


THE ILLINOIS MANUFACTURER

FOURTH QUARTER 2019





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Illinois Manufacturers' Association

TABLE OF CONTENTS

FOURTH QUARTER 2019

FEATURES

MISSION STATEMENT

The Illinois Manufacturers' Association is the only statewide association dedicated exclusively to advocating, promoting and strengthening the manufacturing sector in Illinois. The IMA is the oldest and largest state manufacturing trade association in the United States, representing nearly 4,000 companies and facilities.

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Share Your Company News with the IMA . . .

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10

BRIDGING THE GAP BETWEEN
RUBBER AND PLASTIC:
GALLAGHER CORPORATION



16

PHIL CELEBRATES 50 YEARS
OF MANUFACTURING

FROM THE IMA

The Room Where It Happens.....	4
The IMA Health Plan is Open for Business!.....	6
Survey Says.....	14

ENERGY & ENVIRONMENT

Uncertainty Abounds in Wake of WOTUS Appeal.....	8
Aging Equipment: How It's Costing Your Business.....	15
What Do Recent Environmental Enforcement Decisions Mean for Your Company?.....	20
Update: The Natural Gas Market and Your Business.....	26

GOVERNMENT REGULATION & LEGISLATION

Your Employee-Employer Relationship Has Changed.....	18
------------------------------------------------------	----

BUSINESS DEVELOPMENT

The Challenges and Opportunities of Marketing Sustainability in 2019.....	12
The Battle of the Forms: Terms of Your Business Deal.....	24

RECOGNITIONS

Member News.....	28
New IMA Members.....	31

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THE ROOM WHERE IT HAPPENS

MARK DENZLER, PRESIDENT & CEO



In Act 2 of the famous musical *Hamilton*, protagonist Aaron Burr sings the song “The Room Where it Happens” to describe an unprecedented political compromise that occurred in 1790. Thomas Jefferson, James Madison, and Alexander Hamilton reached the “dinner table bargain” that moved our nation’s Capitol to Washington D.C. in exchange for a financial system in which the federal government created the first national bank and assumed state debt.

Aaron Burr sings “No one else was in the room where it happened. No one really knows how the game is played. The art of the trade. How the sausage gets made. We just assume that it happens.”

When I travel the state and speak with manufacturing companies, I’m often asked about the value of membership in an association or what is the return on their investment in the Illinois Manufacturers’ Association. This song epitomizes the value of your membership; the IMA and the voice of manufacturers are literally in the room where it happens every day at the State Capitol.

As the recent legislative session drew to a close, the IMA embarked on a quiet and ultimately successful strategy to get some key wins for the business community. Working with Republican Leader Jim Durkin, the IMA crafted a letter that garnered the support of a majority of the business community. Republican lawmakers in the House of Representatives threatened to withhold budget votes at the end of session unless some pro-business reforms were enacted.

The IMA’s leadership, and being in the room where it happened, resulted in some significant victories including a new Manufacturers Purchase Credit that took effect in July. Manufacturers no longer have to pay sales tax on consumables (fuel, oil, lubricants, etc.) that are used in the manufacturing process. We are phasing out the antiquated franchise tax over five years. The Illinois Research & Development tax credit was extended for another five years and a new apprenticeship credit was created to help manufacturers address the looming workforce challenge. Combined, these will result in a tax cut of more than \$300 million annually for Illinois businesses, with the lion’s share of savings enjoyed by the manufacturing sector.

These positive changes happened because the IMA was in the room where it happened.

The IMA’s strength lies in our membership. Across the state, we represent nearly 4,000 locations that currently employ 592,000 women and men who produce an amazing economic output of \$304 billion annually. Manufacturing is the largest share of Illinois economy, providing more than 90 percent of our state’s exports.

In addition to our legislative advocacy, the IMA team is working hard every day to provide value and make it easier for your companies to operate in Illinois. We recently launched an exciting new association health care plan with Blue Cross and Blue Shield of Illinois that offers small manufacturers a way to save money and navigate the confusing and changing health care landscape. If you’re a small manufacturer (2-50 employees), call your broker and get a quote today.

I hope that you have noticed our robust new programming that is being held in every corner of Illinois this year. We have already set record annual attendance numbers for IMA events with topics such as recreational marijuana, crisis management, cyber security, compensation & benefits surveys, OSHA 10-hour, and our coming annual tax conferences. Our team is working on a new system so that we can stream events so companies can participate from anywhere in Illinois.

We’re poised to roll out a new look later this year after a yearlong rebranding campaign. Thank you to everyone who took time to participate in our surveys and provide input about the IMA and how we can better serve your needs. We heard you and appreciate the positive feedback.

It’s an exciting time to be at the IMA and I cannot wait for you to see the great new brand and exciting programs that we plan to roll out in 2020. Thank you for your investment in OUR association and everything that you do to make Illinois and the world a better place every single day.

As always, if you know of a manufacturer that is not a member of the IMA, please let us know! ♦

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FRIDAY, DECEMBER 6



KEYNOTE SPEAKER

DR. PAUL K. KEARNS

Director, U.S. Department of Energy
Argonne National Laboratory

Register at: ima-net.org/calendar

THE IMA HEALTH PLAN IS OPEN FOR BUSINESS!

MARK FRECH, EXECUTIVE VICE PRESIDENT



Last quarter's magazine edition included an update regarding the IMA's effort in forming and bringing to its members an affordable path for group health coverage through an Association Health Plan. Since that time, we are pleased to announce the launch of the IMA Health Plan!

Together with Blue Cross and Blue Shield of Illinois (BCBSIL), the IMA is proud to bring Illinois manufacturers a statewide solution for affordable, flexible, and customizable group health coverage. The IMA Health Plan allows manufacturers and their employees to choose the right health care plan to meet their needs and budget.

"We are very excited to announce the formation of this important IMA member benefit for small manufacturers in Illinois that is a collaboration between the IMA and Blue Cross and Blue Shield of Illinois. This exciting new program will help IMA member companies provide the best quality health care coverage to their most valued asset – the women and men of the Illinois manufacturing community," said Mark Denzler, President & CEO of the Illinois Manufacturers' Association.

"For decades, the IMA has been a trusted source of information and programs for our member companies. The IMA and our new health care plan will help small manufacturers navigate the evolving and complex health care maze. We are confident that this new group purchasing arrangement, powered by the strength of Blue Cross and Blue Shield of Illinois, will benefit small manufacturers across the state."

Several key highlights of the IMA Health Plan are as follows:

- No medical underwriting
- Statewide and nationwide availability
- Comprehensive provider networks
- Flexible medical plan designs and prescription drug coverage
- Integrated COBRA administration

The IMA Health Plan also delivers to participating member companies an industry-leading benefits administration technology solution called SIMON®. Powered by Vimly Benefit Solutions, SIMON empowers participating member companies to automate their benefits enrollment process with a few clicks of a button.

Quotes for the IMA Health Plan can only be obtained through a licensed Illinois insurance agent or broker consultant. The first available coverage effective dates begin in October 2019 and enrollment will extend throughout the end of the year and into 2020.

During the month of September, over 200 IMA Health Plan proposals were requested by Illinois manufacturers with 2019 renewal dates. Additionally, more than 65 percent of those proposals are priced competitively relative to comparable plans in the open market.

Any Illinois manufacturer that meets the following criteria is eligible to participate in the IMA Health Plan:

1. Operate within the manufacturing sector (SIC code assignment of 2000 – 3999)
2. Employ between two and 50 employees (on average) in the prior calendar year
3. Be headquartered in Illinois
4. Be an IMA member in good standing

If your group health coverage renews in the coming months, the IMA Health Plan could provide you and your employees with a cost effective and comprehensive alternative to your current program.

For more information about the IMA Health Plan, please visit www.imahealthplan.com or contact Mark Frech at (217) 718-4203. ♦

Mark Frech



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UNCERTAINTY ABOUNDS IN WAKE OF WOTUS REPEAL

DINSMORE & SHOHL LLP

On June 22, 1969, the Cuyahoga River, which runs through the heart of Cleveland before emptying into Lake Erie, caught fire for the 13th time. *Time Magazine* ran a story that highlighted the river's severe pollution. The national reaction to the story is widely credited as the impetus for the Federal Water Pollution Control Act Amendments of 1972, now known as the Clean Water Act ("CWA"). The objective of the CWA is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." This seemingly straightforward and worthy objective has, however, led to more than 40 years of uncertainty and litigation over what constitutes "the nation's waters" or "waters of the United States."

That uncertainty dramatically increased following two significant Supreme Court cases in 2001 and 2006. How the term "waters of the United States" is defined often determines whether the CWA's permitting provisions apply, so the lack of clarity of the definition has been problematic for manufacturers that operate in close proximity to or on land that contains water that could be considered a water of the United States. The Environmental Protection Agency ("EPA") and the Army Corps of Engineers ("Corps") have tried with mixed success to clarify the murky definition on a number of previous occasions, including in 2015. As it currently stands, 22 states and Washington, D.C., abide by one definition of "waters of the United States," while the other 28 states follow another definition.

Now, the EPA and the Corps under the Trump administration have once again expressed desire to "increase [CWA] program predictability and consistency by increasing clarity as to the scope of 'waters of the United States.'" The agencies have embarked on a two-step process to accomplish this goal, but these efforts may only further muddy the waters, continuing the decades of uncertainty.

Step One: Repealing the Clean Water Rule

For 22 states (including Illinois) the definition contained in the Clean Water Rule passed by the Obama administration is in effect. In promulgating the Clean Water

Rule, the EPA and the Corps emphasized that the definition only covered waters that were historically covered by the CWA and that the Rule "does not interfere with or change private property rights, or address land use[,] does not regulate most ditches or regulate groundwater, shallow subsurface flows or tile drains[,] does not change policy on irrigation or water transfers[,] and] does not apply to rills, gullies, or erosional features." Rather, the goal of the Clean Water Rule was to maintain jurisdiction over navigable rivers, lakes, bays, and coastal waters while clearly defining and protecting tributaries, streams, and wetlands that impact downstream water quality as well as certain, defined water features that also impact downstream waters. These include prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools in California, and Texas coastal prairie wetlands when they impact downstream waters.

On September 12, 2019, however, the agencies announced a final rule that will repeal the Clean Water Rule ("Recodification Rule"). It will be effective 60 days following publication in the Federal Register, which is expected in the very near future. The Recodification Rule repeals the definition of waters of the United States that went into effect in Illinois following the Clean Water Rule. Instead, "[t]he agencies will implement the pre-2015 Rule regulations informed by applicable agency guidance documents and consistent with Supreme Court decisions and longstanding agency practice."

