

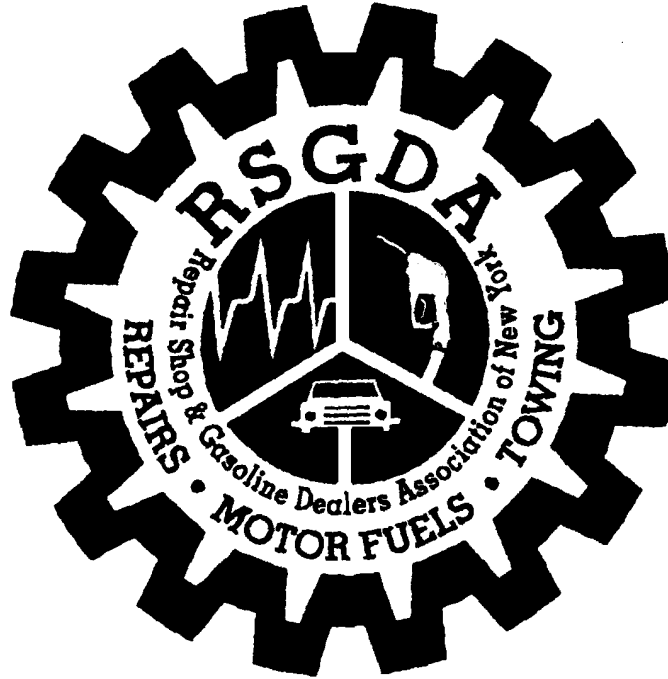


REPAIR SHOP AND GASOLINE DEALERS ASSOCIATION NEWS

(585) 423-9924
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144 Fairport Village Landing 308
Fairport, New York 14450

March 2013



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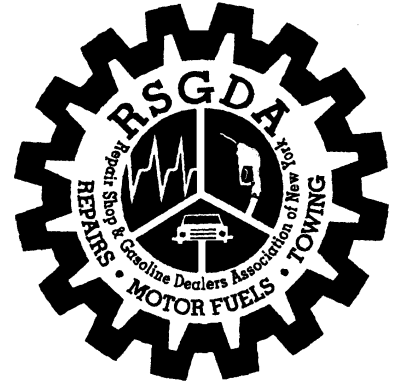
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Repair Shop and Gasoline Dealers Association

144 Fairport Village Landing, #308, Fairport, NY 14450-(585) 423 9924

This publication is owned by the Association and is published each month.

It is published in the interest of Service Station and Repair Shop Dealers and dedicated to the promotion of the organization.



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GENERATORS IN THE WAKE OF SANDY

In the aftermath of Hurricane Sandy, federal and state authorities are taking steps to improve the government's disaster preparedness. The federal government recently approved \$51 billion in disaster relief for the Northeast and Governor Cuomo has set up four different commissions to improve the state's response capabilities and strengthen the state's infrastructure. After assisting the victims of Hurricane Sandy put their lives back together, efforts for long-term planning should take priority in this effort. Obviously, careful planning is necessary if the opportunity this funding provides us is not wasted.

Careful planning is not in evidence on Long Island, however, where some localities with knee-jerk reactions have run amok by imposing mandates without much appropriate attention to their impacts or efficacy. The Town of Hempstead, for example, recently enacted an ordinance to require the installation of generators at all the retail gas stations. The burden of this \$50,000 business expense didn't dissuade the town board nor evidently did the fact that Hempstead dealers would be put at a disadvantage vis-à-vis dealers in adjoining towns where no such expense would be imposed. Nor did it disturb them that this move might affect gas prices as Hempstead dealers could very well consider raising prices to recoup the cost of these generators.

During the hearings on the measure it was obvious that most of the Town Board members were directing their ire at LILCO's failure to adequately prepare for Hurricane Sandy's devastating impact. But since they had no authority to do anything about LILCO, they decided to do something they

could do—whether it made sense or not. Perhaps they thought the major oil companies could afford the cost of all these generators and—well, where's the political harm? No one has much sympathy for costs imposed on major oil companies, right?

Well, this cost will not be absorbed by the major oil companies because—with the exception of one major oil company that owns all its stations and has no franchisees—the majors do not own stations anymore. By and large retail gas stations are run by individual business owners, not some corporate conglomerates.

Even in the states of Florida and Louisiana, states with more active hurricane weather patterns than Long Island, generators are not required at every station. Their approach is more flexible and reasonable. The Florida statute, for example, requires that newly-constructed stations be prewired for an alternative power source and only those located near interstate highways and along evacuation routes have generators. A number of similar bills have been introduced in the state legislature. We should all ensure that our state legislators appreciate the flexible and reasonable statewide approach contained in the Florida law.

Many of us have not experienced a storm like Hurricane Sandy in our lifetimes. Its extraordinary impact has us all thinking about what we need to do better next time. It has us wondering if we should rebuild or move. Should we close up shop or continue a business? These are major decisions that require planning and deliberation. We have every reason to expect our town boards to undertake the same deliberative process before blithely imposing unreasonable and expensive requirements on local businesses, some of which were victims of this hurricane themselves. If Florida doesn't

require a generator at every station, but only to have one available, why on earth would every station in Hempstead need to have one installed? Because it makes a town board look responsive? If so, to whom? For sure, not to the hundreds of station owners in Hempstead.

