

---

---

# NYS ASSOCIATION OF SERVICE STATIONS & REPAIR SHOPS, INC.

---

---

6 WALKER WAY, ALBANY, NY 12205  
(518) 452-1979 – state@nysassrs.com – www.nysassrs.com

January 2008

## Employment Laws/Labor Standards

The overtime requirement is based on hours worked in a given payroll week. Thus, time and one-half, double-time -- or any amount higher than the agreed rate -- is not required simply because the work is performed after eight hours per day or on a Saturday or Sunday. Some categories of employees are excluded from New York State's overtime provisions

LS 210 -- Minimum Wage Order Summary -- Miscellaneous Industries & Occupations (Part142)

C. DAILY CALL-IN PAY An employee who by request or permission of the employer reports for work on any day shall be paid for at least four (4) hours, or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum hourly wage. D. ADDITIONAL DAILY RATE FOR SPLIT SHIFT AND SPREAD OF HOURS For any day in which an employee works a split shift and/or a spread of hours that exceeds 10 hours, the employee must receive an additional hour's pay at the basic minimum hourly wage rate.

## Energy Traders Forces Fuel Price Increases

Wall Street energy traders are forcing the prices of motor fuel and heating oil up, according to several news articles. The New York Post recently published an article questioning whether speculators are driving up the price of home heating oil to increase their profits. The article reports that the latest group to enter the battle to stop this is the New York Oil Heating Association, which is urging Congress it initiate and investigation.

The Oil Heat Association, through radio ads is encouraging its members to contact their legislators and ask that they act to stop the manipulation of heating oil prices.

The Post article claims there are two energy markets, one for real crude oil and one for paper barrels of crude. Wall Street controls the paper, which almost reached \$100 a barrel even though there was no real world justification for these prices, according to the article.

The Post Article quotes a story which appeared in Bloomberg. It reported in that story wrote "the price of crude oil on the New York futures market reached a record \$92.29 a barrel on November 21, 2007 having gained 50% in six months. That is supposed to mean that demand for crude to meet the energy needs of the works has been soaring, it hasn't. What's driving the market is demand by speculators."

The Bloomberg article said that the United States, the biggest energy guzzler in the world, has a sinking economy. Therefor unless developed countries must have suddenly started to guzzle energy like the U.S., there will be a surplus of crude. Add the increase use of alternative energy sources, ethanol and hybrid engines discoveries of deposits of oil in Africa and South America and the energy picture changes.

The gasoline markets have already figured out what the speculators are doing. Gasoline is still high priced but the price has not followed it usual upward spiral tracing crude oil prices. However, heating oil has taken a hit due to the suspected speculations of traders according to the articles. The industry believes is due to seasonal nature of heating oil.

Our Association is watching this situation closely. If the price of crude is being artificially manipulated there needs to be an investigation. Many blame a loophole in the law created by Enron, which exempts the reporting of transactions on daily bases. We need to determine if this loophole is driving the price of motor fuel. If we determine it is a factor we will join in the lobbying effort to have Congress initiate an investigation

## INSIDE THIS ISSUE

- 1 Labor Standards
- 1 Energy Traders Force Up Fuel Prices?
- 2 Future of Repair Shops
- 2 Repair Shop Restitution Bill
- 2 Bill to Increase DEC Enforcement
- 2-3 DMV Message 22
- 3 Petroleum Business Tax Decreases
- 3 NJ Right To Repair Bill Introduced
- 3-4 California Introduces Bill Requiring Insurers to Pay for OEM Parts
- 4 SBA Increases Urged

### **Future of the Repair Shop.**

The Association has noted a disturbing decline in the number of repair shops in operation in New York State. Of course, there are many reasons that could contribute to the trend. Today, cars and trucks do not break down as often, some shops have not kept up with the technology, and we are losing business to the automobile franchise dealers.

The future does not look much brighter. The "Super Warranty" will send more motor vehicle owners back to the dealership. In addition, Federal and state government does not believe that the motoring public maintains their vehicles properly. The concern is that improperly maintained vehicles will result in excess emissions adding to air contamination.

In an effort to convince the motorist to maintain their vehicle properly, states are in the process of mandating warranties on emission components of up to fifteen years or 150,000 miles. If the check engine light comes on, the motorist will be forced back to the dealership for the emission repair. Once there, motorists will more than likely have any other repair needed, done.

Many states are already in different phases of adopting these warranty programs. Currently, California, Connecticut, Massachusetts, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont and Washington are actively involved in developing legislation to increase new vehicle warranties on emission parts.

