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Summer 2012

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**IMA member profile:
Nucor Steel Kankakee**



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... there is a full scope of options available today to help companies achieve their environmental goals and improve the way they buy, manage and use energy.

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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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Share your company news with IMA ...

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Is your energy supply plan ready for the future?



The IMA strongly advocates for competitive power markets because the ability to comparison shop for the best supply program is one of the strongest weapons we have in managing our energy expenses.

When it comes to summertime weather extremes, Illinois manufacturers normally fare much better than our colleagues in the south and southwest. Consider the record-breaking heat wave in Texas last summer . . . 40 days over 100 degrees! Texas spot market power prices spiked to nearly \$3,000 per mwh during the worst of the scorcher.

Summers here are normally cooler and yet it's worth noting that Illinois and the nation as a whole is coming off the warmest spring on record. Statewide records go back to 1895 and 2012, with an average spring (March, April, May) temperate of 59.1 degrees, was the hottest ever.

Are we having a record-breaking summer? It seems so, but our state has experienced severe heat waves in the past. Guess wrong and your business can be facing enormous unbudgeted electricity bills.

That's why we urge IMA members to adopt a strategic energy management plan that reduces the risk of a weather-related budget shock. Illinois' electricity market is open to competition and that means businesses of all sizes can shop for customized power and gas procurement programs. IMA's endorsed energy partner, Constellation, has been serving our members for more than a decade.

Electricity supply programs come in all shapes and sizes. There's no single "right" approach or plan. Customers with the budget flexibility to accept the risk of volatile commodity prices may sign a contract for half of their power needs and buy the rest on spot market. Others may adopt the opposite approach, securing 80-90 percent of their annual load under a fixed-price agreement and minimizing exposure to spot prices to 10 or 20 percent. Contract terms can range from one year to multi-year. Given today's low commodity costs, many customers are locking in favorable prices for two years or more.

Power prices are down sharply the past few years but it wasn't long ago — in the days before competition — that Illinois electricity charges were among the highest in the nation.

A recent report from the COMPETE Coalition (www.competecoalition.com), an organization representing energy customers and competitive suppliers, includes an interesting chart illustrating prices for all U.S. power consumers over a 21-year period, 1990-2011. Prior to the introduction of retail power competition, Illinois power prices were far above the national average. Post-competition, prices dropped to below the national average.

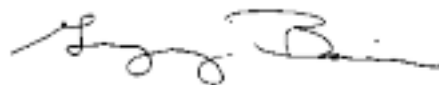
Statistics like that tell the story. Energy customers in Illinois — and competitive markets nationwide — are shopping for one simple reason: the marketplace is working. It is presenting customers with choices and, ultimately, a better value.

The IMA strongly advocates for competitive power markets because the ability to comparison shop for the best supply program is one of the strongest weapons we have in managing our energy expenses. Typically energy is among the biggest expense in the manufacturing sector.

Buying power from the competitive market is just one way of getting a better handle on energy spending. In many commercial operations, lighting can account for up to 20 percent of energy use. Lighting often generates heat, which makes the air conditioning system work even harder when all the lights are on during hot summer days. It pays to look at energy holistically. If your business is designing or renovating a facility this year, you'll obviously want to do so with an eye toward reducing ongoing costs for energy, water and maintenance. Modernizing systems on existing buildings can save up to 20-30 percent in energy costs.

Our mission at IMA is manufacturing, but it's good to know the benefits of competition are spreading to Illinois households and that's good news for our employees. Many suppliers, including Constellation, are actively marketing for residential customers in the ComEd region. Voters are also approving ballot measures that allow local leaders to aggregate residential power load and shop for the best supply deal.

When it comes to energy supply, it's gratifying that Illinois has embraced competition and the benefits of lower prices and increased innovation are available to the largest commercial users and now, homeowners. If there's one silver lining to this prolonged recession it's that energy costs are down and savings are available. That's a much needed dose of good news as we experience the summer of 2012. ■





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Illinois needs a comprehensive energy policy



When it comes to natural gas, recent geologic studies of the New Albany Shale in the Illinois Basin are providing the best potential economic news and a spark of hope in nineteen of Illinois' southernmost counties.

More than a quarter-century ago, Illinois lawmakers created the Energy Policy & Planning Act (EPPA) as a means of organizing a comprehensive approach for energy that "is of vital importance to the public welfare and to the continued operation of business and industry" noting that many of "the problems related to energy are beyond the ability of the national government to solve." Unfortunately, despite biannual reports required by EPPA and energy proposals from each of Illinois' last three Governors, the fact remains that Illinois does not have a comprehensive and forward-thinking plan that will help grow our economy and increase energy production while protecting the environment.

For a manufacturing sector that uses one-third of all energy in the United States, the lack of a comprehensive energy policy in Illinois is creating a stream of ill-conceived proposals. Over the past few years, private, out of state companies like Tenaska Energy and Leucadia National Corporation have dangled the promise of hundreds of temporary jobs in front of legislators in exchange for sweetheart deals for their companies to sell electricity and natural gas. In each case, the companies sought special legislation locking in guaranteed 30-year contracts regardless of the cost foisted on businesses and consumers. In the absence of an energy policy, the General Assembly will continue to face a piecemeal and detrimental approach to our energy needs.

The IMA helped found and lead the STOP Coalition, consisting of three hundred businesses and trade groups, successfully defeating Tenaska's expensive carbon sequestration project which would have cost nearly \$400 million annually in above-market prices to finance a 544 MW "clean coal" facility in downstate Illinois. After reviewing Tenaska's own study, the independent Illinois Commerce Commission found that electricity from the plant would cost as much as 700 percent more than current market prices. This was the fourth year in a row that Tenaska sought passage of this special sweetheart deal.

While Tenaska sought to carve out a special subsidy for electricity, Leucadia tried essentially the same scheme for synthetic natural gas obtained from coal. Despite record finds of natural gas reserves in shale readily available because of new hydraulic fracturing technologies that have pushed the price of natural gas to near-record low prices, some lawmakers are pushing a new law forcing 30-year contracts on gas utilities. In June, Apache announced a massive shale-gas discovery with as much as 48 trillion cubic feet of recoverable natural gas, enough to supply U.S. needs for two years. It make no economic sense for Illinois lawmakers to try and force businesses and residential consumers to pay more than \$8 per MMBtu for Leucadia's synthetic natural gas when the real resource is available for \$2.19 according to the latest Henry Hub price (natural gas spot price). The price is projected to remain low for decades.

When it comes to natural gas, recent geologic studies of the New Albany Shale in the Illinois Basin are providing the best potential economic news and a spark of hope in nineteen of Illinois' southernmost counties. It is estimated that up to 19 trillion cubic feet of recoverable natural gas is available through hydraulic fracturing which would be a huge boon for manufacturing, transportation and energy sectors that could see billions of dollars in economic activity.

The IMA and other industry groups negotiated a good bill governing wastewater management, wellhead protection and model chemical disclosure rules that passed the Senate unanimously with support from agricultural and environmental advocates. Unfortunately, competing hydraulic fracturing legislation drafted in the House, with the assistance of Attorney General Lisa Madigan, sent a chill over the industry because of excessive set back provisions and a massive 12 percent severance tax. Later, a key Democrat lawmaker proposed a two-year moratorium that would have stopped the burgeoning industry before it takes hold in Illinois. One company tore up \$2 million in mineral rights leases when news of the potential moratorium hit the press. Fortunately, these

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New EPA regulations expected to drive energy costs higher

The U.S. Environmental Protection Agency has issued several environmental regulations over the last two years that impact electric power producers and industrial boilers used in manufacturing, processing, mining and refining, as well as commercial boilers used in malls, laundries, apartments, restaurants and hotels. These regulations are predicted to raise energy costs for business and residential consumers alike. Some have expressed concern that these regulations could even threaten the reliability of electric power in some parts of the country due to the retirement certain of coal-fired power plants. In a poll conducted recently by Black & Veatch of 500 utility company executives, more than 90 percent believe that rules instituting stricter limits on coal-fired power plants and rules requiring the use of more renewable energy will mean consumers will see higher monthly electric bills.

In commenting on the proposed U.S. EPA rules for industrial, commercial and institutional boilers (aka Boiler MACT), the Industrial Energy Consumers of America (IECA), which represents companies with approximately 750,000 employees, said that they were concerned that in this "fragile economic recovery" the high costs of the Boiler MACT rules will leave some companies "no recourse but to shut down the entire facility, not just the boiler."

This article is not intended to delve into the intricate details and complexities of the rules in question or to join the ongoing debate about the social and political implications of the rules. What is intended here is to present an overview of the regulations in question and their current status in order to insure IMA members are aware of the potential

for this issue to impact their future business decisions regarding energy costs. What should become clear is that the complexity, timing and uncertainty posed by these particular regulations increase the difficulty of conducting suitable planning. However, failure to adequately plan for and respond to these regulations in a cost effective and efficient manner has the potential to cause serious or even catastrophic consequences for affected businesses. Following is a brief overview of the recently proposed or promulgated regulations affecting businesses that use boilers for heat and/or power.

"New" rules affecting electric power generators

The electric power industry has made significant investments in equipment and strategies to reduce their impact on the environment, especially over the last 20 years.

One indicator of the success of this effort comes from air emission data published by the Illinois Environmental Protection Agency in their Annual Air Quality Reports. These show that emissions in 2010 of the three pollutants emitted by power plants in the largest quantities decreased to a level of less than 25 percent of their 1997 emissions. New regulations from U.S. EPA seek to reduce these emissions even further and address issues such as hazardous air pollutants, cooling water, and coal ash disposal.

Clean Air Interstate Rule (CAIR)

On March 10, 2005, U.S. EPA issued the Clean Air Interstate Rule (CAIR) to address the problem of power plant pollution that drifts from one state to another. The U.S. Court of Appeals for the D.C. Circuit vacated the CAIR rule on July 11, 2008 and

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LEGISLATIVE REPORT

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job killing proposals were defeated with the IMA's help in the last days of spring legislative session. We cannot afford to let this huge economic

potential slip through our fingers.

Illinois has substantial fossil fuels, huge reserves of coal and natural gas; and produces ethanol and generates wind and solar power. We lead the Midwest in oil refining capacity and are the nation's top nuclear generator. Our state plays a crucial role as a transportation hub

for natural gas and oil moving across the nation. We have enormous potential to grow our energy and manufacturing sector but we need a comprehensive policy to reach that goal.



EPA REGULATIONS

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then remanded the rule to U.S. EPA to revise the method for addressing the transport of air pollution across state boundaries while allowing the remainder of the CAIR rule to be implemented in the interim.

Cross State Air Pollution Rule (CSAPR)

This rule was issued in July 2011 in response to the remand of the CAIR rule. It puts in place four regional trading programs that set emission limits for sulfur dioxide and nitrogen dioxide in 28 states that was set to begin in 2012 and tighten in certain states in 2014. However, on December 30, 2011, the U.S. Court of Appeals for the D.C. Circuit issued a ruling staying the CSAPR rule pending judicial review. The U.S. EPA is now transitioning back to the CAIR rule while the Court deliberates on the fate of the CSAPR rule which is expected to be decided this year, possibly by late summer.

Clean Air Mercury Rule (CAMR)

The U.S. EPA issued the CAMR rule on March 15, 2005 for the purpose of reducing mercury emissions from coal-fired power plants. The U.S. Court of Appeals for the D.C. Circuit vacated the CAMR rule on February 8, 2008 based on "fatal flaws" in the rule.

