



Council of Industry Newsletter

March 2013
Volume 17
Issue 3

Manufacturing Lobbying Days in Albany

The Council of Industry, as part of the Manufacturers Alliance of New York State, a state-wide coalition representing over 45 counties and 1,000 businesses across New York State, will join together on March 4th and 5th in Albany for "Manufacturing Lobby Days," an annual effort to increase awareness in Albany about critical issues affecting the state's manufacturing sector during today's difficult economic climate.



Senate Majority Leader, Dean Skelos, addresses the manufacturers in attendance at last year's Manufacturing Lobbying Days in Albany.

Over 85 Presidents and manufacturing executives from across the state participated in Manufacturing Days last year. This year's event will take place at the Fort Orange Club and will feature an introduction from Manufacturer's Alliance President Randy Wolken, a 2013 public policy briefing, followed by guest speakers and a panel of the Business Coalition culminating in a legislative reception in the evening. Day two of the event will consist of lobby visits with elected officials.

The goal of Manufacturing Days is to allow our economic sector the opportunity to rally together and relay to Albany our legislative agenda for 2013. If you missed Manufacturing Days but would still like to get involved or even if you attend Manufacturing Days but are wonder what you should do now read the article on page ?? from the National Association of Manufacturers on ways to build a relationship with your elected officials.

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Nominations Are Now Being Accepted for the 2013 Manufacturing Champions Awards

For the past several years, the Council of Industry has been honoring those individuals and organizations, who through vision, dedication, hard work and tireless involvement have helped to overcome some of the many obstacles faced by manufacturers in the Hudson Valley community and in so doing they have made it possible for manufacturers and their employees to prosper. It is up to our members to nominate an individual from the public sector, an individual from the private sector and a company that they feel is worthy of this recognition. The award will be presented at the Council's annual breakfast sometime in May.



Last year's Manufacturing Champions: Orange County Executive Ed Diana, Carole and Richard Parker, Fair Rite Products Corporation, and The HVEDC.

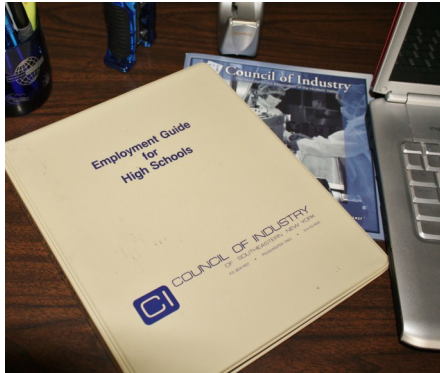
To nominate an individual or company please send the nominee's name, why you feel they should receive the award and your contact info to hking@councilofindustry.org. The Council of Industry Award Committee will review all nominations and recommend a recipient to the Board of Directors.



Training and Education

An immediate and noticeable change in both productivity and the positive attitude every sales professional requires to be successful will be visible. The tools discussed will assist participants in sharpening their consultative and customer relationship selling skills.

The Council Needs Your Input For "Employment Guide for High Schools"



The Council of Industry has been conducting a Needs Skills Assessment Survey of our manufacturing members. The purpose of this survey is to two fold. First the data will help to identify possible skills gaps. Second, by tabulating this data and publishing a Employment Data booklet to be distributed to schools and local elected officials we hope to make the public more aware of these skills gaps, the value of a manufacturing job, and that a career in manufacturing can be rewarding.

Council intern Jorge Gonzalez, a senior from the SUNY New Paltz School of Business, has put together a survey for our members to assess the employment positions they are presently trying to fill and to identify the skill level required

for those positions. We will be marrying that with data we already have such as from our wage and benefit survey to create a resource that students, parents, teachers, guidance counselors and administrators can use to understand the career opportunities available with Hudson Valley manufacturers.

If you have not yet completed the survey, the Council encourages all of our manufacturing members to do their part and complete the survey to the best of their ability in an effort to increase public awareness of vital role manufacturing plays in the Hudson Valley economy. The deadline is March 15th to complete the survey and we hope to have the booklet completed in April. For more information on the survey contact Alison Butler at abutler@councilofindustry.org or call (845) 565-1355.

Certificate in Manufacturing Leadership Classes are Going Strong

The Certificate in Manufacturing Leadership program has sold out and the classes are well under way. This year there is a core group of twenty one individuals from nine different companies enrolled in the program for supervisor training. We have several classes that have two or three additional people enrolled for just that class. If you wanted to enroll but did not register in time and were shut out, please look for our training catalog in November of 2013 and sign up early.



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There is still room for one or two more in Train the Trainer (5/1), Making a Profit (5/8), and Environment, Health, and Safety (5/22). If you are interested email Training@councilofindustry.org or call (845) 565-1355.



Council News

NLRB Wrap –Up for the February HR Sub-council Meeting



The National Labor Relations Board has been in the news quite a bit as of late. The most recent reports have focused on whether the decisions made since last January are valid since on January 25, the U.S. Court of Appeals for the D.C. Circuit overturned a routine NLRB unfair labor practice decision on the grounds that three members of the Board who participated in that decision had been unlawfully appointed by President Obama a year earlier, by way of invalid “recess appointments.” Sanjeeve DeSoyza, Bond, Schoeneck & King PLLC, covered this and a variety of other NLRB issuances such as:

- Notice Posting Requirements
- Quickie Ambush Elections
- Rules and decisions promoting micro-units
- Challenging dues check off provisions
- Social media and media contact policies

The meeting was very well attended and many came away with answers but maybe also more questions that only time can answer. Mr. DeSoyza also has extensive experience in collective bargaining negotiations, labor arbitrations, proceedings before the National Labor Relations Board and management of daily labor relations issues.

