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Air Conditioning Contractors of America
Greater New York Chapter
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Greater New York Contractors' NEWS



www.accany.org

JUNE 2009

President's Message

OUR ACCA BOARD OF DIRECTORS MEETING WAS HELD ON MAY 14 at the LaGuardia Marriott. We had a full agenda of committee reports and presentations. Be sure to check our website at www.accany.org for the latest on scheduled events and to sign up for upcoming outings.



Ron Nathan

National Grid made an educational energy presentation at our board meeting. They discussed rebate programs and incentives for businesses and multi-family buildings which upgrade to energy efficient equipment. Rich

Turn to President's Message on page 3

You're Invited To Our June Meeting

Join us for an
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Wednesday, June 10

Louie's Oyster Bar & Grille
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PRESIDENT'S MESSAGE *Continued from page 1*

Staiano of National Compressor Exchange explained the company's product line and described the manufacturing process of compressors. The Chairperson of the Long Island Sierra Club, Frank Morris, spoke of the green advocacy of his organization and explained the need for support of energy efficiency within the political arena. Tony Penachio of GeoEnergy Enterprises introduced us to his company's hybrid geothermal HVAC system. The GeoColumn has won the Popular Science Best of What's New Award and uses shallow well condensers for the removal of heat. Thanks to all our speakers for their informative presentations.

The National Grid and LIPA Educational and Energy Efficiency Trade Expo will be held on Wednesday, June 3 at the Hilton Long Island in Melville. Some of the workshop topics will include high-efficiency hydronic systems, Energy Star codes and standards, geo thermals, solar energy, selling energy efficient technologies in today's market, and HVAC Manual D training. Our ACCA chapter will be manning a booth at the trade expo, so be sure to stop by and say hi!

The next ACCA General Meeting will be held on Wednesday, June 10 from 6-8pm at Louie's Oyster Bar and Grille, 395 Main Street in Port Washington. Please join us for this Networking Cocktail Party. Admission is free for paid ACCA

members; guests are \$45 each.

This year's annual Golf Outing will be held on Monday, August 17 at The Hamlet Golf and Country Club in Commack. Check-in begins at 9:00 am, and registration fees include green fees, lockers, showers, golf carts, breakfast, foursome pictures, and lunch. Following your golf game, you will enjoy a cocktail hour and barbeque dinner where you can network with other ACCA members, lick your wounds, or show off your new golf trophy! If you are unable to engage in the day's golfing event, register to join us for cocktails and dinner. Registration for the golf outing will be on a first come, first paid basis. Sign up at our website, or call Roy Bernheimer, Nick Terran, Ken Ellert, Marc Stoffler, or Greg Singer for more details. — **Ron Nathan**



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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.

Editor's Notes

By Anthony N. Carbone

May has brought about some much needed business for many contractors, although many parts of the United States are in the frozen zone when it comes to spending. We here in the Northeast are starting to see some consumers come back to the table. We are seeing people make decisions and continue to be cautious.

The government and economists are saying many retail establishments and homebuilders are reporting that business is picking up. The stock market is beginning to heat up and quality companies with dividends are the choice of many. Money from the sidelines is getting thrown back in slowly.

The marketplace in HVAC is all about energy efficiency, rebates, variable speed, two state, 95 percent efficiency, manufacturers' incentives, and refrigerant changes. This is a confusing time for consumers, but the fact that they are even asking is a benefit in the right direction, if contractors can nurture the sale to fruition.

We are bringing interesting topics to our organization during these changing times. Last month's meeting discussed geothermal tubes that are being used which allow these systems in areas that would not permit open loops in the ground.

Rich Stiano of National Compressor gave a detailed video presentation that was extremely interesting. It outlined the entire process of a rebuilt compressor. What a great presentation from one of our Board of Directors! The Sierra Club's Frank Morris discussed current matters of their organization.

We are a vibrant, relevant organization that adds relativity to your company. Can you afford not to join us? Hope to see you at Louie's Oyster Bar on the water in Port Washington.

— Anthony N. Carbone

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Flexible Fuel Vehicles Top Six Million

By Kelly Hiner, *Enterprise Fleet Management*

The high cost of gasoline, concerns about our nation's dependence on foreign oil and warnings about global warming, are generating increased interest in alternative fuels such as E85. Compared to today's gasoline/ethanol blends that have up to 10 percent ethanol, E85 is composed of 85 percent ethyl alcohol (ethanol) and just 15 percent petroleum.