Mercury and Air Toxics Standards (MATS)

On February 16, 2012 the U.S. EPA's Mercury and Air Toxics Standards (MATS) were published. This rule sets limits on emissions of mercury and acid gases from coal and oil-fired power plants, and it seeks to reduce heavy metals and other toxic chemicals by limiting particulate matter. The statutory compliance deadline for MATS is

January 2015 subject to some flexibility allowed by the rule.

New Source Performance Standards for Greenhouse Gasses

The U.S. EPA proposed New Source Performance Standards for Greenhouse Gasses (GHG) from Electric Generating Units on March 27, 2012 with a comment period that ended on June 25th. The rule requires new electric generating units, including coal-fired boilers, to meet a GHG emission standard equivalent to the performance of natural gas combined cycle units, though there are some limited exceptions.

Coal Combustion Residual Rules (CCR)

In June 2010, the U.S. EPA proposed rules that would regulate the handling of CCRs (often referred to as coal ash) from their generation at power plants to final disposal. The proposed rule contains options to classify CCRs as a non-hazardous solid waste under the Resource Conservation and Recovery Act (RCRA) (Subtitle D) or as a special waste (Subtitle C). Currently, CCRs are used beneficially in products such as wallboard, cement, roofing shingles, and abrasives. Classifying CCRs as a Subtitle D special waste would prohibit such beneficial usage. The U.S. EPA does not face a legal requirement to issue a final rule by a specific deadline but plans to finalize this rule later this year.

Cooling Water Intake Structures 316(b)

As proposed by U.S. EPA in March 2011, the Cooling Water Intake Structures Regulations (under section 316(b) of the Clean Water Act) would require that cooling water intake structures reflect the best technology available for minimizing adverse environmental impact on aquatic organisms. Affected power plants

would have to demonstrate compliance with a national aquatic organism impingement requirement and work with state and federal permitting authorities to address aquatic organism entrainment on a site-specific basis. The U.S. EPA is under a settlement agreement to issue a final rule by July 2012.

"New" rules affecting industrial, commercial, and institutional boilers

Owners of industrial, commercial, and institutional boilers have invested in emission reduction projects for a number of years. The air emission data published by the Illinois Environmental Protection Agency (Illinois EPA) in their Annual Air Quality Report provides an indication of the scope of the substantial investment business has made. The Illinois EPA data show that emissions of the three pollutants emitted by these boilers in 2010 have decreased to about 33 percent of their 1997 emissions. New U.S. EPA regulations for these boilers are directed at reducing emissions of certain hazardous air pollutants such as mercury, other metals, dioxin and acid gasses.

Maximum Achievable Control Technology (MACT) for Industrial Boilers and Process Heaters (aka Boiler MACT)

This rule has a long history. It was first promulgated by U.S. EPA in February 2004. Shortly before the compliance deadline in 2007, the U.S. Court of Appeals for the D.C. Circuit vacated the rule and remanded it back to U.S. EPA. After re-proposing the rule and receiving extensive comments, the U.S. EPA, under Court order, promulgated the rule on February 21, 2011. On May 18, 2011, the U.S. EPA stayed the effective date of the rule in order to reconsider sev-

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International sales corporation status can reduce federal tax burden

Illinois manufacturers work hard to make products and services competitive in the global economy.

State exporting activity places Illinois as the enviable top exporter in the Midwest and sixth among U.S. states, according to the International Trade Center at Southern Illinois University-Edwardsville (SIUE). What's more, Illinois exports have increased by \$24 billion, to \$64 billion, in the past 10 years alone. Clearly, generating foreign sales is a necessary component for growth. And many state exporters are leveraging these international sales to reduce their federal tax burden through an incorporation tool called an IC-DISC.

People tend to think that smaller companies face big obstacles to exporting. Yet, 89 percent of Illinois exporters are small and medium-sized businesses, according to SIUE. Exporters do face fierce competition — as well as foreign tariffs, fees, and taxes — on export sales. Fortunately, they have at least one federal tax regulation going for them. By creating an Interest Charge-Domestic International Sales Corporation (IC-DISC), a domestic manufacturer with international sales can defer and/or reduce its overall tax burden related to the income on these sales.

The IC-DISC reduces U.S. taxation on exports of property manufactured in the United States for direct use outside the U.S. Two types of sales qualify: sales from products shipped directly outside the U.S. and sales from products sold in the U.S. that ultimately are added to a product that is shipped internationally.

Many contract manufacturers are part of supply chains that serve large OEMs whose products end up outside the U.S. Parts shipped domestically to these OEMs may also qualify

for this tax-advantaged status, even though on the surface they don't appear to be foreign sales.

An IC-DISC can be used in a number of ways. Some of the advantages and benefits provided by an IC-DISC include:

- Permanent tax savings on export sales. Although an IC-DISC is a tax-exempt entity, any cash distributed from an IC-DISC is taxed to the shareholders at the qualifying dividend rate of 15 percent. This results in a federal tax savings of up to 20 percent on the income associated with foreign sales.
- Tax deferral on export sales. An IC-DISC also allows a company to defer up to \$10 million of taxable income to the future. This can be a significant benefit if cash flow is tight, or if a business

prefers to defer the payment of tax to Uncle Sam.

- Means to facilitate succession planning. An IC-DISC offers a number of capabilities for executing a succession plan. Shareholders can be corporations, retirement accounts, individuals — or a combination thereof. This can result in an effective means to distribute cash to beneficiaries in a tax-advantaged manner. It doesn't take much for a company to benefit from an IC-DISC. Companies with as little as \$500,000 in export sales have shown savings from establishing IC-DISCs. In addition, the set-up and recurring maintenance of this strategy is relatively minimal compared to the savings.

IC-DISCs have been around for

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TAX BURDEN

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close to 30 years, yet they are not widely used in small to midsize manufacturing companies. Why not? One reason they are not used stems from a misconception that they are too complicated or administratively burdensome. However, an IC-DISC strategy does require a company to establish a separate entity to report its international sales. The IC-DISC is a “paper” entity created to make the company more competitive. It does not require corporate substance or form, office space, employees, or tangible assets. It simply serves as a conduit for export tax savings. Customers do not need to know about the IC-DISC, and contracts remain current. In addition, the transactions required to be reported for the IC-DISC can be summarized and reported once a year.

Another reason for a low IC-DISC adoption rate is that in the past, this structure didn't provide much benefit. There were other provisions in the tax code that provided deductions for international sales. These provisions

expired a number of years ago, resulting in the IC-DISC strategy once again becoming more advantageous.

If you think this strategy may be an option for your company, it is important to act quickly. An IC-DISC is only allowed to provide benefit beginning on the date it is formed

People tend to think that smaller companies face big obstacles to exporting. Yet, 89 percent of Illinois exporters are small and medium-sized businesses, according to SIUE.

(benefits are not available retroactively). The sooner a taxpayer creates an IC-DISC entity, the greater their benefits will be.

To maximize savings and ensure proper IC-DISC formation and administration, businesses that wish to create an IC-DISC should seek

assistance from a qualified tax advisor. While the concept and administration are relatively simple, it is important that the initial set-up is done properly to maximize and protect this tax advantage.

It should be noted that the qualifying dividend rate is scheduled to increase January 1, 2013, which would eliminate the federal income tax benefit — if Congress does not act. One proposal would change the rate to 25 percent, which would still provide a 10 percent benefit.

IMA member CliftonLarsonAllen is one of the nation's top 10 certified public accounting and consulting firms. Structured to provide clients with highly specialized industry insight, the firm delivers assurance, tax and advisory capabilities. CliftonLarsonAllen offers unprecedented emphasis on serving privately held businesses and their owners, as well as nonprofits and governmental entities. The firm has a staff of more than 3,600 professionals, operating from more than 90 offices across the country. For more information about CliftonLarsonAllen, visit www.cliftonlarsonallen.com. ■

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Styrene: Regulatory obligations one year after being listed in the NTP's report on carcinogens

Styrene is a naturally occurring organic compound, found in a variety of foods, that has been synthetically produced and incorporated into thousands of everyday consumer products for decades, including food containers and packaging materials, CD cases, helmets, refrigerators, computers, tires and boats. Domestic styrene production represents a \$28 billion industry that employs approximately 90,000 workers at more than 5,000 plants nationwide. Illinois is among a handful of states that contribute the majority of the styrene workforce.

Potential health effects associated with styrene remain a hotly contested topic in the scientific community, with numerous published studies reaching conflicting results as to whether styrene may be a human carcinogen. Despite this difference of opinion, on June 10, 2011, the National Toxicology Program ("NTP") listed styrene in its *12th Annual Report on Carcinogens* ("RoC") as "reasonably anticipated to cause cancer in humans." This listing triggered several federal regulations that require certain actions from companies that manufacture and distribute styrene and employers that use styrene in the workplace. For example, OSHA regulates the use of potentially harmful chemicals through a Hazard Communication Standard ("HCS"). Under the HCS, a chemical is considered to be a carcinogen or potential carcinogen if it is listed in the RoC. [See 29 C.F.R. 1910.1200(d)(4).] Accordingly, while the scientific debate continues regarding styrene's potential health effects, it is currently a carcinogen or potential carcinogen for hazard communication purposes under OSHA regulations.

In light of the listing of styrene

in the most recent RoC, there are three primary OSHA regulations that have applied to styrene products since September 10, 2011. First, styrene manufacturers and distributors must revise their product labels to reflect the NTP's classification of styrene. [See 29 C.F.R.

1910.1200(f)(1),(11).] Second, those companies must update their material safety data sheets to reflect the NTP's classification. [See 29 C.F.R. 1910.1200(g)(5).] Third, companies that use styrene in the workplace must satisfy their ongoing obligation to provide employees with effective information and training about potential health hazards associated with styrene exposure. [See 29 C.F.R. 1910.1200(h)(1).]

The styrene industry has not accepted the NTP's classification without opposition. On June 10,

2011, the same day that the NTP included styrene in the RoC, the Styrene Information and Research Center ("SIRC") and a major manufacturer of styrene-containing products, Dart Container Corporation ("Dart"), filed a lawsuit in U.S. District Court for the District of Columbia (Case No. 1:11-cv-01079) to have styrene removed from the RoC. In the lawsuit, SIRC and Dart argue that the listing of styrene was arbitrary and capricious because the Secretary of Health and Human Services and the NTP failed to follow proper protocol, mischaracterized various studies to reach a pre-determined conclusion about the causal link between styrene and human cancer, and failed to consider various scientific studies that refuted a finding of carcinogenicity. Essentially, the plaintiffs argue

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IMA member profile:

Nucor Steel Kankakee

When Ransom E. Olds first invented the Oldsmobile, it would have been impossible for anyone to have guessed that his gasoline-powered “horseless carriage” would also be the genesis of the Nucor Corporation, which revolutionized the steel industry and grew to become one of the nation’s largest steel producers. Through Olds’ innovations, the Oldsmobile became one of the premier businesses in the United States before he later sold the company and started his other automobile business, Reo Motors.

Reo procured several defense contracts during World War II, but after the war, production of the company’s trucks declined, and Reo was forced into a merger with Nuclear Consultants, Inc., a St. Louis-based business that offered nuclear consulting to businesses such as hospitals. Incorporated as Nuclear Corporation of America in 1955, the business began making acquisitions and divestitures, and

none would become more valuable than the acquisition of Vulcraft in 1962. Vulcraft was a modest steel joist manufacturer based in Florence, South Carolina. Under the direction of Nuclear Corporation’s Ken Iverson, Vulcraft would grow to become a symbol of American-made steel that would eventually be unparalleled.

