RSGDA

REPAIR SHOP & GASOLINE DEALERS ASSOCIATION

October 2016

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ATTORNEY'S CORNER

One time, a young minister gave a splendid sermon of which all his congregants heartily approved. The following week he gave the same sermon again. The next week he repeated again the same sermon. Finally, some of his congregants approached him and said, "Reverend, we've noticed that for the past several weeks you keep giving the exact same sermon." The minister replied, "I see you finally noticed. And I'll continue to give the same sermon until you start acting upon it." After a recent session at the local County Department of Health, I can do no less. Our member's failure to advise the County within 10 days of the violation of the steps he was taking to correct it lead to a fine of $750, all of which could have been avoided by a timely reply to the violation. The language to this effect on the violation notice was plain. So read the below section of a recent "Attorney's Corner" again and then go and sin no more! And if you don't care about an unneeded $750 fine than send the money as a gift to your Association. We'll put it to good use for your benefit.

Many of your Associations provide legal plans to assist you in responding to summonses, violation notices, and certain types of lawsuits. Often, some appearances by your Association attorney are free of charge, and others are offered at a reduced rate from the attorney's regular billing rate. In addition, with Association attorneys you have the benefit of working with lawyers who are very familiar with issues affecting your industry, such as environmental regulations, franchise laws on the state or federal level, Department of Motor Vehicle regulations, and the like. However - and this is a big BUT - it frequently happens that your Association attorney is handicapped from giving you all the help he or she can offer by a Dealer's failure to pass along to the attorney summonses, violations and lawsuits when they first come in. You'd be amazed at how many Dealers just throw these documents on the desk and leave them to be buried under a pile of paper. But I've got news for them - they're NOT going away! Several months later, when a default judgment comes in or a repair or inspection license is suspended and a fine pending, your Association attorney is already behind the 8 ball when it comes to bailing you out of trouble. In addition, the extra work that needs to be done to restore the status quo, if that can be done - is usually not covered by your legal plan, so you will be paying extra for the work needed. So please, any time such notices are received by you, please forward them to your Association attorney immediately! We Association attorneys draw a great deal of satisfaction from helping our members out from the often inadvertent difficulties they get into. Help us help you, and give us the earliest notice that trouble is brewing.

The contents of this column are not intended as legal advice. I give no legal advice without an appointment and interview with a client.

INSIDE THIS ISSUE

Automobile Club of America

There are many repair shops throughout the U.S. that are having problems with AAA. Many of these repair shops have gone through the process of becoming AAA-approved repair shops, but now it seems that AAA is demanding these shops provide their customer lists to AAA. Of course, no one should be required to share their customers with any competitor and AAA is in fact a competitor! AAA operates their own modern, multi-bay repair centers in direct competition with you.

If this is happening to you please let the Association know.

Tobacco Front

21 Purchase Age Spreads, County by County

Over our objections, six counties in New York State have now elevated the tobacco purchase age to 21, and several others are considering doing so.

They blindly claim it will prevent youth access to cigarettes, which is total baloney, given that 86% of underage smokers obtain cigarettes from social sources rather than stores that enforce the purchase age.

Here's a scorecard, which may have changed somewhat since the issue of STOREfronts Quarterly went to press:

- Albany County – Passed, took effect in early July, 2016
- Schenectady County – Passed, took effect September 1, 2016.
- Chautauqua County – Passed, took effect September 1, 2016.
- Suffolk County – Passed, took effect January 1, 2015.
- Cortland County – Passed, will take effect October 1, 2016.
- Montgomery County – Actively being discussed by county legislature.
- Tompkins County – Actively being discussed by county legislature.
- Cattaraugus County – Legislation introduced, public hearing September 14.
- New York City enacted Tobacco 21 effective May 18, 2014.