E85 is designed for use in flexible fuel vehicles (FFVs), which can switch easily from using regular gasoline to E85. Although miles achieved per gallon for E85 may be slightly below vehicles fueled with regular-unleaded gasoline, the price of ethanol blends has been considerably less expensive.

FFVs typically are offered as standard equipment, with little or no incremental cost. They are available in a wide range of models, from sedans and sport utility vehicles to pickup trucks and minivans. New models arrive yearly from manufacturers such as Chrysler, Ford, General Motors, Isuzu, Mazda, Mercedes, Mercury, Nissan and Toyota.

According to the Energy Information Administration, there currently are more than six million light-duty FFVs in the United States and in 2009 nearly 50 FFV models are available.

But, despite growing popularity, many owners are not aware that their FFV can be fueled either with E85 and/or gasoline interchangeably. One reason for the confusion may be that FFVs are designed with only one fueling system. Owners can find out whether a vehicle is included by checking their owner's manual, checking the fuel filler door, or viewing a list of current model year FFVs, available from the National Ethanol Vehicle Coalition at <http://www.e85fuel.com/e85101/flexfuelvehicles.php>.

In many ways ethanol is an ideal transportation fuel. In addition to its positive environmental qualities, it is domestically produced and its use supports farmers and rural economies. Currently, 10 percent ethanol is added to approximately one-third of all the gasoline used in the United States. Adding ethanol to gasoline not only fulfills oxygenate requirements for federal clean air programs, it also increases octane and extends the petroleum fuel supply.

Considering FFVs for a Company Fleet

For businesses considering how FFVs fit into a fleet management program, cost is always a concern. Generally, manufacturers offer FFVs at the same prices as comparable gasoline vehicles. The U.S. Department of Energy also offers an online tool that calculates cost by type of vehicle and state based on availability of fueling locations. The calculator, which is easy to use, is available at <http://www.afdc.energy.gov/afdc/>

[progs/cost_anal.php?0/E85/](#)

In addition to costs, other considerations include the following:

- **Tax Credits and Incentives.** FFVs may qualify for tax credits or incentives in accordance with requirements for alternative fuel vehicle mandated fleets under the Energy Policy Act of 1992, which specifies that a vehicle must be capable of using fuel blends up to 85% ethanol.
- **Flexible Fueling Options:** The FFV system allows the driver to use any combination of gasoline or ethanol – from 100 percent unleaded gasoline to 85 percent ethanol. This means a driver can use unleaded gasoline if ethanol is not available. Because tax credits are available to stations for the costs of retrofitting pumps and tanks, the number of stations offering E85 continues to increase.
- **Educate Drivers:** While FFVs may use either regular gasoline or E85, gasoline only vehicles should not use E85. Using E85 in gasoline-only vehicles may cause damage because of the incompatibility of the alcohol fuel with the parts in gasoline-only engines. Performance and emissions also will be compromised.
- **Maintenance and Repairs.** Preliminary studies indicate that maintenance costs may actually be reduced for FFVs because of the way E85's cleaner exhaust emission impacts the engine's operation/performance.

In addition to ethanol, alternative fuels include natural gas, propane, hydrogen, pure biodiesel, electricity, methanol and p-series fuels. Based on information provided by the U.S. Department of Energy's Alternative Fuels Data Center, using any of these alternative fuels in vehicles can generally reduce harmful pollutants and exhaust emissions, and most of these fuels can be domestically produced and derived from renewable sources. For more information, visit <http://www.eere.energy.gov> or <http://www.e85fuel.com>.

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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EEOC Warning: Employers May Inadvertently Violate ADA with Health Care Policies

In March EEOC issued an opinion letter answering an employer's questions regarding whether certain types of medical testing violated the Americans with Disabilities Act ("ADA"). The employer wanted to know if it could require its drivers to submit to post offer, but pre employment, medical examinations, as well as require individual drivers who "exhibit certain behaviors" to submit to a medical examination. The EEOC's answer reinforced their position that the ADA requires nondiscriminatory qualification standards and selection criteria of employees. Through their opinion letter, the EEOC clarified that health risk assessments that include disability-related inquiries and medical examinations are not job-related or consistent with business necessity.

