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

Air Conditioning Contractors of America
Greater New York Chapter

www.accany.org PLEASE ROUTE THIS PUBLICATION WITHIN YOUR ORGANIZATION MAY 2013

President's Message

Al Trudil

I would like to thank Mike Newman for running the April meeting for me. Mike has told me it was an epic meeting with many excellent questions and answers heard about hiring and firing of employees.

With the crazy weather we are having lately, the air conditioning season has yet to start in full swing but hopefully within the next few weeks we will all be very busy keeping people cool.

At next month's meeting, Weil McLain will be speaking about the changes NYC plans to make regarding the use of PVC for high efficiency boilers. They will also discuss what the EPA is looking to do about doing away with the 80% efficiency units. This meeting will be held at the LaGuardia Marriott on May 9th. ***—Al Trudil***

Thursday, May 9th Meeting

WEIL-McLAIN

Changes Affecting High Efficiency Boilers

Changes are on the way for high efficiency boilers. A representative from Weil McLain, a leading designer, manufacturer and marketer of heating and cooling equipment will discuss several changes being considered for high efficiency boilers particularly by the EPA, which may eliminate 80% efficiency units and New York City, which plans to change the use of PVC for high efficiency boilers.

Don't miss this very informative meeting.

LaGuardia Marriott

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

BREAKING NEWS:
Department of Energy Will Not Enforce Regional Efficiency Standard for Furnaces

On April 5, the US Department of Energy released a statement announcing that, due to the ongoing lawsuit settlement negotiations regarding the proposed Regional Energy Efficiency Standards, there will be no enforcement of the 90% AFUE rating minimum for non-weatherized gas furnaces in the Northern Region.

WHAT THIS MEANS TO YOU:

While the lawsuit settlement is pending, there will be no requirement for furnaces in the Northeastern US to operate at 90% AFUE. This means that contractors may continue to do business as usual, and do not have to worry about meeting higher efficiency rates. The announced changes apply to the Northern US Region only, and do not affect the proposed standards for the Southern US Region. •

Interested in Shaping Your Business Future and that of our Organization? Volunteer to serve as an ACCA Board Member. Contact Executive Director John DeLillo (516-922-5832) or any ACCA Board Member.

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Editor's Notes

by Anthony N. Carbone

The first two warm days have come to the Metro New York Area sparking some thoughts of the upcoming air conditioning season. Some commercial buildings requested to begin the seasonal air conditioning service to start cooling down their occupancies! Premature as it may be, it's always good to get a jump start to see if any preliminary repairs or replacements are needed. Let the fun begin and the revenue flow…

Our last program was very well attended as our Contractors' News contributor and great friend of ACCA, attorney Alan Pearl and his associate Mary Simmons, provided expert advice and insight regarding the terminating of employees, the proper legal processes and the examples of how to document situations that could lead to the termination of an employee without the fear of the Department of Labor repercussions. This valuable information is part of your membership and may just save you thousands of dollars and avoid unneeded legal defense fees. Thank you Portnoy Messenger, Pearl and Associates.

I hope to see many members from ACCA at the Networking Cocktail Party on June 4th, 2013. It is always a great opportunity to hear how others are dealing with situations you may be encountering in your own business.

This Board of Directors and our President, Al Trudil, are working to provide industry events and programs to keep our own members at the top of their game. May all of you enjoy a prosperous and productive air conditioning season. ***—Anthony N. Carbone***

New York State Poised to Make Geothermal Heat Pumps Tax Exempt

By John Ottaviano, Air Ideal

Press release from the Long Island Geothermal Energy Organization (LI-Geo.org):

The New York State Senate and Assembly have proposed new legislation related to geothermal heating and cooling installations.

On January 9, 2013, New York State Senator Maziarz introduced a bill to amend the tax law to exempt both sellers and purchasers of geothermal systems from sales and use taxes for materials.

The same day, New York State Assembly Member Jaffee introduced an identical bill to the Assembly.

This legislation will make geothermal heating and cooling systems more affordable and thus more economically attractive to all NYers. Please write to your NYS representatives to show your support for these bills.

The proposed bills are to amend the tax law to exempt both sellers and purchasers of geothermal systems from sales and use taxes for materials. (Sales and use taxes for the labor involved in capital improvements, such as these installations, are already exempt.). This is similar to the sales and use tax exemption that has aided the solar PV industry in New York State to prosper.

