out a final rule on the fees by April 21 and it could become effective in July, Reuters reported. The association holds firm that there should not be any interchange fees on debit transactions, bringing it on an even keel with checks. The proposed rules are a positive step in addressing the anti-competitive behavior of the banks and credit card companies and an acknowledgement of the voice of American small businesses and consumers. It's been a long-standing argument from retailers that debit transactions, which are essentially electronic checks, should be in line with fees charged to process paper checks. The proposed rulemaking by the Federal Reserve begins to create a system in which debit swipe fees are reasonable and

proportional to the processing costs.

Broken down by numbers, swipe fees have been the second largest expense item -- with labor costs coming in first -- for retailers for several years, according to NACS. As a percentage of overall sales, card fees rose in 2009, increasing from 1.35 to 1.45 percent of total industry sales dollars, factoring in all forms of payment, including cash and check. At $7.4 billion, total credit card fees also surpassed overall convenience store industry pretax profits, at $4.8 billion, for the fourth consecutive year in 2009.

Appeals Court Denies Stay of Greenhouse Gas Rules

The U.S. Court of Appeals for the District of Columbia has denied industry and state motions to stay the Environmental Protection Agency (EPA) regulations to reduce greenhouse gas emissions from both mobile and stationary sources. The ruling permits the agency to continue implementing regulations that would limit greenhouse gas emissions from cars and light trucks, as well as rules to require large, new and modified stationary sources to control greenhouse gas emissions and to obtain preconstruction permits for those emissions.

The ruling came on a motion filed by the state of Texas, the Coalition for Responsible Regulation and the National Association of Manufacturers, to stay the regulations claiming that that the rules are unlawful and will cause immediate and irreparable harm without countervailing benefit to third parties or to the public interest. However, the court ruled that the petitioners had not shown that the harms they allege are certain rather than speculative or that the alleged harm will directly result from the actions that the plaintiffs seek to enjoin.

Federal Judge Strikes Down Key Provision of Obama Health Care Law

A federal district judge in Virginia ruled today that a key provision in President Obama's health care law was unconstitutional. Specifically, the judge ruled that a provision, which required nearly all Americans to purchase health insurance, exceeded the regulatory authority granted to Congress under the Commerce Clause of the Constitution. However, the judge refused to freeze implementation of the law pending appeal, meaning that there will be no immediate impact of the ruling. Most legal observers believe that the constitutionality of the president's health care law likely will be ultimately decided by the Supreme Court.

NHTSA Proposes to Require Rearview Video Cameras on Cars and Light Trucks

The National Highway Traffic Safety Administration (NHTSA) issued a Notice of Proposed Rulemaking (NPRM) that would expand the required field of view for all vehicles under 10,000 pounds to include the area immediately behind a vehicle that a driver must be able to see when the vehicle is in reverse. The agency believes that the only technology that is available, which would comply with the requirement, is a rear-mounted video camera with an in-vehicle visual display. Admitting that the video option is expensive (as much as $203 per vehicle), NHTSA is seeking comment on other technologies, that while not as effective as a video camera, might offer some safety benefits, but at a lower cost. One option that might be offered for passenger cars is a sensor system that monitors an area behind the vehicle and an audible warning when the presence of an object is sensed.

NHTSA is proposing to phase-in the standard, requiring 10 percent of vehicles to meet the standard between Sept. 1, 2012 and Sept. 1, 2013;

40 percent of vehicles produced prior to Sept. 1, 2014 and 100 percent of vehicles produced after Sept. 1, 2014.

The proposed rulemaking was mandated to be issued by the Cameron Gulbransen Kids Transportation Safety Act of 2007, which required that a rule be finalized by Feb. 28, 2011, that amended the agency's safety standard for rearview mirrors to improve the driver's ability to detect a pedestrian directly behind the vehicle. NHTSA states that in the NPRM there are 292 fatalities and 18,000 injuries resulting from back over crashes every year. Children under five years of age represent approximately 44 percent of the fatalities.

Obama, Democrats Continue to Spar on Tax Proposal

President Obama last week announced a framework for a tax extenders proposal designed to grant a temporary two-year extension of the soon-to-expire 2001 and 2003 Bush tax breaks. In addition to extending the tax cuts through 2012, the proposal would also cap the estate tax at a maximum of 35 percent with a $5 million exemption for those two years; extend unemployment insurance benefits for 13 months; and cut workers' shares of the Social Security payroll tax from 6.2 percent of earnings to 4.2 percent for one year. According to the Congressional Budget Office score, the package would cost an estimated $857.8 billion over 10 years, almost all coming from the tax cut provision.