Recodification Rule

The EPA defined waters of the United States in the 1980s to include navigable rivers, lakes, bays, and coastal waters, and their tributaries and adjacent wetlands, as well as "[a]ll other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce." Once the Recodification Rule becomes effective, the agencies in Illinois and the other 21 states will go back to using this definition as interpreted by the agencies in the wake of two, landmark Supreme Court Decisions:

SWANCC and *Rapanos*.

The Supreme Court opinions in *Rapanos* built on the Court's SWANCC opinion; however, the Court failed to issue a majority opinion in *Rapanos*. Instead, four justices joined Justice Scalia's plurality; four justices joined Justice Stevens' dissent; and Justice Kennedy issued a concurring opinion. In his plurality opinion, Justice Scalia stated that, "On its only plausible interpretation, the phrase 'the waters of the United States' includes only those relatively permanent, standing or continuously flowing bodies of water 'forming geographic features' that are described in ordinary parlance as 'streams[,] ... oceans, rivers, [and] lakes.' The phrase does not include channels through which water flows intermittently or ephemerally, or channels that periodically provide drainage for rainfall. The Corps' expansive interpretation of the 'the waters of the United States' is thus not 'based on a permissible construction of the statute.'" "Therefore, only those wetlands with a continuous surface connection to bodies that are 'waters of the United States' in their own right, so that there is no clear demarcation between 'waters' and wetlands, are 'adjacent to' such waters and covered by the Act. Wetlands with only an intermittent, physically remote hydrologic connection to 'waters of the United States' do not implicate the boundary-drawing problem of *Riverside Bayview*, and thus lack the necessary connection to covered waters that we described as a 'significant nexus' in SWANCC."

In the explanation of the Recodification Rule, although the agencies highlight those elements of Justice Kennedy's and the plurality's opinions that are substantially similar, the agencies emphasize that they will administer the Clean Water Act's jurisdiction as they did prior to the 2015 Clean Water Rule. Instead of following Justice Scalia's plurality opinion, the EPA and the Corps followed the guidance common to five of the nine justices in both Justice Kennedy's concurring opinion and the *Rapanos* dissent. The agencies declared that they would continue to "assert jurisdiction over wetlands adjacent to traditional navigable waters, including over adjacent wetlands that do not have a continuous surface con-

nection to traditional navigable waters.” The agencies also confirmed that the definition included “(1) non-navigable tributaries that are not relatively permanent, (2) wetlands adjacent to non-navigable tributaries that are not relatively permanent, and (3) wetlands adjacent to, but not directly abutting, a relatively permanent tributary (e. a., separated from it by uplands, a berm, dike or similar feature)” so long as such waters had a significant nexus with a traditional navigable water.

Effect on Jurisdictional Determinations

The agencies addressed how the Recodification Rule will affect jurisdiction determinations (“JDs”). (JDs are written determinations issued by the Corps that confirm the existence or absence of a water of the United States on a parcel of land.) JDs are valid for five years. The Recodification Rule will not affect the validity of any JD that the Corps issued under the Clean Water Rule. Bearers of JDs that the Corps issued under the Clean Water Rule may, however, request the Corps reassess the parcel within the five-year period and issue a new JD where appropriate. So, manufacturers that received a JD for a water that falls under the Clean Water Rule’s definition of a water of the U.S. but not under the definition that was in place prior to 2015 may consider requesting a reassessment once the Recodification Rule takes effect.

Step Two: Redefining Waters of the United States

Once the Clean Water Rule is repealed, the agencies plan to redefine “waters of the United States” as the second step in the administration’s plan to bring clarity to the jurisdictional limits of the Clean Water Act. In comments at the National Press Club Luncheon in early June, the EPA’s current administrator, Andrew Wheeler, confirmed that the new definition of “waters of the United States” proposed by the EPA in February 2019 is “focused on providing regulatory certainty and clarity that every American can understand.” He said the EPA’s “ultimate objective is that property owners should be able to stand on their property and tell if a water is federal or not without hiring outside professionals.”

The definition would retain navigable rivers, lakes, bays, and coastal waters. Significantly, however, the proposed rule would alter the definition of adjacent wetlands to those “that abut or have a direct hydrological surface connection to [those navigable waters].” The proposed rule also excludes ephemeral streams, upland ditch-

es, ephemeral ditches, and groundwater. This definition would remove a number of waters from the federal EPA’s and Corps’ protection under the CWA and, depending on the applicable state regulations, would allow stakeholders to develop, or discharge to, such waters without the need for a permit.

Additional Illinois Regulations

Regardless of how the federal agencies ultimately define the waters of the United States, manufacturers in Illinois are still subject to Illinois EPA’s permitting system. In addition to implementing the National Pollutant Discharge Elimination System (“NPDES”) under the CWA, the Illinois EPA also requires other permits, “which regulate certain structures and discharges therefrom that are not required to have an NPDES Permit.” Specifically, the Illinois EPA requires permits for the following construction and operating activities:

- Construction of new sewers, sewage pumping stations, and connections to the public sewers which are 1,500 gallons per day or larger or serve two or more buildings;
- Construction of new sewage treatment plants, pretreatment equipment, and industrial wastewater treatment plants;
- Expansion or modification of sewage treatment plants, pretreatment equipment, and industrial wastewater treat-

ment equipment;

- Land application of treated municipal, industrial, or water treatment plant sludge to cropland or other areas; and
- Operation of non-discharging waste water treatment systems such as spray irrigation of treated wastewater or waste water evaporation or recycle systems.

Manufacturers in Illinois are currently subject to the EPA’s and the Corps’ broad jurisdiction over navigable and non-navigable waters as well as the Illinois EPA’s jurisdiction over additional industrial wastewater activities. The EPA’s and Corps’ jurisdiction will change once the Recodification Rule goes into effect. It will then change again when the EPA finalizes its proposed rule revising the definition of waters of the United States. To cloud matters further, both the new definition, which is due to be published as a final rule in December 2019, as well as the Recodification Rule, are widely expected to face significant legal challenges. The certainty the EPA has sought to achieve for decades will likely not arrive anytime soon.

During this period of increased uncertainty, manufacturers should carefully review the status of these various regulations before conducting any construction, expansion, or modification to determine whether any development or discharge is subject to the CWA or the Illinois EPA’s Other Permit provisions. ♦

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From left to right: John, Rich, Rick and Shaun work together as a family to use both old and new processes to create the perfect polyurethane product.

BRIDGING THE GAP BETWEEN RUBBER AND PLASTIC: GALLAGHER CORPORATION

Operating within ‘the best of both worlds’ when it comes to rubber and plastic, Gallagher Corporation of Gurnee, Illinois has been making custom polyurethane components for original equipment manufacturers since 1965. The family-owned business produces millions of parts annually for the agriculture, military, mining, paper, material handling, oil and gas, and road construction industries, supplying polyurethane parts to large and small OEMs across the country.

“The components we make are bridging the performance gap between rubber and plastic,” said Rick Gallagher, President. “Polyurethane takes higher loads than rubber, is more impact resistant than plastic, and more abrasion resistant than both. We can also mold complex shapes, and overmold or bond polyurethane to metals, plastics and composites. Our OEM customers see the benefits of polyurethane components when their products perform better and last longer.”

While molded polyurethane products may appear similar to rubber and plastic products, the way that the products are manufactured is much different.

“The unique thing about our process is that we’re handling the raw materials as liquids,” said Rick. “Nearly all types of rubber are processed as a gum-like material that is worked into a mold and cured, while plastic comes in pellets that are converted through injection molding. Both cases require a mold that is usually substantial to withstand the molding forces. But for processing polyurethane, we can build a light-weight mold and make relatively large or complex parts with ease, all because we work with it as a liquid.”

Polyurethane’s mechanical properties are tailorable depending on its chemical formulation and its processing. Slight adjustments can produce polyurethane components as varied as bumpers that absorb millions of cyclical impacts, long-lasting wear pads and screens, cut and tear resistant wheels, and bushings that withstand

high loads. Because of this, each product made at Gallagher Corporation is custom-tailored to the needs of the OEM.

“We partner with OEMs to figure out exactly what they need their components to do, and then we perfect the chemistry and the design to meet the requirements,” said John Gallagher, Director of Product Development. “We make our parts from start to finish. We can do everything here in house from application engineering to designing and making tooling, formulating and mixing raw materials, molding, machining in precise features, even assembling and painting products if required.”

Shaun Gosselin, Vice President of Engineering, added “for new customers that aren’t familiar with polyurethane and its advantages, it’s valuable to start with a technical overview about polyurethane. We call them ‘lunch and learns’. They are a great way to initiate creative thinking that flows into engineering solutions.”

The Gallagher Corporation has taken an “all-around” approach to their manufacturing business, which necessitates the use of several different manufacturing processes to ensure the highest quality parts. They have three processes for making polyurethane components: cast molding, injection molding, and 3D printing. Dick Gallagher started the business in 1965 strictly using cast molding. Injection molding was added in the 1980s, and 3D printing was added just this year.

Gallagher’s very first customers were in the tool and die business. “The metal forming process used to be much more difficult,” said Rick, “There would be male and female steel dies for making a product, and they would take a lot of time and money to fabricate. Our customers substituted polyurethane for the female die and reduced their tooling cost and lead time for short runs.

The entire Gallagher family has a passion for the family business. John, Rick’s oldest child, remembers spending time in a playpen in the office, and learning about the business from employees that still work for the company today. Though John joined the company just



Gallagher uses 3D printing to manufacture complex products that would be costly and time-consuming using traditional processes.



Gallagher manufactures custom polyurethane products in all shapes and sizes, many with overmolded features.



Connor Adams programs an robotic spraying arm that will cut production time and allow an existing employee to take on less repetitive work.

two years ago, he knows that manufacturing and his family's business have always been in his blood.

John's brother, Rich, has been a part of the family business since he graduated from college in 2013. Rich is a Sales Representative for Gallagher Corporation.

"I love what we do here," Rich said. "It's so interesting and cool that we make tangible products that solve real-world problems. I love being the first point of contact to our customers, hearing about their challenges, and describing to them how we can help."

While Rick's children were given the option of following in his footsteps and joining the family business, he always knew that he was destined to take the reins from his father.

"It's always what the family was thinking," Rick said. "Just like if you grew up on the family farm, you were going to take over the farm and work on it. But fortunately this business has worked out great for me. I love the engineering challenges that we get to help solve. And there is so much that you have to solve in order to be a successful business. I've thoroughly enjoyed it all. My hope for this next generation is that they feel the same way too."

