



November 2021 Bulletin

Pass Me Along to Share with other Stations!

ASSOCIATION CONTEST

CONGRATULATIONS TO THE OCTOBER 2021 CONTEST WINNER MCLEAN WHEEL ALIGNMENT

YONKERS, NY. Please read through this bulletin for your chance to win!!! Call the office with the correct answer to the trivia question and you will be entered in the monthly drawing for a chance to receive a free month's dues; a value of \$45.00.

ATTORNEY'S CORNER

Ever wonder how gasoline and diesel fuels as well as Home Heating Oil and the other products we use in our daily life are made? Big secret - they are made from, gasp - petroleum. You know, the stuff that certain 'woke' elements of today's society complains about.

Gasoline is made when crude oil is broken into various petroleum products through a process of fractional distillation. The finished product is then distributed to gas stations through pipelines to terminals and then trucked to gasoline stations. Gasoline is essential to running most internal combustion engine cars. Because of this, gasoline is one of the most widely used petroleum products. Gasoline makes up about half of all the petroleum products used. In contrast, diesel made up ~20% and kerosene (or jet fuel) ~8%.

Did you know that today gasoline usually is mixed with a biofuel known as ethanol and can consist of up to 10% ethanol. This is the highest percentage of ethanol that a regular car engine can still function on.

Now for the technical fun stuff. Ever drive by a refinery and notice the tall towers, some with flared off gas coming out of the top? These are the true heart of the refinery. They may be referred to as "cracking towers". (See below technical information)

We all know that gasoline is made from crude oil. The crude oil pumped out of the ground is a black liquid called petroleum. This liquid contains hydrocarbons, and the carbon atoms in crude oil link together in chains of different lengths.

It turns out that hydrocarbon molecules of different lengths have different properties and behaviors. For example, a chain with just one carbon atom in it (CH₄) is the lightest chain, known as methane. Methane is a gas so light that it floats like helium. As the chains get longer, they get heavier. Methane and Ethane are what you usually see being "flared" off from the top of the cracking towers. The different chain lengths have progressively

higher boiling points, so they can be separated out by distillation. This is what happens in an oil refinery -- crude oil is heated and the different chains are pulled out by their vaporization temperatures at the different levels of the cracking tower.

I won't go into the other chains except to note that the octane rating is important to gasoline engine operation. The octane rating of gasoline tells you how much the fuel can be compressed before it spontaneously ignites. When gas ignites by compression rather than because of the spark from the spark plug, it causes knocking in the engine. Certainly, knocking can damage an engine, so it is not something you want to have happening for your customers. Lower-octane gas (like "regular" 87-octane gasoline) can handle the least amount of compression before igniting.

Where does the name "octane" come from? When you take crude oil and "crack" it in a refinery, as I noted above, you end up getting hydrocarbon chains of different lengths. These different chain lengths can then be separated from each other and blended to form different fuels. For example, methane, propane, and butane are all hydrocarbons. Methane has a single carbon atom. Propane has three carbon atoms chained together. Butane has four carbon atoms chained together. Pentane has five, Hexane has six, Heptane has seven and Octane has eight carbons chained together.

It turns out that Heptane handles compression very poorly. Compress it just a little and it ignites spontaneously. Octane handles compression very well -- you can compress it a lot and nothing happens. Eighty-seven-octane is gasoline that contains 87-percent octane and 13-percent heptane (or some other combination of fuels that has the same performance of the 87/13 combination of octane/heptane). It spontaneously ignites at a given compression level and can only be used in engines that do not exceed that compression ratio.

Now you know the rest of the story!

Vincent P. Nesci, Esq. Association General Counsel

REFERRALS

If you know of a station that needs our services and is interested in becoming a member, refer them to us and upon signing you will receive a \$50.00 Amazon gift card. If you know of someone interested, please contact our Sales Representative Bill Griese at 914-227-0144.

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This document is intended to address some of the most common situations or questions in the workplace related to adult-use cannabis and the Marijuana Regulation and Taxation Act (“MRTA”). This document does not address the medical use of cannabis. For further assistance with New York Labor Law and the MRTA, please visit New York State’s Office of Cannabis Management’s website at cannabis.ny.gov or consult with an appropriate professional.