Several of the counties included in their local laws a provision making college IDs an acceptable form of ID for verifying the age of a tobacco customer, directly conflicting with the New York State Public Health Law, which says only a driver's license, non-driver ID issued by DMV, passport or military ID are acceptable.

FDA Issues First Retailer Warning Letters Under Deeming Rule

One month after the deeming rule went into effect, the Food and Drug Administration (FDA) has issued its first warning letters to retailers in violation of the new regulations.

The agency has taken action against 55 tobacco retailers for selling the newly regulation tobacco products — including electronic cigarettes, cigars and e-liquids — to minors.

According to the FDA, during compliance checks at major national retail chains, tobacco specialty stores and online retailers, children were able to purchase some of these products in a variety of flavors that appeal to youth, including bubble gum, cotton candy, and gummy bear flavors.

In May the FDA released its final deeming rule extending its regulatory authority to all tobacco products, including electronic cigarettes and cigars. The issuance comes two years after the agency first released its proposed deeming rule. The authority also extends to hookah tobacco and pipe tobacco, as CSNews Online previously reported.

The rule includes provisions prohibiting the sale of e-cigarettes, hookah tobacco or cigars to people under age 18.

The provisions, which went into effect Aug. 8, include:

- Not allowing products to be sold to persons under the age of 18 (both in person and online);
- Requiring age verification by photo ID;
- Not allowing the selling of covered tobacco products in vending machines (unless in an adult-only facility); and
- Not allowing the distribution of free samples.

Summer Gasoline Demand Was Uneven

The summer driving season has ended, and marketers throughout the country saw very uneven demand through the most recent period, according to exclusive station survey data from OPIS.

The typical summer driving season is measured from Memorial Day to Labor Day, though the EIA measures the April-through-September period for its driving season.

While there has been plenty of anecdotal evidence of an increase in gasoline demand, an exclusive OPIS survey of some 10,000 stations reveals that gasoline demand was up 0.6% when compared to 2015. The marginal increase is a contrast to what EIA has reported. Although there are still a few more weeks left in its driving season, EIA to this point is showing gasoline demand growth that is closer to 3.5%.

The uneven demand landscape comes from some sizable gains in the West and Midcontinent, while the Northeast has struggled for much of 2016 from a gasoline demand standpoint.

According to OPIS data, Northeast station volumes were off by 1% this summer when compared to the same period in 2015. At the same time, strong moves higher were seen in the West, where demand was seen growing by 2.7%, and the Midcontinent was not far behind, seeing a 2.5% increase. More modest growth was seen in the Southeast and Southwest, with gasoline demand increasing by 1% and 1.3%, respectively.

From an OPIS sampling of 14 states, data shows that just six had seen gasoline demand growth this summer. Although eight states from the sampling saw a decline in gasoline volumes, they were relatively small when compared to some of the states that saw demand growth.

Nevada had the strongest summer as demand there was seen growing by 5.9%, OPIS data reveals. The next closest state to Nevada was Indiana, where retailers there saw a 3.7% jump in gallons sold. Seven states saw gasoline demand slip by 1% or more, but the states with the most attrition were Connecticut and Washington, with a drop of 1.8% in both states.

--Denton Cinquegrana, dcinquegrana@opisnet.com

Repeal Of Swipe-Fee Reform Heads To Committee Vote

Retailers across the country won a hard-fought battle for swipe-fee reforms when the Durbin Amendment was included in the Dodd-Frank Wall Street Reform and Consumer Protection Act. Now, legislation to take back these reforms is heading to a committee vote in the House of Representatives.

The House Financial Services Committee will begin meeting next week to discuss the Financial CHOICE Act (Creating Hope and Opportunity for Investors, Consumers and Entrepreneurs). Supporters of the measure, headed by Rep. Jeb Hensarling (R-Texas), call it a "pro-growth, pro-consumer" alternative, according to Housing Wire.

Hensarling is chairman of the House Financial Services Committee.

