

**ELECTRIC COMPETITION IS GOOD FOR MANUFACTURERS**

# THE ILLINOIS **Manufacturer**

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Summer 2011

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heating up energy  
costs for your business?**

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# Summer 2011



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### Mission Statement

The object for which the Illinois Manufacturers' Association was formed is to strengthen the economic, social, environmental and governmental conditions for manufacturing and allied enterprises in the state of Illinois, resulting in an enlarged business base and increased employment.

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Subscriptions: One year \$50. For subscription, address changes, renewals and adjustments, write to The Illinois Manufacturer. Presort standard postage paid at Bloomington, IL. Postmaster: Send address changes to *The Illinois Manufacturer*, 220 East Adams Street, Springfield, IL 62701. 217-522-1240.

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## Electric competition is good for Illinois' manufacturers



Because of the upward price pressure on one of manufacturers' biggest cost line items, it has never been more important for IMA members to become better educated on how geo-political, weather, economic and environmental factors impact energy markets.

**C**ustomer electric choice remains as critical a component to the success of Illinois' manufacturing industry today as it was in 1997 when the Illinois Manufacturers' Association led the way in helping convince the General Assembly to pass the 1997 Illinois Electric Customer Rate and Relief Law.

The fully open electric market that Illinois commercial and industrial users have enjoyed for years is now making way for an emerging, vibrant, open and competitive electric market for residential customers across Illinois.

In contrast, manufacturers in Michigan are burdened by the limitation of only 10 percent of each utilities' users having access to the favorable electric prices available in today's market while no manufacturers in Wisconsin or Indiana have access to open electric markets. Ohio's utilities are proposing onerous regulatory changes that may dramatically increase utility rates and may even threaten the existence of an open competitive electric market.

The availability of electric choice is an opportunity for IMA members to leverage to their advantage. As one of the three biggest expense line items for most manufacturers, having an energy strategy has never been more important.

The economic downturn has depressed consumer demand for goods and services. Since mid-2008, electricity and natural gas prices have steadily dropped in conjunction with the decline of goods and services. We must guard against the complacency that can set in at times like now, when energy commodity prices languish at levels that hover near seven year lows, as there are looming factors on the horizon such as environmental regulations over chemicals used in extracting natural gas from shale reserves and air emission standards for coal-burning electric power generating plants.

Further, the retirement of aging nuclear facilities, potential shutdowns of uneconomic coal-fired generating plants in the face of new Environmental Protection Agency standards, and the resulting shift toward natural gas as a fuel of choice for generating electricity combined with an eventual recovering demand, will most likely lead to price increases and could increase volatility in the market.

Because of the upward price pressure on one of manufacturers' biggest cost line items, it has never been more important for IMA members to become better educated on how geo-political, weather, economic and environmental factors impact energy markets. To address this need, the IMA Energy Program is expanding its' educational offerings — monthly energy market updates in mailings; convenient, concise and time-efficient briefings from energy trading experts; and explanations of resources and tools available to allow improved and simplified budget planning and management of price risk.

In proactively educating and encouraging manufacturers to plan ahead in procuring and managing energy, an intelligent, well planned energy strategy will make an immeasurable difference across your company operations. ■







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## Tough choices ahead for unemployment program



With a struggling economy, imposing massive taxes and asking employers to bear the brunt of the cost is unacceptable.

**M**ore than 350,000 Illinoisans drew benefits from the state's Unemployment Insurance (UI) Trust Fund during the past two years as the recession and resulting high unemployment hit double digits. Unemployment levels peaked at 11.2 percent in January 2010. Over the course of the recession, the balance in the employer-funded UI Trust Fund dropped precipitously. Today Illinois joins nearly two dozen states facing a crippling deficit that places both businesses and employees in a very difficult spot as we enter the fall.

With a \$2.4 billion deficit, Governor Quinn and state lawmakers are turning to the business and labor community to hash out a compromise that will restore balance to the Trust Fund without devastating worker benefits or forcing an enormous tax hike on employers. Beginning in late August, a small panel of employers including the IMA, representatives from organized labor, a bipartisan group of legislators and representatives from the Governor's Office began meeting weekly at the Executive Mansion in an effort to devise a solution.

In the past quarter century, the highest amount of state unemployment tax revenues collected from employers was \$2.52 billion in 2005 while more than \$5.3 billion in benefits was paid in 2010. Since the state began running a deficit in the Trust Fund, Illinois has been forced to borrow money with interest from the federal government in order to pay the benefits owed to unemployed workers. While the federal stimulus waived these interest payments for the first two years, Illinois was forced to pay nearly \$90 million in interest this past spring with another \$120 million payment scheduled next year. Unlike UI benefits, which are paid by specific employer taxes, all interest payments are made from the state's General Fund.

With a struggling economy, imposing massive taxes and asking employers to bear the brunt of the cost is unacceptable. Any solution should involve shared sacrifice including a reduction in benefits for workers which can now reach 99 weeks with federal benefit extension programs. Over the years, business and labor have worked together well to achieve balance in the system. This is demonstrated by the fact that Illinois ranks 11th in per capita borrowing while having had one of the highest unemployment rates in the nation.

Illinois must act now to deal with the UI Trust Fund deficit. If we fail to find a solution, federal unemployment taxes on Illinois employers will automatically increase by \$21 per employee per year until reaching the maximum federal level of \$420 per employee per year. As part of the solution that should include a reduction in worker benefits, the IMA also believes that additional enforcement mechanisms can be enacted to avoid fraud and ensure that workers are actively seeking work.

We must also stop efforts by other groups to expand benefits that will further drain the UI Trust Fund. As the saying goes, "when you're trying to get out of a hole, stop digging." Groups like AARP are pushing a \$55 million proposal that would eliminate Social Security or retirement revenue from being considered when determining unemployment benefits. Every other unemployed worker who receives some income has that amount deducted from any UI benefit and the same rule should continue to apply to senior citizens.

As we begin the long process of resolving the UI deficit, I welcome your thoughts and suggestions on how best to balance the interests of unemployed workers and employers who continue to struggle in today's economy. ■

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# Impact of retiring coal-based electric generating plants on Midwest energy costs

For decades, coal technology has been a primary fuel source for electric generating plants in the United States due to the abundance of the fuel supply and relative low cost. According to the Energy Information Administration, coal is nearly 25 percent cheaper than natural gas and approximately 60 percent cheaper than Fuel Oil on an equivalent basis. For this reason, coal has been a fuel source for more electricity in the U.S. than any other power source and currently supplies more than natural gas and nuclear combined (see chart 1). However, in recent years there has been a slow decline in the percentage of electricity generation by coal due to an increased focus on renewable technologies, lower natural gas prices and a tightening regulatory environment.

As a result, the electric supply mix is expected to gradually shift away from coal over the next five to 10 years and move closer towards natural gas and renewable technologies. Cost implications of this industry change could appreciably impact electric prices in the long-term. The largest majority of backfilled generation will likely come from new natural gas power plants which have a more expensive variable fuel cost and are designed to run intermittently rather than the 24 x 7 base load designs of coal plants.

Since 2008, 90 percent of power plant deactivations announced by the Independent System Operator PJM are coal-fired power generating plants. By 2015, the total number of confirmed retirements in PJM is expected to be approximately 12 percent of total coal fleet (see state breakout in chart 2). In March of this year, the Environmental Protection Agency announced a tightening of emissions regulations

directed towards brown power generation, and as a result electric prices for 2013 and beyond have risen.

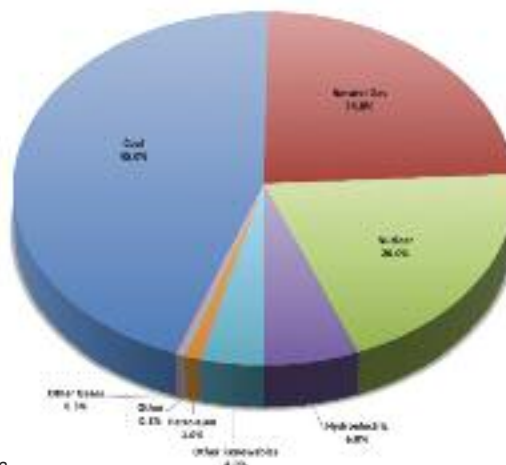
Some potential implications that customers should consider are the ultimate impact on electricity costs and grid reliability. According to American Electric Power chairman and CEO, businesses that have benefited from lower electricity prices due to coal may face the impact of increasing costs ranging from 10 percent to over 35 percent just for compliance with these new environmental rules. This all comes at a

time when small business and large corporations are still trying to recover from the economic downturn and efficiently ramp up activity.

The reliability of the transmission grid, particularly in the Midwest, could be a developing concern as coal units begin to shut down and new gas and renewable units start ramping up. If proposed timelines are not adequate for the construction of coal retrofits or replacement of generation, system operators will mandate schedules that ensure grid reliability regardless of the cost to end users. ■

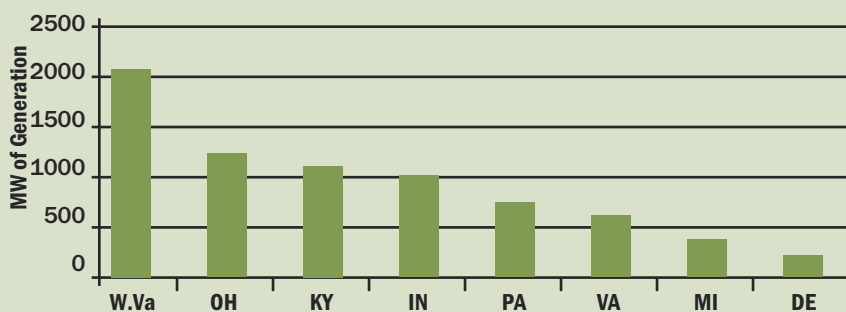
**Chart 1**

## U.S. Net Electricity Generation by Fuel, 2010



Source: U.S. Energy Information Administration, *Electric Power Monthly*, Table 1.1, Preliminary Data

**Chart 2** Announced PJM Retirements – 2011-2015





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# You've been sued, now what?

*Key questions every manufacturer must ask defense counsel when sued*

**Y**ou've just been served with a legal complaint and realize that your company is a defendant in a product liability lawsuit. The lawsuit claims that your product has injured someone. Once the lawsuit is faxed to your insurer, and defense counsel is assigned, what should you expect next? Unfortunately, some manufacturers are "seasoned veterans" in defending against product liability lawsuits, and others have been fortunate enough not to have been sued. This article is designed to provide any product manufacturer with key questions to ask defense counsel to ensure the most effective outcome for the defense of your case.

