

NEW YORK STATE ASSOCIATION OF SERVICE STATIONS & REPAIR SHOPS, INC.

STATE INSURANCE FUND SAFETY GROUP 536 MEMBERS

March 2005

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Changes Proposed To Bottle Law

Assembly bill A.2517 seeks to include fruit beverages, milk, bottled water, non-carbonated beverages and other assorted drinks under the current bottle return law. The bill also allows redemption of out-of-state containers as long as the consumer limits the returns to two cases per trip.

The bill proposes increasing the fee from 2 to 3½¢ for handling returns, but this does not cover the added cost of handling returns. The space that will be lost to storage will reduce the products that can be sold creating a financial hardship for our members.

The association is opposing A.2517 and will monitor its progress.

Pataki to Begin Collecting Taxes from Native Americans?

George Pataki is being quoted as saying that he must begin collecting taxes on cigarettes and gasoline sold by Native American retailers to non-Indian customers. The Governor has been criticized for ignoring a legislative mandate passed in 2003 requiring the collection of these taxes. Now Mr. Pataki is saying he must obey the law.

Several months ago Pataki vetoed legislation that would have forced him to collect taxes at the wholesale level. This would have been an end run around the Native American retailer. The veto is consistent with the Governor long time stated position that his administration has no interest in collecting taxes from Reservations sales. However, in 1997 the administration initiated an effort to collect Native American taxes but backed off due to fear of violence.

Recently the New York State Tax Commissioner, Andrew S. Eristoff said that regulations are on the drawing board to

begin the collection of sales and other taxes from the sale of cigarettes and motor fuel from reservations retailers. The regulations will be published in the near future.

Skeptics are looking at the Governor's threat to begin collecting tax as a possible political move to discourage New York Indian Nations, especially the Senecas from their public relations campaign against the Governor supported gambling casinos in the Catskills. Other feel that his unpopular stand against not collecting the taxes will hurt him if he decides to run for a fourth term. More as it develops.

Price of R134 Soars

The price of a 30-pound container of R134a was \$69.95 in July of 2004, \$99.95 in December of 2004, and \$129.95 in January of 2005. As of today, where it is available, a 30 lb. container costs our repair shop members \$350 to \$400. Our industry will have to pass these costs onto consumers, greatly increasing the cost of service to automotive air conditioning systems.

According to industry trade journals, the problem started with the Daikin factory located in Japan, which had an explosion last year. Another unnamed company has switched from production of R134a to other refrigerants. Dupont has had an unexpected interruption in its manufacturing operation, which has affected its ability to supply the product. The company is using its inventories to meet demand. Other manufacturers are also claiming production problems due to "maintenance issues." Dupont has asked its customers to be patient during this critical time and expects to be in a position to supply customer's needs.

In the interim the Association has asked the FTC and the New York State Attorney's Office to initiate an investigation.

Internet Tobacco Sales Face Tax Enforcement

Internet cigarette buyers across the United States may be surprised with a tax bill for the IRS of a state tax department. Tax collection efforts are part of a joint campaign among states, which include Ohio, New York, Pennsylvania and Oregon to collect millions of dollars owed on cigarette tax revenue from hundreds of thousands of smokers who opt to purchase cigarettes online at a cheaper price to avoid higher prices in their home state.

Many states have a problem enforcing a 1949 federal law that requires dealers who ship cigarettes across state lines to report the sale back to the buyer's home state. The process is further complicated because a significant amount of Internet cigarette sites are housed on Native American Reservations. State jurisdiction and enforcement is uncertain.

New Jersey and New York City have sent out bills to individuals that purchased cigarettes less tax over the Internet. More than 530 Michigan residents have received bills averaging \$3,200 per individual for the states tax department. In Illinois 1,300 residents who purchased cigarettes online will receive notification from the state to pay the 98 cents per pack tax.

According to one study done in 2004 governments lost an estimated \$15.5 billion in 2003 from uncollected taxes from Internet sales. The Study also predicts that if these sales are unchecked the revenues that will be lost will approach \$33.7 billion by 2008.

MasterCard is increasing its efforts by reinforcing legal requirements its customers must comply with concerning individual state regulations governing the Internet sale and shipment of tobacco products. All we can say "its about time."