He discussed how union participation has been dwindling over the years and the fact that New York State has the highest percentage of unionized workers in the country. He also covered the best ways to stay in compliance and how to proactive in the workplace.

A key action for all employers is to watch the news and be alert for new court decisions. The Council of Industry will continue to post information in this newsletter and will continue to hold HR sub-council meeting to keep you up to date on the changes. Bond, Schoeneck & King is also an excellent source of information on this topic and their website is www.bsk.com.

There Will Be a Leadership Network Meeting for Graduates of the Certificate in Manufacturing Leadership Program on March 22nd

When: Friday, March 22nd from 8:30 –10 am
Where: Viking Industries, S. Ohioville Rd, New Paltz NY
Cost: None for members—Open to graduates of the Certificate in Manufacturing Leadership Program
How to register: email abutler@councilofindustry.org or call (845) 565-1355.

The Leadership Network is for graduates of the Certificate in Manufacturing Leadership Program to continue the connections that were made during their time in the class room and to continue the learning that began there as well. This meetings topic is Influence and the meeting will include a tour of Viking Industries in New Paltz, NY.



Influence is one of the many tools leaders have available to assist them in their job. Determining when and how to use your influence properly can be difficult to judge. This meeting will feature a discussion on the use of influence by Viking Industries General Manager, Richard G. Croce and Plant Manager, Michael Cozzolino, followed by a tour of Viking Industries. All past Certificate in Manufacturing Leadership participants are encouraged to attend.

To register contact Alison Butler at abutler@councilofindustry.org or call (845) 565-1355.

Welcome New Member:

Hunter Panels - Manufactures a full line of Polyiso, "iso", roof insulation panels.
 County: Ulster County. Contact: Marc Gannon

Personnel Matters

Hiring Steps to Improve Results and Reduce Risk

From Ethan Allen Personnel, a Council of Industry associate member

The hiring process is complex and can be very confusing. It is laden with the risks of poor employee selection, turnover and employment claims. This article is a compilation of useful tips and points to consider which can be used to improve employee selection and reduce litigation.

Job Description: Have a Job Description that provides the required qualifications, essential functions, and expectations of the position. The Job Description should be carefully thought through and easily understood by candidates. In addition to assisting in compliance with the American with Disabilities Act (“ADA”), a written Job Description is extremely helpful in creating a common and lasting understanding among all parties.

Advertisement: Develop a consistent practice for advertising and internally posting job openings. Filling positions predominantly through referral can result in hiring people who are similar to current employees and may create difficulties in defending a discrimination claim. Additionally, employers should exercise caution in selecting workers for advancement without notifying other qualified workers of the opening as this could lead to a perception of discrimination. Be careful to avoid using descriptions or listing requirements that could be deemed discriminatory.

Application: Application forms should be completed by all applicants and should request sufficient information to screen applicants. This will support a defensible position that an employer screens applicants based on identifiable criteria. It will also assist in objectively screening out unqualified candidates before they get to the interview stage. Additionally, the application should provide notice of any particular conditions of employment (such as a drug screens), employment agreements or at-will employment status. This will prevent applicants from being surprised later in the process.



Interview: The interview is an important stage in the hiring process. Interviewers should be prepared so the interview does not develop into casual conversation. Candidates should be able to describe the job they are applying for and specific examples of their skills. Look for evidence of accomplishment. Ask candidates what results they have produced in their previous jobs as opposed to just having them explain "what they did". Additionally, anyone conducting an interview should be trained on what they may legally ask an applicant and what they may discuss. Asking inappropriate questions such as an applicant's age, national origin or even community involvement can lead to discrimination claims. Unauthorized or inaccurate discussions of compensation can result in the loss of a qualified applicant or a claim of misrepresentation. Finally, promptly inform candidates who are not selected. Treating unsuccessful candidates with courtesy will leave them with a positive impression.

Reference and Background Checks: Reference checks are valuable and should be used to validate the information that the applicant has provided on their application and during the interview. If possible, conduct references with people to whom the applicant reported at prior places of employment so questions on strengths weaknesses and accomplishments can be asked. However, even if it is only possible to confirm dates of employment and position title, it is still important to know that the applicant has given accurate information and has not falsified their application. Employers that conduct background checks (including obtaining credit reports or criminal histories) utilizing third parties should be aware of and comply with the requirements of the Fair Credit Reporting Act (FCRA) regarding disclosures to employees and applicants. Additionally, it is important to understand that Article 23-A of the New York Correction Law prohibits discrimination against people with criminal convictions unless there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought by the applicant.

Offer letter: Offer letters prevent misunderstandings and create a record of what is being presented to the candidate. They should include the position/title, work location, who the applicant reports to, compensation, start date, work hours, employment agreements, benefit information, and any other important details. It is usually preferable to have all the details agreed to in writing before an offer is accepted than to find out there is a problem after the employee starts work.

An investment of time and resources in organizational hiring practices will yield significant returns through better hiring decisions and reduced risks of legal liability.

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More Personnel Matters

Employment Contracts: Usually Unnecessary Documents Trying To Be Something They Are Not

From *HumanResourcesIQ.com*, by Devora Lindeman, Greenwald Doherty LLP, a Council of Industry associate member

Many companies unnecessarily use employment contracts with all their employees. Instead of these documents providing specific legal protections for the company (the very reason to utilize a contract), many documents I see in my practice are often trying to be something they are not and are more of a hassle for the employer in the long run. Take away? Unless the new hire is a senior executive with a complex compensation package and, perhaps, a “golden parachute” (a type of severance arrangement), or other similar guarantees, your company would probably be better off not having employment contracts with your employees.

