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Greater New York Contractors' NEWS



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JULY 2010

President's Message



Anthony N. Carbone

Our networking cocktail party at the Crescent Beach Club was a great success. Even though the forecast was for rain and lightning, John Delillo made some calls and requested a perfect sunset. His calls were successful. It was a great site and a beautiful location overlooking the Long Island Sound. It was nice to see people exchanging ideas and socializing with the Greater

Turn to President's Message on page 3

The Greater New York Contractors' News does not publish in August. Our next meeting will be September 2nd at the Westbury Manor.

*Don't Forget the Chapter's
Night Out With The Mets On*

*Saturday, July 31st, Sponsored in large part by
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*The ACCA 32nd Annual
Golf Outing is on Monday, August 16th at
The Hamlet Golf & Country Club in Commack.*

Register Online At www.accany.org.

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PRESIDENT'S MESSAGE

Continued from page 1

New York Chapter of ACCA.

News was reported in June's ACCA Newsletter regarding the sale of National Grid's Home Energy Services business. It was reported that a sale of the home service business to Home Serve LLC (a London-based company) was made. The installation side of National Grid's Home Energy Service business is being disbanded. The Home Serve LLC company somehow secured a marketing agreement with National Grid to continue to use the name "National Grid Home Energy Services". I believe this is preposterous. Why should a private company have the ability to use the name of the utility (a monopoly) to further their

marketing ambitions by confusing the public. These are very questionable strategies here. I am not sure but since my company is a "National Grid Value Plus Contractor" that has met the criteria to participate as an independent installing contractor, we may choose to use the name of the utility to bolster my position in the marketplace. Something just doesn't seem appropriate in this transaction.

I would like to wish you a healthy, prosperous summer season. The Board of Directors and I appreciate everyone's support of the organization and hope to see you at the Night At The Mets and the Annual ACCA Golf event. The next issue of our newsletter will be in September.

— *Anthony N. Carbone*

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Greater New York Contractors' News is printed monthly by the Greater New York Chapter of ACCA. Questions should be directed to the appropriate director or committee member for assistance. While this newsletter is designed to provide accurate and authoritative information on the subjects covered, the Association is not engaged in rendering legal, accounting, or other professional or

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.

ACCA 32nd Annual Golf Outing

Monday, August 16, 2010



9:00am Registration
9:30 am Breakfast
11:30 am Shotgun Start
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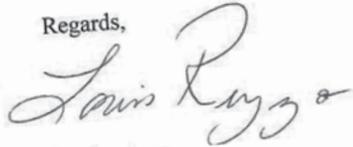
ACCA,

Thank you for supporting the second annual National Grid & LIPA Educational and Energy Efficiency Trade Expo event held on May 19th 2010.

We had more than 650 attendees from various heating, cooling, building, and weatherization trade industries. We also had attendees from various local and state governmental agencies.

This year's Expo event demonstrated again that when organizations come together great accomplishments can be achieved. As a token of our appreciation, National Grid Energy Efficiency is presenting ACCA with a check for \$2,000.00 in recognition of their support.

Regards,



Louis Rizzo
Lead Program Manager
National Grid Energy Efficiency

Checks Enclosed

CC: Anthony Carbone

News From ACCA National

Davis Bacon Requirement Would Make "Building Star" a Non-Starter

A legislative proposal to provide rebates to commercial building owners who make energy efficiency improvements would only be available for work performed by contractors that follow federal Davis-Bacon prevailing wage requirements. ACCA says that the inclusion of this unprecedented expansion of Davis-Bacon turned a good idea into bad legislation.

The bill would create a new, two-year program known as the Building Star Energy Efficiency Rebate Program, along with a new state based loan program to assist in the financing of commercial building retrofits.

Energy efficiency retrofit measures eligible under the Building Star proposal include: building envelope insulation, low slope roof insulation, mechanical insulation, new windows and window screens, and interior and exterior lighting improvements.

For HVAC equipment installations, the Building Star proposal would give rebates for new boilers, furnaces, water heaters, unitary air conditioners and heat pumps, variable speed drives for motors, and qualified chillers.

However, the Building Star program would require that

contractors that perform the work must follow Davis-Bacon prevailing wage rules in order for a job to be eligible for a rebate. ACCA believes this is an unprecedented expansion of Davis-Bacon into the private marketplace.

While prevailing wage rules have been applied to federal public works projects supported through loans, block grants, and revolving funds, in these cases the government was the "owner" of the project. Under Building Star, private building owners seeking to put up their own money for retrofits would have to apply prevailing wage rates that may add wage costs and administrative burdens into their bids.