DISCRIMINATION PROHIBITED

The MRTA amended Section 201-D of the New York Labor Law to clarify that cannabis used in accordance with New York State law is a legal consumable product. As such, employers are prohibited from discriminating against employees based on the employee’s use of cannabis outside of the workplace and work hours, and without use of the employer’s equipment or property.

PERMITTED EMPLOYER ACTIONS

The MRTA amended New York Labor Law Section 201- D by adding a new subsection 4-a, which provides that employers MAY take employment action or prohibit employee conduct where:

- An employer is/was required to take such action by state or federal statute, regulation, or ordinance, or other state or federal governmental mandate
- The employer would be in violation of federal law
- The employer would lose a federal contract or federal funding
- The employee, while working, manifests specific articulable symptoms of cannabis impairment that decrease or lessen the employee’s performance of the employee’s tasks or duties
- The employee, while working, manifests specific articulable symptoms of cannabis impairment that interfere with the employer’s obligation to provide a safe and healthy workplace as required by state and federal workplace safety laws

FREQUENTLY ASKED QUESTIONS: HUMAN RESOURCES ISSUES / ACTION AGAINST EMPLOYEES

Is illegal cannabis use protected?

Only the legal use of cannabis by adults over the age of 21 under New York State law is protected. The illegal use, sale, or

transportation of cannabis is not protected by Section 201-D of the Labor Law. For more information on what is now considered legal use, please visit New York State’s Office of Cannabis Management’s website at cannabis.ny.gov or consult with an appropriate professional.

Can an employer take action against an employee for using cannabis on the job?

An employer is not prohibited from taking employment action against an employee if the employee is impaired by cannabis while working (including where the employer has not adopted an explicit policy prohibiting use), meaning the employee manifests specific articulable symptoms of impairment that:

- Decrease or lessen the performance of their duties or tasks
- Interfere with an employer’s obligation to provide a safe and healthy workplace, free from recognized hazards, as required by state and federal occupational safety and health laws

What are articulable symptoms of impairment?

There is no dispositive and complete list of symptoms of impairment. Rather, articulable symptoms of impairment are objectively observable indications that the employee’s performance of the duties of the position of their position are decreased or lessened. Employers are cautioned that such articulable symptoms may also be an indication that an employee has a disability protected ADULT USE CANNABIS AND THE WORKPLACE New York Labor Law 201-D by federal and state law (e.g., the NYS Human Rights Law), even if such disability or condition is unknown to the employer.

Employers should consult with appropriate professionals regarding applicable local, state, and federal laws that prohibit disability discrimination. For example, the operation of heavy machinery in an unsafe and reckless manner may be considered an articulable symptom of impairment.

What cannot be cited by an employer as articulable symptoms of impairment?

Observable signs of use that do not indicate impairment on their own cannot be cited as an articulable symptom of impairment. Only symptoms that provide objectively observable indications that the employee’s performance of the essential duties or tasks of their position are decreased or lessened may be cited.

However, employers are not prohibited from disciplinary action against employees who are using cannabis during work hours or using employer property.

Can employers use drug testing as a basis for an articulable symptom of impairment?

No, a test for cannabis usage cannot serve as a basis for an employer’s conclusion that an employee was impaired by the use of cannabis, since such tests do not currently demonstrate impairment.

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Can I fire an employee for having a noticeable odor of cannabis?

The smell of cannabis, on its own, is not evidence of articulable symptoms of impairment under Labor Law Section 201-D.

Do I have to fire an employee for using cannabis on the job or for cannabis impairment on the job?

No, employers are permitted to take action under such circumstances but are not required to do so.

Do I have to discipline, report, or fire an employee under age 21 who uses cannabis on the job?

No, there is no legal requirement to do so in the Labor Law.

Are employers required to hire an employee back who was previously terminated for now legal cannabis use or a related expunged crime?

No, the law does not require employers to rehire former employees who were terminated due to cannabis use prior to the legalization of cannabis.

Can a person use cannabis if they are on leave?

For purposes of the labor law, employers cannot prohibit the use of cannabis while employees are on leave unless the employer is permitted to do so pursuant to the provisions of New York Labor Law Section 201-D(4-a).