This change in the law will help the in-state geothermal industry—geothermal engineers, installers, designers, service providers, equipment distributors and manufacturers—be both more competitively priced and profitable.

Please write or e-mail your Senator, asking him or her to support this bill. We have a sample letter prepared on our web site for you to sign.(www.airideal.com) Please feel free to customize the letter. If you do not know who your senator is, you can find him or her here (http://www.nysenate.gov/open).

Please also write or e-mail your Assembly Member, asking him or her to support this bill. We have a sample letter prepared on our web site for you to sign. (www.airideal.com) Please feel free to customize the letter. If you do not know who your assembly member is, you can find him or her here (http://assembly.state.ny.us/mem/?sh=search).

The bills are available for reading at the following links:

Senate Bill S01343 (http://open.nysenate.gov/legislation/bill/S1343-2013)

Assembly Bill A01411 (http://assembly.state.ny.us/leg/?default_fld=&bn=A01411&term=&Summary=Y&Actions=Y&Votes=Y&Text=Y) •

Enterprise Fleet Management Announces New Mobile App for Android and iPhone

Added convenience for drivers and improved monitoring for management

The brand new Enterprise Fleet Management Mobile App, a customized mobile phone application for Android and iPhone users, is now available free of charge to all Enterprise Fleet Management customers. Its touch-screen features are designed to add convenience and efficiencies for any business with a fleet of vehicles.

"We are delighted to offer a mobile application to our customers and their drivers who increasingly rely on mobile phone technologies to improve productivity and efficiency," said Thomas Chelew, senior vice president for Enterprise Fleet Management. One of the new app's benefits, Chelew added, is that it lets business owners send messages to one or more of their drivers, as well as receive status updates on new vehicle orders. In addition, drivers making service calls or traveling to job sites can use the app to record mileage and make notes on a particular job or situation. Those drivers also can use the app to search for fueling locations based on cost, fuel type and distance from their location, as well as view a map and receive turn-by-turn directions.

Similarly, the new app can locate the closest maintenance facility and provide a map and directions from the driver's location. The app also makes maintenance easier to manage by displaying current or past due oil change reminders and indicating when the work has been completed.

When accidents occur, the app allows drivers to report them in a timely manner and submit the information, including up to four photos of the damage/scene, directly to Enterprise with details about time, location, other parties, whether the vehicle was towed and to what body shop. The app's click-to-call functionality, which includes a contact number and/or name, also makes it fast and easy to reach the right person at Enterprise who can help with fuel, general account services, maintenance, or roadside assistance in an emergency.

To learn more call 877-23-FLEET or contact Kelly Hiner at 973-709-2499. •

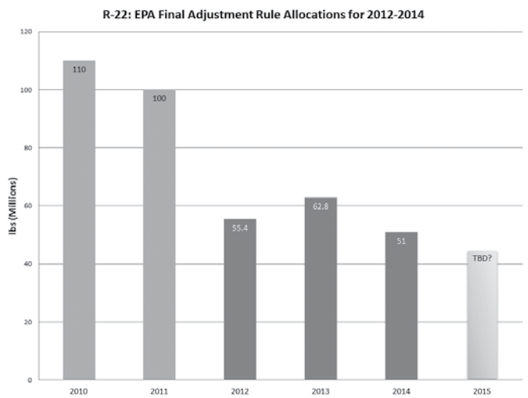
EPA Finalizes R-22 Allocations for 2012-2014

By Charlie McCrudden

On April 3, the U.S. EPA published in the Federal Register the final rule adjusting the allocation of HCFCs (including R-22 refrigerants) for the years 2012-2014 (2013 Final Adjustment Rule).

According to the Final Adjustment Rule, R-22 allowances for 2013 will rise by about 13% relative to 2012, and decrease by 20% in 2014 relative to 2012. The allocations for the years 2015-2019 will be set in a subsequent rulemaking. These allocations became effective on April 3, 2013.

See the chart below.



Contractors may want to contact their wholesalers or gas distributors to inquire about any changes in pricing or sales policies in light of the 2013 Final Adjustment Rule. Despite the unexpected increase in the allocations for 2013, the market remains volatile and prices for R-22 may not respond to the increased supply.

Charlie McCrudden is ACCA Vice President for Government Relations. •

Driver Safety Policy Priorities

By Kelly Hiner, Enterprise Fleet Management

Many businesses have workplace policies for vacation days, sick days, hiring, benefits, tuition reimbursement, substance abuse, dress code and more. But for companies that have a fleet of vehicles or employees who drive on company business, a driver safety policy can be an important one to have in place.

