SERVICE STATION AND REPAIR-SHOP ASSOCIATION OF CENTRAL NEW YORK

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DEC TERMINATES STAGE II VAPOR COLLECTION ENFORCEMENT

What follows is an excerpt from the DEC website, about changes to the DEC enforcement policies, effectively ending Stage II Vapor Collection System requirements.

This enforcement discretion directive (directive) is written in response to industry concerns regarding the proposed repeal of Stage II Vapor Collection System (Stage II) requirements currently found in part 230 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR Part 230). This existing regulation requires approximately 3,000 gasoline dispensing facilities in the New York Metropolitan Area and lower Orange County to install, maintain and test Stage II. The continually diminishing emissions benefits of Stage II, no longer justify the cost of installing new systems or maintaining existing ones. Therefore, the Department of Environmental Conservation is revising 6 NYCRR Part 230 to, among other things, reduce volatile organic compound (VOC) emissions from gasoline dispensing facilities by repealing Stage II requirements.

Without this directive, industry would be required to install new Stage II systems, and maintain and test Stage II even though the systems no longer reduce emissions of VOCs in New York State.

This directive protects air quality and provides industry with an alternative to compliance with Stage II requirements in 6 NYCRR §§ 230.2, Gasoline dispensing sites - prohibitions and requirements, and 6 NYCRR §230.5 Gasoline dispensing sites - recordkeeping and reporting.
The Department will exercise enforcement discretion at this time to relieve industry of Stage II requirements, provided that the criteria outlined in this directive are complied with. This directive is effective until 6 NYCRR Part 230 is revised.

Enforcement Discretion
The Department will exercise its discretion and not assess a violation for failure to comply with Stage II requirements in 6 NYCRR §§ 230.2 and 230.5 at gasoline dispensing facilities that:

1. begin operation after January 1, 2011 and would otherwise be required to install a new Stage II system;
2. become subject to Stage II requirements due to an increase in throughput after January 1, 2011 and would otherwise be required to install a new Stage II system; or
3. decommission existing Stage II in accordance with Stage II Vapor Collection Systems Decommissioning Procedures in Appendix A of this directive after January 1, 2011.

Gasoline dispensing facilities equipped with Stage II systems that are not decommissioned must continue to comply with existing Stage II requirements in 6 NYCRR §§ 230.2 and 230.5 until Stage II requirements are repealed.
Questions regarding this matter can be directed to darweb@gw.dec.state.ny.us

Decommissioning Procedure - Appendix A Stage II Vapor Collection System
Any owner and/or operator of a gasoline dispensing site choosing to decommission a Stage II Vapor Collection System (Stage II) must:

1. drain and collect all accumulated liquids from all decommissioned equipment;
2. if applicable, remove any liquid drop-out tank or condensate trap or decommission by removing any accumulated liquid and capping off any siphon line associated

with the tank;

3. if the Stage II vapor collection system equipment involves a vacuum-assist vapor pump, either remove or disable the pump;
4. if leaving the Stage II vapor collection system line in place, disconnect and cap off the vapor line at the dispenser end with a vapor-tight and liquid-tight cap or plug after purging the vapor line with nitrogen to void of any accumulated liquid;
5. if accessible without excavation, disconnect and cap off the Stage II vapor collection system line at the tank end with a vapor-tight cap or plug;
6. upon any instance of excavation exposing the Stage II vapor collection system line, remove the vapor collection system line;
7. replace the Stage II vapor collection system hanging hardware with conventional (non-Stage II) hanging hardware;
8. remove the Stage II vapor collection system operating instructions from all dispensers;
9. conduct a passing CARB Vapor Recovery Test Procedure TP-201.3 - Determination of 2-inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities to ensure the vapor tightness of the system; and
10. within 30 days of completing the decommissioning of the Stage II vapor collection system, provide documentation of the procedure(s) used to demonstrate that Stage II has been decommissioned accordingly to the Department at DARWeb@gw.dec.state.ny.us

NLRB DELAYS POSTING OF NEW EMPLOYEE RIGHTS NOTICE

The posting of the new employee rights notice has been postponed to Jan. 31 to allow for further education and outreach to

The National Labor Relations Board has postponed the implementation date for its new notice-posting rule by more than two months in order to allow for enhanced education and outreach to employers, particularly those who operate small and medium sized businesses.

The new effective date of the rule is Jan. 31, 2012.

According to a press release, the decision to extend the rollout period followed queries from businesses and trade organizations indicating uncertainty about which businesses fall under the Board's jurisdiction, and was made in the interest of ensuring broad voluntary compliance. No other changes in the rule, or in the form or content of the notice, will be made.