Under the leadership of Chief Executive Daniel DiMicco, Nucor has become America’s largest steel producer. Nucor is also the nation’s largest recycler, keeping more than 23 million tons of scrap metal per year from cars, appliances and other discarded products, out of landfills. The recycled scrap is then melted down and recovered as useful steel. Nucor’s recycling is so thorough that even the dust from operations is captured so that the metal within can be recovered and reused.

The company is a pioneer of the mini-mill concept, which uses environmentally responsible electric arc

furnaces to melt scrap metal into new steel. The process conserves 2,500 pounds of iron ore, 1,400 pounds of coal and 120 pounds of limestone for every ton of steel.

Nucor has a strong commitment to education. Every Nucor team member and their dependents are eligible to receive a \$3,000-per-year scholarship to college or vocational school. To date the scholarship fund has awarded more than \$50 million.

And within the Nucor family of mini-mills, Nucor Steel Kankakee Inc. in Bourbonnais has become the most recent to be recognized by the federal government for its commitment to safety.

Nucor Steel Kankakee

Nucor Steel Kankakee is a proverbial phoenix arisen from the ashes. The mill was once described by a former CEO as one of “the oldest, meanest, most terrible mills in the nation.”

Now the mill is being recognized for its safety record, a testament to the dedication of the more than 300 men and women who work in the Bourbonnais, Illinois, steel mill. The federal Occupational Safety and Health Administration recently bestowed upon Nucor Steel Kankakee Inc. its coveted Star Voluntary Protection Program (VPP) status — a demonstration of just how far the mill has come.

Before Nucor purchased the assets of Birmingham Steel Corporation in December 2002, the mills within the Birmingham fold had undergone a series of rise-and-fall years, at times exceeding productivity models, and at others falling woefully short. In the waning years of Birmingham, however, failed mergers, stock price decline, and internal management fights had all led to a period of prolonged uncertainty.

But Nucor’s purchase of the four mills for approximately \$615 million, including mills in Birmingham, Alabama; Seattle, Washington; and Jackson, Mississippi — as well as the Kankakee mill in Bourbonnais, Illinois — has led to a decade of joint prosperity, efficiency, safety and productivity.

Even in its best years under Birmingham, the Illinois mill wasn’t able to approach the million tons of recycled steel that it regularly produces now. In fact, in the year before Nucor acquired Kankakee,

the mill was forced to reduce hours as demand fell.

But 2011 was not 2001. In 2011, Nucor again assumed the mantle of America's largest steel producer, shipping more than 23 million tons of recycled steel. And the Charlotte, North Carolina-based company did so while running the safest and most efficient steel recycling process in the world.

To be considered for OSHA's Star VPP status, Nucor Steel Kankakee Inc. first had to have a safety and health management system, one monitored by management and practiced by employees. The facility also must maintain an injury/illness rate that is below the national average of its industry. Lastly, regular self-evaluations must be performed, with participants striving for improvement.

Nucor's focus on "safety first" is by design and flows through the entire 20,000-person organization. Commitment to the safety of its employees in Illinois is how Nucor Steel Kankakee recently was welcomed into the OSHA VPP at the Star level. Earning the mill's VPP status was no easy feat, as only about 2,300 worksites out of seven million across the United States qualify for membership in this elite worksite safety circle.

Kankakee as Birmingham

Nucor Steel Kankakee began its life as Birmingham Steel Corporation. At the time, the American steel industry was suffering from declining returns and facing daunting pressure from more efficient competition from rivals in Japan and Europe.

Birmingham Steel's first acquisition was that of the Birmingham Bolt Co., which operated a pair of rebar and merchant product mini-mills in Birmingham, Alabama and in Kankakee, Illinois.

In the two years after it went public in 1985, Birmingham Steel's sales increased fivefold, reaching \$218 million in 1987. Its annual steel output hit 648,000 tons, up 49 percent from the previous year.

In just over a decade, however, a dissident shareholder group encouraged shareholders to initiate a coup, having seen the company's share price fall from \$17 to \$4 in three years.

The move proved to be little more than a Band Aid, however, as share value increased little, productivity

*see **NUCOR STEEL** page 14*



Bill Ader, Chuck Barwegen and Scott Morse, team members at Nucor Steel Kankakee, raise the hard-earned Voluntary Protection Program (VPP) flag given by the Occupational Safety and Health Administration of the U.S. Department of Labor to Nucor Steel Kankakee.



Dedicated to safety first, pictured here (l to r) are Nucor team members David Zawistowski, Gerry Davis and Andrea Baker.

NUCOR STEEL

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remained flat, and hours fell at various mills between 1999 and early 2002.

Salvation came at the end of 2002 when Nucor Corp. purchased substantially all remaining assets of Birmingham Steel Corp.

Since the time of the acquisition, Nucor Steel Kankakee Inc. has seen its productivity increase to more than 850,000 tons of steel per year, its employment balloon to more than 310 teammates, and its awarding of educational scholarships and contributions in Illinois to about \$60,000 per year.



Jason Nowman, a Nucor Steel Kankakee team member, shares what safety means to him as Nucor Steel Kankakee celebrates earning the coveted Voluntary Protection Program (VPP) Star Designation from the Occupational Safety and Health Administration of the U.S. Department of Labor. Only about 2,300 worksites out of seven million nationally have qualified for Star VPP designation.

Safety is our motto

Teammates look out for each other. Teammates protect each other. Teammates help each other achieve more than they could as individuals. And teammates keep each other safe.

At Nucor, they proudly declare, "Safety is our motto." This is not just lip service. They work in an industry where accidents can have serious consequences for the men and women who drive the company, their families and their communities.

While foreign competitors have little or no worker safety oversight, or ignore those laws that are in place but are seldom enforced, Nucor says it proudly exceeds the federal standards for safety to ensure each one of its teammates goes home at the end of their shift.

OSHA first announced Nucor would receive this latest VPP designation earlier this year. Kankakee

became the sixth Nucor mill to earn the coveted VPP Star status, joining her sister mills in Norfolk, Nebraska; Seattle, Washington; Marion, Ohio; and Tuscaloosa and Decatur, Alabama.

But the company insists that this is not a goal, but rather a continuing, ongoing and evolving process.

Looking forward

Nucor is one of many manufacturing businesses caught between the old world and the new — between the age of hard, physical work and sweat and the new digital age. But as Chief Executive Daniel DiMicco points out, America needs to remain a nation that "makes and builds things."

To do this, however, Nucor asserts that a fundamental shift in focus and policy needs to occur. American companies cannot be rewarded for offshoring jobs while simultaneously seeking tax shelters overseas, and the various Administrations that occupy the White House can no longer ignore the fact that American companies are being forced to compete with government-owned entities abroad.

Among a number of our trading partners, government intervention to develop and support their steel industries has been frequent and sustained. And this type of intervention continues in Brazil, Japan, Russia, India and especially, China. Despite depressed global economic conditions, these nations have continued to add new and excessive production capacity and continued to place an emphasis on driving exports.

While it is never good for an industry to have to contend with unfairly traded product, now is a particularly vulnerable time for our domestic manufacturers.

Nucor insists globalization is a good thing for American businesses and the American worker, and asserts its confidence that the people and industry of Illinois and of this great nation can compete in the global marketplace when given the fair chance to do so. But it is almost impossible for a single company to compete against a government anywhere.

The steel industry of the United States is vital to both our economic stability and national security. When foreign governments seek to aggressively harm that industry, it is the duty of the American government to use the tools available to it to inter-



Nucor installed this monument to honor employees who serve or have served in the U.S. armed forces. Each of the five branches: Air Force, Army, Navy, Marines and Coast Guard, are represented.

vene on its behalf.

The trade issues are just one piece of a much bigger pie. The pie also includes the need to create and legislate a U.S. manufacturing turnaround strategy. Elements of this strategy include better trade enforcement, infrastructure investment and a comprehensive plan to develop domestic energy resources.

Nucor is immensely proud of its accomplishments to date, both in productivity and safety. But the company has never been one to rest on its laurels. Nucor has succeeded through the decades through a series of innovations and acquisitions, strategically placing itself at the forefront of an industry that is as old as industry itself.

And the company whose origins began with the earliest of automobiles shows no signs of slowing down.

Headquartered in Charlotte, North Carolina, Nucor Corporation and its affiliates manufacture carbon and alloy steel — in bars, beams, sheet and plate; steel joists and joist girders; steel deck; fabricated concrete reinforcing steel; cold finished steel; steel fasteners; metal building systems; steel grating and expanded metal; and wire and wire mesh. Nucor, through The David J. Joseph Company, also brokers ferrous metals, pig iron and HBI/DRI; supplies ferro-alloys; and processes ferrous and nonferrous scrap. For more information, please visit www.nucor.com. ■

Cheap natural gas fueling an industrial renaissance

North American energy producers have achieved notable success by unlocking and developing the technologies necessary to deliver vast amounts of cheap natural gas to the market. As a result, the U.S. might be on the verge of an industrial renaissance that could provide the spark that will help the country regain its economic footing, and at the same time significantly alter the industrial landscape of the country for many years to come.

A recent surge in domestic natural gas supplies, due to the process known as “fracking,” has enabled gas production to reach levels not reached since 1988. The location of these hard-to-reach gas deposits have been known for decades, but the industry has not had the means to unearth it at costs that were economically feasible, until recently.

It is widely thought that the U.S. has more than 100 years of recoverable supply at current consumption levels. These new sources of natural gas and natural gas liquids (NGLs) are not only abundant in the traditional areas of the Gulf region of Texas and Louisiana, but in non-traditional regions such as the East Coast. Extremely large shale fields in the Northeast not only provide cheap energy to two of the country’s major consuming regions, but also provide hope of resurgence to once proud regions that were hit hardest by the economic downturn.

The oil and gas boom has not only injected immediate energy jobs into the local economies of these regions, but has also provided the framework for long-term job growth to the industrial production sector as well. Already, Texas and Louisiana together share unemployment rates of seven percent, which is significantly lower than the national aver-

age (the lowest is three percent in North Dakota, where gas producers in the Bakken Shale don’t have enough workers to fill their shifts). Production companies in the Northeast are estimated to have created 60,000 jobs in the region with an additional 200,000 likely by 2015.

Manufacturing companies, particularly in the steel industry, will invest millions in new facilities to take advantage of this low cost input to their production process. Low cost energy gives U.S. steel producers a distinct advantage on the world stage. Energy is a significant percentage of the overall cost of these products. The Department of Energy recently reported that the energy intensity or portion of the costs of their final product is amongst some of the lowest in the world. Nucor Steel is expected to develop a new steel plant in Baton

Rouge, Louisiana, while U.S. steel and other foreign investors are eyeing Ohio for their new investments.

Big steel is not the only industry that will benefit from this abundance of cheap energy. Dry natural gas (methane) and feedstock from NGLs are some of the main components of the petrochemical industry. “Crackers” are a part of the chain of manufacturing that turn natural gas byproducts into usable components. Ethane is a feedstock for ethylene which is a main component for making plastics. An ethane cracker plant has not been built in the U.S. since 2001. High natural gas prices, for decades, had made the U.S. one of the most expensive places to produce ethylene.