As the third generation fully settles into their positions in the family business, new innovations, processes and expansions are taking place. Recently, Gallagher Corporation added a fourth building to the manufacturing plant, taking their total square footage past 150,000 square feet. The additional space will be used for expanding the company's current operations as well as working on some new projects.

The company added 3D printing to the mix, revolutionizing the kinds of parts that can be made as well as the ways in which they are produced.

"With the new 3D printer, we are able to produce complex parts without ever using a mold – you jump straight from liquid resin to a solid product that makes itself right in front of your eyes," John said. "It's not just for prototyping either. It can be competitive for

production projects."

Gallagher Corporation is also working to innovate on existing processes – always looking for ways to upgrade capabilities and increase safety and quality. One such project is a robotic arm that will paint parts automatically. It will increase their efficiency and improve safety and ergonomics on what was previously a manual process to spray thousands of parts per day. This won't eliminate a job at the plant; rather, it will enable an existing employee to move to another area that will be less physically demanding.

Another project added a laser marking capability so that Gallagher can offer direct part marking for better product traceability. Gallagher's customers like having "born on" information that supports their quality control processes, supply chain management, and regulatory compliance

Ensuring a healthy and safe workforce is a top priority for the Gallagher Corporation.

"We definitely focus on safety and quality here, as well as the environment," said Shaun. "We are very proud of being ISO 9001 and 14001 certified as well as being in the OSHA Safety & Health Achievement Recognition Program (SHARP)." Gallagher highly recommends the Illinois run SHARP safety management program to all Illinois manufacturers.

Taking extra steps to guarantee high quality and safety has resulted in an almost-perfect track record for Gallagher Corporation, with 99.9 percent customer satisfaction and 99.9 percent on-time delivery last year.

"That's really a testament to our team that works day in and day out," John said. "They exercise precise control over everything that we do, and they make sure our projects are done right."

Gallagher Corporation is a prime example of what it means to manufacture quality products in Illinois. The IMA is proud to call them a member of over 50 years! ♦

THE CHALLENGES AND OPPORTUNITIES OF MARKETING SUSTAINABILITY IN 2019

SIMPLE MACHINES MARKETING



It should come as no surprise that consumers are increasingly giving preference to sustainably-minded businesses, as this trend has been gaining steam for several years now.

According to Nielson research conducted in late 2018, 48 percent of U.S. consumers said they would “definitely or probably change their consumption habits to reduce their impact on the environment.” Furthermore, the data shows consumer spending is lining up with these values: by 2021, Nielson is forecasting sustainable product sales to hit \$150 billion — up from \$107.3 billion in 2014. As a result, more and more businesses are adapting to meet this demand.

This presents a clear opportunity for manufacturers selling direct to consumers, but if you’re selling to businesses and have been touting your environmental bona fides either as part of your marketing or as a core foundation of your brand, you may be finding it more

challenging to find a receptive audience.

Assuming your environmental claims are legitimate, let’s dig into where the disconnect might be happening and explore how you can overcome this challenge to win on sustainability.

Is Your Sustainability Message Getting to the Right Audience?

There are two primary layers of targeting to consider when marketing sustainability in a B2B environment: the company and the buyer.

Company

Naturally, companies with publicly stated sustainability goals will be more receptive to a supplier that’s aligned with their objectives. To identify these companies, look for those in your target market that have environmental goals with clear targets and objectives published on their websites. You can also find these prospects by researching companies with third-party certification from bodies such as the International Organization for Standardization

(ISO) or the Forest Stewardship Council (FSC).

By incorporating this layer of targeting into your strategy, you’re greatly increasing the odds that your message will resonate.

Buyer

The next layer to consider is at the buyer level. Within your narrowed list of environmentally-minded companies, there’s a strong likelihood that the purchasing and procurement decision-makers are not the people most likely to prioritize sustainability. In most cases, they’re more interested in price, inventory and reliability — things that will make their lives easier.

So, if you’re marketing sustainability to this audience and you’re not beating their current vendor on price, service and/or quality, your campaign is dead on arrival.

In these cases, taking a top-down approach can be the most effective strategy. If you’re able to sell your sustain-

ability advantages to the people at the director, VP or C-level who care the most about the cause, you're reaching people who have the power to direct management and procurement to fall in line and purchase from you.

Easier said than done? Definitely. But if there are high-value accounts that fit this mold and are otherwise great potential fits, the extra effort can pay off.

Are You Offering More than Sustainability Lip Service?

In 2019, speaking to your business's sustainability commitment at a high level is simply not enough to differentiate.

Across industries, the number of companies vying for green/sustainable/environmentally-friendly business has exploded. As a result, messaging that's comprised of flimsy claims and marketing buzzwords has become white noise to your potential customers — it won't break through.

To stand out from this crowd, ditch the buzzwords and focus on specific, quantifiable benefits that actually matter to your market. For example:

- Can your product help your customers reduce their carbon emissions? How so and by how much?
- Do your shipping practices result in less fuel used or water consumed? How much?
- Does your product avoid use of hazardous or toxic materials found in competitor products? What environmental impact is achieved by switching to your product?
- Do you source locally or use recycled materials? How much waste are you eliminating as a result?

Whatever the benefits, take the extra step of doing the work for your prospects and quantifying the impact. Consider providing a calculator that lets them plug in their own numbers and see for themselves. Use images, video and infographics to bring the benefits to life in an easy-to-understand and memorable way. Then, broadcast these benefits on your website and through your social media, content and sales literature.

How to Get Specific with Sustainability Messaging

There are a number of ways you can move past environmental lip service

and make your messaging more meaningful to your audience.

Leverage long term commitment

If you have a long history of environmentally-minded practices, make this a prominent part of your message to differentiate you from those who have more recently jumped on this bandwagon. No long history to draw from? You can still tell the story of how and why you first adopted sustainable practices to demonstrate your commitment and add texture to your mission.

Quantify Your Impact

Rather than simply stating that your company has invested in efficient and renewable energy sources, provide specific documentation on practices and processes, and calculate the exact impact on energy, resources or footprint.

Highlight Your Partnerships

Addressing today's ecological challenges requires cooperation. If you haven't already, research the authoritative environmental associations, certifying bodies and organizations in your industry and make a plan to join or become

certified by those that align with your values and practices. Then, be sure to promote those alliances and recognition. Social proof is a powerful tool, so if you're able to point to certification or membership from a recognized name like B-Corp or the EPA, you'll have a powerful advantage over competitors that cannot.

Looking Ahead

As demand for sustainable business practices inevitably continues to grow it's a fair assumption that not only will more manufacturers adapt to meet this need, but that your competitors' tactics for marketing their sustainability will grow increasingly sophisticated.

By sharpening your targeting, avoiding generalities and speaking to the specific outcomes that matter to your audience, you can avoid having your sustainable marketing fall on deaf ears now. By looking forward to what's next and prioritizing innovation, you can position your company to stay ahead of the pack for years to come. ♦

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SURVEY SAYS...

JIM NELSON, VICE PRESIDENT OF EDUCATION
& WORKFORCE POLICY



Anytime a new program or product is launched, there is always trepidation about how that new item is going to play out in the eyes of the customer. Such was the case with the ICATT Apprenticeship Program, the multi-award winning apprenticeship program the IMA Education Foundation operates with our great partners at the German-American Chamber of Commerce of the Midwest. Re-introducing apprenticeship as a workforce strategy for manufacturing proved to be a challenge since apprenticeships had not been widely used by industry since the end of World War Two. Three full generations of management have moved through the sector since then, and while apprenticeships sure sounded swell, few manufacturers were prepared to make the investment they believed would create a drain on resources.

Along the way, however, manufacturers came to realize they were already spending at least an equal amount of company money, and in some cases more, without getting the results that high-quality Registered Apprenticeships produce.

But, how to make that demonstrable? How could the ICATT partners make the best case that apprenticeships were not only a viable alternative to how companies were acquiring and training new workers, but could we make the case that the ICATT program produced significantly more desirable results?

Last spring, the IMA Education Foundation launched an Employer Satisfaction Survey of the two-dozen companies currently participating as ICATT Member Companies. We wanted to find out whether or not ICATT is hitting the goals and objectives we had set out, and what changes were seen by employers as desirable to improve program quality. Respondents primarily included Presidents/CEOs, Plant Managers, Operations Managers, and HR Managers.

MORE THAN 84 PERCENT OF EMPLOYERS TOLD US THAT THEY FIND THE TRAINING PRODUCTS PROVIDED BY ICATT TO BE VALUABLE OR HIGHLY VALUABLE.

Overall, more than 73 percent of employers say they are satisfied or highly satisfied with the ICATT Apprenticeship Program. No employer reported the program was unsatisfactory.

When we asked about the quality of pre-screened candidates referred by ICATT for interview as apprentices, nearly 86 percent reported they were either satisfied or highly satisfied. Just two respondents reported they were not satisfied. When we asked employers to compare the quality of ICATT referred candidates to all other applicants interviewed by the employer, nearly 43 percent said ICATT candidates were either above or significantly above average.

Unlike most other apprenticeship programs, the ICATT Apprenticeship Program provides each company with an individualized company training plan designed specifically for that company. More than 84 percent of employers told us that they find the training products provided by ICATT to be valuable or highly valuable.

We also asked a number of value proposition questions, some of which employers told us were premature. However, one question that did elicit responses was whether using an apprenticeship model created any savings over the company's current expenditures for hiring and training new workers. Fifty percent of employers say they have realized some savings over current practice, and another 28.5 percent reported costs remaining about the same.

Lastly, we asked if, based on experience, the company was likely to engage additional apprentices through the ICATT Apprenticeship Program. To that, 71 percent said they are likely to highly likely to do so, and several companies have already done so.

So, the votes are in. Manufacturers find the ICATT Apprenticeship Program is meeting their workforce needs and nearly always without increasing costs to the company. And with the Apprenticeship Employer Tax Credit legislation advanced by the IMA and signed into law by Governor JB Pritzker taking effect for tax year 2020, apprenticeships are becoming even more affordable for manufacturers of every size.

If you'd like a copy of the complete survey, please contact me. For more on the ICATT Apprenticeship Program, visit www.icattapprenticeships.com ♦

AGING EQUIPMENT: HOW IT'S COSTING YOUR BUSINESS

CONSTELLATION



Is every piece of equipment at your offices or factories as efficient and effective as it could be?

For many businesses, the answer is often no. Why? Executives and managers are busy running the companies. They're often not familiar with the innovations that could be used to make efficiency improvements — and don't typically have the time to do the kind of research that's involved with large-scale improvements or the funding needed for a modernization project.

What companies fail to realize, however, is that it's often more expensive to continue working with the same inefficient, wasteful gear. Companies that make efficiency upgrades now can benefit in the long run by avoiding unpredictable repairs and high energy consumption — and instead, minimize risk and increase budget predictability.

