
NYS ASSOCIATION OF SERVICE STATIONS & REPAIR SHOPS, INC.

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

December 2007

OSHA Issues New PPE Standard, Exemptions

The Occupational Safety and Health Administration (OSHA) published a standard that requires employers to pay for their employees' personal protective equipment (PPE). The rule, originally proposed eight years ago, was published in the Nov. 15 Federal Register, and affects occupational safety and health standards for general industry, construction, shipyard employment, marine terminals and long shoring. The rule enters into effect 90 days from publication and must be implemented within six months.

The rule does not require employers to provide PPE where none has been traditionally required. Rather, an employer must simply pay for required PPE. The exceptions to an employer's requirement to pay for PPE include non-specialty safety-toe protective footwear and prescription safety eyewear, logging boots, items used solely for protection from the weather and lost or intentionally damaged PPE.

OSHA estimated that the annual cost of the rule will be \$85.7 million, while the injuries prevented under the rule should lead to a benefit of \$228.3 million annually. The three main benefits that OSHA expects to see from the rule are the increase in use of PPE when provided by an employer; better functioning and better quality PPE since the employer is paying for it; and increased participation in safety and health programs.

House Committee Passes New Portable Gasoline Container Requirements

The House Energy and Commerce Committee passed several pieces of legislation that would improve product safety and strengthen the Consumer Product Safety Commission (CPSC). The various bills include legislation that would require manufacturers to provide recall registration cards for durable children's products, raise fines for failing to report product defects and set safety standards for swimming pools and gasoline containers.

Of interest to the aftermarket, the committee passed H.R. 814 which would require CPSC to issue regulations mandating child-restraint closures on all portable gasoline containers. CPSC would have to issue a final rule six months after legislation passed both chambers of Congress. H.R. 814 was introduced by Rep. Dennis Moore, D-Kansas, and has 40 co-sponsors.

Motorcycle Riders Call for Passage of Right to Repair

The Motorcycle Riders Foundation issued a statement on Oct. 31 declaring their support for the Motor Vehicle Owners' Right to Repair Act (H.R. 2694) and urged Congress "to pass the legislation in order to safeguard individual vehicle ownership rights."

"The fact is that consumers are entitled to the right to choose how their motor vehicle is maintained or upgraded," said Jeff Hennie, vice president, government relations, Motorcycle Riders Foundation. "The point of Right to Repair is not to discourage vehicle owners from using the dealership for service, but to protect the freedom of American consumers to choose how they take care of their motor vehicle, be it in their driveway or at a trusted repair facility.

"We have formally committed to support the Right to Repair Act because we believe that safeguarding individual ownership rights is an absolute must. Access to accurate information when it comes to the repair or upkeep of a vehicle is essential to the safety and well being of the entire American motoring public."

The Motorcycle Riders Foundation (MRF) is a membership-based, national motorcyclists' rights organization headquartered in Washington, D.C. As the first motorcyclists' rights organization to establish a full-time presence in Washington, MRF is the only Washington voice devoted exclusively to the street rider.

Right to Repair Support Continues to Grow

The Motor Vehicle Owners' Right to Repair Act (H.R. 2694) gained two new co-sponsors last week. Reps. Steve

INSIDE THIS ISSUE

- 1 OSHA Issues New Protection Standards
- 1 New Gas Container Regs Pass House Com.
- 1 Motorcycle Riders Lobby For Right to Repair
- 1 Right to Repair Act Gains Sponsors
- 2 Light Truck Fuel Standards Thrown Out
- 2 Senate Com to Consider Global Warming
- 2 Hydrogen Pump Opens In White Plains
- 2 Federal Gas Tax Increase Proposed
- 2 HFCF Phaseout Timetable Pushed Up
- 3 CARB Passes Emission Cuts in California
- 3 Indian Cigarette Tax Lawsuit Proceeds
- 3 Inspection Station Not Liable
- 4 Underground Used Oil Tanks

Cohen, D-Tenn. and Peter DeFazio, D-Ore., added their name to the growing list of supporters of this pro-consumer, pro-small business and pro-competition legislation. H.R. 2694 now has a total of 32 sponsors.

To find more information on the legislation and to send an e-mail to your elected official asking for them to support a car owner's right to repair, visit www.righttorepair.org.

Appeals Court Throws Out NHTSA Light Truck Fuel Economy Standards

In a ruling issued on Nov. 15, the U.S. Court of Appeals for the Ninth Circuit rejected federal fuel economy standards for sport utility vehicles and light duty trucks that were promulgated by the National Highway Traffic Safety Administration (NHTSA) in 2006.

The regulation in question required that fuel economy for light trucks increase to 23.5 miles per gallon (mpg) from the current 22.2 mpg by 2010. In sending the regulation back to NHTSA for a rewrite, the court stated that the agency erred in not considering the benefits of carbon dioxide reductions in setting the "maximum feasible" fuel economy rules as required by the National Environmental Policy Act (NEPA).