Often, the employment contracts I see are trying to do the job of an employee handbook and an offer letter combined—with sometimes elements of a job description thrown in as well. For example, if the contract sets forth information regarding company policy that the employee is expected to abide by and also includes employee benefits, it is trying to be an employee handbook. The company would be better protected with a handbook distributed to all employees, and containing uniform policy and benefits. Otherwise, any time the company wants to change something it has to modify each and every employment contract.

For example, if the company has included individual employee benefits in the employee contracts, but then wants to change a benefit (or if, for example, the insurance company changes the health insurance policy and/or insurance premiums required), the company will need to change each individual contract for the employees affected. There also could be issues raised if an employee refuses to sign a new contract and demands the old benefits, but the company is not in a position to provide them. It is better for the company to have global employment policy and benefit issues addressed through a general employee handbook that is applicable to everyone—which can be changed whenever the employer desires to do so.

An offer letter is a better vehicle to use to set forth the basic terms and conditions of employment—start date, base compensation, eligibility for bonuses or commissions, etc. Such a letter can indicate that employment is conditioned upon the employee signing other types of agreements, usually on the employee’s first day of work. For example, if the employee is going to receive commissions, a separate commission agreement may be advisable. If the company is concerned about confidentiality, non-competition and non-solicitation of employees and/or clients/

customers, a separate agreement containing these “restrictive covenants” is called for.

Having restrictive covenants reflected in a contract executed by employees is in fact vital if the company ever wants to enforce those provisions. Employers can go to court to enforce a breach of a confidentiality provision in a contract, but cannot base a lawsuit on merely a policy in a handbook.

Additionally, employees in the U.S. should be hired at will. As you probably know, that means that the employment relationship exists as long as the employee and employer “will it”—as long as they want it to exist. If an employee is at will, when the employee wants to leave, he or she can quit. When the employer doesn’t want the employee to work for the company any more, the employer can let the employee go. Employment contracts are often structured with certain durations, for a term of a number of years. Including an expected duration of the term of employment destroys an employee’s at will status—which can be vital for the company to maintain.

Employees who are employed at will have no duration for the term of their employment. It lasts as long as the employer and employee both want it to. Thus, using employment contracts often inadvertently destroys an employee’s at will status.

While there are a number of pit falls with utilizing employment contracts with your employees, there are certainly some specific situations where they might be warranted. If you determine that you want to utilize an employment contract for your business, it is probably a good idea to have it reviewed by a management side employment lawyer familiar with the law where your business is located. That will ensure that you have not inadvertently included any provisions in the contract that could be counter to the company’s interests and be more trouble than they are worth in the long run.



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Legislative Matters

DOL Publishes Final Regulations Addressing Military Family Leave Provisions

From Jacksonlewis.com, a Council of Industry associate member

The U.S. Department of Labor (DOL) has published final regulations clarifying several amendments to the Family and Medical Leave Act (FMLA) which expand the law's military family leave provisions. The agency's final rule—released on the FMLA's 20-year anniversary—also implements changes enacted through the Airline Flight Crew Technical Corrections Act and contains other modifications to the prior regulations, described below.

Following a 2008 law that extended FMLA-qualifying leave to certain eligible employees for reasons arising from a family member's service in the military, the National Defense Act Authorization Act for FY 2010 (NDAA) further expanded the leave entitlements available to relatives of covered servicemembers. The DOL's final rule, published in the Federal Register on February 6, 2013, provides additional guidance regarding these and other changes.

Qualifying Exigency Leave

Prior to the 2010 NDAA's enactment, eligible employees could take FMLA leave for qualifying exigencies because the employee's spouse, son, daughter or parent was on active duty or had been notified of an impending call or order to active duty in support of a contingency operation. Among other things, the 2010 NDAA extended qualifying exigency leave to family members of servicemembers in the Regular Armed Forces, as the law previously only provided such leave to family members of servicemembers in the National Guard and Reserves. The 2010 law also added the requirement that the servicemember (National Guard, Reserves and Regular Armed Services) be deployed to a foreign country in order for qualifying exigency leave to be utilized by a covered family member.

The DOL's final regulations also add a new category of qualifying exigency leave. Eligible employees are now entitled to "parental care leave" to care for a military member's parent, which in many cases will be an in-law, who is incapable of self-care when the care is necessitated by the member's covered ac-

tive duty. Further, under prior law, employees could take up to five days of qualifying exigency leave to spend time with a military member on Rest and Recuperation; the new regulations extend that time to 15 days.

Military Caregiver Leave

Under the 2008 amendments to the FMLA establishing military caregiver leave law, certain family members were entitled to 26 work-weeks of FMLA leave in a single 12-month period to care for a covered servicemember with a serious injury or illness incurred in the line of duty on active duty for which the servicemember was undergoing medical treatment, recuperation, or therapy. The NDAA revised the definition of "covered servicemember" to add veterans, provided they were a member of the Armed Forces at any time during the five-year period preceding the date of the medical treatment, recuperation, or therapy. Importantly, the final regulations state that the period between their effective date and enactment of the NDAA on October 28, 2009 does not count for purposes of determining the five-year period for covered veteran status.

The regulations also clarify that, for a veteran, an injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty may constitute a "serious injury or illness" in certain situations. The final regulations similarly expand the definition of a "serious injury or illness" for current service members, but without the limitations applicable to veterans.

