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July 2011

President's Message

I guess we can all say that we are happy that the temperature finally hit 90 degrees. We wait all year for the summer and it is finally here.



Michael Newman

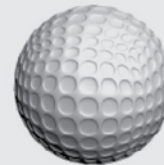
I hope everyone has a productive and profitable summer.

If you did not make it to the June event you missed out on a great night! We held our networking cocktail party at Louie's Oyster Bar and Grille. The event was overlooking the water in Port Washington and we watched the sunset while eating great food. Thanks to Anthony Carbone for putting this special night together. Our next major event will be our annual Golf Outing in August at the Hamlet Golf and Country

Turn to President's Message on page 3

ACCA 33rd Annual Golf Outing

Monday, August 15, 2011



9:00am Registration
9:30 am Breakfast
11:30 am Shotgun Start
4:30 - 5:30 Cocktail Hour
5:30 - 8:30 Dinner

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PRESIDENT'S MESSAGE *Continued from page 1*

Club in Commack on Monday August 15th.

This year we will be focusing on increasing the membership 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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Editor's Notes

by **Anthony N. Carbone**

Welcome to Summer! We received a jolt of hot weather on the first two days contractors were probably closed since New Years Day—it was Memorial Day weekend! The calls were piling up and consumers and businesses began turning on their equipment for the first time. Preventative Maintenance and initial start-ups to test if units work would elude many homeowners due to human nature.

Therefore, there is this huge influx of calls that occur with emergency “no cools.” Well, its good for our industry while the rest of the economy languishes along.

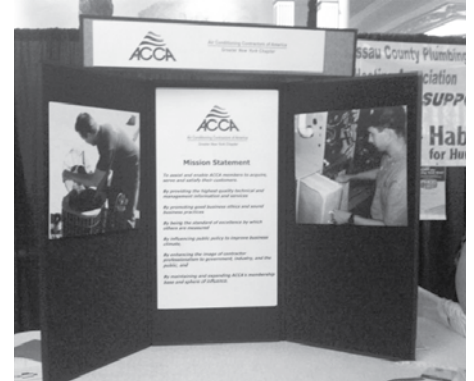
NEXT TOPIC: Carrier Corp. asks EPA to stop DRY R-22 Units...

Carrier Vice President John Mardeyk describes the theory behind Carrier's decision to petition the EPA to mandate a discontinuation of the DRY R-22 units. (see article included in our newsletter)

As the editor of the ACCA Contractor News, it is in my opinion that this request is really more about what's best for the bottom line of big corporations. The idea that this is not a component to a system is ridiculous. No different than an engine to a car. Let's take a scenario where a consumer has replaced his ENTIRE SYSTEM some 10 years ago and by a virtue of a series of bad winters and usage, the outdoor cooling unit deteriorates and fails. Now, I have plenty of clients with systems that have blowers that reside in attics and see no exposure to the elements and can last beyond 30 years. Why wouldn't this be considered preposterous that “other sales outfits” have recommended a need to replace both units to satisfy the requirement to transition to R410A refrigerant, after such a short period of time...and certainly not at the end of its useful lifecycle. This is beyond absurd. The guise of environmental friendliness has now defied logic since it is a known factor that NO refrigerant can be vented or liberated into the atmosphere. So perpetuating existing systems with a “faulty or bad” component is not ridiculous unless you are concerned about selling “BOXES”. Some manufacturers of R410A (or PURON as known by this specific manufacturer that has petitioned the EPA) has an apparent preference to which “Golden Box” is sold as opposed to the “Vanilla Box” which yields a far less margin of profit... What do you think?

—Anthony N. Carbone

The Greater New York Chapter ACCA participated in the 2011 Education & Energy Efficiency Expo at Leonard's of Great Neck on June 22. About 700 people attended.



Photos by Anthony N. Carbone

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Carrier Asks EPA to Stop Dry R-22 Units

By Mike Murphy
ACHRNews

Carrier Corp. recently filed a petition with the U.S. Environmental Protection Agency (EPA), formalizing a request to reclassify a residential condensing unit as a sub-system of a system to extend the manufacturing prohibition to dry R-22 condensing units. “The petition urges EPA to reconsider its current position and to issue a new rulemaking effective January 1, 2012,” said John Mandyck, Carrier vice president, sustainability & environmental strategies. “In our opinion, the rule as it currently exists is not in-line with the intent of the long-planned phase-out of R-22, nor is it in-line with the Clean Air Act’s mandate to curtail the use of ozone depleting substances.”