The 11 states and four environmental groups claimed in their legal challenge that the NHTSA fuel economy standards were set too low and did not consider the benefits from reducing carbon dioxide emissions. The agency responded that it was not required by the Energy and Conservation Act to consider the impact of carbon dioxide. However, the court rejected the government arguments, stating that the energy act does not override the agency's duty under NEPA to conduct a full environmental assessment and consider alternatives that are more stringent.

"The impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct," the court said. The Department of Justice is currently weighing its options regarding whether to appeal the recent court ruling.

Date Set for Senate Committee Consideration of Global Warming Legislation

Turning away Republican calls for further study, Senator Barbara Boxer, D-Calif., announced last week that the Senate Environment and Public Works Committee, which she chairs, will begin consideration of legislation (S. 2191) to curb emissions of greenhouse gasses on Dec. 5.

The date represents a small slow down in consideration of legislation from the earlier statement by Boxer that the bill needed to be voted on before the United Nation's Dec. 3 climate change meeting that will be held in Bali, Indonesia. Notwithstanding the delay, Republicans at a Senate Environment hearing on Nov. 15 called for more analysis of the legislation and its impact on the U.S. economy before moving forward. Boxer responded that the calls for more analysis were a thinly veiled attempt to delay the vote indefinitely.

S. 2191 was approved by the Senate Environment and Public Works Subcommittee on Private Sector and

Consumer Solutions to Global Warming and Wildlife Protection on Nov. 1 and would require capping U.S. greenhouse gas emissions at nearly 70 percent from 2005 levels by 2050 through use of an emissions allowance trading program. Although supporting the decision to move ahead with committee consideration, bill sponsor Joseph Lieberman, I/D-Conn., admitted that the U.S. Environmental Protection Agency (EPA) and the Energy and Information Agency (EIA) would not be likely to complete their analysis of the bill in time for them to review. However, Lieberman further contended that both agencies had analyzed other previous versions of S. 2191 and, in any case, that the analysis should be completed before the legislation is debated on the Senate floor.

Hydrogen Pump Opens In White Plains

Hydrogen could be the fuel of the future, but it is available now at a service station in Westchester County. The first hydrogen pump in the tristate area opened Tuesday at a Shell station in White Plains.

While few cars currently use the odorless, colorless fuel, it is where the city plans to take five vehicles it is converting to run on a blend that also includes natural gas.

It is also where two county residents are expected to fill up the tanks of their prototype hydrogen fuel cell-powered Chevrolet compacts. The vehicles can go 160 miles before they need to be refueled.

Shell plans to have hydrogen pumps at four other sites over the next 12 months.

Dingell Offers Carbon Tax Proposal

Rep. John Dingell, D-Mich., an ardent opponent of increasing vehicle fuel economy standards, last week unveiled his new plan for reducing greenhouse gas emissions. The chairman of the House Energy and Commerce Committee, who will be charged with writing any global warming legislation, is calling for a 50-cent-per-gallon increase in gasoline taxes and a \$50-per-ton levy on carbon emission from fossil fuels. Under the plan, the new fuel tax would not apply to bio-fuels or diesel fuels, which is expected to force car companies to shift some of their SUV and pick-up fleet to diesel power.

The proposal further calls for a phase-out of the mortgage interest deduction for homes larger than 3,000 square feet. Dingell also is reportedly working on a cap-and-trade bill that would establish mandatory limits on U.S. heat trapping emissions. The congressman has announced that the Energy and Commerce Committee likely will consider legislation to curb greenhouse gas emissions this fall.

International Agreement Reached to Accelerate Phase-Out of HCFC Production

The 191 parties to the Montreal Protocol announced Sept. 22 that they came to an "historic" agreement to freeze production of hydrochlorofluorocarbons (HCFCs) by 2013 and accelerate the complete phase-out of production and use by 10 years.

Under the original protocol, HCFCs had been slated for

full elimination by 2030 in developed countries and 2040 for developing countries. However, according to signatories, evidence was mounting about the growing use of HCFCs, as well as the potential benefits to the ozone layer and climate change of an accelerated freeze and phase-out of HCFCs.

Specifically, the agreement commits developed countries to freezing in 2013, their production of HCFCs at the average production levels in 2009-2010. Developed countries would be committed to reductions in production and consumption of HCFCs from base-year levels of 75 percent by 2010 and 90 percent by 2015, with full elimination of production and consumption by 2020.

Developing countries would be required to reduce HCFC from the base-year level of 10 percent by 2015, 35 percent by 2020, and 67.5 percent by 2025, with full elimination of production and consumption by 2030. Developed countries further committed to support, at a currently unspecified amount, the continuation of the Multilateral Fund for implementation of the Montreal Protocol when it comes up for renewal in 2008. The fund is directed at assisting developing countries in implementing the protocol.

California Air Resources Board Approves Extensive Air Pollution Control Measures for Two Areas

Following a nearly year-long dispute with the South Coast Air Quality Management District (SCAQMD), the California Air Resources Board (CARB) has approved additional measures to reduce air pollution in both the Los Angeles area and the San Joaquin Valley. The measures, approved at a meeting on Sept. 27, largely focus on older, heavy-duty diesel trucks, as well as diesel-powered farm and construction equipment.

