THE ILLINOIS MANUFACTURER

FOURTH QUARTER 2021

SEISMIC SHIFT IN ILLINOIS' ENERGY MARKETPLACE

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ILLINOIS MANUFACTURERS' ASSOCIATION

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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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SEISMIC SHIFT IN ILLINOIS' ENERGY MARKETPLACE

MARK DENZLER, PRESIDENT & CEO

In a picturesque setting at Shedd Aquarium with downtown Chicago in the background, Governor JB Pritzker recently signed groundbreaking legislation into law that will significantly alter Illinois' competitive energy landscape for decades to come. His signature on the nearly 1,000 page bill that will cost $700 million annually occurred less than one week after the massive legislation was unveiled and passed by the General Assembly following nearly two years of stakeholder discussions.

This seismic shift in energy policy will have a disproportionate impact on our state's manufacturing sector. Nationally, the industrial sector uses one-third of all energy consumed in the United States with energy costs often being one of the most expensive line items in a budget. Illinois has long enjoyed a competitive energy advantage since 1997 when the lawmakers deregulated the energy market. A 2013 study from the IMA showed that Illinois families and businesses had saved more than $37 billion since competition was introduced in Illinois making it one of our state's best economic development incentives.

In today's hyperpartisan world driven by social media, manufacturers are often called "corporate polluters" by people who have images of belching smokestacks. Nothing could be further from the truth. Manufacturers are proudly leading the way forward to greater sustainability and a cleaner environment and have been doing so for decades. According to the U.S. Bureau of Economic Analysis (BEA) within the U.S. Energy Information Agency, America manufacturers have reduced carbon dioxide emissions by 23 percent – the largest decrease of any sector since 1990 - while increasing manufacturing output by 112 percent. In the last decade alone, manufacturers have reduced overall emissions by 21 percent while growing economic activity by 18 percent

Since 2007, policymakers began chipping away at this advantage by reregulating energy markets in Illinois starting with passage of the Renewable Portfolio Standard that required a set percentage of renewable energy to be purchased regardless of price. In 2017, former Governor Bruce Rauner and the legislature passed the Future Energy Jobs Act (FEJA) that increased the renewable energy goal while also subsidizing two downstate nuclear facilities that deliver reliable baseload generation with zero emissions.

This ambitious new law sets Illinois on a path to 100 percent carbon-free energy by the year 2020. It will force coal and gas-fired electric generating plants to close by 2045 including co-generation and peaker plants. Illinois set a goal of 40 percent renewable energy by 2030 and 50 percent by 2040. Ratepayer subsidies totaling nearly $700 million will keep three nuclear facilities operating and a new performance-based rate formula will encourage utilities to invest in their infrastructure to ensure grid reliability. Energy efficiency programs are broadened to include large industrial customers and nearly $200 million from ratepayers will fund a host of social programs like job training or the just transition of communities that may see a facility closure. Illinois set a goal of electrifying the grid and placing 1 million EV's on the road by the end of the decade.

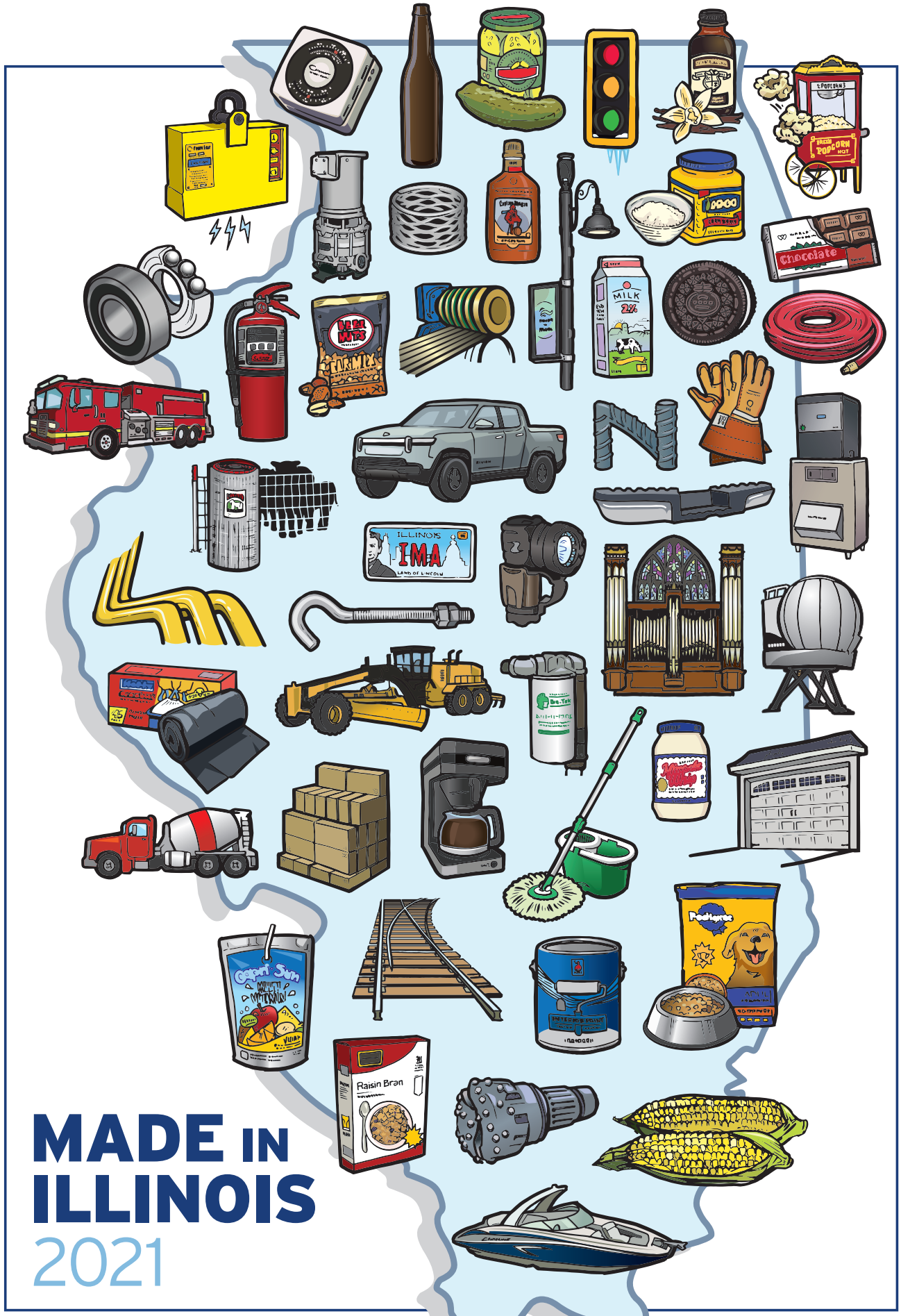
Laudable goals were debated and manufacturers are committed to a cleaner and greener future. But serious questions remain about cost and reliability that were not answered or properly addressed during debate that create consternation among manufacturers and business owners who rely on stable, efficient, and low-cost energy.

If base load generation plants close, and there is not enough renewable energy to backfill the need, how will Illinois meet the demand? We have seen rolling brownouts in California and several European nations just authorized new coal and gas plants because renewable energy did not meet the demand. The Illinois Commerce Commission, a utility regulator under the Governor's auspices, concurred noting that they don't know "how Illinois' electricity needs will be fully met in the event that fossil fuel plants are eliminated." It's a legitimate question because Illinois has spent billions of dollars on renewable energy since the first RPS in 2007 but they only provide 7 percent of the energy load.

Why should the innovative manufacturing sector cross subsidize the residential and commercial sector? The final law requires the industrial sector to pass significantly higher rates for energy in an effort to control the cost increases on families and retail stores.

