
NYS ASSOCIATION OF SERVICE STATIONS & REPAIR SHOPS, INC.

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Court Denies Exxon's Last-Ditch Effort to Avoid Billion Dollar Verdict

Dealing a fatal blow to Exxon Corporation's efforts to avoid paying out on a \$1.3 billion jury verdict won by a class of Exxon service station dealers, the Eleventh Circuit Court of Appeals in Atlanta has denied Exxon Corporation's request that it reconsider a June 2003 ruling in favor of the dealers.

As a result of the March 15 ruling, it is possible that some of the thousands of dealers who have filed claims may be able to begin receiving payment as early as the end of 2004. "Exxon's based faith caused much hardship to Exxon dealers and their families," said Stearns, Weaver, Miller partner Eugene Stearns, an attorney for the dealer class. "We will be working hard to get the dealers' money returned to them, with interest, as soon as possible."

At a February 2001 trial in Miami federal court, the class proved that Exxon acted in bad faith by overcharging its dealers for the wholesale price of motor fuel, and then fraudulently concealed the overcharge. The average dealer recovery is expected to be approximately \$130,000.

The class consists of the approximately 10,000 current or

of Columbia who owned or operated an Exxon service station between March 1, 1983 and August 28, 1984, and were party to one or more Sales Agreements with Exxon Corporation. The class also includes anyone who purchased, inherited, or otherwise acquired the rights of an Exxon dealer. To date, approximately 2,800 claims have been filed.

Because the claims administrator does not have current addresses for a significant portion of the class, attorneys for the class are urging anyone who may know the whereabouts of former Exxon dealers or their families to contact them. The deadline for filing claims is August 29, 2004. More information about the case is available by visiting exxondealerclassaction.com or by calling (888) 769-7759.

The class was represented by Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson and Pertnoy, Solowsky & Allen, both located in Miami, Florida

Department of Environmental Conservation Updated Regulations

The U.S. Clean Air Act requires painting operations to reduce emissions. According to DEC volatile organic compound content of coating and paints used in auto body shops. New Volatile Organic Compounds, (VOC) limits will become effective on January 1, 2005 and will apply to all auto body refinishing operations located throughout the State. Body shops should check with their paint supplier to ensure that the coatings being used are in compliance with the new regulations. As long as you mix the coating properly and do not add more solvent/reducer than is recommended by the supplier the results should be within proper limits.

Also, on January 1, 2005 one of the following methods must be used to clean spray guns after applying auto repair and refinishing coatings:

- an enclosed spray gun cleaning system
- non-atomized discharge of VOC solvent into a paint waste container
- disassembling and cleaning of the spray gun in a container
- atomized spray into a paint waste container that is fitted with a device designed to capture atomized VOC solvent emissions. The bill provides that any small business or local government may pay an amount of \$300 or more which it owes to a state agency, for either fees or civil penalties, in four

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former direct-served dealers in 34 states and the District quarterly installments or in other installments agreeable to the agency. Such installment payment would be subject to interest but would not be subject to penalties.

Along with the above methods the gun cleaning equipment involved must be kept closed when not in use.

Paint Booths

Most auto body shops in the New York City Metropolitan Area need a registration from the New York State Department of Environmental Conservation prior to construction and/or operation of an auto body shop. Body shops, located in upstate New York, that use less than twenty-five gallons per month of coating and solvents combined are exempt from permitting requirements but will need to comply with the coating standards. If a shop just performs "touch-up" body painting, painting small areas of a vehicle, it may be exempt from registration with DEC provided the shop does the following:

- applies coating using high volume low pressure spraying with a maximum cap pressure of 10.0 psig;
- cleans spray guns using techniques that minimize Volatile Organic Compound emissions
- use coating that does not exceed the appropriate VOC content limits;
- exhaust emissions into appropriate emission control equipment;
- apply coating to work areas that do not exceed 9.0 square feet;
- use no more than 5 gallons of coating and cleaning solvents on an annual basis
- maintains records for five years needed for tracking the quantity of coating and cleaning solvents used on an annual basis.