**What really happened in this case?** While this question can be difficult to answer shortly after the lawsuit itself is filed, it is critical that defense counsel immediately investigate the case. Your participation in this process will assist defense counsel in gaining an accurate and credible account of the relevant events. The complaint itself often times includes vague allegations, or even wrong information. It is critical, therefore, that defense counsel immediately review important documents, interview key employees, and inspect the product and accident scene if possible. Defense counsel must gain a clear understanding of what occurred, at the outset of the litigation, so that he or she can craft the best defense strategy. While the strategy may evolve as the lawsuit progresses, the failure to gain an immediate understanding of what transpired could prove detrimental down the road.

**Is my case in the right court?**

The proper venue and jurisdiction can make all the difference in a case. Defendants in product liability

cases typically prefer to litigate in federal court, because, among other reasons, federal law rigorously evaluates plaintiff's experts and is often more aggressive than state law about precluding the admissibility of weak or meritless expert "opinions." It may not be possible to litigate in federal court, in which case you will want to discuss, with defense counsel, the specific venue in which your case will proceed. In some circumstances, you will want to attempt to transfer the case to a different, more favorable venue, if possible.

It is also important to consider the judge who will preside over your case. What is your judge's record on granting summary judgment? Will your judge be plaintiff or defense oriented at trial, or more neutral? The answers to these questions will also

influence your defense strategy, and whether you pursue alternative dispute resolutions.

**What should I tell my employees?** If you suspect or learn about a lawsuit against your company, you should immediately advise your employees not to speak with anyone other than your attorney. The plaintiff or other defendants to the lawsuit may hire investigators who will attempt to contact and interview your employees. An employee who does not understand that he can refuse to speak with such an investigator may say the wrong thing and seriously jeopardize your defense. This is a point which defense counsel should reiterate to all key employees as well. If an opposing lawyer is harassing your employees,

see **SUED** page 10



a simple concept:

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## SUED

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you should immediately advise defense counsel who will address this issue and, in some cases, seek court intervention.

**How can I assist defense counsel?** Defense counsel will need your cooperation throughout the course of the lawsuit. Defense counsel will need the names and contact information for any employees with knowledge of the accident and your product. Also, defense counsel will require access to information concerning the design, manufacture and warnings affiliated with your product, as well as any accident investigation material. Your cooperation with defense counsel in these areas is critical to defending your company, and ensuring compliance with important court orders.

As the case proceeds, outside counsel should report to you on a quarterly basis, at minimum, and should inform you of all substantive developments in a timely manner. You may want to ask why defense counsel is taking certain depositions or filing certain motions, and how these activities benefit the defense of your case. You can also consider attending depositions of important witnesses, like the injured plaintiff or key experts, to gain a first-hand understanding of their testimony. Although the realities of business operation may make it difficult to attend lengthy depositions, your attendance and feedback will benefit your defense.

**When should I inform my insurer?** Following receipt of the complaint, it is paramount that you advise your insurance company of the claim as soon as possible. You should also consider advising any excess insurance carriers about the case, because if you fail to do so in a timely manner, you could jeopardize your excess coverage.

**What do I do with the evidence?** If you learn about a potential lawsuit, or once a claim is filed, it is critical that you preserve any relevant evidence and documents. While this point may seem self-evident to a business owner, this is a point which may not be so obvious to your employees. Accordingly, it is critical that you instruct employees

see **SUED** page 25



# Rural Illinois experiencing an economic renaissance because of Tax Increment Financing

**P**oet Ogden Nash famously said, "People who work sitting down get paid more than people who work standing up." Unfortunately, this is especially true today in Illinois where manufacturing jobs are on the decline. In fact, there are 300,000 fewer employed persons in Illinois than there were in 2008. With more than 12 percent of the total amount of jobs available being in manufacturing, the industry has arguably taken a hit.

Why are jobs coming back so slowly? Partly because many of the jobs that have been created in the private sector over the last two to three years have not been in manufacturing. Technological innovations may be sparking new businesses and reshaping society, but consider the following: Facebook launched a privately owned Website in 2004. By January of 2011, it had more than 500 million users and had become a publicly traded, \$50 billion company. Yet, Facebook employs only 1,400 people.

Alternatively, Peoria-based Caterpillar, Inc. is a \$7 billion company with annual sales in excess of \$42 billion and employs about 93,000 people worldwide. While Caterpillar's 23,000 employees in Illinois account for about 22 percent of its global work force, high federal and state corporate tax rates, coupled with an inefficient workers compensation program and the rising costs of employee benefits, have pressured it to consider investing in more business-friendly environments.

The Milken Institute, an independent nonpolitical economic think tank, published a report in 2009 called

"Manufacturing 2.0: A More Prosperous California" that reported in some sectors, like computer manufacturing, 15 additional jobs are created outside the manufacturing sector for every job in manufacturing. Clearly, Illinois needs to become more business friendly real fast, thereby providing reasons for companies to repatriate foreign operations in the U.S. and encourage start-up entrepreneurs to create the next Caterpillar or Apple Computer company right here in Illinois.

Easing our beleaguered State's taxing and regulatory burdens would be a good start, but maintaining an arsenal of properly-designed incen-

tives to retain and attract manufacturing jobs in America's heartland may be Illinois' ultimate salvation.

Additionally, providing a means of upgrading and improving manufacturing infrastructure and increasing the economic competitiveness of the State's economy are also critical pieces of the puzzle.

There are essentially two proven economic development tools currently available to Illinois municipalities enabling local leaders to aggressively incentivize private investment in new and/or expanding manufacturing businesses: Enterprise Zones and Tax Increment Financing Districts.

see **TIF** page 12



Cook Medical facility in Canton, Illinois

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## TIF

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Since 1982, there have been 97 Enterprise Zones established by the Illinois Department of Economic Opportunity. Since 1986, more than 1,000 TIF Districts have been established by about 400 Illinois municipalities. Two reasons why there are so many more TIF Districts: 1) for some rural Illinois communities, TIF is the only economic development tool available; and 2) TIF works.

Tax Increment Financing (TIF) is an economic development tool that, unlike tax abatements and Enterprise Zones, is a program of real estate tax reimbursements. TIF does not establish a new taxing district. TIF does not increase taxes. TIF does not create tax exemptions. What TIF does is reduce or remove some of the obstacles preventing economic development without raising taxes.

TIF was instrumental in bringing Seattle Sutton Healthy Eating, state-of-the-art food processing to Ottawa, Illinois. Founded in 1985 by Seattle Sutton, RN, BSN to help address patients' needs to lose weight or address other health issues, such as diabetes, hypertension, heart disease and obesity, the company now prepares and delivers tens of thousands of meals weekly and its innovative approach has helped thousands of people achieve and maintain weight loss without the planning, shopping or cooking for themselves. After 25 years in a business that began with three employees and \$1,000 in capi-

tal in a small kitchen in Marseilles, Illinois, Seattle Sutton Healthy Eating has grown to employ more than 110 people who prepare more than four million meals a year from a 30,000-square-foot facility in Ottawa, Illinois.

Another example is Cook Polymer Technology, a raw materials manufacturer. It announced in May of 2011 that it would construct a \$15 million facility to complement Cook Canton, a medical device manufacturing company that opened in Canton in 2010. Cook Polymer Technology will be a specialized manufacturing facility producing polytetrafluorethylene (PTFE) tubing, which is widely used by Cook Medical's various business units. The new plant will be located near the existing Cook Canton plant, a 45,000 sq. ft. facility on a site that formerly hosted the International Harvester plant, a brown field recently cleaned up by the City of Canton in an effort to rebuild a manufacturing base that employed 3,000 people when the IH plant closed in 1983.

The decision to build these plants was supported by the economic environment created by Canton's use of Tax Increment Financing. When a TIF District is established, the redevelopment area's initial equalized assessed value is determined. When the property improves and the property value increases, as was the case in Canton, the City receives the increased real estate tax "increment" generated by the improvements and uses it only for TIF eligible public and private project costs within the TIF District. In essence, the commu-

nity is reinvesting in itself by using TIF to encourage new private investment and continue local efforts to attract more industry and jobs in a county still suffering from chronically high unemployment.

With the success of these tools, there may be no better time than the present for local community officials, business leaders and policymakers to more fully examine the State's tax and economic development policies. Engaging in this type of dialogue is exemplified by Mattoon-based East Central Illinois Development Corporation, who, along with Rural Partners and several other public and private sponsors, will host a statewide educational forum in September to focus on key downstate economic trends and issues. This event is designed to build solidarity among downstate leaders and legislators who want to more fully understand the value of economic development tools like Enterprise Zones, TIF Districts and other innovative approaches.

TIF Districts that are well managed and used strategically within a broader community and economic development effort continue to bring jobs, particularly in manufacturing, back to Illinois. With Canton, Ottawa and other communities like them leading the way, downstate Illinois areas can effectively stimulate economic development and job creation by cultivating a manufacturing renaissance that, despite the State's current financial woes, will introduce a new era of growth and economic vitality in Illinois. ■

*Mark your calendar for the 2011...*

# IMA Annual Luncheon

**Friday, December 2, 2011**

**Hotel InterContinental, Grand Ballroom**

**505 North Michigan Avenue**

**Chicago**

**Reception & Exhibits:**

**11:00 am-Noon**

**Lunch: Noon-2:00 pm**

*For more information, visit*

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**Keynote speaker: Jeff Thredgold, CSP, Economic Futurist**



# Streamlining IEPA's permit process

A greatly scaled down and revised version of the Illinois Environmental Protection Agency's (Agency) proposed air permit fee increase passed this session and was signed by Governor Quinn on July 12th in a ceremony in Chicago at the site of IMA member company World's Finest Chocolate. The passage of this legislation was made possible by the Agency's willingness to agree to a number of measures to modernize and streamline permitting and other processes important to the business community. Most of these measures had been proposed to the Agency over the last few years without gaining much traction but the Agency seemed more interested this year in finding ways to use their resources more effectively and efficiently. The proposals suggested by business were based in large part on ideas that a number of other states adopted long ago.

In signing the bill (HB 1297 sponsored by former Rep. Dan Reitz (D-Steeleville) and Sen. James F. Clayborne, Jr. (D-East St. Louis)), Governor Quinn stated that "Simplifying and speeding up the review process for environmental permits will help Illinois companies begin hiring, investing and producing more quickly." IMA president and CEO Greg Baise said, "We applaud Governor Quinn's support of this new law that modernizes and streamlines the process, allowing businesses to save time and money. It balances environmental and economic interests."

So what did we give and what do we get? In terms of the giving part, the Agency's initial fee request and the final legislative response is as follows:

1. Asked for a ~85 percent increase in fees (\$16.5 million); received ~\$3.2 million in fees and up to \$2 million from sales tax revenues from certain pollution con-

trol commodities.