At the end of the day, manufacturers will adapt and move forward albeit under a more costly structure that could create reliability issues. Our sector will continue innovating – creating the technology and products that move us closer to sustainability goals – while we continue advocating for a balanced approach that will help alleviate the cost shift and protect important manufacturing jobs. ◆

Mark Denzler is President and Chief Executive Officer of the Illinois Manufacturers' Association. He may be reached at mdenzler@ima-net.org or (217) 718-3726.



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UNDERSTANDING ENVIRONMENTAL JUSTICE

DONOVAN GRIFFITH, DIRECTOR OF GOVERNMENT AFFAIRS

Environmental justice, or "EJ", is one of the most important environmental-related issues manufacturers are facing today, as many states across the country, including Illinois, look to introduce further environmental regulations on businesses and industry in the name of environmental protection and equity for all.

In its simplest form, environmental justice is the principle that all people should be protected from environmental pollution and have the right to a clean and healthy environment. This principle requires that no segment of the population, regardless of race, national origin, age, or income, should bear disproportionately high or adverse effects of environmental pollution. In order to help this concept come to fruition, "environmental justice areas" are often established throughout the state and additional regulations are placed on businesses in those areas in an effort to offer additional environmental protections for those citizens. Often, environmental justice areas are determined by looking at census data to pinpoint areas that represent a significant number of minority and/or low income populations.

This underlying premise of environmental equity is widely supported by manufactures and the IMA. In fact, environmental justice is an issue that should be bringing manufacturers and the communities in which they reside closer together. Often times manufacturers have deep-rooted connections to the community in which they are established and are the lifeblood for those who call those communities home.

Unfortunately, one element missing from many discussions in Illinois and other states when contemplating new EJ regulations, is the inclusion of businesses and industry. As we have already seen in Illinois, environmental groups, regulators and legislators can and have pushed proposals that have not been discussed with the regulated community which has an equal part in the success of the pending law or policy. Instead, some are taking advantage of EJ regulations to push overburdensome permitting laws to the point of completely stopping various environmental permits from advancing at all. Some proposals include community agreements which would require community sign off on any state permits for a facility in an EJ area, or require extremely lengthy public comment periods that would allow any person for almost any reason to contest a permit and slow the process. The list doesn't stop there.

In the Spring of this year, the Illinois EPA issued a permit for a business in the Chicagoland area much to the disappointment of environmental groups. Due to the uproar caused by these outside groups, the U.S. EPA stepped in and called into question the Illinois EPA's permitting process for permits in EJ areas. The involvement of the U.S. EPA caused the Illinois EPA to delay issuing certain permits, a delay that continues to exist today for both new and existing businesses looking to get a permit or modify an existing permit that may have an impact on emissions in the community. This uncertainty not only hurts businesses, but it hurts the very communities EJ regulations are supposed to help.

The IMA has been very active on the issue of environmental justice. In addition to meeting with both the Illinois EPA and U.S. EPA to ensure permits are being issued in a timely fashion, the IMA also testified in hearings in front of the Illinois House and Senate after numerous EJ bills were filed but did not advance. In the testimony, the IMA called for a more open process that included manufacturers. The IMA has also met with numerous legislators and joined other business groups in asking legislators to ensure that any new legislation that is introduced on EJ include steadfast protections for those in environmental justice areas while also protecting the businesses that provide essential jobs to those living in the region.

At the state level, the IMA has asked that when continuing the conversation and introducing legislation, any environmental justice program should: (1) clearly define environmental justice areas, (2) clearly define what permits and other activities are subject to the program, (3) provide outreach and education to potentially impacted communities, (4) provide opportunity for meaningful participation, (5) utilize well defined objective criteria to reach predictable outcomes, (6) be developed with input from the regulated community.

At the same time, to protect businesses, the IMA has also stated that an environmental justice program should not: (1) provide additional cause for permit appeals, (2) supersede local governments' zoning decisions, (3) hinder economic growth and/or opportunities, (4) significantly alter existing permitting timeframes, (5) impact existing permit protections, (6) conflict with existing federal requirements.

As of today, environmental justice is a policy in Illinois, not a law, but that will change, and it's imperative that manufacturers be mindful of potential changes that could be coming for facilities in EJ areas. While the IMA is fighting to protect both manufacturers and the communities they call home, others will be pushing to burdensome regulations in an attempt to slow down or shut down facilities. Environmental justice must be embraced, but embraced with a logical approach none-the-less. ◆

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ENERGY BUDGETING IN A POST-COVID WORLD: FY2022 AND BEYOND

CONSTELLATION

If you have driven across Central Illinois lately, you have likely seen first-hand the presence of one of Illinois' top growing businesses – the wind energy industry. Illinois is now the 3rd fastest growing state in the country for new wind development. This growth presents two opportunities of which Illinois manufacturers should be aware. First, the opportunity for a new customer. And second, the opportunity to enhance your sustainability strategy through power purchase agreements.

In 2020, the COVID-19 pandemic brought unprecedented volatility and uncertainty to energy markets, which our experts detailed early last year and provided guidance for our customers. Electricity usage fell by up to 20 percent during the stay-at-home orders and crude oil prices fell to a negative value for the first time. But those low prices were only temporary. And today, energy managers are beginning to see the permanent consequences of the pandemic on energy prices.

Now is the time for energy managers to reevaluate their FY2022 energy budgeting approach. They should ensure that they are taking every opportunity to reduce their risk over time.

"The pandemic has been a unique challenge for all energy budgets," said Mark Huston, President of Constellation's National Retail Energy Business. "But if seized upon as an opportunity to make needed changes, organizations can position themselves to be more resilient to future market volatility."

The Long-Term Effects of COVID-19 on Energy Purchasing

The 2020 energy price downturn will have long-lasting effects as the total U.S. energy consumption is not projected to return to 2019 levels until 2029. Oil producers are taking steps to reduce their financial risk and avoid the volatility they experienced last year. They are moving away from continuous production to prevent overproduction—which will drive prices upward—and adjusting their contract pricing mechanisms to shift more risk to suppliers through demand-based charges.

The power mix temporarily shifted more toward renewables during the lockdowns, and U.S. renewable energy infrastructure investments are expected to continue, driven by sustainability initiatives and favorable government policies that incentivize the adoption of renewables and carbon reduction.

Meanwhile, many organizations are facing tighter budgets. About 80 percent of manufacturers—who use one-third of all energy in the U.S.—believe the pandemic will have a lasting impact on their businesses.

Likewise, state and local governments are facing projected tax revenue decreases of $167 billion in 2021 and $145 billion in 2022, with many relying on federal grants to offset those losses and lessen their financial strain.

Looking ahead to 2022, energy managers in manufacturing, government and other sectors have an opportunity to reduce costs and risks through innovative, long-term energy planning. Taking a more flexible approach to energy purchasing allows companies to think further into the future, buy energy at regular intervals and take advantage of market opportunities.

"Flexible strategies are designed to offer risk protection," said Huston. "Using a flexible approach allows organizations to take advantage of the benefits of price declines like we saw in 2020 and mitigate any increases over time."

"With these drivers in mind, Constellation is working with customers to create an energy strategy that includes price risk strategies and sustainability options."

Protecting Your Business from Future Volatility

While a flexible approach to energy purchasing can help protect against market volatility, there is no one-size-fits-all approach. Every company is unique and will benefit from a customized strategy suited to its needs.

