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Greater New York Contractors' NEWS



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February 2012

**WELCOME
ACCA National
President and CEO
PAUL T. STALKNECHT**
speaking on the state of our industry and
its future directions. **DON'T MISS THIS!**



Thursday, February 2, 2012

See Details on Page 4

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President's Message



Michael Newman

HAPPY NEW YEAR!!!!

We opened the year at our January meeting with the topic of valuing your business which was led by John DeLillo. We learned what to look for when buying and selling companies. It is a well known fact that every owner wonders what their business is worth to others. The meeting was set up as a round table discussion which created a very informative dialogue. I would like to thank John for putting the program together and everybody who participated in the program.


2012 will be an exciting year! First order of business I have to express right now is you must come to the February meeting!! In February, Paul Stalknecht, CEO of ACCA will be the main attraction for the February general meeting. He is making a special trip from Virginia to meet our chapter and discuss ACCA on a national and government level. I urge all members and companies to attend the event.

This year we will be focusing on increasing the mem-

bership within our organization and seeking out greater participation from our contractors, suppliers and associate members. If anybody has an idea or issue relating to our business and industry, please get in touch with us and we will make it happen. How can ACCA help you this year? Are there any issues or topics you want to hear about this year?

Please use ACCA as a networking experience and a place where you can bring the hottest and most relevant business topics back to your day to day operations.

Thank you for your support and I look forward to seeing you at the next meeting. — **Mike Newman**



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Special Monthly Meeting
Thursday, February 2nd
featuring
ACCA National President and CEO
Paul T. Stalknecht
discussing new issues and directions
for our industry

Join your fellow ACCA contractors for a special meeting featuring a presentation by ACCA president and CEO Paul T. Stalknecht. Mr. Stalknecht will discuss a variety of national and local initiatives and opportunities offered by our national organization. Included will be the following:

ACCA National's Major New Initiatives to Help Contractors Succeed — Overview of ACCA's latest programs, products and activities.

ACCA is the Contractors' Voice on Capitol Hill — Update on ACCA's advocacy efforts on behalf of the HVACR Industry in the legislative & regulatory arenas.

Your Competitive Edge in Today's Economy — Educational Opportunities (In-person and on-line Training Courses, Webinars, ComfortU, etc.).

Increase Your Opportunity for Success — Networking with Your Peers and Industry Leaders at ACCA Annual Conference & Expo - March 5-7, 2012 Paris Hotel in Las Vegas; and Contracting Week - October 9-12, 2012 Sheraton Hotel in Austin, TX.

Thursday,
February 2, 2012

Westbury Manor
Cocktails at 5:30 pm; Dinner at 6:30 pm
Register Online at www.accany.org

About Paul T. Stalknecht
President and CEO, Air Conditioning
Contractors of America

Paul Stalknecht is president and chief executive officer of the Air Conditioning Contractors of America (ACCA), the nation's leading organization of environmental systems contracting businesses. Stalknecht has led the 45-year-old association through a series of unprecedented changes since assuming its top executive role in 2001.



Under Stalknecht's leadership, ACCA has increased its membership and its annual combined revenues. Growth has resulted from Stalknecht's focus on providing solid value to the association's contracting membership base; aggressive advocacy at the federal level; expanded educational programs, including innovative distance learning solutions; an open approach to partnering and collaboration between different segments of the industry; and the development of new standards for heating and cooling systems that are bringing the industry to the forefront of technology and energy efficiency.

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Editor's Notes

by **Anthony N. Carbone**

Does Presidential politics effect the sale of air conditioning? Has the Senate and Congress created so much gridlock that regardless of which political party wins, they spend 4 years criticizing each other and posturing to discredit and derail any plan put in place. When party politics forgets the good of the whole and people become victims of circumstance, unrest begins to erupt. Creating a stimulus package to produce movement in our economy sometimes jump starts consumers into spending money. As the spotlight hits the Republican party candidates and abstract issues come to the podiums with how these potential Presidents ponder to solve the United States economic problems with their imaginary dreams... The public gets images and thoughts of economic stagnation by the doom and gloom being portrayed by their outlook of the existing administrations handling of the economy. I think these debates put a damper on the current recovery.

