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Greater New York Contractors' NEWS



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APRIL 2015

President's Message



Marc Soffler

As we approach the busy days of summer, it's important that we encourage our employees to remain COOL when it comes to taking care of customers. We all know that warm weather tends to create stress for both customers and staff. It is important to have a conversation with your staff and technicians to discuss how they represent your company and that the experience they provide to the customer has a tremendous impact on the success of the business. A positive customer experience is the key to any prosperous service business.

As many of you are already aware,
Turn to President's Message on page 4

Membership Meeting Thursday, June 4th



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Editor's Notes

by Anthony N. Carbone

This year's air conditioning season began in the very beginning of May, unlike last year when it began on Memorial Day. Last year was the summer that wasn't. Most evenings were cool with no humidity. The 90 degree days were non-existent so many of the outdoor units that should have failed due to usage and duress never occurred. So this year's early start brought about a needed overflow of calls with many cooling failures.

The past two winters were excessively brutal, and outdoor equipment took quite the beatings. Upon Spring 2015 start-ups, many units saw their demise. Some equipment manufacturers are running out of retro-fit R-22 heat-pump condensers and it is driving the prices of unitary equipment up.

The economy seems to be supporting the data from Home Depot and Lowes that sales are up by 30%. Evidently homeowners are enhancing and investing in their homes.

Our monthly ACCA events are getting huge attendance due to the quality and relevance of our programs. Be sure to join us and find out what is happening in our industry.

June 4th is our cocktail party at City Cellars in Westbury. . . weather permitting we will be in the patio lounge!!!

PRESIDENT'S MESSAGE *Continued from page 1*

new changes for our organization will take place in the months ahead. The Board of Directors and I are meeting on a regular basis to work toward creating a new identity and direction for our organization. We will continue to provide informative content to our members and have many exciting topics planned for the upcoming year. We will also be adding new programming to our educational workshops that are geared toward providing both technical and business training for our employees.

I would like to thank everyone who attended the April meeting at Vivaldi Restaurant. It was a beautiful night overlooking the Throgs Neck Bridge and Long Island Sound. I would also like to offer a special thanks to Jocelyn R. Nager for her presentation on credit and collection policies.

During the summer months we do not hold monthly meetings, but instead we have many exciting social events planned. Our Cocktail Party on June 4th City Cellar will be a great opportunity to network with other members of our organization. On June 12th we have our annual Baseball Outing at Citi Field, which is always a fun night for employees and their families. In August, we will host our 37th Annual Golf Outing at The Village Club at Lake Success. Our regular monthly meeting will resume in September. Please visit our website (www.accany.org) on a regular basis to stay informed about upcoming events. —*Marc Soffler*

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meeting on June 4th.



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Pro-Geothermal Heat Pump Bills Passed In State Senate

From John Ottaviano

The New York State Senate passed two pro-geothermal heat pump bills on April 22, 2015, in honor of Earth Day!

Bill S2905-2015 establishes a tax credit for the purchase and installation of geothermal energy systems

Bill S4279-2015 provides an exemption for the sale and installation of residential and commercial geothermal heat pump systems equipment

These bills support consumers and the GHP industry by helping defray the higher installation costs of geothermal heat pump (GHP) systems. They heat and cool buildings without fossil fuel combustion and yet are the most efficient heating and cooling system currently available. GHPs harvest the sun's heat stored in the ground to heat and cool buildings and to create hot water. They eliminate oil, gas and propane heating bills, while also reducing electricity usage for cooling during hot summer months (peak demand).

For more information about this technology and its benefits, please read further. I have also attached a letter of support you can use.

Both bills were delivered to the Assembly, where they are awaiting approval from the Ways & Means Committee. The Assembly Bills are:

Bill A2177A establishes a tax credit for the purchase and installation of geothermal energy systems

Bill A5508 provides an exemption for the sale and installation of residential and commercial geothermal heat pump systems equipment

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If you are interested in seeing these bills passed by the Assembly and signed by Governor Cuomo, then please write to your State Assembly Member and Members of the Ways & Means Committee. Listed on the following page are the Assembly members.

Wins of Geothermal Heat Pump Legislation

Legislation supporting the growth of geothermal heat pump (GHP) systems would create multiple-wins for New York State, its geothermal industry and customers, as well as New Yorkers in general.

