

IN THIS ISSUE...

- 1 President's Message
- 1 Casino Night Lineup
- 4 Editor's Notes
- 6 Seeing Red All Over
- 7 ACCA Hydronics Council Is Now Largest
- 7 Night Out With Mets
- 8 Pearl - NLRB Rules Boost Unions
- 9 ACCA National New Directors
- 10 Enterprise - Good Driving - Good Business
- 11 ACCA's New Comfortool on R-22 Pricing
- 14 Zisholtz - Handling Cost Increases

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APRIL 2012

President's Message

March was a very busy month for ACCA. I and several other members from the New York chapter attended the ACCA national convention in Las Vegas. I had the opportunity to meet contractors and vendors throughout the country while attending several learning labs during the convention. My goal for a trip like this is to obtain as many key ideas as I can to bring back to my company. I am always searching for the "WOW" factor. This was my first ACCA convention and it was so resourceful that I would attend more in the future.



Michael Newman

Turn to President's Message on page 3

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PRESIDENT'S MESSAGE *Continued from page 1*

The program for the March meeting was very simple and can be summed up in one sentence. Show me my money. Marvin L. Schechter Esq. and Michael D. Ganz Esq. with the law firm of Tunstead & Schechter discussed collecting aged receivables and resolution of disputes through mediation, arbitration and litigation. The meeting was so successful that we had to get more tables to fill the room. I would like to thank Marvin and Michael for an excellent presentation!

Please mark on your calendar April 5th at Westbury Manor for the ACCA casino night. It is a night filled with food, drinks, fun and prizes!! Feel free to bring your spouses or significant others. It is a fun night out!!

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

This was an extraordinarily mild winter with one small snow event this year. Many contractors complained without excessive wear and tear due to extreme temperature, there were less mechanical breakdowns and emergency replacements. On the converse side, think of the productivity that was achieved because trucks weren't getting stuck in the snow or into accidents. Manpower was not being held up from getting to work or to the jobs. Down time with buried vehicles and accident repairs were non-existent.

With recent warm temperatures in March, it has made consumers begin to think they better jump on air conditioning

decisions. Waiting for tax money may be too late with 70 degree temperatures in March. The normal influx of tax refunds usually fuels pre-season purchases of new systems.....but this year with no snow and early warm days, many wonder what kind of summer is approaching. Interestingly enough, a client of mine called to say with fuel prices approaching \$5 a gallon, he would be driving less this summer and staying home more. Therefore, there was no way he would sweat all summer in his house.

A double price increase for contractors at two different fronts has occurred recently. The price of gas has rocketed 20% to almost \$5 per gallon causing the cost of trucks on the road to become very expensive to get from point A to point B. In addition, R-22 refrigerant per cylinder cost has risen dramatically to over \$300 per 30 LB container. Some may need an armed guard to protect these assets on board of all trucks. Watching the per pound distribution of refrigerant is going to become a full time job or contractors will lose their shirts if not tracked meticulously. (ACCA has published a new *Comfortool* on this. See page 11.)

The changing landscape and hot topics are rising quickly. It's hard to imagine missing a meeting with us here at ACCA New York. We discuss relevant and pertinent topics that will effect your business. — *Anthony N. Carbone*

Check the ACCA national website, www.acca.org, regularly for up-to-date information on our industry.



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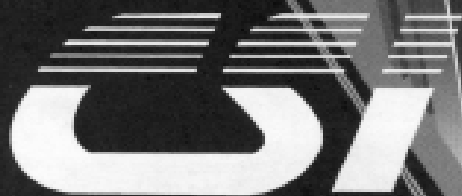
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Seeing Red

All Over *By John Owens/C&T magazine*

Face it, many of us who've been nabbed by a red-light camera and had to fork over \$50 or more have wondered whether safety or raising cash for local governments is the real purpose of these photographic robocops.

Yes, we know that research by The Insurance Institute for Highway Safety shows that red-light cameras save lives. But I haven't heard drivers cheer as authorities around the state install more cameras and lobby for legislation to increase their number even further.