This exemption is fairly restrictive but if a shop can comply with all six items it does not need to register. For more information call the association office.

Discharging of Pollutants

Environmental law prohibits the discharge of pollutants into surface or groundwater without a State Pollutant Discharge Elimination System (SPDES) Permit. Sources of wastewater discharges include floor drains and car washes. Since most repair shops do not have an SPDES permit, and will probably not qualify to get one, shops must be sure that floor drains are connected to a public sewer system. Floor drains in repair shops may not discharge into the ground.

Also, if the shop is hooked to a sewer system an oil water

separator is required.

Fluorescent Light Bulbs

Many fluorescent lamps currently in use are considered hazardous wastes when taken off service due to their mercury content and need to be disposed of properly. Other lamps that are commonly classified as hazardous waste due to the presence of mercury or lead include high-intensity discharge (HID), neon, mercury vapor, high-pressure sodium and metal halide lamps.

To determine if lamps are a hazardous waste a toxicity test can be performed however, the cost of this test is prohibitive. The shop can rely on the manufacturers of low-mercury fluorescent lamps, which they believe are non-hazardous. When these bulbs are taken out of service, manufacturer's date may be used to help determine if they are a hazardous waste.

Pollution Prevention Program "P2"

The New York State Association of Service Stations and Repair Shops has joined with the Empire State Development in a new program to help small business save money by reducing the potential for a normal business operations to produce waste, consume unnecessary energy or other wise damage the environment.

Participation in the program is entirely voluntary. While the amount of effort required of the business owner or manager is minimal, the results can be significant. A successful P2 Assessment can add to the bottom line. The assessment will determine efficient ways to work that protect the environment and save money, use of material that are less hazardous and less expensive to purchase, use and dispose of waste and making changes in operations, and recommend Equipment that can reduce the use or cost of energy.

The assessment is performed by professional engineers and would normally cost over \$300. However, members and affiliates of the New York State Association of Service Stations and Repair Shops will receive the service at no charge.

While the recommendations should be considered carefully by the business owner, there is no obligation to adapt any of them.

If you wish to participate or have questions please call the State Association office at (518) 452-4367

Tobacco Sales Certification

The New York State Department of Health and County Health Departments are continuing their "Sting Operations". A minor is sent into a business that sells tobacco products and attempts to make a purchase without

identification. If the sale is made the business receives a violation which will result in one or two points. If the clerk has receive an approved tobacco sales certification only one point is assigned. If the clerk is not trained, the business will receive two points. A total of three points will result in a six-month suspension of the tobacco license.

The Association will provide this training if there is sufficient demand in an area. Please call the office for more information.

Sales Clerk Tobacco Sales Training Program **Most Asked Questions**

Q. How many points are given for a violation of the law that prohibits tobacco sales to any person eighteen or younger?

A. It's a system where the points vary depending upon whether the clerk has been trained. Two points are awarded if the clerk has not been trained at the time of the violation and one point if the clerk has been trained.

Q. How many points mandate a suspension of the State's tobacco sales license?

A. Three

Q. How long are these points counted against the retailer before they are removed?

A. All points are removed if the retailer receives a six-month suspension. At this time the point system starts over. However, points are removed for an infraction of the law three years after that particular point is awarded to the retailer.

Q. Does this mean that if a retailer receives a violation and the clerk that is not trained causes the infraction that the retailer will receive two points and one more infraction makes it three points resulting in a six month suspension.

A. Yes

Q. If a clerk makes an illegal sale to a minor and is not certified and the retailer receives two-point can the points be reduced to one point if this clerk is trained after the infraction?

A. NO. The points are assigned at the time of the violation and the clerk must be trained prior to any infraction of the regulations.