For example, consider two of the many systems and pieces of equipment businesses of all types rely on: lighting and

HVAC. By installing LED lights, companies can improve brightness in their facilities, contributing directly to greater safety and productivity, while using less power. By transitioning to more modern HVAC systems, companies can create more comfortable climates for employees and customers, while — again — using less energy.

Energy efficiency initiatives, such as equipment upgrades, can provide key benefits that would be available to you and your employees immediately:

- reduced consumption and an improved load profile
- improved production and greater output
- upgraded equipment meets OSHA or EPA standards, improving workplace health and safety

Examples of equipment upgrades might include:

- electric forklifts and charging stations
- replacement of pneumatic sand conveyors with belt or bucket conveyors

- high-efficiency, variable speed motors
- installation of monitors and power load-shedding software on electric induction furnaces

- replace lower-efficiency lighting and implement automatic lighting controls

Don't let the upfront costs of energy-efficient devices fool you. You'll more than recoup your costs in the long run with better equipment as opposed to letting old, inefficient devices continue to silently eat away at your budget. From long-lasting light bulbs to more efficient components for your heavy machinery, almost every plugged-in device represents an opportunity to save.

If you and your company are interested in implementing and funding energy conservation measures and efficiency upgrades with no upfront capital, a program like Constellation's Efficiency Made Easy or "Equipment Made Easy" (EME) solution might be the right one for you. ♦

Constellation – Providing tools to create a customized energy strategy for your company



PHIL CELEBRATES 50 YEARS OF MANUFACTURING

On November 4, 2019 Philippi-Hagenbuch (PHIL) of Peoria, Illinois will celebrate 50 years of manufacturing tailgates for off-highway trucks in Illinois. Though the company has seen five decades of growth and change, the ideas and approaches used at PHIL are always innovative and fresh.

"We may be a 50-year-old company, but we act very much like a scrappy start-up," said Josh Swank, Vice President of Sales and Marketing. "We have our tried-and-true policies, but we're not afraid to shake things up. You never know if something is going to work or not until you try it!"

Josh shares the same sentiment as L.B. "Phil" Philippi, the grandfather of Danette Swank, who is now the President of her family's company. In the 1940's, L.B. – who went by the nickname of Phil – was working as a salesman for Dart Truck Company in Olathe, Kansas. One of his sales brought him to the Dominican Republic, where he sold trucks to a company that was moving large loads of bauxite.

However, there was a problem. Bauxite flowed like water, and therefore the open-ended trucks that Phil brought for the job did not keep the material contained very well. In danger of losing the sale, Phil got crafty. He ran to the nearest store and made an odd request.

"He asked if he could buy two shoe boxes. They could keep the shoes – he didn't need those – just the boxes," Josh said. "Then he went back to his hotel room, and with some paper clips, tape, and scissors, he invented the first tailgate."

While Phil was an extraordinary salesman who traveled across the country for his work, he was not an engineer. Though he was able to save the sale and solve the problem for his cus-

tomers, it wasn't until the late 1960's that he began to get into the business of manufacturing the tailgates he invented.

It all began when LeRoy Hagenbuch met Phil's daughter, Pat. Phil had retired and was able to focus more on his ideas, and LeRoy had the engineering mind to make it happen. Once LeRoy got out of the army he and his father-in-law founded the company out of the family's garage on Pat's birthday, and it has been a family venture ever since.

**IT TAKES MORE TIME AND
EFFORT TO ENGINEER A SIMPLE,
LONG-LASTING SOLUTION AS OPPOSED
TO SOMETHING THAT IS COMPLEX
AND BREAKS DOWN EASILY.**

"When I was growing up, the day after I got out of school my father and mother and I would go on the road for the summer," Pat said. "We traveled all over and saw so many things, and sometimes I got to be there when he was making a sale."

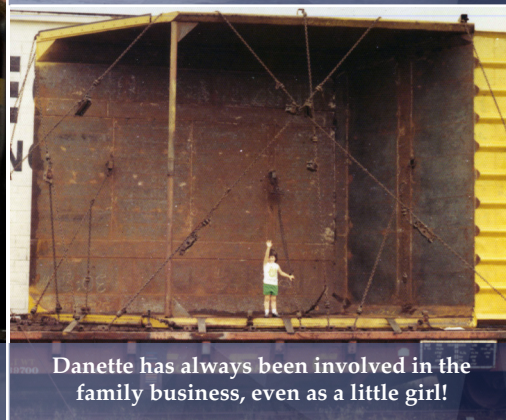
For Pat, transitioning into a family business was natural – she had been a part of her father's work all her life. Bringing her own daughter into the family business was also a natural fit, and although Pat may not have had the same opportunities as a businesswoman that Danette has, she has paved the way for future generations of manufacturing leaders to be the bosses of what they do.



The PHIL family continues to engineer simpler, sturdier solutions after 50 years.



The tailgates Philippi-Hagenbuch engineers and manufactures are installed on off-highway trucks with tires that are double Josh's height – and he is tall!



Danette has always been involved in the family business, even as a little girl!



With Phil's sales experience and LeRoy's engineering expertise, Philippi-Hagenbuch was born.

"My parents never tried to steer me, and they never told me I couldn't do something," Danette said. "As parents, it is so important to make sure your kids know that they can do whatever they want, because we are raising this generation not only to fill the shoes of those before them, but to go further and do more."

When the Philippi-Hagenbuch family incorporated the business in 1969, Pat was not even able to go into a bank and ask for a small business loan without LeRoy in the room. Now, things have changed, but there is still some catching up to do when it comes to bringing young women and men into the manufacturing workforce and making sure they have an equal chance at success.

Danette is meeting this challenge head on. She has been selected as the President of the IMA's "Next Wave in Manufacturing Leadership," a group organized to network and develop the leadership skills of up-and-coming leaders in Illinois manufacturing.

"Next Wave will be so great for harnessing the energy of so many excited young leaders and get them to have a network they can rely on if they have any questions or need some perspective," Danette said. "I have high hopes that it will create a platform for people to better themselves and their knowledge in the industry."

While working to create better opportunities for future leaders in manufacturing, Danette and her family are also working to create smarter, simpler solutions at PHIL.

"We have never taken a cost-cutting approach, but we have looked at improving the quality and life of our products while also diminishing the cost to produce," Josh said. "It takes more

time and effort to engineer a simple, long-lasting solution as opposed to something that is complex and breaks down easily."

Sometimes, the outcome of those simple solutions can be awe inspiring. Many of PHIL's products last for decades, and it isn't often that the company will get a call with an order for some replacement parts. Earlier this year, however, the Philippi-Hagenbuch family was given a reminder of just how important their products are to the world.

"I got a call from a client who had one of our products for over 20 years," Josh said. "They had a couple of trucks that had been at ground zero, hauling debris for years after the 9/11 attack. They needed to order a few replacement parts that amounted to a little under four hundred dollars. To think that a product we made had lasted so long and was around for so much – well, it made me realize how special it is what we do here."

Whether it's for a 30-ton or a 400-ton off-highway haul truck, the PHIL team is dedicated to engineering an effective, high-quality end-product that does exactly what the client needs. Philippi-Hagenbuch was founded on the principle of trying new ideas and making long-lasting, simple solutions. To this day, this family-owned business is still doing just that – even if some of the methods might have changed over the decades.

Congratulations to the Philippi-Hagenbuch family for 50 years of manufacturing in Illinois! ♦

YOUR EMPLOYER-EMPLOYEE RELATIONSHIP HAS CHANGED

BARNES & THORNBURG, LLP

Like no other time in recent memory, state and local legislators have dramatically changed the employer-employee relationship in Illinois. The most highly publicized change is the enactment of H.B. 1438, legalizing the recreational use of marijuana. This significant development was addressed in a separate article in the third quarter issue of the *Manufacturer*. However, legislators did not stop there. State laws and local ordinances involving artificial intelligence, scheduling of employee hours, payment for employer business expenses, sexual harassment training, sick leave, equal pay, and other issues have been passed and either recently became effective or will shortly become effective. These new laws and ordinances impact virtually every Illinois employer.

Artificial Intelligence Technology

The Illinois Legislature unanimously passed H.B. 2557, the Artificial Intelligence Video Interview Act ("AI Act") on May 29, 2019, and it becomes effective once it is signed by Governor Pritzker. The AI Act addresses when and how employers may use artificial intelligence technology in connection with video interviews. Under the AI Act, employers have to (1) notify the applicant that it is being used, (2) explain how the artificial intelligence works, and (3) obtain their consent.

AI technology is now being employed in the workplace. The AI Act is vague and this will make employer compliance difficult. First, the AI Act assumes that the term "artificial intelligence" is self-evident, meaning that every employer will understand exactly how its use of AI is implicated under this law. For example, would assigning scores to an applicant based on tone of voice or word choice count as AI? Or would an algorithm that edits the video to show the "key" moments of the interview be permissible? These few examples demonstrate that not every employer will know what falls under AI.

Next, the AI Act requires that the employer describe "how the artificial intelligence works." It will be highly unlikely that an employer will be able to do this adequately. Describing the "how" with any degree of

specificity will be challenging – especially by a layperson to another layperson.

The AI Act also requires all copies of videos to be deleted within 30 days of the request. This requirement may be difficult to implement if third-party cloud providers do not allow complete deletion of backups.

Lastly, Section 10 of the AI Act states, "an employer may not share applicant videos, except with persons whose expertise or technology is necessary in order to evaluate an applicant's fitness for a position." There is simply no guidance on how to interpret this provision.

What is certain though is that court litigation will commence so these vague terms can be interpreted. Unfortunately, we anticipate that much of this litigation will be of the costly class action variety.

The Pew Research Center conducted a survey that examined Americans' attitudes towards an algorithm that makes hiring decisions. Although some respondents reported that this type of program would be less biased and make better decisions than humans make, a large share of Americans expressed concern such as "many important qualities would be overlooked in the process." Not surprisingly, responses also included: "most Americans would not want to apply for a job knowing that a computer program would be responsible for evaluating candidates."; "Are you kidding me? You have to talk to the applicant to see how they interact with humans. This is ridiculous and scary to think that a computer would do all the steps in hiring new employees." and "[This] is idiotic. There are nuances to everything. Such a system denigrates the value of things a program cannot measure like work ethic, dedication, integrity, and commitment level."

