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Greater New York Contractors' NEWS



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DECEMBER 2012

President's Message



Michael Newman

Due to hurricane Sandy, ACCA felt it was necessary to cancel the November monthly meeting. Our area experienced a storm of epic proportions...one that will be called the perfect storm. It will take a long time to rebuild and to get back to normal. On a personal note, a tree came crashing into my house when my whole family was inside right by the area that got struck. As the whole house shook, my family and I ran to safety in the basement. Luckily we were unharmed and able to seek

Turn to President's Message on page 3

You are invited to the ACCA 2012
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PRESIDENT'S MESSAGE

Continued from page 1

safer shelter nearby during the storm. We are fortunate for our friends and family who took us in. Many houses were left without power and still are in the dark. Others do not have a home to go back to. Our hearts and prayers go out to all that suffered loss.

The storm also created business road blocks with the gas shortage. I am sure that everybody struggled with the limited amount of gas available in some way. Unproductive hours were wasted waiting on line for gas with the hopes that the gas tankers will actual show up. Even mass transit was disrupted. We cannot operate our businesses without gas. It seems that the gas shortage has lightened up this week, however we are still being told when we can fill up our gas tanks.

I hope you and your families are safe and everybody can move forward. Family, heart and determination will help us get through this horrifying disaster.

The next event will be the annual holiday party at 420 North Restaurant in Great Neck on December 6th starting at 6:30 for cocktail hour. Please bring an unwrapped toy for the annual Toys for Tots Campaign.

This year we will be focusing on increasing the mem-

bership 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. As I always say this year has been legendary.

Thank you for your support and I look forward to seeing you at the next meeting! Have a Happy Thanksgiving!!

— Mike Newman



Kevin Cirincione
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Editor's Notes

by Anthony N. Carbone

Nothing like the end of an election season and a brutal massive storm to stir up the economy. Evidently, Hurricane Sandy came to the Metro/New York area with a terrific fury that devastated the entire New York, Long Island region as well as New Jersey.

Such massive power outages took electrical power service away from more than one million electrical customers. This was a wake up call for many to see how vulnerable we all are and dependent on local utilities as well as cell phone towers, cable television, internet service; Verizon "FIOS" and apparently the gasoline delivery process. Was this the perfect storm followed by a Nor-Easter that compounded an existing chaotic situation?

The resulting destruction led to sales of many new heating systems replacing those rendered useless by severe basement flooding. Many air conditioning condensers were destroyed by trees, and equipment was in high demand to replace these casualties of the powerful storm "Sandy". Much equipment became scarce quickly and shortages are now prevailing.

Sandy brought about much realization that standby natural gas generators were no longer a luxury but a necessity for our day-to-day lives. One additional issue came to light...phone service was interrupted in many homes. Why, because cable companies and phones provided by the cable company and Fiber Optic "FIOS" were knocked out by the thousands.....UNLIKE good old dependable copper lines that once were in all homes...makes you think twice about the "what if."

As the 12 days passed from "Storm Sandy" the temperatures began to drop. Many houses and businesses were not only dark and

without phone service they began to get cold. Sleeping became a bit barbaric with night time temperatures dropping into the 30s. Gasoline generators were in hot demand and the unthinkable occurs...no gasoline. The delivery process was interrupted leaving the results of a third world nation with horrendous gas lines wrapping around several city blocks. Empty stations...No Gas...We turn to *Gas Buddy.com* to steer us to the next OASIS of gasoline. The utilities were getting hammered by the public and politicians who have become frustrated due to the slow results and lack of coordination and practically no communication to the public. The public is demanding heads to roll.

Now HVAC companies were scrambling to find fuel for the trucks that could help people turn on the heat and natural gas generators. Heat equipment repairs for the elderly or sickly were nearly impossible to perform due to the fuel shortage. I should think we would be considered "first responders" or "Emergency Relief Personnel" but evidently not so according to the police that governed the lines at the stations that received gasoline.

This was a wake up call to many who realized how dependent we have become on daily luxuries like electric, gasoline, phone service and internet access. Survivalists were few to be found. The windfall of work for the skilled trades is bittersweet especially for HVAC companies which are in great demand to rebuild the devastated communities and restore normalcy and warmth to many damaged properties.

We at ACCA wish you a very happy and healthy holiday season and most importantly, give to those who need our help and count your blessings...Hope to see you at our Holiday Gala this year.