As a result, many of the plants along with the jobs were sent overseas. Today, besides the Middle East, the U.S. is the cheapest place to pro-

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Strategies for greening your energy use

Submitted by Constellation

Businesses that are looking to incorporate robust sustainability plans into their energy strategies have a lot to consider. Energy costs, current and future legislation and a growing need for environmental responsibility are just a few examples.

Businesses of all sizes can choose whether to approach developing a sustainability plan on their own or by utilizing the various resources available, including competitive energy suppliers and environmental, non-governmental organizations. Companies that choose to work with outside organizations are executing sustainability plans more quickly, according to a recent study by David Hyatt of the University of Arkansas featured on the DC Velocity website.

“The study points to a shift in the energy industry we’ve been noticing for quite some time,” said Bruce Stewart senior vice president and chief marketing officer for Constellation. “More businesses are looking to incorporate sustainability options into their energy strategies. They understand that managing total energy cost over time requires a strategy focused on the quantity of energy used as well as price.”

According to Stewart, one way that businesses are achieving this is by bundling electricity purchases with energy conservation measures. Efficiency Made Easy, Constellation’s energy efficiency solution, factors in

the costs of energy efficiency upgrades into a power supply contract. This unique solution offers customers the chance to manage both their price for power

(\$/MWh) and the quantity consumed (MWh) over a period of time.

Another way that businesses can cost-effectively incorporate renewable solutions into their energy strategy — and support the development of renewable energy facilities — is by

Businesses of all sizes

can choose whether to approach developing a sustainability plan on their own or by utilizing the various resources available, including competitive energy suppliers and environmental, non-governmental organizations.

purchasing renewable energy certificates (RECs) along with their power contracts. RECs from Constellation Energy can be purchased as part of a broader energy supply agreement including electricity and gas supply at very little additional cost.

“We also see many commercial and industrial customers implement-

ing on-site solar installations that provide long-term price control and contribute to sustainability goals,” said Stewart. Through a power purchase agreement, businesses may install on-site solar generation with no upfront capital and lock into fixed power costs that are often less than projected market rates.

Businesses can further maximize savings by combining on-site solar with conservation measures. One of Constellation’s customers, McCormick & Company, has been operating its 363,000 square-foot distribution center as a net-zero energy building for more than a year. As a net-zero energy building, it produces as much or more electricity than it consumes from the grid. This was achieved through a combination of energy conservation measures and the installation of a 1.8-megawatt rooftop solar power system from Constellation Energy in 2011.

Large companies of all types are pursuing load response or demand response programs for various reasons. Many customers are able to use the revenue generated from load response programs for efficiency projects or to fund other aspects of their business. Emerging technology allows them to better manage electricity use and maximize participation in load response programs. For example, Constellation’s VirtuWatt™ application provides commercial and industrial customers with real-time electricity usage and pricing information from grid operators, as well as automated electricity curtailment capabilities and access to bid into electricity markets.

As companies and organizations continue to look ahead to improve their sustainability efforts, there is a full scope of options available today to help achieve their environmental goals and improve the way they buy, manage and use energy. ■

Exelon-Constellation merger creates nation's leading competitive energy company

Exelon and Constellation recently merged to create the nation's leading competitive energy company. It's a partnership of industry leaders that promises to drive sustainable energy solutions and customer-focused product innovation in markets coast to coast.

The new Exelon has the scale and scope to compete across the energy value chain, from homeowners to the largest utilities and manufacturers.

Exelon's Generation subsidiary is the nation's number one competitive power generator, with nearly 35,000 megawatts of owned capacity. The portfolio is among the cleanest in the industry: 55 percent nuclear, 28 percent natural gas and nine percent hydro, wind, solar and other clean generation.

As Exelon's retail business unit, Constellation provides customers with an array of clean energy solutions, including natural gas and renewable energy supply, load response, real-time energy management, and solar and energy efficiency projects. Constellation serves more than 100,000 business and public sector customers and one million residential customers.

The combined Exelon-Constellation operates in 47 states, the District of Columbia and Canada.

Constellation President Kenneth W. Cornew said the combination of Exelon's clean energy fleet and Constellation's retail, wholesale and renewable sales expertise is a key advantage in the competitive marketplace.

"Exelon's competitive platform is beyond what any competitor can claim," said Cornew.

As the new president and CEO of Constellation, Cornew is responsible for the marketing of electricity, natural gas and other energy-related products and services to Constellation customers, as well as ensuring the commercial and competitive optimization of Exelon's generation portfolio. A 25-year veteran of the electric industry, Cornew

also serves as Executive Vice President and Chief Commercial Officer of Exelon Corporation.

In addition to the natural pairing of a large clean energy fleet with the industry's leading energy sales and marketing team, Cornew said Exelon and Constellation also share a passion for providing customers greater choice through competitive energy markets.

Constellation President Kenneth W. Cornew said the combination of Exelon's clean energy fleet and Constellation's retail, wholesale and renewable sales expertise is a key advantage in the competitive marketplace.

"In a regulated market, customers have few choices," said Cornew. "In a competitive market customers do have choices. If they want to install solar panels, we'll help them do that. If they want to become more energy efficient, we'll help them do that."

Industry research illustrates that competition is helping business and residential customers save and manage energy more efficiently.

The Illinois experience with electric utility restructuring is an interesting case study in the ongoing effort to better understand the impact of restructuring on prices according to "Retail Electric Choice: Proven, Growing, Sustainable," a report issued by the COMPETE Coalition. Prior to the introduction of retail competition, average Illinois electric prices had consistently been higher than the national average. Retail electric choice was phased-in over a several year period starting in October 1999 and by 2001, average Illinois electric prices had fallen below and the national average and have stayed lower every year since.

According to COMPETE, competitive electricity markets are active in 17 states and the District of Columbia. By the end of 2011, retail electric choice accounted for more than 18 percent of the nation's total power supply.

"Customers want more choice in energy buying and management," said Cornew. "Whether it's a product that saves money or allows for more customization or minimizes a customer's carbon footprint, we're at work developing and offering products and programs focused on customer need. We firmly believe that competition drives innovation and innovation in turn creates customer value." ■



Constellation SM

An Exelon Company

Kenneth W. Cornew

Executive Vice President and Chief Commercial Officer,
Exelon Corporation — President and CEO, Constellation

A 25-year veteran of the electric utility industry, Cornew leads Constellation, Exelon's competitive retail and commodities businesses. He is responsible for the marketing of electricity, natural gas and other energy-related products and services to Constellation customers in 45 states, the District of Columbia and parts of Canada, as well as ensuring the optimization of Exelon's generation portfolio by obtaining maximum value for power produced while managing risk for the Company and its shareholders.

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



*It's not easy
being green...
or is it?*

It's time to change conventional wisdom. Innovative technologies, new approaches and increasingly competitive markets are redefining energy choices for businesses and homes across America.

Constellation is in the forefront of a new era with customer-focused flexibility, a growing array of sustainable, efficient energy options, and inspired, forward-thinking enterprise. The result: Tailored energy strategies that meet not only today's needs, but tomorrow's challenges.



Introducing a new energy purchasing pool for IMA members

Program unique to the IMA provides new approach to managing cost and risk over time

By John Domagalski, Constellation

One of the many benefits of retail energy deregulation is the variety of options available to businesses making purchasing decisions. Businesses now have the flexibility to determine how much to buy, when to buy, and for how long. And with deregulation, businesses can also leverage the market expertise of an energy services provider, such as Constellation, to make more informed purchasing decisions. This allows businesses to proactively develop and maintain an energy purchasing strategy consistent with their risk objectives.

Although many businesses like the idea of having a robust energy procurement strategy, some don't have the time or resources (because energy is a relatively low percent of operating costs) to regularly review and make proactive energy purchasing decisions. Additionally, many of these same businesses wonder whether they have sufficient purchasing power to get a good deal.

Constellation, in collaboration with the IMA, recently introduced a new energy purchasing program for businesses looking to increase their purchasing power while limiting the amount of time and resources they need to put into following the markets. Constellation's new IMA Energy Purchasing Program aggregates load from participating members and creates a structured, systematic, purchasing strategy to manage energy cost and risk over time. This program, unique to the IMA, allows members to benefit from the increased purchasing power of member aggregation while freeing up time for members to focus on their core businesses.

The program has been designed to meet member cost and risk objectives. A fixed price will be established over a defined period of time for 100 percent of IMA members' anticipated

load. The fixed price will be established using Constellation's Minimize Volatile Pricing (MVP) solution, which uses a transparent, proprietary methodology to reduce market timing risk while locking in fixed prices.

Through systematic purchases over a defined time period, members mitigate the market-timing risk associated with a single purchase. This systematic strategy also eliminates the guesswork and reduces the emotional aspect inherent in all purchasing decisions, freeing purchasing managers from trying to time the highs and lows of the market. Target purchases made on each member's behalf are based on sophisticated modeling that aims to lock-in higher percentages of load when prices are low compared to historical prices, as opposed to basic cost averaging approaches that lock-in a fixed percentage at regular intervals regardless

of market conditions.

In addition to the purchasing program, participants will receive comprehensive monthly reporting on purchases and budget performance. Reports include a forecast of member usage and cost, comparisons of forecast to actual spend, and variance analysis.

The objective of the program is to provide a high degree of budget predictability while using a prudent purchasing strategy which benefits from the increased purchasing power that comes from aggregation. Constellation will be providing more details to IMA members through direct mail in the near future. For questions or additional information, please contact Mark Frech at the IMA (800-875-4462, ext. 4203 — mfrech@ima-net.org) or visit Constellation at constellation.com/IMA to learn more about this exciting new offer exclusive to IMA members. ■

Constellation and the IMA launched the new IMA Energy Purchasing Pool at the IMA board meeting held at the Chicago Bears' Halas Hall in June. This event was made possible through the relationship Constellation has with the Chicago Bears. Visit constellation.com/IMA to learn more about this exciting addition to the IMA Energy Program.



Constellation — Provides products and services to manage energy cost and risk over time

STYRENE

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that the NTP cannot list styrene in the RoC if it is a “possible” carcinogen, and the studies relied upon by the NTP reflect, at most, a possible causal connection. Several third parties, including environmental groups and labor unions, have moved to intervene in the lawsuit to support the listing.

The lawsuit remains pending today. SIRC and Dart filed a lengthy motion for summary judgment on May 18, 2012. The court set a deadline of June 22, 2012, for the defendants to file a response brief and, if they desire, their own motion for summary judgment. If SIRC and Dart prevail in the litigation, styrene will be removed from the RoC and the accompanying OSHA regulations will no longer apply.

In addition to contesting the styrene listing in court, SIRC directly contacted OSHA and requested a stay of enforcement for all regulations that would be triggered by the listing. On November 17, 2011, OSHA publicly responded and addressed two of the three regulations discussed above: labeling requirements and material safety data sheets. With respect to labeling requirements, OSHA has maintained a voluntary stay on its enforcement of 29 C.F.R. 1910.1200(f)(11) since March 20, 1998. In its November 2011 letter, OSHA reaffirmed that this voluntary stay will remain in effect and, until further notice, that it will not issue citations to companies that fail to update their product labels. Notwithstanding this reaffirmation, OSHA cautioned that the stay on enforcement of the regulation does

not affect the underlying obligations imposed by the regulation. In fact, OSHA explicitly recommended that manufacturers and distributors update their product labels to avoid citations in the event OSHA ends its voluntary stay of enforcement.