NLRB member Brian E. Hayes dissented from the adoption of the final rule. For this reason, he agrees with any postponement of the effective date of the rule. Most private sector employers will be required to post the 11 x 17-inch notice, which is available at no cost from the NLRB through its website, either by downloading and printing or ordering a print by mail.

For further information about jurisdiction and posting requirements, see the NLRB's Frequently Asked Questions. For questions that do not appear on the list, or to arrange for an NLRB presentation on the rule, contact the agency at questions@nlrb.gov or 866-667-NLRB

FLOOD DAMAGE ASSISTANCE AND OPTIONS

Tropical Storm Lee and the unprecedented flooding which followed left a devastating mark on the Southern Tier. While we know that this has been an emotionally trying time for many, we are cautiously optimistic that those affected will be able to recover. We offer this guide to help identify the main forms of aid available to those affected by the flood.

FEMA Aid

The first stop for any individual or family suffering a hardship caused by the flood is to apply for aid from the Federal Emergency Management Agency. FEMA provides direct aid to individuals who live in an area declared a disaster by the President(currently Broome, Chemung, Chenango, Delaware, Otsego, Tioga, and Schenectady counties).

This aid comes in two forms. Housing needs aid consists of money to repair or replace a home damaged by the flood. FEMA will send an inspector to your home to assess the damage, and then a determination of eligibility will be made. FEMA then will transfermoney slated for repairs or to permit the owner to find a new place to live.

FEMA also provides aid for "needs other than housing". This aid is for serious needs that are necessary to allow a person to live. It can include things like personal belongings, clothing, home furnishings and, in some cases, a vehicle. FEMA aid for such items will only be available if a person is not eligible for any other sources of aid, including loan programs.

There are some limitations that apply to all forms of FEMA aid. FEMA does not provide enough money to completely repair the home; only enough to make it safe to live in. There is a maximum of $30,200 on all combined FEMA aid. All FEMA aid must be used in accordance with specific limitations given in the grant letter, or it must be repaid. FEMA aid is not available to businesses or owners of rental property. If losses are covered by insurance, FEMA aid is not available.

SBA Loans

Individuals are also eligible for Small Business Administration Home and Personal Property Loans. These are loans for up to $200,000 for a home and up to $40,000 for personal property. Most borrowers are eligible to borrow at 2.5%, payable up to 30 years. Unlike FEMA aid, these loans are intended to allow a property owner to restore their home to its pre-disaster state, but they are only available for an owner's primary home. The SBA will also look at every application to determine whether refinancing an existing mortgage is desirable.

All FEMA aid applicants are also given an SBA loan application. It is important to complete this application. Among other things, unless the SBA denies a loan application, no "other than housing needs" aid from FEMA is available. If this is the case, the SBA will refer the applicant back to FEMA. Otherwise, the only FEMA aid the applicant will be considered for is housing needs aid.

Aid Available to Businesses- SBA Loans

Unlike the aid available to individuals, the aid for businesses is largely in the form of loans. The SBA provides loans to all businesses that have suffered a physical disaster, and provides loans for economic disaster for small businesses. These loans can be for up to $2 million, with loan terms of up to 30 years, and interest rates can be as

low as 4%. The SBA automatically considers refinancing existing loans when it reviews the application.

SBA loans to cover physical disaster can be used for broad purposes. They are intended to allow the business to replace or repair real property, machinery, equipment, fixtures, or inventory. SBA loans for economic disaster are not as widely available and have a more limited scope. They are available only to businesses that have suffered a substantial economic injury as a result of a disaster, and they provide the business the funds to pay its necessary operating expenses and obligations as they come due.

Flood Insurance

The National Flood Insurance Program affords businesses and homeowners a reasonably-priced way to protect themselves from losses to buildings, property or contents caused by a flood. Policies are sold by local insurance agencies, but the federal government's participation means the terms and pricing of these policies are largely standardized. Private flood insurance also exists, but is much less common. As such, the discussion which follows pertains only to NFIP flood insurance.

Some businesses and homeowners are required to purchase flood insurance as a condition of their mortgage or a condition of past FEMA aid, but nearly all are eligible to electively purchase it. All communities in the seven counties declared a disaster (except the Village of Roseboom and the Village of Milford) participate in the National Flood Insurance Program, making businesses and homeowners eligible to purchase flood insurance. As recent events have shown, you do not need to be in a previously affected or high risk flood area to suffer flood damage. Nearly 20% of all flood losses annually come from areas that are medium or low flood risk areas.