2. Asked for greenhouse gas fees of \$0.15/ton up to a facility maximum of \$150,000/year; received no fees for greenhouse gasses.
3. Asked to raise the per ton fee from \$18/ton to \$30/ton; received \$21.50/ton.
4. Asked to raise the maximum fee from \$250,000/year to \$400,000/year; received an increase to \$294,000/year.
5. Asked for an automatic annual fee increase based on the consumer price index from 0.5 percent to 2.5 percent; received no automatic fee escalator.
6. Asked for the fee increase to begin July 1, 2011; the increase begins January 1, 2012.

The average air permit fee increase per facility will be ~18 percent. However, there is no fee increase for air construction permits and no fee increases for other Agency programs (e.g. Water or Land).

The fee increase that has been approved will help the Agency's Air Bureau avoid layoffs that would begin this fiscal year and it will also allow a modest increase in staff to

replace previous losses. The fee increase will also be used to fund contractual assistance for some of the improvements that business sought such as an improved Web presence with permit tracking status reports and online permit application submittals. The Agency's original fee increase request was intended to raise staffing from ~195 to ~285 in the Air Bureau with about one-half of the increase planned for greenhouse gas work. With the fee increase signed by Governor Quinn, the Agency should be able to phase-in about 20-25 new staff which will be used to beef up the air permit staff and related efforts.

In return for the fee increase the Agency agreed to legislation that requires the implementation of the following permit streamlining and improvement measures that extend to air, land and water programs:

1. Construction and operating permits and annual emission reports would no longer be required for about 3,250 of the 6,500 facilities now requiring permits. These 3,250 facilities would simply reg-

see **AIR PERMIT FEES** page 18





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# New ADA regulations mean new opportunities for disabled employees

**T**he basic requirement of Title I of the Americans with Disabilities Act (“ADA”) is a simple one. An employer should make reasonable accommodation for a disabled employee who, with that accommodation, is able to do his or her job. Of course, in practice, employers find this requirement far more complex. In the past, when confronted with a request for accommodation, employers faced two key questions: (1) is the employee disabled, and if so, (2) is their request for accommodation reasonable. With the adoption of a new — and very inclusive — definition of disability, employers have basically been instructed to ignore whether the employee is disabled and focus solely on whether the requested accommodation is reasonable.

## Old way of doing ADA business

Over the years, the basic definition of a disability under the ADA has remained constant; it is a physical or mental impairment that substantially limits a major life activity. Of course, these terms include some ambiguity (for example, what is a “major” life activity), and as a result, the courts have been asked to interpret what Congress meant. For example, in 1999, the United States Supreme Court concluded that if one had an impairment that could be fully resolved by the individual’s own action, that person was not disabled — specifically, if one suffered from bad vision but that vision could be fully restored by wearing eyeglasses, that individual was not disabled under the ADA. Similarly, in 2002, the Supreme Court concluded that if one had a genuine disability that resulted in only minimal impact to them (i.e. limiting someone’s ability

to do something they had no need or desire to do), that individual was not disabled under the ADA.

In our system of government, when Congress adopts a statute, it falls to the courts to interpret that statute. If Congress does not like how the courts interpret a statute, Congress is free to “clarify” the statute by amending it to address any undesirable court interpretations.

In 2008, Congress did just that, rejecting the two Supreme Court decisions described above as well as other similar decisions, by amending the ADA to (1) broaden the definition of disability, (2) instruct the courts to apply the ADA more liberally, and (3) delegate to the Equal Employment Opportunity

Commission (“EEOC”) responsibility to come up with new regulations that would help employers comply with the changes.

## Why we must change the way we do ADA business

On May 24, 2011, the EEOC’s new regulations expanding the definition of disability went into effect. For the first time, there is a list of what are considered “virtually always” to be disabilities under the ADA. These include: deafness, blindness, intellectual disability (formerly termed mental retardation), missing limbs or mobility defects that require use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy,

see **ADA REGULATIONS** page 20





# Summer weather heating up energy costs for your business?

By Mark Harada, Constellation Energy

Participation in load response can be managed through a curtailment service provider (CSP) like Constellation Energy. A CSP may be a company that solely focuses on providing load response capabilities, a local electricity utility, or an energy service company. As part of its role, a CSP can identify load response opportunities and work with customers to develop a variety of curtailment strategies, ranging from the simple use of back-up generators to more sophisticated load management initiatives.

A common misconception among industrial companies is that in order to participate in such a program, the company must shut down all of its electricity usage during these curtailment events. Not true. Such energy conservation measures such as raising the thermostat setting by a few degrees, turning off some lighting in public areas such as a lobby and turning off some of the elevators are very effective and non-intrusive ways to participate in a low response program and lower energy costs. The events, should they happen, are limited typically to a maximum of a four hour duration per curtailment event. And it should also be noted that since Commonwealth Edison joined PJM in May 2004, there has never been a load response event called as of the writing of this article.

In order to qualify for participation, companies must intend to reduce energy consumption by a minimum of 100 kilowatts of electricity demand usage or more should an event be called. In exchange for the willingness to curtail electric demand during times of electric system grid instability, a monthly or quarterly dollar amount per kilowatt will be paid to companies participating in the program regardless of

**F**or much of the nation, this summer has delivered a blast of some of the hottest temperatures in recent memory. The sweltering heat drives significant electricity demand — mostly related to air conditioning — and also pushes electric prices higher. And while the hot weather creates a challenge for the power grid, it also presents an opportunity for many businesses and institutions to better manage their energy costs and budgets through participation in load response programs.

Load response — curtailing power use in response to the electric grid's changing stress levels — is an excellent entry vehicle for many businesses to engage in day-to-day energy management. Load response is the reduction of electrical consumption in response to high wholesale electricity prices, system resource capacity needs or system

reliability events. A variety of such programs are in place across North America to help maintain electric system stability. These programs were developed by regional transmission organizations and utilities that operate the electric grid to help reduce the need for additional expensive peaking plants to prevent blackouts.

For businesses, load response helps offset rising operating costs and provides a hedge against the volatile power markets by offering compensation for decreasing consumption should such a system need occur. Revenue derived from load response can be allocated to energy efficiency upgrades or other otherwise unfunded capital programs. Load response can also help to serve as a tool for disaster preparedness, by pre-aligning alternative power resources in advance of grid instability.



whether such curtailment events occur or not.

In Illinois, load response programs are currently offered in Commonwealth Edison service territory but are not yet offered for companies behind Ameren service territory.

Some businesses participate and earn payments simultaneously from a variety of load response programs. Common load response programs include:

- **Capacity Programs** — Operate primarily in summer months and provide a 1-2 hour event notice for participants to curtail load through a pre-determined curtailment plan. The length of an event call is typically 3-4 hours but can be up to 6 hours during weekdays.
- **Ancillary Services or Synchronized Reserves** — These programs have a shorter window of notification time (about 10 minutes) to curtail load. However, the length of an event usually does not exceed 30 minutes. Curtailment events can occur year round.
- **Economic or Price Response Programs** — Allow participants to choose when to curtail load based on energy price. On extremely hot summer days when high demand for electricity drives prices upward, companies may choose to voluntarily reduce their usage and sell the electricity they normally would have used back into the electric market at the elevated market prices. Participants curtail a pre-determined kw of load at their facility triggered by a price in the real-time or day-ahead energy markets.

Manufacturers often have even a greater opportunity to take advantage of load response participation based on their ability to schedule work and increased electricity use to coincide with market conditions. In the past several years, technology and integration have helped propel the potential impact of load response and enable participants to respond more effectively when events are called.

Energy services provider Constellation Energy offers a Web-enabled electricity metering and energy management through its VirtuWatt™ application. By connecting directly to a user's energy meter and building controls systems, VirtuWatt combines minute-to-minute metering and real-time pricing information with energy marketplace bidding capabilities and curtailment strategies in a way that's controllable, reliable, and automatic.

The application's dashboard receives real-time pricing feeds which provide information of electricity pricing in various utility zones, called Locational Marginal Pricing (LMP). The application also provides time-frame snapshots and usage estimation for utility budgeting and shows the correlation between outside temperature and electricity consumption. In some markets where such prices are available, it also displays the day-ahead price (the hourly energy prices for the following day), thereby allowing users to map tomorrow's strategy (for example, pre-cooling) ahead of time. The result is a complete visibility of current power usage and cost that allows users to better monitor and manage their electricity use and maximize the financial benefits from capacity, reserves and price-based load response programs.

Whether it's the temperature outside or changes in the energy markets, electricity costs will continue to fluctuate — and businesses will increasingly look to load response strategies and technology to help better manage their energy use. If your business isn't a part of a load response program, there's the chance that you could be missing out on an opportunity to beat the heat by receiving what could amount to significant compensation for reducing electricity usage during the relatively few times a year when load response events occur. ■

## What commercial and industrial businesses can say to promote their business' environmental commitment

One of the easiest ways that businesses can show their sustainable commitment is to purchase renewable energy certificates or RECs. Buying RECs require no physical change to a business' facility and we've found that many companies choose to participate in a REC program specifically for the marketing benefits that it can provide. Marketing claims about using renewable electricity or RECs, reducing greenhouse gas (GHG) emissions through the use of renewable electricity, or receiving any other environmental benefits of renewable energy use constitute making an environmental claim. REC customers must be careful when making environmental claims, which is why we provide our customers with a "green marketing" package, including easy-to-use guidelines that document how to communicate an environmental accomplishment with others.

For example, customers can say that their REC purchases:

- Support demand for building new, clean wind power.
- Matches the designated purchase of their company's expected annual energy use (review the agreement or Product Label for the specific designated purchase.)
- Demonstrates their organization's commitment to operate in an environmentally responsible manner.

The most significant benefit of renewable energy is that it creates low or no emissions of carbon dioxide and other pollutants. Generating electricity from renewable sources prevents emissions that would otherwise be released from fossil fuel generation. In other words, when renewable energy generation is delivered to the grid it prevents a more polluting source such as natural gas from being used to generate an equivalent amount of electricity.\* This is also referred to as making claims about reduced or avoided emissions.

When making claims about reduced or avoided emissions, ensure you are specifying the emissions associated with your electricity use (also known as Scope 2 emissions).

- RECs can only be used to make reduced emission claims in the electricity that you use. Your Product Label will tell you the tons and pounds of CO2 emissions that are avoided based on the amount of RECs you have purchased. Please refer to the bottom of your Product Label, under Renewable Energy Certificate Carbon Equivalents.
- Scope 2 emissions are those greenhouse gases released when electricity you buy from the grid is produced. By matching grid electricity use with RECs, you can make claims to the clean energy benefits of those RECs rather than the emission characteristics of the grid power.