While Republicans in both Chambers of Congress support the legislation, many Democrats have expressed displeasure with the bill, claiming that it is little more than an unnecessary tax break for the top 2 percent of the nations most wealthy. A one-year extension of energy production tax credits was added on Dec. 9 to make the package even more attractive to Democrats. The White House maintains that this is the best deal that Democrats are likely to get this year and predicts that this is he framework under which the tax extensions will be moved forward. The Senate is likely to take the bill up early this week, with House consideration to take place later in the week.

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Members of Congress Charge EPA Proposal Will Reduce Used Oil Recycling

Twenty-six members of Congress sent a letter to the Administrator of the Environmental Protection Agency (EPA) expressing strong concern regarding an agency proposal to indentify off-specification used oil as a solid waste. If finalized, the new rule would require that automotive maintenance facilities test any used oil that they collect from the public to determine if it meets specifications before burning as a fuel in space heaters. Under the Clean Air Act, sold waste cannot be recycled as fuel and must be burned in incinerators.

The congressional letter states that "if finalized as

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.

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proposed, we believe that it could seriously impact the used oil management system that has successfully kept large quantities of used oil out of our waterways since it was first adopted by EPA in 1985." The letter points out that "no problem has been identified with the handling and combustion of used oil under current EPA regulations. As a practical matter, no small business is going to be willing to either incur the cost of testing the oil or of sending any oil to an incinerator. As a result, automotive maintenance facilities across the country will stop accepting DIY used oil." The letter expresses concern that oil that is currently safely burned for heat in industrial furnaces, industrial boilers, utility boilers and space heaters "could end up being improperly disposed of on the ground or down the drain."

Brady Hopes to See Quickened Action on FTAs

Rep. Kevin Brady, R-Texas, expected to be the next House Ways and Means Trade Subcommittee chairman, stated on Dec. 7 that House Republican leaders were hopeful that the stalled U.S. free trade agreements (FTA) with Columbia, Panama and South Korea could be moved in the first half of 2011. Brady added that he hoped to see President Obama submit all three FTAs to Congress at the same time in a package deal.

Brady made it clear that expected Speaker of the House for the 112th Congress, Rep. John Boehner, R-Ohio, had yet to set the trade strategy for the upcoming session of Congress, though both Boehner and Rep. Dave Camp, R-Mich., who is in line to become House Ways and Means Committee chairman, are both strong supporters of FTAs. Brady believed that "discussions still need to be held with the White House and Senate leadership on what the best strategy to go forward is, but I don't think there is any question that we need to have an aggressive trade strategy sooner rather than later."

Judge Strikes Down NYC Law Regarding Antismoking Placards

On Dec. 29, a federal judge rejected New York City's law that would make convenience stores hang posters showing images of diseased brains, lungs and teeth to curtail smoking, the New York Times reports.

Judge Jed Rakoff said that the law violated federal statutes because only the federal government has the power to control cigarette advertisements and warnings. "Even merchants of morbidity are entitled to the full protection of the law," wrote Judge Rakoff, "for our sake as well as theirs."

Rakoff's ruling puts the kibosh on the city's requirement to have more than 11,000 retailers display the placards by cash registers. The city had been waiting for the judge's decision before implementing the rule. The city will appeal the ruling.

Late in 2009, the New York City Health Department devised the regulation. Six months ago, Lorillard, Philip Morris, R.J. Reynolds and the Association filed a lawsuit to challenge the requirement. The suit claimed the First Amendment rights of retailers opposed to the message were violated by the rule and also pointed out that the regulation breached a law relating to the federal government's regulation of cigarette ads and warnings.

The Annual Energy Outlook 2011

Reference case released this week by the U.S. Energy Information Administration (EIA) presents updated projections for U.S. energy markets through 2035. These Reference case projections do not include the effects of potential future policies that have not yet become law.

"Our Reference case projection shows the growing importance of natural gas from domestic shale gas resources in meeting U.S. energy demand and lowering natural gas prices," said EIA Administrator Richard Newell. "Energy efficiency improvements and the increased use of renewables are other key factors that moderate the projected growth in energy-related greenhouse gas emissions," he said.

Some key findings:

•A higher updated estimate of domestic shale gas resources supports increased natural gas production at prices below those in last year's Outlook: The technically recoverable unproved shale gas resource is 827 trillion cubic feet (as of January 1, 2009) in the AEO2011 Reference case, 474 trillion cubic feet larger than in the AEO2010 Reference case, reflecting additional information that has become available with more drilling activity in new and existing shale plays. This larger resource leads to about double the shale gas production and over 20 percent higher total lower-48 natural gas production in 2035, with lower natural gas prices, than was projected in the AEO2010.