Predictive Scheduling

Predictive scheduling has become the rage since 2015. The following have enacted predictive scheduling ordinances: Emeryville, CA, New York City, Philadelphia, San Francisco, San Jose, Seattle, and the state of Oregon, and the Chicago City Council's Workforce Development Committee passed the Fair Workweek Ordinance this year. The goal of the Ordinance is to "enact and enforce fair and equitable employment scheduling practices" in Chi-

cago and "to provide the working people of Chicago with protections that ensure employer scheduling practices do not unreasonably prevent workers from attending to their families, health, education and other personal and familial obligations." While predictive scheduling ordinances in other cities and states in the United States were generally limited to the hospitality and retail sectors, Chicago's ordinance would apply broadly and will be the most expansive predictive scheduling ordinance in the country.

The Chicago Ordinance applies to all employers with at least 100 workers and to restaurants with more than 250 employees and 30 locations globally; though there are exemptions for the construction industry, the city, and other governmental agencies. Franchisees who own four or fewer locations also would be exempt. Workplaces with collective bargaining agreements would be exempt as long as they explicitly waive the Ordinance in their contracts. Covered employees include all hourly workers and salaried employees earning less than \$50,000 a year, but not those who work in sports stadiums or as live-in staff at residential institutions for people with disabilities. The Chicago Ordinance covers broad sectors of the local economy, including hospitals, healthcare programs, hotels, restaurants, banks and financial services, airports, manufacturers, childcare facilities, and law firms not covered by prior similar laws.

Employers are required to provide at least 10 days advance notice of workers' schedules starting April 1, 2020, and that would increase to a minimum of 14 days in 2022. Newly hired employees would have to receive a good-faith written estimate of their work schedule, including the median number of weekly hours of work to expect and whether the employee can expect to work any on-call shifts.

If an employer changes a worker's schedule less than two weeks before the shift, it would have to give the worker an hour of "predictability pay" at their regular wage rate. If an employer cancels or reduces hours within 24 hours of the start of a previously scheduled shift, they would have to pay the worker half of what would they

have made had they worked. Employers can change an employee's hours without penalty when it is mutually agreed upon in writing.

The Chicago Ordinance also includes a "right to rest" provision that gives employees the right to decline work hours that start less than 10 hours after the end of a shift. Absent employee consent to work such shifts, the employer would be required to pay time and a half. An employee is also able to request a modified and/or flexible work schedule. Lastly, employers must offer existing part-time workers extra hours before hiring new employees, meant to address issues of underemployment.

Penalties for non-compliance are significant. Employers that fail to comply with the Chicago Ordinance's requirements could be subject to fines of \$300-\$1000 per worker. Covered employees would be entitled to file complaints within three years from the date of an alleged violation, and recover civil penalties, plus any predictability pay owed. In addition, the Chicago Ordinance contains an anti-retaliation provision, which prohibits employers from retaliating against an employee who asserts his or her rights under the Chicago Ordinance.

Predictive scheduling will likely have an adverse impact on Chicago businesses who rely on workplace flexibility. It will not allow employers to control or manage expenses related to part-time and full-time employees. Employers are essentially being deterred from having part-time employees given that the ordinance calls for employers to offer existing employees extra hours before an employer can make new hires.

Recordkeeping will be another significant burden for employers. Employers will be required to develop and implement a host of new forms and communications to manage the scheduling process. Employers are required to maintain such records for three years. Employers are well advised to develop these new procedures early as there will be no way to defend against likely individual and class action lawsuits without such documentation.

The bottom line is that impacted employers will have to dramatically alter their business practices. For example, employers will need to think strategically about their staffing model, and review current policies and procedures now before the ordinance

passes to ensure full compliance.

Illinois Equal Pay Act

The Illinois Equal Pay Act of 2003 ("EPA") was amended during this legislative session. One amendment is focused on closing the gap between gender and racial inequalities in terms of pay. The EPA has now been expanded to protect African-Americans in addition to women. This means that an African-American employees must be paid at the same rate for doing the same work as any of their counterparts.

The amendments will also prohibit all employers, employment agencies, and agents (such as recruiters) from seeking historical salary information of any applicant from any current or former employer. Employers are prohibited from requiring that an applicant's prior wage or salary "satisfy minimum or maximum criteria; or to request or require such wage or salary history as a consideration of being considered for employment."

Illinois Wage Payment and Collection Act

The Amendments to the Illinois Wage Payment and Collection Act ("IWPCA") went into effect on January 1, 2019. One amendment requires employers to reimburse employees for "all necessary expenditures or losses incurred by the employee within the employee's scope of employment and directly related to services performed for the employer." In order for an employee to receive a reimbursement under the IWPCA: (1) the employer must have authorized or required the employee to incur the expense; (2) the expense request must be submitted within 30 calendar days; and (3) the employees must provide a signed, written statement in lieu of a receipt when supporting documentation has been lost or does not exist.

California has a similar statute and courts have ruled that employers must reimburse employees when they are required to use their personal cell phones for work, even if the actual cost of an employee's cell phone usage for work cannot be determined - for example, if an employee has an unlimited minutes/texting plan. In such a case, the employer must reimburse the employee for a "reasonable percentage" of the personal cell phone bill. We expect similar litigation under the Illinois statute. Unlike

California, however, Illinois' new expense reimbursement law allows employers to establish a written expense reimbursement policy specifying the amount and requirements for such reimbursements. If the employee incurs an expense in excess of those guidelines, the company is not responsible for the excess amount so long as the policy does not indicate that there is either "no reimbursement or de minimis reimbursement."

The Illinois Human Rights Act

The Illinois Human Rights Act ("IHRA") was also amended. The IHRA now covers employers with one (instead of 15) or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding any alleged violation of this Act by any kind of harassment or discrimination. The IHRA also now allows employees who have filed a charge under the Act to opt-out of the IDHR's investigative process and proceed directly to state courts, accelerating the judicial process for victims of sexual harassment and discrimination in the workplace. ♦



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WHAT DO RECENT ENVIRONMENTAL ENFORCEMENT DECISIONS MEAN FOR YOUR COMPANY?

HEPLERBROOM

The precedents established by recent enforcement-related actions and decisions involving the Illinois Environmental Protection Act ("Act") are eroding traditional protections regulated entities have relied upon in Illinois, and are a significant cause for concern. The rulings of the Illinois Pollution Control Board ("Board") in *Sierra Club, et al. v Midwest Generation, LLC*, PCB No. 13-15, raise serious questions regarding the scope of liability protection afforded by Compliance Commitment Agreements and groundwater management zones ("GMZs") negotiated between regulated entities and the Illinois Environmental Protection Agency ("Agency"). Meanwhile, the *Midwest Generation* rulings and the Agency's 2018 enforcement action against the Sterigenics facility in Willowbrook significantly expand the scope of potential liability for open dumping and air pollution violations under the Act. Illinois companies cannot afford to ignore the alarming precedent set by *Midwest Generation* and the Sterigenics proceeding, and an understanding of these actions and decisions is essential for companies seeking to navigate the environmental regulatory system in Illinois and safeguard their bottom line.

Environmental Enforcement in Illinois

The *Midwest Generation* case and the Sterigenics complaint were enforcement proceedings brought under the authority of Section 31 of the Act (415 ILCS 5/31). Section 31(a) of the Act establishes a "pre-referral" process that the Agency is required to follow for alleged violations of the Act or Board regulations prior to referral to the Illinois Attorney General's Office ("IAGO"). Within 180 days of becoming aware of an alleged violation of the Act or Board regulations, Section 31(a) requires the Agency to notify the alleged violator in

writing. The written Violation Notice must include a detailed explanation of the alleged violation(s) and provide the violator with an opportunity to meet with Agency personnel. Section 31(a) also allows an alleged violator to propose terms for a Compliance Commitment Agreement ("CCA") to resolve the alleged violations prior to formal enforcement by the Agency. Upon receiving proposed terms for a CCA, the Agency can either issue a proposed CCA or notify the alleged violator that the violations cannot be resolved without the involvement of the Attorney General or the local State's Attorney.

A COMPANY'S COMPLIANCE WITH AGENCY-ISSUED AIR AND WATER PERMITS OR AGENCY-APPROVED GMZs OR CCAs IS NOT ENOUGH.

If the Agency elects to enter into a CCA, Section 31(a)(10) of the Act provides that "[i]f the person complained against complies with the terms of the Compliance Commitment Agreement ..., the Agency shall not refer the alleged violations that are the subject of the Compliance Commitment Agreement to the IAGO or the State's Attorney of the county in which the alleged violation occurred." As amended in 2011, Section 31 provides that any violation of a CCA is an enforceable violation of the Act, subject to civil penalties. Under the 2018 amendments to Section 31, the Agency is required to publish all final executed CCAs on its website and maintain a searchable database for CCAs.

If, in the exercise of its discretion, the Agency elects not to enter into a CCA, it can refer the alleged violations to the IAGO or State's Attorney. The IAGO or State's Attorney can then file a for-

mal complaint, either before the Board or the circuit court of the county where the alleged violation occurred. Section 31(d)(1) of the Act also allows "any person" to file a complaint before the Board against an alleged violator of the Act or the Board's regulations. This type of complaint is known as a citizen's enforcement action and is not subject to the pre-referral notice and meeting requirements applicable to the Agency. (Additionally, in prior decisions, the Board has consistently held that the IAGO can file a complaint under its own independent legal authority and is not required to comply with the Section 31(a) pre-referral requirements.)

The *Midwest Generation* case was a citizen's enforcement action and the Sterigenics Complaint was filed jointly by the IAGO and DuPage County State's Attorney, but these matters utilize three of the most important enforcement tools available to the Agency and private citizens/environmental groups: Sections 9(a), 12(a), and 21(a) of the Act which prohibit air and water pollution and open dumping, respectively. The applicable statutory language is as follows:

Section 9(a): No person shall "[c]ause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, ..."

Section 12(a): No person shall "(a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, ..."

Section 21(a): No person shall "(a) Cause or allow the open dumping of any waste."

The definitions of "air pollution" and "water pollution" in the Act are both anchored by the term "contaminant" which is broadly defined as "any sol-

id, liquid, or gaseous matter, any odor, or any form of energy, from whatever source." "Open dumping" is defined as "the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill."

The Midwest Generation Case

In 2010, Midwest Generation ("MWG") voluntarily performed hydrogeological assessments of coal ash disposal ponds at its four Illinois power stations: Joliet #29, Powerton, Will County, and Waukegan ("the Stations"). MWG has owned and operated the Stations since 1999, and the coal ash disposal ponds at all four MWG power stations were lined and permitted under National Pollutant Discharge Elimination System ("NPDES") permits issued by the Agency to MWG. MWG submitted the groundwater monitoring results from the hydrogeological assessments to the Agency and, in June 2012, the Agency issued Violation Notices ("VNs") to MWG alleging violations of Section 12(a) and the Illinois groundwater quality standards and regulations at all four Stations.

