NYS ASSOCIATION OF SERVICE STATIONS & REPAIR SHOPS, INC.

May 2008

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NYVIP MESSAGE No. 30 2008
DATE: 05/06/2008
TO: ALL INSPECTION STATIONS
FROM: NYS DEPT. OF MOTOR VEHICLES
SUBJECT; ANNUAL SOFTWARE UPDATE CD

The NYVIP annual software update CD did not get mailed as we told you in NYVIP message No 28. This message is to provide you with a new timetable for the update. The CD's are now in the mail and you should receive the CD by 05/9/2008.

When you receive the CD you should follow the enclosed instructions for updating your NYVIP unit. You must install the software immediately upon receipt. If the software is not installed by May 23, 2008 it will cause the NYVIP unit to lockout and your station will not be able to conduct any inspections until the new version is loaded.

If you need assistance in loading the update or if you haven't received the update CD by 05/12/2008, contact the SGS Testcom Help Desk at 866-469-8477.

State Excise Cigarette Tax Increase

The 2008/09 New York State Budget included an increase on the tax on cigarettes by $1.25. Some municipalities are expected to add another $0.25 - $0.50 per pack increase. The increase is due to go into effect at the close of business June 2nd, at which time stores will be expected to calculate a floor stock tax.

It is mind boggling to believe that this tax will increase revenue to the State. What will become a rare artifact is a pack of cigarettes with a New York State Tax Stamp.

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Open Supply Bill (S.6151 – A.9073) On Senate Calendar

The subject bill amends New York State's General Business Law, in relation to the sale of unbranded motor fuel at service stations. It allows gasoline retailers and distributors to purchase and sell unbranded motor fuel in addition to the brand of motor fuel supplied under the terms of a franchise agreement with a refiner. The provisions of the bill invalidates any provision of a franchise with a refiner that would prohibit a dealer or distributor from selling or purchasing unbranded motor fuel.

This bill would permit service station dealers who own their retail locations, and distributors who supply such locations, to sell unbranded motor fuel without the fear of repercussions from major suppliers.

Motor fuel franchise agreements have been described by the United States Congress as contracts of "adhesion." They typically include provisions, which permit a service station dealer or a distributor to use the trademark of a refiner. The dealer and distributor than must purchase and sell motor fuel supplied solely by that refiner. Dealers are usually prohibited under such agreements from selling motor fuel from any other source including unbranded motor fuels. Distributors are also prohibited from supplying unbranded motor fuel to franchised dealers.

This restriction has limited the availability of unbranded motor fuel to New York's motorist during periods of escalating prices. This has helped support higher than necessary gasoline and diesel fuel prices. Unbranded motor fuel often sells at a lower price than branded motor fuel. The availability of unbranded motor fuel would result in additional competition in the marketplace, and availability of unbranded motor fuel would help to open up competition. The effect of this bill will be to create another level of competition where one does not exist, at wholesale.

At this time high gas prices lead legislators to look for a legitimate avenue to reduce consumer prices. The price of motor fuel has risen steadily over the last few years. The only additional ingredient creating these price increases is profit for major suppliers, be it in the price of crude oil, refining, or markup in the wholesale price to dealers.

For the above reasons the association supports this bill and will lobby for its enactment. The bill, sponsored by Winner in the Senate, has been reported by the Committee on Consumer Protection and is on the Senate Calendar. In the Assembly, the bill, sponsored by Morelle, has been reported by the Committee on Economic Development to Codes. We will report more news as it becomes available

Gas Tax Moratorium (S.7594) Passes Senate

The subject bill, sponsored by Lanza et al. amends the New York State Tax Law and the General Business law, in relation to suspending taxes on gasoline and similar motor fuels between the Friday preceding Memorial Day and the day following Labor Day 2008. It also amends the New York State Finance Law, in relation to dedicated highway and bridge trust fund set-asides.

The bill provides for the suspension of taxes on gasoline and similar motor fuels during the summer months and is an effort to provide relief to the motorist while encouraging travel within the State.

By suspending the state gasoline tax for the summer months, this bill intends to stimulate New York's economy, encouraging travel and its attendant economic benefits for retailers, restaurants and destination locations. The suspension of State fuel taxes will lower the price of motor fuel by approximately thirty-two cents per gallon. This will lower the cost of doing business in New York and provide the citizens of New York desperately needed economic relief. The bill, additionally, would allow municipalities to suspend local taxes, which can account for another 10 cents or more per gallon. In addition, the bill contains provision to ensure that no shortfall should occur in highway and bridge funds, which are subsidized by, dedicated fuel taxes.