Certifications

The final regulations clarify that, with respect to military leave, FMLA certifications can be signed by any health care provider who is authorized to certify a FMLA medical certification form for other FMLA-qualifying reasons.

The DOL has also replaced the previous prototype FMLA medical certification and notice forms with a note that such forms should be obtained directly from the DOL website or a local office. Thus, in the future, the DOL will not need to issue new regulations each time it changes the required certification forms.




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More Legislative Matters

Intellectual Property: Major Change to U.S. Patent Law Goes Into Effect on March 16, 2013

From Bond, Schoeneck & King PLLC, a Council of Industry associate member



On March 16, 2013, U.S. patent law will change from a “first-to-invent” patent system to a “first-to-file” patent system. Transitioning to a first-to-file system is in-

tended to align the United States with all other industrialized countries. Under current U.S. law, the first person to invent and file for a patent is entitled to the patent, even if a person who invents the technology later files a patent application first. However, under the new law, the first person to file for a patent will be entitled to the patent.

Because of the potential advantages under the “first-to-invent” system, strong consideration should be given to filing patent applications before March 16, 2013. Thus, if your company or organization is contemplating filing for patent protection on an invention and would like to take advantage of the current patent law, the process should be initiated immediately, as the preparation and filing of a patent application is a time-consuming endeavor and there likely will be a spike in filings before March 16, 2013.

Filing before March 16, 2013:

What are Potential Advantages under the “First-to-Invent” System?

1) Proving an Earlier Date of Invention

The most significant advantage to filing under the “first-to-invent” system is that it allows applicants to potentially remove “prior art” (i.e., what was already known by the public, such as prior patents, publications, commercial products, etc.) by proving an earlier date of invention. In other words, an applicant who files before March 16, 2013 will still be allowed, in certain circumstances, to overcome prior art by proving that they invented the claimed technology before the pertinent prior art. Applicants who file on or after March 16, 2013, however, will not be entitled to rely on the same evidence.

2) Prior Art Definition

Patent applications filed after March 16, 2013 will be analyzed using an arguably broader definition of “prior art,” and accordingly, it may be more difficult to obtain patent protection under the new system. For example, under current U.S. law, prior art includes information that is “known or used by others” before an invention is conceived. Under the new system, however, prior art will include any information that is “otherwise available to the public” before the filing date. Further, under current U.S. law, prior art includes only public uses or sales that have occurred within the United States. Under the new system, prior art will be expanded to include public uses or sales outside of the United States. Finally, under current patent law, prior U.S. patents and published applications are considered prior art as of the earliest filing date within the United States. Under the new system, prior U.S. patents and published applications will be considered prior art as of the earliest filing date anywhere in the world.

Filing on or after March 16, 2013:

Strategies under the “First-to-File” System

After the new law takes effect, applicants may wish to consider the following strategies for enhancing the opportunity to secure patent protection under the “first-to-file” system:

1) Implement a Patent Program

When the change to the “first-to-file system” takes effect, there will be increased pressure to draft and file patent applications as quickly as possible, while still maintaining a high degree of quality. To prepare for this change, corporations and organizations will greatly benefit by having a systematic patent program in place before March 16, 2013.

Continued on page 15

Under current U.S. law, the first person to invent and file for a patent is entitled to the patent, even if a person who invents the technology later files a patent application first. However, under the new law, the first person to file for a patent will be entitled to the patent.



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EHS Matters

Employees must be registered, trained and licensed as a New York State Security Guard to perform these tasks and your company must also be registered as a Proprietary Employer of Security Guards per Section 99 of the Executive Law of the Department of State.

Maintenance versus Security

Contributed by HOUSE WATCH INC.

If your company has employees doing *maintenance/security*, you may be in violation of the New York State Security Guard Act. Are these employees doing the following:

- Protection of individuals and /or property from harm, theft or unlawful activity?
- Deterrence, observation, detection and/or reporting of incidents in order to prevent any unlawful or unauthorized activity including but not limited to, unlawful or unauthorized intrusion or entry, larceny, vandalism, abuse, arson or trespass on property?
- Responding to alarms designed to prevent or detect unauthorized intrusion, robbery, burglary, theft, pilferage in your business?
- Make rounds around the company building and grounds?
- Check employees/guests as they enter or exit your building?
- Have an employee checking incoming and outgoing freight before it can enter or leave company property?
- Question unauthorized people on company property, and detain them until police arrive?

If you have answered **yes** to one or more of these questions your company may be in violation of Section 89-G Article 7 & 7A of the New York State General Business Law. Employees must be registered, trained and licensed as a New York State Security Guard to perform these tasks and your company must also be registered as a Proprietary Employer of Security Guards per Section 99 of the Executive Law of the Department of State.



upon successful completion, he will be issued a Certificate.

- Fill out a 4 page N.Y. State Department of State Security Guard application.
- Have his fingerprints taken.
- Send in her license application, Certificate and fingerprints to Albany, along with 2 checks one for \$36.00 for her license fee, and one for \$102.25 to have her fingerprints and background check done.

Within 90 days the employee must take a 16hr. On-The-Job Training class (relevant to the duties of the guard, requirements of the work site and the needs of the employer) upon successful completion, a Certificate will be issued.

Every year thereafter the employee must take an 8hr. Annual-In Service Training class and every two years the employee must renew his Security License.

As an employee of Security Guards, per the Department of State, rule 19-174.6, the employer must register the guard with the NYS Department of State, using an Employee Status Notification form for both when an employee is hired as a guard and when that employee leaves your employ.