As the news outlet reported, the committee is slated to begin debating the Financial Choice Act on Sept. 13. Included in that discussion will be the addition of possible amendments to the bill and perhaps a vote on the legislation. If the bill passes out of the committee, it would then go to the full House of Representatives for a vote.

However, retail groups are taking a stand against any legislation that would repeal swipe-fee reforms.

We are deeply disappointed that Rep. Hensarling will try to repeal debit swipe fee reform. A repeal would allow the credit card goliaths to resume price-fixing of debit-card fees and block smaller card networks from competing with them for business.

Even with reform, the dominance of the Visa-MasterCard duopoly means retailers and consumers in the United States pay the highest swipe fees in the world — up to seven or eight times European levels. Without the vital protections of debit reform and the small measure of competition it has introduced to the market, consumers would face higher prices and smaller merchants would face even greater burdens — especially convenience store owners.

The Retail Industry Leaders Association (RILA) is urging members of the committee to vote no when the CHOICE Act comes up for a vote next week.

As RILA explained, as part of the swipe-fee reform, the fees that banks and card networks charge every time a debit card is swiped are "reasonable and proportionate to the cost of processing the transaction."

"Repealing debit swipe fee reforms would once again allow the largest banks and card networks to impose outrageous fees on merchants across the country, while hurting everyone outside Wall Street," said Jennifer Safavian, RILA's executive vice president for government affairs.

"Make no mistake, the CHOICE Act's central objective is to turn back the clock on reforms that brought fairness and competition to the broken debit card market. We urge members to recognize the importance of competition in the payments ecosystem and to oppose the CHOICE Act,"she added.

Note: The bill was passed out of committee with only a few days discussion. However there was some bipartisan opposition, leading to the hope that the bill will face opposition when brought before the full House.

The Next Wave Of EMV

With the October 1, 2017, EMV liability shift looming for automate fuel dispensers, many U.S. convenience store operators are preparing for the switch—to the tune of $6 billion.

Upgrading fuel dispenser point-of-sale technology comes with a price tag as high as $17,000 per pump, Gray Taylor, executive director of Conexxus, told CNBC, an expense that will cut into the bottom line of the more than 90,000 single-store operators with the 154,000-plus convenience store universe.

Taylor added that convenience store operators may have to replace their fuel dispensers entirely to implement EMV at the pump, and retrofitting existing dispensers can cost more than $6,000. “[T]he loss of gas pumps may create delays for summer drivers next year,” writes CNBC.

And as EMV chip technology continues to siphon resources for other operational and technology-related projects, many convenience retailers are advancing mobile payment technology to meet consumer demand for contactless/cardless payment options both inside the store and the pump.

Payment Week reported that many small businesses are opting out of the EMV standards by pushing mobile payments. A recent CAN Capital Small Business Health Index found that more than one in three small businesses (34%) accepted mobile payments, such as Apple Pay, which is a substantial increase from April 2015 when the number of small businesses that allowed mobile payments hovered at 13%.

As of October 1, 2016, U.S. EMV deployment will take place at the ATM. Last week Conexxus and the National ATM Council released an ATM Skimming Detection & Deterrence Guide for use at U.S. convenience stores. The guide helps ensure that U.S. convenience stores and retail ATM providers maintain their excellent track record for providing safe and secure transactions at in-store ATMs, despite a heightened near term card skimming risk from current implementation of EMV at U.S. ATMs.

EMV implementation is a major issue for the convenience and fuel retailing industry, which is why there are education sessions and group discussion opportunities specific to this topic taking place at the 2016 NACS Show in

Atlanta, October 18-21. “Are You Prepared for EMV?” will highlight the essentials regarding EMV technology, including upgrading equipment and evaluating risks. At the “Group Forum: EMV,” subject matter experts will lead an interactive discussion on EMV deployment.

Rutter’s, NCR Bring EMV To The Pump

York, Pennsylvania-based Rutter’s has teamed up with NCR to bring its OPTIC outdoor payment terminal solution to the convenience and fuel retailer’s 65 locations.