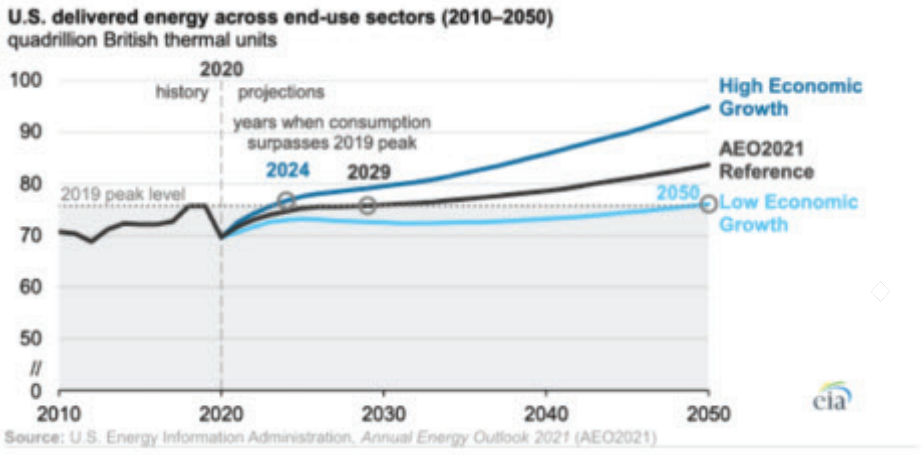
Some organizations may benefit from looking at the most significant driver of their total gas price—the commodity component—to achieve price stability over time. They can purchase energy using either a straight-cost averaging or modified-cost averaging approach, in which they buy less when prices are high and more when prices are low.

Other energy managers may prefer proactively monitoring the forward power markets to make more informed purchase decisions.

Still, others might be ready to capitalize on the continued momentum towards renewable energy options that support their short- and long-term environmental goals or commitments.

As we come out of a year where the energy price showed unprecedented volatility, all organizations can become more resilient by making smarter energy purchasing decisions.

"With these drivers in mind, Constellation is working with customers to create an energy strategy that includes price risk strategies and sustainability options," said Huston. "We've got the knowledge and the innovative solutions to help energy planners solve their most pressing energy purchasing problems." ◆



NAVIGATING EMPLOYER VACCINE MANDATES, INCENTIVES, AND PENALTIES

SMITHAMUNDSEN LLC

By now just about every business has asked itself the "to mandate or not to mandate" question regarding the COVID-19 vaccine for its employees. While initially mandates were slow to take hold in the business community, they have accelerated in recent weeks. This question is particularly relevant to the manufacturing industry given the severe worker shortage in the U. S., along with vaccine hesitancy among many American workers. In this climate, the National Association of Manufacturers in July required all its employees to be vaccinated by September 20, 2021, and it just reported that 100 percent of its roughly 150 employees are vaccinated.

Yet questions remain. Will a vaccine mandate scare away potential hires? Will it drive some current employees to leave? Will it negatively affect morale? What about the safety concerns of not having a vaccine mandate in place?

With the disclaimer that mandates and other vaccination programs are constantly evolving as more companies began to embrace them, below are some guidelines for businesses seeking to implement a vaccine mandate, or something short of a full mandate, such as an incentive program or a "soft mandate."

Mandates

The first thing employers should know is that, generally, yes you can mandate vaccines. Especially now with the Food and Drug Administration (FDA) giving full approval for the Pfizer-BioNTech COVID-19 vaccine, mandates are expected to increase and legal challenges to vaccine mandates should begin to abate. But just because you can, it does not always mean you should. Which is seen in the fact that only 8 percent of manufacturers are currently requiring vaccines for its employees. Yet, at the same time an AP Poll showed that half of all American workers are in favor of vaccine mandates in their workplaces. It does seem that the list of employers mandating vaccines grows every day. If you are considering a vaccine mandate, some points to keep in mind:

- Employers must first make a determination that a mandatory vaccination program is job related and consistent with business necessity, under the standards of the Americans with Disabilities Act (ADA). This is not a high hurdle at this time given the transmission rates and the surge of the delta variant, but it still must be considered;
- Exceptions must be made pursuant to the civil rights laws, specifically for those with disabilities or sincerely held religious

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beliefs:

–Exceptions to a vaccine mandate must be made if an employee has a disability that prevents them from receiving the vaccine, which would implicate the ADA;

–If the employee has a sincerely held religious belief that prevents them from receiving the vaccine, under Title VII of the Civil Rights Act of 1964 (Title VII), or under Illinois' Health Care Right of Conscience Act (745 ILCS 70/), then they too can be excepted from the mandate;

–A reasonable accommodation in these circumstances could be mask wearing, other additional PPE for the employee, periodic COVID-19 testing of the employee, or remote work, or leave pursuant to the Family Medical Leave Act (FMLA) or the employer's leave policies;

• Morale should be considered. Given the labor shortage throughout the country, it is a valid concern by employers to consider lower morale and even separation of employment by some employees who may bristle at being forced to be vaccinated as a condition of continued employment;

• Employees who do not comply with the vaccine requirement or accommodations granted pursuant to an exemption must be disciplined, and this should be communicated at the outset of the mandate;

• While to date lawsuits challenging vaccine mandates have failed, that does not mean an employee will not sue their employer over a vaccine mandate;

• Unionized employers should be aware that at least one lawsuit has been filed by a union alleging that a vaccine mandate alters the terms and conditions of employment in violation of a collective bargaining agreement;

• Legislation is pending in several states (including Illinois) that would ban vaccine mandates by private employers and several already have passed legislation banning mandates by public employers. To date only one law has been passed affecting private employers, in Montana, that prohibits discrimination based on vaccination status (such as firing for not being vaccinated);

–Thus, despite mandates being legal under federal law, employers should be mindful of pending legislation in the states in which they operate, the chances of passage, and any potential legal challenges to these laws;

Incentive Programs

Many employers are turning away from mandates and instead relying on incentive programs to encourage vaccination among their workforce, such as cash rewards, gift cards, or even lotteries.

However, while generally federal law does not limit the size of incentives, EEOC guidance cautions that incentives cannot be too large as to be considered coercive. Unhelpfully, the EEOC does not specify how large an incentive would have to be to be considered coercion. But the EEOC guidance does make clear that if the incentive is for vaccination done by the employee's community provider—and not through an employer provided work-site vaccination program—the size of the incentive does not matter and nothing would be considered coercive. The EEOC's concern appears to be that in a workplace vaccination site the employee may feel coerced to provide confidential medical information that is normally protected from disclosure. Such disclosure is not implicated when an employee gets vaccinated by an outside provider.

Also, incentive programs require inquiring into the vaccination status of employees. While this is allowable pursuant to EEOC guidance, employers must be careful that they do not veer into a "disability-related" inquiry, in violation of the ADA. Questions should be limited, ideally, to: "are you vaccinated?" and a "yes or no" answer. Any further inquiry brings the employer potentially into dangerous waters. This applies to all vaccine-related programs discussed here; such information should be kept in a confidential file separate from the employee's personnel file, and the vaccination status should be provided to managers only on a "need to know" basis.

Penalties

Yet another approach some employers are taking—most recently and publicly by Delta Airlines—is to impose some type of financial penalty on employees that choose not to be vaccinated. Delta, for example, said it would implement a $200 monthly surcharge on health premiums for employees who have not been vaccinated against COVID-19 by November 1, 2021. Delta based its decision on the rise of the delta variant and that the average hospital stay for COVID-19 cost the company $50,000 per employee.

But before jumping on the surcharge bandwagon, employers should tread carefully, as it raises compliance considerations. Generally federal law allows employers to charge higher health insurance premiums only if the health factor is within a wellness program. And penalties (technically an "incentive") cannot be so large as to be coercive, according to the EEOC. Additionally, rewards and penalties in a wellness program cannot exceed 30 percent of the cost of employee-only coverage.