If you would like to learn more information, please contact your Constellation Energy representative or contact us at 800-436-3746

*\*Best Practices in Public Claims for Green Power Purchases and Sales, Oct 7, 2010, version 1.1. Center for Resource Solutions.*

*Posted by Constellation Energy*

**Constellation Energy — 24/7 Access to billing and energy usage data**

## AIR PERMIT FEES

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ister with the Agency each year and pay a \$235 fee. Based on the Agency's records, there are some facilities now paying as much as \$3,400/year that can take advantage of this program though most will have been paying the current fee of \$200/year.

2. Exempts facilities from obtaining construction and operating permits due solely to greenhouse gas emission unless otherwise required by federal law.
3. Improves Agency Website with checklists and guidance for permit applications that will be able to be completed online and submitted electronically. Also required is a permit status tracking report and permit processing statistics.
4. Requires the Agency to consult with the regulated community to identify the types of permits whose terms and conditions could be specified by rule (aka, permits-by-rule) thereby allowing a business to simply invoke the terms of the rule rather than

obtain a permit through the current process.

5. Requires the Agency to consult with the regulated community to identify the types of general permits that would be appropriate for the construction, installation, or operation of various categories of facilities.
6. Provides for an expedited permit review process for any permit (Air, Land, Water) required under the Environmental Protection Act. Requires a fee of four times the normal fee not to exceed \$100,000.
7. Allows a permit applicant to submit suggested permit language for Agency consideration and, if requested by the applicant, requires the Agency to meet with the applicant to discuss the suggested language.
8. If requested by the permit applicant, requires the Agency to provide the applicant with a draft of the permit prior to any public review period and, if requested, the final permit prior to its issuance.
9. Also, requires the Agency, if requested, to notify the applicant

of the name of the permit analyst assigned to the application. This information is required to be placed on the Agency's Website by July 1, 2013.

What Should You Do Now? You should determine the impact that the fee increase will have on your facility and evaluate, if you believe necessary, steps that can be taken to minimize this impact. It is possible to reduce your fee exposure and a number of companies are already planning such actions. You should check to see if you might qualify for the small emission source registration program. IMA staff have the list of facilities that the Agency believes will qualify for this program and we can work with you to evaluate your situation. Much of the permit streamlining aspects of this law require the Agency to consult with business. The IMA has already been in touch with the Agency on this topic and we will keep members informed of progress but it will be important to receive ideas and suggestions from members as we go forward. Hopefully, we will begin to see the improvements that we know are obtainable. ■

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member only discounts and pricing.



# Your next Website: Getting from great ideas to a powerful business tool

**T**alk to enough new clients in our industry, and you'll find that few things inspire hope, fear, and all the emotions in between like the prospect of a new business Website. That's probably because most business owners and executives understand what kind of new opportunities a strong Web presence can bring, but also the dangers and tough decisions that are part of the process.

Get it right, and you could have a strong marketing and branding tool that will bring you thousands of new customers every year; go in the wrong directions, and you could find yourself with a very expensive and extremely underperforming part of your business.

So how do you ensure that your organization will get what a business Website really needs? A good first step is understanding a little bit about the process from start to finish, and knowing what areas you need to pay the most attention to. By doing that, and making a few key decisions beforehand, you can cut down on the amount of time and stress your business Web design project is going to require — not to mention make it far more likely that you'll end up with a final product that's going to help you hit your real-world business goals.

Here are the most important steps and decisions you'll face when it comes to getting a new business Website:

## **Imagining your next site**

Forget about all of the features, tools and gimmicks you've heard about; what really matters on a business Website is what you actually need it to do. Think hard about what sort of experience you would like your customers to have, how your business Website can help you

meet real world bottom-line goals, and where it would position you within your industry and against your competitors.

Also remember that your Website will likely attract hundreds of visitors every week, if not more — meaning that it will be your first (and sometimes only) point of contact for the vast majority of the public. A company's Website isn't another tool for marketing; it's their most important branding piece. It doesn't just need to follow the existing tone of your print and lead generation materials; it needs to set the standard for all of your other communications.

In other words, remember that your Website isn't just part of your brand; for a lot of potential customers,

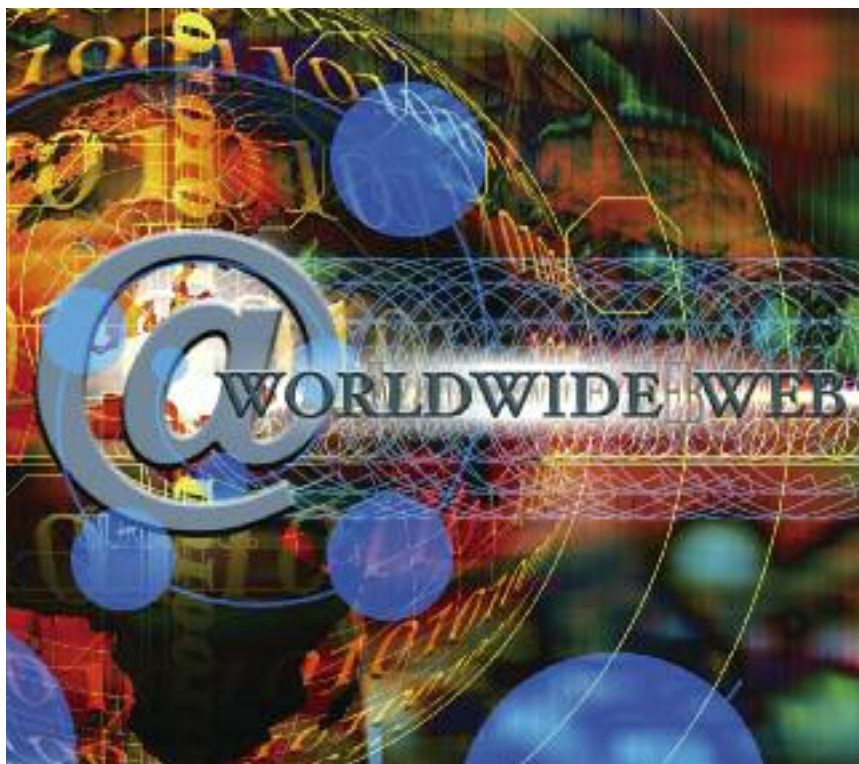
it's going to be your brand. Make sure that knowledge factors into your expectations for the look, feel, and functionality of your new site.

## **Staying current**

It's not always worth it, in Web design or any business, to try to worry about what your competitors are up to, much less keep up with them directly. But when it comes to launching a commercial Website, there are some tools and features that have simply become standard.

What might you want to integrate into your new design? A shopping cart and fulfillment system are an obvious choice, since they can help your Website make more money right away, and give customers the

see **YOUR NEXT WEBSITE** page 24



**Theresa Kuhl** is a Sales Manager with Weblinx, Inc. If you have questions about your Website or would like to receive a free site analysis, contact Weblinx, Inc. at 630-551-0334 or email [sales@weblinxinc.com](mailto:sales@weblinxinc.com).

## ADA REGULATIONS

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HIV, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder and schizophrenia. Note, however, that this is only a list of presumptive disabilities; many other disabilities are covered though they are not explicitly named in the regulations.

Some employers have learned about these changes the hard way. For example, a medical supplier in Indiana fired an employee who had been diagnosed with renal cell carcinoma but was in remission at the time of his discharge. The former employee filed suit, claiming he was fired because he was disabled. The employer filed a motion for summary judgment, arguing that because the employee was in remission and fully

able to perform his job at the time of his discharge he was not disabled, and thus, there was no need for the matter to proceed to a trial. The court rejected this argument and found that under the new statute, even though the former employee's cancer was in remission and did not affect his job performance at the time of his discharge, the new very inclusive definition of disabled (which includes "an impairment that is episodic or in remission . . . if it would substantially limit a major life activity when active") under the ADA included the plaintiff. Thus, in the past, the employer could have disposed of this lawsuit rather easily as the former employee was not disabled under the old version of the ADA. Under the new standard, however, an employer is unlikely to persuade a court that an employee is not disabled.

Other expansions of the definition of disability are also noteworthy.

Before the amendment, an employee with hearing impairment, who was fully able to mitigate his physical disability by using a hearing aid, was not disabled. But, under the new regulations, his ability to fully mitigate his physical limitations is irrelevant; he is disabled, and the only issue for his employer is whether accommodation is necessary. Similarly, before the amendment, being unable to do something one had no need or desire to do did not render one disabled. Now, however, the fact that the impairment exists is sufficient to establish disability; whether the impairment is "major" or prevents one from doing something of "central importance to daily life" is irrelevant. Finally, even if an individual has an impairment that only prevents them from doing something for a period of just a few months or less, that person may nonetheless be disabled during that period of time. The point that the EEOC appears to be making with these regulations is that the question of whether an employee's impairment substantially limits a major life activity "should not demand extensive analysis."


Stated simply, the EEOC has made it clear that the primary object of attention in cases brought under the ADA should be employer conduct — not the scope of the employee's impairment.

### What this means for you

In the past, when an employer was sued for violating the ADA, the employer would usually try to make at least two arguments: (1) the employee was not disabled, and thus, not covered by the ADA, and (2) even if they were covered by the ADA, no violation occurred. This defense strategy was a boon to employers as it made it easier for employers to get ADA cases thrown out before the court had a chance to assess the employer's conduct.

In effect, the new EEOC regulations appear to remove this highly effective defense and instead place the focus of ADA lawsuits on the employer's conduct rather than the employee's impairment. To this end, the regulations have rendered nearly everyone disabled. Under the new regulations, defending yourself in an

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# Manufacturers and the changing environmental landscape: Beware

The growing awareness in the United States regarding carbon emissions and their effect on the environment and weather patterns, have produced an increase in environmental litigation and some important decisions from the United States Supreme Court. Many states and environmental groups have filed lawsuits in an effort to get the judicial system to force cuts in greenhouse gas emissions. On June 20, 2011, the high court issued an 8-0 opinion (with Justice Sonia Sotomayor recused) in the case of *American Electric Power Co. v. Connecticut*. The unanimous decision reversed the Second Circuit Court of Appeals in New York and reaffirmed the Supreme Court's 2007 decision that carbon dioxide emissions are subject to federal regulation under the Clean Air Act. The Court further held that the Environmental Protection Agency (EPA) has the sole authority to regulate the greenhouse gas.

The interesting part about this case, at least as far as manufacturing is concerned, is that the case began with a 2004 lawsuit in which the plaintiffs — eight states, New York City and three land trusts — brought public nuisance claims against four private power companies and the federal Tennessee Valley Authority. The plaintiffs alleged that the power companies are the five largest emitters of carbon dioxide in the country, and their greenhouse gas emissions are significantly contributing to global warming and thus impinge on public rights by threatening human health and safety. The plaintiffs sought to have a federal judge order the com-

panies to decrease their emissions of carbon dioxide. The District Court dismissed the suit, holding that the case presented a political question unsuitable for judicial review. The Second Circuit reversed, which would allow the case to proceed, and the Supreme Court granted certiorari.