If you have a contracted Security Company on site, you may want to check to make sure their guards have a valid (not expired) license, and are up to date with the required training (Hr. On-The-Job & 8hr. Annual).

To become licensed, an employee must first:

- Take an 8hr. pre-assignment class for security (a general introductory course) where

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Manufacturing Job Opportunities

If you have job openings and positions to fill:

- Post it on the Council of Industry Website www.councilofindustry.org
- Look at resumes from our member recommended **For Hire page**

Contact Alison at abutler@councilofindustry.org for more info.



CI Calendar of Training and Events

| | |
|----------------|--|
| Mar 4,5 | <u>Manufacturing Days in Albany</u> — A two day advocacy event at the Fort Orange Club in Albany. Cost \$100 per person. More info at http://www.councilofindustry.org/events.html |
| Mar 6 | <u>Certificate in Manufacturing Leadership: Problem Solving & Decision Making</u> — 9:00 am— 4:30pm at Dutchess Community College, Bowne Hall, Poughkeepsie, NY. |
| Mar 6 | <u>Affordable Care Act Seminar</u> —8:30—11:00 am at Rose & Kiernan in Fishkill, NY. No cost for members. |
| Mar 13 | <u>Certificate in Manufacturing Leadership: Positive Motivation & Discipline</u> — 9:00 am— 4:30pm at Dutchess Community College, Bowne Hall, Poughkeepsie, NY. |
| Mar 22 | <u>Leadership Network Meeting: The Use of Influence</u> — 8:30—10 am at Viking Industries, New Paltz, NY |
| Apr 3 | <u>Certificate in Manufacturing Leadership: High Performance Teamwork</u> — 9:00 am— 4:30pm at Dutchess Community College, Bowne Hall, Poughkeepsie, NY. |
| Apr 17 | <u>Certificate in Manufacturing Leadership: Effective Business Communication</u> — 9:00 am— 4:30pm at Dutchess Community College, Bowne Hall, Poughkeepsie, NY. |
| May 1 | <u>Certificate in Manufacturing Leadership: Train the Trainer</u> — 9:00 am— 4:30pm at Dutchess Community College, Bowne Hall, Poughkeepsie, NY. |
| May 8 | <u>Certificate in Manufacturing Leadership: Making a Profit in Manufacturing</u> — 9:00 am— 4:30pm at Dutchess Community College, Bowne Hall, Poughkeepsie, NY. |

You can find more information on the courses and events listed in our calendar by going to our website— www.councilofindustry.org or if you are reading our electronic version just press Ctrl and click the course title.



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Energy Matters

Under the law, only the smallest businesses will be exempt from penalties if they don't offer health insurance in 2014. This provision is commonly called the "employer mandate."

Energy Market Overview

January 2013 felt very similar to January 2012, when the market began its amazing decline which bottomed out in late April 2012. However, history is not repeating itself. Calendar strips 2014 – 2017 have increased approximately \$0.13 per MMBtu from Jan. 9, 2013. The current rally has been fueled by colder weather in the Midwest and Northeast and larger than anticipated storage withdrawals.

Market Fundamentals

Weather

According to the National Oceanic and Atmospheric Administration (NOAA), 2012 was the warmest year in the 1895-2012 period of record for the nation. The 2012 annual temperature was 1.0°F warmer than the previous record-warm year (1998). Winter 2012-2013 has been slightly above normal but significantly colder than Winter 2011-2012, which was a record-warm winter. February 2013 is projected to have below-normal temperatures in the Northeast, while Texas and Southern California are expected to be above normal. March 2013 is projected to be above normal from the Eastern to the Central U.S.

Supply & Demand

One key metric that traders are keeping an eye on is the estimate of natural storage levels at the end of March (i.e. the end of withdrawal season). Last year we finished the withdrawal season at 2,437 Bcf—a record high—while the 5-year average is 1,710 Bcf. Based on forecasts for cold temperatures for the remainder of February, and assuming we experience a “normal” March, inventories could finish below



production has contributed to the larger storage withdrawals. Both total gas and horizontal rig counts have stabilized since November, as prices are higher than last spring. But, in both cases, drilling activity is still down significantly versus a year ago. New data does suggest that production has fallen by more than 2 Bcf per day since the peak in November 2012, with most of the declines occurring as a result of reduced drilling in the Gulf of Mexico. Production economics also contribute to a rangebound market, as reduced production has provided price support, but upside is clearly limited by prolific shale gas reserves that can be tapped if prices move higher.

Market Outlook

This past year we saw a remarkable drop in electricity generation from coal because of economics driven by low natural gas prices, rather than of regulation. Higher prices have reduced switching over the last few months, but the grid's flexibility to switch between these two fuels should contribute to the rangebound nature of natural gas prices.

However, future regulations such as the Mercury and Air Toxics Standard (MATS) and the potential reinstatement of Cross States Air Rule (CSAPR), are likely to adversely affect the cost competitiveness of coal electricity generation a couple of years into the future and should have a long-term bullish impact on gas and power prices.

Fixed Price Customer Considerations:

There is not a one-size-fits-all strategy due to both customer and regional considerations. Overall fixed prices remain low based on long-term history. Northeast power prices have risen as a result of strong gas basis and colder temperatures. Although prices for 2014-2015 are higher, they are worth considering. The impacts of the changes in production, shrinking storage surplus and lost coal generation due to both economics and the EPA, support higher prices for the long-term. So, current price levels may be a value. As always, consider how they compare to your targets—higher prices do not necessarily indicate a poor value, depending on the fundamental outlook and risks of the market.