•Imports meet a major but declining share of total U.S. energy demand: Projected demand for energy imports is moderated by increased use of domestically produced biofuels, demand reductions resulting from the adoption of efficiency standards, and rising energy prices. Rising fuel prices also spur domestic energy production across all fuels, which moderates energy imports growth. The net import share of total U.S. energy consumption in 2035 is 18 percent, compared with 24 percent in 2009.

•Non-hydro renewables and natural gas are the fastest growing fuels used to generate electricity, but coal remains the dominant fuel because of the large amount of existing capacity: Coal remains the dominant energy source for electricity generation because of continued reliance on existing coal-fired plants. EIA is not projecting any new central station coal-fired power plants, however, beyond those already under construction or supported by clean coal incentives. The generation share from renewable resources increases from 11 percent in 2009 to 14 percent in 2035 in response to Federal tax credits in the near term and State requirements in the long term. Natural gas also plays a growing role due to lower natural gas prices and relatively low capital construction costs that make it more attractive than coal. The share of generation from natural gas increases from 23 percent in 2009 to 25 percent in 2035.

•Industrial natural gas demand recovers, reversing recent trend: Industrial natural gas demand grows sharply in the near term from 7.3 trillion cubic feet in 2009 to 9.4 trillion cubic feet in 2020. This growth reverses the recent downward trend, as a result of a strong recovery in near-term industrial production, growth in combined heat and power, and relatively low natural gas prices.

•Assuming no changes in policy related to greenhouse gases, carbon dioxide emissions grow slowly, but do not again reach 2005 levels until 2027: After falling 3 percent in 2008 and nearly 7 percent in 2009, largely driven by the economic downturn, energy-related CO2 emissions do not return to 2005 levels (5,980 million metric tons) until 2027. CO2 emissions then rise by an additional 5 percent from 2027 to 2035, reaching 6,315 million metric tons in 2035.

Other highlights of the AEO2011 Reference case projections:

•World oil prices rise in the Reference case, as the world economy recovers and pressure from growth in global demand continues. In 2035, the average real price of crude oil in the Reference case is $125 per barrel in 2009 dollars. World liquids consumption grows from 83.7 million barrels per day in 2009 to 110.8 million barrels per day in 2035. Most of the growth is in non-OECD countries or regions, lead by China, India, and the Middle East.

•In the AEO2011 Reference case, U.S. natural gas consumption rises 16 percent from 22.7 trillion cubic feet in 2009 to 26.5 trillion cubic feet in 2035. The total in 2035 is about 1.6 trillion cubic

feet higher than in the AEO2010 Reference case (24.9 trillion cubic feet).

•U.S. crude oil production increases from 5.4 million barrels per day in 2009 to 6.1 million barrels per day in 2019 and declines slightly from that level through 2035. Production increases come from onshore-enhanced oil recovery projects and shale oil plays.

•The Reference case projections from the Early Release Overview of the AEO2011 are available at eia.gov/oiaf/aeo. The full AEO2011 report, including projections with differing assumptions on the price of oil, the rate of economic growth, and the characteristics of new technologies, will be released in spring 2011, along with regional projections.

Refiners Sue EPA Because of E15

The National Petrochemical and Refiners Association (NPRA) has filed its own lawsuit against the U.S. Environmental Protection Agency (EPA) because of the partial approval to sell E15 fuel, the Associated Press reports.

The Obama administration said in October that gasoline stations could offer gasoline with 15 percent ethanol, a ruling that has several trade organizations suing the government. The decision specifically allows E15 to be sold for vehicles built after the 2007 model year, a move that has been controversial for both ethanol producers, who want a higher ethanol content, and engine manufacturers, who fear that the blend could harm vehicle, boat, snowmobile and outdoor power equipment engines.

The refiners association is asking a federal appeals court to repeal the decision on the basis that the EPA lacks authority under the Clean Air Act to okay a plan for fuels not applicable for all engines. The group also said the agency approved E15 based on new information without allowing the public time to comment on those findings.

The agency "acted unlawfully in its rush to allow a 50 percent increase in the amount of ethanol in gasoline without adequate testing and without following proper procedures," said Charles Drevna, NPRA president. The International Liquid Terminals Association and the Western States Petroleum Association joined with NPRA in filing the lawsuit.

EPA did not offer comments on the lawsuit, but the agency has stated that the higher blends are necessary in order to meet a congressional mandate calling for more ethanol usage. In December, automobile and engine manufacturers filed a lawsuit saying motorists would mistakenly fill up with E15 and possibly damage older vehicle engines.

FDA Continues Push to Regulate E-Cigarettes

WASHINGTON -- The Food and Drug Administration is taking another shot at regulating electronic cigarettes. On the heels of a ruling earlier this month rejecting the federal agency's bid to regulate e-cigarettes, the FDA has filed an appeal with the entire U.S. Court of Appeals for the District of Columbia Circuit.