Finally, to assure that the savings are passed on to the consumer and not absorbed by unscrupulous retailers and distributors, language is included that will allow the Department of Taxation and Finance in conjunction with the Consumer Protection Board to determine if such is the case, and after a hearing, assess stiff fines on bad actors. This same language has been successfully utilized since the imposition of the 2006 gas tax cap, which raised similar concerns.

Gasoline retailers along with consumers want stability in the retail gasoline market. Retailers are at the end of the distribution chain and do not have any measure of control over gasoline price. Retail gasoline sales are subject to competitive pressures from competing retailers. There are no similar pressures on pricing up the distribution chain. Retailers' impact on the pricing of gasoline is minimal.

The association has expressed, to the legislature, its support of the bill with the that the State enforce the penalty provision in a fair and equitable manner. The bill has passed the Senate and has been referred in the Assembly to the ways and means committee. A similar bill has beeen introduced in the U.S. Congress.

Zone Pricing (S.0175 – A5701 & A9163) On The Move

As the price of motor fuel increases and consumers find it difficult to fill their tank, many suppliers are enjoying a "windfall profit." Suppliers for no apparent reason are increasing the prices of gasoline and diesel fuel to the motoring public. The only justification is that the public is willing to pay. The only way to discourage these price increases is for government to initiate an investigation into the rise in cost of motor fuel.

One mechanism used by suppliers to control the price of motor fuel is by creating zones and offering the product at different prices depending upon what the traffic will bear. Oil companies claim that this practice is used to meet competition. In some cases this may be true, but in most it is not.

Zone Pricing as it is, is a marketing technique used by petroleum companies. These companies determine the geographical price zone based on the demographics of a certain area. If one area is more affluent than another the wholesale price to the service station dealer can be higher or lower. While many believe that the more affluent the neighborhood the higher the prices, this is often incorrect. There are many cases where the price is higher in areas that can least afford to pay these escalating prices. What is always certain, the less competition, the higher the price.

The price of motor fuel begins at the exploration stage. The product is found, extracted from the ground, sold per barrel as raw crude oil, shipped to refineries, refined to different type products including gasoline and diesel, then transported to a terminal. There, it is off loaded and sent to a service station. The price of the motor fuel along this chain is subject to change. However, the only price the public sees is what's on the pumps. The smallest margin of profit is between the wholesale price to the service station and the price to the consumer.

At times oil companies, to punish dealers, use zone-pricing practice. If the dealer does not sell the product at a price that the company determines the dealer's price increases. For example, if they want the dealer to make ten-cents per gallon but the dealer increases that margin, the supplier will increase the wholesale price. They will also take advantage of a situation where there is a lack of competition. The practice of zone pricing can be abused and in many cases is.

Legislation is needed to deter suppliers from taking advantage of motorists by using a pricing strategy that can be manipulated. While it would be in the publics best interest if the price of the product could be controlled from the well head to the automobile this is impossible. However, there is an ability to control the price from the supplier to the retail dealer and subsequently to the consumer. The provision in this bill will create a deterrent against discriminatory pricing.

The basic flaw in the zone pricing is that it is discriminatory and used by oil companies to take advantage of situations. If this is found to be true, some sort of penalty must be assessed on these abuses.

For the above reasons the association supports this bill and will lobby for its enactment. The bill, sponsored by Winner in the Senate, has been reported by the Committee on Consumer Protection and is on the Senate Calendar. In the Assembly, the bills, sponsored by Bradley and Brodsky, have recently been reported by the Committee on Economic Development to Codes. We will keep you informed.

ConocoPhillips Plans Second Cut In Credit Card Fees

The following article was reprinted from the 04/04/08 issue of Oil Express. Copyright 2008, Oil Express

In an unprecedented move, ConocoPhillips is about to reduce credit card fees for the second time in a month, Oil Express learns. As a result, the refiner's marketers will now pay the lowest fees in the industry for Visa, and the second lowest for MasterCard.

"We have been monitoring market conditions and the resulting impact on our customers' credit card processing fee expenses," says a ConPhil marketing exec. "The average street price has continued to increase has created a greater cost burden for our marketers. This additional reduction represents our commitment to keeping our credit card processing fees competitive."

Effective April 8, ConPhil trimmed processing fees for Visa, MasterCard, AmEx and Discover .10%. It shaved another .15% off Visa and MasterCard on May 1, to bring the total cut to .25%.

Based on the current rates majors are charging marketers, ConocoPhillips has the lowest fee on Visa sales. A ConPhil marketer would pay 73cts in fees on a 10-gallon Visa purchase at $3.60/gal. Shell has the cheapest rate on MasterCard, where the same 10-gallon purchase would result in a 72.4cts fee. With current temporary fee cuts, here's what major-brand marketers are paying, sources say.