1,906 Bcf. This estimate has been significantly revised (downward) over recent weeks, which has clearly contributed to the price rally.

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Manufacturing Matters

Achieving Improved Profitability through Waste Reduction

Part 2 of 2 – Prioritizing Options and Creating an Action Plan

By Ross Topliff, Tops Engineering, Council of Industry Associate Member

In the first article of this series (Jan. 2013 CI Newsletter), we covered the fundamentals of preparing and conducting a waste audit using material balances to identify and measure the types and amounts of waste generated throughout a manufacturing process. In this article, we will cover steps 2 and 3: prioritizing the identified reduction opportunities and developing an action plan to implement the projects.

Your existing audit team will best be able to efficiently complete these two steps, as they are already familiar with the process and identified waste streams. However, it may be necessary to bring additional resources onto the team for project cost estimation and scheduling.

Prioritizing Options

Prioritization requires establishing a ranking method based on several criteria that assigns numerical values to each potential project. When the final ranking is ready, the top projects should be apparent. I recommend setting a ranking of 1 to 5 for each criterion with precise definitions of each value. This article explores two sets of rankings: waste disposal costs and the degree of difficulty in changing the waste source

Waste disposal cost is an important ranking to consider and may include:

- disposal permit creation, fees, and maintenance,
- transportation cost to the disposal destination, and
- disposal processing fees.

If a particular waste stream consists of waste from several sources within the facility, the material balance will assist with distributing costs to each source. For example, disposing of a particular liquid stream of 10,000 gal/day (GPD) may cost \$0.50/gallon for a total of \$5000/day. Assume this stream has two primary sources: 2000 GPD and 5000 GPD. Initially, we might want to distribute the costs at \$1000 and \$2500 for these two streams. However, if the 2000 GPD stream contains 90% of the contaminant that requires treatment, then this stream should assume the bulk of the \$5000/day cost. For non-hazardous solid waste, it is most likely the easiest course of action



to allocate the disposal cost based upon the weight from each area. The ranking would be based upon the current disposal cost, with high cost equaling a high ranking.

A second ranking can be the degree of difficulty in changing the waste source, or finding a new treatment method. A simple change like adding a new filtration step will be low cost and highly rated. However, having to install expensive equipment will be a low rated option. Additional rankings can be built for the time required to implement a change, any public relations value, and the criticality to a planned production expansion.

Adding the values from the different criteria is an easy way to arrive at a final ranking. This final ranking should provide multiple projects to pursue. In the unlikely event this does not happen, the next step is to either change the ranking system, or create additional criteria.

Reduction Action Plan

Next, you need to look at the resources available to implement the initial project(s). This may require bringing in outside resources for the detailed design and implementation of the project. Obviously, an internal person needs to maintain control and responsibility for the overall project.

As project details are developing, you must confirm that the project cost and anticipated savings are in line with the original estimates. You don't want to get to the end of the project only to discover that the capital cost is several times higher and /or the savings have disappeared. Either of these will remove any incentive to complete the work.

Conducting an audit of the entire manufacturing process using the material balance technique will find the source and size of almost every type of waste within a facility. Developing a ranking system will permit the firm to prioritize the uncovered options and determine which to pursue first.

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Financial Matters

Succession and Exit Planning

By Jim Santangelo, Certified Financial Planner

Early in my professional career I was employed by an extremely successful business person. The lessons I learned under his tutelage have remained with me for decades and have proven useful and durable through both good and bad economic times. One of the most valuable lessons I learned was as follows:

“The day you start a business, is the day you should begin planning your succession and exit from that business.”

First and foremost, a succession and exit plan is just that, “A PLAN.” Without a plan, failure is often more likely than success. For example, did you ever see a builder try to build a structure without a plan? If so, I suspect that when the light switch was turned on, water poured through the light socket and the kitchen faucet may have emitted light. That is, of course, an exaggeration, but it does make the point. This example can be applied to an owner’s business exit if a plan is not utilized. Absent a succession and exit plan, the value of the business may be diminished or worse yet, the business and business owner may be sending our friends in Washington D.C. more tax money than necessary.

In my opinion, some of the steps necessary to implement a successful plan, optimize the value of the business and assist the business owner in reaching his/her financial goals include the identification of objectives; ensuring business continuity; and wealth and estate planning. As with many plans involving business assets (e.g. the business being transferred), individuals representing certain professional disciplines should be included in the process. This will increase the probability of success. Some of these disciplines typically include a business attorney, an estate and trust attorney, a CPA, a CERTIFIED FINANCIAL PLANNER™, an exit planner, a valuation specialist and an insurance professional.

Without the expertise offered by this diversified group of professionals, many business owners might conclude that the quickest way to reach their financial goals is an outright sale of the business. This belief often proves to be incorrect because that approach may actually diminish the after-tax value of the owner’s

interest in the business. After all, it is not about how much you make, but how much you keep after taxes that matters.

With the guidance of a CPA, exit planner and attorney, there are tax compliant methodologies that may assist in reducing the overall income tax consequences of transferring one’s business and, therefore, in increasing the after-tax proceeds from the transfer.

Of course, one of the most critical components of successfully transferring any business is the value of the enterprise realized. Quantifying market value typically includes, but is not limited to considerations about, the company’s history of cash flow, with the buyer likely to have a specific interest in the direction that the cash flows. Is it increasing or decreasing? Another component important to buyers is the value of the customer base, which is impacted by, among other things, the diversification of the customers.