At the heart of the matter is how the FDA should regulate the fairly new industry whose products have caught on with smokers who are looking for an alternative to their daily habit, according to The Wall Street Journal. On Dec. 7, a three-judge appellate panel ruled that the FDA should regulate e-cigarettes as tobacco products unless they are marketed with specific claims that the devices help smokers quit or provide other remedies.

For its part, the FDA argues that e-cigarettes are drug or medical devices that require preapproval from the agency -- similar to nicotine gums, patches or sprays. Two years ago the FDA began

intercepting e-cigarette shipments from China, sparking a lawsuit by the industry. In January 2010 a district judge granted a preliminary injunction to e-cigarette distributors who sued the FDA; the appellate panel upheld this ruling.

In its Dec. 20 filing the FDA requests that the full appellate court reinstate a stay of the preliminary injunction, pending a request for a rehearing of the case, the Journal reported. In the appeal, the agency also argues that the three-panel's decision "rests on a clear error of law and will undermine" objectives that were laid out by Congress when it passed legislation that empowered the FDA to regulate tobacco products.

Experts Weigh In on $5 Gasoline

Will we see $5 gasoline in 2012? Depends on whom you ask. John Hofmeister, former president of Shell Oil who now heads the Houston-based nonprofit Citizens for Affordable Energy, said he believes that $5 gasoline will become reality by 2012 in the United States, and that the next two years "will be a disaster when it comes to energy prices," writes the Palm Beach Post. He cites a "divided Congress" and increased regulation of motor fuels and oil as the primary drivers, as well as global supply demand that could lead to "severe energy shortages" within the next 10 years.

"If it happened, it would be horrific," Hofmeister told the newspaper, adding, "It would send hundreds of billions of our disposable income to the Middle East."

However, other industry experts disagree.
"I think he [Hofmeister] is dead wrong," Tom Kloza, chief oil analyst for the Oil Price Information Service, told the newspaper. "I think he is guilty of some hyperbole here. We are not looking at $5 a gallon in the next couple of years."

Kloza added that for gasoline prices to reach $5 a gallon, crude oil would have to reach a price tag of $175 a barrel.

“There is a question whether the global economy could handle something north of $125 a barrel on crude oil and a question about whether the U.S. could handle anything north of $100,” Kloza said, adding, “My forecast is $3.25 to $3.75 for the spring peak this year.”

Meanwhile, Brian Milne, Telvent DTN energy editor in Omaha, agrees that gasoline could reach $5 in 2012.

"The key issue has been the country's inability to establish an energy policy," Milne told the newspaper. "Oil is an international commodity which is seeing increased demand globally, mainly from emerging economies in Asia. This will tighten the supply-demand balance and push oil prices higher."

Then there’s AAA, which sides with Kloza.

AAA Auto Club South's Jessica Brady also believes that $5 a gallon gasoline is unlikely come 2012.

"It's almost impossible to predict where prices are going to be five months from now, much less 15 months from now," she told the newspaper. "That comment has consumers worried. We need to focus on what is happening now and what is going to directly affect us instead of speculation for next year."

Ned Bowman, executive director of the Florida Petroleum Marketers and Convenience Store Association, believes that anything is possible with gasoline prices. "You have speculators in the market in New York who are driving a lot of the pricing," he told the newspaper, adding that retailers selling gasoline would be devastated by $5 a gallon fuel.

General Counsel Corner
Through the Year's Legal Highlights (and Lowlights)
By Peter H. Gunst

As the year ends, it is appropriate to pause and consider some of the year's more significant legal developments.

We start with the lowlight. In the Mac's Shell Service, Inc. v. Shell Oil Products Co. case, the Supreme Court finally considered a Petroleum Marketing Practices Act claim. Unfortunately, it ruled unanimously against the dealers' position. The Supreme Court rejected the dealers' claims of constructive termination and nonrenewal, in which they contended – although they had received no formal notice of termination or nonrenewal – that Motiva's harsh rental and pricing policies were the practical equivalent of termination or nonrenewal.

The Supreme Court disagreed, holding that the dealers had no claim under the PMPA because they continued to operate their stations despite Motiva's oppressive conduct. Although not declaring categorically that a claim for constructive termination or nonrenewal could never be brought, the Court's decision makes it very difficult to press any claim under the PMPA absent a formal notice of termination or nonrenewal.

Even this lowlight, however, contained a helpful aside. The Supreme Court also made clear that suppliers cannot assert the PMPA's reach as a bar to actions brought under state law "to address wrongful franchisor conduct that does not have the effect of ending the franchise." This should significantly reduce the occasions on which suppliers can use the PMPA as a weapon to bar dealers from their remedies under state law.