Employers who require their employees to participate in a health risk assessment in order to be eligible for health insurance

coverage may be unknowingly violating federal anti-discrimination law. The ADA currently prohibits disability-related inquiries prior to a job offer. Once a conditional job offer has been made, disability-related inquiries are only permitted if they are required of all employees in the same job category. Once employment begins, disability-related inquiries and medical examinations must be job-related and consistent with business necessity. Health risk assessments used as a prerequisite to determine eligibility for health insurance coverage occur once employment has begun, and therefore must be job-related and consistent with business necessity if they include disability-related inquiries and medical examinations.

To be job-related and consistent with business necessity, the employer must have a reasonable belief based on objective evidence that a medical condition will impair the employee's ability to perform essential job functions, or that the employee's medical condition will pose a direct threat. In this particular instance, the health risk assessment required the employees to answer a short health-related questionnaire, take a blood pressure test, and provide blood for use in a blood panel screen - none of which related to the employee's ability to perform the essential job functions. As such, the EEOC opined that this type of health risk assessment would violate the ADA. Although the EEOC did not take a formal position regarding the particular question asked, employers should take a close look at their health insur-

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ance plans' eligibility requirements, including the assessments employees must take in order to determine eligibility.

This EEOC opinion is somewhat surprising in light of the fact that programs that merely require all employees to complete a health risk assessment to enroll in a plan are not considered discriminatory under HIPAA nondiscrimination rules. Furthermore, even the EEOC noted that disability-related inquiries and medical exams are permitted as part of voluntary wellness programs. Such programs are voluntary if employees are neither required to participate nor penalized for non-participation. If employees who choose not to participate in the health risk assessment are denied a significant employment benefit (such as the opportunity to obtain health coverage through the employer's plan), then such a program is not voluntary. Thus, employers should review their programs to determine whether such programs are truly voluntary.

Out-of-State Employees Can Sue NY Employers under State and City Human Rights Laws

In May, New York courts departed from precedent in a decision that has significant impact on employers who do business in New York, as well as other states. The Appellate Division held in *Hoffman v. Parade Publ'n*, that NY courts have subject matter jurisdiction over discrimination claims filed under the New York State Human Rights Law ("NYSHRL") and the New York City Human Rights Law ("NYCHRL"), where the act of discrimination occurred within New York, even if the effects of the alleged discrimination are felt mainly outside the state.

The plaintiff was employed by Parade Magazine as a managing director for the newspaper relations group. The plaintiff, who classified himself in his complaint as a traveling salesman, resided in Georgia and was almost exclusively based in the Atlanta office. He reported to management in New York and occasionally travelled to New York for meetings.

While in Atlanta, the plaintiff received a telephone call from the President of Parade Magazine advising him that the Company had decided to close the Atlanta office and terminate his employment. The plaintiff then sued his former employer in New York state court under the NYSHRL and NYCHRL. Mr. Hoffman, who was 62, alleged he was terminated because of his age and further claimed that the "economic rationale given for his termination was pretextual.

What is unique about this case is that the New York Court found that there is subject matter jurisdiction over the claim, even though the plaintiff's employment was in another state, the plaintiff resided outside of New York, and received notice of his termination outside of New York. What was important in this case was that the decision to terminate was made in New York, which was also the state from where the employer called the employee.

The employer moved to dismiss the action on the grounds that New York courts lacked subject matter jurisdiction over the action because the employer's alleged misconduct did not occur

either inside New York State or New York City, as was required under previous cases. The trial court which initially heard the plaintiff's complaint dismissed it because of this precedent, which Hoffman appealed.

On appeal the trial court's decision was reversed and the complaint reinstated. The higher court refused to apply the "impact rule" it announced less than four years ago, holding that the rule "should not be applied so broadly as to preclude a discrimination action where the allegations support the assertion that the act of discrimination, the discriminatory decision, was made in this state." The court clarified that the situation would have been different if the termination decision occurred out of state, and the discriminatory employment decision was made out of state.

The Appellate Division chose, instead, to follow the reasoning of a federal district court, which focuses on whether the alleged discriminatory act took place within New York. The court found that "application of logic and common sense alone would dictate that if an employer located in New York made discriminatory hiring and firing decisions, those decisions would be properly viewed as discriminatory acts occurring within the boundaries of New York." In addition, the court looked to the purposes of both the NYSHRL and the NYCHRL and determined that it would be improper for courts of other jurisdictions to handle acts of discrimination that occurred in New York.