Keep in mind, willing buyers may have different motives for buying any specific entity. Consequently, the amount an individual buyer may be willing to pay for a business is likely to vary among acquirers. For example, one willing buyer may be looking to increase his/her footprint in the area, in order to gain economies of scale and increase market share. Another willing buyer may be looking to purchase the company as an investment rather than to get involved with the “day-to-day” running of the enterprise. Still another willing buyer may be the current senior management of the company seeking to become entrepreneurs.

Irrelevant to the motives of any buyer, the entity and its owners must be fully and properly prepared for the transfer of the business by employing continuous planning. As with any type of plan, revisions should be made as needed and the plan must be updated to reflect changes in the tax laws, regulatory environment, etc.

In conclusion, transferring any business requires a plan that includes proper tactics and strategies in order to optimize the after-tax value of the transaction.

Jim Santangelo, CERTIFIED FINANCIAL PLANNER™, 845-546-0327. "Securities and Advisory services offered through Royal Alliance Associates, Inc., One Industrial Drive, Middletown, NY 10941. (845)695-1700. Member FINRA/SIPC and a registered investment advisor.




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More Legislative Matters

10 Steps to Building a Better Relationship with Your Elected Officials

By Ned Monroe, senior vice president, external relations, National Association of Manufacturers

Thousands of elected officials are making decisions every day on issues that impact your bottom line. City council members are voting on zoning issues. State legislators are voting on infrastructure legislation, and members of congress are deciding federal spending and tax issues. How our policymakers vote can cost you money or can help your business thrive. With a freshly minted congress in place, there's no better time than now to build and improve your relationships with your elected leaders. Policymakers need to hear manufacturing's story, but to do that requires manufacturers building relationships on Capitol Hill that will help ensure our voices are heard on legislative issues critical to manufacturing.

Here is how:

1. Commit to building relationships. The first step to forming or starting a relationship is to make a decision to spend time on this process. You can do this yourself, or you can assign a team member to make this a part of his or her job.

2. Research who represents you. Find out which local, state and federal officials represent your home, office or plant. The National Association of Manufacturers' (NAM) Manufacturing Works website can link you to your state and federal officials based on a simple zip code search. This site helps you find out whom to contact about manufacturing issues.

3. Introduce yourself. The easiest way to begin the relationship is to send a letter of introduction, make a phone call or reach out electronically. A short note introducing your company, the product you manufacture and the number of employees you have will help establish yourself as a constituent. This is another way that the Manufacturing Works website can be useful to you. It's as easy as logging on and sending an e-mail.

4. Invite elected officials to visit. Invite elected officials to visit your manufacturing facility. The best location for a site visit is the place where you manufacture and employ local workers. The NAM's toolkit shows how to conduct these visits.

5. Visit their local office. While policymakers like to visit manufacturing facilities, they also welcome a chance to talk in their legislative offices.



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Consumer Price Index for January 2013

| | | | | <u>Point</u> | <u>%</u> | <u>% Increase</u> |
|--|-----------------|-----------------|-----------------|-----------------|--------------|-------------------|
| Wage Earners & Clerical | <u>Jan. '12</u> | <u>Jan. '13</u> | <u>Dec. '12</u> | <u>Increase</u> | <u>Month</u> | <u>Year</u> |
| 1967=100 | 664.89 | 674.73 | 672.85 | 1.88 | 0.3 | 1.5 |
| 1982-84= 100 | 223.22 | 226.52 | 225.89 | 0.63 | 0.3 | 1.5 |
| All Urban Consumers | | | | | | |
| 1967=100 | 678.99 | 689.82 | 687.78 | 2.04 | 0.3 | 1.6 |
| 1982-84=100 | 226.67 | 230.28 | 229.60 | 0.68 | 0.3 | 1.6 |
| Hudson Valley unemployment rate for December 2012 = 7.3% | | | | | | |

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More Legislative Matters**

Such a program should include regular meetings (e.g., monthly, quarterly) where engineers, developers, and business managers, along with patent lawyers, analyze invention disclosures and decide whether to file for patents on the technology being developed internally. Companies and organizations that have a systematic patent program in place will be better positioned for the "first-to-file" system.

2) Filing of Provisional Applications

Under the first-to-file system, delays in filing could be detrimental to patent rights. A filing strategy that should be considered when the "first-to-file system" goes into effect on March 16, 2013 is the strategy of filing multiple provisional applications over the course of the "provisional year." A provisional patent application filing is a kind of filing designed to allow inventors to get their new inventions on file with the U.S. Patent Office quickly, while buying some time to decide whether a full-blown utility application, and its corresponding costs and fees, are warranted. By filing multiple provisional applications during the provisional year, the inventive concepts would be "on-file" as early in time as possible. Then, as the provisional year is drawing to a close, all of the provisional applications could be combined into a single utility patent application.

Conclusion

The conversion from a "first-to-invent" to a "first-to-file" system is one of the most significant changes to U.S. patent law in recent history. Under the new system, patents will be awarded to the applicant who was first to file a patent application, as opposed to the applicant who invented first, thereby putting increased pressure to draft and file patent applications as quickly as possible.

The Final Rules

On February 14, 2013, the USPTO published in the Federal Register the final rules and examination guidelines for the AIA. The new final Rules begin with a brief overview of the specific changes to Title 35 which necessitate amendments to the USPTO's rules, a general discussion of the changes from the proposed rules to these final rules, a discussion of the specific rule amendments, and responses to 57 different comments that the USPTO received in response to its proposed rules. The Rules then end with the specific amendments to 37 CFR part 1 in order to implement the AIA.