Flood insurance does have limitations. Flood insurance does not take effect for 30days after the purchase. There are also limitations on what is covered in basements orareas below grade under both the building property coverage and contents coverage policies. Flood insurance never protects anything outside a building, currency, precious metals, or most vehicles. Flood insurance also does not protect against groundwater seepage. There is a maximum coverage amount for building property and for contents that differs based on whether the coverage is for a dwelling or a business property.

Finally, under certain circumstances, your homeowners or casualty insurance policy may afford coverage for some losses. That unfortunately, is the exception rather than the rule.

NEW BATTERY FOR ELECTRIC CARS CREATED

A new battery for electric cars, with a 35 per cent greater range compared to batteries of the same weight, has been created through research led by Axeon.

The battery uses Nickel Cobalt Manganese (NCM) electrochemistry, which theoretically requires 50 per cent less volume and 30 per cent less mass when compared to Lithium Iron Phosphate (LIP) chemistry at cell level.

"NCM batteries have a higher energy density which means they can produce more power than LIP batteries of the same size," Allan Paterson, a senior electrochemist at Axeon told The Engineer.

A key goal of the project was to confirm that cell level benefits pass through to the battery pack level when taking into account the overall packaging, cell retention, cooling and interconnects, Battery Management System components and overall system functionality.

The developers claim their tests revealed that the majority of cell level benefits migrated to battery pack level. A demonstrator of the battery system has now been deployed into an Allied Vehicles test vehicle, with the results of improved range and performance.

The new battery incorporates NCM 'pouch' cells packaged in modular building blocks. Axeon believes that this modular design will allow them to support rapid prototyping into a range of vehicles with reduced development time.

Additional benefits of the new system include increased ground clearance, a better driving experience due to improved weight distribution; and more power giving better drivability.

Axeon and its partners, Ricardo and Allied Vehicles, now believe that it is feasible to replace LIP batteries in electric vehicles with NCM batteries. In a statement Lawrence Berns, CEO of Axeon said: "This new battery represents a real step forward in the development of electric vehicles and is highly versatile, being suitable for applications for many vehicle manufacturers and across a wide range of platforms."

Funding for the project came in at over £1.3m after the Technology Strategy Board invested £680,000 to the Axeon-led consortium. Project partners are now discussing the next steps for the new breakthrough.

COMPUTER MONITORS MUST BE READY TO PASS STATE INSPECTION

New York State regulators are now capable of detecting 'Clean Scans" of cars which do not have monitors ready. This process involves running a scan on a car which is known to be capable of passing a scan while fooling th scan tool into thinking that it is actually scanning the car which is presented for inspection without monitors ready. The following article reprinted from newsday address the issue of getting the monitors into a ready state.

Ask the Auto Doctor

Dear Doctor: I have a problem each year get a renewal for my New York State inspection sticker on my 2007 Jaguar XJ8L. I don't put a lot of mileage on my car (about 2500 miles per year). When my mechanic tries to perform the test, it comes up "Failed Test". The Jag then has to be driven about 200 miles before the test can be completed. Is there a way to bypass the computer so I can take the test before the sticker expires.

Dear Stuart: Your car's computer monitors are not ready, so the vehicle does not pass the first time. When you drive the car the 200 miles the computer monitors reset. Before the next inspection date , fill the gas tank to ¾ - not full. Then start the car cold and let the engine idle for a few minutes. Drive to the freeway, getting up to 60 mph, let off the accelerator and drop to 45 mph without touching the brake pedal. This has to be done 3 times on this drive cycle (total drive mileage should be 40 miles.) This drive cycle will be enough to set the computer monitors. A shop with a can tool can plug into the ALDL connector under the dash and see if the monitors are ready.

FDA RESPONDS TO TOBACCO INDUSTRY ABOUT NEW CIGARETTE PACKAGING

The U.S. Food and Drug Administration has answered the tobacco industry's lawsuit that the new graphic cigarette labels scheduled to take effect in 2012 with an opposition brief, the Wall Street Journal reports. In August, four U.S. tobacco firms claimed in a lawsuit filed in federal court that the new cigarette packaging requirements infringed upon their free speech.

The labels, mandated by the federal government, will occupy the top half of both the front and back of the package and will show graphic images of a man with throat cancer or diseased gums, among other photographs. Accompanying the grisly pictures will be warnings, such as "Smoking can kill you."

The tobacco companies object to the labels on the grounds that they are unconstitutional. "The notion that the government can require those who manufacture a lawful product to emblazon half of its package with pictures and words admittedly drafted to persuade the public not to purchase that product cannot withstand constitutional scrutiny," said Floyd Abrams, a lawyer for Lorillard, one of the companies in the suit.

