

# NOZZLE & WRENCH

AN OFFICIAL PUBLICATION OF THE WASHINGTON DC, MARYLAND & DELAWARE SERVICE STATION & AUTOMOTIVE REPAIR ASSOCIATION

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*All the violations are serious, and most could be avoided by having a check list for when required inspections are due, daily inventory control, monthly, yearly, along with record retention.*

## KIRK'S CORNER

# MDE Oil Control Division Cracking Down Compliance Requirements



By Kirk McCauley, Director Of Member Relations & Government Affairs

**In the last 2 months I have had calls from dealers** that MDE has stepped up enforcement on locations, along with heavy fines for non-compliance. I have also had complaints from dealers on a "Delivery Ban" that had compliance issues corrected and fines paid, but the delivery ban not lifted in a timely manner.

By far the largest number of violations are for Financial Responsibility (FR) not being received, bad or incomplete information. All the violations are serious, and most could be avoided by having a check list for when required inspections are due, daily inventory control, monthly, yearly, along with record retention.

Yes, MDE can be hardnosed when comes to violations, but they really have no choice. USTs come under federal and state regulation.

Violations can surely be managed in a way that will affect the outcome by responding to MDE with a plan of action (like immediate). Dealers that have corrected violations, and supplied MDE with proof of correction by a certified technician should be able to get a delivery ban lifted quickly. The bottom line is pandemic days are over and inspectors are doing their job, and it is up to business owners to do theirs, no short cuts. WMDA is here to help member locations, any questions give me a call or text 301-775-0221.

**MDE fact sheet, Class inspection forms, monthly, Dailey, yearly forms, FR form.**

[Fact Sheets and Publications \(maryland.gov\)](http://www.maryland.gov)

List of Violations	April 2024	January 2023
Financial Responsibility (FR)	539	392
Tank Release Detection	331	261
Containment Sump	318	317
Tightness Test	309	164
Inventory Control	279	272
Spill Prevention	249	232
Dispenser	172	138
Pipe Release Detection	163	122
Overfill Prevention	163	108
Monitoring Pipe	139	138
Tank Top Components	121	124
Stage I	101	76
Pipe CP	83	82
Registration	71	97
Tank CP	64	61
Vent Pipe	23	28
Housekeeping	23	18
Site Wells	10	13

Continues on page 4

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Continued from cover

### Operator training violations by Class – From January 2023 to April of 2024

A 105  
B 108  
C 153

### Delaware Legislators Closed their Doors on June 30th

After Maryland year we needed a no impact year from Delaware, and we got as good as we could ask for.

[HB248](#) - Failed

Before a Permit could be issued for new or “substantially modified” building or renovation it would go to a community hearing, on value to community

[HB422](#) – Failed

Would have required applicants for a new facility, expansion of an existing facility, or renewal of an existing permit located in an “overburdened community” to provide an Environmental Justice Impact Report. Also create Environmental Justice Board to hold hearing

[HB17](#) - Failed

Employer paid sick and safety leave

[HB438](#) – Failed

Would have heavily modified medical leave insurance requirements

### District of Columbia

D.C. passed their budget bill, but I have not had a chance to look at how it affects our industry, will update in August.

### July 1, 2024 Changes Maryland

Since I am still getting calls on Form 600F (Tobacco Floor Tax) here is original article, with all changes.

### Change to Gas tax

The Consumer Price Index (CPI) increased from 0.0750 to 0.0860 and Sales and Use Tax Equivalent (SUTE) decreased from 0.1600 to 0.1400. The result was a decrease in gasoline from 0.4700 to 0.4610

and diesel tax decrease from 0.4775 to 0.4685.