The Supreme Court issued an opinion written by Justice Ruth Bader Ginsburg rejecting the lawsuit against the power companies. The Court found that the Clean Air Act displaces the plaintiffs' right to sue under federal common law, stating that "the test is simply whether the statute speaks directly to the question at issue." In other words, common law claims cease to exist when Congress has drafted federal legislation that

governs the same activity. The Court also encouraged judicial restraint in cases like these, reasoning that the EPA is better suited to handle greenhouse regulations. Justice Ginsburg focused on the fact that federal judges are not equipped with the scientific, technological and economic resources that the agency possesses to deal with these complex issues. "It is altogether fitting that Congress designated an expert agency, here, EPA, as best suited to serve as primary regulator of greenhouse gas emissions," Justice Ginsburg wrote. "The expert agency is surely better equipped to do the job than individual district judges issuing ad hoc, case-by-case injunctions."

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Katherine Smith Dedrick is a Member of Risk Worldwide, a disaster response and insurance claim consulting company with offices in Chicago, Miami, and Dallas. Ms. Dedrick is also a Partner at Childress Duffy, Ltd., a boutique law firm handling insurance issues for policyholders both nationally and internationally. Katherine may be reached at [kdedrick@riskworldwide.com](mailto:kdedrick@riskworldwide.com), 312-291-7576, 866-675-9075 or [kdedrick@childresslawyers.com](mailto:kdedrick@childresslawyers.com), 312-494-0200. Childress Duffy, Ltd. is an IMA member company.

## ADA REGULATIONS

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ADA lawsuit by arguing that the employee was not disabled is likely a losing proposition.

### What you can do to adapt

The new regulations appear to indicate that the EEOC wants employers to get serious about ADA compliance. If you are sued under the ADA, you need to be able to show up in court with evidence that you understood and complied with your obligations under the ADA.

Common sense and sound policies can help you meet this goal. For example, most employees are subject to a job description. You should sit down with each employee annually to review the accuracy of the employee's job description and revise it as needed. Ask the employee to identify in writing whether they require any accommodation in order to meet the obligations of the position. Remind the employee that they should notify you if a need for accommodation arises. Give them a copy of their job description for the coming year and include a statement identifying who they should contact regarding any need for accommodation.

When hiring, make sure that the position description (and job post-

ing) accurately describes the demands of the position. If a position requires that the person be capable of lifting 50 pounds, then include that in the description. If a position description states that a person must be able to lift 50 pounds but no one in that position has ever been expected to lift more than 20 pounds, then correct the description. This same principle applies to any pre-employment testing. Be prepared to defend any test you give job applicants. If what is tested is not clearly and defensibly related to the position, fix the test or do not require the test for applicants for that particular position.

Identify an individual or department that can serve as your business' point person for ADA issues. Make sure all of your supervisory personnel know who this individual or department is, and require that supervisors refer all requests for accommodation to this individual or department.

Once a request for accommodation is made, a documented interactive process should follow. Initial requests for accommodation are usually made by the employee to their immediate supervisor; such requests are rarely made in writing. Any request, written or otherwise, should be referred to your ADA point person. Every request for accommoda-

tion, regardless of whether the individual is disabled or the request is reasonable should be documented by your ADA point person in the form of a letter to the employee informing them that you understand that the employee is seeking accommodation and that you need the employee to submit a written response outlining the requested accommodation including its basis and anticipated duration. Include in this letter a statement to the effect that if the purported disability prevents the employee from preparing such a document, arrangements can be made to help him or her get the request into writing. Once a response is received from the employee and the requested accommodation identified, evaluate it and submit your own written response to it outlining whether the requested accommodation can be made, and if not, propose other means of accommodation if at all possible. If accommodation will be made, outline the accommodation offered and require that the employee agree to it or, in the alternative, the employee should submit a written response explaining why your offered accommodation is insufficient. Include in any accommodation a statement informing the employee that any further accommodation needs should be directed to your ADA point person and provide them with that contact information.

If you reach a point in the interactive process where you have concluded that the requested accommodation will not be made, you will need to decide whether further negotiations will be likely to result in some kind of agreement. If you think such an outcome is still possible, you should notify the employee in writing why their requested accommodation is not reasonable. If possible, you should offer an alternative accommodation. If, however, you are certain that further interaction will not result in any agreement, you may simply inform the employee that their request for accommodation is denied. Before reaching this point, however, you should consider whether your decision to deny accommodation is based on the reasonableness of the request or whether your denial is based on your perception that the employee is not disabled. Remember, everyone is assumed to be disabled now. ■

## 4th Annual IMA Young Leaders Council Fall Conference Thursday–Saturday, October 13-15, 2011

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## Fauske & Associates, LLC – Risk management services for manufacturers

For more than 30 years, Fauske & Associates, LLC (FAI), an IMA member company, has provided high quality testing services to the chemical process and nuclear industries. As a value-added service to their clients, they also provide a variety of risk management solutions related to combustible dust and chemical processing for reactive hazards. Building on experience serving the chemical industry, FAI is now focusing efforts in the following areas: combustible dust explosions, fire hazards and safety consulting, including incident investigation services.

### Combustible dust explosion and fire hazards

FAI offers a wide range of services related to characterizing, preventing and mitigating combustible dust explosions and fire hazards. These include onsite assessments, combustible dust National Emphasis Program (NEP) compliance, testing of dust samples, ignition source evaluation, training of personnel and vent sizing calculations.

### Onsite dust hazard assessments

An FAI safety expert will visit client facilities and review the receiving, storage, use, processing and disposal of all “powder” materials. In addition, they will evaluate existing fire/explosion suppression system(s), warning devices and onsite extinguishing capabilities. Possibilities for fugitive dust will also be identified where appropriate. Services include the following:

- Incident investigation for dust explosions/fires;
- Evaluation of compliance with relevant national, local and industry standards;
- Identify electrostatic hazards — grounding and bonding issues;

- Recommendations for risk reduction; and
- Determine dust sampling points and collect samples for dust explosibility testing.

### Combustible Dust NEP compliance services

- Preparation for an OSHA Combustible Dust NEP inspection, including appropriate responses to inspectors’ questions
- Documentation review for OSHA Combustible Dust NEP and NFPA requirements
- Testing services available to meet all OSHA Combustible Dust NEP and NFPA requirements

### Additional dust hazard services

- Ignition source evaluation
- Vent size calculations for new or existing equipment
- Electrical area equipment classification

- Onsite training of personnel
- Integration of combustible dust hazard management into existing process safety programs for process safety management (PSM) facilities
- Development of process safety programs to manage combustible dust hazards for non-PSM facilities

### General safety consulting and Process Safety Management (PSM)

FAI offers a variety of risk management solutions to meet customer needs for many years, and currently provides services for all fourteen elements of Process Safety Management (PSM). Consultation typically begins with a compliance audit or gap analysis, which can be used to identify and prioritize needs. FAI will work with each client to develop a PSM program and create a process that will result in

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## YOUR NEXT WEBSITE

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convenience of shopping online. Online videos not only show your products in action, but make your business seem more personal, and even answer a lot of frequently asked questions more thoroughly than the text description. Links to your social media profiles can help you grow your list of customers and colleagues, and a content management system (CMS) makes adding new pages, writing, and images to your site easier and less expensive.

These are just a few of the basics, of course, and your Web design team might help you come up with other features, or different ones, that can help you out. What's important to remember, though, is that these aren't just items that help you keep up with your competition — they'll make your business Website a lot more profitable, too.

### **Finding the right Web design team**

I'll admit that we're biased, but finding the right group of creative professionals to turn your ideas into something that works can be the most important factor, as well as one that business owners and executives struggle with the most. That's because you need to get past quotes and samples and find a Web design partner who can give you not only what you want, but what your business really needs.

It's important for your Website to look fantastic, but it's even more important that it help you achieve all those objectives we asked you to think about in the beginning of this article. Much of that success will have to happen behind the scenes, in coding, flowcharts, and unseen features.

For that reason, the most important part of the business Web design process happens before a single pixel is put into place. It's when your creative team sits down with you to ask the important questions, get to know your organization, and find out what you're really hoping to accomplish, rather than just giving you the first few things you ask for.

Choosing the right team to take your site online can make or break your company on the Internet; take your time and choose wisely.

### **Prepare for success later**

One area that you'll want to pay particular attention to, both in choosing your Web design team and having initial conversations about the project, is search engine optimization (or SEO). Basically, SEO is the art and science of being found by the major search engines like Google, Yahoo, and Bing.

Why is this so important? Because at the time of this writing, roughly 85 percent of all Web transactions begin with a search engine. That's billions and billions of buyers every day, for every kind of company in every part of the world. Competition for search engine rankings is getting tougher than ever, but the rewards of a successful SEO effort are getting bigger, too. Make sure it's a strong consideration in your site's development from the beginning.

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... remember that your Website will likely attract hundreds of visitors every week, if not more — meaning that it will be your first (and sometimes only) point of contact for the vast majority of the public.

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### **Getting your materials together**

Often, the difference between a business Web design that goes smoothly, and one that begins to feel like an ordeal, is all in the details. Specifically, it can be tough to keep things moving along when everyone finds themselves waiting on a minor but important detail.

There's an easy way to prevent this from being an issue with your project: Make sure you have high quality copies of your logo, product images, and other visuals ready before you get started. In addition, make sure you have — or can get — things like a company history, product descriptions, and other written materials in place. Whether you are working with a photographer and copywriter or generating these materials in-house, having

them on hand and ready for your Web design team can save you a lot of time and stress later.

### **Review designs and pick a direction**

Finally, after you've brainstormed some ideas and direction for your Website, found someone who can help you make it into reality, and gotten all of the necessary materials together, you arrive at a moment of truth: the unveiling of some new layouts for you to look at.

These may be exactly like what you had envisioned. Or, they might go in a different direction. Either way, getting the most out of the first designs for your new Website requires a little bit of a balancing act — you should definitely be open to suggestions from your design team, but at the same time don't be afraid to speak up if you feel like something important is missing.

The best way to manage this is usually by looking over the designs and then coming back to them after a day or two. The look and feel of your next Website is so important that you don't want to make snap judgments. Once you've had a chance to see what sort of impression is left on you and others, you can get back with your design team and figure out what elements work, which ones need to be refined, and the steps that need to be taken to get your site ready to go live.

### **Put your site to work**

Once your site is ready to launch on the Internet, all of the fun can begin . . . and so can the real work. That's because your new Website isn't going to do you or your customers any good if it can't be found. Things like online press releases and social media marketing take the project from a big expense to a wonderful long-term investment.