The FDA's brief argues that the government has the In its opposition brief filed Friday, the FDA claims that the federal government has the power to curb speech if public interest warrants it. The agency said the new graphic photographs better convey smoking's health risks than the current language.

More than 40 other nations have slapped graphic labels on cigarettes, many more explicit than those proposed by the United States. Recently, Australia's tobacco firms have asked for an extension of its new packaging rules. The court case has a hearing scheduled for September 21.

RECESSION IS LIKELY SAY ECONOMISTS

Last week economists said that there is little the Federal Reserve can do to thwart a potential recession, which could happen in the next year, a Wall Street Journal survey of economists reports.

There's a one in three chance a recession will happen over the next 12 months, which are the "highest odds" for a new downturn that the economists have given since the start of the recovery.

"It feels like a recessionary environment. What they call it later on I can't tell you," Bart van Ark, chief economist of the Conference Board, who put the odds of recession at 45%, told the newspaper.

The Journal adds that since 1988, every time the Conference Board's estimate of the probability of recession topped 40%, a downturn followed shortly thereafter. "The consumer has never really thought that we got out of the recession," van Ark said.

Following an August meeting of the rate-setting Federal Open Market Committee, the Federal Reserve said it would hold rates near zero through mid-2013, notes the Journal, adding that in its own poll, economists expect the Fed "to take more action" this week, "but doubt any likely moves will spur growth."

For the remainder of 2011 and all of 2012,

the economists surveyed said they expect gross domestic product to expand less than 2.5% at a seasonally adjusted annual rate, which is down from estimates near 3% just two months ago. “As a result, they expect the economy to add just 125,000 jobs a month over the next year, barely enough to keep up with population growth,” the newspaper writes, which is much lower than last month’s estimate that the economy would create about 148,000 jobs a month.

WHAT’S UP WITH COFFEE PRICES

When gas prices go up, it’s because oil is trading high on Wall Street. And “these same big financial investors” are boosting the price of coffee, the Baltimore Sun reports.

So what gives? According to coffee industry leaders at last week’s National Coffee Association conference in Washington, financial speculators are at fault, “taking advantage of global supply hiccups to drive up coffee prices by adding volatility to the trading of contracts for future delivery of coffee. It's not as debilitating to family income as high crude oil prices, but the phenomenon is the same,” writes the newspaper.

According to experts, hiccups in production and higher global demand justify higher prices, but perhaps not this high. The newspaper notes that the price of a futures contract for 37,500 pounds of coffee increased by more than 40 percent in 2010, and has risen by more than 57 percent this year through August 19.

"It's not a true coffee market anymore, where the laws of supply and demand hold forth," said Danell Seda, a trader for Walker Coffee Trading in Houston.

GAS SPENDING NEARS RECORD LEVEL

Anyone with a car has suffered from sticker shock when pulling up to the gas pump this year, so it should be no surprise that U.S. drivers could spend a record $491 billion for gasoline this year.

Gas prices may dip a bit over the next few weeks as the country switches its gas supply to winter blends -- which are less costly to produce -- but high gas prices are here to stay, according to a report by the L.A. Times.

"The 30 days between now and mid-October will be the most hospitable days in the country for dropping prices," said Tom Kloza, chief oil analyst for the Oil Price Information Service (OPIS), who came up with the $491 billion estimate. "But then, the drumbeats will start about fears of a second Arab Spring [of political unrest]. Demand outside of Europe and the U.S. continues to rise. By spring, Americans will be wrestling with $4 gasoline in a lot of markets."

The current average price for a gallon of regular gasoline stands at $3.642, with premium at $3.909, according to AAA's Daily Fuel Gauge Report. Today's price is nearly a dollar more than a year ago when the average was $2.709 for regular and $2.980 for premium.

As the newspaper reported, the average price is noticeably below the all-time high set in 2008 when it cost drivers $4.114 a gallon to fill up their tanks. However, overall, drivers have spent more for fuel this year than three years ago because prices

have risen faster in 2011 and stayed high longer.

Energy Department statistics show that gasoline demand in the United States is running 157,000 barrels a day below 2010 levels. At the same time, gasoline stocks in the country are down 16.3 million barrels below last year, at 208.8 million barrels, even though refinery outputs are high.

Rising inventories in periods of weak demand are one of the things that drive retail prices lower, but the refined fuels aren't staying here; they are going overseas, the newspaper noted.