Rutter’s has been an NCR partner for more than 10 years and had early interest in the OPTIC solution when NCR unveiled the technology. “We were initially excited by two aspects: the open source platform and the media management components,” said Scott Hartman, Rutter’s CEO. “The open source platform allows us to easily integrate our Rutter’s VIP Club rewards program, while the new media capabilities extend our storefront marketing to the forecourt. It’s a major omni-channel win.”

NCR OPTIC is a modular, self-service solution that accepts a range of payment options in its standard configuration:

- EMV and magnetic stripe
- Contactless (including mobile phones) and mobile wallet
- 2D barcode scanner
- OPTIC comes in two sizes, a 5” terminal for use with older dispensers, and a 12” widescreen. OPTIC was engineered to retrofit most brands of fuel dispensers, allowing retailers to easily upgrade their at-the-pump engagements.

“While OPTIC provides Rutter’s the immediate benefit of outdoor EMV compliance, the long-term benefit comes as the company improves its omni-channel experience at the fuel pump,” said Michael Bayer, president, NCR Retail. “By extending our partnership, we can better support Rutter’s initiatives to enhance customer engagement—whether the consumers are in the store or at the forecourt.”

This year at the NACS Show convenience and fuel retailers can find solutions to meet EMV mandates at Technology Edge education sessions and the Technology Edge Solutions Center.

ExxonMobil Begins Retail Fuel Payment Transition to Smartphone

ExxonMobil said that it has begun a transition for Speedpass consumers to its Speedpass+ app, the next generation of mobile payment at its retail stations.

A Speedpass key tag is a "touchless" payment device that links to existing credit or debit card, so a driver can pay quickly at the pump or in-store at participating Exxon- and Mobil-branded service stations.

The Speedpass+ app lets drivers pay for gas and car washes using their smartphones exclusively at Exxon- and Mobil-branded stations.

"We will no longer acquire new Speedpass key tag accounts beginning in 2017, and we plan to discontinue accepting Speedpass key tag payments by year-end 2017.

We recommend that you do not install Speedpass key tag equipment as you update your pumps," ExxonMobil said in a letter to retailers on Thursday.

Since 1997, Speedpass has played a leadership role in payment technology, ExxonMobil said.

ExxonMobil is the first major fuel retailer to accept mobile payment, including Apple Pay, at the pump at the majority of its U.S. network.

The Speedpass+ app is available at over 8,100 Exxon and Mobil stations and the company is working to expand the number of Speedpass+ locations as well as the features available in the Speedpass+ app.

Around 70% of its Speedpass key tag customers are already loyal ExxonMobil cardholders and many have started to take advantage of Plenti, ExxonMobil said. Some have already migrated to the Speedpass+ app.

"We plan to actively migrate our remaining Speedpass key tag customers to the Speedpass+ app, Smart Card, and Plenti to ensure we retain their loyal business," the company said.

--Edgar Ang, eang@opisnet.com

New York To Propose Fuel Regulation Update To Allow E15 Sales

The New York Department of Agriculture and Markets will soon propose a fuel regulation update that would allow the sale of E15 in the state for all model year 2001 and later vehicles, the agency said Tuesday.

Lisa Koumjian, a spokeswoman for the state agency said the proposal was initially submitted as a consensus rule, but following several objections, mostly from motorcycle enthusiasts, the department decided it will resubmit the proposal as a regular rule to provide additional information to the public.

The agency will hold a hearing to allow for further public comment at a still- to-be-determined date, Koumjian said.

Biofuels interest group Growth Energy said it has worked with the state of New York for two years to get the regulation updated.

This proposal marks a major victory for consumers, who would gain access to cleaner, more affordable choices at the pump," Growth Energy CEO Emily Skor said in a statement. "We appreciate the Department's work on this regulation to reflect federal approval of E15 and we look forward to working with retailers across the Empire State to quickly get E15 into the market.

