IN THIS ISSUE...

Air Conditioning Contractors of America
Greater New York Chapter
123 South Street, Suite 112
Oyster Bay, NY 11771

Greater New York Contractors' NEWS

ACCA Air Conditioning Contractors of America
Greater New York Chapter

www.accany.org PLEASE ROUTE THIS PUBLICATION WITHIN YOUR ORGANIZATION JANUARY 2014

President's Message

Al Trudil

I hope everyone had a nice Thanksgiving and Hanukkah. Our holiday party at the Chalet was excellent. I would like to thank Mr. Anthony Carbone for putting it together. We collected lots of toys for "Toys For Tots" and the marines were very appreciative.

This is going to be a very interesting year for us all between the Affordable Healthcare Act and how it will impact our businesses, what the EPA will do about our allotment of Freon and its cost, and with OSHA looking into more requirements and inspections. We at

Turn to President's Message on page 3

January 9th Meeting

The Topic for the Thursday, January 9th meeting had not been finalized at press time. Please watch your email for news of this meeting.

2014

Wishing you a happy, safe and prosperous New Year

ACCA, a federation of 60 state and local affiliated organizations, is the leading trade association representing the business, educational, and policy interests of the nation's heating, air conditioning, ventilation and refrigeration contractors. ACCA represents over 9,000 small businesses nationwide through its federation of affiliates.

PRESIDENT'S MESSAGE

Continued from page 1

ACCA will do our best to keep you informed on these topics and more. If you have any topic you would like us to cover please contact any member of the board.

2014 looks like it will be a busy and productive year for our industry. Hope everyone has a wonderful holiday and happy, safe and prosperous new year. I hope to see you all at our next meeting. ***— Al Trudil***

Make a habit of checking the ACCA Chapter website at www.accany.org

ACCA Directors at Work at a Recent Board Meeting. Join Them!

Board members enjoy the prestige of serving an industry and knowing what is happening. *Are You That Good?*

Contact John DeLillo (516-922-5832) or any ACCA Board Member.

ACCA Greater NY Chapter

Greater New York Contractors' News is printed monthly by the Greater New York Chapter of ACCA. Questions should be directed to the appropriate director or committee member for assistance. While this newsletter is designed to provide accurate and authoritative information on the subjects covered, the Association is not engaged in rendering legal, accounting, or other professional or technical advice. Accordingly, the Association cannot warrant the accuracy of the information contained in this newsletter and disclaims any and all liability which may result from publication of or reliance on the information provided herein. If legal advice or other expert assistance or advice is required, the services of a competent, professional person should be sought.

Editor's Notes

by Anthony N. Carbone

Welcome to 2014 members of our HVAC community!! The Board of Directors, the President and our Executive Director are formulating an interesting year of programs, events and educational seminars. Our previous networking events have brought together many leaders in our industry. These meetings reveal what is happening and where we are headed. If you leave your head in the sand, you certainly will lose your relevance in the industry.

We have had many attendees to our monthly programming meetings. We attribute this to the interesting topics we have chosen that are relevant to what is currently happening within our industry.

We are inviting the readers of this newsletter to join us and see how much you don't know. The experience will prove that being a member of ACCA New York Chapter will yield many results in your business. We are re-examining the method in which we distribute the "Contractor News." The thought is we may proceed with a color quarterly newsletter and a monthly e-mailed version for vaster distribution. Remaining relevant and following the trend keeps our readers informed in many ways, Keep reading our newsletter and please consider placing an ad to help support our efforts and distribution of the Newsletter.

—Anthony N. Carbone

IRS Deals Major Blow to Geothermal Market

By John Ottaviano, Air Ideal

Here in the northeast, the recent price erosion of natural gas due to hydrofracturing has made it more difficult to sell geothermal by ROI payback analysis alone. It was still a home run against oil comparisons when including the 30% Federal Renewable Energy Tax Credit. In a major blow to the industry, the IRS recently issued "Notice 2013-70 titled "Q*&A on Tax Credits for Sections 25C and 25D"*. This notice serves to clarify certain parameters and questions regarding the 25C and 25D Renewable Energy Tax Credits. Specifically, the following passages effectively reduce the Section 25D tax credits to a point where geothermal systems cannot be sold by the financial benefits alone using many of the financial formulas currently in use:

Geothermal Heat Pump Property.