NY GOV. CALLS FOR EMERGENCY FUEL RESERVE, GENERATORS AT SOME GAS STATIONS

Citing lessons learned from Superstorm Sandy's destructive and disruptive impact, New York Governor Andrew Cuomo (D) is now calling for several fuel- supply infrastructure measures to prepare the state for future natural disasters and other emergencies.



Delivering his annual State of the State address in Albany, N.Y., Wednesday,

Cuomo said a petroleum fuel reserve and additional pumping capacity for a key pipeline was needed to help bolster New York's fuel delivery system. In addition, he said that back-up generators should be installed at strategically located gasoline stations.

"We must harden our fuel delivery system," he said, touching on several elements of the disruption visited on New York's five boroughs and northern New Jersey as a result of flooding and power outages caused by Sandy.

The interruption of gasoline fuel flow into downstate New York via the Buckeye Pipeline "for just a few days had an amplified impact over a period of several weeks," the printed version of Cuomo's presentation said. The addition of new pump stations would address the problem that Buckeye faced at that time, that is, that

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insufficient pumping capacity didn't allow the system to "catch up" for lost days while pumping to meet the daily requirements of the region.

"Deeply interdependent" electricity and fuel networks meant that Sandy's widespread power outages prevented many gas stations from pumping the gasoline contained in their tanks to customers.

"We must ensure that gas stations in strategic locations are required to have back-up power capacity," Cuomo's presentation said, noting laws in Florida and Louisiana that require pre-wiring for back-up power or require companies owning 10 or more stations within a county to maintain a certain number of portable generators that can be installed within 24 hours of a power outage.

Following Sandy's disruption of marine traffic in New York Harbor and the flow of fuel through terminals in the vicinity (cutting regional fuel supply by about one third), "a Strategic Fuel Reserve must be created to protect New York during a fuel shortage or prolonged disruption to the supply chain," Cuomo said. Access to a reserve could relieve short-term problems during major weather events or provide supplemental volume, ensuring that first responders and residents can access gasoline, he added.

Cuomo cited the work of several commissions which were created at the end of November to study the storm's impacts and make recommendations to overhaul the state's preparedness and response capabilities. As reported by OPIS, the NYS Ready Commission recommended establishing an emergency fuel reserve and installation of back-up power generators at gasoline stations.

Commission member Steven Levy, Managing Director of Sprague Operating Resources LLP, previously told OPIS there would likely be secondary and tertiary storage available that could be used for a fuel reserve. Additionally, there may be a number of terminals with available capacity for local fuel supply. The use of storage on Long Island, in Westchester and the Hudson Valley would inject some much-needed supply diversity into the metropolitan area's fuel infrastructure, he added. There is also the potential to build additional storage if deemed necessary.

--Beth Heinsohn, bheinsohn@opisnet.com

PAYROLL TAX HITS HARD

Consumer confidence is down and firings unexpectedly climbed since 2013 began, "the first sign that higher U.S. payroll taxes will slow the economic expansion at the start of this year," writes Bloomberg.

Accordingly, the news source writes that its Bloomberg Consumer Comfort Index "fell to minus 34.4 in the seven days ended Jan. 6 from minus 31.8 the prior period, the biggest one-week drop since August. Jobless claims increased by 4,000 to 371,000 in the week ended Jan. 5, according to Labor Department figures."

The rate of workers' payroll taxes, which help finance Social Security, had been 4.2% for the past two years. Beginning January 1, the tax reverted to 6.2% from 4.2%, resulting in Americans having to rely on "increases in salaries to counter some of the lost income at the same time the job market shows little sign of further progress and the debate in Washington turns to federal spending cuts and the debt," writes the news source.

“Consumers are coming to the realization that their take-home pay is going to get smaller,” said Richard Yamarone, a senior economist at Bloomberg LP in New York. “That will translate into weaker spending. I expect the economy will spin its wheels for many months until the jobs picture, and associated incomes, improves.”

Meanwhile, business analysts told Bloomberg News that they expect sales at discount and other retailers that attract low-income shoppers, such as Dollar General and Family Dollar, to drop as the payroll tax increase continues to take shape on consumer spending. It’s “like a splash of cold water,” Credit Suisse analyst Edward Kelly told Bloomberg News. “It represents a direct reduction of spending by the lower-end consumer.”

AAIA URGES SEC TO REJECT PETITION CALLING FOR PUBLIC DISCLOSURE OF CORPORATE POLITICAL ACTIVITY

AAIA joined a large group of industry associations to urge that the Securities and Exchange Commission reject a petition that would require publicly held companies to disclose political spending to their shareholders.

The letter to the SEC stems from a petition submitted on Aug. 3, 2011, from a group of law professors, with the support of shareholder activist groups which urged the SEC to “initiate a rulemaking project to require disclosure of corporate political spending to public-company shareholders.” The petition further states that, “Shareholders in public companies have increasingly expressed strong interest in receiving information about corporate spending on politics, and such spending is

likely to become even more important to public investors in the future. Furthermore, shareholders need to receive such information for markets and the procedures of corporate democracy to ensure that such spending is in shareholders’ interest.”