Learn to think of your site going live as a starting point, rather than the completion of a Web design project. There are going to be tweaks to be made, maintenance to perform, and updates to come in the future. If you've followed these steps, however, and thought about your business Website the right way from the beginning, then each of these won't just be a detail to perform — they will be pieces to add to the most profitable part of your business. ■



## SUED

Cont. from page 10

to immediately preserve any relevant evidence. This includes any e-mails or other electronic documents. If your company has a policy of destroying documents, it is critical to suspend that policy, at least to preserve any evidence that may be relevant to the suit. If you are unsure what may or may not be relevant, be sure to ask defense counsel, who should be working with you to ensure your evidence is properly preserved. A defendant who destroys relevant evidence could, potentially, find itself on the wrong end of a default judgment, which would essentially prevent you from defending yourself at trial.

**Should I sue any parties who contributed to the accident?** The answer to this question is "maybe," and depends on the strengths and weaknesses of your defenses, as well as the basis of potential liability against other parties. It is critical to identify any potential third party defendants at the outset of the case, and to ensure that defense counsel is mindful of the statute of limitations which governs such a claim. You will also want to consider how, if at all, a third party complaint may affect your business relationship with the target of your claim.

**Should experts be involved in this case?** The answer to this question, in a product liability lawsuit, is almost always "yes." The retention of proper experts will be an important part of defending your product, and it is typically best to retain the appropriate experts at the outset of a case, to help guide the efforts of defense counsel. While the early retention of an expert will add cost, this investment will pay off as the case proceeds. Defense counsel should consult with you about the proper discipline for the type of expert to be involved in your case.

If the value of your case does not warrant the retention of an expert at the outset, it may be practical to use your own employees as consulting experts to assist defense counsel with the development of your defense strategy. Your decision here will depend on the nature of and potential exposure in your case.

**Can I win the lawsuit?** While this is difficult to predict, it is impor-

tant to know early on whether you have a legitimate chance of winning your lawsuit. Defense counsel will be able to advise you of factual or legal issues which may give rise to a motion for summary judgment. If a motion is not available, defense counsel can provide theories regarding trial defense, and how counsel will protect and defend your company. An early evaluation of whether there is a legitimate chance of winning your case is important, because it may influence decisions made throughout the course of the lawsuit, including the best time to explore other forms of dispute resolution.

**Should I settle this case and, if so, when?** The answer to this question will depend on the specific issues of your case, but settlement may be worthwhile to consider at the outset of the litigation. Experienced lawyers know how to determine whether it is worth exploring early settlement, although such discussions are only fruitful if all parties are truly committed to making a good faith effort towards settlement. This will not work if you have a plaintiff who is unreasonable or may want his or her day in court. In some cases, it may not be appropriate to meaningfully explore settlement, at least until you have a clearer understanding of the case.

There are many forms of alternative dispute resolution which may be appropriate for your case, depending on the circumstances. While alternatives to litigation are often less expensive than litigation itself, the option to proceed with alternatives may require you to relinquish certain legal rights, such as the right to a trial by jury, or the right to appeal. However, a settlement conference or a mediation may be beneficial and save years of expensive and time consuming litiga-

tion. These alternatives should be discussed with defense counsel throughout the litigation.

**What is the case value?** Once defense counsel learns the basics of a case and plaintiff's claimed damages, counsel should be able to provide at least an approximate evaluation of the case value. While this evaluation may change as the case proceeds, depending on what is learned during investigation and discovery, it is important to gain at least a general understanding of the case value early on. This knowledge will impact whether you choose to defend your case through trial, or pursue settlement or another form of dispute resolution.

## Conclusion

There is no substitute for the thorough and diligent preparation of the defense of your case. It is critical for you to be involved in the defense of your product and the development of your defense strategy. The questions discussed in this article should assist you in gaining a clear understanding of the lawsuit, as well as your litigation strategy, and ensuring the best possible outcome for your case. ■

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## IMA's 2011-2012 Annual Compensation Report

*How do your benefits and compensation plans compare?*

*This is what you need to plan for the future.*

Compiled by the Illinois Manufacturers' Association with assistance from McGladrey and Verisight, the new Compensation Report contains valuable data specifically relevant to Illinois manufacturers.

Order online at: <http://www.ima-net.org/2011-12-benefits-compensati/>

For information, call Janie Stanley, 800-875-4462, ext. 1-3020, or email: [jstanley@ima-net.org](mailto:jstanley@ima-net.org).

**IMA'S 2010-2011 BENEFITS REPORT IS ALSO STILL AVAILABLE**

### Plante & Moran appoints Chris Montague to lead manufacturing practice

Plante & Moran, PLLC, recently announced the appointment of Chris Montague, CPA, to industry group leader for its world-class manufacturing and distribution practice. The appointment results in the shifting of leadership of Plante & Moran's premiere practice from Southfield, Michigan to Chicago.

Montague replaces Tom Doescher who is retiring in October and has led the practice since 1994.

Montague will also continue his duties as the office managing partner in Chicago; a role he has held since 2006.

"Montague has been a member of the manufacturing and distribution leadership team since 2003, and given his industry expertise and history with the practice, we believe he is supremely positioned to lead and help expand our offering in this critical market," said Gordon Krater, managing partner of Plante & Moran. "The Chicagoland area has the second most manufacturing companies in the U.S. and makes up 12 percent of the total economic activity in Illinois, making this market a priority for our long-term success."

"The continued growth and strength of the practice highlights the tremendous demands that industry changes are placing on companies, especially in the middle market. Some of these include escalating costs of energy, raw materials and health care; aging workforces and the need to train new talent; and the increased competition that comes from global markets," said Montague. "Since the early 1990s, the practice has been benchmarking various manufacturing sectors, which increases our unique ability to put today's challenges into perspective and helps equip our teams with the knowledge to help clients."



### Prairie States Enterprises, Inc. is the IMA-endorsed health plan administrator

While health reform may increase the cost of health insurance, self-funded employer medical plans will be favored under the new legislation. Consider partial self-funding for your company's group health benefits, and consult Prairie States Enterprises, Inc.

Prairie States is the IMA-endorsed health plan administrator for partially self-funded health plans, serving employer plan sponsors in all business segments for more than two decades. Over 25 percent of its members are employed by manufacturers. Year after year, Prairie States' clients chose to renew — some for over 15 years.

The best technology tools available are utilized and active interfaces maintained with SAP, People Soft, Coresoft and other HCM Systems. Prairie States ensures the integrity and security of your data in a HIPAA-compliant environment, expertly analyzing your data to benchmark and manage your health plan performance.

"Prairie in the Plant" is one special featured benefit. One full day a year your own claim processor and a Prairie States RN will be on site and at no cost to you.

Robust provider savings and access, Illinois and national pharmacy network and select reinsurance partners have been especially selected for Illinois manufacturers.

Prairie States gives you control over medical risk management and service beyond your expectations; starting with a Prairie States receptionist answering your call in person. Call 800-232-2899. Say IMA.

### Donations by Cargill Pork benefit Beardstown and surrounding communities

Demonstrating its commitment to community partnerships, Cargill Pork presented contributions to Beardstown's Fire Department and the Police Department recently.

Fire Department Chief Darrin

Paul accepted a check for \$7,000 presented by Cargill Pork Vice President and General Manager, Steve Pirkle, as well as a check for \$7,000 from the local United Way President, Scott Riddle for the purchase of a much-needed utility truck. The three-quarter ton Ford F-250 featuring a four-door crew cab will allow the mostly volunteer fire department to more easily move manpower and equipment to and from emergency response sites.

Police Chief Bob Schueleter accepted an \$8,500 check from International Casings Group, Inc. (ICG), a natural sausage casings partner headquartered in Chicago, and a Cargill Pork partner, to purchase a K-9 dog to be used for drug detection.

"ICG is delighted to provide the donation to the Beardstown Police Department to further propel their efforts toward building an environment of drug free workplaces, schools and the overall community," said Eric Svendsen, ICG's vice president of casings.

In another presentation, Cargill was awarded a \$26,960 Employer Training Investment Program (ETIP) grant by the Illinois Manufacturers' Association. Illinois Representative John Sullivan and Mark Denzler, vice president and COO of the Illinois Manufacturers' Association, presented the funds.



### Quality Float Works, Inc. establishes distribution center in Dubai, UAE

IMA member company Quality Float Works, Inc. announced its international expansion with the launch of a new distribution center located in Dubai, UAE (United Arab Emirates) to serve its growing international customer base. Although the company currently exports to locations on several continents, this expansion establishes the first office location abroad enhancing their position in the global marketplace. Quality Float Works, Inc. has become recognized worldwide for its top-grade materials, excellent workmanship, exclusive designs and extraordinary engineering capability.



Led by third and fourth generation manufacturers, President Sandra Westlund-Deenihan and her son, Vice President and General Manager Jason Speer, this 96-year old family-owned and operated manufacturing business is globally engaged.



### Gov. Quinn signs legislation to help businesses grow in Illinois



Ima member company World's Finest Chocolate hosted Gov. Quinn as he signed HB 1297 into law on July 12, 2011.

Governor Pat Quinn recently signed legislation that will make it easier to open and expand a business in Illinois. HB 1297 will help employers create more jobs by streamlining the environmental permitting process in Illinois, establish a plan for long-term funding, and make the Illinois Environmental Protection Agency (IEPA) more efficient.

Like the recent worker's compensation reform law, HB 1297 was pushed by Governor Quinn to strengthen Illinois' business climate. House Bill 1297 requires the Illinois Environmental Protection Agency (IEPA) to speed up and streamline the permitting process.

Under the new law, IEPA will begin to use more efficient techniques such as online permitting, processing and tracking to make the permitting process easier to navigate for businesses.

"For too long, Illinois' environmental regulatory process has hindered economic development and made it more difficult for businesses to compete," said Greg Baise, president and CEO of the Illinois Manufacturers' Association. "We applaud Governor Quinn's support of this new law, allowing businesses to save time and money. It balances environmental and economic interests." (See article by David Kolaz on page 13.)

### IMA again chooses Constellation Energy as endorsed energy supplier for IMA companies

Constellation Energy, the nation's leading competitive electricity supplier to business and public sector customers, recently announced the Illinois Manufacturers' Association has signed a three-year agreement choosing Constellation as its endorsed energy supplier, further cementing a relationship that began 10 years ago.

"We are thrilled with this opportunity to offer Illinois manufacturers a broader array of energy solutions to help them meet their financial and sustainability goals," said Mark Huston, head of Constellation Energy's Retail businesses. New services available to IMA members in the contract include natural gas, residential electric choice with the potential to benefit 570,000 manufacturing workers, and load response service to help IMA companies offset rising operating costs during periods of peak energy demand.