Q-31: A taxpayer contacts a seller to inquire about the installation of a geothermal heat pump to heat his home. The seller/installer informs the taxpayer that the following items must be installed in addition to the geothermal heat pump: heat exchange equipment in the ground outside of the house, a distribution system for the home, and a back-up emergency heating or cooling system. Which of these costs, if any, are eligible for the § 25D credit?

A-31: Only the cost of the heat exchange equipment in the ground outside the house can be eligible for the § 25D credit. The costs for the distribution system for the home and a back-up emergency heating or cooling system are not eligible for the credit because they are not incurred for qualified geothermal heat pump property. Section 25D(d)(5)(B) defines qualified geothermal heat pump property as any equipment that (1) uses the ground or ground water as a thermal energy source to heat the dwelling unit or – 12 - as a thermal energy sink to cool such dwelling unit, and (2) meets the requirements of the Energy Star program in effect at the time that the expenditure for such equipment is made. Section 25D(e)(1) provides that expenditures for piping and wiring to interconnect qualified property to a dwelling unit are eligible for the § 25D credit.

However, nothing in § 25D extends the credit to other auxiliary equipment such as distribution systems within the dwelling unit or backup emergency heating and cooling systems.

Rebates.

Rebates generally represent a reduction in the purchase price or cost of property, and the taxpayer must exclude the amount of the rebate from the amount of the qualified expenditure on which the taxpayer calculates the tax credit. In general, in order for a receipt of funds to be considered a nontaxable rebate, the rebate must be based on or related to the cost of the property; the rebate must be received from someone having a reasonable nexus to the sale of the property, for example, the manufacturer, distributor, or seller/installer; and the rebate must not represent payment or compensation for services.

So, not only is the IRS taking away the ability to take a tax credit on the duct distribution system installed as a necessary part of the majority of geothermal heat pump installations, it appears to also eliminate radiant floor distribution systems as well. Depending upon your interpretation here, only the ground loop, connecting primary loop, geothermal heat pump and electrical wiring for the system actually qualify for the tax credit. To add insult injury, Utility Rebates must also be figured against the tax credit value.

Until now, I don't know of a residential customer who has not claimed these items via Form 5695. How the IRS plans to enforce this determination and/or clarification moving forward is another story. You can easily foresee inflated ground loop and equipment installation segments with a $1.00 ductwork marketing special from contractors looking to bend the rules or create loopholes. A major and essential component for the operation of any energy efficient system has apparently been eliminated from consideration. Unfortunately, this may be a serious job for the tax lawyers and lobbyists to try to reverse which may have too high a price tag for a burgeoning industry represented by IGSHPA and the Geothermal Exchange Organization. Between these two organizations there is neither the staff nor the PAC fund necessary to mount the political backlash necessary to reverse such a decision. Perhaps if they were to join forces with ACCA, ASHRAE and other industry organizations that are affected, there might be the necessary political clout to quash such a narrow interpretation. •

ACCA Holiday Party December 12, 2013

Thanks to these generous Holiday Party Sponsors

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View these photos and many more in full color on our website: www.accany.org

People & The Workplace

By Alan B. Pearl,
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The Fair Credit Reporting Act: How Your Company Could Be Liable.

The Fair Credit Reporting Act (FCRA) is a federal law that regulates the collection, dissemination, and use of consumer credit information. However, in recent years FCRA compliance has become increasingly important for employers. In particular, the newly formed Consumer Financial Protection Bureau has set forth new rules and procedures for using consumer credit reports for employment related decisions. A credit report is defined very broadly under the law as "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for, among other things, employment purposes." Thus, everything from credit checks to criminal background checks, as well as DMV records are covered.

Before an employer can request a consumer report on a potential employee, he/she must first notify the employee that they may use the information for employment reasons, obtain written permission from the applicant to pull the consumer report, and provide written certification to the company that will supply the report. Furthermore, if the employer takes adverse action as a result of the information contained in the consumer report the employer must provide additional notice to the applicant. The employer must notify the applicant that adverse action was taken as a result of a report, the name of the reporting agency, and an explanation of the applicant's rights under FCRA.