The New York Times Sunday paper on page 1 January 15, 2012 speaks of the Teflon economy in parts of New York and Long Island. Many contractors and suppliers as well as retailers are saying business is recovering compared to 2009 and 2010. This is progress. Other contractors are hiring and the easing of loans for consumers and businesses is occurring. Think of it, low rates and low housing costs should be a recipe for people to buy if they are still gainfully employed. I think recovery is here and the tides are rising.....What do you think? —*Anthony N. Carbone*

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PSEG Long Island Awarded 10-Year Contract to Manage LIPA Electric Utility System

PSEG Long Island LLC, a subsidiary of Public Service Enterprise Group Incorporated (PSEG), was selected by the Long Island Power Authority (LIPA) to manage LIPA's electric transmission and distribution system. The contract includes targets to improve customer satisfaction and provide safe and reliable service for 1.1 million LIPA customers.

PSEG Long Island was one of three finalists considered for the LIPA management services contract, which will begin Jan. 1, 2014 after a two-year transition period and run for 10 years.

"We are committed to serving LIPA in meeting the needs of its residential and business customers, as well as becoming active members of the Long Island community" said Scott Jennings, PSEG vice president of development.

"In accepting our proposal, LIPA recognized the depth of PSEG's experience and its ability to assist LIPA in managing a safe, highly reliable electric system on behalf of its customers and in improving customer service," Jennings said. "PSEG also has a strong track record in partnering with the communities we serve. Together with our experienced partner, Lockheed Martin, we look forward to working with LIPA and the employees dedicated to LIPA's service territory to bring increased customer satisfaction and reliable service to Long Island customers."

Under the agreement, PSEG Long Island will be responsible for managing electric transmission and distribution operations, customer services, LIPA's 18 percent ownership of Nine Mile Point 2 Nuclear Station in upstate New York, and related functions. Lockheed Martin, a subcontractor to PSEG Long Island, will provide transition management, information technology, corporate business, energy efficiency services and other services.

"Operating a utility safely and reliably is our core strength and one in which we take great pride," said Ralph LaRossa, president and COO of PSE&G, New Jersey's largest and oldest electric and gas utility. "The LIPA services agreement recognizes that commitment to excellence, and will enable us to share best management and operational practices with LIPA and their customers." PSE&G, a subsidiary of PSEG, has been recognized as the most reliable utility in the nation and in the Mid-Atlantic States.

As part of the management contract, PSEG Long Island will be expected to develop and implement a number of operational improvements to provide safe and reliable service, increase customer satisfaction and manage the operational and maintenance costs of the utility. During the two-year transition, PSEG and Lockheed Martin will appoint dedicated management teams whose employees will live and work on Long Island and prepare to transition the management of LIPA's utility services from National Grid,

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Fossil Fuels Comparison, Geothermal HVAC ROI and Home Heating

by John Ottaviano/Air Ideal

When deciding upon a heating source for a new custom home or commercial building people often ask, "what is the best bang for my buck"? This is obviously a loaded question and will be answered in a myriad of different ways depending upon whom you pose the question to. Here, on Long Island, where No. 2 fuel oil is still a dominant market influence, your local oil dealer will espouse the benefits of oil heat with special emphasis on the fact that it has the most BTUs per gallon of any of the 3 fossil fuel sources (the others being natural gas and propane). Your natural gas utility will tell you that the cost of oil is never going down again and that the cost of clean natural gas is stable and the supply is plentiful. Furthermore, if you measure the cost per BTU of gas versus oil, you will see that natural gas is the less expensive better choice, especially considering that high efficiency gas fired equipment can operate at efficiencies of over 95%, while even the highest efficiency oil burner will top out at 89% or so. And then there is propane, which propane dealers will argue is much better than oil because it burns cleaner, can operate with gas equipment to give you those higher efficiencies and can be used for cooking as well.

So, who is telling the truth and where is the proof? We don't sell any fuel commodity, so I really don't have a

horse in the race and although the prices of fossil fuels are changing all the time, there are some constants. Let us say, for this example, that you live in suburban or rural Long Island and you cannot get natural gas as a heating source. As of this writing, according to NYSERDA, the current price per gallon of #2 fuel oil on Long Island is \$4.05 per gallon. The cost of propane (LPG) is \$3.38 per gallon. To the layman, this may make propane look more attractive than oil, but the truth is that there is considerably more BTU capacity in a gallon of No. 2 home heating oil than there is in a gallon of propane. This stands to reason because propane is actually a byproduct of petroleum and its relative price fluctuates in much the same way oil does. Considering that there are approximately 138,000 BTUs in a gallon of oil and 92,000 BTUs in a gallon of propane, this changes your understanding a bit. If you divide the BTU output versus the cost, you will see that currently oil provides 34,100 BTUs per dollar spent while propane provides 27,200 BTUs per dollar spent. Well, that makes it a no-brainer right? Oil is cheaper on a per BTU basis. Unfortunately, you forgot one thing. Gas-fired equipment can operate at a higher AFUE (Annualized Fuel Utilization Efficiency) than propane. So if you compare a 96% efficient propane burner to an 85% efficient oil burner, what happens? Then you are just about dead even. Do the math yourself. Now, if you add the non-tangible benefits of propane, like being able to install a gas stove, gas dryer or gas fireplace insert, it might just tip the scales for you. It actually makes sense that this decision could come down to a coin flip on a cost basis because LPG does indeed stand for liquified petroleum gas and propane is a byproduct of petroleum.