### Gasoline tax as July 1 is 0.4610 Diesel tax as of July 1 is 0.4685

Link to Motor fuel tax chart - [https://marylandtaxes.gov/forms/compliance\\_forms/MFT-RatesPerGallon-July2024.pdf](https://marylandtaxes.gov/forms/compliance_forms/MFT-RatesPerGallon-July2024.pdf)

Before anyone asks there will be no floor tax rebate because prices went down. Maryland does not believe in the theory of “what goes up must come down” - LOL

### Tobacco, OTP and ESD Changes

Cigarettes, OTP and ESD July 1, tax rate changes. These were all in Budget bill ([SB0362](#)) this year and increases excise taxes and sales taxes. The link to chart from Comptroller’s office give details on price increases and the ones that stayed the same. - [Tax Alert Cigarettes, OTP, ESDs - Tax Rate Changes July 1, 2024 \(marylandtaxes.gov\)](#)

Now that you have adjusted your prices, accordingly, make sure you take an inventory as of start of business July 1, as you owe a floor tax on some of your inventory and adjust your POS to reflect tax changes on other products. Link to 600F floor tax form - [https://www.marylandtaxes.gov/forms/tobacco\\_forms/600F.pdf](https://www.marylandtaxes.gov/forms/tobacco_forms/600F.pdf) - Floor tax payment is due by September 30, 2024.

### Minimum Wage

Montgomery County is the only county in Maryland to have a wage increase for non-government workers

- Large employers 51+ – \$17.50
- Employees 11-51- \$15.50

Required Poster - <https://www.dllr.state.md.us/labor/wages/minimumwagelawmont.pdf> - more information - [https://www.montgomerycountymd.gov/humanrights/Resources/Files/Minimum\\_Wage\\_Transition\\_Table.pdf](https://www.montgomerycountymd.gov/humanrights/Resources/Files/Minimum_Wage_Transition_Table.pdf)

### District of Columbia

Minimum wage in D.C. will go to \$17.50 - required poster - <https://does.dc.gov/sites/default/files/dc/sites/does/publication/attachments/2024%20Minimum%20Wage%20Poster.pdf>

### Delaware – No changes

### U.S. Department of Labor - Salaried Workers - Overtime Finale Rule

The department’s final rule, which will go into effect on July 1, 2024, will increase the standard salary level that helps define and delimit which salaried workers are entitled to overtime pay protections under the FLSA.

Starting July 1, most salaried workers who earn less than \$844 per week will become eligible for overtime pay under the final rule. And on Jan. 1, 2025, most salaried workers who make less than \$1,128 per week will become eligible for overtime pay. As these changes occur, job duties will continue to determine overtime exemption status for most salaried employees.

A coalition of U.S. business groups has filed a [lawsuit](#) seeking to block a Biden administration rule that would extend mandatory overtime pay to 4 million workers, saying it goes too far.

UPDATE – July 1st has come and gone so it does not look like law suits have held up enactment.

### Customer Service Contest

Customer Service Contest will be starting soon, and we will be accepting self-nominations from Repair facilities, or independent service stations and convenience stores, suppliers will send in their nominations, Deadline for nominations is July 12, 2024.

Send to [kmccauley@wmda.net](mailto:kmccauley@wmda.net) - Information needed:

- Owner/Manager
- Name of Location
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# Mechanics and Overtime Under the FLSA

Brought to you by James L. Parsons, Jr., [Lynott, Lynott & Parsons, P.A.](#)

**The Fair Labor Standards Act (FLSA)**, developed in 1938, is a set of laws designed to ensure fair practices between employers and employees regarding leave, wages, working conditions, hours, and other terms of employment. While there are several important provisions of the FLSA to be followed, overtime pay is a frequent subject of disputes between employers and employees. Traditionally, overtime pay must be 1.5 times the employee's regular rate of pay and is used for any hours above 40 that are worked in a given workweek. The calculation is relatively straightforward for standard hourly employees, but for employees with different pay structures such as commissions, which are often used under "flat rate" pay structures for mechanics in the automotive industry, the analysis can become more complicated.

FLSA section 7(i) (29 U.S.C. §207(i)) provides an exemption for overtime pay for employees who are paid wholly or partly by commission. That section provides

No employer shall be deemed to have violated subsection (a) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under [29 U.S.C. § 206], and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

29 U.S.C. §207(i). In the case of *Herrera v. TBC Corporation*, 18 F.Supp.3d 739 (2014), the United States District Court for the Eastern District of Virginia found that the "flat rate" compensation structure used by the defendant (which does business as NTB) for its mechanics, qualified for the overtime exemption under FLSA Section 7(i).