Following Section 31 pre-referral meetings for the VNs, MWG and the Agency entered into CCAs for each of the Stations on October 24, 2012. The CCAs required MWG to cease using the ash ponds as permanent disposal sites, continue periodic removal of ash from the ponds, and continue groundwater monitoring at all four Stations. Additional site-specific compliance measures were mandated by the CCAs, including relining certain ash ponds and removing some ponds from service, establishing GMZs at Joliet #29, Powerton and Will County, and installing additional monitoring wells. In 2013, MWG certified to the Agency that it had met the requirements of all four CCAs.

On October 4, 2012, four environmental groups (Sierra Club, Environmental Law and Policy Center, Prairie Rivers Network, and Citizens Against Ruining the Environment) filed a complaint against MWG before the Board for violations of Section 12(a) and (d) and 21(a) of the Act at all four of the Stations. Over the course of the ensuing litigation, the Board issued Orders on October 3, 2013 (addressing MWG's dismissal motion) and June 20, 2019 (addressing MWG's liability). The Board's Orders contained

the following significant rulings.

First, the Board unequivocally rejected MWG's argument that the complaint filed by the environmental groups was precluded by the CCAs negotiated between MWG and the Agency. The Board noted in its October 3, 2013 Order that the "existence of a CCA does not preclude the filing by the People or any citizen of an enforcement action against the person subject to the CCA," and further noted that "the Agency's role in pursuing enforcement against alleged violations of the Act or Board regulations plainly is not exclusive." The Board also rejected MWG's claim that the issuance of the CCAs rendered the claims of the environmental groups moot, and held that the only claims eliminated by the CCAs were those claims the Agency could have pursued through a referral. Dismissing MWG's contention that the General Assembly's 2011 amendments to Section 31 were intended to make CCAs legally binding and independently enforceable, the Board opined that the Section 31 pre-referral process "is not capable of producing anything comparable to a consent decree or settlement agreement."

Under the Board's ruling, CCAs provide very limited protection to alleged violators. While the Agency cannot refer violations that are addressed in a CCA, the Board's ruling is clear that these same violations can be the subject of a citizen's enforcement action or a complaint filed by the IAGO or State's Attorney. As a result, a company that enters into a CCA with the Agency may later find itself the subject of a Board proceeding that seeks penalties or other relief for violations previously addressed in a CCA negotiated with the Agency. The new requirement for publication of CCAs on the Agency's website means that the IAGO and private citizens will have a roadmap for alleging violations of the Act and/or Board regulations against a company that has entered into a CCA.

Second, the Board's interpretation of the regulation governing the establishment of GMZs calls into question the validity of GMZs established at sites throughout the State of Illinois to address impacted groundwater. As explained in 35 ILL. ADM. CODE 620.250(a), a GMZ is a "three-dimen-

sional region containing groundwater being managed to mitigate impairment caused by the release of contaminants from a site." Prior to the completion of corrective action, the Class I and Class II groundwater quality standards are not applicable to groundwater within the GMZ, provided that corrective action proceeds in a "timely and appropriate manner." 35 ILL. ADM. CODE 620.450(a)(3).

In an issue of first impression, the Board ruled that "timely and appropriate" corrective action did not include groundwater monitoring conducted by MWG or ongoing natural attenuation of groundwater contamination at the Stations. Instead, the Board held that "corrective action" must be accomplished through remediation of contamination or removal of the contamination source. Even though the Agency had taken no action to modify or remove the GMZs at the Stations, the Board ruled that MWG could not claim the exemption from Class I groundwater quality standards afforded by the GMZ regulations after it certified completion under the CCAs. Based on this ruling, the Board found that MWG was in violation of Section 12(a) for the period of time prior to the establishment of the GMZs and after certification of the CCAs.

For those remediation sites in Illinois where a GMZ has been established, the Board's ruling strongly suggests that GMZs may be invalid unless active remediation or contamination removal is underway at those sites. Under the Board's ruling, the exemption from the groundwater quality standards only applies during a period of active remediation or contamination removal in the area covered by the GMZ. Thus, if a GMZ is no longer in effect after Midwest Generation, the Class I or Class II groundwater quality standards apply to groundwater within the area covered by the GMZ, and exceedances of the groundwater quality standards could be the subject of enforcement actions by the State and/or private citizens.

Finally, the Board found that MWG was liable under Section 21(a) of the Act for open dumping at the Powerton, Waukegan and Will County Stations even though MWG was not the entity that placed the coal ash on the land.

CONTINUED ON PAGE 22

The Complaint filed by the environmental groups alleged that MWG violated the Section 21(a) prohibition against open dumping, by its “knowledge of and acquiescence to” coal ash having been deposited in the coal ash ponds prior to MWG’s ownership of the power stations.

In its motion to dismiss the environmental groups’ complaint, MWG countered that the ash ponds were not “disposal sites” because they were specifically referenced in and covered by the NPDES permits issued by the Agency for each of the Stations. MWG further argued that it had not “allowed” open dumping and listed the extensive efforts it had undertaken to prevent open dumping, remove ash from the ponds on a periodic basis, and upgrade the existing ash ponds.

The Board rejected MWG’s arguments, holding that “a properly permitted facility may become a ‘disposal site’ subject to the open-dumping proscription.” According to the Board, because the ash ponds at the four Stations were not permitted “for the disposal of waste,” they did not fulfill the requirements of a sanitary landfill and were in violation of Section 21(a) of the Act. The Board also held that MWG had control over the areas containing coal ash since 1999 when it began operating the Stations, and violated Section 21(a) by failing to remove coal ash from the Station properties and also by allowing the release of coal ash contamination to groundwater.

The Board’s ruling indicates that any surface impoundment or similar containment structure that is part of a wastewater treatment system covered by a NPDES permit is, by definition, in violation of Section 21(a). Under the Board’s reasoning, Section 21(a) violations are also a means by which the State or a private citizen can impose strict liability on owners of impacted properties that are not covered by a landfill permit, and thereby circumvent the proportionate share liability standard set forth in Section 58.9 of the Act (“in no event may the Agency, the State of Illinois, or any person bring an action pursuant to this Act or the Groundwater Protection Act to require any person to conduct reme-

dial action or to seek recovery of costs for remedial action conducted by the State of Illinois or any person beyond the remediation of releases of regulated substances that may be attributable to being proximately caused by such person’s act or omission or beyond such person’s proportionate degree of responsibility ...”).

The *Midwest Generation* decision is an interim order of the Board and is still subject to reconsideration by the Board and, eventually, an appeal to the Illinois Appellate Court. The Board’s docket indicates that *Midwest Generation* will seek reconsideration or modification of the Board’s rulings. Further developments in the case will be closely watched by both environmental groups and the regulated community.

The Sterigenics Complaint

On October 30, 2018, the IAGO and DuPage County State’s Attorney filed a Complaint for Injunctive and Other Relief against Sterigenics U.S., LLC, in the Circuit Court of DuPage County, Illinois. Per the allegations of the complaint, Sterigenics operated sterilization equipment at its Willowbrook, Illinois facility within the limits established by an Agency-issued air permit. Notwithstanding Sterigenics’ compliance with its Agency-issued air permit and underlying regulations, the complaint filed by the State and County alleged that permitted ethylene oxide emissions from the Willowbrook facility were “contaminants” and “air pollution,” in violation of Section 9(a) of the Act. The Section 9(a) violations were brought at the request of the Agency. According to the complaint, Sterigenics’ “allowable emissions” violated Section 9(a) by threatening the health of people living and working near the facility, causing fear in the community, and interfering with the use and enjoyment of people’s homes and work places. (The complaint against Sterigenics also included a separate public nuisance count.) There were no allegations in the complaint that Sterigenics failed to comply with the terms and conditions of its air permit. On February 15, 2019, the Sterigenics’ Willowbrook facility was closed pursuant to a Seal Order issued by the

Agency, and Sterigenics challenged the Seal Order through lawsuits filed in both federal and state court. On July 17, 2019, the IAGO and DuPage County State’s Attorney filed a motion seeking approval of a proposed Consent Order, and this motion was granted on September 6, 2019.

The alleged Section 9(a) violations in the Sterigenics Complaint were not predicated on air permit violations or violations of applicable regulatory standards or emission limits. Instead, the Agency and IAGO based the alleged Section 9(a) violations on nuisance-related concerns. The use of Section 9(a) by the Agency and IAGO to assert what are essentially nuisance claims against a facility operating in compliance with an Agency-issued permit is a disquieting precedent for the regulated community in Illinois.

The Agency’s use of the drastic measure of a Seal Order in the Sterigenics matter is also alarming. Although rarely used, Section 34 of the Act allows the Agency, if it “finds that an imminent and substantial endangerment to the public health or welfare or the environment exists” at any facility, to “seal any equipment, vehicle, vessel, aircraft, or other facility contributing to the imminent and substantial endangerment.” The owner or operator of the site is then entitled to a hearing “to determine whether the seal should be removed,” but there is no time frame for the hearing specified in the statute. In other words, the Agency can decide on its own that a facility presents an imminent danger and can shut it down indefinitely.

Granted, the IAGO has similar authority under Section 43(a) of the Act, which allows the IAGO to file a civil action in circuit court to seek immediate injunctive relief “to halt any discharge or other activity” where there is a “substantial danger to the environment or to the public health.” The IAGO can obtain this injunction *ex parte* – meaning without prior notice to the facility and without an opportunity for the facility to oppose the injunction prior to its entry – but at least the IAGO must present evidence to a judge and convince him or her that drastic relief is needed. Fur-



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ther, the court is required to “schedule a hearing on the matter not later than three working days from the date of the injunction,” so the facility has an almost immediate opportunity to oppose the shutdown or work out an agreement with the IAGO. By contrast, the Seal Order by the Agency does not require any court or Board approval prior to its issuance and, as seen with Sterigenics, can remain in place for a lengthy period. Accordingly, the Agency’s use of the extreme measure of issuing a Seal Order, particularly where the facility is operating in complete compliance with its permits, should be quite concerning to the regulated community.

What Are the Takeaways from *Midwest Generation* and *Sterigenics*?

The most significant takeaway from *Midwest Generation* and *Sterigenics* is that a company’s compliance with Agency-issued air and water permits or Agency-approved GMZs or CCAs is not enough, because Sections 9(a), 12(a) and 21(a) may be employed by the State and environmental groups to impose liability on companies anyway. Likewise, a central premise to the *Sterigenics* en-

forcement action is that a company’s activities can be in compliance with an Agency-issued permit and nonetheless constitute a common law nuisance, capable of adjudication in state court. This should concern any company relying on compliance with air or water permits or a GMZ to avoid liability. *Midwest Generation* also signifies that the legal protections afforded by CCAs are limited in scope and will not preclude a future enforcement action by the IAGO or an environmental group for the same violations.