USE AT WORK OR DURING WORK HOURS

Can employers prohibit use of cannabis during meal or break periods?

Yes, employers may prohibit cannabis during “work hours,” which for these purposes means all time, including paid and unpaid breaks and meal periods, that the employee is suffered, permitted or expected to be engaged in work, and all time the employee is actually engaged in work. Such periods of time are still considered “work hours” if the employee leaves the worksite.

Can employers prohibit use of cannabis during periods in which an employee is on-call?

Yes, employers may prohibit cannabis during “work hours,” which includes time that the employee is on-call or “expected to be engaged in work.”

Can employers prohibit cannabis possession at work?

Yes, employers may prohibit employees from bringing cannabis onto the employer’s property, including leased and rented space, company vehicles, and areas used by employees within such property (e.g., lockers, desks, etc.).

Can employers prohibit use when the employee uses a company vehicle?

Yes, employers are permitted to prohibit use in company vehicles or on the employer’s property, even after regular business hours or work shifts.

WORKPLACE POLICIES

Can employers prohibit the use of cannabis outside of the workplace?

No, unless the employer is permitted to do so pursuant to the provisions of Labor Law Section 201-D(4-a).

Can employers require that employees promise or agree not to use cannabis as a condition of employment?

No, employers are not permitted to require employees to waive their rights under Section 201-D of the Labor Law as a condition of hire or continued employment.

Are existing policies prohibiting use permitted?

No, unless an exception applies. Employers are encouraged to update or amend such policies to reflect changes to New York State law.

APPLICABILITY

Are both public and private employees covered by the MRTA and New York Labor Law Section 201-D?

Yes, they apply to all public (state and local government) and private employers in New York State, regardless of size, industry, or occupation.

Which employees aren’t covered by the MRTA and New York Labor Law Section 201-D?

The MRTA and New York Labor Law Section 201-D do not apply to individuals who are not employees (e.g., students who are not employees, independent contractors, individuals working out of familial obligation, volunteers) or provide any consumer protections. Employees under the age of 21 are also not covered, as cannabis use by individuals under the age of 21 is prohibited by New York Law and not subject to the present protections.

Do the MRTA and New York Labor Law Section 201-D depend on immigration or citizenship status?

No, the MRTA and New York Labor Law Section 201-D apply to all employees regardless of immigration or citizenship status.

DRUG TESTING OF EMPLOYEES

Can an employer test for cannabis?

No, unless the employer is permitted to do so pursuant to the provisions of Labor Law Section 201-D(4-a) or other applicable laws.

Can an employer drug test an employee if federal law allows for drug testing?

No, an employer cannot test an employee for cannabis merely because it is allowed or not prohibited under federal law. However, an employer can drug test an employee if federal or state law requires drug testing or makes it a mandatory requirement of the position.

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SLEEP ACT

The SLEEP Act bill has been passed by both parties and signed into law by our Governor on October 29, 2021.

This law will increase enforcement against motorists and repair shops that illegally modify mufflers and exhausts systems to make them excessively noisy for motor vehicles and motorcycles.

This law also puts responsibility on the inspection stations to fail motorcycles and vehicles that have exhausts systems that have been illegally modified.

We, along with other associations have sent in a letter for an amendment to this bill, which covered the following:

The letter was submitted to request a chapter amendment to the subject legislation on behalf of the following the trade associations: The Service Station Dealers & Automotive Services of Greater New York, The Long Island Gasoline Retailers and The New York State Association of Service Stations and Repair Shops including its five affiliates.

We stated that this bill is primarily focused on the prohibition of the sale or installation of muffler devices which amplify the noise emitted by a motorcycle and the bill also gives the DMV Commissioner the authority to suspend, revoke or deny a license to operate an official inspection station upon a third or subsequent willful violation of the inspection requirements for a muffler or exhaust system of a motorcycle. Also, this bill further provides DMV with the authority to revoke, suspend or deny a registration for a motor vehicle repair shop based on an illegal modification to the muffler system.

