

# ISRI

## New England

### Catalytic Converter Theft Legislation: Yes in CT, No in MA (for Now)

One of the more pressing issues in the scrap metal industry today is catalytic converter theft from motor vehicles. Given the presence of highly valuable precious metals in converters, criminal activity concerning these parts is rising throughout the country. In 2020, the National Insurance Crime Bureau reported over 14,000 catalytic converter theft claims, a 500% increase from the previous year. In Massachusetts, reported thefts also rose five-fold from 140 to over 800. Many of these thefts have attracted the attention of the media and state legislators, as dramatic stories on the news detailing unsuspecting owners having their catalytic converters ripped from the underside of their vehicles are more commonplace.

Many states have passed legislation directed at the theft problem. In Connecticut, the legislature passed a new catalytic converter theft law which became effective on July 1. The law imposes detailed record-keeping requirements on each catalytic converter transaction between a seller and a scrap metal processor and limits a seller to one transaction per day with a scrap metal recycler. The law also requires scrap recyclers to report all of their catalytic converter sales to the State Police on a weekly basis. Commenting on the new legislation, Governor Lamont noted: "The easy ability to sell stolen parts is a major reason why motor vehicle theft and vandalism occurs and this law will help serve as a deterrent."

In Massachusetts, catalytic converter theft legislation moved quickly through the State House this spring and early summer but ultimately did not pass. The bill, HB 4722, was introduced by Rep. Steve Howitt and co-sponsored by 10 other legislators. The bill contained detailed record keeping requirements similar to the Connecticut bill. One particularly troublesome provision was the inclusion of a ten-day "tag and hold" provision requiring the scrap recycling facility to set aside all catalytic converters in a separate area from other yard inventory. ISRI and the New England Chapter have consistently opposed "tag and hold" provisions in scrap metal theft legislation as unnecessary and unduly burdensome to the operation of their facilities.

The New England Chapter monitored the progress of the bill through the final frantic days of the legislative session which concluded on July 31. Ultimately, the bill died in committee and was not presented for a vote. Accordingly, advocates for catalytic converter theft legislation will need to re-file the bill in the next legislative session which starts in January 2023.

While the legislation did not pass in Massachusetts this time, given the value of catalytic converters in the marketplace and the heightened public awareness of motor vehicle vandalism and theft, similar legislation is likely to regain momentum in the State House in the next session. We will keep a close eye on this issue in the next legislative session.

## Supreme Court Cuts Back EPA's Authority: Anything in It for Scrap Recyclers?

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In June, the US Supreme Court delivered its decision in *West Virginia v. EPA*. In the case, the Court decided that EPA had exceeded its authority in issuing regulations governing emissions from existing coal and natural gas-fired power plants. The Court held that the absence of specific authority delegated to EPA from Congress to issue the specific regulations ran afoul of the "major questions" doctrine which requires a specific delegation of authority to a government agency in an area of major economic and political significance.

While lawyers and commentators have offered a wide range of interpretations of the *West Virginia* case, a question is raised about its impact on the scrap recycling industry. First, the case has no direct bearing on scrap recyclers because the EPA regulatory program struck down by the Court addressed the power industry. There are, of course, several EPA programs which cover scrap recyclers such as the Clean Air Act (setting air emissions standards and requiring permits for some air pollutants common to scrap recycling facilities) and the Clean Water Act (establishing a wide range of requirements for storm water management at scrap yards). It is not a stretch to see how some of these programs might be challenged by the industry as "major questions" of economic and political significance. The *West Virginia* decision has generally been considered a pro-business/anti-regulation decision. Whether the Supreme Court will accept challenges to EPA authority under other regulatory programs affecting scrap recyclers remains to be seen but bears watching.

## Massachusetts Court Rules That Employers Are Liable for Treble Damages for Late Wage Payments to Employees.

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Here's an important update on the employment law front. It is a longstanding rule in Massachusetts that employers must pay all earned wages, including accrued and unused vacation time, to employees who are involuntarily terminated on their final date of employment. Employers who fail to pay wages on a timely basis are liable for treble damages, meaning three times the unpaid amount. Although this strict rule does not leave much flexibility for employers, until recently employers could avoid liability for treble damages by paying the former employee all earned wages at any time before the employee files a lawsuit against the employer. A recent decision by the Massachusetts Supreme Judicial Court has eliminated this pre-suit grace period.

In the case of *Reuter v. City of Methuen*, issued in April of this year, the Massachusetts SJC held that paying employees late is the same as not paying employees at all, and employees are entitled to treble damages if they are not paid on time. In *Reuter*, the employer neglected to pay an employee her accrued unused vacation time on her last date of employment. The employer paid the employee's vacation time about three weeks late. Approximately a year later, the employee filed suit and demanded three times the amount of her late vacation pay, plus attorney's fees. The SJC agreed with the employee and ordered that she be paid treble damages on the entire amount that was paid late. As part of the SJC's rationale, it stated, "employers rather than employees should bear the cost of such delays and mistakes, honest or not."

This case highlights the importance of Massachusetts employers paying involuntarily terminated employees all earned wages, including vacation time, on their last day of employment and no later. Paying even a single day late can result in payment of treble damages to the former employee.



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