So much for the propane versus gas battle. What about the properties and cost of natural gas? According to NYSERDA, the current price of natural gas in New York State is \$1.60 per Therm (or 100 CCF). There are 100,000 BTUs per Therm of natural gas. Therefore, if you were to price natural gas versus no. 2 fuel oil by the BTU content of a gallon of oil (138,000 BTUs) the current rates would be \$4.05 for a gallon of oil and \$2.21 for a "gallon" of natural gas with the same heating capacity. So, is there really a consideration here? You don't need to here about cleanliness, safety, efficiency and other factors with such a price advantage. However, this has not always been the case. In fact, the January home heating price

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of natural gas has fallen by 28% in New York State (and across the country) over the past 5 years. The cost of petroleum base fuels in New York has continued to steadily rise. The reasons for this evolve around the fact that hydrofracturing processes has opened up vast new reserves of natural gas in subterranean shale fields throughout the US. At the same time, the volatility of foreign oil reserves and the limited capacity of US refineries all but assure that petroleum products will not see the same type of price reductions. At best, petroleum prices will slowly increase with plateaus at various levels.

Now, how does this all relate to the cost of geothermal heating and cooling. After several years of doing Return On Investment comparisons for new homes and buildings I have seen several consistencies. Geothermal HVAC is by far and away the best investment for your dollar in new home heating while the current 25C Federal Tax Credits are in place. If you combine the 30% Federal Tax Credit (good until 2016) with the advantage of no recurring utility cost (besides a small electric KW requirement) against the installed cost of fossil fuel heating and electric cooling systems, you should see a return on investment of anywhere from 4 to 8 years, depending upon the type of fossil fuel, your rates and the efficiency of the equipment chosen. In our comparison analysis, the payback period typically ranges from 4-6 years versus fuel oil/propane and 6 to 8 years versus natural gas at current rates. This can change in retrofits depending upon the age of your home, the condition or presence of existing ductwork. Try out our home savings calculator sometime to see your savings versus fossil fuels. This does not apply to commercial projects, as the 30% Federal Tax Credit is only

available residentially. There are other credits and financing considerations for commercial geothermal projects that can be seen in the state incentive database.

If you want to compare all of your potential fuels and relative equipment efficiency to determine what is best for you, this link will take you to a great fuel comparison spreadsheet. It was created by the US Energy Information Administration and you can input your local utility fuel costs and the efficiency of the equipment you are considering to come out with a best estimate of your true cost to operate. It does not include geothermal HVAC, but we will be happy to provide an ROI analysis for you on any project you are considering.

As always, to keep up to date with what's new in HVAC technology, visit our website at airideal.com and follow us on Twitter @airideal and at our Facebook page! •

John Ottaviano is president and principal at Air Ideal, Inc. He is a past president of the Greater New York Chapter, ACCA and currently serves on our board of directors.

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People & The Workplace

By Alan B. Pearl,

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Don't Let Snow Days Blindside Your Pay Practices

2011 brought record snowfall across the country and required many businesses to either have snow days or delayed openings. As a result, many employers are wondering how to approach the difficult issue of paying their employees without violating the Fair Labor Standards Act.

The most-common question: Do employers have to pay employees for snow days? The U.S. Department of Labor has provided guidance via several Opinion Letters on this matter. Generally, there should be a two step analysis that employers engage in: 1) Is the employee exempt or non-exempt? 2) Is the office open or closed?

If an employee is exempt from overtime, then the general rule of thumb is that the employee must be paid his or her full salary for any week in which he or she performs any work, regardless of the number of days or hours worked. Of course, there are certain exceptions to this general rule, which will be discussed below. If an employee is non-exempt (i.e., employed on an hourly basis) the employee is required to be paid only for time worked, regardless of whether the office is open or closed.

Next, the answer to the question of whether the office is open or closed, affects only exempt employees. If the office is open, but there is transportation difficulty, fear of driving in weather conditions, etc., causing an exempt employee to voluntarily elect not to come in at all, then the employer may deduct a

“full day” absence from the employee’s salary. Keeping in mind, of course, that the employee does not perform any work from home.

