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Greater New York Contractors' NEWS



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President's Message

I cannot believe that the summer is coming to an end and we are getting ready for September. School is starting, traffic and commutes are now longer and the beaches and pools are closed. I wish it was July every month of the year.



Michael Newman

Unfortunately due to inclement weather our golf outing was cancelled. It will be rescheduled for October 24th. We hope that everyone that signed up can make the new date. I was very excited because this was going to be my first golf tournament. After getting a lesson at the driving range last weekend my instructor told me, "don't worry, you can always go for the high score." Well, enough about my golf game. We are looking forward to the September program which will be a technical seminar for a management

Turn to President's Message on page 3

Thursday, September 8th, 2011

MANAGEMENT TECH TALK

Latest Information on Product Releases

Christopher A. Meza, Senior Sales Engineer at Eaton Corporation will discuss Harmonics and the affects they have on the AC line, touching on drive basics and ways to deal with this growing concern. Specs are putting more responsibility on the drive manufacturers to limit harmonics on AC lines. Discussion will include 6-pulse drives, filtered drives and 18-pulse drives to meet IEEE-519 specifications. Chris will also show some of the Eaton Engineered variable frequency drive options available to mitigate harmonics.

A KRIWAN representative will speak about their new line of protection controls, INT280/OPS2 oil level regulator and differential pressure switch for new or retrofit applications. Also discussed will be INT69 Diagnosis module which prevents reoccurring trip conditions and captures diagnostic and fault data.

Don't miss this evening of cutting edge information on new products and techniques that will keep you on top of the latest in our industry.

Westbury Manor

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

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.

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PRESIDENT'S MESSAGE *Continued from page 1*

audience on new and innovative HVAC technologies put together by Twinco and National Compressor.

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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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**

As the summer season comes to a close, many contractors look back and say 2010 was a longer, hotter summer with consecutive 90 and 100 degree temperatures than 2011. Consecutive heat is the key to putting real pressure on Air Conditioning equipment.

This year there was hot weather but not a consecutive heat wave with brutal nights. Brutal hot temperatures at night cause decisions that mean business. With the economic forecast looking dismal, the average investor is perplexed in what to do with invested money. United States Bond ratings being reduced by Standard & Poor's had caused some capitulation in the stock market. When consumers are nervous and (401K) statements take a nose dive, the money stops flowing and consumers stay on the side lines.

Interestingly enough, oil prices took a 20% dip to \$80 a barrel. Although the price of oil drops, it takes some time to hit the pump. The dollars saved at the oil pump can act as a stimulus package. If consumers have discretionary money which they save from spending less at the gas pump, it is assumed they will most likely loosen their belts and spend it on clothing, movies, dinner...the perception is things aren't that bad. But according to the economic pundits on CNBC, we have a long tough road ahead.

With HVAC companies like ours that are laden with overhead for skilled labor and necessary insurance, it can result in a disaster in the making. Many assumed we were out of the woods and prosperity was around the corner...it doesn't look so. On the commercial side, many companies are lean and mean from the last wave of cost cutting that occurred in 2008-2009...so it is inevitable many needed purchases of new HVAC equipment will have to occur since profits were rising...at least for those who survived this economic storm. The residential customers are hesitant to spend, build or remodel. The housing market is stagnant regardless of record low interest rates.

These are tumultuous times not only economically but politically. There is significant unrest and believe it or not, it has been 10 years since the attack on the World Trade Center. There is still uncertainty in the Middle East and many issues will need to be sorted out before prosperity returns to our country.

With these times, you cannot afford to miss the wealth of information from your fellow HVAC colleagues. Learn what is happening at all levels of our industry. Thank you for supporting our organization and I hope to see you at our next programming meeting.

If you have any comments or point of view you would like to share with us, please contact me to discuss and we will publish it in our Contractor News. — **Anthony Carbone – AC2@SystematicControl.com**

REMEMBERING BOB RICE



Bob Rice, a retired Research Products salesman, passed away on June 10, 2011.

Bob, who worked in the industry for decades, earned great respect from both his colleagues and his customers.

He was born in Boscobel Wisconsin on May 16, 1935. As a young man, Bob served honorably in the United States Navy and then attended the University of Wisconsin where he met his wife and learned about Research Products.

When Bob started at RP, he took on the company's challenging New York-based sales territory and successfully worked the district until he retired.

Bob is survived by his wife Eleanor (Ellie), his daughter Cara, and his granddaughter Colette. When Bob and Ellie learned that their granddaughter was on the way, they moved from Ridgewood, NJ to their daughter's home of Phoenixville, PA. Bob happily took on a significant part of his granddaughter's child care and spent time with her every day.