The flat rate compensation structure at issue in the *Herrera* case was the product of two components: (i) "turned hours," and (ii) a "flat rate," both of which are terms of art in the automotive industry. "Turned hours" are a predetermined number of hours that a service task should require, and do not necessarily equal the actual hours spent on the task. A "flat rate" is an hourly rate assigned to each mechanic based upon his or her experience and certifications. To arrive at the customer's price, the turned hours are multiplied by the "shop rate" for each location, which is based upon the competition in the area.



*Continues on page 12*

*...overtime pay is a frequent subject of disputes between employers and employees.*

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NTB paid its mechanics by multiplying the turned hours by the flat rate. However, to comply with FLSA Section 7(i), if the rate of pay for hours actually worked for a mechanic fell below one and a half times the hourly wage, then the mechanic would receive “differential pay” in an amount so as to increase the mechanic’s pay to at least one and a half times the minimum wage.

The mechanics in the *Herrera* case argued that the NTB’s compensation arrangement was not a bona fide “commission” for purposes of FLSA Section 7(i), because it lacked a “critical element of proportionality between the compensation to the employees and the amount charged to the customer.” 18 F.Supp 3d at 741. In this regard, the mechanics relied on the case of *Wilks v. Pep Boys*, 2006 WL 2821700, 2006 U.S. Dist. LEXIS 69537 (M.D. Tenn. 2006), which held that, for pay to qualify as a commission, there must be “some proportionality between the cost of service to the customer and the corresponding payment to the employee.” *Id.* at \*11, 2006 U.S.

Dist. LEXIS 69537 at \*36.

In addressing this question, the court in the *Herrera* case noted that there is a divide among the circuits of the federal courts as to whether the flat rate system similar to that used by NTB is a bona fide commission qualifying for exemption under FLSA Section 7(i). The Seventh and Eleventh Circuit Courts of Appeal had both found in published opinions that it does qualify, while the Sixth Circuit found that it does not. Ultimately, the court in the *Herrera* case sided with the majority view of the Seventh and Eleventh Circuits that it does qualify, because there was “some correlation between the labor hour credit given to employees and the labor costs passed on to customers.” 18 F. Supp. 3d at 746-47 (citation omitted). The court held that while “some” element of proportionality is required, it need not be formal nor mathematically precise. Since the mechanic’s pay was “the equivalent of a portion of the customer’s bill,” the compensation was linked to the cost passed along to the customer, and was therefore a

bona fide commission. The other two elements under FLSA Section 7(i)—employment in the retail or services industry and salary in excess of one and one half times minimum wage—were also met. Accordingly, the court found that NTB’s compensation scheme qualified as exempt under FLSA Section 7(i).

The determination of whether a flat rate compensation plan is exempt under FLSA Section 7(i) will be fact specific to the compensation plan under consideration. In addition, as pointed out by the *Herrera* case, there is a split of authority as to whether such plans are exempt. However, where a compensation plan includes a commission of at least half of the total compensation to the employee, along with total compensation in excess of one and one half times minimum wage (which may include a differential pay component to achieve this result), the *Herrera* case may provide useful authority to support of an argument that such a flat rate compensation plan is exempt under FLSA Section 7(i). ■