As always, should this article raise any questions you can also reach me at ABPearl@pmphr.com. •

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Are You a Safety Master? Join The Club!

The Air Conditioning Contractors of America (ACCA) has announced that it is accepting applications for the 2009 Safety Masters Club, sponsored by Federated Insurance. The nomination form, which can be downloaded online, is due by July 10, 2009.

The Safety Masters Club recognizes ACCA member contractors who have made a significant commitment to their company's employees and customers by implementing safety programs that produce results. Those contractors with the best safety record and programs in their size category will also be presented with the ACCA Safety Award of Merit.

All entrants for the Award of Merit become members of the Safety Masters Club. It's a simple way for contractors to demonstrate to their employees, their customers, and their community that they care about a safe working environment.

Any ACCA member can apply based on a category that matches your company size (in man hours). The categories are: 0 to 15,000 hours; 15,001 to 40,000 hours; 40,001 to 100,000 hours; 100,001 to 200,000 hours; and 200,001 + hours.

Applications are only accepted once a year, and this is the time. The form is available online at www.acca.org/safety-masters and must be returned by July 10, 2009.

Through ACCA's partnership with Federated Insurance, ACCA members have access to a growing library of articles and resources related to workplace safety and business risk management, located online at www.acca.org/safety. Federated's loss control experts are working with ACCA's Safety Committee to develop programs that contractor members can use to enhance workplace productivity and ensure the health and well-being of employees.

For more information about the Safety Masters Club, please contact Charlie McCrudden at 703-824-8841 or charlie.mccrudden@acca.org.

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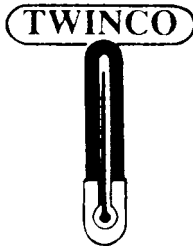
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Statement From Stuart S. Zisholtz, Esq.

Home Improvement Licenses

Once again, the Appellate Division has rendered a decision involving home improvement licenses. The recent decision broadly defines the requirements that a contractor must meet when performing home improvement work.

The Appellate Division, Second Department, recently held that a contractor could not collect approximately \$150,000 for work performed and materials furnished on a residential house in Westchester County, New York.

The Court correctly found that the Administrative Code of the County of Westchester provides that no person shall maintain, conduct, operate or engage in a home improvement work unless such person obtains a home improvement license. A contractor's failure to adhere to this requirement precludes the contractor from collecting fees from a consumer and enables the consumer to move for a dismissal of an action commenced by the contractor against the consumer.

In this case it was undisputed that the contractor was unlicensed. However, the contractor claimed that the same administrative code defines an owner as a homeowner, tenant or any other residential dweller who orders, contracts for or purchases a home. In this particular instance, the contractor argued that the consumer neither owned nor lived in the house at the same time

the contract was executed.

The Court found that it did not matter that the consumer did not live in the house or owned the house at the time that the contract was executed. The Court continued by stating that the consumer intended to reside in the premises in the future and, thus, was an "owner" within the meaning of the Administrative Code.

The Court broadly construed the definition of "Owner" in the Administrative Code in order to protect the consumer. The end result was that the contractor lost approximately \$150,000.

It is obvious that the Courts are protecting the interests of the consumer. It is imperative, therefore, that each and every one of you who performs home improvement work obtain a home improvement license in every county where you are performing your work. Failure to do so may result in your inability to collect the balance due.

It does not matter whether the consumer knew of the absence of a license or even if the consumer had planned to take advantage of the absence of a license. The failure to obtain the license is absolute and cannot be revised or overlooked.

Never let your lien time run out!!

For a free copy of a pamphlet pertaining to Mechanic's Liens and payment bond claims, please 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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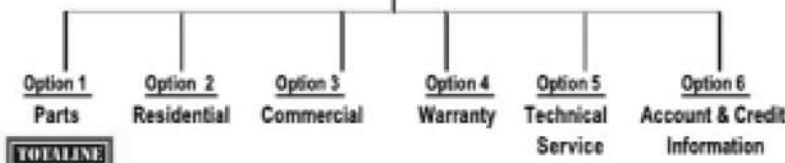
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