In a letter sent to the SEC on Jan. 4, AAIA and other industry groups questioned the true purpose of the petition which would be to discourage corporate political and lobbying activity. These activities are clearly important to companies since “government policies can have a tremendous impact on a company’s fortunes; indeed on its very existence. The leadership of a business therefore acts in accordance with its most fundamental fiduciary obligations to the company when it seeks to engage effectively with respect to government policies that could inflict financial harm upon, or provide a financial benefit to, the company.”

IRS ISSUES PROPOSED RULE ON SHARED RESPONSIBILITY FOR EMPLOYERS REGARDING HEALTH COVERAGE

The Internal Revenue Service (IRS) has issued a Proposed Rule in the Jan. 2 Federal Register, outlining how employers will be subject to the Employer Shared Responsibility for health insurance.

These provisions fall under section 4980H of the Internal Revenue Code, which was added by the Patient Protection and Affordable Care Act. The Proposed Rule offers 37 pages of guidance, responding to comments received from the public that the IRS had requested in four previous notices dating back to 2011.

The rule offers clarification on a multitude of key definitions that will impact which

employers are subject to the law and what they must provide in the way of healthcare insurance. Some noteworthy aspects of the rule include:

* For the purpose of identifying full-time employees' status, the proposed regulations retain the 130-hour standard as a monthly equivalent of 30 hours per week. (Regulations apply to employers with 50 or more employees.)

* An applicable employer has the option to determine each ongoing employee's full-time status by looking back at a measurement period (a defined time period of not less than three but not more than 12 consecutive months, as chosen by the employer).

* For purposes of determining employee eligibility for the premium tax credit, coverage for an employee under an employer-sponsored plan is affordable if the employee's required contribution for self-only coverage does not exceed 9.5 percent of the employee's household income for the taxable year (emphasis added).

Section 4980H is effective for months after Dec. 31, 2013 and employers may rely on these proposed regulations for guidance pending the issuance of final regulations or other guidance. Written or electronic comments must be received by March 18, 2013. The complete Federal Register notice may be viewed here: <http://www.gpo.gov/fdsys/pkg/FR-2013-01-02/pdf/2012-31269.pdf>. An IRS Q&A bulletin on the subject can be viewed here: <http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>

NIST AND NCWM PROPOSES NEW REGULATIONS GOVERNING SALE OF AEROSOL PRODUCTS AND ELECTRICITY FOR VEHICLE RECHARGING

The National Institute of Standards (NIST) has announced on Jan. 3, the 2013 Interim Meeting for the National Conference on Weights and Measures (NCWM). Among the agenda items for the meeting are proposed regulations governing the sale of aerosol products and the sale of electricity for the recharging of vehicles.

The NCWM is the organization responsible for developing model standards for legal metrology, the science of measurement. Individual states typically adopt the model standards. NIST supports the NCWM by providing technical advisors and publishing the model standards in applicable handbooks.

The NCWM is proposing to revise the regulations governing the Method of Sale for Aerosols and Similar Pressurized Containers, over concerns that some packages using Bag on Valve (BOV) technology have their net contents declared in terms of fluid volume.

BOV is a pressurized package where a propellant is not expelled with the product when the valve is activated. The NIST Handbook 130, Section 10.3 currently requires aerosols and similar pressurized containers to disclose their net quantity in terms of weight.

Because BOV containers (net contents in fluid volume) are being used to sell the same type of products dispensed from aerosol containers (net contents in weight), consumers are unable to make value comparisons and this proposal is intended to provide an appropriate method of sale for

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packages utilizing the Bag on Valve (BOV) technology.

Under the heading of Developing Item, a new Section is being proposed to regulate the sale of electricity for vehicle recharging. A workgroup has been formed to engage manufacturers, users and others involved in vehicle recharging. All stakeholders, including device manufacturers, are encouraged to participate in this effort. A workgroup report will be presented at the meeting.

EPA APPROVES NEW CLEAN CAR EMISSIONS RULES IN CALIFORNIA

The Environmental Protection Agency (EPA) has granted a waiver from federal preemption for the State of California to implement its Advanced Clean Car (ACC) program, which includes a package of stricter emissions standards for vehicles of all types for model years 2015 through 2025. Under Section 209(b) of the Clean Air Act, California is the only state permitted to offer different emissions standards than the federal government, but must obtain a waiver from EPA to promulgate those standards. Once a waiver is granted, other states are permitted to adopt California standards or follow EPA rules.

California's ACC program is expected to reduce vehicle greenhouse gas emissions by 75 percent beginning in 2015 and allows for the development 1.4 million zero-emissions vehicles (battery electric, plug-in hybrid, fuel cell) in the state over the next decade. According to the California Air Resources Board, this action taken by EPA will allow the state to continue to have the "toughest vehicle emissions standards in the nation" and permit other states to adopt identical standards if they so choose.

Specifically, the ACC program sets out to significantly reduce nitrogen oxide and hydrocarbon emissions, extend engine durability life, and, as mentioned, impose stricter general emissions standards for gasoline-powered vehicles. The state has established a greenhouse gas emissions standard of 166 grams of carbon dioxide per mile by 2025, forcing vehicle manufacturers to use off-the-shelf technologies to achieve this goal. The vehicle manufacturers supported California's requirements, as they have with the standards crafted at the federal level, but the waiver includes a provision that designates them as compliant with the state as long as they meet the federal greenhouse gas emissions standards.