In the event the office is closed, meaning that the employer officially shut down operations due to inclement weather and instructed employees to not come in at all, the employer is still obligated to pay all exempt employees their full salary. Simply put, no deductions can be made if exempt employees are “ready, willing and able to work,” but there just happens to be no work available. Employers must always be mindful of the “full day” rule. If an exempt employee is absent from work for a partial day, the employer cannot deduct for any partial day absence and can only deduct for an actual “full day” missed. This would apply if there was a delayed opening; in this case the employer must compensate the exempt employee for the full day of work.

The FLSA does not prohibit employers from asking both exempt and non-exempt employees to use personal, sick, or vacation time for missed hours or days due to a “snow day.” The simplest way to avoid confusion about this subject is to have a clearly writ-



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ten and communicated policy. Most of all, snow days can create conflict between employees and management. It is crucial to factor in employee morale when factoring in whether to compensate employees for missed work when the office is closed. Employers are allowed to be more generous than what the FLSA requires, but they should also be mindful of setting precedent.

This office can help develop an inclement weather/emergency policy, as well as analyze the complicated issue of whether employees are exempt or non-exempt.

Can an Employee Sue the Company for Discriminating Against a Loved One?

The U.S. Supreme Court recently expanded Title VII's anti-retaliation provision to include relatives, friends, and close associates of a discrimination claimant. This issue will become a matter of concern especially where employees maintain a personal relationship with a co-worker.

In *Thompson v. North American Stainless*, decided in January of this year, the Supreme Court allowed an employee to proceed with his claim that he was retaliated against because his fiancé filed a sex discrimination charge against their mutual employer.

The Plaintiff's fiancée filed a charge with the Equal Employment Opportunity Commission alleging that her supervisors discriminated against her based upon her gender. Approximately three weeks after the employer was notified of the charge by the EEOC, the Plaintiff was terminated on the grounds of "poor work performance." The Plaintiff then filed his own EEOC charge, claiming that his termination amounted to retaliation for the filing of his fiancé's EEOC charge.

What is unique about the Plaintiff's claim is that he was alleging that the employer terminated him in order to retaliate against his fiancée for filing a charge of discrimination. According to the Court's decision, Title VII's anti-retaliation provision must be construed to cover a broad range of employer conduct and to prohibit any employer action that "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." The Court found that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired. The case will proceed to trial.

All employers know that it is unlawful to retaliate against employees who have filed claims of discrimination with administrative agencies. However, what is important to for employers learn from this case is that their actions will be scrutinized not only with respect to the claimant, but also those closely around them.

Portnoy, Messinger, Pearl and Associates can help you further understand the topics discussed in this article, and adapt your internal HR policies accordingly. Of course, any questions about the above topics can be addressed to me at ABPearl@pmphr.com. •

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Service for Sustainability

By Kelly Hiner, Enterprise Fleet Management

Often, some of the simplest things can make a significant difference. This is true when it comes to helping the environment. In fact, every business with a fleet of vehicles can help the environment just by performing regular vehicle maintenance, practicing sensible driving habits, and replacing vehicles at appropriate intervals to take advantage of more fuel efficient technologies.

For example, simply reexamining and changing routes could save a few gallons of gasoline every week. This can add up to a substantial savings at the end of the year when multiplied by the number of vehicles in a company's fleet.

Paying more attention to proper vehicle maintenance also can help reduce fuel consumption. This not only means performing preventative maintenance at the recommended intervals and using the correct fluids but also maintaining your vehicles' recommended tire pressure, checking wheel alignment and keeping the air and fuel filters clean. It also means avoiding the temptation to overload a truck, which can result in poor performance and decreased fuel efficiency along with the possibility of expensive repairs and frequent downtime.

Maintenance issues that can have a significant effect on fuel consumption include the following:

- Keep tires properly inflated. Under-inflated tires create more rolling resistance on the road, which decreases fuel mileage

and shortens tire life due to accelerated wear. Since tire pressure changes with temperature, you should check and adjust pressure when the tire is cold and when the vehicle has been sitting for a couple hours. Because information printed on the tire's sidewall may not be the optimum pressure for your vehicle or driving situation, the most accurate place to find out about proper tire pressure is on a label inside the driver's door or in your vehicle's owner manual.

- Check wheel alignment periodically. Misalignment can be caused by hitting potholes, curbs and bumps, worn steering or suspension components and deterioration from aging of suspension parts. Not only does misalignment increase rolling resistance and reduce fuel efficiency, it also causes additional wear and tear on tires. Wheel alignment should be checked every 12,000 miles or once a year, whichever comes first or if you notice unusual tire wear.

