
NYS ASSOCIATION OF SERVICE STATIONS & REPAIR SHOPS, INC.

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OBD II Emission Inspection Program Update

Effective April 1, 2005, according to the Department of Motor Vehicles, all emission inspection testing for vehicles 1996 and newer must be done through a new system called the New York Vehicle Inspection Program, (NYVIP). The program is expected to begin in July of 2004 in the counties outside of the Metropolitan Area. The selected program contractor is SGS TESTCOM. The cost of the basic equipment is \$1,664.04, which will include a personal computer, barcode scanner, printer, and an OBD II scanner. Stations will also be required to pay for telephone calls similar to the downstate program. The cost is \$0.365 per call. Most inspection will require two calls. One, to receive the data in the vehicle to be inspected and, the second to inform the data manager of the results of the inspections. The maintenance cost for the equipment is included in the cost of the telephone calls. Upgraded optional equipment, such as a flat screen monitor, computer stand, laser printer, and a faster scanner will be available for an additional cost. Wireless and bar code scanners will not be available when the program begins.

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 otherwise 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

S.6724 Suspension Pending a Hearing (DMV)

The Department of Motor Vehicles, in an attempt to increase its authority over repair shops has introduced legislation to give them the authority to suspend a repair shop license before the shop has a hearing. It also gives DMV the authority to refuse to reinstate a repair shop license during an appeal. Under current law, the repair shop license remains in effect until an administrative law judge suspends it after a hearing. If the judge suspends the repair license after a hearing, the shop can continue operation if the decision is appealed. This bill eliminates these rights. We have opposed this bill.

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Indian Tax Collection

Members of the Republican controlled Senate have accused Governor Pataki of squandering nearly \$1 billion in uncollected revenue for tobacco and gasoline taxes on Indian reservations. Traditionally, the two parties are allies but the Governor ignored a legislative mandate to collect the taxes and help bridge the state's budget gap, and increase funding for education.

The taxes from Indian reservation tobacco and motor fuel sales were to be collected starting December 1, 2003. Legislators anticipated the revenue and used it in the budget. In January however, the governor ordered the Department of Taxation and Finance to delay collections until March of 2004. This date has come and gone and still no revenues have been collected.

Below Cost Selling Law

An amendment to the 2003 Below Cost Selling Law has passed both houses of the State Legislature and is on the Governor's desk awaiting his signature. The law identifies five general categories of unlawful pricing activities by motor fuel retailers:

- Predatory Practices – the sale of motor fuel at a retail price less the 95% of cost
- Discriminatory practices – the sale of motor fuel by a refiner at a price less than 95% of the price charged to other wholesalers or dealers in the same market
- Discriminatory allocations – limitations of allocations of the quantity of motor fuel by a supplier to a reseller in certain conditions
- Unfair Practices – Unfair practices such as fixing or maintaining the retail price of motor fuel by a refiner or making significant modifications to a contract between a supplier and the dealer during the terms of the contract
- Unlawful rebates – rebates, subsidies or concessions associated with the sale of motor fuel for resale when the seller does not provide the same general terms to all persons in the geographic market.

The New York State Consumer Protect Board will lead in the enforcement of these regulations. Forms have been developed to make complaints against business that violate the law. Please contact the Association for assistance if you suspect a motor fuel supplier, refiner or retailer of violating the law.

Court Upholds \$1.3 Billion Verdict against Exxon

The United States Appeals Court in Atlanta has denied a request by Exxon/Mobil Corp. that it reconsider a \$1.3 billion verdict awarded last June to some 10,000 Exxon

service station dealers. The class includes about 10,000 current or former dealers who owned or operated Exxon service station between March 1983 and August 1994 in thirty-four states. Exxon/Mobil may appeal this latest decision which has grown to \$1.3 billion because of interest.

The case is based on Exxon's failure to give the dealers a 1.7 cent per gallon decrease in the wholesale price of motor fuel to compensate for the dealer's increase cost of the "discount for cash" program. The dealers claim, and thus far the court has agreed, they never received the discount.

Dealers must register that they were an Exxon dealer during the time frame, March 1983 through August 1994 to be eligible to receive a portion on the settlement. Dealers have until August 2005 to register. To date most dealers have not registered. Call the Association office for more information.

S.4428-B Lavallo – A.8589-A, The Encroachment Bill

The Association promoted Encroachment Bill in on the Calendar in the State's Assembly and Senate. The Bill needs to pass both houses of the legislature and be signed by the Governor to become law. The Bill amends the General Business Law to prohibit a motor fuel refiner/franchisor from directly impacting the financial position of its franchisee dealer or distributor by locating a company owned service station in direct competition of a dealer station. The distance limitations include:

- one mile in cities with a population of one million or more;
- one and one half miles in counties outside New York City with a population of 900,000 or more;
- two miles in all other counties.

The Association, with member support, has work hard to bring the Bill to its current status. If and when it is passed by the legislature we will need a major effort by the industry to convince the Governor to sign this Bill into law.