"The IMA already knows Constellation Energy is a proven supplier who has given our members customized energy solutions and price certainty for the past decade," said Greg Baise, IMA president and chief executive officer. "The IMA is excited about this new contract with Constellation because it gives our member companies even more ways to help protect their businesses from price risk in today's volatile energy market and it has the added benefit of extending energy price certainty to individual employees."

Constellation Energy offers Illinois manufacturers a variety of services, including energy purchasing programs for commercial and industrial electric power and natural gas. Constellation works with customers to identify peak load periods so companies can optimize production during periods when energy is at a lower price.

Constellation Energy began providing residential electric service to Chicago-area Commonwealth Edison residential customers in February, and selected Ameren residential customers in July. More information about Constellation's residential electric choice offer to consumers

throughout Illinois is available at [home.constellation.com](http://home.constellation.com).

Constellation Energy ([www.constellation.com](http://www.constellation.com)) is a leading advocate for clean, environmentally sustainable energy sources, such as solar power and nuclear energy. The company delivers electricity and natural gas through the Baltimore Gas and Electric Company (BGE), its regulated utility in Central Maryland. A FORTUNE 500 company headquartered in Baltimore, Constellation Energy had revenues of \$14.3 billion in 2010.



### Abbott expanding manufacturing in China

Abbott announced recently that it will invest \$230 million to build a state-of-the-art nutrition manufacturing facility in Jiaxing, China.

The facility represents Abbott's largest investment in China to date and will manufacture premium powdered milk products for Chinese infants and children.

"This facility will play a key role in providing science-based, innovative nutritional products to infants and children while helping to build a healthier future for China," said John Landgraf, executive vice president, Nutritional Products at Abbott.

Products made at the Abbott manufacturing facility in China will contain the same quality ingredients and undergo the same testing standards as products made at the company's other facilities around the world. The plant, when operational in 2013, will employ approximately 300 people.

With the addition of the new facility in Jiaxing, Abbott will have opened six manufacturing and R&D facilities in its nutrition and pharmaceuticals businesses in the Asia-Pacific region during the past three years, including three in China.

Abbott has been operating in China for nearly 20 years and currently has more than 3,000 employees in the country. The company has been named to the top 100 ranking by both The China Corporate Social Responsibility List and the Southern Weekly List for its long-term commitment to philanthropy.



## BEWARE

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The Supreme Court's decision may impact industry in Illinois, both positively and negatively. On the surface, the holding is a win for power companies and manufacturers and provides the industry with some regulatory clarification. Electric utilities and other manufacturers that produce greenhouse gases know, at least for the time being, that they will only have to comply with one set of federal standards: those implemented by the EPA. Had the Court ruled in favor of the plaintiffs, these businesses would have been doubly burdened by having to adhere to judicially created standards and then further adapting them to meet whatever regulations the EPA ultimately enacts. For now, the Supreme Court has provided manufacturers with a clearer view of regulatory progression, something the industry has been demanding for years.

While the Court held in favor of the plaintiffs, states and environmentalists took away some victories as well. One of the big issues in the case was whether the plaintiffs had Article III standing to even bring these claims. The Court upheld the Second Circuit's affirmation of standing, thus leaving the door open for conservation groups and private land trusts to assert claims in the future. The Court also did not decide the issue of whether the Clean Air Act preempts state common law nuisance claims. It expressly left these actions available to future litigants to be decided by lower courts.

And for the second time in four years, the Supreme Court made it clear that it trusts the EPA to make decisions on important environmental issues. Environmentalists are pleased that the government has taken a firm stance on climate change and view the ruling as a call to action for the EPA. They posit that the ruling places an unquestionable duty on the EPA to impose emission regulations on certain industries, something the agency has not done despite the Court's 2007 ruling in *Massachusetts v. EPA*. In its most recent opinion, the Court noted that the EPA is currently proposing strict standards for greenhouse gas emissions from fossil-fuel fired power plants and has agreed to complete its rulemaking by

May 2012. While the Court's decision reaffirms the EPA's power to do so, whether or not the agency will retain that authority remains to be seen.

One reason for the uncertainty is that the EPA has faced strong opposition from Republicans (and a few Democrats) in Congress. These politicians are attempting to introduce bills that would limit the EPA's regulatory powers. EPA critics fear that emission restrictions will further damage an already struggling economy by killing industry jobs and putting an unnecessary burden on taxpayers. According to a press release from its Website, American Electric Power Company ("AEP") warned that it would have to shut down five plants and reduce operations at six others to comply with the EPA's proposed regulations. AEP estimates that this will cost about 600 power plant jobs and a net loss of approximately \$40 million in annual wages.

### The EPA has proposed air quality regulations, fuel regulations, air toxic regulations, hazardous materials regulations and water quality regulations to take effect in the next decade.

Furthermore, manufacturers will see their bottom line affected by a sharp increase in energy costs. AEP stated that the EPA proposal would lead to higher electric rates, including increases of more than 35 percent for some businesses. Industry in the Midwest could be hit hard, with AEP warning that their "compliance plan alone would abruptly cut generation capacity in the Midwest by more than 5,400 megawatts." And this is just one report from one utility company. Other power companies and greenhouse gas emitters are likely to face similar difficulties if the proposed regulations take effect.

And, if the EPA does retain its regulatory authority, greenhouse gas emitters are hardly the only manufacturers that will be affected. The Supreme Court's decision has given the agency the opportunity to speed up its regulatory scheme for other environmental issues. The EPA has proposed air quality regulations, fuel

regulations, air toxic regulations, hazardous materials regulations and water quality regulations to take effect in the next decade. For example, earlier this summer the EPA released its proposed regulations for cooling water intake structures that sets a ceiling for "impingement mortality." These regulations are designed to decrease the number of fish and other aquatic life that are killed in the process of cooling industrial facilities. When these factories draw in water from nearby lakes and rivers, fish get trapped and die in the screens covering the intake structures. The EPA gives two options to comply with the threshold: either by installing new fish screen technology or by reducing intake velocity. The rule also requires existing facilities to add new units to match the agency's current requirements for cooling water intake structures at new facilities.

Most recently, according to a press release from the EPA's Website, the agency finalized its Cross-State Air Pollution Rule on July 7, 2011. The rule is designed to reduce power plant emissions of sulfur dioxide and nitrogen oxide that, according to the release, travel to other states and damage their environment. The EPA propounds that by 2014, the rule will reduce sulfur dioxide emissions by 73 percent and nitrogen oxide emissions by 54 percent from 2005 levels. These current and future proposals have caused many critics to lash out at the EPA for overregulation, with the National Association of Manufacturers starting a campaign called "No New Regs." According to its Website, the campaign "exposes the devastating impact the EPA's overregulation would have on America's prosperity and urges lawmakers to pursue a national energy policy that protects the environment and increases access to affordable domestic energy."

Finally, it is important to note that whatever decisions the EPA does reach will be reviewable by the courts. The Supreme Court expressly gave environmental regulation power to the agency, but made it clear that the courts will be there to ensure that the EPA's decisions are not "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." This will hardly be enough to quell industry concern, and only time will tell the ultimate victor in the highly polarized environmental battle. ■



compliance and operational improvement. Properly implemented PSM will result in increased knowledge of the procedures which can be utilized to improve safety, reduce operating costs, increase productivity and make organizations more competitive.

Focus areas include the following:

- Process Hazard Analysis and Revalidation (PHA) — audit, lead, coach, review;
- Process Safety Information (PSI) — identification of safe storage and operation conditions;
- Mechanical Integrity (MI) — training, program development, inspection and testing;
- Management of Change (MOC) — determine relevant changes and proper documentation;
- Operating Procedures — review and development;
- Training — be confident that employees and contractors are fully aware of all hazards associated with the chemicals and process that they use on the job;
- Emergency Planning and Response — develop a strategy for notifying emergency responders, emergency shutdown procedures and precautions to protect employees and the public; and
- OSHA Combustible Dust NEP — full range of testing to characterize a sample's hazardous characteristics.

FAI is uniquely qualified to assist in the evaluation of pertinent Process Safety Information required for Process Hazard Analysis (PHA) reviews. We offer a full range of PHA services using a variety of techniques including hazard and operability (HAZOP), "what-if," checklists, Layers of Protection Analysis (LOPA) and Failure Modes and Effects Analysis (FMEA). If a PHA evaluation is not comprehensive or key aspects of the process such as start-up and shut down are not considered, potential adverse consequences could be overlooked.

For revalidating PHAs, some background work must first be performed to verify that the PHA is consistent with the current process. FAI can assist in this effort and evaluate whether the previous PHA is sufficient for revalidation.

There is a benefit to performing a PHA in conjunction with a LOPA, which is a simplified form of risk assessment. It can be used to evaluate scenario risk compared with risk tolerance criteria to determine if existing safeguards are adequate, or if additional measures are necessary. Using a LOPA can improve the efficiency of hazard evaluation meeting by providing a tool to help reach risk judgments more quickly.

For companies that do not manufacture products included in the PSM program, there is a general duty responsibility to provide a workplace free from recognized hazards. As such, both OSHA and EPA have the ability to apply their General Duty Clause which requires that companies operate their facilities

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### FAI is uniquely qualified to assist in the evaluation of pertinent Process Safety Information required for Process Hazard Analysis (PHA) reviews.

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(including those systems that may have less than threshold quantities of hazardous chemicals or flammables) consistent with industry recognized good practice. At a minimum under the general duty clause, a company should identify and assess impacts of releases of hazardous substances and/or flammables, design and maintain a safe facility to prevent those releases and minimize the consequences of releases that may occur. Increased knowledge of the process can be utilized to improve safety, reduce operating costs, increase productivity and establish competitive advantage. Successful PSM programs involve attention to detail. When implement-

ed properly, this can result in improving the overall efficiency of the systems they operate.

#### Incident investigation

FAI safety experts are available for consultation to discover possible conditions that led to recent fires, explosions, near misses or incidents. Our experts will review the normal process and events prior to the incident to identify potentially hazardous conditions. FAI can also perform a root cause analysis to establish the initiating cause of the event, assist in identifying scenarios that led to the incident, and ascertain if follow-up testing is necessary to validate the hypothesis. Our process safety experts operate a full service lab that can determine the hazard potential of a given situation. Test capabilities include dust explosion severity, flammability and chemical reactivity (contamination, material incompatibility, loss of power or agitation, additional upset conditions and more). Results can be used to provide litigation support or expert witness testimony.