Several national associations are working to protect the interest of the repair industry. You may be asked to help by contacting your legislator.

### **Bill A9624 – Repair Shop Restitution**

Assemblywoman Audry Pheffer introduced bill A9624. The bill amends the New York State Vehicle and Traffic Law in relation to the payment of civil penalties by registered and unregistered repair shops. The bill provides that a repair shop may make restitution instead of a civil penalty or portion of a civil penalty. If the registered or unregistered repair shop does not exercise the option to make the payment, an amount equal to three times the amount assessed for restitution is to be paid by the shop.

I wonder what we did to Ms. Pheffer to get so mad at us that she introduced this bill before the session started.

This is a great example of why we need an association. If we were not around who would handle this?

### **BILL NUMBER: A9019 - S6055**

This bill is the most damaging legislation that we will face in the 2008 session. It must be amended to make it acceptable to the industry.

The subject bill amends the Environmental Conservation Law, in relation to petroleum and chemical storage facilities. It is introduced to provide New York State Department of Environmental Conservation (DEC) with the authority to amend the current regulations to

provide authority to become consistent with EPA regulations.

The industry concern is that DEC will use this as an opportunity to give itself greater authority when enforcing the regulations. It will be the obligation of the industry to see that DEC does not become overly aggressive in its effort to strengthen the laws and regulations.

### **THE PURPOSE of the BILL**

This bill amends the Environmental Conservation Law (ECL) to be consistent with federal regulations governing underground storage tanks, and to comply with the federal Energy Policy Act of 2005 with respect to petroleum bulk storage (PBS) and chemical bulk storage (CBS) facilities.

It modifies the definitions of "facility" and "petroleum." The term "facility" is modified to add underground storage tanks covered by 40 CFR Part 280 (tanks with a capacity of greater than 110 gallons). The term "petroleum" is broadened to encompass all of the products defined as petroleum in 40 CFR Part 280, including synthetic oils.

It requires operators to register a facility, and increase the range of tanks to which the title's lowest fee applies from greater than 1,100 to 2,000 gallons combined storage capacity to greater than 110 to 2,000 gallons combined storage capacity, to reflect the amendments to the definition of facility in ECL.

These provisions of the bill could include heating oil and used oil tanks that are ten percent underground.

The bill is unclear and can be interpreted to create a \$100 fee for facilities that have tanks greater than 110 gallons and making the facility subject to the same regulations as a service station.

This bill must be opposed. Businesses with any kind of petroleum tanks that may become responsible for the new fee and greater regulations need to contact their State Legislator and ask that they oppose bills, A.9019 - S.6055. A letter, fax or telephone call to the legislator's Albany or local office will force the legislator to consider opposing the bill.

Call the Association Office for help with whom to contact.

### **Re: DMV Message No. 22**

The message below was sent to Emission Inspection Stations. We send it on to be sure that you received it.

NYVIP MESSAGE No. 22 (2008)

01/15/2008

TO: All NYMA INSPECTION STATIONS

FROM: NYS DEPT. OF MOTOR VEHICLES

SUBJECT: NYTEST OFF LINE LIMITS

Effective immediately the number of NYTEST OFF - LINE INSPECTIONS that are permitted will be reduced from the current maximum limit of TWENTY FIVE (25) to TEN (10). If the NYTEST inspection information is not

transmitted to DMV after ten off - line inspections, NYTEST inspections will be stopped until the data is transmitted to DMV. This may also result in a stop of NYVIP inspections until the NYTEST information is transmitted. However, the off-line limit for NYVIP inspections will not change.

DMV is making this change because motorists are being inconvenienced when inspection stations do not transmit the inspection information to DMV promptly. Motorists attempting to renew their vehicle registration must have a valid emission inspection on their DMV record or the registration renewal is denied. When a station does not transmit the data to DMV, motorists are not permitted to renew.

NYTEST equipment will normally transmit inspection information to DMV when the inspection is completed on-line. The only time inspections should be done off - line is when there is a communications or equipment problem that must be looked into immediately and corrected. If the NYTEST equipment and communications are working properly, inspections will not be affected.

Stations are still responsible for ensuring that the NYTEST equipment is operating and calibrated properly. Failure to maintain a fully operational NYTEST system will result in DMV action against the inspection station.

If you have any questions you may contact Clean Air at 518-473-0597, or if you have questions about equipment maintenance contractors you may call DEC at 1-877-231-5411.