Companies with GMZs should take special note of the Board’s rulings in *Midwest Generation* which appear to significantly limit the effective period of GMZs. Indeed, any company with a GMZ on its property should assess whether it would be considered by the Agency, Board, or environmental groups to be engaged in active remediation or source removal. If not, in light of the Board’s position in *Midwest Generation*, there is a risk of an enforcement action based on alleged violations of the groundwater quality standards. As noted above, the *Midwest Generation* decision is not yet final, but the interpretations of the Act set forth by the Board

remain troublesome and, if not modified or reversed on appeal, will be applied in other cases, and will not be limited to cases involving coal ash ponds.

From a broader perspective, the *Midwest Generation* and *Sterigenics* matters highlight the need to stay educated regarding regulatory developments and enforcement trends in Illinois. Whereas entering into a CCA or obtaining a permit, and complying with the terms of the CCA or permit, once precluded the possibility that the State would pursue enforcement, this is seemingly no longer the case. In this new environment, maintaining open lines of communication with regulatory agencies can be an effective way to identify possible issues before they become the subject of an enforcement action, and can create an opportunity to work collaboratively with the Agency and minimize a regulated entity’s exposure to liability. Similarly, monitoring local concerns and building relationships within county and municipal governments and local citizens’ and environmental groups are critical steps to building support for a company’s operations within its community, and can be invaluable in limiting the likelihood of nuisance-style actions. ♦

THE BATTLE OF THE FORMS: TERMS OF YOUR BUSINESS DEAL

ICE MILLER LLP

It is not uncommon in the sale of goods for there to be the following documents exchanged between the buyer and the seller: (1) a request for quote from a buyer for the purchase of goods, (2) a quote from the seller for the sale of goods, (3) a purchase order from the buyer, and (4) an invoice for the goods. Each one of these documents may contain its own version of business terms and conditions (T&Cs) detailing shipping terms, payment terms, warranties, etc.

This swirling mess of competing T&Cs is commonly referred to as the "Battle of the Forms." Buyers and sellers often exchange contradictory T&Cs without addressing the effect of the contradiction and without knowing what the terms of the business deal actually are.

In Illinois, the Uniform Commercial Code (UCC) Article 2, applies to the sale of goods and addresses the question of whether a contract has been formed between a buyer and a seller and provides rules related to the acceptance of terms sent by a party.

As a result of the UCC, a number of outcomes from the Battle of the Forms can occur.

First, the seller's form could be treated as an "acceptance," and therefore, a contract exists on the writings exchanged. Second, no contract exists because the seller expressly conditions its acceptance on buyer's acceptance of seller's T&Cs. Third, ambiguity as to whether a contract on the writings exists when the buyer expressly conditions its offer on the seller's acceptance, and the seller accepts with different terms and conditions.

If there is no contract on the writings, a couple of things can happen: (1) the buyer and seller can walk away from the deal; and (2) the seller can ship goods and the buyer can accept shipment. If the latter occurs, a contract now exists "per conduct," and the terms that do not clash form the contract between the parties. The remaining necessary contract terms that do not exist are supplied by the pro-buyer UCC "gap fillers."

These "gap fillers" include, but are not limited to, implied warranties of merchantability and fitness (which are often much longer and much broader than the seller wants), no limit of liability for the seller, and potential consequential damages.

How can the seller avoid the pro-buyer UCC "gap filler" provisions? Assuming the seller has leverage in the deal, the seller can either negotiate a revision of the boilerplate terms provided by a buyer which removes clauses providing for these T&Cs and results in the ability to revise the buyer T&Cs to terms more acceptable to the seller, or the seller can seek to negotiate a Supply Agreement or other form of master contract between the parties that lays out all of the applicable and acceptable T&Cs between the parties for contractual dealings and which supersedes any competing T&Cs in the parties RFQs, quotes, purchase orders, invoices, etc.

A Supply Agreement or Master Agreement is usually preferable to attempting to negotiate a revision to boilerplate terms. With proper drafting on the front end of a sales transaction, the parties can go into a business deal with a full understanding of the legal and business risks involved in such a transaction and obtain a clear understanding of their rights and responsibilities. Waiting until you have an issue to find out the actual T&Cs of your business deal can have devastating financial effects. ♦

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Panel: What to Do if You Get a Violation

UPDATE: THE NATURAL GAS MARKET AND YOUR BUSINESS

CONSTELLATION



Natural gas and power prices in the US have experienced a great deal of downward pressure throughout 2019 as a result of the changing market dynamics that have been taking place over the last few years. Greater supply of natural gas and the necessary build-out of pipeline infrastructure to bring that gas to market has continued to apply downward pressure on forward prices, particularly in zones that tend to be constrained during peak seasons. The shift away from more expensive coal-fired generation, and even some nuclear, toward natural gas and renewable (wind and solar) generation along with expansion of transmission lines have enabled a greater supply of efficient and less costly MW's to be distributed to high demand regions that had traditionally experienced significant spikes in prices

due to congestion during high usage times. This shift or renaissance in the energy industry was all predicated on the Shale Revolution that really started back in 2008 and has been going strong for over a decade. The process of shale fracturing or "fracking" has revolutionized the way in which the United States energy sector takes natural gas and oil products out of the ground today and will continue to have a significant impact for years to come.

The confidence that the market has in the producing sector to deliver an adequate supply of natural gas to meet any growth in demand in the foreseeable future, has established a perception of low risk and low-price volatility that has natural gas and power prices at multi-year lows. The NYMEX prompt-month gas contract (next month forward) is at the lowest price seen in

over three years. The NYMEX calendar strips through 2024 range from \$2.37/MMBtu for the 12-month strip to \$2.65/MMBtu for the calendar year 2024 and are below the five-year average by close to 50 cents. Forward power prices in COMED from 2020-2024 are currently only 5 percent above the all-time lows that were set only less than two months ago back on July 5th. At that time, those forward strips tumbled between \$2-\$3/MWh before recovering a bit the following weeks. Despite cooling demand this summer coming in warmer than the 10-year and 30-year normal, Day Ahead index prices in COMED have settled \$4.80/MWh or 17 percent lower this summer than last summer as a result of more economical MW's being dispatched to meet peak demand. From a risk management perspective, the current market funda-

mentals seem to be presenting a very opportunistic case for risk managers to take additional portfolio risk off the table through 2024, in a historically under-valued market.

The current short-term fundamentals have set-up favorably since the end of winter and has enabled the market to apply the kind of downward price pressure that we have experienced since then. The market typically injects natural gas into its storage facilities between April and October of each year for use during the winter (November-March) to meet peak demand. The pace at which the gas is put in or taken-out can impact the price of natural gas significantly. The natural gas inventory level in storage went from a 33 percent deficit to the 5-year average and a 23 percent deficit year-over-year, at the end of winter to a mere 4 percent deficit to the 5-year average and a 15 percent surplus year-over-year currently.

The market had injected more gas in the six weeks from the end of March to mid-May than it ever had in the past. Historically high gas production enabled the market to make-up huge ground in the refilling of its storage facilities in the spring. That infusion of supply back into storage at such a rapid pace had single-handedly tempered any upside price volatility since the winter and has continued to keep prices trending downward to lows not seen since Q2 of 2016. The end of season (Oct'19) storage estimates are ranging between 3.7 and 3.8 Tcf, a significant boost to last year's ten-year low inventory of 3.1 Tcf and right in-line with the 5-year average. This will be perceived much more favorably heading into the winter this year as compared to the considerable deficits the market incurred ahead of last winter where NYMEX prompt-month gas prices went as high as \$5/MMBtu due to some early cold in November.

Currently, record natural gas production (currently at 91.5 Bcf per day) coupled with growing storage inventories and waning summer heat in late August are keeping a lid on natural gas prices on the threshold of the fourth quarter. Last week concluded the best 4-week period of growth in gas production ex-

perienced since May '16. Natural gas production has increased by approximately 30 percent over that last few years as the growth in pipeline exports and Liquid Natural Gas (LNG) exports have increased from virtually nothing back in 2016 to over 10 Bcf/d currently. There is a clear line of sight to 10 Bcf/d for LNG facilities by 2021. The build-out of six LNG terminals of the East and Gulf Coasts along with hundreds of miles of pipeline has helped the US take advantage of one of its cheapest resources and grow demand abroad, particularly in the Far East countries like China, South Korea and Japan.

A real risk to natural gas production and supply in the future could be the amount of investment dollars flowing into the sector due to dubious returns over the past decade. It is no secret that Wall Street hasn't been thrilled with the returns that they have received in the energy producing sector over that time. The total value of equity and debt offerings to shale companies was at the lowest level in a decade, back in 2018. Drillers capex has been slashed this year and the frequency of cash infusions are drying-up and are back down to levels seen back in 2007 at the onset of the Shale Revolution. According to Rystad Energy Consultants, of the 40 top US shale companies that they looked at, only 4 had positive cash flows. Gas-directed rig counts have suffered as a result, steadily declining over the past year. Though has production continues to rise, investment sentiment could evolve as an impediment to future growth until prices start rising to more lucrative levels. This situation poses a potential risk and could provide support to power and gas prices in the near term.

COMED forward power prices have followed the trend set by NYMEX gas through 2019, which hit a high in the middle of this winter and then plummeted over 65 cents or 23 percent to where it currently sits around \$2.23/MMBtu. COMED forwards hit a year-to-date high back in the springtime of 2019 before summer and then declined an average of \$3.50/MWh or 14 percent until they hit a bottom on July 5th of this year. They have since recovered about 5 percent or an average of \$2.00/

MWh to where they currently sit. These forward calendar strips are now 5 percent above the all-time lows and are trading sideways (or consolidating) for the time-being ahead of the fall shoulder months. As gas production and the natural gas storage inventory picture continues to get better approaching October, there is a good chance that there will be some more downward pressure applied to these prices over the next month of so.

The caveat to that, of course, is the winter weather outlook. If the weak to neutral weather pattern continues through the fall, it could open the door to some cooler risks as we head into winter because the El Nino weather pattern will have less of an influence. A lack of a signal from El Nino means that other factors will come into play, like the +AMO, +QBO, +PDO and any blocking influences that might occur. These introduce more uncertainty (i.e. potential volatility) because the confidence level of these other indices is stronger in the shorter-term. That unknowing and lack of confidence in a clear winter weather pattern, could create more perceived risk and more of a risk premium applied to the forwards in the near-term.