And, just like a mandate, employers must consider and provide accommodations to those who are unable to receive the vaccine due to a disability or sincerely held religious belief. Moreover, employers should be mindful of the impact such a surcharge will have on lower-wage workers, where the proportion of those unvaccinated is significantly greater than higher-wage workers. And finally, like a mandate, surcharges or other penalties may lead to the loss of employees in a tight labor market.

Soft Mandates

Another approach that employers can take rather than a strict vaccine mandate is the "soft mandate." Under this approach (taken by the federal government for its employees), employers require that employees either provide proof of vaccination or undergo regular testing and indoor masking. All caveats that apply to mandates and incentives apply to soft mandates. Additionally, considerations related to the cost of testing and compensating employees for screening time must be taken into account.

As with all guidance here, state and local laws should be consulted prior to the implementation of a soft mandate. For example, at the time of this writing, Illinois just issued a new mask mandate for all indoor public spaces, regardless of vaccination status. While the definition of "public spaces" is not clear from the executive order, it could impact soft mandates where employers are not requiring masks of vaccinated individuals.

In closing, there are several options for employers seeking to increase the number of vaccinated employees in their workforce. However, each path requires significant thought and consideration given the laws and regulations applicable to each. An employer that jumps headfirst into any of these risks potential legal headaches down the road, not to mention a potential loss of employees and a downturn in morale. Thus, employers should do the research and legwork prior to implementing any type of vaccine mandate, incentive or other program. ◆

EDUCATION REPORT

COMBATING WORKFORCE SHORTAGES

SARAH HARTWICK, VICE PRESIDENT OF
EDUCATION & WORKFORCE POLICY

Workforce shortages continue to be the number one issue that manufacturers are facing today. Digging deeper, the soft skills and the skills gap are the most significant contributors to the work-force shortage, specifically for those who are able and willing to seek employment. With the ever-advancing technology, Industry 4.0, being implemented across manufacturing, the skills gap is becoming wider and leaving education and training to play a never-ending game of catch-up.

I joined the IMA in April as the Vice President of Education & Workforce Policy and the Executive Director of the IMA Education Foundation. My professional experience includes over 12 years of education policy advocacy including most recently serving as the Executive Director of an Illinois suburban school district advocacy organization. It was those high schools in northwest Chicago that opened my eyes to the importance of an employer-lead talent pipeline that works alongside regional educational institutions and community partners. The implementation of career exploration with work-based learning experiences will not only lead to a more qualified workforce, but also a more passionate, dedicated workforce.

The State of Illinois has continued to push policies that ensure high school students enter a post-secondary institution but little focus is put on what happens after that? What happens to those students who are not "college-track" and/or those who are still undecided when graduating from high school? Well, the IMA Education Foundation wants to find out.

March of 2020 placed a hard stop on in-person learning for schools across the country. Teachers struggled to keep students engaged in a format that no one had prepared for. Parents struggled to keep students engaged in school while also balancing their own professional duties. Students fell through the cracks and some were left behind in numbers that we will not realize for years to come. The State of Illinois is focused on "learning renewal" and getting those kids back on track for post-secondary career success. Measuring, through assessments, where students are now compared to where they were and where they should be will provide some data on the impact of the pandemic. However, is getting back to normal really where we need to go?

The key to student success – beyond test scores – is student engagement. Keeping kids excited about learning and engaged in school must be the number one priority when it comes to defining the role of education. Creating and defining career pathways that stem from career exploration opportunities as early as third grade will absolutely solve many of the problems that we are seeing with today's workforce. Taking an exciting career in manufacturing, like designing and building parts for the space station – yes, those are made in Illinois – to a third grader who is interested in outer space and working with their hands, directly connects what is being taught in third grade geometry in a way that provides relevance to what the student is learning and ignites passion. Sparking interest early engages students in a new and creative way and allows them to connect their passion with what they are learning in the classroom.

At the middle and high school level, it is important to integrate internships alongside learning, youth apprenticeships and even job shadowing to provide students with a hands-on experience for a career that interests them. Not only will it provide a recruitment opportunity for an employer but will also allow the student to experience firsthand a career path may be right for them.

The newest generation entering the workforce is providing new challenges for employers. This generation wants to be passionate about their career, they want to see that they are making a difference in the world, and they want to ensure appropriate work/life balance. This generation has experienced much turmoil in their short life from being born around the time of the September 11th attacks, seeing the impact the 2008 recession had on their family and loved ones, and now living through a once in a lifetime pandemic. This generation is putting their well-being and mental health first before putting together the rest of life's puzzle pieces and that starts with being passionate about the life they are seeking to create.

Passion and dedication alone do not help to narrow the skills gap. It does, however, work to provide incentive for both employees and employers to ensure that they have the skills needed to be successful in the workplace. The COVID pandemic is an opportunity to rethink how we provide education and refocus what the means of education is an end to. The goal of the education system should not simply be to graduate from a four-year university, though for some that is the right path. It should instead provide the tools and skills that students need to be successful after graduation, at whatever level that may be, and able to live a well-balanced meaningful life.

The IMA is embarking on an Education & Workforce Statewide Policy tour to dive deeper into the role local and regional educational institutions have in preparing a highly skills workforce that meets the needs of local employers. Through these discussions, we hope to discover the barriers that are preventing streamlined talent pipelines and, most importantly, identify solutions. If you are interested in being part of the tour or providing your own experience, please reach out. The more we begin to understand local workforce issues the better we can work towards narrowing the skills gap for a more highly skills workforce of tomorrow. ◆

Sarah Hartwick is Executive Vice President of Education & Workforce Policy at the Illinois Manufacturers' Association and Executive Director of the IMA Education Foundation. She may be reached at shartwick@ima-net.org or (217) 718-4211.

BUILDING A SAFEGUARD TO FIGHT ILLEGAL TRADE

PMI GLOBAL SERVICES INC.

As one of America's largest job creators, the manufacturing sector is essential to our nation's economy. This is especially true here in Illinois, where the industry accounts for nearly 10 percent of the state's jobs and contributes more than $108.43 billion to its GDP. While COVID has challenged the industry, it is positioned to emerge even stronger. But below the surface, another epidemic is harming businesses and the communities we call home: illegal trade.

Since COVID began gripping our nation, criminals have exploited the crisis to take advantage of innocent consumers, preying on their fear and desire to protect themselves and their families. They've created fake masks and other forms of personal protective equipment and demonstrated even more disregard for human life by selling fake vaccines and fake vaccination certificates. Since January 2020, online counterfeited goods have jumped nearly 40 percent.

But for manufacturers, this is a problem that goes beyond COVID. In 2019, counterfeit products robbed the U.S. economy of $131 billion and 325,500 jobs.

Here in Illinois, criminals have long trafficked in illegal goods, hawking everything from honey to Air Jordans and professional sports apparel merchandise. This has taken a heavy toll for business owners trying to make an honest living. Chicago, specifically, is a key hub for smugglers delivering shipments of illegal goods to the entire Midwest—Illinois' central location makes us a prime target for criminals. What's more, criminals do not stop at crimes like cigarette smuggling or selling knockoff sneakers. Criminals only care about profit, and so they will traffic seemingly innocuous goods to finance more nefarious and horrifying activities. The same criminals who deal in counterfeit apparel are often connected to those trafficking in drugs, weapons, and even people.

Tobacco smuggling is an excellent example of this growing problem. Selling illicit cigarettes is often dismissed as a "victimless" or "petty" crime—this could not be further from the truth. In reality, the victim is the Illinois taxpayer, as the state's coffers suffer over $135 million each year in lost revenue due to illegal tobacco sales. And that's likely a low estimate, as criminals don't report their earnings. That's $135 million that could have gone to funding important programs and improving Illinois communities, but instead winds up in the pockets of criminals.