— Anthony N. Carbone

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Tough Heating Season Forecast In The Northeast For Oil Consumers

By John Ottaviano – Air Ideal

With home heating oil prices currently at \$4.25 per gallon here on Long Island and a much colder season forecast ahead, a Newsday article predicts a difficult winter for those heating with fuel oil. Two thirds of Long Islanders still heat their homes with oil and the majority of those would choose to convert to natural gas, if given the opportunity. Unfortunately, Long Island's natural gas pipeline infrastructure (see Northeast map above) is not being expanded and National Grid, the private entity responsible for local gas service, is loathe to invest shareholder money to do so. Michael White, executive director of the Long Island Regional Planning Council, has been an advocate for gas infrastructure expansion to improve Long Island's economy. White was quoted in the Long Island Business News stating, "it appears we are dependent upon the interests and investments of private fuel suppliers and pipeline companies to actually get approved, construct and operate infrastructure to supply us with natural gas. This paradigm clearly constrains Long Island's ability to have an adequate and reasonably priced supply of natural gas to support our on-Island generating facilities, as well as conversions from heating oil to natural gas and overall growth."

Because Long Island's energy utility infrastructure is controlled by a host of players including private entities (National Grid, ratepayers and private contractors) and public entities (the Public Service Commission, Iroquois Pipeline, NY State and local government), expansion of main and branch service is an excruciating process. This unfortunate stalemate has historically left the majority of Long Islanders with only the costly options of No. 2 fuel oil, electric or propane heating. We have previously written here about which of these energy options gives you the best bang for your buck.

Taking into account federal tax credits of 30% and

LIPA incentives, it is clear that any Long Islander who plans to remain in their home for 5 years or more can get the best rate of return or return on investment by installing a geothermal ground source heat pump to heat their home. Unfortunately, there is a significant initial investment to make in order to convert to geothermal, which has scared away many consumers, even with a financial investment analysis proving out its viability and sound capital return. However, a new program allowing Long Islanders to pay for this conversion through NYSERDA with 2.99% on-bill financing may just be the answer for those too far from the pipeline for gas conversion and hesitant to put savings at potential risk. In order to obtain this financing, a homeowner participates in the Home Performance with ENERGY STAR program, where a BPI accredited contractor approved by NYSERDA will perform a comprehensive home energy assessment to identify opportunities for energy savings. The contractor will write a report that recommends specific energy improvements for your house along with cost figures for making the improvements and estimated energy savings. This program also includes air sealing, energy-efficient furnaces, boilers, water heaters, air conditioners, lighting fixtures and appliances. A homeowner can finance up to \$25,000 with this program. An On-Bill Recovery Loan is 2.99% for terms of 5, 10, or 15 years. Once approved for the loan, the consumer's interest rate is fixed for the life of the loan.

With the advent of variable speed and inverter driven compressors, another efficient option for consumers looking to move away from oil is VRF or "variable refrigerant flow" heat pumps. The market is now flush with systems manufactured by Mitsubishi, Fujitsu, Daikain, Samsung and the like, which have dominated Asian and European markets, but have only recently caught on here. These systems are extremely beneficial to multi-family residential complexes like condominiums and apartment complexes because they are modular, expandable and very efficient at part-load. They achieve their efficiencies because they can operate at partial loads from 10% to 130% in diverse settings, even at low ambient temperatures. •

CarmelSoft HVAC ResLoad-J Recognized By ACCA As Powered By Manual J

ACCA, has recognized CarmelSoft HVAC ResLoad-J (for iPad) as "Powered by Manual J." This is the fifth software program to have this designation from ACCA.

To become recognized, ACCA reviewed the software's functionality, sensitivities, defaults, and capabilities to ensure that HVAC ResLoad-J complies with the procedures and requirements of ANSI/ACCA2 Manual J-2011 (Residential Load Calculation). CarmelSoft will now be able to use the "Powered By Manual J" logo on this product.

"When reviewing third-party software, like CarmelSoft HVAC ResLoad-J, we spend a lot of effort to ensure that contractors are getting true Manual J calculations. We are extremely pleased that more software companies are seeing the value of using Manual J to create their load calculation software," said Paul T. Stalknecht, ACCA president and CEO. "We also want to remind contractors that if the software they are using is not listed on our website as 'Powered By Manual J' it has not been approved by ACCA and that their software may not properly be observing Manual J's procedures, methodologies, and defaults."

Contractors looking for ACCA Manual J-recognized software should visit <https://www.acca.org/industry/system-design/software>. •

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Wage and Hour Requirements in Rough Weather

In the wake of Hurricane Sandy, I fielded many inquiries about the federal and state wage requirements as they relate to scenarios resulting from inclement weather conditions. Because there is significant potential for disruptive weather in the upcoming months, I recommend that employers become familiar with the requirements and review their policies regarding these scenarios. To avoid potential headaches, I advise employers to not only establish protocol for dealing with extreme weather emergencies, but also to make sure that their employees are well aware of this protocol, especially in the days ahead of an anticipated storm. Moreover, I recommend that employers establish a hotline so that employees can find out whether the office is

open in the event of extreme weather.