"We do know that there have been more sales overseas this year compared to previous years," said Gregg Laskoski, a senior petroleum analyst for GasBuddy.com. "That has been most evident in the Midwest. When we look at the BP Whiting refinery in Indiana, which is one of the largest in the country, you see the output is strong, yet we are still seeing a lot of high prices in the markets this refinery is serving.

"It's troubling for consumers to try to reconcile the high price they see at the pump when the seemingly local refineries that served them in the past are now outsourcing more of their products overseas," he added.

SMALL PURCHASE FEES MAXED BY VISA, MASTERCARD

The recent news that credit card companies Visa and MasterCard would charge the maximum fee allowed on small purchases was no surprise to the National Association of Convenience Stores (NACS).

Lyle Beckwith, senior vice president of government relations at NACS, says the people and organizations who won reduction of debit-card swipe, or transaction, fees in 2010 have been working on a plan of action since mid- summer, when the Federal Reserve ruled that the reduced fees would be much higher than anticipated.

Visa and MasterCard, the world's number one and number two credit card networks, said Sept. 22 they would raise fees from 8 cents on a $2 purchase to 23 cents, according to news reports.

The giants of plastic will eliminate the interchange portion of the fee, charging the highest amount allowed by the Fed's June rule.

The Fed ruled that beginning Oct. 1, each swipe of a debit card would cost merchants 21 cents plus 0.05% of the transaction. It had proposed Dec. 7, 2010 to raise it to 12 cents per swipe. Beckwith says the enemy will always be the giant credit card companies, but is now the Fed as well.

"This shows that there is a broken market, that (Visa and MasterCard) compete by raising prices," Beckwith says. "It shows that the Fed completely got the rule wrong; it was not the intent of Congress to pass this legislation to make small-ticket items go up. It proves that one, the Fed got the rule wrong, the final rule, and two, the credit card companies operate in a duopoly with no competition, that the market is in fact broken.

"What this is is an attempt by Visa and MasterCard to steer merchants - since merchants now have the ability to steer - they want merchants to steer people to credit (cards) as much as possible," he added.

Beckwith says that the Merchant Payment Coalition, a Washington D.C.-based lobbying group, is rallying anew and it will

be just the start of the merchant pushback.

"(The MPC) is also going to be initiating a campaign now to go after credit the way we went after debit," says Beckwith. "That could be a multiyear campaign. The MPC, while keeping an eye on what's going on with debit, is also moving to educate Congress about credit. We'll be taking any and all appropriate actions."

GENERAL COUNSEL CORNER

Distributor Litigation Developments
By Peter Gunst

Litigation continues as a result of dealer dissatisfaction with refiners abdicating to distributors their roles as landlords and suppliers. Two recent decisions are typical.

East River Petroleum Realty, LLC v. Woodhaven Realty Corp., 2011 NY Slip Op. 31597U (Nassau Cty. 2011), involved a dealer who debranded the service station that he owned after his supply agreement for Mobil branded products was assigned to a distributor.

The distributor sued the dealer in New York state court for breach of the supply agreement, claiming among other things a right to liquidated damages.

The dealer counterclaimed, asserting that the distributor had breached the assigned supply agreement by "unilaterally raising tank wagon prices in bad faith such that the prices were not competitive."

As often occurs in such circumstances, the distributor moved to dismiss the dealer's counterclaim, contending that the assigned supply agreement's open price term gave it almost unlimited pricing discretion, and that the dealer's "mere allegation of bad faith" was insufficient as a matter of law.

The trial court denied the distributor's motion, and permitted the dealer's claim to proceed to discovery. Emphasizing that the dealer's counter- claim identified at least one instance where the dealer tank price that it had been charged was higher than the retail prices charged by its competitors, the court concluded that the dealer's counterclaim "adequately alleges a viable cause of action" for bad faith pricing by the distributor.

The court's conclusion appears to be correct. Too often, trial courts – and especially federal trial courts – have treated open price term provisions as an unlimited license to gouge the dealer. This court recognized, however, that the distributor's discretion is limited by the requirement of good faith.

Barja, Inc. v. Equilon Enterprises, LLC, 2011 U.S. Dist. LEXIS 73177 (C.D. Cal. 2011), involved two lessee dealers' challenge to the sale of their stations and the assignment of their franchise agreements to a distributor. They argued that Equilon had failed to comply with the requirements of California's right of first refusal statute because the sale to the distributor, which involved a "cluster" of service tations and included additional "rights and interests," enabled the distributor to inflate the purchase price that it offered to pay for their service stations.