	Visa	MasterCard	AmEx
BP	1.75%+12cts	1.75%+12cts	1.75%+12 cts
Shell	1.95%+ 10cts	1.65%+13cts	2.45%+15cts
Chevron	1.85%+10cts	2.00%+10cts	2.90%+10cts
ConocoPhillips	1.75%+10cts	1.75%+10cts	2.40%+10cts
ExxonMobi	1.85%+10cts	1.90%+10cts	2.80%+10cts

The rate reductions are temporary, however. How long they last will depend on market conditions. Last year, the refiner's rate cut ran through October. Current card costs are not expected to decline significantly with the summer driving season just ahead.

ConocoPhillips also has a two-day settlement cycle, which it introduced > in 2004. Shell moved to a two-day schedule last week, but its recent reduction in fees is a permanent cut.(OE 04/04/08).

Liquor Authority Steps Up Enforcement

The New York State Liquor Authority recently initiated an enforcement program aimed at convenience stores that do not have the proper ratio of grocery products to snacks and alcohol. Fifty percent of the store-displayed inventory must be groceries. Included in the non-grocery inventory are tobacco products. With the increased prices and taxes on cigarettes it is almost impossible for a convenience store to comply with the regulations.

If enforcement is expanded almost every service stations/convenience store will be affected. We are working to get regulatory relief but will not get it in time to protect convenient store owners if the State begins aggressive enforcement.

Food Safety Training

Most convenience stores need a license to do business form the New York State Department of Agriculture and Markets. Each year the business receives a renewal form. Department regulations require that a business that sells more than three million dollars of food products must have a person on staff that has completed an eight-hour food safety program. Motor full is not included in the sales figure, however if the store is part of a group, or chain, such as On the Run or A-Plus, if falls into the requirement. On the license renewal form, question eight asks if you are exempt from the training requirement. Most convenience stores should answer NO.

We Petition For Inspection Fee Increase

There has been no increase in the safety inspection fee since 1985. We have petitioned both the Governor and the DMV Commissioner on many occasions to increase the fee without success. All past increases in the fee have been for emission inspections. We have again petitioned the State for an increase. We have been asked for an analysis of the time and cost to perform a safety inspection. We are in the process of updating this data and will present it to the Department of Motor Vehicles shortly. We hope to convince the state that we are entitled to an increase.

Legislation (A.4996) Would Regulate Repair Shop Estimates

The subject bill, introduced by Assemblywoman Hooper amends the New York State General Business Law and requires motor vehicle repair shops to give fair and legal estimates for car repairs. The bill is directed at major franchise repair shops. It insinuates that legal and fair estimates are not provided to motorists by the automobile repair industry.

The estimate must be projected to the best of the motor vehicle repair shop's employee's ability and shall describe and outline the prices of necessary parts and labor.

This legislation tries to protect the public with words. The New York State Vehicle and Traffic Law already has the needed language to protect the consumer. The Department of Motor Vehicles is aggressive in its enforcement of the law.

This bill opens enforcement to other possible agencies, which will create confusion. DMV has the interest and all the authority necessary to assure the consumer a quality estimate and repair.

For the above reasons the Association opposes this bill and asks that it be defeated.

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Class Action Lawsuits Claim Manufacturers Fixed Prices On Auto Replacement Filters

As many as nine class action suits alleging price-fixing conspiraciesamong makers of automotive filters have been filed in various courts across the country. The cases allege that the defendants conspired to fix prices for oil, air, fuel and transmission filters in the filter replacements market. The companies accused include Purolator Filters NA LLC, Honeywell International, Inc, Wix Filtration Corp., The Donaldson Company, Baldwin Filters Inc., Bosch USA, Mann + Hummell USA Inc., Arvinmeritor Inc., United Components Inc., and Cummins Filtration Inc.

The suits are based on information from a senior sales executive employed by two of the defendants, who came forward with allegations that the defendants conspired to coordinate prices, rig bids and allocate customers from at least January 1, 1999 to the present. The suits claim that the defendants agreed to the magnitude and timing of their price increases during face-to-face meetings at industry events and by exchanging confidential pricing materials.

For example, in June 1999, a Purolator senor executive faxed his counterpart at Honeywell a letter which announced a 6% increase for prices of all Purolator-branded filters effective on August 15, 1999. But notice was not sent to the company's customers until two weeks later. At a meeting of Champion sales representatives in February 2004, Champion's president informed his sales team that the company planned to increase prices and instructed the team to make sure Champion's competitors followed suit.

Under their allegedly unlawful agreements, the defendants instituted price increases for filters in 1999, early 2004, late 2004, late 2004 and early 2005. The increases ranged from about 4% to 6% each.

Members of the Connecticut Association have filed a case. There will be procedural maneuvering for at least another month, so if a new case if filed, that plaintiff or plaintiffs should have a voice in litigation.