The waiver can be found on EPA's website at <http://www.epa.gov/otaq/cafr.htm>.

ANTIFREEZE MANUFACTURERS REACH NATIONWIDE AGREEMENT ON USE OF BITTERING AGENT TO PREVENT HUMAN AND ANIMAL POISONINGS

In a joint statement issued by the Humane Society Legislative Fund and Consumer Specialty Products Association (CSPA), manufacturers of antifreeze and engine coolants have agreed to add a bittering agent to their products sold in all 50 states in order to reduce poisonings of children and animals who ingest them. Ethylene glycol, which is used to make antifreeze and engine coolants, has a sweet taste, thus attracting young children and animals to open containers and driveway spills. According to the American Association of Poison Control Centers, an average of more than 500 children under the age of six and between 10,000 and 90,000 animals are poisoned annually from ingesting this substance, some of which prove fatal from amounts as small as a

teaspoon.

The announcement comes after years of state by state efforts by the Humane Society to obtain legislation that required denatonium benzoate, a bitter-tasting substance, to be added to these products. Oregon was the first state in 1991 and since then 16 other states have passed similar laws. The agreement by both the Humane Society and CSPA means that antifreeze with denatonium benzoate will be sold nationwide, hopefully discouraging other states from passing their own legislation regarding antifreeze.

The joint statement can be found here: <http://www.cspa.org/news-media-center/news-releases/2012/12/antifreeze-and-engine-coolant-being-bittered-nationwide/>

SAUDI ARABIA CUTS OIL OUTPUT

The world's top oil exporter slashed its oil production by nearly 5% in December, representing Saudi Arabia's "deepest production cut in almost three years, which comes amid expectations of lower demand for OPEC crude this year," write the Wall Street Journal.

The cut in crude production came largely in response to lower demand from Asian customers. The cut also sent the price of European benchmark Brent crude to its highest level since October and U.S. benchmark West Texas Intermediate crude to a near four-month high.

As demand for crude from OPEC members drops this year, Saudi's cut in production shows that it, "still wants to have, and does have, the role as the swing producer in the market," Thina Saltvedt, a senior oil market

analyst at Nordea Bank Norge, told the newspaper, which also notes that Saudi oil production fell to 9.025 million barrels a day in December compared with 9.49 million barrels a day a month earlier.

Meanwhile, Saudi's cut doesn't reflect a shift in its approach to supplying the oil market. The newspaper notes that Saudi Arabia has repeatedly stated its commitment to meet all requests for oil from customers in the last year.

NEW HAMPSHIRE SUES EXXON MOBIL, CITGO FOR MTBE CONTAMINATION

The state of New Hampshire launched its case against ExxonMobil and CITGO on Jan. 14, seeking more than \$700 million in fees to monitor and treat water systems contaminated by the additive MBTE, reported the Associated Press. Defense lawyers have argued in pretrial hearings and court documents that the oil companies already cleaned up their own sites, and other contamination was caused by unnamed third parties.

"A significant part of the state's case will be presented from the defendants' own documents," stated Jessica Grant, representing New Hampshire. Grant presented multiple ExxonMobil memos in which company employees warned against the environmental effects and potential remediation costs of MBTE.

MBTE was used in gasoline to increase octane and reduce smog-causing emissions starting in the 1970s. In the late 1990s, it was discovered to contaminate drinking water when gasoline spilled or leak into surface or groundwater. New Hampshire banned MBTE in 2007.

The lawsuit, filed in 2003, is the only stated-filed case on MBTE contamination to reach trial. Other cases, brought by municipalities, water districts or individual well owners, were settled or dismissed, with one exception, according to the report.

The trial is expected to last four months and is being held in a federal court on loan to New Hampshire in order to avoid monopolizing Merrimack Superior Court, which only has three courtrooms. More than 50,000 exhibits have been marked, and more than 230 individuals are named on the witness list.

Grant told jurors that experts for the state estimate that more than 40,000 wells in New Hampshire are likely contaminated by MBTE. Approximately 60 percent of the state's population receives water from wells, driving the treatment cost up.

E15 SURVIVES ANOTHER APPEALS COURT CHALLENGE

E15 earned another victory in court when the United States District Court of Appeals for the District of Columbia Circuit denied petitions to rehear a case that challenged the U.S. Environmental Protection Agency's (EPA) permitted commercial use of the petroleum alternative.

The case, the Grocery Manufacturers Association, et al. v. EPA, is not the first challenge to E15, a gasoline blend featuring 15-percent ethanol and 85-percent traditional gasoline. In August, an U.S. appeals court upheld the approval of E15 in a 2-1 vote. In discussing its decision, the court claimed the food and auto industries, as well as oil refiners, which brought forth the suit, failed to prove they were harmed by E15's approval.

The EPA approved E15 for use in cars and light trucks made since the 2000 model year. It is barred from use in light equipment and older vehicles. E10 is currently and commonly used throughout the country.

The Grocery Manufacturers Association has yet to issue a statement regarding yesterday's ruling. Following the August decision, the trade group stated: "The court's split decision to dismiss the petition on procedural grounds instead of the merits of the case is disappointing and unfortunate for consumers. The decision clears the way for the continuation of misguided food-to-fuel policies at a time when Americans can least afford it."