1. It will make GHP systems more affordable and thus more economically attractive to all. Since geothermal heating and cooling is more efficient than conventional (oil, natural gas and electric) systems, it uses less energy.
2. As more residential and commercial property owners choose geothermal heat pumps not only will their utility bills be lower, but this increased usage will help to reduce the peak load demand on our electric grid. This demand on the grid is seen as a bottleneck in the overall development of the new, New York State Smart Grid.
3. Reducing peak demand in summer and adding to the electric load in winter increases the utilization of power plants when their current usage is otherwise low. This evening-out of use can help to eventually reduce electricity costs for all ratepayers in New York State.
4. It is estimated that New York ratepayers could save \$2 billion a year by increasing our (nonpeak) electricity utilization from 51% to 59% of our power plant capacity. This is based on projections from the Department of Public Service.
5. As similar legislation has aided the solar industry, this same strategy will allow our burgeoning New York State GHP industry to become both more competitively priced and profitable. This will help geothermal engineers, installers, designers, service providers, equipment distributors and manufacturers throughout New York State, such as me.
6. As the implementation of GHP technology grows so will the demand for professional expertise and skilled labor. This provides more well-paying jobs to help grow our economy. These jobs cannot be outsourced.
7. At the same time, this technology's many benefits will help New York State meet its renewable energy and energy efficiency goals ("80 by 50") as outlined in Executive Order # 88 and the REV initiative.
8. The final winner will be New York State's air quality. As more consumers switch to non-combustion heating technologies such as GHPs, smoke and particulate matter in our air will decrease. Cleaner air helps our most vulnerable residents—young children, the elderly and anyone with a respiratory condition—to breathe easier.

SUGGESTED LETTER

Re: S02905/A02177a Geothermal Tax Credit, S04279/A05508 Geothermal Sales Tax Exemption

Dear Senator/Assembly Member -----

To help New Yorkers with their energy bills, I am seeking your support for two bills that would help defray the higher installation costs of geothermal heat pump (GHP) systems. GHPs heat and cool buildings without fossil fuel combustion.

Similar bills have been passed in support of solar PV equipment systems, leading to their growth and popularity. Solar PV systems use light from the sun falling on solar panels to generate electricity and cut electric bills.

GHP systems harvest the sun's heat stored in the ground to heat and cool buildings and to create hot water. GHP systems eliminate oil, gas and propane heating bills, while also reducing electricity usage for cooling during hot summer months (peak demand).

In many cases the total installation costs of solar PV and GHP systems are similar. For example, upstate typical solar PV and GHP systems are in the \$20-\$30,000 range. Costs downstate and on Long Island are typically higher.

In the example of a \$27,000 system in Western NY, the federal government incentivizes both solar PV and GHPs with a 30% income tax credit. This brings net costs to \$18,900 for either system.

For the solar PV system, NY State provides a 25% income tax credit up to \$5,000 and a sales tax exemption worth \$500 to \$1,000. Furthermore, NYSERDA now offers rebates worth several thousand dollars (\$6,500 in a recent quote for a 6.5kW residential system). This reduces the cost of the PV system to \$6,675.

GHP systems currently receive no NYS income tax credit nor sales tax exemption, and seldom are granted utility rebates. The GHP customer is out-of-pocket \$18,900 for a similarly-priced, similarly renewable energy heating and cooling system.

Both the Solar PV and GHPs benefit New Yorkers—by cutting energy bills for the owners, by reducing greenhouse gas emissions, by creating local jobs, and in several other ways. GHP systems are particularly helpful in:

- ending on-site fossil fuel burning for heating and hot water
- eliminating expensive and volatile fossil fuel bills for oil, gas and propane
- cutting electricity use for cooling and reducing the need to bring dirty, expensive “peaker” power plants online, which can reduce rates for all electric customers
- being available 24/7/365, night and rain or shine
- using the heat stored naturally underground where the temperature is relatively constant
- creating local jobs both to lay the necessary piping in the ground and to install the heat pumps indoors: these jobs cannot be outsourced

Despite these advantages, GHP systems—unlike solar—are not currently being supported by New York State as the great investments they are. Passing the tax credit bill (S02905/A02177a) and the sales tax exemption bill (S04279/A05508) would help correct this oversight. I urge you to become a co-sponsor of each of these bills and to push for their passage this session.

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Past Topic Revisited – *Is Travel Time Compensable?*

The issue of compensation for employee commuting time is especially important to companies involved in commercial and residential air conditioning, gas and heat, plumbing, and electrical work. While some employers may allow employees to take home company vehicles, others may require employees to meet at a fixed location before heading out on the job for the day. Regardless of the practice, companies must ensure they pay employees for all compensable work time.