With an annual gasoline consumption topping more than 5.5 billion gal, the state of New York could be a major growth market for ethanol. New York has an annual ethanol production capacity of 140 million gal/yr, with two plants in

production. Sunoco operates an 85-million-gal/yr plant in Volney, and Western New York Energy operates a 55-million-gal/yr plant in Shelby.

"E15 represents an exciting opportunity for New Yorkers to select affordable, clean-burning biofuels produced at plants like ours," Western New York Energy Chief Financial Officer Timothy Winters. "With higher blends like E15 in the marketplace, we can continue to help drivers save money and improve the quality of the air we all breathe, all while creating jobs and growing our local economy."

--Jordan Godwin, jgodwin@opisnet.com

Attention Inspection Stations

Bill number A4106 - S6034 passed both houses of the New York state legislature in the 2016 session.

It would require inspection stations to test the light transmittance through the drivers and front passenger windows when the vehicle goes through its annual safety inspection. If the light transmittance is less than 70%, the vehicle fails.

Inspection stations would need to purchase a light meter. The cost of the equipment has not been determined at this time.

There is no provision for an additional inspection fee to offset the cost of equipment or labor associated with this addition to the inspection procedure

This bill was passed largely due to the efforts of New York City mayor De Blasio

A similar bill was vetoed by Governor Coumo in 2012. This may not be the case this time due to pressure from law enforcement agencies.

We are voicing our objection to the bill and asking for a veto. You may wish to do the same. Feel free to use the letter below in your lobbying efforts.

Fax the Governor's office at

518-486-9652

Or write to:

Alphonso David
Counsel To The Governor
Executive Chamber
State Capitol
Albany, NY 12224

NEED HELP? CALL THE ASSOCIATION OFFICE
516-371-6201 518-452-4367 585-423-9924
607-723-1849 716-656-1035

Sample Letter Asking For Governor's Veto

September 2016

Alphonso David
Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

Dear Governor Cuomo:

Shortly Bill Number A4106 – S6024 will be sent to you for your signature or a veto. I urge you to veto this Bill.

The Bill requires inspection stations to test light transmittance through the drivers and front passenger windows when the vehicle goes through its full safety inspection. If the light transmittance is less than 70% the vehicle fails.

This Bill makes no provisions to reimburse an inspection station for the equipment to perform the inspection or add additional fees for the inspection.

In 2012 you vetoed the same Bill saying you did not want to burden the inspections stations with additional requirements or increase the cost of the inspection to the motoring public.

The Safety Inspection Fee has not been increased since 1985. It is unfair to place an additional burden on these stations.

Law enforcement has the authority and the ability to enforce the tinting law. Please governor, veto this Bill.

Yours truly,

Truck Carrying Takata Air Bag Inflators And Propellants Explodes

A truck carrying Takata air bag inflators and propellants exploded in South Texas last week, killing one person, the company said on August 29.

The inflators and propellants are at the center of a global recall involving exploding airbags. The defective bags have killed at least 14 people in the U.S.

The truck in last week's incident, operated by a subcontractor, was bound for a Takata warehouse in Eagle Pass when the accident occurred.

The ensuing explosion destroyed a nearby home, killing 69-year-old Lucida Robles. It also burned 10 other houses and injured a driver and passenger in a passing vehicle.

News 4 San Antonio said the explosion was not caused by a collision with another vehicle, suggesting it was caused by a problem in the truck, its trailer or the cargo.

Takata has a warehouse in Eagle Pass that stocks inflators manufactured across the border at a plant in Monclava.

Takata said it sent personnel to the site to help investigate the incident.

The Takata recall is the largest in the history of the auto industry. Prolonged exposure of the inflators to hot conditions can cause airbags to explode, spraying shrapnel into the passenger compartment.