ACCA and several other organizations have sent a letter to Congress outlining strong concerns with the proposed legislation that has been introduced in the House and is expected to be soon introduced in the Senate. •




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Sunset over Long Island Sound

The Greater New York Chapter's Networking Event on June 3rd





See the photos in full color on the chapter website: www.accany.org

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

Beware Company Issued Cell Phones and Employee Auto Accidents:

In today's work environment employees are working harder and longer than ever. Many employers offer employees personal digital assistant ("PDA"), such as Blackberrys, in order to keep employees connected with clients and the office. However, PDA's can create liabilities for employers. Employers should be aware that when employees misuse their PDA's while driving and get into automobile accidents, the employer could be the one on the hook.

Numerous studies have shown that using a handheld device while driving greatly increases the chance of an accident. The National Safety Council (NCS) has reported that 28% of all crashes involve the use of cell phones, which amounts to almost 1.4 million crashes. In 2003, another study estimated that cell phone distractions caused 2,600 traffic deaths every year, and 330,000 accidents that result in moderate or severe injuries.

Employers should be concerned because in many instances they could be found liable for accidents caused by their employee's negligent behavior. An employee that crashes a vehicle while engaged in company business may open up the employer to liability through the respondeat superior doctrine. This legal doctrine states that an employer is responsible for the actions of employees performed within the course of their employment. Courts will generally look at many details when using the doctrine including whether or not the employers issued the cell phone and whether or not the employee was engaged in company business.

Most importantly, Courts will analyze the guidelines that employers give employees for using cellular phones while driving. Employers that encourage drivers to use their phones while driving risk liability for any damages that occur as a proximate result of these actions. Many Courts will find that companies that do not outright prohibit cell phone use while driving may have impliedly condoned the behavior, even if that was not the intention of the Company.

To limit both liability and accidents employers should start by drafting a policy and including it in the company handbook. The policy should also be provided to employees when they are issued their company cell phone. The policies should clearly inform employees about the risks of using a cell phone while driving. Employers should require that all employees verify by signature that they have read and understand the policy and consent to the consequences for failure to comply.

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An outright prohibition of all cell phone use-company issued and personal as well-on the job is the best way employers can limit potential liability. Although written policy will not deter every employee from using a cell phone while driving, it is the foundation of a good defense for the employer. A firm company policy will show potential judges or juries that the employee was acting outside the scope of his or her employment and that the employer did everything in its power to prevent negligent actions undertaken by its employees.

Of course, should you need assistance in drafting or implementing a company cell phone policy, this office can help. Now is the time to implement a cell phone policy; it is a relatively minor step that can have a major impact for employers.

Department of Labor Finalizes Regulations on Contractors Obligations to Inform Employees of Organizing Rights

Effective June 19, 2010 federal contractors and subcontractors are required to post notifications that inform employees of their right to unionize. This and other requirements resulted from the Department of Labor’s final regulations regarding employee rights under Federal law (the “Final Regulations”). This is particularly relevant to ACCA members because even if employers are not federal contractors, they might fall within these provisions if they engage in contract related work for a covered entity.

The Final Regulations require covered federal contractors and subcontractors to post a notice informing employees of the right to unionize and to engage in certain protected activities under the National Labor Relations Act. The rule further requires contractors to police subcontractors and diligently observe the subcontractor ensuring that they comply with notification requirements. While the rule has an effective date of June 19, 2010 covered contractors and subcontractors are not required to comply with the Executive Order until they have signed a new federal contract. It should be noted

The regulation allows the notification requirement to be completed through reference because in many cases the lengthy clause could dominate entire subcontracts.

Pursuant to the executive order notifications must be posted at locations where employees “perform work that contributes to or furthers the performance of the contract, or work whose omission would impede the contract’s performance.”

Should any ACCA members have any questions as to how they must comply with the Final Regulations, this office is here to answer questions.

As always, if you have any questions, please contact me at ABPearl@pmphr.com. •

ACCA's Night Out with the METS!



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Service for Sustainability

By Kelly Hiner/Enterprise Fleet Management

Often, some of the simplest things can make a significant difference. This is true when it comes to helping the environment. In fact, every business with a fleet of vehicles can help the environment just by performing regular vehicle maintenance, practicing sensible driving habits, and replacing vehicles at appropriate intervals to take advantage of more fuel efficient technologies.

For example, simply reexamining and changing routes could save a few gallons of gasoline every week. This can add up to a substantial savings at the end of the year when multiplied by the number of vehicles in a company's fleet.

Paying more attention to proper vehicle maintenance also can help reduce fuel consumption. This not only means performing preventative maintenance at the recommended intervals and using the correct fluids but also maintaining your vehicles' recommended tire pressure, checking wheel alignment and keeping the air and fuel filters clean. It also means avoiding the temptation to overload a truck, which can result in poor performance and decreased fuel efficiency along with the possibility of expensive repairs and frequent downtime.