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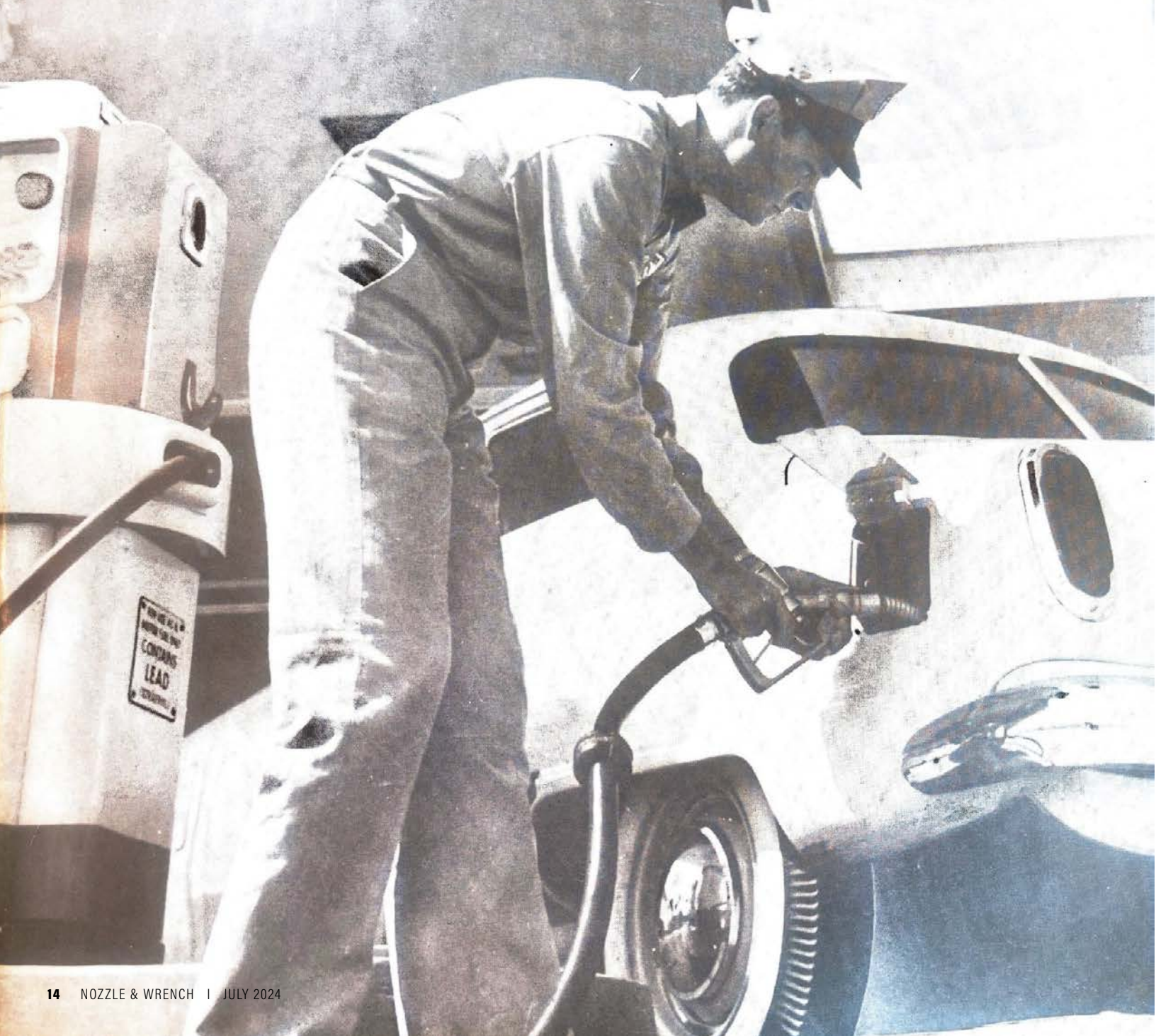


# NOZZLE

*Greater Washington Service Station Association*

VOL. XIII, NO. 4

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# ***Blast From The Past***

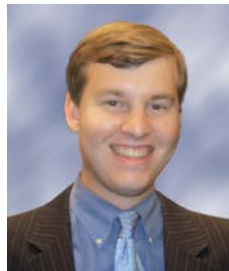
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# Government Affairs Update



By Roy Littlefield IV

**WMDA/CAR being represented by SSDA-AT** on the federal level has focused government affairs efforts on tax reform, infrastructure funding, and right to repair. SSDA-AT participated in several lobby days, coalition meetings, and individual meetings pushing an impactful message on these top issues to members of Congress.

SSDA-AT attended SEMA's Washington Rally. The focus of the event was gaining support for the REPAIR Act in Congress among other automotive related issues in Congress such as EPA regulations and vehicle choice. SSDA-AT met with several Congressional offices during the Rally including Rep. Steny H. Hoyer (D-MD-5), Sen. Benjamin Cardin (D-MD), and Sen. Christopher Van Hollen (D-MD). Support for the REPAIR Act continues to grow.