Further clouding the waters for E15 was a telephone survey the American Automobile Association (AAA) concluded last month. As CSNews Online reported, the survey revealed that 95 percent of consumers don't understand E15 fuel standards.

"It is clear that millions of Americans are unfamiliar with E15, which means there is a strong possibility that many motorists may improperly fill up using this gasoline and damage their vehicle," AAA President Robert Darbelnet said in a statement last month. "Bringing E15 to the market without adequate safeguards does not responsibly meet the needs of consumers."

However, yesterday's court decision was hailed as a victory for the renewable fuel standard, a mandate put forth by the Obama Administration to increase fuel mileage.

Also, Tom Buis, CEO of Growth Energy, an organization that represents the producers and supporters of ethanol, applauded the court decision and said it opens the door for further investment in new fueling technologies to offer E15 to consumers.

"[The] result is a win-win for American consumers, providing them with both a choice and savings at the pump, and is a critical step in increasing market access," Buis said. "Not only will E15 help reduce our dependence on foreign oil, it will also help create jobs here at home and revitalize rural economies, while also improving our environment by increasing the availability and use of a cleaner burning fuel."

It is unknown if yesterday's court ruling permanently closed the book on E15 litigation.

ETHANOL FIGHT MAY ADVANCE TO SUPREME COURT

The American Petroleum Institute (API) is "strongly considering" petitioning the Supreme Court to review an appeals court decision that preserved the EPA's decision

to allow E15 fuel in the marketplace, The Hill reports.

According to API Group Downstream Director Bob Greco, API would need to file a petition by mid-April to have the Supreme Court consider the ruling by the U.S. Court of Appeals for the District of Columbia. The EPA and biofuels groups have maintained that E15 is safe for cars made in 2001 or later.

"Oil companies are desperate to prevent the use of higher blends of renewable fuels," said Tom Buis, chief executive with biofuels trade group Growth Energy. "They have erected every regulatory and legal roadblock imaginable to prevent our nation from reducing our dependence on oil."

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GENERAL COUNSEL CORNER

By Peter H. Gunst, Esquire

Getting Hosed at the Pump: the PMPA Defense

Usually this column focuses upon Part I of the Petroleum Marketing Practices Act ("PMPA"), which governs termination or nonrenewal of the franchise relationship between supplier and dealer. There exists, however, another portion of the PMPA - Part II - which governs the posting of octane ratings at the pump. Recently, that relatively obscure portion of the PMPA has come to the fore in the defense of consumer fraud litigation.

Class action attorneys have brought suits on behalf of consumers of premium gasoline, contending that they have been cheated because they are charged the premium price for the fraction of a gallon of regular gasoline that remains in the dispenser hose, when a previous customer has purchased regular product.

Although the price differential involved is trivial, these claims are significant because they seek damages for an entire consumer class, and because they request significant and expensive injunctive relief by demanding fundamental changes to the pump dispensation system.

One such action was *Alvarez v. Chevron Corp.*, 656 F.3d 925 (9th Cir. 2011), where six California consumers brought a diversity of citizenship claim in federal court against the major refiners, charging them with breach of contract and violation of California statutes dealing with unfair

competition, consumer fraud and false advertising.

After the district court dismissed the consumers' complaint for failure to state a viable cause of action, the would-be class action claimants appealed to the United States Court of Appeals for the Ninth Circuit.

In a unanimous three judge opinion, the appeals court agreed with the district court that the consumers' breach of contract claim was barred by their failure, required under California law, to provide the refiners with notice of their claim before filing suit. Despite the fact that a prefiling notice would almost certainly have been an exercise in futility, the appeals court held that it was expressly mandated by California state law.

The appeals court also agreed with the district court's determination that the refiners were entitled to a "safe harbor" from liability under California's unfair competition and consumer protected statutes because they had complied with the dispenser design requirements established by California statute. In so holding, the appeals court relied upon a California state court determination that, where the legislature "has permitted certain conduct, ... courts may not override that determination."

Part II of the PMPA became important when the appeals court considered the consumers' final claim, that the refiners had violated California's False Advertising Law by "advertis[ing] motor fuel for sale as having a minimum octane rating when, in reality, the initial 0.2-0.3 gallons of such motor fuel sold had a lower octane rating due to the residual fuel [situation]."

Once again agreeing with the district court's conclusion, the appeals court emphasized

the express requirement contained in Part II of the PMPA that gasoline retailers "display in a clear conspicuous manner, at the point of sale to ultimate purchaser of automotive fuel, the automotive fuel rating of such automotive fuel," and its preemption provision prohibiting states from enacting laws that are inconsistent with any provisions of Part II.

The appeals court concluded that the consumers, by seeking to compel the refiners to add a corrective disclosure at the pump warning customers about the residual fuel situation, were in effect "challenging the accuracy and undermining the uniformity of federal octane labeling regulations." This the PMPA would not allow.

A second class action suit, brought in the name of a Missouri consumer, tried a different tack. In order to avoid what she apparently thought would be a hostile reception in federal court, the consumer filed a state law claim charging only local marketers with misrepresenting the grade of gas pumped at their stations.

The marketers removed the case to federal court anyway, arguing that their defense of PMPA preemption created an independent basis for federal jurisdiction. The district court agreed with the marketers, and refused to remand the consumers claim back to state court.