We emphasized that this legislation is directed at limiting excessive noise generated by motorcycle muffler systems that have been modified to create excessive noise. This bill attacks that problem effectively by banning the sale and installation of devices which amplify the exhaust sound. By interdicting the sale of such muffler devices in New York State, this bill significantly limits the availability and distribution of such muffler devices through both retail and wholesale parts distributors. This is the appropriate remedy to the muffler device problem. The problem needs to be remedied at the point of sale and distribution not at the repair shop or inspection station.

The current law provides for suspension, revocation or renewal of a license to operate a vehicle inspection station. This bill adds specific authorization to provide for the revocation, suspension or renewal of the vehicle inspection license solely on the grounds of a willful violation of the muffler or exhaust inspection regulations. There are already in statute multiple grounds for inspection license suspension, revocation or non-renewal including Vehicle & Traffic Law section 303(e) (i)

“failure to conduct inspection in conformance with the provisions of this article and the rules and regulations promulgated thereunder...” There is no sound public policy rationale to have a different requirement applied to this type of inspection which although important is focused on quality of life while other violations which have significant safety and health consequences for vehicle operators and passengers are not as stringent. This bill amends the grounds for suspension, revocation or refusal of a motor vehicle repair shop registration solely based on the installation of an illegal muffler devices to a motorcycle. There is already in Section 398-e 1. (i) grounds to suspend, revoke or refuse a repair shop registration which provides “has willfully failed to comply with any of the provisions of this article or the rules and regulations of the commissioner promulgated hereunder.” There is no necessity for the addition of a specific provision directed at muffler installation. There are significant safety violations which may occur through improper vehicle repair with consequences for operators and passengers of motor vehicles versus the harm created by installation of illegal muffler devices. The revocation of a motor vehicle repair shop registration places livelihoods and employment at risk. There are already increased fines included in this legislation for illegal installation of muffler devices.

The focus of enforcement should be exclusively on the sale and distribution of banned muffler parts. Manufacturers, retailers and distributors which supply banned muffler devices should be monitored to ensure such devices are eliminated from the New York marketplace either online or at retail. The DMV should undertake an educational campaign so that consumers, repair shops, manufacturers, distributors, retailers and inspection stations are aware of the ban on sale and installation of such muffler devices. A concerted effort to limit the availability of the muffler devices is the most productive and efficient approach. The inspection station or repair shop should not be charged with education of the public or be the primary enforcement mechanism illegal muffler devices. The inspection station is charged with monitoring compliance emissions and safety requirements. A motorcycle inspection costs the owner \$6. This fee does not represent the responsibilities and the actual time frame required to complete a thorough inspection. Based on the foregoing a chapter amendment is requested to delete the unnecessary provisions for revocation of a registration of a motor vehicle repair shop and also for the license of an inspection station. These provisions are not necessary particularly since the ban on sale and installation should be adopted and implemented prior to the adoption of any additional enforcement requirements, which are of questionable benefit.

Hopefully she will hear us and act on our request.

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CLASSIFIEDS

For Sale: Powersports Dealership for sale, Motorcycles, ATVS, UTVS, Snowmobiles, Generators/power washers. Parts dept. Service dept. 8500 sq. ft. building on 8 acres. Rent or buy. Kawasaki and Arctic Cat, Kymco, Generac generators. We are located on the Newburgh/Marlboro NY, RT 9w. High traffic road. Check our website bigboyztoysny.com
Call Tony 845-781-3082 cell.

For Sale: Dutchess County. Selling NYS Inspection License and computer unit for the sum of \$35,000.00. Please contact Thomas DiPerno at T & D Auto Repair (845) 831-6120 between 8am and 3pm Mon – Fri, if no answer, please leave a message.

For Sale: Westchester County NYS Inspection Machine & License including window tint meter. asking \$20,000 obo. Auto repair shop of over 30 years closing. All equipment & tools for sale call Ed at 914-659-0453.

For Sale: Auto body repair shop in Town of Clarkstown, Rockland County. In business over 50 years. State of the art spray booth able to service small trucks and school buses, mobile spray booth, new diagnostic scanning system, wheel alignment machine, solvent and water-based paint system, brand new lift. Too many new items to list. Serious inquiries only. 845-548-7064, text or leave message. Will get back to you asap.