Natural gas and power prices could always go down, but the current bearish bias in the markets and the fact that COMED forwards through 2024 are only 5 percent above established lows that were set in an over-sold situation this past July, makes these current prices in the market even more intriguing. From 2020 to 2024, the current spread between the two calendar strips is \$1.77/MWh, while the spread between 2022-2024 is a mere \$0.31/MWh. If budget certainty and low volatility is the objective of a buyer, then it doesn't get much better looking than what the current market is presenting to us. The forward curve is slightly backwardated in the front part of the curve and flat on the back. This provides a good value opportunity for risk managers and buyers looking to take a portion of their risk off the table at historically low prices over the next five years. ♦

MEMBER NEWS

Tyson Foods Awards \$50K Grant to Pantry



People's Resource Center announced it has received a \$50,000 grant award from Tyson Foods for its food pantry services.

The money will allow PRC to continue to provide for 28 percent of families in DuPage County who use its food pantries.

"Tyson Foods support ensures that neighbors facing difficult times have access to the healthy food they need to live productive and active lives," said Jenifer Fabian, executive director of People's Resource Center. "Nearly 80 percent of our families first come to PRC for food pantry services. By supporting the program, Tyson Foods creates a critical bridge to the wide array of programs and services PRC offers for DuPage County residents, including educational and job search programming that can help lift families out of poverty."

PRC operates two of the largest-volume food pantries in the Chicago region, serving 21,000 people each year.

National Black Chamber of Commerce Recognizes Illinois American Water with Inclusion and Diversity Award



**ILLINOIS
AMERICAN WATER**

Illinois American Water President Bruce Hauk was awarded the 2019 Inclusion and Diversity Award by the National Black Chamber of Commerce (NBCC) during its annual conference held last week in Atlanta, Georgia. The award is presented annually to an individual who champions inclusion and diversity within his or her company.

NBCC President Harry C. Alford said, "Mr. Hauk's focus on inclusion and diversity at American Water has played an instrumental role in increasing the company's partnerships with minority businesses, diverse suppliers and diverse employee candidates. The National Black Chamber of Commerce was proud to present Bruce Hauk with the 2019 Inclusion and Diversity Award."

American Water sees diversity as a vital element in creating an environment where differences are celebrated and contribute to success. This is why the company created a national Inclusion & Diversity Council. The Council is made up of executive sponsors, an advisory council and champions from across the workforce. Hauk is an Executive Sponsor of the Council.

Aisin Manufacturing Recognized for Workplace Safety



For a Better Tomorrow

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For the 12th consecutive year, the Marion Aisin plants were recognized at the Aisin North American Executive meeting for their safety performance.

Aisin Mfg. Illinois (AMI) was presented the President's Award for Safety for achieving 0 recordables in fiscal year 2018. AMI was one of only two plants to achieve this result. In 2019, AMI has also surpassed 4 million hours worked without a recordable accident. Aisin Electronics Illinois (AEIL) received the Platinum Award for achieving a recordable injury rate of less than 1.0.

Aisin Light Metals, Aisin Mfg. Illinois, LLC, and Aisin Electronics Illinois LLC are located in the REDCO Industrial Park area in Marion, and manufacture sunroofs, door components, bumper reinforcement, and ECU's for automotive manufacturers including Toyota, GM, Honda, and Subaru.

Blue Cross and Blue Shield of Illinois Bringing 550 jobs to Morgan Park



**BlueCross BlueShield
of Illinois**

Blue Cross and Blue Shield of Illinois said on August 5 that it will open a community health center and office space in a former Target store in Morgan Park, where it plans to eventually bring 550 jobs.

The health insurer said it will begin construction this summer at 11840 S. Marshfield Ave. and should have the space ready by mid-2020. It is leasing 130,000 square feet that Target vacated in February amid substantial criticism that it was investing in upscale North Side locations while abandoning stores in Morgan Park and Chatham on the South Side.

Blue Cross is branching out by bringing health care resources closer to neighborhoods with critical needs. In February, it opened its first such venture, the Blue Door Neighborhood Center in Pullman, where it offers wellness classes and referrals for services such as food and transportation.

"We are member-owned, so our focus is on the needs of our members and the communities in which they live — not shareholders," said Maurice Smith, president of Health Care Service Corp., which owns Blue Cross Blue Shield Illinois.

Mueller Water Products Inc. to Build State-of-the-Art Foundry in Decatur

Mueller Water Products

Mueller Water Products Inc. plans to build a new, state-of-the-art foundry in Decatur.

Officials say the foundry, planned for 2700 N. Jasper Street, will be one of the largest finished goods brass foundries in the world. The new facility's goal is

to increase production capacity to meet current and future demands of Mueller customers and the industry.

"Mueller is committed to continuing to build and strengthen our American manufacturing footprint," said Scott Hall, President and Chief Executive Officer of Mueller. "Mueller has been in Decatur since the very beginning, and we are proud of the products that are built by our employees there. The new Decatur foundry is part of a multi-year project that will modernize our facility and provide operational efficiencies that will directly benefit our customers, employees and the local community. We look forward to continued work with the EDC and the city of Decatur."

Smithfield Foods Donates 50,000 Pounds of Protein to Food Bank

Smithfield

Good food. Responsibly®

A global food company that is a pork processor and hog producer has donated more than 50,000 pounds of protein to Central Illinois Food Bank.

Smithfield Foods, which also produces packaged meats, donated the protein as part of its 2019 Helping Hungry Homes donation tour.

The tour is Smithfield's signature hunger-relief initiative founded in 2008 to focus on alleviating hunger and helping Americans become more food secure.

Helping Hungry Homes provides nutritious, high-quality protein to food banks, school nutrition programs, disaster relief efforts and community outreach programs, according to helpinghungryhomes.com.

The donation to Central Illinois Foodbank is equivalent to more than 200,000 servings of protein and will help families fight hunger across the state.

"Protein is hard to come by, so we're always thrilled when someone like Smithfield steps in and donates a full truck of it because it's not easy to get,"

said Pam Molitoris, the food bank's executive director.

How Koch Facilities are Tackling Tons of Electronic Waste



As the world's fastest-growing waste stream, electronic waste is notoriously challenging to recycle—but worth it. Recycling 1 million laptops would save the equivalent of the energy used by more than 3,500 homes in the United States every year.

Koch facilities have implemented e-waste recycling into their industrial operations through a single waste management vendor, US Ecology, as part of a project through Koch Waste Connected Services. In doing so, explains senior environmental engineer Mark William-

son, sites can better align incentives and drive down the real and opportunity costs associated with waste disposal.

"We've traditionally had many service issues with waste vendors, particularly with our smaller facilities. This is an effort to buy off-site waste disposal similar to how we buy computers or toilet paper," Williamson said.

Flint Hills Resources and US Ecology have built a preferred partnership, and both are transforming to create value for each other. For example, Flint Hills Resources' environmental engineer, Michael Wallman, realized that many employees at his Peru, Illinois, facility wanted to recycle their old electronics but could not find any place to take them. Working with US Ecology, Wallman organized a month-long drive for the facility's 100 employees to bring in old devices.

CONTINUED ON PAGE 30



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**Otto Engineering
Apprenticeship in Full Swing
in Carpentersville**



Otto Engineering President Tom Roeser has a select group of workers with the precision and skills to manufacture small stamped parts, accurate to about one-tenth the diameter of a human hair.

All six of those longtime tool and die makers are expected to retire from the Carpentersville company within the next five years. And in the search for new hires, Roeser said he found a significant gap in "essential workers" who have the skill sets necessary to fill those roles.

"So," he said, "can we grow them?"

Establishing an apprentice program was a key component of Otto's new multimillion-dollar technology center, which became fully operational this month at 17 Cleveland Ave.

The 100,000-square-foot facility contains training rooms, a fitness center and some of the most sophisticated technology in the industry, Roeser said. With exposed brick and natural light, the building was designed to match the look and feel of Otto's main campus at 2 E. Main St.

It also aims to fight the stereotypical image of a factory as a dark and dirty work environment, he said.

Construction began about a year ago and wrapped up this summer, when Otto's tooling, machining and stamping departments were relocated. The new site also houses the operations of Dies Plus, a tool and die business purchased by Otto a couple years ago.

"We have made a significant investment in the future support of manufacturing in America," Roeser said. "The most important investment that we have made, however, is our investment in human capital."

**Rivian, Aiming to be Tesla
of Trucks, Gets \$350 Million
Investment as it Gears Up to
Open Illinois Factory**



Rivian, which is opening a factory in downstate Normal, is getting a \$350 million investment from Cox Automotive, the latest equity partner to take a stake in the electric truck startup.

In addition to the investment, announced September 10, the companies will explore opportunities to team up in areas such as logistics and digital retailing as Rivian gets closer to launching its electric pickup truck and SUV late next year.

"As part of this, we are excited to work with Cox Automotive in delivering a consistent customer experience across our various touchpoints," RJ Scaringe, Rivian founder and CEO, said in a news release. "Cox Automotive's global footprint, service and logistics capabilities, and retail technology platform make them a great partner for us."

Rivian will remain an independent company, while Cox Automotive, which owns such brands as Autotrader, Kelley Blue Book and Manheim auto auctions, will become a minority partner and add a member to the Rivian board.

**How Lockheed Martin is Using
Augmented Reality in
Aerospace Manufacturing**



Lockheed Martin is famous for engineering innovation, dating back to the legendary Skunkworks. Today, the defense contractor is making use of inno-

vative augmented reality technology in their manufacturing process and across entire product lifecycles. Lockheed Martin's AR project began in the Space Systems division, for example in assembly and quality processes for NASA's Orion Spacecraft, but has been so successful that the company has deployed the Microsoft HoloLens hardware and Scope AR software in other divisions, namely Aeronautics, Missiles and Fire Control, and Rotary and Mission Systems. The company may even send HoloLens to space on crewed missions to support training and maintenance tasks.

Deere Names New CEO



Deere & Co. is promoting John May to lead the tractor-making giant through a tough agricultural environment, with outgoing CEO Samuel Allen, 66, to stay on as chairman.

The Moline-based company is splitting up the CEO and chairman roles as it grapples with American farmers balking at equipment purchases amid a yearlong trade war with China and weather that has disrupted planting.

May, 50, seems to have been groomed for the position, serving as president and chief operating officer since April. He also headed China operations earlier in his career. May will join the board immediately and take over as CEO on Nov. 4.

The promotion "was somewhat expected, it was just a matter of time, but we believe May was the most logical successor to Allen," said Chris Ciolino, an analyst for Bloomberg Intelligence.

Deere has historically promoted from within, and former chief executive officers have been internal operating managers who assume chief operating officer roles ahead of time. ♦

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