In a 2-to-1 decision in *Johnson v. MFA Petroleum Co.*, 701 F.3d 243 (8th Cir. 2012), the Eighth Circuit Court of Appeals reversed the district court, emphasizing that PMPA preemption has its limitations.

The appeals court based its opinion on the distinction between "ordinary" and "complete" preemption. In the "ordinary"

case, preemption may be raised as a defense in state court but it does not nullify the existence of state court jurisdiction so as to justify removal to federal court. Following Supreme Court guidance, the majority opinion concluded that "complete" preemption justifying removal exists only where a federal statute "so completely preempt[s] a particular area that any civil complaint raising the select group of claims is necessarily federal."

In drawing a line between "ordinary" and "complete" preemption, the majority opinion emphasized that Part II of the PMPA provides for enforcement exclusively by the Federal Trade Commission, thus leaving a consumer with no alternative federal remedy. This is different from Part I of the PMPA, which might support a claim for complete preemption because Congress provided an express remedy for damages and injunctive relief to impacted dealers.

The court of appeals concluded that "without a federal cause of action which in effect replaces a state law claim, there is an exceptionally strong presumption against complete preemption." That is because it is doubtful that Congress, through preemption, would strip a litigant of his or her rights under state law without providing at least some federal remedy.

Although the appellate decision favored the consumer, it was far from a complete victory. The court of appeals directed the district court to consider whether another federal statute, the Class Action Fairness Act, provided an independent basis for removal to federal court.

Even if the consumer surmounted that hurdle, she would still be faced with the doctrine of "ordinary" preemption in state court. The state court might well be swayed by the Ninth Circuit's opinion in Alvarez

establishing the "ordinary" preemptive effect of Part II of the PMPA over false advertising claims.

The bottom line appears to be that consumer hose claims face considerable procedural and substantive obstacles, not the least of which is PMPA preemption.

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 drivers license, vehicle registration, and vehicle title records for an additional fee of \$2 per abstract. Please call 518-452-4367.

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 than 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 is a violation that almost always results in revocation.

\$afety Group 536

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DIVIDEND HISTORY

35%	2010-2011
35%	2009-2010
35%	2008-2009
35%	2007-2008
30%	2006-2007
30%	2005-2006
25%	2004-2005
22.5%	2003-2004
17.5%	2002-2003
10%	2001-2002
15%	2000-2001
30%	1999-2000
40%	1998-1999

DISCOUNT HISTORY

25%	2012
25%	2011
20%	2010
20%	2009
20%	2008
25%	2007
25%	2006
25%	2005
20%	2004
20%	2003
20%	2002
20%	2001
30%	2000

Current Group Management took over for the 04-05 policy year
2008 20 % Discount due to 18% rate decrease

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RECEIVE A REBATE CHECK FOR 2% OF YOUR PURCHASES (MINIMUM OF \$150 REBATE)

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FREE MONEY

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Business Address Street:		
City:	State:	Zip:
Phone:	Fax:	E-Mail:
Name of NAPA Dealer:		
NAPA Street Address:		
City:	State:	Zip:
Phone:	Fax:	
Additional NAPA Dealer(s) you do business with:		
Name of NAPA Dealer:		
NAPA Street Address:		
City:	State:	Zip:
Phone:	Fax:	
Name of NAPA Dealer:		
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City:	State:	Zip:
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Rewards Information: Active accounts are defined as those (i) that are billing more than \$0 and (ii) for which we have not received a request to discontinue service. Please note, if you enroll both electric and gas accounts, it is possible your services will start on different dates, so your bonuses may be awarded on different dates. Your Cash Back rebate will be mailed automatically after the close of your twelfth billing cycle which means you must have an active Energy Plus account for 12 billing cycles to receive the Cash Back rebate. Account eligibility for a natural gas Activation Bonus requires a minimum of 500 annual therms or ccf, based on historic usage as estimated by your utility at the time of enrollment.

Green Option Information: If you choose to add the Green Option, you will be charged approximately \$0.01 additional per kWh over Energy Plus' variable electric supply rate and your monthly electricity usage will be automatically offset by an equivalent amount of wind power via Renewable Energy Certificates (RECs).

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RSGDA

LEGAL PLAN

As a member in good standing of the Association, you are entitled to participate in our group legal service plan. If you are in need of this service, you must first call the Association office at (585) 423-9924. An appointment will be arranged that will be convenient for you and the attorney.

Covered services available to members include:

- Defense in Small Claims Court if your business is sued or at Department of Motor Vehicles or at any other New York State Administrative Proceeding hearing. (Once per year.)
- Review of leases, supply contracts and franchise agreements to advise you of your obligation under these contracts. The plan does not include actual negotiation on your behalf. (One hour per issue, up to five hours per year.)
- Consultation on legal questions pertaining to your business. (One hour per issue, up to five hours per year.)

Appeals of judgments against you are not a covered benefit, but are available to members at special contract prices.

Additional legal services will be provided by the designated law firm's standard hourly rate less 15%. Special contract prices have also been negotiated for the following services.

- Residential real estate purchase or sale. The designated law firm will represent you in the sale of purchase of your primary residence and/or a second home or vacation property at the following rates:

Sale	\$295.00
Purchase	\$350.00
- Simple will \$75.00 Simple will (husband and wife) \$125.00

In order to participate in the plan you must be a member in good standing and must have been a member for ninety days prior to the need for legal service.