A driver safety policy may affect several areas of a business, from vehicle insurance rates, worker compensation claims and risk exposure to reducing downtime due to worker injuries and vehicle repairs. And, as with other business situations, it is the employer's responsibility to take appropriate actions to commit to enforcing policy standards.

Businesses interested in developing a driver safety policy may begin by forming an internal committee comprised of representatives from various departments, such as human resources, sales, risk management, purchasing, safety, legal, as well as rank-and-file employees. The committee may review existing policies and determine if all elements are common practice, uniformly enforced by management and followed by drivers.

A professional fleet management company also may be able to help by providing a basic set of driver safety policy guidelines, but it is up to a business to customize its own set of guidelines, as well as enforcement practices and penalties. Once guidelines are established, they should be provided in writing to all drivers and the employer may ask drivers to sign a copy indicating that they have read and understand the policy. This may ultimately be advantageous in a future situation where an employer may be held responsible for what a driver "did" know or "should" have known.

Various components of a driver safety policy may include some of the following:

- Background information and purpose – indicating who is covered by the policy, whether the policy applies to personal vehicles as well as company-owned vehicles driven for company business, and what kinds of past driving records, background checks or other measurement criteria will be used to qualify drivers.
- Policy specifics – pertaining to everything from use of seatbelts for drivers and occupants to use of cell phones, including compliance with different state laws regarding their use, to taking certain prescription medicines, eating while driving, and more.
- Traffic violations or accidents – outlining who is to be notified, how situations will be investigated, who will file specific reports, how negligence and/or fault will be defined, and what kind of follow-up will take place if it is determined whether an accident was preventable.
- Corrective actions – providing very specific language regarding the driver safety policy for minor violations, major or repeat violations, as well as DUIs, preventable accidents and citations for speeding, to name a few.

There are a number of sources that offer additional information about driver safety policies, including NAFA Fleet Management Association and Network of Employers for Traffic Safety (NETS), as well as government sources such as the National Highway Traffic Safety Administration (NHTSA).

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. •

People & The Workplace

By Alan B. Pearl,
Portnoy, Messinger, Pearl & Associates, Inc., Syosset, NY 516-921-3400, Fax 516-921-6774 e-mail: ABPearl@pmpHR.com, Website: www.pmpHR.com

Human Resources Compliance Checklist

The growing number and ever changing collection of labor and employment laws have left many employers confused and overwhelmed in their efforts to comply with all of the applicable laws and regulations. In order to ensure that your business is in compliance, we have developed an HR Compliance Checklist as set forth below. After you have had a chance to review the checklist, please do not hesitate to contact us regarding any questions or concerns you may have in ensuring that your company is in full compliance with all these laws.

I-9s: Do you have properly completed I-9s for all employees? Use Form I-9 dated 3/8/2013 for all new employees hired after that date. Once an employee leaves the company, his/her I-9 must be maintained for 3 years from date of hire or one year from termination, whichever is later.

IRCA (Immigration Reform & Control Act): Have all your employees provided the required documentation attesting to their immigration status?

Posters: Are updated federal and state labor posters displayed in all business locations?

FLSA (Fair Labor Standard Act): Are all employees properly classified as exempt or non-exempt and paid correctly for overtime?

COBRA (Consolidated Omnibus Budget Reconciliation Act): Do you adhere to the rigid timeframes for giving prior employees and their families the right to choose group health benefits?

FMLA (Family Medical Leave Act): Do you provide employees job-protected unpaid leave in compliance with federal law?

WTPA (Wage Theft Protection Act): Is your business compliant with the NYS Wage Theft Prevention Act? Do new employees receive the correct form in their primary language? Are all your employees receiving the correct form annually, before the February 1st deadline?

ADA (Americans with Disabilities Act): Are you compliant with the wide-ranging civil rights protections afforded to Americans with disabilities? Do you have a confidential process in place where employees or job seekers can request accommodations if needed?

OFCCP (Office of Federal Contract Compliance Programs): If you are a federal contractor or subcontractor, do you have a current and compliant affirmative action plan in place?

New York City Amends Its Human Rights Law To Prohibit Discrimination Against Unemployed Persons

Effective June 11, 2013, the New York City Human Rights Law ("NYCHRL") will prohibit discrimination against unemployed persons. Notwithstanding strong protests from employers and the mayor's office, the NYC Council overrode Mayor Bloomberg's veto of the amendment on March 13, 2013. The amendment prohibits employers with four or more workers operating in New York City from discriminating against an unemployed person, retaliating against an employee who opposes a practice prohibited by the amendment or testifies on behalf of the unemployed employee.