Maintenance issues that can have a significant effect on fuel consumption include the following:

- Keep tires properly inflated. Under-inflated tires create more rolling resistance on the road, which decreases fuel mileage and shortens tire life due to accelerated wear.

Since tire pressure changes with temperature, you should check and adjust pressure when the tire is cold and when the vehicle has been sitting for a couple hours. Because information printed on the tire's sidewall may not be the optimum pressure for your vehicle or driving situation, the most accurate place to find out about proper tire pressure is on a label inside the driver's door or in your vehicle's owner manual.

- Check wheel alignment periodically. Misalignment can be caused by hitting potholes, curbs and bumps, worn steering or suspension components and deterioration from aging of suspension parts. Not only does misalignment increase rolling resistance and reduce fuel efficiency, it also causes additional wear and tear on tires. Wheel alignment should be checked every 12,000 miles or once a year, whichever comes first or if you notice unusual tire wear.

- Select the right oil for your engine. Using the correct viscosity oil is important because higher viscosity oils create greater resistance to the moving parts of the engine and can actually reduce fuel efficiency. Manufacturers have, in some cases, increased the service intervals for their vehicles to help reduce their carbon footprint. This not only decreases the cost of maintaining them but reduces the amount of crude oil needed and the amount of waste oil produced. Changing your vehicles' engine oil at the manufacturers recommended intervals is not only a good maintenance policy, but it is also good for fuel efficiency.

- Adjust driving style to save gas. Smooth, steady acceleration from a stoplight or stop sign uses fuel more efficiently than quick "jackrabbit" starts. Drivers also can increase fuel efficiency by shifting to higher gears at the lowest practical speed for standard transmission and accelerating gently with an automatic transmission. If vehicles are equipped with overdrive and/or cruise control, these should be used when appropriate. Also, making sudden starts and stops, revving the engine and excessive idling significantly lower gas mileage. And, according to a United States government Web site, www.fueleconomy.gov, "each 5 mph you drive over 60 mph is



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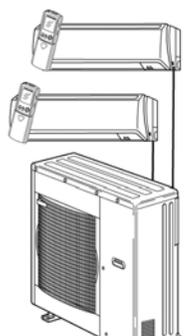
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- Remove excess weight. Using roof-mounted racks and keeping unnecessary items in your vehicle, especially heavy ones, increases rolling resistance. The U.S. government estimates that an extra 100 pounds in your vehicle can reduce your mpg by as much as 2 percent, based on the percentage of extra weight relative to the vehicle’s weight, which affects smaller vehicles more than larger ones. A good rule of thumb is, when possible, to carry large items inside the trunk or vehicle, and remove items when you don’t need to carry them.

Replacing older, less fuel efficient vehicles at appropriate intervals also can impact the environment. Knowing when to dispose of older vehicles, a systematic process known in the fleet management industry as “cycling,” depends on many factors, such as the time of year, mileage, vehicle type, age and maintenance issues. A cycling program not only ensures vehicles are always in the best possible condition, it helps a company achieve optimum performance and the best resale value, which also directly affects cost savings.

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.**

Forum Selection Clause

Many contracts contain a Forum Selection Clause. A Forum Selection Clause determines a location where a lawsuit should be brought in the event a dispute occurs between you and a contractor or owner.

In the event you are performing work for an out-of-state general contractor or owner, there is a strong likelihood that there is a Forum Selection Clause in your Agreement.

The Forum Selection Clause in the Agreement, more likely than not, contains the location of where the general contractor is located. Thus, if you are hired by a general contractor located in Atlanta, Georgia, the likelihood is that he will compel you to institute an action in Georgia as opposed to where you are located.

These forum selection clauses are valid and enforceable unless the challenging party can establish that it is a completely unreasonable, unjust, in contravention of public policy, invalid due to fraud or would cause such difficulty that you would practically be deprived of your day in Court.

The criteria necessary to defeat the Forum Selection Clause is extremely difficult and unlikely to be granted. The

various exceptions referred to above are limited in nature and should not be relied upon by you when entering into a contract.

Recently, the Appellate Division, Second Department, rendered a decision enforcing a Forum Selection Clause and directing that the parties proceed with their litigation in Pennsylvania. The Court specifically found that when entering into the contract, the parties agreed upon the location of any future litigation. Since that location was Philadelphia, Pennsylvania, the Court granted the defendant's motion to dismiss the complaint finding that the Forum Selection Clause was unambiguous and valid.

Before you enter into any contract, you must review all of the terms and conditions in order to ensure that you are properly protected. The costs associated with pursuing a claim



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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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