Reservation of Rights Letter

There is confusion among some of our members as to what they are doing when they sign a Reservation Of Rights Letter. What they are doing is instructing the State Insurance Fund to cancel your workers compensation policy through the safety group. We have received complaints by members that they thought in signing the letter they were merely reserving their right to seek insurance from an alternate source. This is incorrect.

Before signing any form or notice of such kind, we ask that you contact the association or your lawyer. We are working hard to reinstate members without penalty into the safety group who have signed such a letter in error

Association Decides Offering Self-Insured Trusts Would Be "Irresponsible"

Someone may approach or has approached you, suggesting that you can save money on your Workers' Compensation Insurance by switching to a self-insured trust . They may not tell you that by becoming self-insured you open yourself to liability for everyone in the trust. This could potentially cost you all of your assets.

The biggest downside of a self-insured trust is "Joint & Several Liability." This means everyone is responsible in the group. You pay a contribution instead of a premium. If the group falls short of funds necessary to pay claims you are retroactively charged another "contribution." While considering a trust, make sure you understand your

exposure. You may wish to check with your attorney.

The association has researched self-insured trusts, otherwise known as self-insured consortiums, self-insured trusts, association trusts, or group employer plans. We have come to the conclusion that it would be irresponsible to offer any plans we have seen to our members. The association continues to support safety group #536 for our members Workers' Comp needs.

Safety group #536 has paid a dividend every year for the last 13 years. Dividends have been as high as 45%, while up-front discounts have been as high as 40%. This year we are pleased to announce a 22.5% dividend for the policy period 5/03 - 5/04. We are also announcing a 25% up-front discount for 5/05 - 5/06 period.

Please arm yourself with all the facts concerning self-insured trusts. Once you are in, it is difficult to leave. They may require 90 days written notice or charge a whole year of premium as a penalty. Once you leave, you may still be charged for up to 5 years for the losses of other members of the trust membership.

For more information contact the Association at 585-423-9924 or the New York State Insurance Fund at 888-875-5790.

IRS Delays Regulations that Require Dealers to Apply for Refund on Tax Exempt Sales of Motor Fuel

The IRS is extending indefinitely a rule that allows motor fuel retailers to sell tax exempt to state and local government fleets. This keeps in affect the rules that were in affect prior to January I, 2005. Under the refund system that was in effect prior to the proposed change in the law, the Oil Company that issued the credit card or fleet

car on which the tax-exempt sale applied for the gasoline tax refunds.

The change, due to a clandestine lobbying effort by Citicorp to move the refund process to the ultimate retailer, which was buried in the American Jobs Creation Act caught every by surprise. Had the changed remained in place retailers would have had difficulty in applying for refund. Retailers would need to register with the IRS and be responsible to for complicated paper work.

This association was one of the first to react and called upon oil companies, state and IRS to keep the old procedures in place. With the help of a lot of people the new requirement has been delayed indefinitely.

Coin Operated Tire Equipment To Be Exempted from Sales and Use Tax?

Prior law exempted coin operated vacuum machines in car wash business from sales and use taxes. In 2003, another law made coin operated vacuum machines in all other exempt as well. Bill S.2551 seeks to expand this tax exemption to coin operated tire inflation machines at gasoline stations. Service stations with four or more pumps are required to provide air to the motorist.

**MEMBERS OF
WORKERS COMP
SAFETY GROUP #536
SHOULD HAVE RECEIVED A
22.5% DIVIDEND CHECK
FOR THE PERIOD
MAY 2003 - APRIL 2004

AS OF MAY 1, 2005
YOUR UPFRONT DISCOUNT
MAY BE AS MUCH AS 25%**

From The Executive Director

I have been working for our industries for forty years now. The first fifteen years I was a member, board member and officer, and the last twenty-five I have been the executive director of the association. I have done the best I can, as have many others, to improve conditions for members of our industries. Sometimes I wonder whether it was worth all that effort by those who actively participate in the association.

I got a partial answer recently when I needed air in my bicycle tire. I went to the closest station and found I needed fifty cents to activate the air machine. Needless to say, I didn't have any money in my biking outfit. Just a little ticked off, I asked myself, who is responsible for this? The answer was our association. We forced the legislature to remove the no charge provision from the bill that required us to provide air. We held that bill in committee for six years until they agreed to allow us to charge for a new service they wanted us to provide.