The federal court entered summary judgment against the dealers. It found that the broad distribution rights granted to the distributor were severable from the sale of the two service station properties, and that there was no evidence that the right of first refusal price offered to the dealers "differed

in any material way" from the price that the distributor offered to pay for the stations.

It may be argued that the court's decision is incorrect because it permitted the distributor to subsidize the prices that it offered for individual stations with the gains that it expected to obtain from its broader distribution rights.

The court, however, found that it was unnecessary to delve too deeply into the details of the"cluster" transaction because there appeared to be little evidence that the dealers had been victimized. One of them no longer even challenged the specific price allocated to its station. Further, the distributor could point to the significant investigation that it had taken in determining the price to be offered for each service station.

As often happens, bad facts create bad – or at least questionable – law.
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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.

THE COMMISSION MARKETER AGREEMENT
By Harry C. Storm, WMDA Counsel

There has been a lot of interest lately in commission marketer/commission agent/fee agreements, and the question that is inevitably asked is whether these agreements are subject to the protections of the Petroleum Marketing Practices Act (the "PMPA"). A recent case decided by the United Stated District Court for the Central District of California, Irvine Fuel Exchange, Inc., et al. v. Pacific Convenience and Fuels, LLC, reminds us that the answer to that question is "no." The PMPA does not apply to commission or other arrangements where the "dealer/retailer" does not purchase the motor fuel from the supplier.

In Irvine Fuel, Tosco Corporation, the predecessor to defendant Pacific Convenience, contracted with the plaintiffs' predecessor under a Diversified Income Property Lease, and a 76 – Branded Fee Operating Agreement. The same form agreement was applicable to all three stations in the litigation.

The form Operating Agreement expressly stated that it did not create a franchise relationship under state or federal law, including under the PMPA. Under the terms of those agreements, plaintiffs leased the stations, and sold motor fuel provided to them by the supplier. The agreements explicitly provided that the operators did not purchase or own the fuel sold at the stations. Rather, the defendant was to "be responsible for the costs and expenses incurred for the sale of motor fuels ... including gasoline resale licenses and permits…" Plaintiffs were said to merely "perform 'marketing services,'such as (1) opening and closing the gas stations, (2) implementing price changes for motor fuels and changing price signs accordingly as directed by [the supplier], (3) collecting payments from consumers, and (4) dispensing and selling motor fuel and products to the public as [the supplier] normally offers to the consuming public at its retail marketing stations…" For these services, plaintiffs were paid a monthly operating fee. The "plaintiffs did not retain any funds from the sale of the fuel."

When Pacific Convenience refused to renew the lease and Operating Agreement at each of the locations, the plaintiffs sued in federal court under the PMPA, seeking a determination that the non-renewal was improper.

Pacific Convenience moved for a summary determination on the pleadings that plaintiffs' claims should be dismissed because the PMPA was inapplicable to the contracts at issue, and the Court agreed. The Court discussed the statutory framework of the PMPA, and its applicability to relationships between a "refiner," a"distributor," and a "retailer." Unless, said the Court, the "parties meet the statutory definition of one of these terms, there is no coverage under the PMPA and general contract principles govern." According to the defendant, the plaintiffs were neither "distributors" nor "retailers" (and were obviously not "refiners). Thus, the argument went, the plaintiffs could not bring themselves within the PMPA's coverage.

Plaintiffs argued that they were in fact "retailers," claiming that they marketed and sold motor fuel for the defendant, and bore significant risks and responsibilities of the type typically assumed by franchisees.

The decision, however, turned on the PMPA's definition of "retailer." That term is defined under the PMPA as "any person who purchases motor fuel for sale to the general public for ultimate consumption." (Emphasis added). As the plaintiffs did not argue (nor could they) that they actually "purchased the motor fuel for resale," their PMPA claim failed, and that claim was dismissed by the Court with prejudice. Their state law claims (including breach of contract and unjust enrichment) were dismissed without prejudice. As to the state law claims, because the PMPA was found not to apply, the plaintiffs were free to re-file and pursue those claims in state court.

The Irvine Fuel case, which cited to several other cases in which courts have ruled that an operator of a station who was not a "purchaser" of products was not a "retailer," confirms that the typical "commission agent," "commission marketer," and "management fee" agreements are not protected by the PMPA. Any party signing an agreement like this, regardless of what it is called, should be mindful of this limitation.

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 607-398-7260.

STAY IN TOUCH

The Association website is
www.nysassrs.com
Our e-mail address has changed to:
ssra@nysassrs.com

Lawley

New York State Association of Service Stations & Repair Shops, Inc.