### Changes to Prepaid Taxes on Motor Fuel

As of January 1, 2008 the state has recalculated the Petroleum Business Tax, formerly known as the Gross Receipts Tax, on gasoline and diesel fuel. This portion of the prepaid taxes on motor fuel will decrease 0.2 cents per gallon across the board. The Petroleum Business Tax on gasoline and gasohol will fall from 16.60 to 16.40 cents per gallon. The tax will also fall from 14.85 to 14.65 on diesel motor fuel.

Pre-paid taxes in cents per gallon of gasoline are:

- Federal Excise 18.40
- State Excise 8.00
- Petroleum Business 16.40
- Pre-Paid Sales (Reg 1) 14.75
- (Reg 2) 14.00
- Test Tax 0.05
- NYS Spill Comp Fund 0.0019

The total prepaid tax on gasoline will be 57.6019 cents/gallon in the downstate Region 1 and 56.8519 in upstate Region 2.

Pre-paid taxes in cents per gallon of gasohol are:

- Federal Excise 13.30
- State Excise 8.00
- Petroleum Business 16.40
- Pre-Paid Sales (Reg 1) 14.75
- (Reg 2) 14.00

- Test Tax 0.05
- NYS Spill Comp Fund 0.0019

The total prepaid tax on gasohol will be 52.5019 cents/gallon in the downstate Region 1 and 51.7519 in the upstate Region 2.

Pre-paid taxes in cents per gallon of diesel fuel are:

- Federal Excise 24.40
- State Excise 8.00
- Petroleum Business 14.65
- Pre-Paid Sales (Reg 1) 14.75
- (Reg 2) 14.00
- Test Tax 0.05
- NYS Spill Comp Fund 0.0019

The total prepaid tax on diesel is 61.8519 cents/gallon in the downstate Region 1 and 61.1019 in the upstate Region 2.

Actual taxes due will fluctuate with the retail price as a result of the sales tax component. Due to the wide variety of sales taxes throughout the state, we are no longer publishing sales tax charts. Should you require a chart for a specific sales tax rate, please contact the Association.

### Right to Repair Legislation Reintroduced in New Jersey

Right to Repair Legislation (A-803) has been reintroduced in the New Jersey Assembly by Assemblyman Reed Gusciora, (D). Similar to federal Right to Repair legislation, the state's version would require car companies to make the same information and tools available to independent repair shops that are provided to new car dealers, thus ensuring competition in the vehicle repair industry. The bill has 11 co-sponsors including the Speaker of the Assembly, Assemblyman Joseph Roberts, D-N.J.

During the 2006-2007 General Assembly Session, Right to Repair legislation (A-931) was passed unanimously by the New Jersey Assembly's Consumer Affairs Committee, but became stalled due to strong opposition from the state's new car dealers. Similar Right to Repair bills are still under consideration by legislatures in the states of New York and Massachusetts.

### California Bill Would Require OEM Parts in Insurer Paid Repairs

California State Senator Carole Migden, D-San Francisco, introduced legislation (S.B. 1059) on Jan. 7 that would prohibit an insurance company from requiring that an aftermarket part be used in the repair of a vehicle that is under factory warranty. Insurance companies could be fined from \$5,000 to \$10,000 per violation.

According to the Collision Repair Association of California, the bill's main sponsor, S.B. 1059 is aimed at protecting both consumers and repairers when the use of an aftermarket part might void a factory warranty.

The legislation would add "requiring an automotive repair dealer to install an aftermarket part in a vehicle that is under factory warranty" to the current list of unfair claim

NEW YORK STATE ASSOCIATION OF  
SERVICE STATIONS AND REPAIR SHOPS  
6 Walker Way  
Albany, NY 12205

PRSRT STD  
US POSTAGE PAID  
MAILED FROM ZIP CODE  
12212  
PERMIT NO 279

**California Bill Would Require OEM Parts in Insurer Paid for Repairs (continued)**

settlement practices. Under S.B. 1059, an aftermarket part could only be used in a repair paid for by an insurance company if both the repairer and consumer consent.

**Senate Small Business Committee Urges Funding Boosts for SBA Programs**

Senate Small Business chairman Sen. John Kerry, D-Mass., and ranking committee member Olympia Snowe, R-Maine, sent a letter to the director of the Office of Management and Budget (OMB) stating that in view of the sub-prime mortgage crisis, government loans backed by the Small Business Administration (SBA) are more important than ever.

The letter, sent to Jim Nussle, director, OMB, urged the administration to include sufficient funding for SBA's vital lending and business development programs in the president's fiscal year 2009 Budget Request. The committee leaders also asked that the fiscal year 2009 budget provide essential funding to increase and improve lender oversight. The administration's proposed 2008 budget of \$464 million for SBA represented a 31 percent reduction in SBA's overall budget since 2001.