- Select the right oil for your engine. Using the correct viscosity oil is important because higher viscosity oils create greater resistance to the moving parts of the engine and can actually reduce fuel efficiency. Manufacturers have, in some cases, increased the service intervals for their vehicles to help reduce their carbon footprint. This not only decreases the cost of maintaining them but reduces the amount of crude oil needed and the amount of waste oil produced. Changing your vehicles' engine oil at the manufacturers recommended intervals is not only a good maintenance policy, but it is also good for fuel efficiency.

- Adjust driving style to save gas. Smooth, steady acceleration from a stoplight or stop sign uses fuel more efficiently than quick "jackrabbit" starts. Drivers also can increase fuel efficiency by shifting to higher gears at the lowest practical speed for standard transmission and accelerating gently with an automatic transmission. If vehicles are equipped with overdrive and/or cruise



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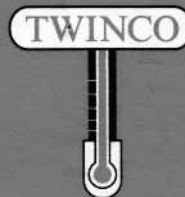
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control, these should be used when appropriate. Also, making sudden starts and stops, revving the engine and excessive idling significantly lower gas mileage. And, according to a United States government Web site, www.fueleconomy.gov, "each 5 mph you drive over 60 mph is like paying an additional \$0.15 per gallon for gas."

- Remove excess weight. Using roof-mounted racks and keeping unnecessary items in your vehicle, especially heavy ones, increases rolling resistance. The U.S. government estimates that an extra 100 pounds in your vehicle can reduce your mpg by as much as 2 percent, based on the percentage of extra weight relative to the vehicle's weight, which affects smaller vehicles more than larger ones. A good rule of thumb is, when possible, to carry large items inside the trunk or vehicle, and remove items when you don't need to carry them.

Replacing older, less fuel efficient vehicles at appropriate intervals also can impact the environment. Knowing when to dispose of older vehicles, a systematic process known in the fleet management industry as "cycling," depends on many factors, such as the time of year, mileage, vehicle type, age and maintenance issues. A cycling program not only ensures vehicles are always in the best possible condition, it helps a company achieve optimum performance and the best resale value, which also directly affects cost savings.

Kelly Hiner is Group Sales Manager for Enterprise Fleet Management in New York and can be contacted at 973-709-2499. Visit the company's web site at www.enterprisefleet.com or call toll free 1-877-23-FLEET. •

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Statement From Stuart S. Zisholtz, Esq.

Liquidated Damages

Many contracts, especially public agencies, contain a clause imposing liquidated damages against the contractor in the event the project is not completed by a certain date.

An owner's damages resulting from delay in completion of construction can take varying forms depending on the project's nature and type of financing. Loss of rental revenues exist with respect to apartments, shopping centers and office buildings; delayed condominium closings can cause loss value; and loss operating revenues exist with respect to industrial facilities. Additional interest during construction, and the increase in the owner's general and administrative costs also exists.

Since it is problematic and difficult to establish each one of these delay damages, liquidated damages are typically included in construction contracts. These clauses set forth a particular dollar amount of liquidated damages for each day beyond a contractually specified date for achieving completion.

The contractor, many times, is bound by the provisions of the liquidated damage clause unless he is able to prove that the liquidated damage clause is a penalty. If it is found to be a penalty, the clause is unenforceable as a matter of law.

The rule of thumb is that when damages are easily ascertainable or the damages fixed are plainly disproportionate to

the injury, the stipulated sum under the liquidated damage clause will be deemed a penalty and unenforceable. However, where the damages are uncertain or difficult to ascertain, then the clause will be enforced if the amount bears a reasonable proportion to the probable loss.

In one scenario, the liquidated damages totaled more than the whole contract price. This result was completely unreasonable and unenforceable. The courts have held that litigation of damages by the owner is not relevant when there is a valid liquidation clause. However, in the event that the liquidated damage clause is unenforceable due to it being unreasonable and a penalty, then litigation would be relevant in ascertaining any damages.

Unless the contract is carefully drafted, a liquidated damage clause will be enforceable no matter what the cause of the delay may be. Thus, if you fail to complete your work in a timely fashion, the possibility exists that liquidated damages will be imposed against you.

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Stuart S. Zisholtz is a partner in the law firm of Zisholtz & Zisholtz, Mineola, New York, a general practice firm specializing in Construction Law and Mechanic's Liens. He is also a member of the Greater New York Chapter, ACCA. He can be reached at 516-741-2200.

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