He was diagnosed with incurable cancer in June of 2011 and died peacefully in his sleep soon afterwards. Bob's wife and daughter were both with him when he passed away.

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Prevailing Wage Law – A Brief Guide

By Michael D. Ganz, Esq. of Tunstead & Schechter
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All Contractors (whether union or non-union) on public works projects are required by NYS Labor Law §220 to pay prevailing wages to the laborers working on, or in some cases, in connection with a public works project. Since contractors essentially purchase their materials from the same supply houses, the deciding factor in a contractor's bid is usually its labor costs. Public monies are used to pay the contractors so the NYS public policy requires that the contractor's laborers receive prevailing wages and supplemental benefits.

The prevailing wage rate is determined by the local union collective bargaining agreement (CBA) for the trade. NYS prevailing wages are updated every July 1st. State law requires that these schedules be made part of all contracts government contracts. The contractor is held responsible to pay the newly determined rates even if the new rates

are not included in the wage schedule. Besides debarment from public work for violating the prevailing wage law, the penalties are extraordinary. The contractor is not only liable for the difference between what he paid and the prevailing wage rate including supplements and can be liable for an additional 16% interest and 25% penalty.

Public Work-Definition

Generally everyone has a sense of what a public works project is as distinguished from a commercial project. However, there are grey areas which this article will not explore. Note that work performed for the Port Authority is not considered "Public Work". Also note that a municipal or state public project that is partially or federally funded will be subject to the Davis-Bacon Act and not Labor Law §220. The wage rates for these federally funded projects



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are substantially lower than for projects covered by NY State law and Davis-Bacon wage rates are fixed during the contract in contrast to New York State prevailing wages which are increased every July 1st.

Prohibition from Bidding Public Work and Enforcement

The New York State Labor Law prohibits contractors who have been debarred for violations from bidding on or being awarded public work projects for five years. A contractor is debarred when two final determinations have been rendered within any consecutive six-year period that such entity has willfully failed to pay the prevailing rate, or one final determination has been rendered involving the falsification of payroll records or the kickback of wages and/or supplements. The NYS Commissioner of Labor enforces the prevailing wage requirements on all projects let by the State or its political subdivisions with the exception of projects let by the City of New York. For New York City public work projects, the New York City Comptroller is responsible for the enforcement.

Conflict between Classification of Workers (Jurisdictional Disputes)

There may be situations when a laborer is “covered” by two unions due to the nature of his work. For example, a contractor was required to pay prevailing sheet metal worker’s wages rather than a roofer’s wage for work involving installation of copper roofing. There are several different procedures for resolving these jurisdictional disputes.

Hours of Work

No laborer employed by a contractor in public work project shall be permitted to work more than eight hours in any day or more than five days in any week, except in cases of extraordinary emergency. However, the specific overtime requirements for each trade or occupation on a public work project may differ. The specific overtime requirements for each trade are contained in the prevailing rate schedules issued for public work projects. For example, a worker for a contractor cannot work four 10-hour days without being paid overtime.

Record Keeping Requirements

Every contractor and their subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under penalty of perjury. Payrolls must be maintained for at least three (3) years from the project’s date of completion. At a minimum, payrolls must show the following information for each person employed on a public work project: Name, Classification(s) in which the worker was employed, Hourly wage rate(s) paid, Supplements paid or provided, Daily and weekly number of hours worked in

each classification.

IMPORTANT - A prime contractor is responsible for any underpayments of prevailing wages or supplements by any of its subcontractors.

Foremen, Independent Contractors and Apprentices

Foremen or supervisors are required to be paid prevailing wages when they are “working with the tools”. Supervisors and/or foremen working with tools must be paid at the prevailing rate for their trade. When strictly overseeing workers, supervisors or foremen are not covered by the prevailing rate requirements. As a rough guide, a foreman must work less than 20% to 30% of his time with tools to be supervisory for purposes of the State not determining the contractor willfully violated the law.

Legitimate independent contractors are excluded from coverage under the prevailing wage law. As an example, a contractor cannot turn thirty (30) employees into thirty (30) independent contractors to undermine the law. Some guidelines are if the “independent contractor” has a signed contract with contractor, previously worked as a subcontractor on a public works project, has its own employees and carries its own insurance.

No employee shall be deemed to be an apprentice unless the employee is individually registered in an approved apprenticeship program. Trainees or helpers or pre-apprentices can only be used on a public work project if they are paid at the journeyworker rate. Only registered apprentices can be paid less than the journeyworker rates. •

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People & The Workplace

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Navigating Through The Benefits and Pitfalls of Social Media in the Workplace

Social media such as Facebook, Linked In and a multitude of blog sites are used by individuals of all ages and professional backgrounds. For the businesses and trades, it is a great way to gain exposure to a vast network of potential clients, customers, vendors and employees. It is estimated that three in four U.S. workers engage in the personal use of social media while at work. Such employee use of social media affords employers even greater exposure to promote their business.