#### Additional consulting services

- Relief Vent Sizing Review
- Deflagration Vent Sizing Review
- Reactivity Hazard Analysis Review
- Process Safety Due Diligence for Acquisitions and Mergers
- Root Cause Analysis
- Safe Process Scale-up

*IMA member company FAI strives to be your one point solution to address your process safety needs. Contact an FAI representative today to discuss your process safety needs for the services mentioned here and more. Call 877-328-7531 or visit their Website at <http://www.fauske.com>. ■*

*Author Amy Theis, P.E., is a Manager, Chemical Testing & QA Services, at Fauske & Associates, LLC. Amy may be contacted by telephone at 630-887-5211 or by email at [Theis@Fauske.com](mailto:Theis@Fauske.com).*

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## New IMA members

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**CHILDRESS DUFFY, LTD.**  
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JOHNSON, LTD.**  
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**PHARMACEUTICAL RESEARCH &  
MANUFACTURERS OF AMERICA  
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**SATELLITE BROADCASTING &  
COMMUNICATIONS ASSOCIATION**  
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**SCOTT PETERSEN COMPANY**  
Chicago, IL

**SELDEN FOX, LTD.**  
Oak Brook, IL

**US BANK**  
Chicago, IL

**VERTICAL, INC.**  
Chicago, IL

**VIENNA SAUSAGE MANUFACTURING**  
Chicago, IL

## 2011 Calendar of events

**October 6, 2011**

**IMA-MIT Event: Strategic Planning and Goal Setting — DePaul University O'Hare Campus, 8770 W. Bryn Mawr Avenue, Chicago**  
Effective strategic planning and thinking skills combined with the ability to set compelling and achievable goals are at the core of all successful leaders and help to establish the foundation for sustainable business success. For more information or to register, visit: <http://www.ima-net.org/oct6-mit-strategic-planning>.

**October 13-15, 2011**

**4th Annual IMA Young Leaders Council Fall Conference — Grand Geneva Resort & Spa, Lake Geneva, WI**

This year's conference, Excelling to Lead, will focus on the three qualities every leader needs – Know yourself – Know your people – Know your stuff. Our key note presenter will be West Point graduate Jim Nalepa of Academy Leadership. For more information or to register, visit: <http://www.ima-net.org/oct13-15-young-leaders-council>, or contact: Jim Nelson, 217-522-1240 x 1-3023, email: [jnelson@ima-net.org](mailto:jnelson@ima-net.org).

**October 14, 2011**

**IMA-MIT Event: Consultative Selling Skills for Sales Professionals — DePaul University O'Hare Campus, 8770 W. Bryn Mawr Avenue, Chicago, 9:00 am-5:00 pm**  
Learn extremely relevant Consultative Selling Skills that will serve as a key competitive differentiator. For more information or to register, visit: <http://www.ima-net.org/oct14-mit-consultative-sellin>.

**October 19, 2011**

**IMA Breakfast Briefing: Wage & Hour Issues: The single greatest threat to employers**  
**Ditka's Restaurant, Two MidAmerica Plaza, Oakbrook Terrace**  
Only educated and prepared employers who understand the obligations imposed by complex federal and Illinois wage and hour laws can avoid the mistakes that invariably lead to litigation. These issues present significant risks, and divert management's attention from other important business matters. For more information or to register, visit: <http://www.ima-net.org/oct-19-breakfast-meeting> or contact Kimberly McNamara, 630-368-5300, ext. 1-2109, email: [kmcnamara@ima-net.org](mailto:kmcnamara@ima-net.org)

**October 21, 2011**

**IMA-MIT Event: Time Management & Personal Effectiveness Skills — DePaul University O'Hare Campus, 8770 W. Bryn Mawr Avenue, Chicago, 9:00 am-4:45 pm**  
Don't miss this opportunity to learn the essential skills that support the highest level of individual and group effectiveness in today's fast paced, multi-tasking and chaotic business environment. For more information or to register, visit: <http://www.ima-net.org/oct21-mit-time-management-ski>.

**October 28, 2011**

**IMA-MIT Event: Effective Performance Management & Goal Setting — DePaul University O'Hare Campus, 8770 W. Bryn Mawr Avenue, Chicago, 9:00 am-5:00 pm**  
Participate in a dynamic and highly interactive workshop to better understand how to maximize

the investment in your organization's talent pool and increase the likelihood of business success by implementing an effective performance management and goal setting process. For more information or to register, visit: <http://www.ima-net.org/oct-28-mit-effective-performan>.

**November 4, 2011**

**IMA Small Manufacturers Council**  
**8:00 am-12:00 noon.**  
Contact: Jim Nelson, [jnelson@ima-net.org](mailto:jnelson@ima-net.org).

**November 10, 2011**

**IMA Sales Tax Seminar — Northern Illinois University-Naperville, 8:30 am-12:30 pm**  
IMA's Annual Sales Tax Seminar presented by IMA-member Wolf & Company. This annual review will cover: Overview of the Illinois Tax structure and how manufacturers' are affected, Manufacturers' Purchase Credit (MPC), Exclusions, Exemptions and Deductions. For more information or to register, visit: <http://www.ima-net.org/nov10-sales-use-tax> form or contact Kimberly McNamara, 630-368-5300, ext. 1-2109, email: [kmcnamara@ima-net.org](mailto:kmcnamara@ima-net.org).

**December 2, 2011**

**IMA Annual Luncheon**  
**Hotel InterContinental, Grand Ballroom**  
**505 North Michigan Avenue, Chicago**  
Reception & Exhibits: 11:00 am-Noon;  
Lunch: Noon-2:00 pm; Keynote speaker: Jeff Thredgold, CSP, Economic Futurist. For more information, visit [www.ima-net.org](http://www.ima-net.org) or contact Kimberly McNamara, 630-368-5300, ext. 1-2109, email: [kmcnamara@ima-net.org](mailto:kmcnamara@ima-net.org). ■

Visit <http://www.ima-net.org/special-events> or <http://www.ima-net.org/training-events> for information, pricing, etc., and a complete listing of IMA and IMA-MIT offerings.

**The Illinois Manufacturer is underwritten by Constellation NewEnergy**



# Quarterly Economic Update



The much-anticipated boost to activity from lower energy costs and reviving auto output has been overwhelmed by a rapid-fire sequence of shocks to business confidence and investor risk appetite. With recent GDP revisions, persistent sources of sluggish recovery appear more formidable and the sudden erosion in financial conditions in recent weeks threatens to abort recovery altogether if not contained or reversed soon. Our forecasts for growth have been cut back noticeably to below trend and would be lower still if not for assumed policy supports ahead.

Despite reassuring news on consumer spending and job growth in July, perceptions have spread that recovery is faltering and that already has prompted the Fed to promise super-accommodative policy for two more years. Strong further guidance and possible sterilized purchases of long-duration assets are now in the baseline view, but there remain high hurdles to renewed QE financed with base money. For this round, we have also assumed that the scheduled expiration of payroll tax relief will be extended and that the Joint Select Committee on deficit reduction will successfully head off automatic triggers for large spending cuts in 2013.

Inflation has remained elevated, with core measures of 2% - 2.5% running above desired ranges. This has narrowed policy options but also undercut growth. Easing bottlenecks in autos should hasten some moderation and business pricing intentions have started to roll over. With labor market improvement stalled, wage growth remains anemic and consumer resistance to higher prices is widely evident. Easing in price pressures should help stabilize recovery.

**To discuss how this data can impact your business please call:**

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## United States Economic Forecast 2010-12F

		2010	2011F	2012F	2010 1Q	2QF	3QF	2011 4QF	1QF	2QF	2012 3QF	4QF
GDP	\$AAR				0.4%	0.5%	1.6%	1.6%	2.1%	2.0%	2.8%	2.7%
	YoY	3.0%	1.6%	2.1%	2.2	1.5	1.3	1.2	1.6	2.0	2.3	2.5
Consumption	\$AAR				2.1	0.2	1.8	2.3	2.3	2.3	2.8	2.5
	YoY	2.0	2.1	2.2	2.8	2.1	1.9	1.6	1.6	2.2	2.4	2.5
Business Investment	\$AAR				2.1	6.3	3.2	3.9	4.0	4.8	7.7	6.0
	YoY	4.4	5.4	4.8	10.0	7.1	5.0	3.9	4.3	4.0	5.1	5.6
Housing Investment	\$AAR				-2.5	12.3	1.4	3.7	4.0	7.3	13.1	15.8
	YoY	-4.3	-0.4	6.6	-2.0	-5.1	3.3	3.6	5.3	4.1	7.0	13.2
Exports	\$AAR				7.9	3.5	6.1	7.7	8.5	8.1	7.6	7.6
	YoY	11.3	7.2	7.5	8.9	7.3	6.3	6.3	6.5	7.6	8.0	8.0
Imports	\$AAR				8.1	1.8	2.3	6.0	6.2	4.9	4.6	4.6
	YoY	12.5	5.3	4.8	9.6	4.8	7.4	4.6	4.0	4.8	5.4	5.1
CPI	YoY	1.5	1.0	1.5	2.2	3.3	3.5	3.0	2.1	1.5	1.7	1.6
Core CPI	YoY	1.0	1.6	1.6	1.1	1.5	1.6	2.0	1.8	1.7	1.5	1.5
Unemployment Rate	%	9.6	9.2	9.5	8.9	9.1	9.3	9.4	9.5	9.5	9.5	9.4
Current Account	US\$bn	-471	-408	-415	-477	-506	-422	-426	-404	-422	-406	-429
	% of GDP	3.2	3.0	2.7	3.2	3.4	2.8	2.8	2.6	2.7	2.6	2.7
S&P 500 Profits (US\$ Per Share)	YoY	37.8	13.5	4.1	19.2	2.4	12.0	10.9	5.3	4.6	3.7	3.0

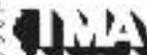
Notes: F.G.S. (except for Nonfarm payroll change); S&P 500 seasonally adjusted annual rate

Sources: Bureau of Economic Analysis; Bureau of Labor Statistics; FRED; Treasury Department; Wall Street Journal; and Citigroup Research and Analysis

## Interest Rate and Bond Market Forecast (End of Period), as of 25 Aug 2011

	Current	30 11	4Q 11	1Q 12	2Q 12	3Q 12	4Q 12
US							
Policy Rate (Fed Funds) End Quarter	0.25	0.25	0.25	0.25	0.25	0.25	0.25
3-Month Libor	0.37	0.31	0.35	0.43	0.45	0.50	0.60
2-Year Treasury Yield	0.20	0.20	0.22	0.30	0.40	0.55	0.75
10-Year Treasury Yield	2.73	2.45	2.35	2.60	2.90	3.10	3.38
30-Year Treasury Yield	3.42	3.75	3.65	3.85	4.10	4.25	4.40
2-10 Year Treasury Curve	163	225	215	230	250	255	355
30 Year Mortgage Yield	4.21	4.30	4.40	4.45	4.55	4.75	4.95

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