In effect, "unemployment" status joins a growing list of protected categories in NYC which includes discrimination based on an employee's actual or perceived race, creed, color, national origin, disability, age, partnership status, marital status, sexual orientation, citizenship status and status as a victim of domestic violence, sex offenses and stalking.

The amendment prohibits an employer from making any employment decision based on a job applicant's unemployment status. For instance, claims that an employer failed to hire an unemployed person or offered an unemployed applicant less money or fewer benefits than it offered an employed job applicant would now be prohibited. An exception is that employers may consider unemployment status where there is a "substantially job-related reason for doing so" such as an employee's prior separation from employment for poor work performance.

The amendment allows an unemployed individual who believes he/she has been discriminated against to file a complaint with the NYC Human Rights Commission or a civil action to recover front and back pay, compensatory and punitive damages, attorneys' fees and costs.

Employers should advise supervision about these new restrictions. Employers should also review all job postings and employment applications to ensure that they do not run afoul of this amendment. As always, should you have any questions or require more information regarding these new regulations, please do not hesitate to contact me at 516-921-3400, or at abpearl@pmphr.com. •

Statement From Stuart S. Zisholtz, Esq.

"Additional Insured" Provisions In Insurance

We all know the pecking order of obtaining insurance in a construction project. The owner demands that the general contractor get liability insurance and name the owner as an additional insured. The general contractor, in turn, passes the responsibility on to the subcontractor. The subcontractor, in turn, passes it on to the sub-subcontractor, if there is one. Each party has to name the entity above it as an additional insured on the policy.

Sometimes, if a general contractor has a subcontractor, he might sit back and let his policy lapse, either willfully or accidentally, but with the comfort that he has insurance. This can have serious implications.

In the first place, the general contractor might have a contractual obligation to hold the owner free and harmless. If, therefore, the general contractor lets the policy lapse, he is in breach of his contract with the owner. The same applies to a subcontractor and his relationship to the general contractor.

More importantly, however, the "additional insured" provisions of the contract might have very substantial limitations. A general contractor cannot contract away his responsibility in the event of negligence. If a general contractor is negligent, his subcontractor's policy would not cover him. Similarly, if the owner, for some reason, is negligent, and that could be hard to visualize, then the "additional insured" provisions of the general contractor's policy will not cover the owner.

In addition, the insurance policy might carry lower limits for the "additional insured." If the subcontractor has $2,000,000 in coverage, the "additional insured" might be half that. It is incumbent upon a general contractor, therefore, to check out what "additional insured" means. The "additional insured" can also have limitations of a contractual responsibility. Thus, the insurance company for a subcontractor might cover the general contractor, but will not cover the owner because there is no contractual relationship between the owner and the sub.

There may be additional exclusions such as, completed operations, limitation on indemnification, limitation on the third party claims, etc.

The bottom line is, if you are relying upon being an "additional insured" on your subcontractor's policy, make sure you have a copy of that policy and you see what it says and what is included and what is excluded. The "exclusions" are often more important than the "inclusions."

The Issue of Force Majeur

The concept of force majeur, which is incorporated into many construction contracts, is that a party is excused from performing the contract if there is an act of God, hurricane, tornado, earthquake, or any other calamity that is beyond his control.

In most instances, a delay claim is sought so that the issue of force majeur does not come up. However, where the issue is raised in the contract, it must be addressed.

The courts of New York narrowly construe the claims involving force majeur and are not inclined to expand its scope. In one instance, an operator of a building had his insurance policy cancelled because the insurance company no longer wrote the policy. The operator was evicted because he could not get a replacement. The operator claimed force majeur, but the Court did not buy it.

In reviewing the contracts with an eye on the force majeur clause, you have to be very careful to make sure that there is a distinction between the force majeur and a delay claim. A delay claim sometimes overlaps the force majeur.

If a building burns down and you have all of your equipment and material on the job and you are able to continue with the job, where do your go? Insurance might cover your equipment and business interruption, etc., but that might not be enough to cover your losses for failure to complete the project.

There are no easy answers to this question; the purpose of the article is to direct the force majeur clause to your attention.

Never let your lien time run out!

For a free copy of our 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. •