In fact, I think I detected chuckles last year when the Los Angeles City Council voted unanimously to shut down the city's seven-year-old red-light-camera program. A study found that their cameras were installed at intersections based not on their ability to prevent crashes, but on their revenue potential. Ironically, wording of the original law made enforcement and fine collection difficult, putting the program in, well, the red for more than \$1 million a year. Cities in California's Orange County and elsewhere in the country also have banned the cameras.

I think it's fair to say that red-light cameras have become one of America's most contentious traffic issues.

Amid this controversy, Lucius Riccio has a big idea: Install

red-light cameras everywhere.

Riccio was a red-light-camera pioneer. New York City's first—some say the country's first—red-light cameras were put into operation while he was Commissioner of Transportation under Mayor David Dinkins from 1990-3.

"Right now, we are doing this in precisely the wrong way," says Riccio, who these days uses his Ph.D. in Engineering to teach at Columbia University and is creating a stir among traffic-safety types with his paper "The Case for Red-Light Cameras Everywhere! And a Plan for Fair Enforcement."

With only a scattering of cameras, enforcement of red-light running is literally spotty.

"We encourage people to break the law by not enforcing it all the time," he says. "But people won't break the law if they know they are going to be caught and punished."

"The idea isn't to give a lot of tickets," he says. "It's to get people to behave properly all the time and to save lives."

Riccio would start by saturating the intersections of one neighborhood with red-light cameras. ("Put up big signs and let everyone know about the program," he says.) Then, record every violation and contact each violator as quickly as possible. (Currently, it can take weeks, even months, to receive a notice in the mail.)

But instead of a flat \$50 fine, Riccio would use a tiered approach, with first time violators facing a nominal fine, say \$10. A second violation might go to \$50. Habitual offenders would pay \$100 or more each time.

"This fine schedule would punish only true repeat offenders," says Riccio. "Someone who makes a one-time mistake would see the \$10 fine as fair notification and wouldn't resent it. Also, as a reward for safe driving, the violation count could be reset for



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those who get no more than one violation in a two-year period”

With fines levied this way, drivers would see the cameras as a safety program, not a government fund-raiser, he insists.

Eventually, the program would expand to cover an entire city or county.

“We need to take a more aggressive approach to reducing driving deaths and injuries,” says Riccio. “We need to get everyone to comply with all regulations.”

Safety? Sure. But there’s a strong whiff of Big Brother in Riccio’s plan.

“Driving is a privilege, not a right. You shouldn’t have the freedom to drive like an idiot,” he counters. “You don’t have a right to endanger my family.”

Riccio makes a good case. But if his idea ever gets traction, it will be due to a courageous politician, not the popular demand of drivers. •

ACCA Council Now Largest Hydronics Contracting Organization

Formed only five months ago, the ACCA Radiant & Hydronics Council (RHC) has attained a membership of more than 500 contracting businesses, making it the largest hydronics contracting organization in the country.

The RHC is the first ACCA Council representing a specific market segment within the industry. As a “group within a group,” the RHC is led by a group of volunteer leaders and provides special benefits and resources for its member companies. Companies must be ACCA members to participate in the RHC.

“The hydronics market segment was in need of, and ready for, a strong contractor-led organization to meet our unique needs,” said Dan Foley, of Foley Mechanical and RHC Advisory Committee Chairman. “ACCA’s background working for and with contractors to build a better, more professional industry made them the right organization to facilitate the RHC. It’s evident that the RHC will continue to grow and flourish under the ACCA umbrella.”

“We are extremely pleased with the number of contractors we have on board with the RHC,” said Paul T. Stalknecht, ACCA president and CEO. “We knew there was a need for a contractor-led organization that was focused on hydronics when we started the RHC, and the response we’ve seen shows us that we were on the right track. The RHC is just getting started, with new training materials, products and events underway for 2012.”

The Hydronics Roundtable, a new two-day conference aimed at hydronics professionals and sponsored by the RHC, will be held October 9 & 10 in Austin, Texas. The conference will feature a variety of learning labs led by leading hydronics contractors.