But enough of the lowlight. A decision by the Superior Court of the District of Columbia in

Kazemzadeh v. Eastern Petroleum Corp. demonstrates just how potent state law can be.

In its decision, the court found that a provision of the District's Retail Service Station Act barred suppliers from prohibiting dealers from purchasing gasoline for resale from competitive suppliers, so long as there was no misbranding and the product was "of a reasonably similar quality."

In addition, the court permitted the dealers to have a jury decide their claim that the supplier's imposition of price zones violated the local act's prohibition of discriminatory "adjustments and discounts."

The court's decision is a significant step toward giving dealers real control over their choice of supply and over pricing. In the District of Columbia at least, dealers may no longer be their suppliers' economic serfs. Open supply anyone?

Another highpoint was at least one court's willingness to free a dealer who had purchased his station from BP from the terms of a restrictive covenant and mandated long-term supply agreement that tied the dealer to a single source of supply.

In BP Products North America, Inc. v. Stanley, a federal judge in Virginia freed the dealer from his long-term supply commitment on the ground that BP's overly broad station use and supply restrictions violated Virginia state law prohibiting such restrictions as unreasonably restraining trade within the state.

The decision may not be universally applicable outside of Virginia, because other states may permit the court to reform even an overly broad restriction and to still limit to a significant degree the dealer's freedom to operate. But the Virginia decision is still a welcome development.

We will wait and see what the New Year brings in. In the interim, Happy Holidays!!

To access the latest articles by the Service Station Dealer's legal counsel, please visit the "Service Station Dealers: Legal Issues" section of the Astrachan Gunst Thomas Rubin, P.C. website at: http://www.agtlawyers.com/resources/petroleum.html.

EPA's Proposed Definition of Non-Hazardous Solid Waste Creates Barriers for the Used Oil Recycling System

EPA's Proposed Solid Waste Rule

EPA is proposing to define all off-specification used oil as solid waste. This solid waste cannot be recycled as fuel; it must be burned in an incinerator. As such this rule would decrease, not increase, environmental protection.

Current Used Oil Recycling System

Existing EPA regulations allow for the safe collection and recycling of used oil. Approximately 780 million gallons of used oil is used as fuel annually. Under current law both on- and off- specification used oil can be used as fuel. Approximately 113 million gallons is used for heating purposes by approximately 100,000 small businesses.

Impact On Used Oil Collection

If off-specification used oil cannot be recycled as fuel, then automotive repair shops will have to test used oil that comes from outside sources. This is a Halogen test. Repair shops that accept used oil from outside sources which does not meet specification will have to pay for its disposal. This will discourage recycling.

EPA has recognized certain cases in which off-spec oil can be recycled in space heaters. 1) the heater burns only used oil that the owner or operator generates or used oil received from household do-it-yourself used oil generators; 2) the heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour; and 3) the combustion gases from the heater are vented to the ambient air. This exemption does not include a repair shop receiving oil from another repair shop. The burden of testing and possibly disposing of that oil may lead to large amounts of on-spec fuel to go unrecycled.

Look To The Future

EPA regulations are to become effective in January 2011. The only saving grace may be an EPA lawsuit to delay implementation. We expect the reprieve to be granted. "Let Us Pray"

Minimum Age For Cashiers Who Sell Alcoholic Beverages

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 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.

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.

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

Our e-mail address has changed to:

grany@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 bill H.R. 5141, The Small Business Paperwork Mandate Elimination Act. Senator Mike Johanns (R-NE) has introduced S.3578, its sister bill.

SSDA-AT, as well as other organizations, has signed a letter of support to Rep. Lungren and Sen. Johanns.

TAKE ACTION

If you want to send emails to your Senators and Representative, go to 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.

GRANY

Gasoline and Repair-shop Association of New York

HEALTH INSURANCE PROGRAM

If you are going without health insurance, you are taking a big risk. Now is the best time to stop exposing yourself to high medical costs. Even if you have insurance, you will want too check how our health insurance programs can better suit your needs. Here are some of the benefits of our program:

- **Reduced premiums by being a member of our groups.**
- **Programs provided by a variety of providers.**
- **Choose from a wide selection of plans.**
- **Tailor your insurance to best suit your needs.**
- **Participating employees may choose different plans.**

Let us work with you to find the best program at the best price. We will send you more information, and help you to navigate the selection of plans and options to find the one that is best for you.

To find out more information call John Casazza at (518) 452-4367

GRANY

LEGAL PLAN

As a member in good standing of the Association, you are entitled to participate in our group legal service plan. If you are in need of this service, you must first call the Association office at (518) 452-4367. An appointment will be arranged that will be convenient for you and the attorney.