Beyond the financial nightmare of illegal trade, there are also lives destroyed by it. Human trafficking is a $150 billion a year global industry, and Illinois ranks tenth in the United States in reported human trafficking cases with over 1,730 cases since 2007. Even worse, those are only the cases that were reported.

Thankfully, there is growing momentum and willingness across industries, sectors, and law enforcement to work together and fight back. And we're proud to partner with the Illinois Manufacturers' Association on United to Safeguard America from Illegal Trade (USA-IT). USA-IT is a public-private partnership made up of national and state-based law enforcement, business, and community leaders working together to raise the public's awareness of the consequences of illegal trade and enhance law enforcement resources and training to confront this menace and protect our communities.

While law enforcement is doing everything they can, meeting the challenges posed by illegal trade is not a task they can face alone. It will take all of us—government, businesses, and law enforcement partnering together to address this complicated and ever-evolving problem. There is a role for everyone in this fight, including those in the manufacturing industry, as we work to build a more secure and prosperous tomorrow in Illinois. ◆

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REPRESENTATIONS AND WARRANTIES INSURANCE: A BURGEONING TOOL IN M&A

BARNES & THORNBURG LLP

Recent years have seen the burgeoning use of representations and warranties insurance (RWI) in mergers and acquisitions transactions (M&A) involving privately held companies. Both strategic and financial buyers have made greater use of RWI in their acquisitions, which significantly benefits both the buyer and seller by generally allocating away risk to a third party insurer. In a typical M&A acquisition agreement, the seller's representations and warranties are often heavily negotiated by the parties. Under the acquisition agreement, the seller will have obligations to indemnify and hold harmless the buyer for the seller's breaches of its representations and warranties to the buyer. Often, the seller's indemnification obligations will be secured by an escrow or holdback of a significant portion of sales proceeds (an escrow of about 10 percent is the current median for middle-market transactions) that would otherwise be payable to the seller at the closing. The seller's indemnity also frequently lasts for months or even years after the closing, during which time the seller may be required forfeit some or all of the proceeds held back in escrow to satisfy the buyer's claims for breaches of seller's representations or warranties.

In this context, an RWI policy can help to mitigate the seller's risk of losing purchase price while also securing for the protections that the buyer has bargained for in the acquisition agreement.

What is an RWI Policy?

In its most general terms, an RWI policy is an insurance policy used in M&A involving a private company that protects the buyer against unanticipated losses incurred as a result of the seller's breach of certain of its representations or warranties in the acquisition agreement.

Why is RWI Becoming More Common?

Traditionally, in order to reduce the risks borne by a buyer in acquiring a business, buyers require that sellers make representations and warranties regarding the business and to indemnify the buyer for any breaches of such representations and warranties. In the event of such a breach, the seller is generally obligated to indemnify, or pay, the buyer for its resulting losses.

Often, the parties will establish specific limitations on seller's indemnification obligations (e.g., a deductible and a liability cap) and also agree that some amount of the purchase price will be held back or placed in escrow to secure these obligations. The negotiation of these provisions of the acquisition agreement is often a highly contentious process. In these cases, the use of RWI can substantially reduce the time and effort in negotiating these provisions by allowing the parties to shift some or all of the risk of a breach to an insurance provider.

Although RWI has been around for a number of years, it has recently seen increased use due to various factors, including more seller-friendly market conditions, M&A participants becoming more familiar and comfortable using the RWI product, and an increase in the number of insurers entering the market.

The entrance of new insurers has also led to more competitive pricing, better policy terms, and a more streamlined underwriting process. In addition, insurers have become more willing to offer RWI on smaller deals.

Currently, deals as small as $20 million in purchase price may be eligible for RWI. All in all, this has meant that more sellers can, and are, requesting or demanding that RWI be used in their sale transactions.

What are the Benefits of RWI?

There are numerous significant benefits of RWI policy to both sellers and buyers.

For a seller, the benefits include the following:

- The seller can reduce or even eliminate the escrow or holdback and increase the proceeds it receives at the closing.
- The seller can obtain greater certainty that it will retain sales proceeds by reducing or eliminating its indemnification obligations for breaches of representations and warranties.

For a buyer, the benefits include the following:

- The buyer's bid can look much more attractive to a seller in an auction or other competitive sale process if there is a limited (or no) escrow or holdback required.
- The buyer can extend the period during which it can make claims based of the representations and warranties, giving it additional time to uncover unknown issues with the acquired business.
- The buyer can increase the amount of its protection in excess of what a seller might be willing to provide in the absence of RWI.
- The buyer will improve its chances of prevailing on a claim since the seller will likely be willing to give more fulsome representations and warranties.
- The buyer has a secure source of funds to cover losses without the risk of antagonizing the seller or its principals (who may continue in the business and remain a key member of buyer's organization after the closing).

For both parties, RWI can help simplify and accelerate the transaction by reducing the seller's incentive to heavily negotiate the representations and warranties in the acquisition agreement.

What are the Terms of an RWI Policy?

A typical RWI policy currently includes the following terms:

- Generally, the buyer is the insured party.
- The policy's customary fees and costs include the following:
  - The premium is typically around 2 percent to 4 percent of the coverage limits (i.e., $200,000 to $400,000 per $10 million in coverage).
  - A non-refundable due diligence fee, generally between $25,000 to $50,000.

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– Applicable premium taxes payable to the state where the insured is residing.

• All premiums and costs are paid in full before or at the time the policy is bound.

• The policy coverage limit is typically equal to 10 percent of the purchase price, though higher coverage limits are available.

• The policy has a deductible/retention amount (i.e., an uninsured amount of the loss to be borne by the insured) that is usually 1.0 percent of the purchase price.

• The policy term is typically for three to 6 years.

• An RWI policy is a "claims made" insurance policy, so claims for losses can only be submitted during the policy term.

• Standard exclusions to coverage apply (noted below).

There are certain standard exclusions in a RWI policy for which coverage will not be available. Among the common exclusions are the following:

• An exclusion for losses for breaches of representations and warranties of which the buyer has knowledge (e.g., because they are disclosed by the seller or discovered in due diligence).

• An RWI policy will not cover breaches of the seller's covenants in the acquisition agreement (e.g., seller's post-closing obligations).

• An RWI policy will not cover purchase price adjustments (e.g., working capital adjustments).

• The RWI policy may exclude certain tax-related liabilities.

• The RWI policy will likely exclude liabilities related to legal compliance issues (e.g., violations of labor and employment laws, environmental issues).

• Representations and warranties involving forward-looking statements (e.g., financial projections).

If the buyer has specific concerns about the limits or exclusions (e.g., specific litigation), some insurers may be willing to offer the desired coverage for additional premiums.

What is the Process for Obtaining an RWI Policy?

The process for obtaining a policy starts with a party (usually the buyer) approaching an insurance broker. The broker will solicit initial non-binding indications of interest and fee quotes from potential insurers. As part of its underwriting process, the selected insurer will need to be satisfied that buyer has conducted substantial due diligence of the seller's representations and warranties before issuing the policy, and may even conduct its own due diligence to supplement the buyer's due diligence efforts. The insurer will charge an upfront, non-refundable due diligence fee before initiating this process.

After the RWI insurer's due diligence is completed, the insured will then negotiate the specific terms of the RWI policy, including the scope of coverage and the exclusions from coverage. The RWI policy is typically bound and premium is paid at either the signing or closing of the acquisition.

Given the lead time requirements of putting an RWI policy in place, and the nuances that will impact the preparation of the acquisition agreement, the parties will want to involve their legal and other advisors in the early stages of the transaction to ensure that the RWI process is run smoothly and not delay the closing.

RWI has become more commonly used as M&A participants come to understand its benefits. Sellers can receive a greater portion of the sale proceeds at closing and reduce the risk that some portion of those sale proceeds will have to be paid back to the buyer. Buyers get the greater security and certainty of an insurance policy under which it will be easier to obtain recovery for their losses.