RSGDAofWNY

Repair Shop and Gasoline Dealers Association of Western New York

Member Legal Services Plan

Administered by
KENNEY SHELTON LIPTAK & NOWAK, LLP

Dues paying members in good standing with the Association are entitled to participate in our group legal services plan that provides the following services:

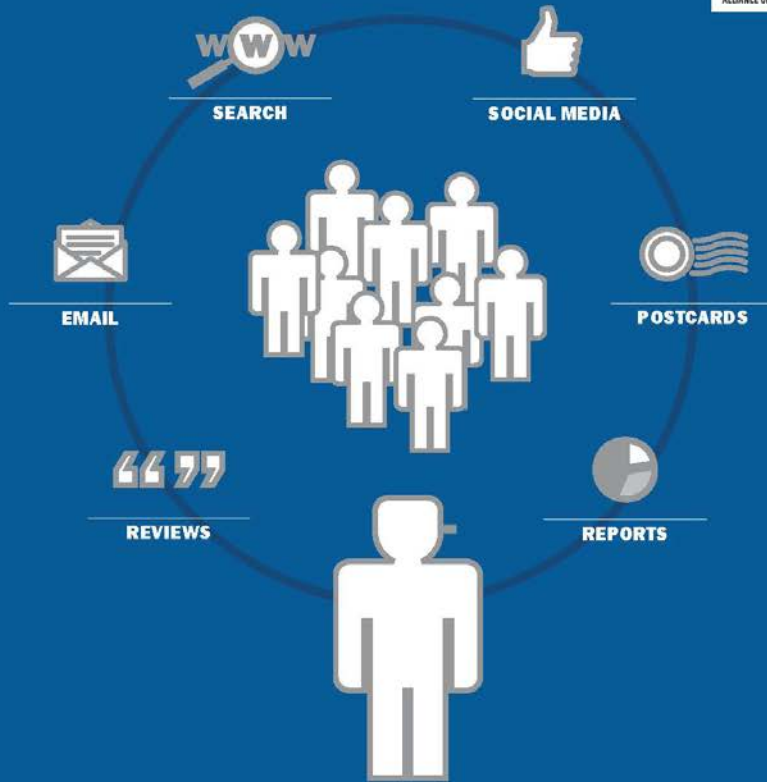
- Five billable hours of legal services for representation and defense at Department of Motor Vehicles or any other New York state Administrative Proceeding or Hearing for repair-shop related issues, and in Small Claims Court, if your business is sued. The Plan does not include representation in any court other than Small Claims or in any matter where the member is charged with a misdemeanor or felony.
- Additional legal services for covered services as listed above, and representation in business-related matters brought in any court other than Small Claims, will be provided at the law firms standard hourly rate (\$200) less 25% member discounted rate (\$150).
- One hour of free consultation per year for business-related transactions, including leases, supply contracts, and franchise agreements.
- Real estate (residential) purchase or sale at a flat fee rate:
Sale \$400
Purchase \$400
- Estate planning at a flat fee rate:
Simple will (single) \$100
Simple will (husband and wife) \$150

In order to participate in the plan, you must be a dues paying member, in good standing, and must have been a member for at least ninety days prior to the need for legal services.

If you are in need of this service, you must first call the association office at (585) 423-9924 or (716) 656-1035. The association will then contact the law firm to relay your information. You will be contacted by the law firm, personally, to schedule an interview.

The law firm of Kenney Shelton Liptak and Nowak, LLP was chosen to administer the RSGDAofWNY legal plan based on their knowledge and familiarity with the needs of our industry.

**To become a dues paying member of RSGDAofWNY
and be eligible for legal services, call (716) 656-1035**



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STAY CONNECTED TO CURRENT CUSTOMERS

Turn first-time customers into loyal, profitable customers automatically. Mitchell 1's Social CRM integrates seamlessly with your shop management system, calculating mileage history and combining that with specific maintenance schedules to determine next recommended services. Includes:

- Email matching with your customer database
- Ongoing automatic email service reminders
- Target market promotions
- Customizable large-format postcards, artwork, and logos



POSTCARDS



SOCIAL MEDIA

IT'S TIME TO GET SOCIAL MEDIA WORKING FOR YOU

Your dedicated support agents will set up your Facebook page for maximum word-of-mouth marketing. Compelling content, AutoNetTV™ videos and Customer Reviews will be automatically pushed to your Facebook page on a regular basis to keep your shop visible and your customers engaged. Facebook links will be included in the Thank-You emails and on your customer's personalized vehicle maintenance website, OwnerAutoSite.com.



REVIEWS

GIVE YOUR SHOP A REPUTATION BOOST

Your customer reviews are posted to the web, complete with Overall Satisfaction Star Ratings, Review Comments, and Recommend scores. The Customer Review System can also verify which reviews are from actual customers, which studies prove are typically higher than unverified reviews. With ReScore, you can ask for a follow up review once you've had the opportunity to resolve a customer concern.