You can learn more about RHC at www.acca.org/hydronics or contact Emily Rogers at emily.rogers@acca.org or 703-824-8858. •



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New NLRB Rules Give Unions a Boost

April Fool's Day is the first day of April, but companies may find they look awfully foolish on April 30th, the day Union's receive two gifts from the NLRB.

Employers could be vulnerable to a surge of sudden and swift organization efforts, finding themselves unable to respond effectively.

April 30th is the date when employers must post an NLRB notice advising employees of, among other things, their right to form and join a Union. That notice, which has specific content, size, and language requirements (as detailed in earlier PMP newsletters), can be downloaded at NLRB.gov. That posting may spur employees - especially disgruntled employees - into action. And we are certain the Unions will be out in force encouraging employees to exercise their rights. Additionally, the road to a successful Union campaign becomes much smoother on the same date.

Election procedure modifications take effect April 30th, and they will substantially reduce the time available for a company to react to any organization attempt. Once a Union has cards signed by at least 30% of the unit of employees they seek to represent, they can file a petition and anticipate a swift process, with elections expected to be held in about two to three weeks. Many of the matters which had to be resolved prior to holding an election in the past - often through time consuming litigation - will be put off for resolution (if necessary) after the election.

This gives Unions the advantage of filing the petition when they deem their momentum accelerating, and severely impeding management's window of opportunity to develop and present its own campaign.

Employers have just two months to prepare for the effects of the new rules. During that time employers should:

Self-diagnose areas of vulnerability. Audit your company

to uncover and cure problems a Union may take advantage of. This includes not only your wage and benefit structure, but your compliance with workplace rules and regulations, as well as the way in which policies and procedures are communicated and enforced. When an employee believes he or she is treated disrespectfully or unfairly - justified or not - that becomes a powerful springboard for a Union.

Educate supervisors in the important skills - including communication skills - they need to manage effectively and in their rights and their obligations under labor and employment laws. Supervisors must recognize and react to morale problems and unionization attempts swiftly and correctly.

Institute regular management meetings so that information which needs to be known gets communicated in all directions.

Establish and enforce appropriate workplace rules (e.g. about use of email, bulletin boards, and solicitations) before a Union is on the scene to ensure that appropriate restrictions regarding organization attempts are in place, along with rules to help management maintain its ability to manage efficiently.

Have a campaign outline in place so there can be a quick and effective response to Union activity.

2011 EEOC Employment Discrimination Charges

The U.S. Equal Employment Opportunity Commission announced that it received a record 99,947 employment discrimination charges and obtained \$455.6 million in settlements in FY 2011.

The record charges were broken out in the following areas:

- Retaliation, under all statutes enforced by EEOC, were the most numerous at 37.4 percent;
- Race charges at 35.4 percent (a decline from the previous year);

The three other most frequently-cited discrimination allegations were based on:

- Sex (28,534 charges);
- Disability (25,742 charges);
- Age (23,465 charges).

As always, should you have any question concerning the contents of this article, please contact me at ABPearl@pmpHR.com.



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ACCA National Installs New 2012-13 Board of Directors

The Air Conditioning Contractors of America (ACCA), has announced the installation of its 2012-13 Board of Directors and officers. The board was installed at ACCA's 44th Annual Conference and Indoor Air Expo in Las Vegas, NV.

Last year's Chairman, Joe Nichter of Comfort Systems USA Southwest in Chandler, Ariz., handed the leadership role to incoming Chairman Laura DiFilippo of DiFilippo's Service Company in Paoli, Pa. DiFilippo will serve a one-year term.

"It was another exciting, but busy year, and with Joe Nichter's leadership, ACCA has been able to overcome the challenges and move forward on its path of success," says Paul T. Stalknecht, president and CEO of ACCA. "Laura DiFilippo now brings a new energy and outlook to continue the association down the path that has been set, while adding her own goals. The members can be confident that ACCA is prepared for another productive and successful year."

Serving as senior vice chairman this year is Bobby Ring, Meyer & Depew Co., Inc. of Kenilworth, N.J. and Secretary/Treasurer for the coming year is Dave Kyle, Trademasters Service Corp., Newington, VA. Other vice chairmen are

Rich Imfeld, IC Refrigeration, Ceres, Calif.; Don Langston, Aire Rite Air Conditioning, Huntington Beach, Calif.; and Phil London, Thermal Concepts, Inc., Davie, Fla. Nichter will serve this year as immediate past chairman.

