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Greater New York Contractors' NEWS



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APRIL 2014

President's Message



Al Trudil

I want to thank Rick Henning from Power Generator System for an informative talk about the generator market. I didn't realize the potential for HVAC companies to enter into the generator market. After Rick explained the benefits of adding the generator market to our services and he showed us the numbers this would definitely be a viable market to add to our companies. We have the customer base already both in residential and commercial. This is another service we can offer our customers and help lock them into our companies.

Next month instead of our regular meeting we will be hosting a Casino
Turn to President's Message on page 3

You are Invited!



ACCA's CASINO NITE

Thursday April 3rd

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PRESIDENT'S MESSAGE

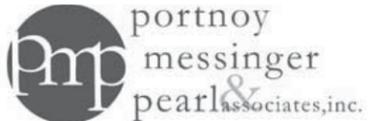
Continued from page 1

Night. This will be a great time for you to come and enjoy yourself. To register go to www.accany.org.

Spring is here and hopefully so is warmer weather. We might be able to finally put the snow shovels and snow blowers away for till next year...lets hope!

Some interesting information was brought to my attention this week and thought that would be useful to us all. Manhattan ConEd has increased its gas pressure to 8" w.c. but still is only guaranteeing 4" w.c. so watch your pressure switches!

Be safe out there and hope to see you all for Casino Night April 3rd. — *Al Trudil*



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Editor's Notes

by Anthony N. Carbone

How many industries' salesmen fight to be bottom dwellers?

Well, in our industry, it never ceases to amaze me how some company owners are willing to give away their labor and quality materials, as well as their intellect and skills. During lean times when the economy slows, many companies gasp for air to stay in business. The first thing they do is throw the baby out with the bath water. Regardless of how hard they try to maintain their quality brand, the solution to getting more work is not doing work for zero profit and low margins. With the amount of responsibility that is required for a heating and air conditioning company installation, meaning the licenses, insurance, payroll, workmen's compensation, medical, auto, general liability, gasoline, I.T. workings and salesmen. It is an incredible burden and quite the feat to manage all these operational plates and not get paid for your efforts.

The ACCA Board of Directors agreed that educational programs such as the one we slated for March 26th, 2014 with Wayne Atkins, "The HVAC Doctor" to present Net Profit Pricing. Wayne has 28 years of experience and has worked with hundreds of contractors one on one. The HVAC Doctor will address the plague that besieges many contractors...

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 — Anthony N. Carbone



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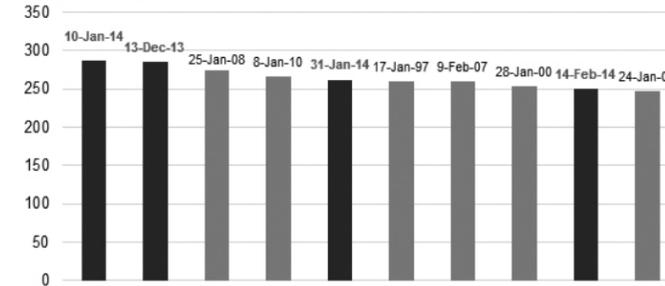
AND DON'T FORGET OUR ANNUAL GOLF OUTING ON AUGUST 11TH

EIA Projects Record Natural Gas Storage Injection In 2014 To Boost Stocks From 11-Year Low

A winter of prolonged, widespread, bitter cold weather throughout much of the United States led to a record-breaking natural gas withdrawal season in 2014, bringing inventories of natural gas to a 11-year low. The U.S. Energy Information Administration's Short-Term Energy Outlook (STEO) forecasts a robust injection season (April-October) with nearly 2,500 billion cubic feet (Bcf) added to storage as operators seek to rebuild inventory levels.

The projected inventory level at the end of the current withdrawal season at the end of March results from a record winter withdrawal of 2,851 Bcf. Demand driven by cold weather has played a major role in driving this winter's high withdrawals. From November 1, 2013 through March 10, 2014, U.S. consumption of natural gas averaged 91.2 billion cubic feet per day (Bcf/d), an increase of 10% over the same days last winter and 13% over the average for these days during the past five winters. Residential/commercial consumption increased by 17% over the same days in the 2012-13 winter season, while population-weighted heating degree days (indicating cold weather) increased by 16%, according to data from Bentek Energy LLC.