Declares Dividend

Workers Compensation Safety Group #536
Pays dividend for the 19th consecutive year.

35%

(Applies to Policy Term 5/1/09 - 5/1/10)

Dividend checks will be mailed direct to your address by The State Insurance Fund

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35%	08-09
35%	07-08
30%	06-07
30%	05-06

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INSURANCE | EMPLOYEE BENEFITS | RISK MANAGEMENT | BONDS

SSRA

Service Station and Repair-shop Association of Central 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 Ralph Bombardiere at (607) 398-7260

CIGARETTE SALES TO MINORS
CLERK CERTIFICATION

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

CERTIFICATION OF A CLERK WHO SELLS TOBACCO PRODUCTS
POINT REDUCTION CLASS

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

THE STATE IS ENFORCING THIS LAW

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

WHERE & WHEN:

Classes will be scheduled upon request.
When sufficient demand for classes in an area exists,
a class will be scheduled

COST:

MEMBERS: $15.00 - NON-MEMBERS $30.00

PLEASE CALL FOR RESERVATIONS AT (607) 398-7260

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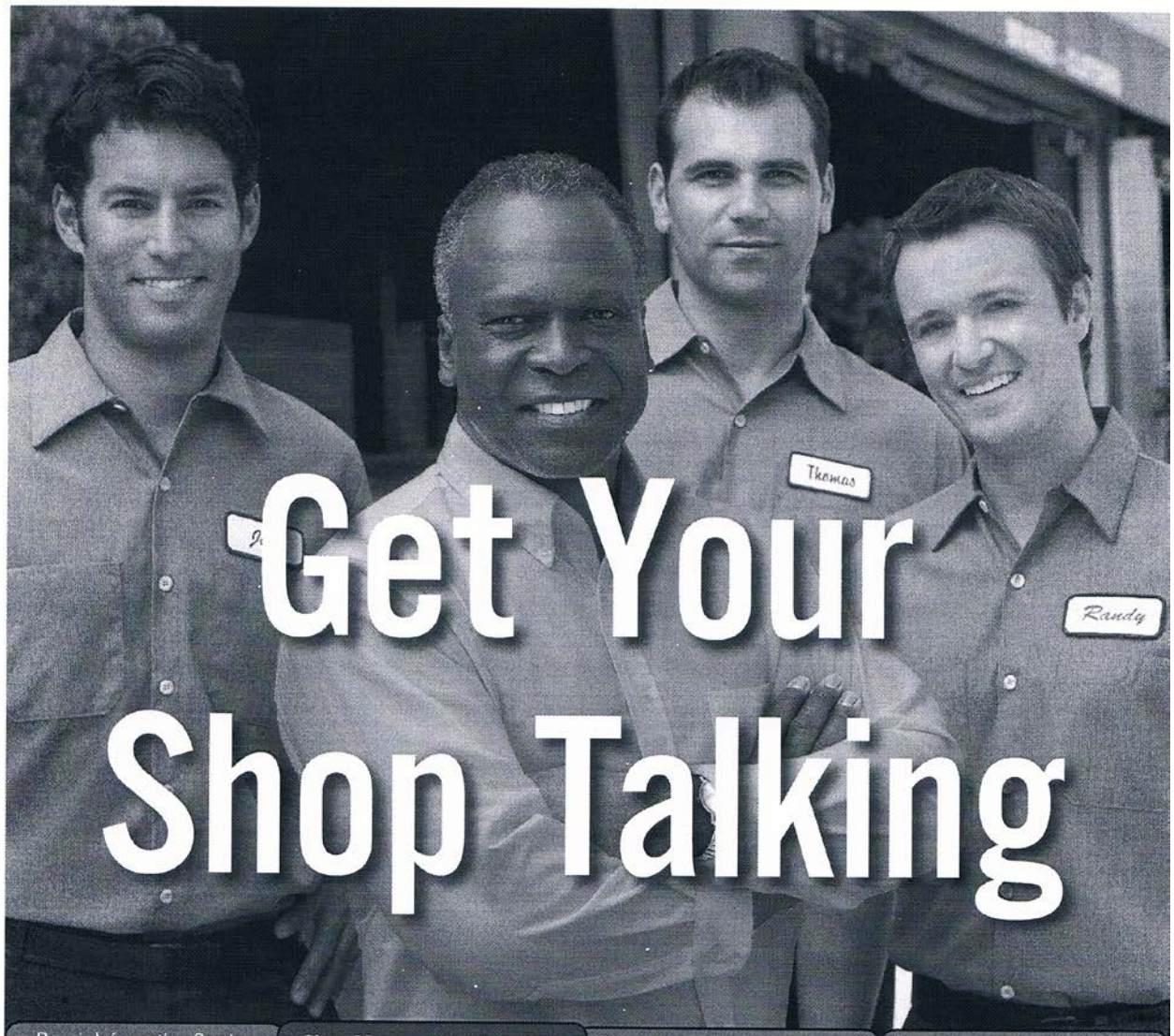