Another benefit to using social media is that Employers are able to mine valuable information on the character of potential or existing employees to be used in their assessments for hiring or terminating them. However, this benefit is still subject to legal consequences.

More cause for concern is that these communication

mediums reach vast audiences instantly and statements good or bad, remain forever in public view. Regulating the content of these communications is more difficult for employers than e-mail which reaches a finite, smaller and traceable number of recipients.

Employers' Use Of Social Media

An increasing number of employers are using social media such as Facebook and Linked In for recruiting purposes. While professional websites such as Linked In are more likely to have users who are mindful of what they say, other social sites are prone to have users who may not have anticipated what they said could have consequences at work.

Under the Fair Credit Reporting Act, employers are well within their rights to engage companies that perform background checks on potential hires. That is, employers are able to gather information on what a person or potential employee has stated on social sites that may reflect negatively on that individual's character. An individual's "character" assessment based on what he/she has said in public is fair game for considering whether or not that person is well-suited for a particular position.

While this may provide an advantage for the employer

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in screening potential employees, how the employer reacts to this information may have litigious consequences. The existing anti-discrimination and related laws still apply. Just because an employer did not act on what the interviewee stated or disclosed at an interview, may not justify unlawful discrimination based upon a background check.

Employees' Use Of Social Media While On And Off Duty

The use of social media by employees at work can be a great way for employers to gain exposure to an ever expanding network of potential clients, vendors and employees. However, the pitfalls of the unregulated use of social media at work may be loss of productivity and damage to the company's reputation. Some employees may believe that they have an unlimited right to free speech even at the workplace. For these reasons, it is imperative that employers set their policies in writing and educate their employees about proper and improper communications before problems arise.

Employees do not have an unfettered right to disparage the company. While the National Labor Relations Act (NLRA) protects concerted activity concerning the terms and conditions of their employment with the employer, in recent Board opinions, the NLRA did not protect gripes or insults about particular managers in the workplace that were communicated to non fellow – employees. Such statements may be defamatory against an individual and/or the company. If employees are made aware of that distinction, they are more likely to be cautious with what they say and where they say it. In turn, there would be less incidents of damage to the employer's reputation which may be difficult to rehabilitate once the statements have been disseminated through social media.

Yet another problematic issue for employees in the use of social media is where employees post comments on blogs. Every employee should be made aware that disclosure of who their employer is and the use of un-

lawful or offensive language, is not representative of the employer and such conduct will not be tolerated. Employees should also be advised through company policy that the use of or reference to the company site, logos or pictures is prohibited unless prior permission was granted by the employer. These policies, prohibitions and consequences should be clear, reasonable and consistently enforced. Otherwise, the employer may face charges of discrimination for inconsistent enforcement or meting out unreasonable and harsh penalties.

Educating the work force serves both the employer and employee. Communication between the employer and its employees is fundamental to a successful business. Written policies made readily available to every employee sets a strong foundation for businesses to succeed and prosper. We can help you set policies in writing and provide staff training to meet your specific business needs. I may be reached at ABPearl@PMPHR.com.


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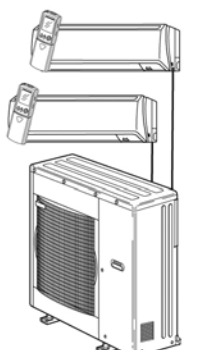
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You've Got Questions? We've Got Answers.

By Kelly Hiner/Enterprise Fleet Management

Keeping up to date on maintenance intervals and checks will not only keep your vehicles running smoothly, costly surprises and unexpected down time for emergency repairs can be minimized. Because sometimes the most commonly asked questions are not easily found in the owner's manual, we've compiled a short list of answers to the most frequently asked questions about vehicles and vehicle maintenance, with answers provided by the ASE-certified technicians at Enterprise Fleet Management.

How can I make my tires last longer?

Properly maintaining your tires including pressure, alignment and rotation is the key to making them last longer. Try to check tire pressure at least once a month and before any long road trips. If possible, have your tires rotated in conjunction with every other oil change. Tire rotation is important and can extend the life of the tires by as much as 20 percent. Another factor that can affect the life of your tire is driving conditions such as on or off road, frequent turns, rapid acceleration and hard braking. Also, overloading the vehicle can cause extra wear on your tires as well.