- Automated low score alerts
- Review customer verification
- Links to your shop's website
- Respond to customer reviews



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Your Mitchell 1 Support Agent will work with you to set up your SocialCRM service and monitor its performance with our extensive Summary Reports. Your support agent will:

- Set up Facebook page and create automatic feeds of video and review content
- Help you choose automatic Email and Postcard campaigns
- Review your Summary Reports and recommend tuning your program for maximum return on your investment
- Help you create coupons and send targeted email blast campaigns



Q1 2012

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ManagerPlus, Single User	\$0 S&I \$139/mo	\$129/mo
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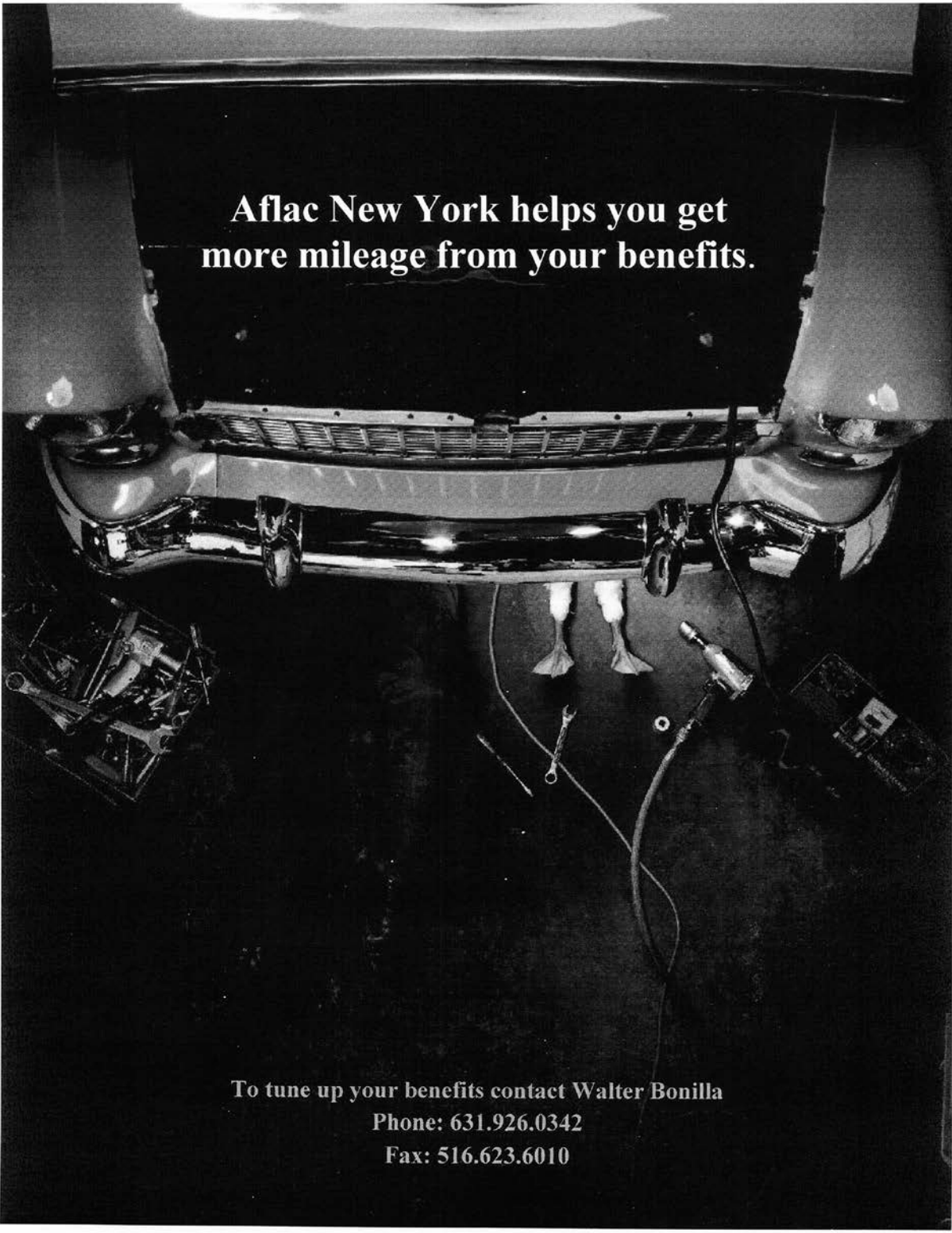
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ManagerPlus, Single User w/ OnDemand5.com:	\$0 S&I \$239/mo	\$229/mo
ManagerPlus, Multi User w/OnDemand5.com:	\$0 S&I \$295/mo	\$285/mo

Other Products available as bundles or individually

OnDemand5.com	\$0 S&I \$159/mo	\$149/mo
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SocialCRM	\$0 S&I \$199/mo	
SocialCRM - AASP Members Only	\$15.00/mo Off Promo Price	
	1st Quarter 2012	

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 To find your local representative, or submit a lead, go to: www.m1leads.com/aasp

- **Prices should not be shared as an example only. Prices may vary depending on the product needs of the Repair Shop Customer.**
- All products come with a 30 day cancellation policy from Mitchell1.
- All products require 12-month agreement. After initial 12 months, each renewal period is 12 months with 30-day guarantee period commencing on renewal date.
- All products offered as software only; customer must provide hardware.
- All products include on-site training and installation.
- Network set up, installation and installation of all multi-user products is the responsibility of customer. Obtaining the services of a Network Professional to set up the network and install all multi-user products is highly recommended.
- Promotional pricing ends March 31, 2012.



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