As the use and effectiveness of RWI become better understood over time and more carriers continue to enter the market, the terms of RWI policies should become more attractive and even easier for M&A participants to take advantage of. To help them understand and make use of this emerging tool in the M&A landscape, M&A participants are encouraged consult with their legal counsel and other advisors. ◆

PFAS INVESTIGATIONS AT MANUFACTURING FACILITIES AND INDUSTRIAL SITES IN ILLINOIS

HEPLERBROOM, LLC

Amid the current storm of news articles, regulatory updates, and seminars addressing per- and polyfluoroalkyl substances ("PFAS"), owners, managers and tenants of manufacturing facilities and industrial properties are asking whether and when to include PFAS in investigations of these properties. While the regulation of PFAS is in flux, this article summarizes the current regulatory status and anticipated regulatory actions related to PFAS, and provides guidance regarding PFAS investigations at such properties.

Two of the stated goals of USEPA's 2019 PFAS Action Plan – designation of certain PFAS as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and issuance of interim groundwater quality standards for PFAS – have not yet been achieved. On March 3, 2021, USEPA published a final determination to regulate two PFAS compounds, PFOS and PFOA, through a National Primary Drinking Water Regulation under the Safe Drinking Water Act, within 24 months. However, federal regulatory action to designate certain PFAS as CERCLA hazardous substances has not been commenced. In 2021, the most likely vehicle for federal legislation addressing PFAS is the 2022 National Defense Authorization Act ("NDAA"), but it is not clear whether the final version of the 2022 NDAA will direct USEPA to take action related to PFAS under CERCLA. (In previous years, the NDAA was used to add certain PFAS to the Toxic Release Inventory and phase out the use of PFAS-containing firefighting foam by the Department of Defense.) Until action is taken to designate PFAS as hazardous substances, the cleanup and cost recovery provisions of CERCLA, including the "innocent landowner" defense and the bona fide prospective purchaser liability protection, do not apply to PFAS.

In the vacuum created by the lack of federal environmental regulations governing PFAS, states have emerged as the primary regulators of PFAS. Some states have attempted to pressure USEPA into moving forward on federal PFAS regulation. On June 23, 2021, New Mexico filed a petition under the Resource Conservation and Recovery Act ("RCRA") to designate all PFAS as

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hazardous waste. Such a designation would subject PFAS to RCRA's cradle-to-grave waste regulatory scheme and would also bring PFAS under the CERCLA definition for "hazardous substances." As this article was being drafted, USEPA had not yet responded to New Mexico's petition.

Many other states have adopted their own drinking water and/or groundwater standards for specific PFAS. New Jersey was a leader among these states and, in 2020, adopted drinking water and groundwater quality standards that were significantly lower than the USEPA non-enforceable PFAS Health Advisory Level of 70 parts per trillion (ppt). However, industry groups in New Jersey have mounted a legal challenge to the adoption of the state PFAS standards, arguing that New Jersey failed to appropriately assess the costs imposed by the regulations and that the standards are "arbitrary, capricious, and tantamount to a regulatory guess."

Illinois has moved at a slower pace, but is preparing to file its first rulemaking proposal addressing PFAS. In September 2020, the Illinois Environmental Protection Agency ("IEPA") issued draft proposed groundwater quality standards ("GWQS") under 35 Ill. Adm. Code Part 620, which included proposed GWQS for five PFAS compounds: PFBS, PFHxS, PFNA, PFOA and PFOS. A public meeting on the proposed GWQS was held in May 2021, and IEPA accepted written public comments until June 25, 2021. Industry groups have questioned the IEPA regarding the availability of analytical testing methods and remediation technologies for the very conservative concentration levels proposed as PFAS GWQS, and have also questioned why Illinois needs to adopt PFAS standards ahead of the federal government. It is anticipated that IEPA will file its Part 620 rulemaking proposal with the Illinois Pollution Control Board ("Board") this Fall.

IEPA has also stated that it plans to file a rulemaking to update the Tiered Approach to Corrective Action Objectives ("TACO") regulations to add the constituents in the proposed Part 620 rulemaking to the TACO tables of regulated substances. According to IEPA, the TACO amendments will also likely include soil remediation objectives for certain PFAS compounds. Designation of PFAS as regulated substances under TACO will raise questions for sites that enroll in Illinois' Site Remediation Program, including whether PFAS can be excluded if there is no evidence that they were manufactured or used in manufacturing processes or industrial activities at the site. (As stated in the TACO regulations, "[t]he contaminants of concern to be remediated depend on … the materials and wastes managed at the site; …" 35 Ill. Adm. Code 742.115.)

Meanwhile, since September 2020, IEPA has conducted sampling for 18 PFAS at the entry points to the distribution systems for 1,438 community water supply systems in Illinois. IEPA is winding down its sampling efforts, and the results of the investigation will be utilized in the development of a rulemaking proposal for establishment of maximum contaminant levels ("MCLs") for certain PFAS. A report on the IEPA investigation is expected in January 2022.

In the absence of regulatory standards for PFAS, IEPA issued Health Advisories for seven PFAS in 2021: PFBS, PFHxS, PFNA, PFOS, PFOA, PFHxA, and HFPO-DA. The health-based guidance levels established for these PFAS are not enforceable, but can be used by IEPA to establish groundwater cleanup or action levels. These health-based guidance levels are much more conservative than the current USEPA Health Advisory levels and have raised concerns among the regulated community about testing and treatment. (IEPA has acknowledged that it is not clear whether technology is available that can treat drinking water to meet the 2 ppt health-based guidance level for PFOA.)

The designation of PFAS as regulated substances under TACO and/or hazardous substances under CERCLA will be the driver for PFAS investigations at many current and former industrial and manufacturing facilities in Illinois. However, because of the unique characteristics of PFAS, including toxicity, mobility, ubiquity, as well as the substantial (and increasing) number of PFAS compounds, it will be important to ascertain whether there were any operations or activities at industrial facilities that could have been a source of PFAS before proceeding with a PFAS investigation. This is particularly the case for properties where PFAS may have been (i) produced or used in manufacturing activity, (ii) an ingredient in firefighting foam that was utilized in fire-training or fire-suppression activities, (iii) contained in wastes disposed on the property, or (iv) contained in biosolids that were land applied at the property. If it is determined that a PFAS investigation is warranted or necessary, one of the most helpful sources of technical and regulatory guidance for PFAS investigation and remediation are the guidance documents, training videos, and data tables compiled by the Interstate Technology Regulatory Council ("ITRC") (available at **https://pfas-1.itrcweb.org/**).

Moreover, a Phase I environmental site assessment may also be an important tool for identifying the possible source or presence of PFAS at a property. However, the current ASTM E1527-13 Standard Practice on Phase I Environmental Site Assessments does not cover PFAS. The eight-year review for the ASTM E1527-13 Standard will be completed in 2021. The draft updated ASTM 1527 standard published earlier this year included proposed modifications to the definition of "Recognized Environmental Condition" ("REC"), but REC will still be defined in terms of hazardous substances and petroleum products. Therefore, until such time as PFAS compounds are designated as hazardous substances or the REC definition is revised to explicitly include PFAS, PFAS are not directly covered by the ASTM 1527 standard.

However, the draft proposed ASTM standard contained a footnote which cautioned users and environmental professionals that "[s]ubstances that are outside the scope of this practice," e.g., emerging contaminants, "may be regulated under state law and may be federally regulated in the future." The footnote goes on to note that, although the presence of such substances is a "non-scope consideration," a user may elect to include such substances in the scope of work for the Phase I. While the timing of designation of PFAS as hazardous substances is uncertain, the adoption of GWQS or TACO groundwater and soil objectives for specific PFAS compounds in Illinois may lend further support for including such compounds as a "non-scope consideration" for a Phase I investigation involving older industrial properties.