That is just one example of what we do. Association members in New York have protection under federal, state and local law. We need more and will keep trying. Each year, 300 bills are introduced that could change the way you must do business. They include increasing the warrantee on auto repairs or requiring you to accept used oil filter from do it your selfers. There is a bill that increases the number and kinds of container where deposits are required. Non-carbonated containers will require a deposit if this bill becomes law. Tobacco and alcohol are highly regulated products.

Each year sees more and more attempts to place responsibilities on the shoulders of the retailer. While we are successful in stopping most of these attempts, there is always a chance that a new law will slip through. In these cases we do our best to limit the damage.

I sometimes wonder if we can call our effort a success. I hope so. But legislation, regulations and unfair practice by oil companies will not go away. There needs to be more interest by the industry. If you react to a situation it is to late. You need to be proactive. Take an interest in what happens to you neighbor. It can and will happen to you. If you see a problem call us we will try to help.

Although I often deal in problems, there is also good news to report. In addition to the tobacco training course which lessens the incidence and consequence of tobacco sales to minors, the association recently rolled out two other programs designed to save its members money. Repair shop owners can take advantage of rebates through the NAPA program. Everyone can take advantage of costs saving suggestions through the pollution prevention (P2) program.

On the federal level there are three bills which are designed to protect our industry, which we are looking forward to being introduced soon. These bills will need our help to move. I feel certain I can count on our members to work as hard as they have in the past.

The Motor Vehicle Owners' Right to Repair Act

The Motor Vehicle Owners' Right to Repair Act was introduced in the previous session as H.R. 2735 by Representative Joe Barton of Texas, with over 100 co-sponsors. He has indicated that he will reintroduce the bill this session. The bill seeks to prevent vehicle manufacturers and others from unfairly restricting access to the information, parts and tools necessary to accurately diagnose, repair, re-program or install automotive replacement parts.

The act would require the Federal Trade

Commission to promulgate and enforce regulations that ensure competition in the vehicle repair business. The Right to Repair Act does not affect the dealer's right to perform any services, including warranty work and does not unconstitutionally take the manufacturer's intellectual property or require them to disclose trade secrets.

It has garnered the support of the American Automobile Association (AAA), Consumers Union, National Federation of Independent Business (NFIB), Service Station Dealers Association - Allied Trades (SSDA), our national affiliate, and variety of other nationwide organizations.

Modern cars and light trucks contain advanced technology that monitors or controls virtually every function of the vehicle including: brakes, steering, air bags, fuel delivery, ignition, lubrication, theft prevention, emission controls and soon, tire pressure. Car owners and independent shops must have full access to the information, parts and tools necessary to accurately diagnose, repair or re-program these systems. This information and equipment is necessary to ensure vehicle safety, performance and environmental compliance. Vehicle manufacturers are making access to such vital information increasingly difficult and costly to obtain for the independent aftermarket and its customers.

Without access to critical information, parts and tools, motorists are forced to patronize new car dealerships, which may not be convenient, accessible or otherwise desirable to the car owner. Moreover, the lack of competition and consumer choice will inevitably lead to higher repair prices. Failure to perform necessary maintenance for any reason will result in unsafe and high-polluting vehicles populating the nation's highways.

Hearings held in the House Energy and Commerce Committee in September 2004,

illustrated the problems facing technicians in accessing the information they need to make effective repairs on late model vehicles. A survey performed by the Terrance Group found that a majority (59 percent) of vehicle service facilities have experienced problems in getting access to the repair information or needed tools necessary for repairs, with a large number admitting that they had to send the vehicles back to the franchised dealer for repairs they could not perform due to lack of information and tools from the manufacturer.

We ask our members to urge their lawmakers to co-sponsor and support passage of the Motor Vehicle Owners' Right to Repair legislation. To determine who your congressman is and how to contact him/her, go to www.elections.state.ny.us and follow the instructions. You may also call your association. Ask your congressman to contact Alex Beckles, office of Rep. Ed Towns at 5-5936 (alex.beckles@mail.house.gov) in order to sign on as a cosponsor of the legislation. For additional information, contact the Aftermarket Legislative Summit staff at 301-654-6664 or e-mail govaffairs@aftermarket.org.