Directors not serving on the Executive Committee are: Jerry Bosworth, Bosworth Air Conditioning, Galveston, Texas; Tommy Castellano, Castellano Air Conditioning Service, Tampa, Fla.; Ellis Guiles, TAG Mechanical Systems, Inc., Syracuse, NY; Paul Hobaica, Hobaica Services, Inc., Phoenix, Ariz.; Steve Lauten, Total Air and Heat Co., Plano, Texas; Gary Marowske, Flame Furnance, Warren, Mich.; Narrissa Rampey, Air Assurance Co., Broken Arrow, Okla.; Steve Schmidt, Frederick Air, Inc., Frederick, MD; Mike Schumacher, Reliable Heating & Cooling, Inc., St. Louis, MO; Matt Todd, Entek Corporation, Longview, Wash.; and Michael Weber, Thomas & Galbraith Heating and Cooling, Inc., Cincinnati, Ohio.

ACCA thanks for their service the members who left the board this year: John Sedine, Engineered Heating & Cooling, Walker, Mich.; Bob Champe, Shearer Heating & Air Conditioning Inc., Washington, Pa.; Don Millard, Bel Red Energy Solutions, Mukilteo, Wash.; Art Pickett, Royal Air Systems Inc., North Redding, Mass.; and Mark Swebston, Atlas Butler Heating & Cooling, Columbus, Ohio.

This board will serve until next year's annual conference, scheduled for February 27 – March 2, 2013, in Orlando, Fla. •



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Good Driving Is Good Business

By Kelly Hiner, *Enterprise Fleet Management*

Businesses that have a fleet of vehicles know that good drivers hold the keys to saving money and increasing productivity. In addition to the obvious savings that result from having fewer traffic tickets, vehicle collisions, personal injuries and worker compensation claims, good driving habits can conserve fuel and reduce the frequency and expense of repairs caused by excessive wear and tear on a vehicle. But, knowing how to develop, implement and enforce an effective driver safety program can be a challenge, especially for companies that depend on having drivers on the job instead of attending classes.

Working with a professional fleet management company can streamline the driver training process. It can also ensure that all of the necessary factors are taken into consideration, from developing a written safety policy that's tailored to the company's needs to recommending options for driver training courses.

Because good driving is good business it's important to begin with a written fleet safety policy, and good examples are easy to find on the Internet. According to *Automotive Fleet* magazine, an excellent source of information on this topic, the content of the policy should cover a number of areas:

- Introduction, including general policy statement
- Basic driver policy, including cell phones and seat belts
- Driver education and training
- Accident reporting, classification, and consequences
- Violation classification, points, and consequences
- Safety reward program (if applicable)
- Motor vehicle records (MVRs) checks
- Driver sign-off

In addition, for businesses with fleet operations in multiple states, cities and counties, it's important for the policy to specifically address differences in laws covering everything from hands-free cell phone use to personal versus commercial driver's license requirements.

Featuring high-impact graphics and audio to keep the user engaged, a variety of interactive driver education and training courses are available online, making it easy and convenient for drivers to log on and complete lesson modules that may be specifically selected to focus on issues for individual drivers. Courses that include quizzes at key intervals and tests at the end of a module enable business managers to monitor their drivers' progress and scores.

As in every business situation, a fleet safety policy is only as good as management's commitment to enforcing rules, changing behaviors and rewarding accomplishments. The most important factor is to develop an organizational standard for safe driving and commit to enforcing those standards for every driver without exception.

Although it's not necessary to reward drivers for maintaining a good driving record, a rewards program that



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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. •



For More Information Contact Lennox Industries at 973-263-8185

ACCA Publishes ComforTool On R-22 Pricing

ACCA published its latest ComforTool for ACCA members to help educate customers. The newest addition to this series of flyers, "Why Is The Price Of R-22 Refrigerant So High?" explains the reason for the recent jump in the price of R-22 refrigerant and what may happen in the future.