More than 100 million vehicles worldwide with Takata inflators are being recalled.

Sputtering Electric Vehicle Sales Lead To 50% Growth Forecast Cut

The public reception of electric vehicles (EVs) has been lukewarm so far despite a recent hype on potential growth of the plug-and-drive fleet.

The sluggish sales may be blamed on slow vehicle production, pure economics or environmental concerns, depending on who you ask.

A recent report from the Union of Concerned Scientists (UCS) claims that automakers are not making enough EVs for buyers, therefore hindering the potential growth of the vehicle sales. In February, sales growth forecasts were cut by 50% from $1 million to $500,000 by 2020 for plug-in hybrid and electric battery vehicles because of low oil prices and last year's sales drop.

The Petroleum Marketers Association of America said on Friday that the reasons automakers are not producing large numbers of EVs are simple.

"First, gasoline and diesel offer better mileage and reliability than EV batteries. Second, EV's are not as environmentally friendly as environmentalists make them out to be," PMAA said.

The charging of batteries used in EVs requires the use of coal and natural gas. There are recent studies which conclude that EVs produce more air pollutants than vehicles fueled by gasoline, it said.

OPEC maintains that EVs will make up just 1% of cars in 2040. This ultimately means that liquid fuels and the vehicles that consume them are here to stay and oil companies will remain in business for years to come, PMAA said.

OPIS reported last year that electric cars are estimated to present the biggest threat to the retail petroleum market. Electric vehicles are expected to gain sizable market share at the expense of gasoline and diesel in the future, according to John Eichberger, executive director at Fuels Institute.

About 98% of today's surface transport energy is petroleum, but the petroleum kingdom may crumble in the long term, he said. A 500-mile battery for an electric vehicle is no longer a dream, and it is becoming a reality, Eichberger said.

The electric vehicle will appeal to the next generation of consumers, and it could gain significant market share in the U.S. in 2030 and beyond, he said.

The Fuels Institute found via a survey that over the past few years, consumers are becoming more open to a nongas vehicle. The younger generation is not loyal to petroleum.

Also, the auto industry now boasts a lineup of more than 30 electric-car models, compared with less than a handful a few years ago. With more visibility on the road, consumers' reception of electric cars will gain traction, Eichberger said.

While electric cars are expected to pick up more market share, the market share for natural gas vehicles in the light-duty segment is expected to be relatively stable, he said. Natural gas prices are expected to be relatively stable in the long run.

--Edgar Ang, eang@opisnet.com

Tesla Announces 315 Mile Range Battery

The Wall Street Journal reports that Tesla Motors Inc. is offering its electric vehicles with a battery capable of going up to 315 miles on a single charge.

The company unveiled new versions of its Model S sedan and Model X sport-utility vehicle with 100 kilowatt-hour batteries, an upgrade from the previous battery size of 90 kwh.

The news source notes that the 315-mile battery range “sets a new benchmark for automotive engineers looking to lessen fears about so-called range anxiety, which drivers encounter when traveling longer distances in an electric car.”

Tesla’s Model S sedan will get the 315-mile range battery, but the heavier SUV won’t be able to travel as far on a charge, notes the news source, adding that the current Tesla line begins at about $66,000 and can run roughly 200 miles on a single charge.

EPA Finalizes Fuel Efficiency Standards For Heavy-Duty Trucks

The U.S. Environmental Protection Agency (EPA) and the U.S. Department of Transportation’s National Highway Traffic Safety Administration (NHTSA) jointly finalized standards for medium- and heavy-duty vehicles to improve fuel efficiency and cut carbon pollution.

The final phase two program promotes a new generation of cleaner, more fuel-efficient trucks by encouraging the wider application of current and developing technologies through model year 2027. The final standards are expected to lower CO2 emissions by approximately 1.1 billion metric tons, save vehicle owners fuel costs of about $170 billion, and reduce oil consumption by up to two billion barrels over the lifetime of the vehicles sold under the program.