For owners, managers and tenants of manufacturing facilities and industrial properties, it is not too early to begin considering how future PFAS regulatory efforts by USEPA and IEPA may affect these properties. Any evaluation of possible PFAS presence or use at a property should be undertaken strategically, and should involve technical experts and legal support. ◆

CROSSING THE COUNTRY FOR A CAUSE

GEORGE MAURER BIKES FROM ILLINOIS TO MONTANA, BRINGING HIS COUSIN BACK TO HER HOME AND RAISING $30,000 FOR ILLINOIS TECH STUDENTS

It's one thing to honor the life of a an ambitious, generous, and warm-hearted family member, but it's a whole other ball game (or rather, bike ride) to travel 1,700 miles and raise $30,000 to perpetuate their legacy of bolstering the manufacturing community and helping others. This summer, George Maurer did just that – embarking on the first annual "Big Sky Highway Ride Home" to honor his first cousin, Lynne Mohr.

Lynne began her career at the age of 14 with Brite-O-Matic in Arlington Heights, Illinois, a specialty car wash systems manufacturer founded by her father, William Gasser. Eventually, Lynne served as President of Brite-O-Matic until her retirement in 2018. She also served on the Board of Directors for the Illinois Manufacturers' Association for several years. A champion of manufacturing with a generous heart, Lynne was well known for her service and commitment to the growth and advancement of the industry and the people within it.

"Lynne was a role model, and I have a lot yet to learn from her," said George. "She always looked out for 'the other,' which included me. When I began these long-distance bicycle rides seven summers ago, she was always right there supporting me. She was selfless in that sense, and anyone who knew her would say the same."

Remembering the lifelong support he received from Lynne, George wanted to find a way to 'give back' to her community and find a way to bring the family together in the midst of their sadness.

"It was around the time of what would have been Lynne's birthday last year when I saw the need to do something," George recalled. "I wanted to get her surviving family focused on something that they could create together in her memory."

In honor of Lynne, the Mohr family and George partnered with the Illinois Manufacturers' Association Education Foundation to establish The Lynne Mohr Endowment, which will provide trade scholarships for post-secondary students in Illinois.

"Since Lynne spent most her life at a manufacturing company, she believed it was important to promote manufacturing careers and help with the training of skilled workers, especially here in Illinois," said her sister Laurie Gasser, Brite-O-Matic treasurer.

In the last seven years, George has ridden his bike through Vietnam, Sri Lanka, Iceland, Patagonia, Newfoundland, and across the United States, raising over $50,000 for cancer research at Mayo Clinic along the way. From being the first in line to make a donation to George's campaign from Brite-O-Matic and even sending personal donations to cover on-the-road expenses, Lynne has always been with George in spirit as he biked all over the world. But this time, his journey had a different purpose.

In the heat of mid-August, George embarked on his three week-long journey from Brite-O-Matic carrying a stone made from Lynne's ashes so that she could travel with him all the way to her vacation home, "Serenity Now," near Eureka, Montana.

Before his foot even hit the pedal, donations and support came flooding in from individuals and companies. What once seemed to George and the Mohr family as an ambitious goal of $20,000 was quickly moved up to a new goal of $30,000.

In a post on the "Big Sky Highway Ride Home" GoFund-

George began the three-week journey from Brite-O-Matic in Arlington Heights, Illinois, where Lynne worked for over 40 years.

From the flat plains of Illinois to 6,600 ft. elevation in the Rockies, George covered a lot of terrain over the course of his trip.

After over 140 hours of and 1,700 miles of riding and $30,000 of funds raised, George reached the finish line in Eureka, Montana. Ken, Lynne's husband (right), was there to meet George (left) and help to finally bring Lynne back home.

Me page, George and 'The Team' wrote: "We are all giving other future tradesmen a greater chance of receiving scholarship funds towards their training. We thank you for your optimism, your enthusiasm, and for your love for Lynne Mohr."

Not only was the ride supported by friends, family, and peers, but even those George met along the way. On a stop at a bike shop to buy some new tires, George was gifted with a new set of tires as well as a donation to the fund. He was also able to visit his alma mater, Saint John's University in Collegeville, Minnesota, where 35 years earlier he had recorded his first piano solo, all the while receiving letters and encouragement from his family.

Being reminded of the support he was given was another motivator for George to move forward, keep sharing Lynne's story, and bring to life her vision of helping young tradespeople achieve their dreams.

"My hope is that the recipients gain personal and financial success through the educational opportunities these scholarships bring," George said. "This ride echoes the ethics and values that Lynne stood for, and the decision the family made to choose the IMA Education Foundation as the vehicle for these funds that we have raised together will be the answer to her wish. She never wanted my thanks, and she never expected anything in return. This is one small way that I can pay it back to her for everything that she's done for me."

When George made it to "Serenity Now" three weeks, 1,700 miles, and over 140 hours of riding later, he finally completed everything he'd promised to do – bring Lynne back to rest at her home, and maintain her legacy through providing for others.

"This experience has been an exciting venture and we were so honored that the Mohr family wanted to partner with us in establishing this endowment," said Sarah Hartwick, Executive Director of the IMA Education Foundation. "The Lynne Mohr Endowment through the IMA Education Foundation is such an amazing opportunity to provide students studying to become future tradesmen with some financial relief. We can only hope for more opportunities like this to come our way to support the needs of our workforce."

"Lynne Mohr's service and commitment to the manufacturing community across Illinois will now be known for generations to come. She was a manufacturing champion and passionate advocate who left a lasting legacy," said Mark Denzler, IMA President & CEO. "The IMA and the IMA Education Foundation are grateful for the opportunity to help honor Lynne through this annual ride and establishment of an endowment in her name."

There are already big plans for next year's bike ride. While George plans to ride again and raise scholarship funds, he hopes to call on others to organize rides in their own communities for the cause.

The IMA is proud to partner with George Maurer and the Mohr family to honor Lynne's legacy and provide a better future for the Illinois workforce.

To make a donation, please contact Sarah Hartwick, Vice President of Education & Workforce Policy, at shartwick@ima-net.org or (217) 718-4211. ◆

ENERGY TRENDS THAT ARE HERE TO STAY: STARTING WITH SUSTAINABILITY BASICS

CONSTELLATION

The energy industry is evolving at a rapid speed. Driven by a combination of corporate environmental, social and governance (ESG) initiatives, competitive pressures, and compliance with new federal, regional or statewide policies, organizations are exploring the implementation of new sustainability strategies in their overall business strategy.

At Constellation, we strive to keep you apprised of the latest trends as they relate to energy, and most recently, sustainability. In a recent survey with Constellation customers, we learned that only 15 percent have a sustainability plan in place and 85 percent have limited knowledge of where to start or are just getting started with developing a strategy.

In our new blog series titled "Energy Trends that Are Here to Stay", we will discuss the meaning of energy trends that are increasingly common in industry news and that are quickly being adopted by businesses in an effort to get ahead of their competition.

Five important terms to know include:

Net-Zero Emissions (or Climate Neutrality)

Net zero refers to the balance between the amount of greenhouse gases released into and removed from the atmosphere. For example, a net-zero goal requires the amount of greenhouse gases (GHG) emitted into the atmosphere to be offset by GHG-reducing projects. Such projects may include forestry preservation and new renewable energy projects and are critical for reaching climate neutrality.

In most cases, getting to net-zero for a business, a specific facility, or a region will require a combination of (1) decreasing emissions through the use of emission-free or renewable energy, renewable natural gas and efficiency measures, and (2) offsetting emissions through the use of carbon offsets.