For Sale: Family owned and operated repair shop for 75 years on City Island, Bronx, NY. Established client base – Corner property 65ft. X 100ft. with 2 bays. Property, Building, Inspection License and Equipment. Please...Serious Inquiries only. Call Dave Carman cell: 646-408-4246.

For Sale: Established shop that specializes in trailer repair, snow plow and salter sales, repair and parts. We also offer vehicle up-fitting. We sell and install dump bodies and hitches. The shop is geared towards landscapers and contractors needs. We have the ability to make hydraulic hoses that we make on site. We have a showroom that is fully stocked with inventory. The shop can fit 4 vehicles inside. Shop equipment includes: 2 two post lifts, torches, welder, tire changer, balancer, band saw, drill press, work benches and more. There is also a private office. Currently we are very busy with pre-season plow work and sales of snow plows. Motivated to sell immediately due to relocating out of the area. Great opportunity to get in now before the snow season. Please call 845-590-5800 for more information.

SCHOLARSHIP RAFFLE TO BENEFIT THE JOSEPH ENGELDRUM MEMORIAL SCHOLARSHIP

Don't forget your raffle tickets and the \$1,000.00 scholarship raffle. The donation for a raffle ticket is \$25.00, and the prizes are as follows: First Prize \$2,500.00; Second Prize \$1,000.00 and Third Prize \$500.00.

This drawing will be held at the Board of Directors meeting in December 2021. The winners of all prizes will be notified then.

If you would like to participate in the drawing you can call the office to set up a payment and we will send you the raffle ticket or you can call your representative to come to your shop.

Don't forget to fill out the application for the Joseph Engeldrum Memorial Scholarship in this bulletin. Be sure to send in your application as soon as possible. To be entered in the drawing all applications must be received no later than November 30, 2021.

OFFICE HOURS

Do you get to the shop in the morning with hopes to settle issues that may arise with your business. Then realize nothing is open so you aren't able to contact businesses and before you know it the rush begins and you didn't get to settle matters. To better serve our members our office hours are changed to 7am to 3pm with hopes to help our early risers.

TRIVIA QUESTION

Can an employer test for Cannabis? Call the office with an answer for a chance to win a free month's dues.

I hope you enjoyed reading this month's bulletin. If you have any questions, feel free to call the association. We are here to help you and your industry.

Regards,

Carla Obalde

Operations Manager

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JOSEPH ENGELDRUM MEMORIAL SCHOLARSHIP

SERVICE STATION DEALERS & AUTOMOTIVE
SERVICES OF GREATER NY, INC

JOSEPH ENGELDRUM MEMORIAL SCHOLARSHIP

YOUR ASSOCIATION WILL AWARD ONE LUCKY WINNER A \$1,000.00 SCHOLARSHIP FOR 2021. The rules and regulations are as follows:

1. Any member in good standings or their employee's sons or daughters who graduate from high school in 2021 or are currently enrolled in college or trade school are eligible, providing they begin classes within 13 months of the award date.
2. To be eligible, the member or his employee must submit the name, address and telephone number of the child and the college or trade school they will be attending within the allotted time. Submission is limited to one entry per person.
3. The deadline for entering is NOVEMBER 30, 2021. All entries must be post-marked by that date. The winner will be selected by a random drawing during our monthly Board Meeting in early December 2021.
4. The check will be made out to both the student and to the school of the student's choice.
5. The scholarship is not limited to potential college students but may be won by anyone wanting to further their education, whether it be college, trade school, etc.

JOSEPH ENGELDRUM MEMORIAL SCHOLARSHIP APPLICATION

MEMBER'S STATION NAME: _____

BUS. PHONE: _____ EMPLOYEE'S NAME: _____

APPLICANT'S NAME _____

NOW ATTENDING SCHOOL AT _____

APPLICANT'S HOME ADDRESS _____

HOME PHONE _____ YEAR GRADUATED HIGH SCHOOL _____

COLLEGE CHOICE, ETC. (IF KNOWN) _____

***** ALL APPLICATIONS MUST BE COMPLETED IN FULL *****

DEADLINE: November 30, 2021

RETURN TO: Service Station Dealers & Automotive Services of Greater New York, Inc.
421 Waverly Avenue
Mamaroneck, NY 10543