The EPA and NHTSA say that heavy-duty trucks are the second largest segment and collectively make up the biggest increase in the U.S. transportation sector in terms of emissions and energy use. These vehicles currently account for about 20% of GHG emissions and oil use in the U.S. transportation sector. Globally, GHG emissions from heavy-duty vehicles are growing rapidly and are expected to surpass emissions from passenger vehicles by 2030.

The vehicle and engine performance standards would cover model years 2021-2027, and apply to semi-trucks, large pickup trucks and vans, and all types and sizes of buses and work trucks.

Compared to the proposal, the final program:

- Achieves 10% more GHG and fuel consumption reductions;
- Includes more stringent diesel engine standards
- Maintains the structure and incremental phase-in of the proposed standards, allowing manufacturers to choose their own technology mix and giving them the lead time needed to ensure those technologies are reliable and durable.

The government agencies worked closely with the California Air Resources Board in developing and finalizing

the standards. The final rulemaking builds on the fuel efficiency and GHG emissions standards already in place for model years 2014-2018. The rule also builds on standards that the administration has put in place for light-duty vehicles, which are projected to reduce carbon pollution by billions of tons over the lifetime of vehicles sold, and will save consumers money at the pump.

Train Your Class C Operators Now

This is a reminder for operators to do the following after becoming authorized:

- Update the PBS Registration for your sites to include your name and authorization numbers to designate yourself as an operator. This counts as an "Information Correction" and as such, there are no fees associated with this update.
- You may use the blank PBS registration application (http://www.dec.ny.gov/docs/remediation_hudson_pdf/pbsrenewal.pdf) to update your registration, or you may send a request for a pre-filled, digital copy of your registration by sending an email to operatortraining@dec.ny.gov. Be sure to specify the PBS numbers of the sites for which you want to be designated.
- Print your Authorization Certificate and file it with your PBS records. Your certificate is accessible to you when you log in (www.dec.ny.gov/about/101500.html) to your User Dashboard: on the lower right-hand side of the screen, there should be a blue button that reads "Print Certificate." Print a hard copy to go with the rest of your PBS Records.
- Train your Class C Operators. All facilities with Subpart 2 USTs must have Class C Operators – no exceptions. Only a Class A or Class B Operator can train them regarding their responsibilities (which are covered in Chapter 18 of the Operator Training Guide/Tank IQ.)
- Maintain records of your Class C Operator Training (with your PBS records). A Training Log must be created for each trained Class C Operator at your site. (Appendix G of the Operator Training Guide/Tank IQ contains a sample Training Log for Class C Operators.) At minimum, the Training Log must have the following information:
    - name of the Class C Operator;
    - date the Class C Operator completed training;
    - name & signature of the Class A or B Operator who trained the Class C; AND
    - name, address, & phone number of the employer of the trainer.

Remember that the deadline for compliance for training Class C operators is October 11th

US Department of Labor Adjust Penalties for Violations

The Department of Labor (DOL) has issued an interim final rule to adjust the amounts of civil penalties assessed or enforced under its regulations. The increased penalties are effective August 1, 2016. The Fair Labor Standards Act (FLSA or Act) and accompanying regulations provide for assessment of civil money penalties for any person who repeatedly or willfully violates the minimum wage and overtime provisions of the Act.

The maximum penalty for a repeated or willful violation is increasing from $1,100 to $1,894 per violation. The Family and Medical Leave Act (FMLA) and accompanying regulations provide for assessment of a civil money penalty for each willful violation of the posting requirement. The maximum penalty amount is increased from $110 to $163 per violation.

OSHA Rule May Require Employers To Revise Drug Testing Policies

Effective August 10, 2016, the Occupational Safety and Health Administration (OSHA or Agency) will require employers to establish "a reasonable procedure" for employees to report work-related injuries and illnesses promptly and accurately.