Four of the 10 largest natural gas weekly storage withdrawals since 1997 took place this winter



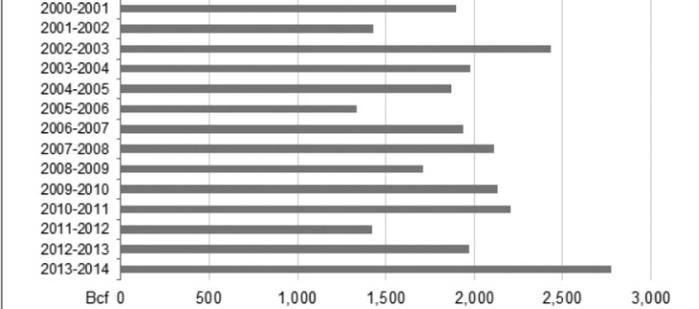
Source: U.S. Energy Information Administration, Natural Gas Monthly and Short-Term Energy Outlook, March 2014

STEO projects relatively high natural gas production growth and moderate demand growth starting in April that will allow for a record storage build through October. The forecasted April-to-October storage build of nearly 2,500 Bcf would surpass the previous record injection season net inventory build (April-October, 2001) by more than 90 Bcf, to end the injection season at 3,459 Bcf. While the projected storage build for the upcoming injection season would be a record, total Lower 48 end-October inventories in 2014 would still be at their lowest level since 2008. High injections would not fully erase the deficit in storage volumes caused by this winter's heavy withdrawals.

The STEO expects spot prices will be in the low \$4 per million British thermal unit (MMBtu) range over the summer, a level high enough to limit the growth of natural gas use in the electric power sector. As a result, and assuming close-

to-normal weather this summer, EIA projects that electric power consumption of gas from April to October will be 23.9 Bcf/d, essentially flat compared to year-ago levels. Expected dry natural gas production during this period reaches 68.1 Bcf/d, a 2% increase over last year.

Net winter natural gas withdrawals as of March 7 (2000-01 to 2013-14)



Source: U.S. Energy Information Administration, Weekly Natural Gas Storage Report

November-to-March natural gas net withdrawals this winter are running 14% above the previous record of 2,436 Bcf, set during the 2002-03 winter season. •

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Amended New York City Sick Leave Law to take Effect on April 1st

The New York City Paid Sick Leave Act, which was passed last year over the veto of former Mayor Michael Bloomberg, required employers with fifteen or more employees to provide up to five days of paid sick leave. Amendments to the law which expanded its scope and coverage were recently passed, and are expected to be signed by Mayor De Blasio within the next few days. The amended law will go into effect on April 1, 2014.

The most significant change brought about by the amendments is the elimination of the exemption for small employers. The original law only applied to companies with fifteen or more employees. However, the amendments lower the threshold to just five or more employees. This means that almost all New York City employers are now covered by the law. Furthermore, all employers not covered by the Act are still required to provide unpaid sick leave.

As part of the original law, employers were also required to provide paid leave for employees to care for sick family

members. The law defined a family member as a spouse, child, domestic partner, parent, or the child or parent of an employee's spouse or domestic partner. The amendments expanded this definition to include grandchildren, grandparents, and siblings.

Further the amendments extend the statute of limitations from 270 days to two years; and include a stricter notice provision. The notice provision requires employers to provide employees with written notice of their rights under the Sick Time Act at the commencement of employment, or by May 1, 2014, whichever is later.

New York City employers should take note of these changes, as the law's effective date is upon us. If you have any questions about the NYC Paid Sick Leave Act, or are unsure of whether it applies to your business please give me a call.

Obama Seeking to Limit Overtime Exemptions

Overtime pay can quickly add up to be a major business expense. A silver lining for employers is that there are a number of exemptions to the FLSA overtime requirements. The major exemptions include: the motor carrier exemption, the commissioned sales employee exemption, and the executive or professional exemption. President Obama is now seeking to impose stricter regulations to limit who qualifies for these exemptions.