Employers can also be held liable under FCRA for failing to "reasonably investigate" information reported to credit agencies. For example, three truck companies were recently held liable for reporting false information to the credit reporting agency "Drive-a-Check," which provides reports of commercial drivers' safety records. Over a three-year period these companies reported to Drive-a-Check that one of their drivers had been involved in unreported accidents. In reality, the driver had never been involved in any accidents while employed for the three companies. When the driver could not find employment with another truck company due to the report, he brought lawsuits against the three companies for violations of FCRA. Under FCRA, if the furnisher of information is notified that the information it supplied has been contested, they are required to "conduct an investigation with respect to disputed information." The Court found that the three companies had been notified that the information may be inaccurate and failed to conduct a reasonable investigation, and were thus found liable.

Employers should thus be aware of the many legal pitfalls when both using credit reports, and supplying information to credit reporting agencies.

New York's Call-in-Pay Law

Winter has arrived, and with winter comes snow. In the midst of a snowstorm many companies close early, or are unable to operate at full capacity. Commonly, employees will show up to work only to find that either there is no work to be done, or they are being sent home early. Thus, employers should be aware of New York's Call-in-Pay law. Under this law employers must pay non-exempt employees who are required, or allowed to report to work, at least four hours "Call-in-Pay," at the basic minimum wage, even if they are sent home due to lack of work, early office closure, or similar circumstances. If the employee's normal shift is less than four hours, then the employer need only pay for the number of hours scheduled for the shift. Furthermore, Call-in-Pay need not equal that employee's regular pay. Thus, employers should always notify employees before their shifts if the company is affected by inclement weather.

If you need any assistance with regards to this or any other employment related matters please contact me at Abpearl@pmpHR.com or (516) 921-3400. •

Statement From Stuart S. Zisholtz, Esq.

Forum Selection Clause

In the event you are performing work for an out-of-state general contractor or owner, there is a strong likelihood that there is a Forum Selection Clause in your Agreement. A Forum Selection Clause determines a location where a lawsuit should be brought in the event a dispute occurs between you and a contractor or owner.

The Forum Selection Clause in the Agreement, more likely than not, contains the location of where the general contractor is located. Thus, if you are hired by a general contractor located in Atlanta, Georgia, the likelihood is that he will compel you to institute an action in Georgia as opposed to where you are located.

These forum selection clauses are valid and enforceable unless the challenging party can establish that it is a completely unreasonable, unjust, in contravention of public policy, invalid due to fraud or would cause such difficulty that you would practically be deprived of your day in Court.

The criteria necessary to defeat the Forum Selection Clause is extremely difficult and unlikely to be granted. The various exceptions referred to above are limited in nature and should not be relied upon by you when entering into a contract.

In a decision rendered by the Appellate Division, Second Department, the Court enforced the Forum Selection Clause and directed that the parties proceed with their litigation in Pennsylvania. The Court specifically found that when entering into the contract, the parties agreed upon the location of any future litigation. Since that location was Philadelphia, Pennsylvania, the Court granted the defendant's motion to dismiss the complaint finding that the Forum Selection Clause was unambiguous and valid.

Before you enter into any contract, you must review all of the terms and conditions set forth in the contract in order to ensure that you are properly protected. The costs associated with pursuing a claim in another state could be extremely expensive. Simply modifying the Forum Selection Clause could alleviate a lot of problems and expenses in the future.

Never let your lien time run out!!

For a free copy of a pamphlet pertaining to mechanic's liens and payment bond claims, kindly contact me or the association.