"The recent spike in the price of R-22 has caused a lot of frustration and confusion among contractors and their customers," says Paul T. Stalknecht, ACCA president and CEO. "This ComforTool serves as an explanation of what is going on in the market and how the price of the refrigerant is out of the control of the contractors. We hope this will help our members deal with some of the push back they are getting from their customers in response to the price increases."

According to the association, recent actions by the U.S. Environmental Protection Agency regarding HCFCs have led to uncertainty about the availability of R-22 in the coming months and years. In response, contractors have noticed a ramp-up in the chatter about R-22 and price changes as some manufacturers and importers have amended their sales policies. •

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Statement From Stuart S. Zisholtz, Esq.

Handling Material Cost Increases

The construction industry is presently threatened with an increase in materials including concrete, gypsum, lumber and fuel prices. Contractors are caught in a squeeze as to whether to continue performing the work on a project and lose money or terminate the contract and risk possible legal ramifications.

The best strategy to avoid the severe consequences associated with increased material prices when dealing with a set contract price is to address the time the bid is submitted. This includes incorporating a time period for the acceptance of your bid or locking in the prices from suppliers at the time your bid is submitted.

Once the contract is executed, it is difficult to request a change order or seek an increase in the contract price due to material prices increasing in costs. Under certain circumstances, where events are outside the control of all parties, a change order for increased costs can be requested. Most of the time, a contract permits a change order for unforeseen acts of nature or for acts of God but, generally, not economic events.

A delay or inability to obtain building materials is not a

basis for an extra. The contractor will be required to purchase the materials and, if possible, pursue a delay claim or some other claim at the end of the project.

If possible, the contractor can request an escalation clause be inserted into the contract to address price escalation. More likely than not, however, an owner will not agree to the terms of a price escalation clause since it exposes the owner to unnecessary costs above and beyond the agreed upon contract sum.

The worst scenario for the contractor would be to abandon the work due to the increase cost in material prices. This will result in the owner pursuing a claim against the contractor for all additional costs incurred in completing the contractor's work above the contract sum.

Never let your lien time run out!

For a free copy of our new Fourth Edition pamphlet pertaining to mechanic's liens and payment bonds, 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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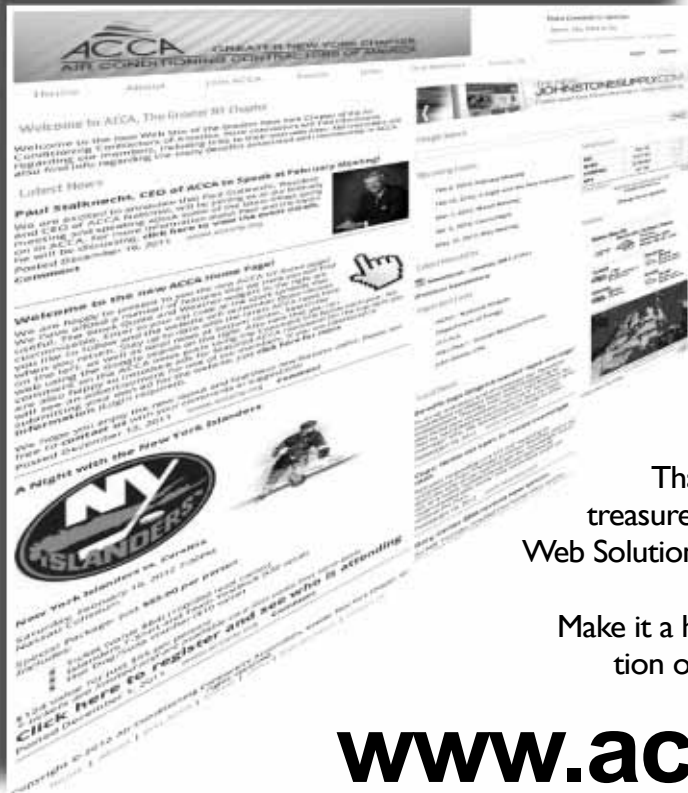
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