Covered services available to members include:

- Defense in Small Claims Court if your business is sued or at Department of Motor Vehicles or at any other New York State Administrative Proceeding hearing. (Once per year.)

- Review of leases, supply contracts and franchise agreements to advise you of your obligation under these contracts. The plan does not include actual negotiation on your behalf. (One hour per issue, up to five hours per year.)

- Consultation on legal questions pertaining to your business. (One hour per issue, up to five hours per year.)

Appeals of judgments against you are not a covered benefit, but are available to members at special contract prices.

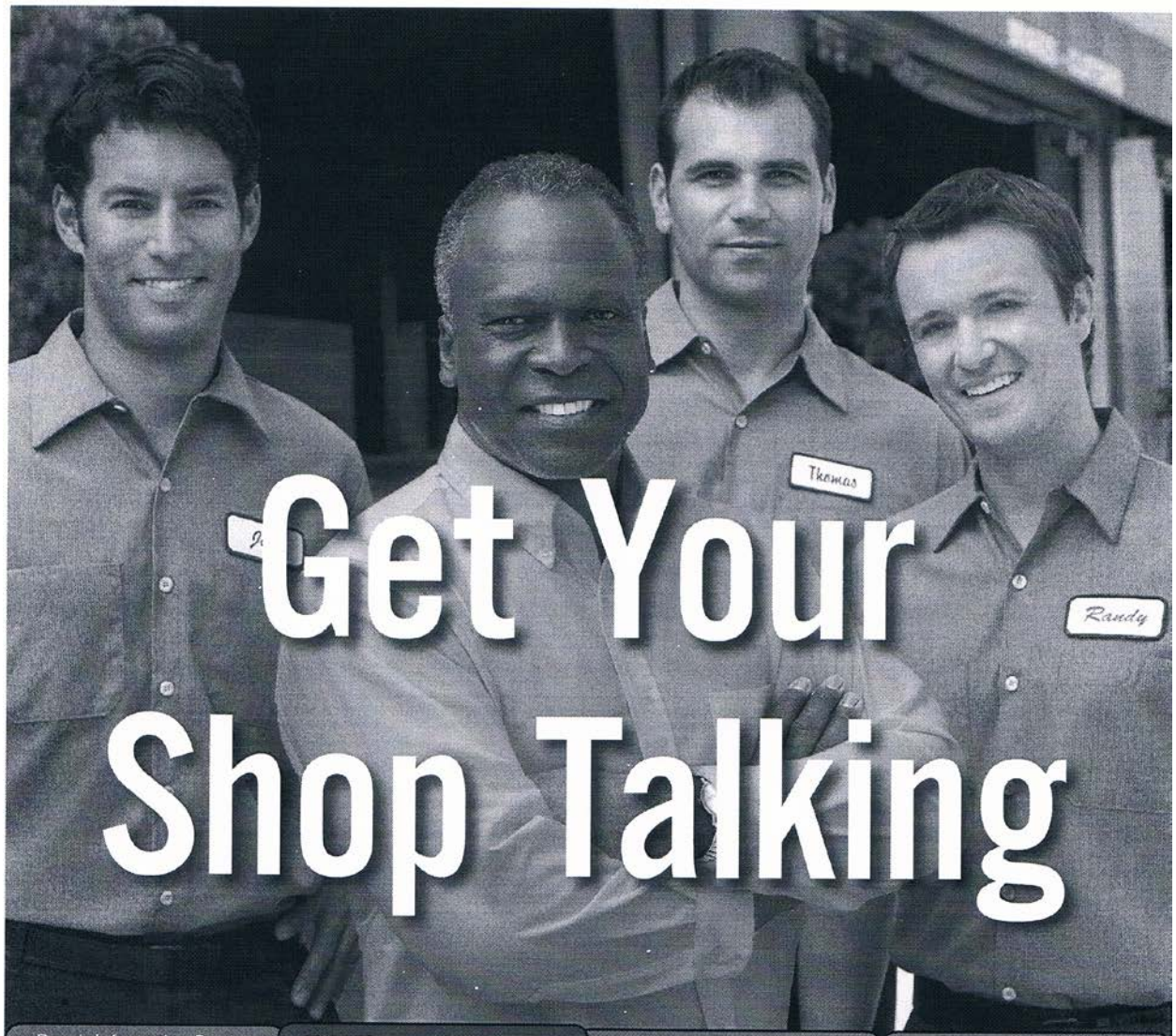
Additional legal services will be provided by the designated law firm's standard hourly rate less 15%. Special contract prices have also been negotiated for the following services.

- Residential real estate purchase or sale. The designated law firm will represent you in the sale of purchase of your primary residence and/or a second home or vacation property at the following rates:

Sale	$295.00
Purchase	$350.00

- Simple will $75.00 Simple will (husband and wife) $125.00

In order to participate in the plan you must be a member in good standing and must have been a member for ninety days prior to the need for legal service.