A.10423 Confiscation of False Identification

A Bill has been introduced in the New York Assembly that allows a licensed seller of alcoholic beverages to confiscate false identification. The Bill is designed to permit the retailer and police to confiscate a minor's false or fraudulent identification that was used as identification in an attempt to purchase an alcoholic beverage. The retailer will be required to turn the fake ID over to the police within four days.

OBD Emission Inspection Program Upstate & Down State

We have been told by the State that the OBD II Emission inspection program will begin on or about July 1, 2004 upstate and April 2005 down state. Regulations permitting the program to begin were to be published the beginning of April however thus far no regulations have been made available.

The regulations will include the price of the equipment, explain how the program will work, and announce the fee. Normally it takes forty-five days for regulations to become final. This permits time for comments and changes. If the State announced the regulations today, it would be the end of May before they become final.

The industry cannot order the equipment until the Regs are finalized therefor the starting date of July 1, 2004 is questionable.

The State tells us the date will be announced shortly when inspection stations can order the equipment. A second date will than be announced when a stations must have the equipment or be out of the inspection program. We believe the second date will be no sooner than September or later.

There have been Alpha stations in operation in the Albany Area. These stations are performing OBD II inspections. We have received reports that there are a few problems, some dealing with the software, others with the equipment. However, the reports are favorable over all.

We have had an opportunity to review the contract between the State and TestCom. The following may be of interest:

- The certification of inspectors can be done on the equipment. The inspector will need to pass a test. There are 125 questions which were supplied by the contract. The inspector will receive a test using twenty-five questions.
- The contractor must provide the public with information about the new program. This information will describe the emission-related repair to pass inspection, the cost of the inspection, how the pass or fail works, and the fee for re-inspection. They must also explain that a repair needed may be under warranty, which vehicles must be inspected, and how the MIL light is an early warning system designed to inform the motorist that there may be a problem.
- TestCom will convey information on the program to the public through pamphlets, advertisement and/or other media designed to communicate the requirement of the program. TestCom is committed to spend two million dollars on this program.
- TestCom will roll out to stations, one month before the enrollment period begins, information by mail. (Another sign that the program will be late,) In addition, information to upstate motorist is to begin no later than three months prior the Upstate Official Start Date.

- The contract states that TestCom may begin soliciting and accepting orders from upstate stations for the NY-VIP units up to 60 days before April 1, 2004. They missed this period. No soliciting has been done thus far.
- Sufficient station enrollments will be achieved when either 3,500 upstate stations have received the equipment or 35% of register inspection stations for each upstate county have the equipment, whichever occurs first.
- The contract provided for updates that include a gas cap pressure test or diesel opacity test. DMV says these options are not expected to become part of the program.
- TestCom must provide financing for stations to purchase the equipment. This will probably be in the form of a credit card.
- According to the contract, the basis cost of the equipment is \$1664.02. There are options available at additional cost. They are:

Printer option – laser printer, \$207.00 plus \$304.08 maintenance and delivery

Monitor option – flat panel, \$399.00 plus \$704.13 maintenance and delivery

OBD scan tool option - \$429.00 plus \$214.07 maintenance and delivery

Hand held wireless bar-code reader option - \$1099.00 plus \$1006.19 maintenance and delivery

Steel cart with locking cabinet \$215.00 plus \$69.00 delivery.

Each additional NY-VIP Unit per licensed inspection stations \$1664.02 plus \$1491.84 maintenance and delivery.

THESE PRICES ARE HIGHER THAN WE WERE LEAD TO BELIEVE.

- Price for optional equipment may increase annually after the first year, but may not increase above 5% or the percent increase in the published Consumer Price Index.
- Each telephone call to the data manager computer will be \$0.365 in the first year. The predicted call volume for the first year of the program is estimated at 11,306,694 and is expected to increase to a high of 21,158,550 in the seventh year. The increase is mostly due to the inclusion of the downstate program. The price per call will increase or decrease depending on the accuracy of the predicted call volume.
- The contract calls for the establishment of a NY-VIP Reserve Fund of up to \$350 per inspection station. The fund is to be used to provide mandatory upgrades to the program. If, at the end of the program, there are funds remaining in the account these funds will go to the State as a Gift.

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Charging For Oil Filter Disposal

One of our members asked us the following question. If a repair shop disposes of an oil filter in an environmentally friendly manner, and there is a fee attached, can the repair shop pass on that fee to the customer? In order to arrive at the best possible answer we passed the question on to DMV. The following is their response.

Businesses can charge as long as it is itemized and reasonable.

This is the same issue as miscellaneous repair charges. For example if a disposal place charges \$100 to take away an oil drum filled with 100 oil filters, the shop owner may charge each customer \$1.00 plus a little more for handling, but he has to itemize it on the bill. He can't have a 3% environmental disposal charge on every bill.

Additionally, DEC says that it is not oil filters that are environmental waste but the oil in them. If the station drains the oil, it can then dispose of the filter in the normal garbage.