OSHA also addressed the requirement that manufacturers update their material safety data sheets within three months of becoming aware of new hazard information for a chemical, such as a new listing by the NTP. According to OSHA, it has never stayed its enforcement of this provision, and it will continue to

In fact, OSHA explicitly recommended that manufacturers and distributors update their product labels to avoid citations in the event OSHA ends its voluntary stay of enforcement.

enforce it wherever violations are found. OSHA did not address employee training requirements outlined in 29 C.F.R. 1910.1200(h)(1).

Therefore, as of today, manufacturers and distributors of styrene products are required to update their labels and material safety data sheets to reflect the NTP's listing of styrene in the RoC, and employers that use styrene in the workplace must update their hazard communication programs accordingly. Even if SIRC and Dart do not prevail in their pending lawsuit, however, these regulatory obligations may be relaxed in the near future. On October 25,

2011, OSHA submitted to the White House Office of Management and Budget a proposed amendment to the HCS that, if implemented, would align the HCS with the Globally Harmonized System of Classification and Labelling of Chemicals (“GHS”) previously adopted by the United Nations and European Union. Under the proposed amendment to the HCS, the listing of a chemical on the RoC will not automatically trigger OSHA's hazard communication regulations. Instead, a “credible weight-of-the-evidence” assessment will be used to determine whether a given chemical is a carcinogen or potential carcinogen. Recently, the European Union performed a credible weight-of-the-evidence assessment and concluded that styrene is not a carcinogen. Accordingly, it is possible that OSHA's proposed shift to the GHS will eliminate the labeling, material safety data sheet and training requirements for manufacturers, distributors, and employers.

But that day has not yet come. In light of the shifting regulatory scheme and current legal challenges to styrene's listing by the NTP, it is certainly possible that the regulatory obligations currently in effect for styrene will change in the near future. Even with those potential changes on the horizon, however, manufacturers, distributors, and employers must remember that they have current regulatory obligations with respect to styrene. With a decision in the SIRC lawsuit months or even years away and with OSHA's regulatory scheme in flux, companies that manufacture, distribute or use styrene products are best served by complying with the current regulations to avoid potentially costly citations and minimize their exposure to liability in personal injury litigation. ■

NATURAL GAS

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duce this product because of this recent trend.

Ethane production is already up more than 25 percent as a result of the new natural gas drilling. Unlike methane, that is used to produce heat and electricity, ethane is difficult to transport so it is usually “cracked” close to the source. Dow

chemical is expected to restart an existing ethylene plant soon and also build a new one in Louisiana by 2017. Shell has announced the development of a new petrochemical refinery in Pennsylvania and is also considering a \$10 billion investment in a Louisiana plant that will convert natural gas to diesel. On top of all this, liquid natural gas or LNG will soon become a big export item due to the profit margin that U.S. gas producers can take advantage of in the global market.

Many markets in the Far East, such as Japan and China, pay significantly higher prices to attract cargoes of natural gas to their shores. U.S. LNG terminals need to be retrofitted with the capacity to liquefy the gas and send it out on a cargo ship. These facilities won't be ready for this process until 2015. Once they are, they promise to be another contributing factor to the industrial “renaissance” that is underway as a result of the surge in production of this cheap energy resource. ■

To declare or not to declare (judgment): That is the question

What do you do when a competitor informs you that they have a patent covering your main product? Do you pay them a fee for a license to avoid a lawsuit? Do you wait for them to sue you? Do you sue them, asking a Federal court for a judgment declaring the patent invalid or not infringed by your product? How do you decide? A recent court decision (*3M Company v. Avery Dennison Corp.*, No. 2011-1339, (Fed. Cir. Mar. 26, 2012)), provides you with more certain guidance regarding at least one response to the competitor — suing the competitor for a court judgment declaring the patent either invalid or not infringed or both (pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq.).

Under the Declaratory Judgment Act, when an actual case or controversy within its jurisdiction exists, a court may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Put another way, you do not need to wait for your competitor to sue you in order to establish your freedom to make and sell your product relative to that competitor's patent.

In 2007, the U.S. Supreme Court addressed declaratory judgments in patent cases, and guided that a declaratory judgment is proper when “a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment” exists. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007). The Court stressed that the controversy had to be “real and substantial” and not hypothetical. *Id.* Since 2007, howev-

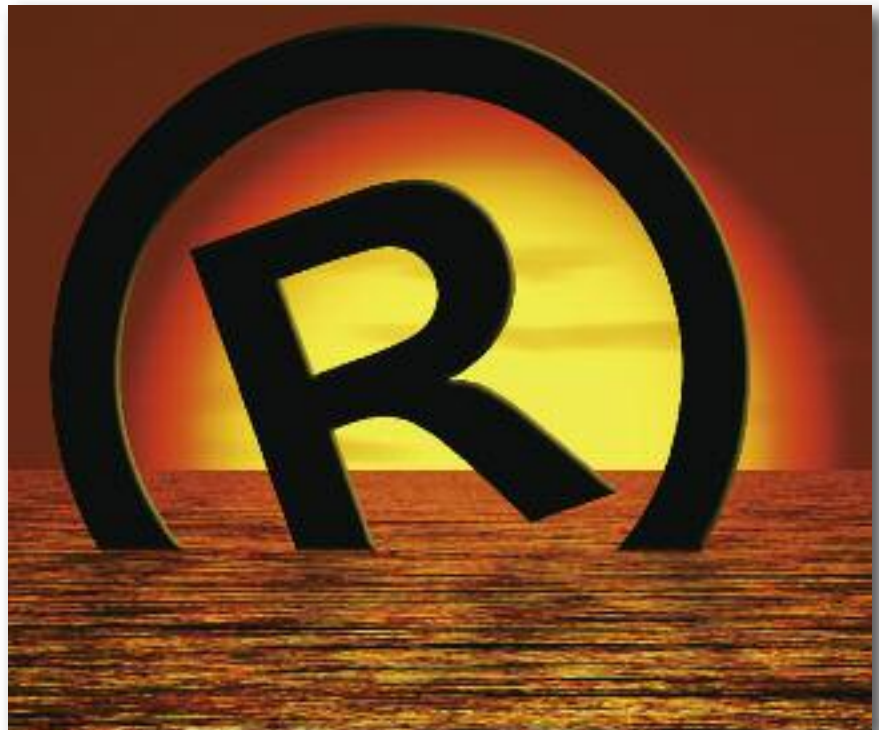
er, companies and lower courts have struggled to define the practical boundaries of an actual case or controversy.

The Federal Circuit Court of Appeals in Washington D.C., which is responsible for adjudicating appeals in patent cases, recently provided useful guidance in the context of a controversy between longtime competitors, 3M Company and Avery Dennison (hereinafter, “3M” and “Avery,” respectively). In early 2009, counsel for Avery telephoned counsel for 3M and stated that a specific 3M product “may infringe” certain Avery patents and that “licenses are available.” Two days later, 3M contacted Avery and declined Avery's license offer. At that time, Avery stated that they had analyzed the 3M product and would

provide 3M with its analysis comparing the 3M product to the patents. 3M never received that analysis from Avery.

More than one year later, in June 2010, 3M sued Avery asking a district court for a judgment that its product does not infringe the Avery patents and that the patents are not valid. The district court found that 3M did not allege a controversy between itself and Avery that the court could adjudicate and, accordingly, the court dismissed the case. On appeal, the Federal Circuit returned the case to the district court for more fact finding on whether a justiciable controversy exists, and determined that if the district court finds the facts are indeed as alleged by 3M (and as briefly summarized

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JUDGMENT

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above), then such a controversy exists and the lawsuit may proceed.

The court focused on the nature of the contacts between 3M and Avery regarding these particular patents and product. Specifically, the Federal Circuit held that to establish an actual case or controversy, “more is required than a communication from a patent owner to another party, merely identifying its patent and the other party’s product line.” As an example of the elusive “more” description, the court advised that Avery “initiated the communications and, without provocation, asserted Avery’s patent rights and represented that claim charts were forthcoming.” In addition, the court distinguished this case from another prior case where no controversy existed because in that other case one party to the communication lacked relevant decision making authority and had not evaluated the potential infringement. In contrast, here, the communications were between the Chief Intellectual Property Counsel of each company.

Despite Avery’s assertion that its communications with 3M were “passing remarks made informally over the telephone,” the court found that Avery’s “informal” use of the term “may infringe” instead of “does infringe” was immaterial in light of Avery’s offer to license the patents and its assertion that it would provide analysis in the form of charts explaining how the patents covered the 3M product. In addition, the history of the litigious conduct between the same parties for different patents and products was merely “equivocal” in determining whether a case or controversy exists. Likewise, the lack of a deadline for 3M to “respond” to Avery — especially in light of the fact that Avery never provided its analysis to 3M — did not weigh against finding a case or controversy as well.

This case provides more certain guidance in determining whether you may be able to maintain a lawsuit when your competitor alerts you to its patent. In addition to analyzing the facts of your situation to determine whether a case or controversy exists, you should also consider the benefits and drawbacks to filing a complaint

pursuant to the Declaratory Judgment Act. Taking control and filing a complaint permits you to choose the timing and court location of the complaint rather than being at the whim of your competitor. However, you may be needlessly increasing your expenses through the cost of litigation for a dispute that may never have materialized into litigation if your competitor did not file a lawsuit against you. Nonetheless, declaratory judgment actions are a powerful tool — and because of the Federal Circuit’s recent guidance — companies perhaps will have a bit more predictability whether a controversy exists for a declaratory judgment action.

Top takeaways

Keep these in mind when your competitor contacts you regarding its patent portfolio. Likewise, use these takeaways to avoid enabling your competitor to bring a declaratory judgment action against you regarding your patents.

... declaratory judgment actions are a powerful tool — and because of the Federal Circuit’s recent guidance — companies perhaps will have a bit more predictability whether a controversy exists for a declaratory judgment action.

Don’t jump the gun. You need more than just a communication from your competitor that merely identifies its patent and your product line to have a case or controversy.

The devil is in the details. If your competitor specifically identifies its patent(s) in relation to your specific product, a case or controversy likely exists. A claim chart comparing the patent to the specific product is likely sufficient.

No solicitation. You cannot create declaratory judgment jurisdiction for the purposes of asking a court to declare your competitor’s patent either invalid or not infringed or both through mere informal contacts with your competitor where the contacts are not with a relevant decision maker or are not regarding the specific patent/products at issue.

Don’t rely on Abracadabra!

Your competitor need not use the magic word “infringe” for you to have declaratory judgment standing, rather, the totality of the circumstances determines whether a sufficient case or controversy exists.

Once litigious, always litigious (not necessarily). Prior litigation between you and your competitor may be relevant to a current controversy; however, if the previous conflicts related to unrelated patents covering different products, then it will likely provide little weight to whether a case or controversy exists for the patents and products at issue.

Tick-Tock, Tick-Tock. If your competitor gives you a deadline to respond to its license offer, that could help show a sufficient immediacy exists. Conversely, a lack of deadline does not negate the existence of a case or controversy.