The professional exemption, also known as the "white collar exemption" applies to employees in "learned professions." These include, doctors, lawyers, nurses, engineers (with advanced degrees), and other positions requiring "advanced knowledge." The executive exemption is broader, and includes employees who (1) regularly supervise two or more employees, (2) have management as the primary duty of the position, and also (3) have some genuine input into the job status of other employees (hiring/firing power etc.).

In addition to the above mentioned requirements, salaried employees must be paid at least \$455 per week; this amount is higher in other states, including New York (currently \$600

per week). Otherwise employees must be paid the equivalent of one and a half times their average hourly rate for all hours worked in excess of 40 hours per week.

Today, a growing number of employees are falling under the executive exemption. As part of President Obama's campaign against income inequality, he is seeking to change Department of Labor regulations regarding the professional and executive exemptions. Specifically, the President is seeking to increase the salary base from \$455 per week to as high as \$984 per week, although no actual figures have yet to be released by the administration.

Furthermore, the new rules seek to impose stricter guidelines to define an employee's primary responsibility. In recent years companies have attempted to get around overtime requirements by having otherwise non-exempt employees engage in supervisory work for a few hours a week. In some

cases exempt employees spend 95% of their time performing non-exempt work. The new rules would close this loophole by requiring employees to perform a minimum percentage of executive work to qualify for the exemption

The Fair Labor Standards Act gives the President the authority to add and change wage and hour regulations without congressional approval. Therefore it is likely that these changes will take effect. However, the extent of these changes will become evident in the days and weeks ahead.

For now, it is important to make sure that your supervisors meet the salary and duties test. If you have any doubts as to whether an exempt employee is improperly classified please contact me immediately.

If you need any assistance with regards to this or any other employment related matters please contact me at Abpearl@pmpHR.com or (516) 921-3400. •

Our winter of brutally cold, snow-filled weather disrupted our meeting schedule but your ACCA chapter still offered a calendar of valuable presentations and work-filled board sessions. Here are some photos taken by Anthony Carbone during meetings on February 20th and March 6th.



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Statement From Stuart S. Zisholtz, Esq.

Payment Bond and Lost Equipment

Imagine this scenario:

You are a subcontractor on a public improvement job. The General Contractor has failed to pay you, is in default under its prime contract and gets terminated from the project. You are owed \$180,000, representing \$85,000 in charges and \$95,000 in equipment.

The bonding company takes over the project and immediately starts using your equipment to finish the project. Somehow, your equipment disappears and is never returned. What are your rights? What can you do?

In a recent decision, the subcontractor brought a claim against the bonding company for \$180,000 for breach of contract, unjust enrichment (getting something for nothing) and conversion (appropriating your equipment). The bonding company admits that it owes you the \$85,000 for the work that you did but not the \$95,000 for the equipment because that is not part of the bond.

The Appellate Court found that the issue involving whether or not the bonding company has to pay for the lost equipment must go to trial. The rationale is very interesting and informative.

A payment bond is for labor and material consumed on the job. Unless certain items are specifically identifiable

under the bond, a payment bond usually will not extend to missing equipment. The equipment we are discussing in this article consists of items that can be taken from one job to another.

As with everything in the law, there are exceptions. The catchwords here are items that are reasonably expected to be consumed or are substantially consumed in the performance of the work. Things that can be removed from one job to another are not considered consumable. Again, there are exceptions.

It has been held, for example that a bond would pay for overhaul of trucks that were used in a construction project if it was contemplated that the trucks would suffer considerable damage as a normal incident of the project. The trucks were considered consumable. It has also been held that tires sold by a supplier for heavy earth-moving equipment and destroyed on the job are considered consumable for which a surety is chargeable. In those instances, it is the intent of the parties in the contract that govern. Even where scaffolds and concrete planks are used, the Courts have conceded that sometimes brackets, bolts and fastening equipment could very well be destroyed in the course of construction and can be chargeable as consumable materials.

The bottom line, therefore, is that if you have equipment on the job and there is a bond, do not, in the ordinary course of events, expect the bonding company to reimburse you for the cost of equipment.

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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