Get Your Shop Talking

Repair Information Services | **Shop Management Solutions** | Business Performance Services | Business Information Solutions

Mitchell1 TeamWorks™

Mitchell 1 TeamWorks combines the features of Manager, Estimator and Repair to seamlessly integrate all parts of your shop. From the moment your customer walks in the door, TeamWorks allows your Service Advisor to look up customer and vehicle information, calculate time to diagnose, check TSBs and prepare an estimate. Parts advisors order and track parts from your favorite vendors. Techs pull up work requested with associated diagnostic and service information, and enter recommended service. That's the kind of shop talk you can turn into profit!

AASP NATIONAL ALLIANCE OF AUTOMOTIVE SERVICE PROVIDERS

888-724-6742
mitchell1.com

Mitchell1 Shop Management Solutions

Keep Your Customers Coming Back

Repair Information Services | Shop Management Solutions | **Business Performance Services** | Business Intelligence Services

Mitchell1 eCRM™

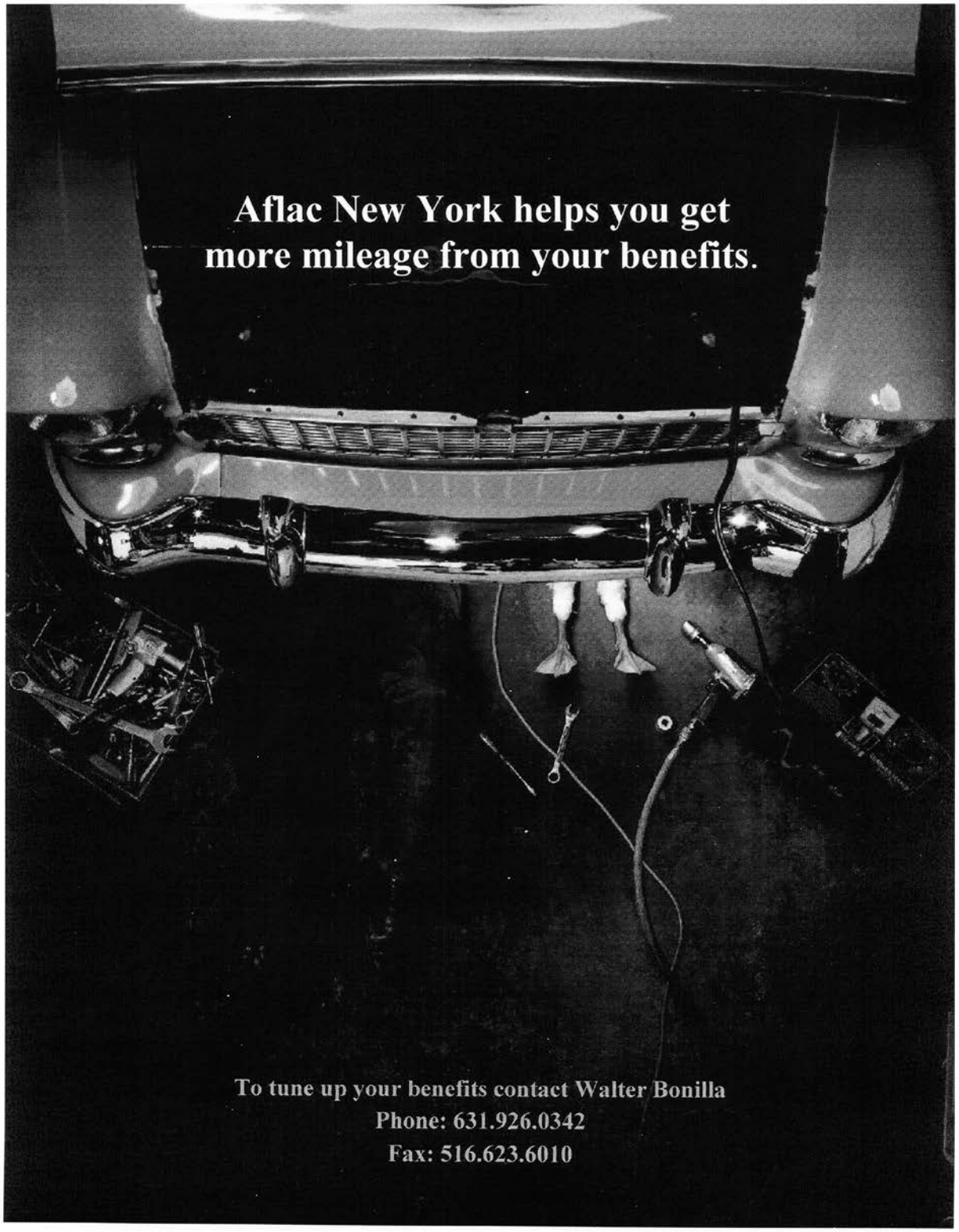
Now you can turn customers into loyal, profitable repeat customers easily. Mitchell 1 CRM integrates seamlessly with your shop management system to track your customers' vehicle history and send timely scheduled service reminder postcards and e-mails automatically. You choose the postcards and customize with your logo and message – finally, a way to communicate your message to your customers that they'll be glad to receive.