DISCLAIMER: *The views in this article are those of the author, and not of Marshall, Gerstein & Borun LLP or its clients. The contents of this article are not intended as, and should not be taken as, legal advice, legal opinion, or any other advice. Please contact an attorney for advice on specific legal problems.*

Marshall, Gerstein & Borun LLP, a full-service intellectual property (IP) law boutique, is exclusively focused on intellectual property law, and protects, enforces, and transfers the intellectual property of its clients in more than 100 countries on six continents. The Firm delivers perspective and guidance where science, law and business converge. Nearly half of the Firm’s professionals have been in-house as general counsel, patent counsel, technology transfer managers, scientists, engineers, or consultants, and offer depth of talent and seasoned experience in devising and executing intellectual property strategy and comprehensive IP solutions. The Firm represents Fortune 250 corporations, multinational businesses, start-up organizations, and non-profits. Marshall, Gerstein & Borun LLP is ranked as a top intellectual property law firm by Chambers USA, U.S. News & Best Lawyers®, Corporate Counsel, Managing IP, Fortune, Intellectual Property Today, and Intellectual Asset Management magazines. Learn more at www.marshallip.com. ■

It runs in the family: Genetics and cancer

Cancer is possibly the most menacing word in the English language. No person wants to be diagnosed with it, no one wants a loved one to be diagnosed with it, and no company wants its valued family of employees or consumers to be diagnosed with it, regardless of the cause. In the world of litigation, cancer comes with allegations of blame. An individual (or her surviving heirs) may search for a cause for her cancer and not only be influenced but also potentially misled by the internet, television, attorneys, or mere rumor that there is but one or a short list of causes for the cancer. Consequently, the individual or family members conclude, often based on faulty information, that someone is to blame. Often, what follows is a lawsuit alleging that exposure to a given substance caused an individual's cancer via personal use of a product; general premises based exposure to a chemical, fiber, or other agent; or exposure to a product as a bystander or second-hand exposure from a friend or family member. In this world of mass communication, and sometimes mass-misinformation, it is prudent to remember the line we have all heard "it runs in the family." This is not just an old saying that our grandparents and great grandparents utilized to explain a unique situation, but as we continue to learn... is often fact.

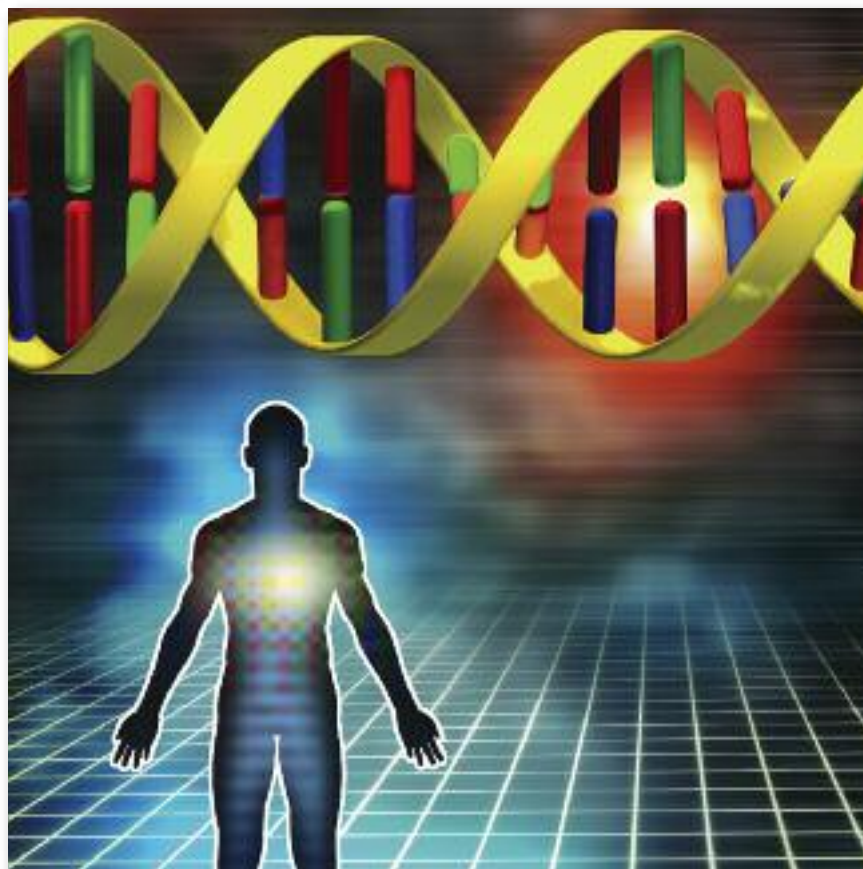
The fact is cancer development is a complicated process. While exposure to certain carcinogens may increase an individual's risk for a certain type of cancer, "the dose makes the poison." If faced with a lawsuit alleging that low-level exposure to a particular carcinogen was

the cause of someone's cancer, check out the family history. It may even be prudent to look into simple genetic testing of the individual. The results may truly reveal just what "runs in the family."

The phrase "it runs in the family" is a simple way to say that a family has a particular predisposition to genetic errors that may lead to a particular cancer. Basically, cancer is uncontrolled cell growth. The genes we get from our direct blood relatives may place us at risk for the development of cancer. There are two main types of genes that relate

to cancer oncogenes and tumor suppressor genes. An oncogene can promote out-of-control cell growth and lead to cancer. Tumor suppressor genes are genes that, if working correctly, slow down cell division, repair DNA errors, or tell a cell when to die in its natural course. When a tumor suppressor gene fails to work properly, cells may grow out of control and lead to cancer. Inherited genetic mutations and errors may make someone more susceptible to genetic errors causing the develop-

see **GENETICS** page 26



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GE Transportation chooses Chicago for global headquarters

Central Location will allow business to better serve global customers and bring 150 jobs to Chicago by 2014

Chicago Mayor Rahm Emanuel and GE Transportation President and CEO Lorenzo Simonelli announced recently that the company has chosen Chicago as its global headquarters. The move will be effective once the location for office space has been finalized.

"This is a banner day for the City of Chicago, and proof positive that our central location, business-friendly climate, and world-class talent will attract the best companies in the world," said Mayor Emanuel. "GE Transportation is a top-level, world-wide company that will be using its Chicago headquarters as a central location from which to do business around the globe. This is a major win for the City of Chicago, its business community, and its residents, and is a harbinger of growth to come."

"We have transformed GE Transportation from a North American rail company to a truly global transportation business," said Simonelli. "Chicago allows us to more efficiently reach and serve customers around the world in the rail, mining and marine industries."

GE Transportation will relocate about 50 people from Erie to Chicago. These employees are primarily associated with the company's global support functions and its services operations. The company anticipates having a headquarters staff of approximately 150 in Chicago by 2014 as the business continues to grow.

"It is our privilege to welcome GE Transportation to the great state of Illinois and the great city of Chicago," said Governor Pat Quinn. "Chicago is one of the most important rail and transportation hubs in the nation. Coming to Chicago, GE Transportation will be positioned to compete fiercely in the U.S. and all over the world to grow in the rail, mining and marine industries. GE Transportation will build on its century-old loco-

tive heritage of excellence in Erie, and its more than 5,500 employees will continue to manufacture world-class locomotives there."

GE Transportation, a unit of GE, builds equipment that moves the rail, mining and marine industries. GE Transportation employs approximately 12,000 employees worldwide. For more information visit the company's Website at www.getransportation.com. GE is an IMA member company.



Cat lift trucks recognized as a top green provider



Food Logistics, a food and beverage supply chain publication, named Cat Lift Trucks a 2012 "Top Green Provider" based on the manufacturer's industry-leading lineup of electric lift trucks that offer zero exhaust emissions and low energy consumption.

Each year, *Food Logistics* invites its readers to nominate a provider that has developed pioneering, innovative and creative products, services and programs to help their customers in the food service industry achieve sustainable or "green" goals.

"We're honored to have Cat Lift Trucks recognized by *Food Logistics* as a Top Green Provider," said Kent Eudy, vice president of sales and marketing, Cat Lift Trucks. "We are dedicated to providing high-quality, energy-efficient products for the food and beverage industry, which makes this recognition an especially significant honor."

Cat Lift Trucks electric battery-operated lift trucks provide a clean environment for indoor applications, including refrigerators and freezers in grocery and food distribution centers. Equipped with the power to

last up to two shifts on a single battery charge in most applications, the electric pneumatic tire Cat® lift trucks do not consume fossil fuels nor emit dangerous greenhouse gases, making the lift truck series ideal for the food industry.

The publication also recognized Cat Lift Trucks development of the Lift Truck Cost Comparison Tool, which factors in a lift truck's total cost of ownership — acquisition, fuel and maintenance — with return on investment. This tool allows customers to easily identify the most efficient lift truck solution for their material handling application. With the Lift Truck Cost Comparison Tool, businesses can evaluate and compare operation costs in dollars for fuel or electrical energy. For more information on Cat lift trucks, visit www.cat-lift.com or call 800-228-5438. Caterpillar has been an IMA member since 1922.



Energy Department invests \$55 million to spur development of transformational manufacturing technologies

As part of the Obama Administration's effort to spark a renaissance in American manufacturing, the Energy Department recently announced it will invest more than \$54 million in 13 projects to develop innovative technologies and materials for the industrial sector. This investment will help to provide American manufacturers with the cutting-edge tools, techniques and processes they need to compete successfully in the global marketplace.

According to U.S. Energy Secretary Steven Chu, the 13 competitively selected projects demonstrate the Energy Department's commitment to clean energy technology. "When it comes to clean energy," he said, "[it] should be invented in America, made in America, and sold around the world." By investing in these technologies, the Department is supporting "an economy built on American

manufacturing, American energy, and skills for American workers.”

Dr. Leo Christodoulou, Program Manager for the Energy Department's Advanced Manufacturing Office (AMO), noted that “Manufacturing converts a wide range of raw materials, components and parts into finished goods that meet market expectations. These projects are an example of how AMO partners with industry, small business, universities and other stakeholders to pursue emerging technologies that can expand or create new markets — generating high-quality domestic manufacturing jobs and enhancing U.S. competitiveness.”

The projects selected for award negotiations represent research and development ranging from the early stages of applied research, or proof of concept, up to laboratory testing or prototype verification. All of the technologies are at a pre-competitive stage of development, so the technical results will be well positioned to provide benefits across a broad section of the U.S. economy. By strengthening the competitiveness of American manufacturing, these projects will help lay a foundation for an economy built to last and a Nation in control of its energy future.

The Energy Department's Office of Energy Efficiency and Renewable Energy accelerates development and facilitates deployment of energy efficiency and renewable energy technologies and market-based solutions that strengthen U.S. energy security, environmental quality, and economic vitality. Find out more about the Department's work to partner with industry, small business, universities, and other stakeholders to identify and invest in advanced manufacturing technologies with the potential to create high-quality domestic jobs and enhance the global competitiveness of the United States. And learn more about the Advanced Manufacturing Partnership, a government-wide effort to transform advanced manufacturing in the United States. For more information, visit <http://www.eere.energy.gov>.



Aviation and clean technology leaders launch Midwest Aviation Sustainable Biofuels Initiative

United Airlines, Boeing, Honeywell's UOP, the Chicago Department of Aviation and the Clean Energy Trust recently announced the formation of the Midwest Aviation Sustainable Biofuels Initiative (MASBI), designed to advance aviation biofuel development in a 12-state region holding significant promise for biomass feedstock, technology development, job creation and sustainable commercialization. MASBI will deliver a comprehensive evaluation of the region's biofuel potential and a plan to support regional and national needs in a responsible manner.

“In just a few short years, aviation biofuels have developed from a hopeful vision of the future to an exciting reality of more than 1,500 passenger flights flown with advanced biofuels,” said Jimmy Samartzis, managing director of Global Environmental Affairs and Sustainability for United. “Our industry is committed to advancing sustainable biofuels, and United is proud to launch MASBI with our partners to define appropriate solutions to make alternative fuel available at commercial scale, unlock the Midwest's economic potential for advanced biofuels and secure a sustainable future for aviation.”