Q. Sounds like it pays to have the clerks trained as soon as they are hired?

A. You bet.

Q. Where could I have may clerks trained?

A. Call the Association office.

Legislative Report

Bill A.345, Christensen, An act to amend the state administrative procedure act, relating to providing for installment payment for fees and civil penalties owed to the

state by local governments and small businesses. It enables them to make installment payments to state agencies.

The bill has passed the Assembly and its counterpart, S6689 in on the calendar in the Senate.

A.6114 Kaufman - this bill amends the general business law in relation to information required on a credit card transaction form. It is suppose to clarify and tightened the protection afforded consumers under the credit card privacy law.

The bill prohibits a merchant from writing a customer's address and telephone number on a sheet of paper. Current law prohibits the noting of the customer's information on the credit card form. Some merchants are avoiding the law by writing the name on a separate sheet of paper and attaching it to the credit card.

The bill has passed the Assembly and sent to the Senate. However, there is no Senate counterpart at this time.

A.7854 Grannis, an act to amend the public health law relating to minimum package sizes for tobacco products. The sponsor expects it will help deter minors by establishing a minimum package size for the sale of cigarettes and rolling paper.

The bill forbids the selling of cigarettes in packages containing fewer than twenty cigarettes and rolling paper in packages containing less than twenty sheets and tobacco in packages containing less than six ounces.

The bill has passed the Assembly and its counterpart S5014 is on the calendar in the Senate.

S.2047 Rath amends the vehicle and traffic law and the penal law in relation to suspension of a driver's license for the theft of motor fuel.

It provides that a driver's license may be suspended for a period of up to six months upon conviction of the theft of motor fuel and up to one year upon subsequent convictions. The bill has passed the Senate.

S.2259 Trunzo amends the penal law relating to the unlawful sale of tobacco products to children making the offence separate and distinct.

The sponsor's memo claims that the sale of tobacco to a minor is a serious offense and the sale of these products to persons under the age of eighteen is a violation of the penal law, which is entitled unlawfully dealing with a minor in the second degree as well as a violation of the health code.

This bill will require that the violation be identified as a separate and distinct offense. The bill has passed the Senate in 2003 and is again on the calendar this year. There has been no action in the Assembly.

NEW YORK STATE ASSOCIATION OF
SERVICE STATIONS AND REPAIR SHOPS

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Legislative Report cont.

S.6822A Spano, amends the tax law in relation to taxes on cigarettes, motor fuel and diesel motor fuel purchased on Native American nations or tribe lands. It provides for the taxation of these products when they are sold to non-Indians. In the justification for the bill the sponsor reports that the New York Senate Committee on Investigations and Government Operations recently conducted a study which details various ways the state is losing revenue from taxes on cigarettes and petroleum due to sales on Reservations. According to Department of Tax and Finance information since September the Indian Nations purchased 26,251,410 cartons of cigarettes. Since 1996 the purchases were 168,082,813 cartons. Recent independent study places the revenue loses for the state at \$609 million for 2001 and about \$895 million for 2002.

Last year's budget bills required the Tax Department to initiate a system to collect non-Indian taxes without violating Indian reservation sovereignty. The Department did develop regulations but has refused to implement the system. This legislation is designed to encourage the state to enforce the tax collection laws at Native American facilities. The Bill is on the calendar of the Senate.

A.8589 Abbata/S4428 LaValle, Establishes the minimum distance in which a refiner may operate a retail service station that will compete with a dealer of the same brand. It requires that a company operated service station may not open within one mile of an existing station of the same brand in New York City, one and a half mile in the metropolitan area surrounding New York City, and two miles in other part of the State. The bill has passed the Assembly and is on the calendar in the Senate.

S.6950 Flanagan amends the tax law in relation to exempting coin-operated tire inflation equipment from sales and use taxes. It addresses tire air machines at service stations. Vacuum machines that are coin-operated are exempt therefore it is only fair that tire machines be exempt, say the sponsor. The bill is on the calendar in the Senate.

S1642 Spano amends the vehicle and traffic law relating to regulations in cities having a population of excess of one million people, in affect New York City.