Non-Exempt Employees

The general rule under federal and state law is that employees that are non-exempt from the Fair Labor Standards Act are only entitled to be paid for the time that they work during a particular workweek. However, under New York State law, hourly employees who report for work on any day must be paid for at least four hours of work (or the number of hours in the employee's regularly scheduled shift, if less than four) at the minimum wage. If the business was closed and the employer did not notify its employees, any employee who reports to work is entitled to this minimum amount as "show-up pay."

Aside from the federal and state wage requirements, employers may have policies or union contractual requirements which dictate some amount of pay for employees who report to work, if no work is available. Those policies should be adhered to.

For days missed due to a business closure or shut-down, non-exempt employees may be given the option to use earned and accrued paid time off, if the employer chooses to do so,

and/or if the policy contains that option.

Exempt Employees

For exempt employees, the general rule is that an employee who performs any work in a workweek must be paid for the entire workweek. This includes time spent working remotely from home or another location.

Alternatively, if the employee does not perform any work the entire week, there is no requirement that the employee be paid his or her salary that week. Where an employee has any amount of paid time off in his or her "bank," the employer may allow it to be applied to all or part of the missed week.

Where a business is closed for only part of a workweek, but the employee remains absent from work for personal reasons after it reopens, the absences of full days or more may be deducted pursuant to the employer's bona fide time-off policy. Under a properly worded policy, an employer may deduct earned days from a time-off bank, or where the employee's time-off bank has been exhausted, may deduct from the weekly salary a pro-rata amount. This is true regardless of the reason for absence (e.g. gas shortage issues), as long as it is not related to sickness or disability.

Questions related to pay for salaried-exempt workers are fact-specific and I encourage you to contact me to discuss all pertinent facts before any decision is made.

As always, employers are cautioned to apply all policies and practices consistently, especially in a time of extreme conditions where there may be a strong desire to provide for an exception to the rule.

Don't Forget Your Posters

Pursuant to United States Department of Labor regulations, employers covered by the Fair Labor Standards Act are required to place a poster explaining the law, as prescribed by the Department's Wage and Hour Division, in a conspicuous place in each of the employer's establishments. By failing to follow this requirement, an employer may not only be subject to monetary penalties, it faces the possibility that a court will suspend the statute of limitations for FLSA violations pursuant to the doctrine of equitable tolling. Under FLSA, the statute of limitations is two years and is extended to three years for a willful violation of the law. If the employer fails to abide by the poster requirement, a court may allow an employee to bring a FLSA lawsuit against the employer even if the cause of action accrued more than two years prior to the commencement of the lawsuit for a non-willful violation and three years prior to the commencement of the lawsuit for a willful violation. Although courts differ as to whether the failure to abide by the poster requirement triggers the equitable tolling doctrine, it would be unwise for an employer to take a chance.

Other federal employment laws, including Title VII, the FMLA, and OSHA (among others), also have poster requirements. As with the FLSA posting requirement, failure to follow these requirements may lead a court to invoke the doctrine of equitable tolling.

If you would like to know which employment laws apply to your business and/or whether the applicable laws have poster requirements, please do not hesitate to contact me. Additionally, you can contact me if you would like up-to-date versions of the required posters.

Best wishes for a happy and healthy holiday season. •

Ronald Milano Passes

Ronald Milano, President of Ultimate Power Inc. of West Babylon for over 40 years, passed away on October 29, 2012.

The officers and members of the Greater New York Chapter of ACCA extend sincere condolences to the family.



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Fuel For Thought: The CNG Alternative

By Kelly Hiner

There's nothing new about compressed natural gas (CNG) as an alternative fuel that is less expensive than gasoline, but it is big news that some 2013 model pickup trucks are now available with factory-installed dual-fuel systems. For those who have been interested in adding dual-fuel pickups to their fleet of vehicles but thought their only option was to install an aftermarket conversion system, the ability to acquire vehicles with CNG systems installed by OEM-trained personnel right at the factory is long-overdue.

New models include those that feature a special engine calibration along with body remodeling to accommodate two separate fuel sources, as well as a single door for both fuel ports, and a fully automatic system that seamlessly switches from CNG to unleaded regular with no discernable difference in operation or capability. Compared to aftermarket conversion systems, factory installed CNG systems are covered under the manufacturers warranty and vehicles can be repaired at the dealership.

Regarding pricing, a recent article in Business Fleet compared the costs for pickups with CNG factory-installed system and an aftermarket conversion. "Expect to pay \$10,000-\$12,000 more for a bi-fuel CNG pickup straight from the factory over its gasoline-powered counterpart," the article stated. By comparison, a company that chose an aftermarket conversion system bought a new truck and had

a qualified mechanic install it for \$5,400 for the complete kit including installation. The article noted that the conversion for that company only worked with a larger engine, which added another \$1,600. "Price (for conversions) is dictated by the size of the tank and its material, from steel to composite," stated Business Fleet.