Get Your Shop Talking

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™

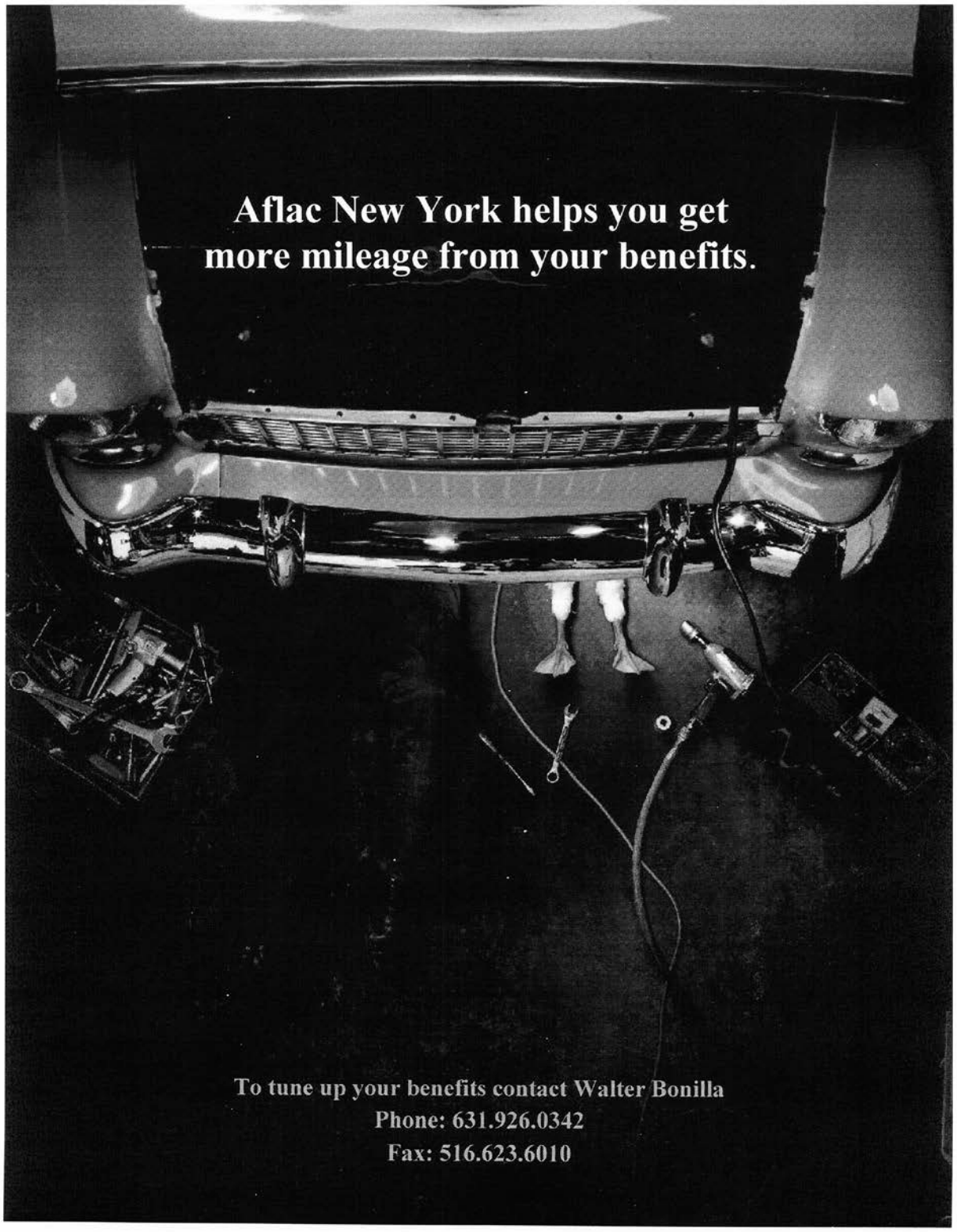
Now you can turn customers into loyal, profitable repeat customers easily. Mitchell 1 CRM integrates seamlessly with your shop management system to track your customers' vehicle history and send timely scheduled service reminder postcards and e-mails automatically. You choose the postcards and customize 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