Consideration of a statewide implementation plan (SIP) was postponed by CARB in June following testimony from numerous witnesses calling for a more aggressive clean air strategy. SCAQMD wanted to see California's mobile source rule strengthened in order to bring the Los Angeles area into attainment with federal particulate matter standards, a reduction of 63 tons of nitrogen oxide emission reductions per day. Additionally, SCAQMD felt that the originally proposed state plan relied too heavily on technology that was not yet available to cut the nitrogen oxides to the required eight-hour federal standard by 2021.

Under an agreement between CARB and SCAQMD announced on Sept. 21, CARB had pledged to consider a number of regulations and incentives that would be utilized to cut nitrogen oxide emissions by 76 tons a day, including a measure that would modernize the heavy-duty truck fleet in the Los Angeles area and San Joaquin Valley.

Suit Over Cigarette Sales Proceeds Against Indian Tribes

A lawsuit filed by the supermarket giant Gristede's Foods against the Unkechaug Poospatuck Tribe and the Shinnecock Indian Nation alleging that the two Long Island-based tribes have engaged in the sale of untaxed cigarettes to non-tribe members via stores, the Internet and telemarketing

will go forward, following a Brooklyn federal judge's denial of the tribes' motions to dismiss. Gristede's asserted seven causes of action, including violations of RICO and the Lanham Act.

In a preliminary decision, Eastern District Judge Carol Bagley Amon ruled that, at a minimum, the Lanham Act claims would survive the motions to dismiss. "Accordingly, the Court presumes that the defendants wish to renew their rule 12(b)(1) motions [for sovereign immunity as American Indian tribes] and proceed with the evidentiary hearing," Judge Amon wrote. She referred the motions to U.S. Magistrate Judge Kiyo Matsumoto, adding that the court will "later issue a full order."

Inspection Station Not Liable For Injury Caused by Defective Vehicle

A driver injured in a crash triggered by a defective vehicle cannot sue the motor vehicle inspection station that certified the car as safe less than two months before the accident, the Court of Appeals ruled yesterday. In a 6-0 decision, the Court said legal precedents do not support such third-party suits. And the judges agreed that they would not be good from a public policy standpoint.

If New York State motor vehicle inspection stations become subject to liability for failure to detect safety-related problems in inspected cars, they would be turned into insurers," Judge Susan Phillips Read wrote for the Court. "This transformation would increase their liability insurance premiums, and the modest cost of a State-mandated safety and emission inspection would inevitably increase."

The Stivers contended that the inspection a Good & Fair mechanic made to Steven T. Corbett's 1991 Plymouth Acclaim in June 2001 should have revealed rusting to the car's steering linkage and ball joint. Two months later, while driving on the busy I-290 in the Town of Tonawanda, Mr. Corbett said his car started to shake and smoke began billowing from the front end. The car stopped moving in the center lane of the three-lane highway and was struck from the rear by Mr. Stiver's 1990 Ford Taurus.

Though Mr. Stiver had his seat belt on and his air bag deployed, his face slammed against the steering wheel. Mr. Stiver suffered permanent damage to his right eye, according to the Court's ruling. In addition to Mr. Corbett and his insurer, Mr. Stiver sought to sue Good & Fair for passing Mr. Corbett's vehicle at inspection prior to the crash.

The Court noted yesterday that two Court of Appeals rulings - *Espinal v. Melville Snow Contrs.* and *Church v. Callanan Indus.* - set forth three exceptions to the general rule that breach of a contractual obligation is not sufficient to impose tort liability on non-contracting third parties. But the Court held that none of those exceptions fit this case.

The judges said that Good & Fair did not create or make the problem with Mr. Corbett's car worse. Nor did the plaintiff rely on the repair shop, not knowing whether or when the vehicle had been inspected. Finally, the Court said the third exception, under which Good & Fair would have displaced Mr. Corbett's duty to maintain his vehicle safely, was not preserved for appellate review.

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

Attention Service Stations And Repair Shops With Underground Used Oil Tanks

All tanks storing used oil are regulated by NYSDEC and EPA and must be in compliance with the Petroleum Bulk Storage (PBS) regulations including registration.

If you currently store used oil in an underground storage tank (UST), and the used oil is not consumed on-site for heating purposes, then that UST is regulated by the United States Environmental Protection Agency (EPA). Such USTs must meet specific requirements, including corrosion protection, and release detection. If your tank is not registered, is not protected from corrosion or does not have release detection, you need to take the tank out of service. Contact the Association to discuss what you must do next.

Tanks that are not protected from corrosion may need to be permanently closed in accordance with Part 613.9 (PBS regulations) and 40 CFR Part 280.70 (Federal UST regulations). Tanks that are not registered or do not have release detection may be returned to service after being brought into compliance.

- Corrosion protected tanks are made of either fiberglass reinforced plastic (FRP), steel clad on the outside with a thick noncorrodible material, or steel with cathodic protection.
- Tanks without corrosion protection need to be upgraded with corrosion protection or properly closed (either in place or removed from the ground).
- Closing the tank requires a site assessment be conducted to test for contamination.

Violations are being issued for tanks not meeting EPA and New York PBS requirements. Please act immediately. Call the Association Office for more details.