Whether a company chooses a factory-installed or conversion system, CNG offers big savings at the pump. While CNG achieves nearly identical mileage as unleaded regular gasoline, it costs a lot less. For example, in Chicago, where conventional gasoline was recently priced at \$4.50 a gallon, a local CNG pumping station was charging \$2.65 GGE (gas-gallon equivalent). Depending on the average miles per gallon for a vehicle and the number of vehicles in a company's fleet, using CNG can save thousands of dollars a year.

In addition to a lower price at the pump, CNG-powered vehicles reduce greenhouse gas emissions and are more environmentally friendly than gasoline or diesel. Also, because natural gas burns so cleanly, maintenance costs may be lower with less wear and tear on the engine and longer time intervals between tune ups and oil changes.

However, despite its advantages, CNG is best suited for fleet vehicles that regularly follow a fixed route or return-to-base routine, such as delivery companies and service providers. Although natural gas is in abundant supply throughout the United States, there are only about a thousand CNG fueling stations nationwide and fewer than 400 are public access. That means that if a vehicle becomes stranded it must be towed to a fueling station, which can be expensive and inconvenient.

Businesses considering CNG should consult a professional fleet management company that can conduct a comprehensive analysis to determine whether CNG is a viable choice based on a variety of factors, including projections for the best return on investment for either a factory-installed or conversion system.

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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Water Efficiency Standard Opens For First Public Comment

With HVAC&R systems accounting for approximately a third of water consumption in a typical office building, the need to minimize water usage is a major consideration in the built environment industry.

A standard to provide baseline requirements for the design of buildings, site and mechanical systems is being developed by ASHRAE, the American Society of Plumbing Engineers (ASPE), the American Water Works Association (AWWA) and the U.S. Green Building Council (USGBC).

ASHRAE/USGBC/ASPE/AWWA Standard 191P, Standard for the Efficient Use of Water in Building, Site and Mechanical Systems, is currently open for public comment until Dec. 10, 2012. To comment on the proposed standard or for more information, visit www.ashrae.org/publicreviews.

"Water efficiency and conservation is a critical factor in the design and operation of buildings," John Swift, chair of the committee writing the standard, said. "Buildings consume 20 percent of the world's available water, a resource that becomes scarcer each year. Efficient practices and products provide opportunities to save significant amounts of water. The reduction of energy use and operating costs and the expectation of increased government regulation will continue to drive

faster adoption of water-efficient products and methods."

The requirements in the standard would optimize the volume of water required to operate HVAC systems, plumbing systems and irrigation systems. There is currently no standard document that adequately and comprehensively addresses the issue of how to efficiently use water in the design, construction and operation of buildings, according to Swift.

The proposed standard covers HVAC&R and non-HVAC&R systems including: evaporative heat rejection, humidification systems, thermal storage, ground source pump systems, water heating systems, laboratory facilities and residential appliances. It would not apply to storm water management.

The standard will provide the tools that a design team needs to properly apply water efficiency measures on all aspects of a building design and construction project. In order to optimize water efficiency in buildings, plumbing, fire protection and HVAC&R engineers must work closely with civil engineers and landscape architects in putting together a functional building mechanical system. •





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Statement From Stuart S. Zisholtz, Esq.

“Underwater” Property

Most of my articles pertain to mechanic’s liens and payment bond claims. However, due to the depressed market I thought it would be wise to educate everyone in other areas of the law.

Many properties owned by members of the Association are considered to be “underwater”. This means that the value of the property is less than the amount of the existing mortgage that encumbers the property. For example, three years ago you may have purchased a piece of property for \$750,000. The first mortgage on the property may be \$650,000 and you may also have a second mortgage for \$50,000. A recent appraisal valued the property at \$600,000. Since the appraised value of the property is less than the amount of the mortgages that encumber the property, the property is deemed to be underwater and the second mortgage is technically unsecured.

In the event you decide to file a Petition in Bankruptcy, the proper proceeding would be a Chapter 13 Bankruptcy proceeding. In a Chapter 13 Bankruptcy proceeding, you may be able to wipeout the entire second mortgage on the

grounds that it is an unsecured debt. To determine whether the second mortgage can, in fact, be voided, you must have the property appraised to determine its value and then commence a special proceeding in the Bankruptcy Court to determine the value of the property by Court Order and deem the mortgage voided.

In the event you file a Chapter 7 proceeding, the Courts are split as to whether the second mortgage could be voided and discharged as a secured creditor.

The end result is that if your property is underwater, you may want to consider a Bankruptcy proceeding at some point to attempt to void the second mortgage and maintain the property.

Never let your lien time run out!

For a free copy of a 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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