The effect of the Carrier action could serve to solve an industry dilemma — what to do about dry R-22 units.

In the middle of 2010, some manufacturers began producing R-22 equipment that did not contain refrigerant. These dry-shipped units exploit a loophole in the original EPA ruling of 2009 — designed to curtail use of R-22 — which stated that entire systems could not be manufactured and that any replacement components for aftermarket use could not be pre-charged with the refrigerant. As a result of allowing R-22 units back into the free market, industry sources, including a component manufacturer, equipment manufacturers, refrigerant manufacturer, and the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) have estimated the number of dry R-22 unit shipments in 2011 could represent between 10 and 20 percent of annual sales, possibly upwards of 700,000 units.

Mandyck said, “We think this is bad policy. The unintended consequence of this loophole is to encourage the sale of new R-22 condensing units, which the industry has been preparing to phaseout for more than a decade. The EPA never could have intended for all condensing unit manufacturers to re-enter the R-22 market, and we would like them to take action now to close the loophole.” Mandyck noted that Carrier was forced to restart the manufacture of R-22 condensing units after several competitors re-entered the market. “It became clear to us that the market was moving faster than the government could act, so we moved with the market to remain competitive, but if EPA banned the manufacture of dry R-22 condensing units today, we would support that move.”

Carrier believes this problem was created when EPA changed the definition of a condensing unit to a compo-

nent. Eighty percent of the cost and technology [of a system] is really in the condensing unit,” said Mandyck.

“We took it upon ourselves to file the petition because we believe strongly in the initial intent of the Clean Air Act when it comes to the phaseout of R-22; we welcome anyone who is concerned about the issue to support us.”

Mandyck said that Carrier, other manufacturers, contractors, and distributors had all invested in new technologies and training in order to prepare for a 20-year expectation that R-22 would be phased out. Mandyck said “Non-ozone depleting condensing units are available from every manufacturer and have been sold and installed for more than a decade with an excellent performance record. This is not a situation where the industry is searching for a technology solution. The answer is there — we simply want the regulations to apply as we all thought they did.”

“Carrier filed the petition to be consistent with that belief. We also did so because of our support of ozone protection, and for energy efficiency — the replacement of a condensing unit without replacing the indoor coil was a step in the wrong direction,” said Mandyck. “Consumers won’t be getting the energy efficiency they think they are buying.”

IN EPA COURT

According to Mandyck, Carrier met with EPA more than a month ago, at which time the agency “asked a lot of good questions.” The EPA indicated it would evaluate and respond to the petition.

Drusilla Hufford, director, Stratospheric Protection Division, U.S. Environmental Protection Agency said, “We have met with Carrier since receiving the petition, and are evaluating additional information provided not only by Carrier, but by others in the environmental community. No final resolution date is available at this time, but EPA is carefully considering this petition.”

Mandyck encouraged contractors to understand the issue and get involved. “We have all prepared; manufacturers invested in technology, contractors invested in training, and now that is all up in the air. We are 16 months into this issue, and still don’t have anything past a preliminary guidance from DOE as to how to rate the efficiency of the dry R-22 units. How are we supposed to view the next regulatory movements from the government? This issue has created a lot of uncertainty,” said Mandyck.

In September 2010, AHRI answered a request by EPA to submit an analysis of the consequences of the action. The response letter showed that if dry R-22 units were to represent 20 percent of shipments, that nearly 10 percent of the gains from the 13 SEER rulemaking (January 2006) would be wiped out. It also showed that if the market would grow to 80 percent, nearly one-third of the efficiency gains would be negated.

When asked about coordination with the U.S. Department of Energy regarding the impact on energy efficiency that projected dry R-22 unit sales will have in the market, Hufford said, "EPA understands that to achieve the best energy efficiency, outdoor condensing units must be properly matched with the indoor coils. The HVAC industry has done a very good job of emphasizing that over the last 10 years, and EPA wants to also help ensure that this practice continues."

The losses would be the result of mismatching of indoor/outdoor coils — the AHRI sensitivity analysis showed that an additional emission of 2.5 million metric tons of

CO2 would result from the mismatching of coils at the 10 percent shipment level, and 10 million metric tons at the 80 percent level.

With the continued manufacture of R-22 units, it is thought by some that prices will increase, and availability could tighten as a result. Mandyck also said, "By proliferating R-22 use, we are pushing the problem of service availability into the future. There is a step-down schedule we are following; in 2015 we have a huge drop to 10 percent of our 1989 baseline production of HCFCs. By pumping more R-22 units into the marketplace now, we are exacerbating the problem."