With the Midwest's strong agricultural, financial and academic institutions, and large aviation industry presence, MASBI Steering Committee members view the region as critical for biofuel development. Airlines operating in the Midwest transport more than 234 million passengers and consume nearly three billion gallons of jet fuel annually. “Aviation's ability to connect the world to people, goods and services through the heartland of the country contributes significantly to the nation's economy and job growth,” said Billy Glover, vice president of Environment and Aviation Policy for Boeing. “Biofuels are a critical part of commercial aviation's long-term fuel-diversification strategy, enabling sustainable growth and improving its

overall environmental performance.”

MASBI invites a diverse set of stakeholders, including airlines, fuel producers, feedstock growers, logistics providers and investors to add their knowledge and expertise to the effort. “The Midwest is ready to lead the nation in developing and using advanced aviation biofuels,” said Rosemarie S. Andolino, commissioner of Chicago Department of Aviation. “Our region has significant feedstock availability and viability; clean technology leaders; an active funding community of large banks, venture capital and private equity investors; airports that are already committed to sustainable practices and support the greater use of biofuels in aviation; policymakers who advance biofuels as a priority; and end-users committed to action.”

“When you consider the U.S. aviation industry uses more than 20 billion gallons of fuel each year, the environmental and economic potential of commercializing biofuels technology becomes truly game-changing,” said Amy Francetic, executive director of Clean Energy Trust.

The Midwest Aviation Sustainable Biofuels Initiative (MASBI) brings together partners from across the value chain to promote the development and use of biofuels. Its Steering Committee is comprised of the following founding members — United Airlines, Boeing, Honeywell's UOP, the Chicago Department of Aviation and the Clean Energy Trust. To learn more about MASBI, visit www.masbi.org. United Airlines and Boeing are IMA members.



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Coming Soon . . . MyTax Illinois

The Illinois Department of Revenue (IDOR) is currently developing MyTax Illinois, an online account management program for taxpayers. MyTax Illinois will provide all electronic services in one centralized location on IDOR's website. Taxpayers will have a single sign-on that will work for all tax types.

MyTax Illinois will be deployed in phases. Beginning in September 2012, IFTA registration, filing, payment, and account management; sales and use tax return filing, payment, and account management; and new business registration for all tax types administered by IDOR will be available.

Some of the features that will be

available in MyTax Illinois include assigning user access rights to the tax account, viewing registration information, filing most returns and paying electronically, completing annual IFTA registration, viewing filing and payment frequency schedules, viewing and scheduling payments, and viewing correspondence and return information.

For more information, visit IDOR's website at tax.illinois.gov.



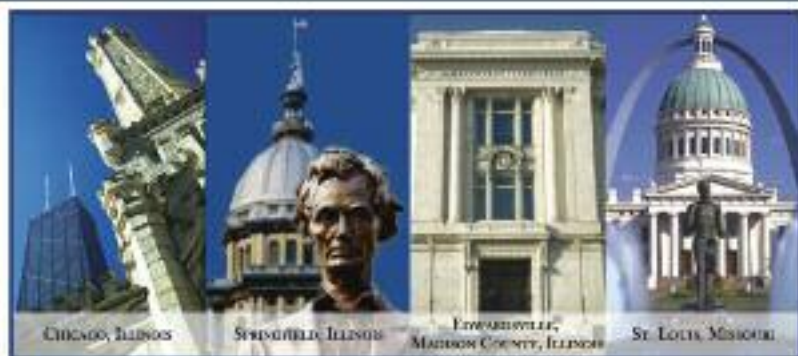
Sikich honored as one of the "Best Places to Work" in Illinois

Sikich LLP, a leading accounting, advisory, technology and managed services firm, was recently named as one of the 2012 Best Places to Work

in Illinois. Recognized at the Best Places to Work in Illinois awards ceremony on May 17, Sikich is one of only 50 companies to receive the award, which honors achievements in business process and operations excellence, community service, workplace environment and employee engagement practices.

"Our dedicated employees continue to thrive and identify best practices not only in their work but also by continuing to make Sikich a great place to work and develop their careers," said Janel O'Connor, Director of Human Capital.

For more information on Sikich, visit <http://www.sikich.com>. Sikich is an IMA member company.



HeplerBroom is actively involved in the representation of manufacturers with mass tort exposure from air, soil and water contamination relating to asbestos, benzene, and other chemicals. Our Firm has the extensive knowledge and the trial experience necessary to defend your facility in this bet-the-company litigation.



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GENETICS

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ment of oncogenes and the malfunction of tumor suppressor genes.

Medicine may not be curing cancer as fast as technology seems to be changing our phones, but make no mistake medical professionals are learning more about cancer, the genetics of cancer, and how to treat cancer every day. Scientists have recently discovered, for instance, that mutations of the tumor suppressor genes called BRCA1 and BRCA2 may have harmful mutations that can be inherited, greatly increasing the risk of developing breast and/or ovarian cancer. Similarly, recent studies have determined that an inherited mutation of the BAP1 tumor suppressor gene may predispose individuals to uveal melanoma, lung cancer, meningioma, and malignant mesothelioma.

Genetic testing may be of great use in defending causation claims by plaintiffs in litigation. More importantly, identifying and understanding the nature and implications of genetic errors associated with oncogenes and tumor suppressor genes may help scientists not only to identify persons at risk for a given cancer, but also lead to further advances in the treatment and cure of certain cancers. ■

Manufacturer benefits under the American Job Creation Act of 2004, as amended

A legal look at the tax changes that resulted from the American Jobs Creation Act and the tax saving benefits available for the manufacturing industry

On October 22, 2004, President Bush signed into law The American Jobs Creation Act of 2004 (the "Act") as amended. The Act contains sweeping changes to the tax landscape for businesses in the manufacturing areas. Many people do not realize that the Act provides significant tax advantages for all factory and manufacturing businesses.

The Act is perhaps best known for changing the playing field in the film and television industries by creating tax relief for those taxpayers who invest in qualifying film and television projects. Less widely known is that the Act provides tax incentives and relief, under Section 199, for those individuals, companies and small businesses who produce and/or manufacture products or tangible property. This article highlights what production activity falls under the Act, who qualifies under the Act, and the incentives that are available.

To qualify as Production Activity and be entitled to tax relief, one must produce, grow, or extract an eligible item. Section 199 of the Act does not apply to sole proprietors, but can be passed through to individual owners by companies that are Subchapter S corporations, partnerships, and LLCs not taxed as corporations. The Production Activity must be conducted in whole or "significant part" in the United States and it must produce tangible property. The businesses that manufacture tangible Property are very wide and exten-

sive. The list is too expansive to recite. The end of the spectrum of qualifying companies might be a company in the diamond industry that only provides the polishing of diamonds. The polishing itself creates a manufacturing business.

The tax benefits for your company under the Act for Qualifying Production Activity are as follows:

A business which engages in Qualifying Production Activity beginning 2010, and beyond, is entitled to take a nine percent deduction of the lesser of the following: (a) net income from the Qualifying Production Activity, or (b) taxable

income (which is determined without regard to the new deduction).

However, you must deduct net operating carry over losses from revenue before you can apply the percentage deductions. There is currently no carry forward on any unused tax relief. As an example of such, if you manufacture 100 widgets in the United States and sell all 100 widgets beginning 2010 and receive \$1,000 of net income or taxable income, you will pay tax based on \$910 of taxable income (nine percent deduction).

see **JOB CREATION ACT** page 28



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The Illinois Manufacturer is underwritten by Constellation — An Exelon Company

JOB CREATION ACT

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If a company performs 20 percent or more of Qualifying Production Activity within the United States, that company may include all indirect costs and other indirect expenses related to that activity (such as salaries) but may not include packaging, shipping and freight in the calculation of revenue qualifying for the deduction.

What is probably not well known is that real estate developers, builders, contractors, and sub-contractors engaged in building or improving real estate may qualify under the Act as companies that have Qualifying Production Activity. The Qualifying Production Activity can be performed on residential or commercial real estate. To the surprise of many, the benefits under the Act even cover architects and engineers who provide services to Qualifying Production Activity in the business areas of real estate developers, builders, contractors and sub-

contractors engaged in building or improving real estate. Section 199 will apply to net profits or taxable income from rentals, leases, license fees and exchange and other dispo-

A business which engages in Qualifying Production Activity beginning 2010, and beyond, is entitled to take a nine percent (9%) deduction of the lesser of the following: (a) net income from the Qualifying Production Activity, or (b) taxable income (which is determined without regard to the new deduction).

sition of Qualifying Production Activity income in the various areas of the real estate industry as described herein. However, the value of any real property (land)

which is part of the sale, disposition or exchange does not qualify as Qualifying Production Activity income. The recommendation is that there should be a separate appraisal to determine the land value and then deduct that value from the income received. Only the balance attributable to improvements made with Qualifying Production Activity will be subject to the deductions under Section 199.

Only one company can claim the Qualifying Production Activity revenue under the Act. You can, however, split the benefits. If Company A contracts with unrelated Company B to manufacture 100 widgets, only one of the companies can take advantage under the Act. The test is who benefits and who carries the burdens of the property manufactured. Under this example, Company A, because it paid for the widgets, can claim the benefits under the Act. However, this should not be left for interpretation or misunderstandings. It would be better to have this issue discussed and addressed at the contract stage.

Some other businesses which may have Qualifying Production Activity include caterers and restaurants who make or prepare food products and who cater or deliver off site, music, film, video, natural gas, water and printing companies, software developers and bakers, baking companies and baking departments in supermarkets, farmers and companies that provide storage and handling for farm products. It also applies to many other types of companies and businesses.

One must evaluate their business and check with their tax advisors and attorneys as to whether their business activity qualifies and, if it qualifies, whether it qualifies in whole or in part as Qualifying Production Activity. If some, but not all of your business revenue qualifies, you must be able to identify the qualifying income and separate the Qualifying Production Activity Revenue from non-qualifying revenue. This will avoid difficulties separating the revenue at a later date.

The American Job Creation Act of 2004, as amended, has provided many avenues of benefits and areas of tax relief for individuals and companies. It is definitely a matter worth talking about with your attorney and accountant. ■



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EPA REGULATIONS

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eral rule provisions. On December 23, 2011 the U.S. EPA re-proposed the rule. However, on January 9, 2012, the U.S. Court of Appeals for the D.C. Circuit vacated the U.S. EPA's May 18, 2011 notice that delayed the effective dates of the Boiler MACT rule. This means that the March 21, 2011 rule is in force though U.S. EPA is expected to issue the revised rules that were proposed December 23, 2011 this summer.

The Boiler MACT rule proposed in December 2011 will impact more than 200,000 boilers used in manufacturing, processing, mining, refining and other industries, as well as commercial boilers used in malls, apartments, restaurants and hotels. About 14,000 of these boilers are considered major while about 187,000 are located at smaller facilities such as hotels, hospitals, and commercial buildings. This rule does not apply to major commercial electricity generators, which are subject to the rules described previously in this article.

Comments

It should be clear from the preceding summary, that there is substantial uncertainty surrounding efforts to further control power plants and industrial, commercial, and institutional boilers particularly those using coal as fuel. The regulations themselves are often very complex and challenging and the uncertainty caused by the legal wrangling and delays simply adds to the confusion and difficulty of planning. The scope and stringency of the regulations certainly can lead to the conclusion that the future of coal-fired boilers will be difficult to predict.