The Independent Service Station Protection Act Seeks To Amend PMPA

Rep. Albert Wynn introduced H.R. 949 in the previous session of Congress, to amend the Petroleum Marketing Practices Act (PMPA) in order to help protect independent service station owners across the country. Had it succeeded, the measure would have sheltered U.S. motor fuel dealers from infringement upon their right to operate their service stations as independent owners or even the outright loss of their stations.

Congressman Wynn's office has agreed to reintroduce the bill. The changes this bill

makes to the PMPA address three major issues of concern to independent service station owners.

The first amendment negates the Supreme Court's opinion in *State Oil v. Khan*, which allows fuel suppliers to fix the maximum price charged by its dealers without violating federal antitrust laws. This bill establishes a motor fuel dealer's right to set his or her own retail prices. Independent dealers have invested significant capital into their businesses with the expectations that they would remain free to make their own pricing decisions. They should not be subject to retail prices set by distant suppliers having limited knowledge of local market conditions.

The second concern addresses a loophole that currently exists in the PMPA. This measure provides motor fuel dealers a right of first refusal to purchase their service stations prior to any assignment of their franchise agreements to a distributor or any other assignee. With the mega-merger trend in the fuel industry, clearly some service stations are being sacrificed. Service station dealers should have the first option to purchase the businesses they have worked so hard to establish.

The third amendment would prohibit suppliers from using their superior economic might to include fee-shifting provisions in franchise agreements, which compel the dealer to pay the supplier's attorney's fees and expenses if the dealer is unsuccessful in litigation with the supplier. Such provisions only magnify the inherent inequality that exists between supplier and dealer. The threat of ruinous attorney's fees that they impose serves as a club to discourage dealers from asserting their legal rights, no matter how strong their case.

This legislation is critical to the future survival of our independent small businesses. We will soon let dealers know

how they can support this bill by contacting their congressmen to sign on as co-sponsors.

Terminal Pricing Legislation

Rep. Mike Thompson (D-CA) introduced H.R. 1039, the Wholesale Motor Fuel Fairness and Competition Restoration Act, in Congress's previous session. No action was taken on the measure, and we are working with Rep. Thompson to reintroduce it. The legislation seeks to stop several unfair and anti-competitive practices.

This bill will make it much more difficult for oil companies to engage in practices such as zone pricing, redlining, discriminatory wholesale fuel pricing and a complex and complicated system of cost allocations the companies use to hide factors on which wholesale costs are based and published. This bill will require full disclosure by oil companies of their wholesale pricing practices. This means that oil companies will be required to reveal their pricing structure, including rebates, refunds, and discounts, so that the American people will finally be able to understand how these companies arrive at the price on the gas station sign. Currently, much of this information is not publicly available nor is it collected by the Department of Energy's Energy Information Administration.

Further, the bill will make it illegal for companies to discriminate on price. It does this by requiring that the price charged at the terminal facility (where gasoline is loaded on tanker trucks) is the same regardless of who is purchasing it. By eliminating the price discrimination between company-owned stations, franchises, and independent operators, it will for the first time introduce a level playing field into the motor fuel marketplace.

The bill declares it unlawful for an owner or

operator to sell motor fuel from its terminal facility to any person in excess of the price it charges any other person, including a distributor or retailer, which it owns or with which it is affiliated. It exempts from such prohibition certain franchises or sales contracts entered into before a specified date.

As a result of the proposed law the Federal Trade Commission would be instructed to issue regulations requiring full disclosure by refiners and distributors of their wholesale motor fuel pricing policies. A separate listing of each component contributing to prices, including the cost of crude oil, refining, marketing, transportation, equipment, overhead, and profit, along with a description of any rebates, incentives, and market enhancement allowances would be required. The FTC additionally would be charged with ensuring that all information acquired pursuant to such regulations is disseminated to the public.

The association supports such a measure has helping protect dealers and consumers alike from anti-competitive practices by major oil companies. We will monitor it's and let you know how to support its passage.

Our Downstate Affiliate

GASDA

Gasoline & Automotive Service Dealers Association
Long Island Petroleum Dealers & Repair shop Association

has moved its offices to

372 Doughty Blvd., Suite 2C

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Tel: 516-371-6201

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Recently Asked Questions About The OBD II Emission Inspection Program

The following are questions which our members have asked us. We passed them on to DMV and here are their responses.

Q. There are indications that some stations are using a "Gold Cadillac" when doing and inspection. The term refers to an inspection station plugging the scanner into a different car in order to get it the original vehicle to pass. What is DMV doing about this?.