The Guidelines provide responses to 50 different comments that the USPTO received in response to the proposed guidelines published last summer, and end with new final examination guidelines.

The Rules and Guidelines are available online:

First-Inventor-to-File Final Rules (78 Fed. Reg. 11024, February 14, 2013) (available at <http://federalregister.gov/a/2013-03453>) ("Rules")

First-Inventor-to-File Final Guidance (78 Fed. Reg. 11059, February 14, 2013) (available at <http://federalregister.gov/a/2013-03450>) ("Guidelines")

Modifications to The Grace Period Under Section 102(b)(1) (B)

One of the major concerns raised by commentators of the proposed rules and guidelines was the requirement under 102(b)(1) (B) of substantial identity between an inventor's earlier disclosure and an intervening third-party disclosure that is used to disqualify an application under 102(a). The proposed Examiner Guidelines published last summer stated that:

"Even if the only differences between the subject matter in the prior art disclosure that is relied upon under 35 U.S.C. 102(a) and the subject matter publicly disclosed by the inventor before such prior art disclosure are mere insubstantial changes, or only trivial or obvious variations, the exception under 35 U.S.C. 102(b)(1)(B) does not apply."

In the final Guidelines, however, the USPTO clarifies, and arguably broadens significantly, this identity requirement:

"[T]here is no requirement that the mode of disclosure by an inventor or joint inventor be the same as the mode of disclosure of an intervening disclosure (e.g., inventor discloses his invention at a trade show and the intervening disclosure is in a peer-reviewed journal). ... [T]here is no requirement that the disclosure by the inventor or a joint inventor be a verbatim or *ipsissimis verbis* disclosure of an intervening disclosure in order for the exception based on a previous public disclosure of subject matter by the inventor or a joint inventor to apply."

March 8, 2013 Webcast

The PTO will be hosting a public forum to discuss the first-inventor-to-file final rules and guidelines on Friday, March 8, 2013 in the Madison Auditorium on the USPTO's Alexandria campus. The forum will run from 10:00 AM to 12:30 PM Eastern Daylight Time and will also be webcast on the AIA micro-site (see http://www.uspto.gov/aia_implementation/index.jsp for more information).

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Some typical effective changes include:

1. Installing new equipment to achieve higher product yield, such as a more efficient mixer. For example, one firm achieved a much more uniform product, improved quality, and reduced the need for rework by installing a high shear mixer for a spray drying operation.
2. Switching the type of raw material being used for reduced toxicity or lower disposal cost. For example, another firm changed from one organic solvent to another with a lower toxicity and greater ease of handling. This reduced airborne emissions, as well as fines related to exceeding the permitted levels.
3. Selecting packaging that reduces waste volume. For example, a food processor changed from plastic buckets to bag-in-a-box and reduced their raw material packaging disposal volume by over 80%, resulting in significant transportation and disposal savings.
4. Process optimization – a slight change in operating conditions can achieve a significant improvement. For example, a major flavor company achieved a 10% yield increase and 20% cost reduction through

improved process control and the adjusting of operating conditions.

Summary

Every production process creates some kind of waste that must be disposed. The cost for doing this is increasing every year. Any waste disposal cost reduction that can be achieved drops right to the bottom line of the company's financial statements and increases their profitability.

Conducting an audit of the entire manufacturing process using the material balance technique will find the source and size of almost every type of waste within a facility. Developing a ranking system will permit the firm to prioritize the uncovered options and determine which to pursue first.

As the project flows from concept to installation, check to assure that the cost and/or savings have not changed significantly, with a resulting loss of payback for the effort.

By correctly implementing this three-step process, you can become a hero by improving the profitability of your firm.

ROSS TOPLIFF is the principal at Tops Engineering, a Council of Industry associate member company, which focuses on reducing waste from manufacturing processes thereby improving the economics. He can be reached at (845) 728-1769; Email: rossst@topsendeering.com.

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Bring material to introduce your company and your manufacturing issues. In some ways, this is a typical "sales call," so be prepared to answer questions about your company.

6. Connect on social media. Elected officials have Facebook pages, YouTube channels, LinkedIn profiles and Twitter handles. Make sure that you "friend," "subscribe," "link" and "follow" all your elected officials. This is an easy and effective way to stay informed and communicate with policymakers.
7. Get to know the staff. If an elected official isn't available, meet and talk with his or her staff. Staff members can be extremely influential and are very knowledgeable on the issues that are important to you, so be sure to tell them your story also.
8. Become recognized as a manufacturing expert. As a manufacturer and NAM member, you are an expert on manufacturing issues. Elected officials need to know that you are an informed information source related to jobs, the economy, taxes, regulatory red tape and hundreds of other issues. Most elected officials want to make informed decisions when they vote, and they are looking for knowledgeable business leaders to help them make good decisions. If you become recognized as a manufacturing expert, you can help influence governmental policy.
9. Keep the lines of communication open. When you create jobs, win a new contract, expand production, increase hours—let your elected officials know. If appropriate, tell policymakers when their decisions are harming your business or costing jobs. Communicating the real economic cost of government decisions is a powerful tool that you should use to tell manufacturing's story.
10. Be helpful. Occasionally, it's appropriate to be aggressive and pointed when necessary in politics. However, on legislative issues related to manufacturing policy, it's more effective to be the helpful, supportive and knowledgeable professional. Help our elected officials solve problems, and you will develop powerful relationships that will impact your company's bottom line.

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