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. •

Check our website regularly for the latest information and updates!
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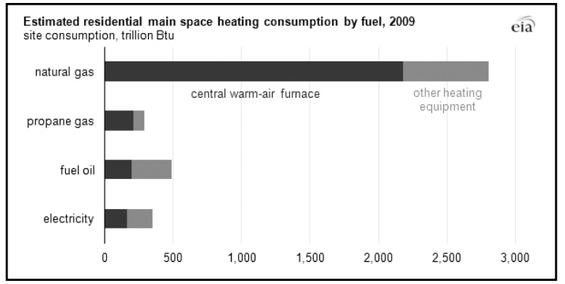
Gas Furnace Efficiency Has Large Implications For Residential Natural Gas Use

Source: EIA Today In Energy



Source: *U.S. Energy Information Administration, Residential Energy Consumption Survey 2009*
Note: *Reflects site consumption only. Other heating equipment includes boilers, radiators, heat pumps, and stoves.*

About 40% of the energy delivered to the residential sector is attributed to space heating, and natural gas- and propane-fired furnaces account for almost half of that, making them a large target for potential energy efficiency gains. Yet the minimum efficiency level of gas furnaces has changed little over the past 20 years. A Department of Energy (DOE) standard that would have updated minimum gas furnace efficiency standards for the first time since 1992 has been challenged in court and delayed many times. As a result, the minimum efficiency standard for one of the highest energy-consuming residential appliance types may remain unchanged for almost three decades.

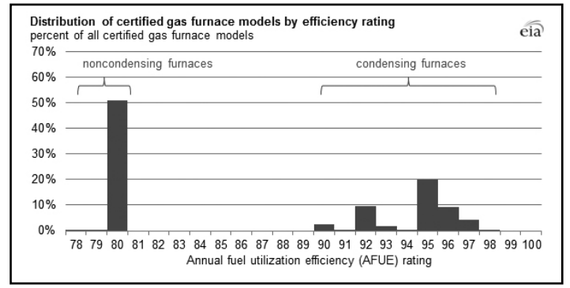
Gas furnaces were among the equipment types first covered by appliance standards in the National Appliance Energy Conservation Act of 1987, which set the minimum efficiency level at 78 annual fuel utilization efficiency (AFUE) starting in 1992. This rating means that it's 78% efficient: for 100 units of energy input, there are at least 78 units of heat output.

In 2007, DOE proposed raising the minimum efficiency to 80 AFUE, effective 2015—a change that would have little impact because almost all gas furnaces on the market already meet or exceed that level. Before that rule could be implemented, however, a group of states and efficiency advocates challenged it in court, encouraging DOE to arrive at a more stringent standard. By law, the federal standards-setting process must arrive at the highest efficiency level that proves technologically feasible and economically justified.

In 2009, a group of efficiency advocates and equipment manufacturers prepared a consensus agreement to advocate for upcoming efficiency standards levels for furnaces, heat pumps, and central air conditioners. The basis of the consensus agreement was to establish separate regional standards—a new concept because previous standards applied the same minimum efficiency levels across the country. Because heating needs vary across the nation, what is cost effective in Massachusetts may not be cost effective in Mississippi; the reverse is true for cooling.

The DOE rulemaking issued in 2011 that was slated to go into effect in May 2013 generally reflected the consensus agreement, establishing a regional standard at 90% efficient in colder climates and remaining at 80% efficient in warmer and drier climates.

But before the effective date this year, an association of natural gas utilities and, later, a group of equipment distributors tried to challenge the rule, explaining that DOE had not accounted for certain issues when upgrading to more efficient furnaces. Unlike changing out a dishwasher or refrigerator, going from an 80 AFUE to a 90 AFUE furnace requires switching technologies (see graph below).



Source: *DOE Compliance Certification Database, accessed August 2013*

The more efficient furnaces are condensing furnaces, meaning they reuse some of the heat that normally would have been vented out of the home. According to a survey of manufacturers, about 35% of gas furnaces sold in 2012 were ENERGY STAR® qualified, meaning at least 90 AFUE. (The ENERGY STAR program has since updated its specifications so there are different qualifying efficiency levels in the North and South.)

Switching from a noncondensing to condensing gas furnace often requires modifying the furnace ventilation at additional expense. In some cases the switch may require retrofitting or abandoning a gas-fired water heater because the existing exhaust flue would be poorly sized for the existing water heater and new furnace.

The most recent rulemaking is now being reviewed in the courts, where it will either be upheld or sent back to DOE for reconsideration. Given the timeline of the standards-setting process, it could take several more years before an updated efficiency standard would be made effective.

—***Principal contributor: O****wen Comstock*