A. "We have found several inspection stations that have plugged into a different vehicle to fraudulently test the original vehicle. It is possible to plug into another vehicle, and the NYVIP will not know that a switch has been made. It is easy, however, for us to tell that it has happened because each vehicle signature is different, and many vehicles now have the VIN embedded in their signal. We will be bringing these stations to hearings in the near future."

Q. If a downstate inspection station's dynamometer is out of service, how long will the stations have to get the equipment repaired?

A. "The regulations require that a state be able to inspect any vehicle that is presented for inspection. If we receive a complaint that a station cannot inspect a vehicle because the NYTEST is not working or discover that it is not working on audit, we will shut the station down for failure to have the proper equipment."

Inspection Fee Discrepancy

Why is the OBD II Emission Inspection Fee downstate \$37.00 and \$21.00 upstate? We can't answer that question, but someone must. The only people that know work on the second floor of the State Capitol, the

Governor's Office, and at the Department of Motor Vehicle. The upstate repair shop industry, those that perform OBD II inspection have a right to know why and we must demand an answer.

How we force the state to justify the \$16.00 difference in the fee may be difficult, but what ever it takes to get the answer must be done. However, once we get the answer what do we do if we are not satisfied. Do we make calls, write, e-mail and fax the Governor and DMV outline our displeasure or do we get a judge to ask the question for us?

Sale Of Motor Fuels To Disabled Persons

Section 396-bb of the NYS General Business Law, requires that. stations offering self service and full service at the same time, shall, between the hours of seven o'clock in the morning and seven o'clock in the evening, provide full service of such motor fuels to disabled persons with a valid New York State disabled person license plate at the same price charged for such motor fuels at the self service islands. These Stations are also required to conspicuously post notice including the international symbol of access and stating as follows:

Full service at self service prices
7 a.m. to 7 p.m.

Such notice may also further state,

For persons with a valid New York State disabled license plate.

Downstream Motor Fuel Profits Nose Dive

During the month of March escalating gasoline prices had the market hustling to keep up with rising cost. Supplier and retailers were forced to increase prices but were unable keep up with the price per

barrel and refinery cost. This pushed the retail prices to the highest level since late last year.

Experts are predicting that the price will continue to rise until suppliers see that the public has had enough and will start to conserve by purchase more economical vehicle and driving less. What that level is unknown..

New York State Service Stations Benefit from Pollution Assessment Program

Pass by a service station or convenience store and invariably one thinks of handy shopping, quick snacks and unfortunately, rising gas prices. But what isn't always seen is the commitment many owners of these stations have to developing and maintaining environmentally responsible enterprises that efficiently reduce the potential for contamination of the air, water and land, and help conserve natural resources.

The New York State Association of Service Stations, supported by a grant from Empire State Development, is undertaking a pollution prevention program for service stations, auto repair shops and related businesses to further aid retailers in this industry meet these commitments.

This new program, called the "Pollution Prevention," or "P2" Program, is intended to identify possible changes in equipment, processes or other practices that can prevent pollution and save business owners money.

Together with WOH Environment and Energy Solutions, TRC Solutions, Allen Engineering and the New York State Economic Development Council, they have designed the program with simple goals:

- Save money for business owners by reducing the potential for normal

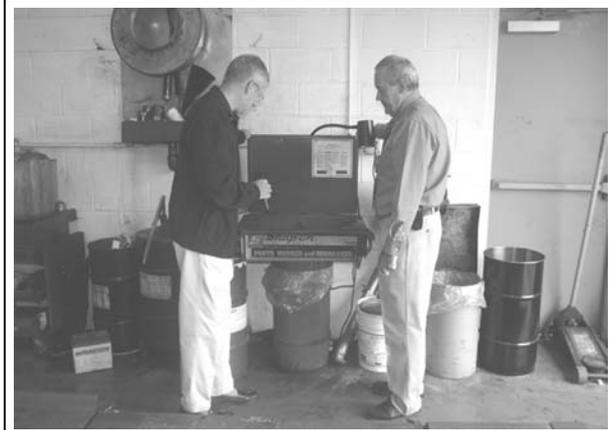
business operations to produce waste, consume unnecessary energy or otherwise damage the environment;

- Recognize businesses that participate in the program and encourage them to continue operating in an environmentally friendly manner; and,
- Demonstrate that the program works by totaling up the dollars saved and the amount of pollution prevented.