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Can I extend my oil change intervals by switching to synthetic oil?

Even with synthetic oils, you need to change your oil at or before the manufacturer's recommended interval. It is important to follow these intervals for preventive maintenance set by the manufacturer to ensure that the vehicle's warranty stays valid and the vehicle keeps running well.

What causes the foul odor when I turn on my air conditioner?

This is especially likely in humid climates. The most common cause for the air conditioner to emit a foul odor is that the evaporator case has collected moisture due to condensation. The mold and mildew left behind by the moisture causes the odor. In most cases, you can spray Lysol or a similar product into the system's air intake (usually located at the base of the windshield) with the blower on high to kill the odor-causing mold. Or, if the problem is more drastic, you may have to have a professional automotive technician disinfect the evaporator case.

WELCOME NEW MEMBERS

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Do I need to take my vehicle in for a tune-up at 30,000 miles?

At 30,000 miles we do not recommend replacing your vehicle's spark plugs. Most of today's vehicles have engines equipped with platinum tipped spark plugs that do not require replacement for up to 100,000 miles. The only instance you would consider replacing these spark plugs prior to 100,000 miles is if you are experiencing driveability problems, poor fuel mileage or similar problems. Consult your owner's manual for the recommended tune-up interval.

Why do the brakes on some vehicles wear out more rapidly than others?

There are several factors that can contribute to brake wear. A major factor is the quality of material used to make the brake pads. This depends on the make and model of the vehicle. Like the tires, the wear on the brakes is also affected by the driving conditions in which they are used and the load being carried. Whether or not they are used in the city, on the highway, or in a hilly or flat area makes a big difference on how quickly the brake pads will wear out. Driving habits have significant impact. The more stops the driver makes and, even more importantly, the more quick or sudden stops a driver makes, the more wear there will be on the brakes.

How often do filters need to be changed?

The filters that keep your engine clean and running smoothly should be examined and changed, if necessary. Engine oil filters should be replaced every 5,000 to 6,000 miles along with an oil change. Air filters should typically be inspected every 15,000 to 20,000 miles and changed as needed. In situations where vehicles are operating in extremely dusty conditions, the filters should be checked daily or weekly and replaced more frequently. The fuel filter should be replaced every 30,000 miles for gasoline engines and every 12,000 to 15,000 miles for diesel engines. Finally, the automatic transmission filter and fluid should be replaced at 50,000 miles or as recommended by manufacturer. If your vehicle is pulling a trailer, carrying heavy loads or doing a lot of stop-and-go driving, it may be necessary to service the transmission more frequently, such as 30,000 mile intervals, because transmissions in these situations can develop excess heat.

Finally, remember always to pay close attention to the manufacturer's warranty information in the owner's manual. Failing to adhere to specific guidelines established by the manufacturer may prevent your repairs from being covered by warranty.

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.

Payment Bonds and the City of New York

In the past, I have written various articles discussing the importance of knowing whether a payment bond has been procured for a particular construction project. Many times it is the difference between getting paid and not getting paid.

Every public project in excess of \$200,000.00 requires a payment and performance bond. No exceptions to the rule are permitted.

Unfortunately, the City of New York has unilaterally decided to substitute the mandatory requirement for a payment bond by incorporating its own contractual payment guarantee in the prime contract. The terms of the payment guarantee are more stringent than the requirements needed for a payment bond claim.

For instance, in a payment bond claim, a subcontractor is not obligated to serve notice upon the general contractor or construction manager if it is in a direct contract with them. Yet, the payment guarantee requires notice of any claim within four (4) months of non-payment. This time frame is a significant change from the payment bond requirements. If you do not meet the time frame, you may be barred from bringing a claim against the City of New York under the payment guarantee.

Worse, unless and until the City of New York denies

your claim, you are barred from filing a Mechanics Lien or instituting legal action against the City of New York for payment. According to the contract with the City of New York, the filing of a lien or the institution of a lawsuit will automatically forfeit any right to making a claim on the payment guarantee.

Luckily, the courts have been reluctant to enforce the stringent terms incorporated in the City of New York's contract which replace the payment bond requirements. Recently, the Court held that a subcontractor may pursue a claim against the City of New York for all sums due, notwithstanding the additional requirements and restrictions set forth in the City of New York's contract.

It is clear, therefore, that the City of New York is unilaterally attempting to disregard the law to the detriment of the subcontractors and suppliers. It is imperative that you understand the terms and conditions of every contract and pursue your remedies when they are available to you.

Never let your lien time run out!!

For a free copy of a pamphlet pertaining to mechanics 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. •

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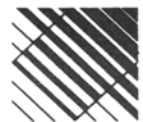
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