According to information provided during a recent webinar sponsored by DuPont and The NEWS, sales of R-22 replacement refrigerants have grown at a 46 percent compound annual growth rate in North America, and this does not include R-410A.

According to Mandyck, an additional benefit of stop-
Continued on page 8

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Carrier To EPA—Stop Dry R-22 Units

from page 7

ping production of dry R-22 units is to comply with ozone protection. "It remains a critical threat to our planet — the Arctic is in danger of record loss of ozone this year. Most common losses had been associated with the Antarctic region, but that has begun to change. We have to remain vigilant," said Mandyck.

STATUS OF RULE

In November 2009, prior to the final EPA rule, AHRI's Unitary Small Equipment Product Section classified all R-22 systems as discontinued as of Jan. 1, 2010 and removed these listings from the AHRI Directory as of Dec. 31, 2010. This meant that dry systems would not be certified by AHRI or listed in the AHRI Directory. Following issuance of the EPA rule, AHRI met with agency officials to encourage them to close the exception to the sale of non-charged R-22 condensing units for air conditioning applications. After the EPA made it clear that it would not do that, the Unitary Small Equipment Section in November 2010 re-visited its November 2009 decision and voted to return R-22 products to the scope of the AHRI Certification Program, thereby requiring dry R-22 models to continue to be listed in the AHRI Directory of Certified Product Performance. The R-22 models certified by AHRI and displayed in the AHRI Directory are High Sales Volume Tested Combinations (HSVTC) only with no mix match coil listings. •

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HVAC Company Charged with Discrimination by EEOC

The Equal Employment Opportunity Commission (EEOC) recently filed a lawsuit in federal court against United Air Temp/Air Conditioning & Heating, Inc. (United Air Temp). United Air Temp provides preventive maintenance for both commercial and residential heating and air conditioning systems and has numerous office locations in Florida, Georgia, Virginia Maryland and Washington, D.C.

The suit alleges that an African-American telemarketer, Patricia Burch, was paid less than a Caucasian telemarketer and despite complaints to management, Ms. Burch and other non-Caucasian telemarketers were paid less than at least one Caucasian telemarketer who performed the same or a substantially similar job. There were ten telemarketers employed by United Air Temp with the Caucasian employee



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allegedly receiving a higher hourly wage than Ms. Burch.

The EEOC charged United Air Temp with violations of Title VII of the Civil Rights Act of 1964, filing suit in the Eastern District of Virginia after unsuccessful pre-litigation settlement discussions. Title VII of the Civil Rights Act of 1964 prohibits discrimination by employers on the basis of color, race, national origin or sex. It also prohibits discrimination against an individual because of his or her association with another individual of a particular color, race, national origin or sex.

The EEOC is seeking compensatory damages, injunctive relief, punitive damages and back wages. Now is the perfect time for you to do a review of your hiring and pay practices to assess any risks. Portnoy, Messinger, Pearl and Associates can assist you in doing this analysis.

OSHA Develops Online Tool to Assist in Recordkeeping

Most members of ACCA are well-informed about the various requirements that The Occupational Safety and Health Administration (OSHA) has placed on businesses, not just the HVAC industry. OSHA regulates everything from the chemicals you use in servicing an air conditioning unit to how to properly protect your employees while they are installing or servicing an HVAC system. Some owners are misinformed, however on the reporting and recordkeeping requirements that OSHA has in place. In response to this growing confusion, OSHA has developed a web-based tool to assist employers in complying with OSHA's illness and injury recordkeeping requirements and regulations.

The online questionnaire will direct employers and business owners to the appropriate course of action based on their responses to the tool's inquiries. The OSHA Recordkeeping Advisor is intended, according to OSHA, to help determine:

- Whether an injury or illness (ore related event) is work related;
- Whether an event or exposure at home or on travel is work-related;

- Whether an exception applies to the injury or illness;
- Whether a work-related injury or illness needs to be recorded; and
- Which provisions of the regulations apply when recording a work-related case.

While this tool will undoubtedly help business owners understand some of their recordkeeping and reporting requirements, it is important to note, as OSHA has emphasized, this online tool cannot be a substitute for the more comprehensive and detailed regulations, manuals, handbooks and/or letters of interpretation. The OSHA Recordkeeping Advisor may be found by visiting: www.dol.gov/elaws/OSHARecordkeeping.htm.