- Service Reminder E-mails & Postcards
- Consumer Vehicle History Website
- Service Recommendations
- Custom Promotions
- Dedicated Marketing Support Center
- Return on Investment Reporting

AASP NATIONAL ALLIANCE OF AUTOMOTIVE SERVICE PROVIDERS

800.410.0529
mitchell1.com/eCRM

Mitchell1 Business Performance Services


Aflac New York helps you get
more mileage from your benefits.
To tune up your benefits contact Walter Bonilla
Phone: 631.926.0342
Fax: 516.623.6010

Aflac™

HERE'S HOW AFLAC NEW YORK CAN HELP:

Many industries-like specialized auto repair and customization-require highly skilled talent that is not easy to find and retain. Great benefits are a top priority for these talented professionals when considering where to work. With Aflac New York, you can provide a wide range of benefits that gives them coverage in the areas they need most, and with a brand they know and want. You can attract and retain new talent by providing the kind of benefits they'd expect from a bigger company, helping your business stand out from the crowd.

THE BEST PART ABOUT AFLAC!

NO DIRECT COST TO YOUR COMPANY

Aflac New York's insurance policies are paid entirely by your employees; therefore, adding value to your employee benefits plan without incurring direct costs.

OFFERS A WIDE RANGE OF POLICIES

Aflac New York offers a wide range of policies that can help cover health events from accidents to hospitalization. You choose the ones that are best for you, your employees, and your business.

POTENTIAL TAX SAVINGS

Aflac New York's tax-advantaged plan allows employees to use pre-tax dollars to pay for certain benefit costs, through a Section 125 cafeteria Plan. This plan may also reduce your FICA taxes, helping you counterbalance the challenges you face in today's economic environment.

ATTRACTIVE TO YOUR EMPLOYEES

Aflac New York insurance complements your major medical insurance to help you create a more attractive employee benefits package. Our wide range of policies is designed to provide cash benefits to your employees if they become injured or sick. With Aflac New York policies, there are no deductibles, copayments, doctor networks, or pre-authorization requirements.

Join the 16,500 companies* that Already include Aflac New York as an essential part of their benefits package. Find out more:

Walter Bonilla **1.631.926.0342** **walter_bonilla@us.aflac.com**

American Family Life Assurance Company of New York (Aflac New York)

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

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

MTA Is Seeking Vendors To Sell E-ZPass On The Go

MTA Bridges and Tunnels is seeking qualified retailers to take part in a pilot program to sell pre-packaged E-ZPass tags through a program called E-ZPass On-The-Go. Through this program, customers can purchase a pre-paid E-ZPass tag worth $30, which will be active upon purchase. The program is designed to reach an untapped portion of the E-ZPass market by getting them to experience the convenience of using E-ZPass.

The tags will be sold to retailers at a discounted rate of $25 and resold over the counter for $30, giving your business a profit of $5 per tag. The tags will arrive in a securely sealed, clamshell package. The live tags should be kept behind the counter in a secure area. We will provide window decals and a dummy tag model for use in a countertop display.

If you are interested in being considered for our pilot program please contact us at ezpassotg@mtabt.org. Please provide your contact information, including name, telephone and fax number.

FOR SALE

New Lebanon Sunoco Mart & Laundromat & Apartments w/property

- Property around 2 acres in downtown New Lebanon
- C-store is around 3500 sq ft
- Laundromat is around 1500 sq ft
- 6 apartments averaging 700/mo rent. Total around 4000/mo.
- Recently switched to Sunoco/Price Chopper -currently pumping 35-40k gals/mo
- Laundromat sales around 3000/mo
- C-Store & Subshop sales w/o gas and lotto around 65000/mo
- Property Taxes around 15000/yr

The property has great potential for a drive through franchise like Dunkin Donuts or Subway both of which have approached us in the last month because a big retailer (Price Chopper has already broken ground) is opening right next to us in the next yr which will significantly increase the traffic count in the area and also boost the commercial property values. There is also great demand for apartments in this area. Our apartments are almost never vacant. One could do really well by adding a few more apts on the property and leverage that demand.

ASKING 1.5 MILLION

Contact John At The GRANY Office
518-452-4367