This was illustrated to an extent in the results of the recent (May 18, 2012) capacity auction conducted by PJM Interconnection. PJM is a regional transmission organization (RTO) that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia. PJM's auction established contracts with power producers who committed to provide electricity between June 1,

2015 and May 31, 2016. This is the time period when compliance will be expected for many of the regulations we have been considering in this article. PJM was able to procure sufficient capacity resources to meet projected need and obtained a record amount of new generation with most of it being from natural gas. The base price was \$136 per MW which is only slightly higher than the \$126 per MW price paid for June 1, 2014 through May 31, 2015. However, this is substantially higher than the ~\$16 per MW paid for June 1, 2012 through May 31, 2013 and the ~\$28 per MW for June 1, 2013 through May 31, 2014.

According to Andy Ott (PJM Senior Vice-President of Markets), "Capacity prices were higher than last year's because of retirements of existing coal-fired generation resulting largely from environmental regulations which go into effect in 2015." While the base price was \$136 per MW the price in much of the mid-Atlantic will be \$167 per MW and in northern Ohio it will be \$357 per MW.

"The retirements (of coal-fired units) impacted northern Ohio to a larger extent than the rest of PJM for several reasons, including inherent transmission restrictions and the level of retirements in that area relative to the rest of PJM," Ott continued.

Capacity prices typically represent a 10-15 percent portion of the consumer price of electricity but the price for 2014-2015 in relation to the present time ((2012-2013, 2013-2014) is part of the basis for the increases. The *Chicago Tribune* reported (Julie

Wernau, May 17, 2012): "Residential electricity prices are expected to spike by more than 10 percent beginning in 2015, with consumers paying between \$150 and \$330 a year more than this year, as coal plants, the least expensive producers of electricity, continue to close."

There are similar operational and cost pressures and uncertainties facing owners of industrial, commercial and institutional boilers that are powered by coal.

Conclusion

Businesses with affected boilers are now faced with difficult decisions regarding their choice of compliance options. These choices are being made more complex by the regulatory uncertainty that now exists in contemporary decision making. Boiler owners can choose to comply with these regulations through the use of existing controls, shifts in power dispatch (electric generation only), purchase of allowances (electric generation only), fuel switching, retrofitting units with pollution controls, or retiring uneconomic units. It is not unreasonable to expect that a lead time of four years could be needed for installing controls not including regulatory approvals and assuming that necessary labor and materials are available.

Consumers of electric power should be prepared to be faced with rising costs as less coal powered generation is available and renewable energy and natural gas makes up a greater part of the electric generation capacity. ■

IMA Seminars and Events — Fall 2012

Breakfast Briefings . . .

Tuesday, September 18, 2012

Where Have All My Workers Gone?

Join Ken Mall and Kevin Watson of EDSI Consulting and get the answers — 8:00-11:00 am, Ditka's Restaurant, Oakbrook Terrace. For more information or to register: <http://events.r20.constantcontact.com/register/event?oeidk=a07e5ynwa4y8fd53ea9>

Tuesday, October 9, 2012

What Every Employer Should Know About Wage & Hour Compliance

Diane E. Gianos, partner in the Labor & Employment Law Group of Ice Miller, LLP, will lead this interactive briefing — 8:00-11:00 am, Mon Ami Gabi Restaurant, Oak Brook. For more information or to register: <http://events.r20.constantcontact.com/register/event?oeidk=a07e5yo32qp0e4c4d12>

WEDNESDAY, NOVEMBER 14, 2012 — IMA'S ANNUAL SALES & USE TAX SEMINAR

SAVE THE DATE . . . Details to come.

FRIDAY, DECEMBER 7, 2012 — IMA ANNUAL LUNCHEON — SAVE THE DATE

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For information on any of the events listed, contact Kimberly McNamara at kmcnamara@ima-net.org, 630-368-5300, ext. 2109.

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Skills & Excellence**

July 31, 2012
**IMA-MIT EVENT: Excel Formulas &
Functions & Excel Pivot Tables Made
Easy**

August 7, 2012
**IMA-MIT EVENT: Effective Presentation
Skills**

August 8, 2012
**IMA-MIT EVENT: Excel Formulas &
Functions & Excel Pivot Tables Made
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August 13, 2012
**IMA-MIT EVENT: Assertive
Communication Skills: Communicating
with Authority & Impact**

August 20, 2012
**IMA-MIT EVENT: Time Management &
Personal Effectiveness Skills**

August 27, 2012
**IMA-MIT EVENT: Effective Business
Writing Skills**

August 29, 2012
**IMA-MIT EVENT: Excel Formulas &
Functions & Excel Pivot Tables
Made Easy**

September 6, 2012
**IMA-MIT EVENT: Project Management
Skills for Non Project Managers**

September 10, 2012
**IMA-MIT EVENT: Essential Leadership
Skills for Front Line Managers &
Supervisors**

September 18, 2012
**IMA Breakfast Briefing:
Where Have All My Workers Gone?**
Join Ken Mall and Kevin Watson of EDSI
Consulting and get the answers! — 8:00-
11:00 am, Ditka's Restaurant, Oakbrook
Terrace. For more information, or to register:
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September 19, 2012
**IMA-MIT EVENT: Essential Internal
Training Skills & Techniques**

September 27, 2012
**IMA-MIT EVENT: Effective Presentation
Skills**

October 4, 2012
**IMA-MIT EVENT: Coaching & Counseling
Skills for Improved Performance**

October 9, 2012
**IMA Breakfast Briefing:
What Every Employer Should Know
About Wage & Hour Compliance**
Diane E. Gianos, partner in the Labor &
Employment Law Group of Ice Miller, LLP,
will lead this interactive briefing — 8:00-
11:00 am, Mon Ami Gabi Restaurant, Oak
Brook. For more information, or to register:
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ter/event?oeidk=a07e5yo32qp0e4c4d12](http://events.r20.constantcontact.com/register/event?oeidk=a07e5yo32qp0e4c4d12)

November 14, 2012
**SAVE THE DATE . . .
IMA's Annual Sales & Use Tax Seminar**
Details to come.

December 7, 2012
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Four Seasons Hotel, Chicago

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Quarterly Economic Update

Commercial Bank



Economic recovery is continuing to advance at a modest pace around 2%. Although some sectors are paying back temporary gains from a mild winter, demand has been a little stronger than expected at the start of Q2, while the apparent inventory overhang from Q1 may be revised away. Earlier concerns about rising gasoline prices have dissipated as pressures have eased and consumer spending has held up. Housing indicators also continue to transition from deeply depressed levels toward modest growth. Still, the upside to growth remains checked by financial headwinds and ongoing fiscal drag. Our base case assumes the US will avoid a fiscal calamity in 2013 but meaningful drag from the public sector is still likely.

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We continue to give a slight edge to further Fed accommodation in the outlook but officials have not signaled that a move will follow immediately on the completion of Operation Twist next month. The readiness to act is contingent still on signs of serious risks to growth and, with inflation running well within desired ranges, the hurdles for additional QE measures are higher. With growth expected to remain below Fed projections and the threat of major fiscal tightening for 2013, this debate is likely to linger and the Fed is expected to anchor super-low rates for a long time.

Earlier worries about inflation have eased somewhat as gasoline prices have dropped contraseasonally heading into peak driving season. An improving job market is just beginning to buoy wage growth and stable inflation expectations are acting as a steadying force in the outlook that should allow policy flexibility.

United States — Economic Forecasts, 2011E-2013F

					2012				2013			
		2011	2012F	2013F	1QE	2QF	3QF	4QF	1QF	2QF	3QF	4QF
GDP	SAAR				1.8%	2.0%	2.2%	2.3%	1.3%	1.9%	2.9%	3.3%
	YoY	1.7%	2.1%	2.1%	2.0	2.1	2.2	2.1	1.9	1.9	2.1	2.3
Domestic Demand	SAAR				1.7	2.0	1.8	2.0	1.9	1.8	1.9	3.2
	YoY	1.9	1.9	2.0	1.5	2.4	2.1	2.0	1.1	1.9	2.7	2.2
Consumption	SAAR				2.9	2.7	2.1	2.1	1.0	1.7	2.6	3.1
	YoY	2.2	2.3	1.9	1.8	2.3	2.4	2.4	2.0	1.7	1.8	2.1
Business Investment	SAAR				-1.1	5.8	8.2	4.9	5.2	5.8	5.7	6.3
	YoY	8.5	5.3	5.5	7.3	6.2	3.9	3.9	5.5	5.5	5.3	5.7
Housing Investment	SAAR				19.0	7.5	10.4	17.8	18.5	18.8	19.8	21.8
	YoY	-1.3	11.1	17.1	8.8	9.7	12.1	13.6	13.5	16.3	18.7	19.7
Government	SAAR				-3.9	-1.1	-1.4	-2.1	-3.1	-1.9	-1.3	-1.2
	YoY	-2.1	-2.4	-2.0	-2.3	-2.3	-2.7	-2.1	-1.9	-2.1	-2.1	-1.6
Exports	SAAR				7.9	7.4	5.9	7.8	7.1	6.6	7.0	7.7
	YoY	6.7	5.9	7.0	4.7	5.7	8.0	7.2	7.0	6.8	7.1	7.1
Imports	SAAR				8.2	5.7	3.5	4.4	4.3	4.1	5.3	6.0
	YoY	4.9	4.3	4.5	3.1	4.2	4.8	5.0	4.5	4.1	4.5	4.9
PCE Deflator	YoY	2.5	1.9	1.7	2.3	1.8	1.7	1.7	1.6	1.7	1.7	1.9
Core PCE Deflator	YoY	1.4	1.8	1.8	1.9	1.9	1.8	1.8	1.7	1.6	1.6	1.7
Unemployment Rate	%	9.0	8.0	7.8	8.3	8.1	8.0	7.8	7.8	7.8	7.8	7.7
S&P 500 Profits (US\$ Per Share)	YoY	14.4	5.5	4.8	8.9	6.5	1.4	5.7	2.7	5.3	4.2	6.2

Notes: F Citi forecast. E Citi Estimate. YoY Year-to-year percent change. SAAR Seasonally adjusted annual rate.

Sources: Bureau of Economic Analysis, Bureau of Labor Statistics, BBE'S, Treasury Department, Wall Street Journal and Citi Investment Research and Analysis

US	Forecast End Period						
	Current	3Q 12	4Q 12	1Q 13	2Q 13	3Q 13	4Q 13
Policy Rate (Fed Funds) End Quarter	0.25	0.25	0.25	0.25	0.25	0.25	0.25
3-Month Libor	0.47	0.50	0.55	0.65	0.75	0.90	1.00
2 Year Treasury Yield	0.29	0.35	0.45	0.60	0.75	0.90	1.00
5 Year Treasury Yield	0.74	1.00	1.35	1.50	1.65	1.85	2.00
10 Year Treasury Yield	1.77	2.00	2.45	2.90	2.75	3.00	3.20
30 Year Treasury Yield	2.81	3.20	3.65	3.80	4.00	4.25	4.40
2-10 Year Treasury Curve	148	165	200	200	200	210	220
2 Year Swap Spread (Swap Less Govt.), bp	36	40	35	35	35	35	35
10 Year Swap Spread (Swap Less Govt.), bp	12	20	22	24	25	25	25
30 Year Swap Spread (Swap Less Govt.), bp	-31	-40	-50	-50	-50	-50	-50
30 Year Mortgage Yield	3.80	4.00	4.30	4.45	4.65	4.85	4.55
10 Year Breakeven Inflation	215	235	235	235	240	240	240

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