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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Greening Your Fleet Is Easier Than You Think

By Kelly Hiner/Enterprise Fleet Management

Record-setting fuel prices and ongoing evidence of global warming are making everyone more aware of the need to be more concerned about the environment. For businesses that want to demonstrate their commitment to improving the environment, one option is to acquire hybrids and flexible fuel vehicles. But, the reality is that every business with a fleet of vehicles can actually 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.

Often, some of the simplest things can make a significant difference. For example, by reexamining routes, it's possible to save a few gallons of gasoline every week. This can add up to substantial savings at the end of the year when multiplied by the number of vehicles in a company's fleet.

Some tips include the following:

Lighten your load. The more weight a vehicle carries, the lower its fuel economy. This is especially true for light duty trucks, which can feature the same space dimensions but vary significantly in gross vehicle weight rating (GVWR), towing or payload capacity and other options.

Reduce speed and keep the RPMs down. 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.

Keep tires properly inflated. Under-inflated tires create more rolling resistance on the road, which decreases gas mileage and shortens tire life due to improper wear. Since tire pressure changes with temperature, pressure should be checked and adjusted when the tire is cold and when the vehicle has been sitting for a couple of hours.

Select the right engine oil. Using the correct oil viscosity is important because higher-viscosity oils create greater resistance to the moving parts of the engine and require more gas. It is best to consult your vehicle's owner's manual for specific oil change intervals and viscosity recommendations for best engine life and fuel mileage.

Use the right fuel. Most cars don't need premium fuel – although some vehicles do call for higher-octane gas to maximize performance and fuel efficiency. Check the owner's manual when choosing what grade of gasoline to use, and don't spend the extra money on a premium grade if it's not specified.

Use the air conditioning. While rolling windows down in lieu of the AC can increase fuel economy at slower speeds, at faster highway speeds the reverse is true – open windows can actually increase drag and hurt fuel economy.

For more information about Enterprise's industry-leading environmental stewardship initiatives, visit <http://fleet.keystogreen.com>.

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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* Contractors may be eligible for an incentive of \$200 if they are BPI-certified as a Central Air Conditioner and Heat Pump Specialist and provide documentation that an ACCA Manual J load calculation worksheet has been completed to determine the proper size of installed equipment.

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Statement From Stuart S. Zisholtz, Esq.

Warehousing and Mechanic's Liens

The concept behind a mechanic's lien is that the materials or the work must be done for the construction and improvement of a particular piece of property. This means that you cannot deliver your materials and do your work at "Location A" and lien "Location B." You materials and labor must be identified as going into "Project A" so that you can lien "Project A." Occasionally, there is a contact where the contractor or the owner will ask a labor or materialman, particularly a materialman, to prepare and fabricate the materials and deliver them in bulk to a storage area so that the owner or contractor can utilize the materials as needed. This is what we call "warehousing."

The minute the materials go into the storage area under the control of the owner or contractor, it loses its identity as being a product earmarked for "Project A" even if the product is specifically manufactured for "Project A." Thus, for example, if a steel stud is specially manufactured at 10 feet by 6 inches, and there are no other studs in the

storage facility that specially call for a 10 foot stud, it loses its identity and thereafter becomes not lienable. There are questions and divided opinions as to whether or not this material should be liened if it is separately packaged, separately identified, separately labeled and sits in a particular spot away from everything else. Why get involved, however, in a situation of that kind? The bindings can be snapped, the materials commingled, and the labels ripped off, etc., all of which is beyond the control of the supplier. To be on the safe side, materials should be delivered to the jobsite. Sidewalk delivery is okay.

NEVER LET YOUR LIEN TIME EXPIRE!

For a free copy of a pamphlet pertaining to payment bond claims and mechanic's liens, please contact me of 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. •



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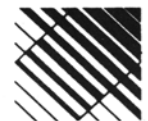
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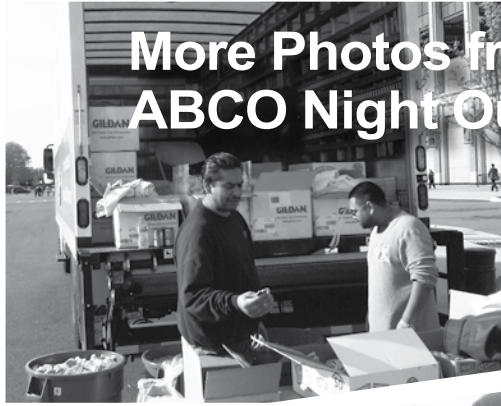
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