There has been a recent increase in both federal court wage claims and Department of Labor investigations into failures to pay employees for travel time. In order to avoid costly litigation or audits, companies should understand the difference between compensable and non-compensable travel/commute time in order to implement

and consistently follow a compliant pay policy.

General Travel Time

The general rule under the Portal to Portal Act (“PPA”), is that an employer is not responsible for paying employees for activities such as walking, riding, or traveling to and from the actual place of performance of the employee’s principal activity which he or she is employed to perform. Companies need not pay employees for activities which are preliminary to principal work. In addition, activities which occur subsequent to the time the employee stops his or her principal activities are not compensable.

According to the PPA’s principles, normal travel time from an employee’s home to the place of business is not compensable. If the employee is being called upon to perform work activities from home or in route to the company’s premises, the issue will be the extent of such work and whether they are principal to the employee’s duties. However, even if the employee must carry tools of the trade while commuting, the travel time is still non-compensable. A New York federal court found that city inspectors who commuted with briefcases containing 15 pounds of files were not entitled to compensation for commute time since carrying the files constituted only a minimal burden.

Generally, an employee is not at work, and thus not entitled to compensation, until he or she reaches the work site. However, an important exception to this rule is when employees are required to report to a meeting place before going out on a job. Many companies mandate employees arrive at a first site for work instructions or to receive equipment before heading out to the first actual job site for the day. In this case, compensable work time begins at the meeting place or where the equipment is loaded onboard.

Use of Company’s Vehicle

Certain companies in the air conditioning industry allow employees to take company vans home for the employee’s convenience. Typically, the employee will not drive to the company’s home office each day, but instead will drive directly to the first customer’s location/job site. So long as use of the company’s vehicle is for travel within the normal commuting area for the employer’s business or establishment and the use of the employer’s vehicle is subject to an agreement between the employee and

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employer, travel time will be non-compensable.

In a recent New York federal court case, carpenters, electricians, and cement masons working for the FDNY were not entitled to compensation for commute time between their homes and job locations within the five boroughs. The employees took FDNY vehicles home and also signed an agreement regarding the use of the vehicles. The court also found that employees' daily inspections of the employer's vehicles and weekly fluid checks were not compensable, as they were relatively trivial, non-onerous preliminary preparation and maintenance activities.

We strongly recommend that companies require employees sign an agreement governing the use of a company vehicle. Such an agreement should set the expectation that travel time within the company's normal area is not compensable. Additionally, the agreement should set forth the permitted use of the vehicles, prohibiting personal stops and the transport of passengers during commutes. Lastly, it is important that maintenance and gas be paid for by the company, not the employee.

Travel Time During the Work Day

Once the employee begins the work day, any travel between job sites is work time and is compensable. No matter the time spent by the employee in such travel, he or she must be paid.

How to Protect Your Company

Companies should evaluate their time and compensation policies to ensure compliance with federal and state laws. It is important to have a compliant policy that is clearly communicated to employees so that they have proper expectations regarding what work is compensable. If company vehicles are being used it is important to have a signed agreement governing the vehicle's use. Finally, companies must ensure that non-compensable travel time does not become compensable by requiring the employee to perform labor during that time.

If you need any assistance with regard to this or any other labor or employment matter please contact me at abp@pmpHR.com or (516) 921-3400. •

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**Statement From
Stuart S. Zisholtz, Esq.**

Joint Check Agreement

Within the construction industry, there are various means available to subcontractors and suppliers to collect and receive payment. Many projects require lien waivers, certified payroll reports, signed change orders, etc. Sometimes, subcontractors and suppliers enter into a joint check agreement which allows for funds to flow directly from an owner or a General Contractor.

A joint check is a check issued by one party and made payable to two parties as co-payees. A joint check agreement involves an agreement between an owner and the prime contractor and its first tier subcontractor whereby the two parties agree that the owner will issue all or part of a payment as a joint check payable to the prime contractor and the subcontractor as co-payees.

A joint check agreement usually occurs when there is a certain distrust between the prime contractor and the subcontractor. The subcontractor may have a large account receivable with the prime contractor or was taken for a ride on a prior project with the prime contractor.

Without a formal joint check agreement, the owner cannot pay the subcontractor. If the owner pays the subcontractor, it

could be in breach of its contract with the prime subcontractor. Therefore, it is essential that the joint check agreement be executed prior to payment.

With the proper language protection in the joint check agreement, a subcontractor can protect himself without having numerous sleepless nights.

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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.



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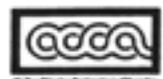


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