Under this new reporting standard, employer policies that request or require post-accident drug or alcohol testing will now face scrutiny by OSHA because, the Agency claims, post-incident testing deters injury reporting. Employers with post-incident or accident drug testing policies will be put to the task of justifying each decision to test based on the facts of each workplace incident or accident.

OSHA will not find fault with an employer which conducts drug testing to comply with the requirements of a federal or state law or regulation, because its motive in conducting testing is not retaliatory. If OSHA finds that an employer drug testing policy deters the reporting of injuries and illnesses by employees, it may issue steep penalties. Penalties up to $12,741 per violation may be imposed or, for willful violations, up to $124,712.

Anti-Retaliation Protections

Delayed (Enforcement) for OSHA Rule Issued to Improve Tracking of Workplace Injuries and Illnesses The new OSHA rule issued to improve tracking of workplace injuries and illnesses includes a provision that prohibits employers from discouraging workers from reporting an injury or illness.

The final rule requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation; clarifies the existing implicit requirement that an employer's procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting; and incorporates the existing statutory prohibition on retaliating against employees for reporting work-related injuries or illnesses.

These provisions become effective August 10, 2016, but OSHA has delayed their enforcement until November 1, 2016 in order to provide outreach to the regulated community. The new reporting requirements will be phased in over two years:

- Establishments with 250 or more employees in industries covered by the recordkeeping regulation must submit information from their 2016 Form 300A by July 1, 2017. These same employers will be required to submit information from all 2017 forms (300A, 300, and 301) by July 1, 2018. Beginning in 2019 and every year thereafter, the information must be submitted by March 2.
- Establishments with 20-249 employees in certain high-risk industries must submit information from their 2016 Form 300A by July 1, 2017, and their 2017 Form 300A by July 1, 2018. Beginning in 2019 and every year thereafter, the information must be submitted by March

What does the rule require? The new rule, which takes effect January 1, 2017, requires certain employers to electronically submit injury and illness data that they are already required to record on their onsite OSHA Injury and Illness forms. Analysis of this data will enable OSHA to use its enforcement and compliance assistance resources more efficiently. Some of the data will also be posted to the OSHA website. OSHA believes that public disclosure will encourage employers to improve workplace safety and provide valuable information to workers, job seekers, customers, researchers and the general public. The amount of data submitted will vary depending on the size of company and type of industry.

DMV Record Retrieval

DMV record retrieval is available to association members and affiliates at a cost of $12 per record. Additionally, you may order DMV certified paper abstracts of driver's license, vehicle registration, and vehicle title records for an additional fee of $2 per abstract. Please call 518-423-9924 or 716-656-1035

Attention Inspection Stations

The Association has received a flurry of requests for legal representation for violations of the DMV commissioner regulations known as "clean scanning." that is when a vehicle other that the one to be inspected is substitute for the OBD-II part of the test. We have no defense for these violations. DMV has the ability to trace the OBD-II inspection to the vehicle used for the inspection.

If you cannot pass a vehicle for any reason, get help. That help could come from DMV. This violation almost always results in revocation.

DEC CERTIFICATION REQUIRED

IF YOU ARE THE OWNER OR OPERATOR OF A SERVICE STATION THAT SELLS FUEL
YOU HAVE UNTIL OCTOBER 11TH TO BECOME CERTIFIED AS A CLASS A AND/OR CLASS B OPERATOR
THIS CERTIFICATION IS FROM THE NYS DEPT OF ENVIRONMENTAL CONSERVATION AND IS ACHIEVED BY TAKING AN ONLINE TEST

AFTER OCTOBER 11, 2016 YOU ARE SUBJECT TO A VIOLATION FROM NEW YORK DEC AND/OR UNITED STATES EPA
NEED HELP? CALL THE ASSOCIATION OFFICE

516-371-6201 518-452-4367 585-423-9924 607-723-1849 716-656-1035

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