P2 is a completely voluntary program, free of charge to service station dealers who are members of the New York State Association of Service Stations and Repair Shops and affiliated trade groups. The assessment is not a compliance audit. It simply encourages good business practices that protect the environment and save proprietors money.

Participation requires only a few hours of the business proprietors' time. It begins with a call to schedule a convenient time for an assessor to visit. Once the proprietor has provided, in advance, background information about their business goals and operations, they meet on-site at their business locations with the P2 experts who will conduct a P2 Assessment of their business. The assessor — a professional environmental consultant — develops his/her recommendations by reviewing the information provided by the business owner or manager, and then inspecting and assessing the facility using a basic "checklist" that has been developed for reviewing customary items.

Independent observations are made about such items as materials usage and handling, the structure and practices in the building, energy usage, and cleaning and waste disposal practices. Once the assessment is completed, recommendations for improvement are then given to the business owner or manager, with an explanation, for consideration. The P2 Assessment Team is available to answer any questions the owner or manager may have on the report, as well



P2 Project Director, Peter Lanahan, discusses aspects of the Pollution Prevention Program assessment with Bruce Mance, proprietor of Guilderland Mobil, Inc., and member of the New York State Association of Service Stations & Repair Shops, Inc.

recommendations, and implementation. These recommendations can materially add to the bottom line of a small business.

Each recommendation is supported by a rationale that includes the estimated initial costs of adopting the recommendation and the projected long-term savings, as well as an outline of the potential environmental benefits that can result.

While these recommendations will be encouraged, there is no obligation that they be adopted. WOH Environment & Energy Solutions contractors and your association are available to assist business owners in obtaining State grants or private sector funding necessary or helpful in making investments in new equipment or adopting any process changes explained in the recommendations. One funding program, the Environmental Investment Program, is administered by Empire State Development. Another is called the Energy Smart program, operated by the New York State Energy Research and Development Authority.

“The service station/repair shop industry of

today is light years away from when I was in business. We thought of marketing first, second and third. But today we think of our environment obligations first. It's too expensive not to," said Ralph Bombardiere, Executive Director of the New York State Association of Service Stations & Repair Shops, Inc.

There are numerous examples where P2 programs have helped protect the environment and save money. At ITT Automotive-Fluid Handling Systems in Gates, NY, an environmentally friendly wash system replaced one using hazardous chemicals. The new process and other innovative process changes saved more than \$600,000 annually in utility charges, disposal costs, labor and materials. Smaller businesses also benefit. Bob's Transmission and Clutch in Simi Valley, CA, switched from solvent to aqueous parts cleaning, saving \$7,600 after 8 months, with an initial investment of \$5000 for the new unit.

Minimum Age For Cashiers Who Sell Alcoholic Beverages

The regulations for clerks who sell alcoholic beverages taken from page 7 of the State Liquor Authority Handbook are as follows:

1. Clerks and cashiers who handle and receive payment for alcoholic beverages in drug stores, grocery stores and convenience stores must be at least 16 years old and must be supervised by someone who is at least 18 years old.
2. Clerks and cashiers in liquor and/or wine stores must be at least 18 years old.

**WORKERS' COMPENSATION
SAFETY GROUP #536
DECLARED DIVIDENDS
HAVE AVERAGED 35% FOR
THE PAST FIVE YEARS**

DMV Record Retrieval

DMV record retrieval is available to association members and affiliates at a cost of \$10 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 should call 518-452-4367.

We Have Changed Our Web Address

The Association is pleased to announce a new web site. The old website has been completely revamped to provide you with easier faster access to the information you need. The new address is

www.nysassrs.com

Our e-mail address has changed to:

state@nysassrs.com

In addition to being able to read back issues of newsletters, and providing you with links to important sites we have added a bulletin board to provide you with information as the stories break.

WARNING

**YOU CANNOT DO
INSPECTIONS IF ANY OF
YOUR EQUIPMENT IS
MISSING OR INOPERABLE.**

**PERFORMING AN
INSPECTION UNDER
THESE CONDITIONS CAN
RESULT IN REVOCATION
OR SUSPENSION OF YOUR
INSPECTION LICENSE.**

**NEW YORK STATE ASSOCIATION OF
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