SSDA-AT attended a panel discussion centered around funding America's infrastructure. The panel was comprised of House and Senate Appropriations THUD Subcommittee Staff. Discussions included the completed FY 2024 bill, the process for funding disasters and tragedies such as Baltimore's Key Bridge, the upcoming FY 2025 process, and a discussion on different perspectives on funding from the Appropriators.

SSDA-AT and members of the SBLC (Small Business Legislative Council) participated in meetings on Capitol Hill to discuss pressing issues including: (1) the troublesome implementation of the Corporate Transparency Act; (2) the small business benefits of the House-passed Tax Relief for American Families and Workers Act of 2024; and (3) the risk of allowing a lapse in beneficial small business provisions within the Tax Cuts and Jobs Act of 2017. Meetings included staff and Congressional members from the Senate Small Business Committee, Senate Small Business Committee, Office of Senator Rick Scott (FL), Office of the House Majority Leader, Office of the Speaker of the House, Office of Congressman Davidson (OH).

SSDA-AT participated in a Family Business Coalition meeting. The meeting featured updates from leadership offices (Speaker Johnson, Majority Whip Emmer, Congressman Feenstra, Congressman Adrian Smith), and tax committees (Senate Finance Committee, House Ways and Means Committee). The meeting focused on expiration of TCJA, the newly formed Ways and Means tax working groups (staff from the groups attended), the latest on the Senate's tax bill negotiations, Sen. Thune/Rep. Feenstra's Death Tax Repeal Act (up to 168 House and 41 Senate cosponsors) and an update on the Death Tax Repeal Act that SSDA-AT is strongly supporting.

SSDA-AT will share future legislative updates as they develop, highlighting out government affairs efforts in Washington. ■

*SSDA-AT attended SEMA's Washington Rally. The focus of the event was gaining support for the REPAIR Act in Congress...*





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# S-Corp Modernization Introduced in House



By Roy Littlefield III

**Positive news in the area of S corporations.** Ways and Means Member Brad Wenstrup (R-OH) has introduced the S Corporation Modernization Act of 2024 (H.R. 8614).

The introduction of this year's bill will help S-Corp move forward on a list of technical tax provisions important to the country's 5 million S corporations, including:

- Increasing their access to capital;
- Expanding the list of eligible shareholders to include more employees, non-resident aliens, and retirement accounts; and
- Eliminating rules that penalize S corporations compared to partnerships and other business forms.

The S corporation was created by Congress in 1958 and has grown in popularity over the years, particularly among small- and family-owned businesses, because of its simplicity and flexibility.

Today, S corporations are the most common form of business structure in America with more than 5 million. Despite their popularity, the rules governing S corporations can have the effect of restricting their ability to invest and create jobs, which is why the Wenstrup bill is so important.

Representative Wenstrup has been a long-time champion of our issues. In his statement introducing the bill, he made clear the importance of these reforms:

"S Corporations are the backbone of American business, located in every city and town across America, especially in rural areas like Southern Ohio. As Congress works to build upon the success of the Tax Cuts and Jobs Act, it's critical that S Corps aren't forgotten. The S Corporation Modernization Act contains important changes to the tax code that will make it easier for S Corps to operate and access capital so that they can grow, employ more Americans, and continue to invest in the communities in which they operate."

S Corporation Modernization has a long history of support from the business community, and its introduction means we now have a sponsor sitting on the critical House Ways and Means Committee with six months of legislative session to go.

SSDA-AT is gearing up to ensure that the priorities of the S corporation community are represented in any tax bill considered later this year. ■



*The S corporation was created by Congress in 1958 and has grown in popularity over the years...*

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for best value



Industry-leading  
fuel brands  
Lowest fuel prices



Flexible credit  
and EFT terms  
No hidden fees

## Three ways to work with us:

### Self Service

- Best and lowest fuel cost
- Guaranteed fuel supply
- Upfront delivery costs with negotiated rates

### Flexible Growth

- All Self Service benefits
- Site upgrade assistance
- Cash grant options

### Wills Advantage

- All Self Service & Flexible Growth benefits
- Management of fuel system upgrades
- Splash In ECO Car Wash franchise opportunity

Fuels network  
brands and  
companies:



Exxon™