Carbon Offsets

Carbon offsets represent verified GHG emission reductions, measured in tons of carbon dioxide equivalent, or CO2e, resulting from projects such as forestry preservation and management, certain energy efficiency measures and renewable energy development, chemical processes and industrial manufacturing recycling and sequestration, methane capture, and other carbon capture and sequestration projects. A key requirement for carbon offset projects is that they be "additional," meaning that they would not have occurred in the absence of a market for carbon offset credits.

By purchasing carbon offsets, businesses can indirectly reduce, or "offset", their on-site GHG emissions, also known as Scope 1 emissions. Carbon offsets also allow facilities to offset emissions made elsewhere beyond their own operations – such as for emissions associated with their electricity use, known as Scope 2 emissions, and for emissions associated with business travel and in their supply chains – known as Scope 3 GHG emissions.

Scope 1 Emissions

Scope 1 emissions are one area that businesses tend to focus on as they comprise sources from a business' owned or controlled assets, and upgrades to these areas are typically easiest to manage. More than 7,000 facilities are required to report these emissions in their business' GHG report on an annual basis, according to the Environmental Protection Agency (EPA).2

Because Scope 1 emissions involve direct emissions created at customer sites or in their owned equipment (e.g., natural gas burned in a boiler or gasoline/diesel/fuel oil used in vehicles or equipment), energy efficiency upgrades, fleet electrification and the use of renewable natural gas may be helpful in reducing these emissions.

RECs

Businesses looking to reduce their fossil-fueled electricity use, known as Scope 2 emissions, may purchase renewable energy certificates (RECs). RECs are proof that energy has been generated from renewable sources, such as solar energy, wind power, hydropower, geothermal energy and/or biomass energy. Each REC represents the environmental benefits of 1MWh of renewable energy generation and may be sold and traded.

The purchase of RECs helps support the market for renewable electricity, which in turn may displace fossil fuel-based electricity generation in the region where the renewable electricity generator is located. Companies purchasing electricity matched with RECs can legally claim to have purchased renewable energy.

EFECs

Whereas RECs track the renewable associated with renewable generation, emission-free energy certificates (EFECs) track the zero-carbon generation attributes associated with emission-free generation. These generation sources may include, but are not limited to, renewable generation (e.g., nuclear, solar, wind, hydropower, etc).

When matched with electricity (which generates Scope 2 emissions), EFECs represent the environmental attributes associated with the generation of electricity from sources that do not emit greenhouse gases from combustion. Most of the time, EFECs sold in the voluntary market are associated with nuclear or large-scale hydroelectric generation.

EFECs are interchangeable substitutes for RECs in greenhouse gas emissions accounting, resulting in zero Scope 2 emissions if matched with all of a company's electricity load. If zero carbon is a customer's main goal, EFECs may be the more cost-effective option. ◆

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REMOVING THE CLUTTER FROM CORPORATE COMPLIANCE

HUSCH BLACKWELL LLP

Back in June 2020, the U.S. Department of Justice's Criminal Division issued an updated guide to evaluating corporate compliance programs. The update provided a useful framework for how build out a corporate compliance program. Given the ever-increasing scope of regulation, compliance can be a daunting topic, especially when building or rebuilding the mechanism to manage it all. The updated guide is helpful in cutting through a lot of clutter by presenting compliance from the prosecutor's point of view.

Such a perspective is much needed. Sometimes, the overall risk profile of a business is too broad and contains too much information, such that it is difficult for the eye to settle on the handful of things that are truly relevant. And as most of us realize, to worry about everything is akin to worrying about nothing. There must be an order, a priority, to corporate compliance; otherwise, thoughtful, intentional action descends into mere box-ticking.

In evaluating compliance efforts, prosecutors begin with why: why is the program structured and designed the way it is? Does it reflect the company's own risk assessments? And, crucially, does it demonstrate a continuous effort at self-improvement and self-evaluation? In other words, does the program change over time to incorporate best practices and lessons learned?

Prosecutors begin with why because it speaks to intent. Compliance programs that lack seriousness in their design signal to prosecutors that the company may not be addressing compliance in good faith—and that could have significant effects on the course of an investigation or litigation.

Next, prosecutors look at how. Once the risk assessments are carried out and the program takes shape at an abstract level, how has it been implemented? What are its policies and procedures? How have those been disseminated throughout the organization? No matter how well conceived a program may be, if it is not communicated to employees in an effective manner, the brilliance of its design is worthless. Communication is not limited to codes of conduct and mission statements, but is also grounded in practical business-unit guidance that can take the form of training and how executives set the tone from the top of the organization through regular and clear internal communications.

Finally, prosecutors look at the mechanisms in place to detect and report misconduct. There must be a well-known, reliable and confidential system in place for employees to file complaints without fear of retaliation. Equally important, once a complaint is lodged, how is it investigated? Prosecutors will evaluate the investigative arm of compliance programs based on their ability to investigate in a timely manner, to triage complaints that merit serious attention, and to resource investigations in a way that demonstrates a serious commitment to complying with the law.

Indeed, program resources are evaluated throughout the compliance lifecycle by prosecutors. So-called "paper programs"—those that are well-conceived but under-resourced—are often viewed as being no better than ill-designed programs. Resources reflect budgets, and budgets reflect priorities; therefore, prosecutors often view under-resourced programs as lacking seriousness.

Even well-designed, appropriately resourced programs can fail to detect misconduct. That's why prosecutors who evaluate programs look for patterns. Certainly, programs need to demonstrate a track record of detecting misconduct—a program that does nothing but fail time and again is pointless; however, programs that show adaptability to changing risks profiles garner a lot of respect. In other words, it's important that programs not fail in the same way repeatedly.

While there are general principles to consider in assessing risk, designing policies, and implementing programs, every business enterprise is different and demands a unique approach. Even within the manufacturing industry, there are significant differences among operations that are material to the compliance function. Businesses can have radically different supply chains, operating geographies, and technology platforms; therefore, the way risk is assessed and dealt with is necessarily enterprise-dependent.

Compliance is not always about the operation itself, but rather, the regulatory environment at large. Administrations at all levels of government increasingly pursue different—sometimes diametrically opposed—policy goals. Over time this political friction has resulted in two things that frustrate regulatory compliance. First, there is a kind of regulatory whiplash that follows a change in administration, where compliance strategy must change course to meet additional or different sets of demands. Second, because so much of the policy implementation occurs at the agency level, at the local level, and/or via executive action, there is a lack of comprehensiveness in many areas of regulation, such that important areas of law and business are regulated by a piecemeal and sometimes contradictory set of laws and mandates. These things conspire to increase complexity and decrease predictability.

It is important, therefore, to know your regulator. Agencies will differ in how they pursue their regulatory remit; what is important to one may be less so to another. Designing and implementing effective programs is a huge piece of the compliance puzzle, but when those measures fall short, there is no substitute for having a knowledgeable network of professionals who understand the who of compliance as well as the why and how. ◆

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ARE ELEVATED FREIGHT RATES HERE TO STAY?

AM TRANSPORT SERVICES

Freight costs are historically high and many manufacturers and distributors are concerned, and rightly so, that relief will be slow in coming due to limited truck capacity. Many experts agree. "The capacity situation is expected to remain tight into 2022 and while rate increases are expected to moderate their rates of growth through the next several months, they will for the most part remain in positive territory through the next several months

Let's take a look at a few factors contributing to the near-constant flux since late 2018 when the adoption of electronic logging devices (ELDs) was mandated by the federal government. This mandate along with changes to hours of service (HOS) rules played a role in capacity disruption during that time as trucking companies faced the complexities of implementing new technology which did away with paper logs which could be manipulated when necessary.

Since that time, we've experienced a variety of major weather events including Hurricane Florence which impacted much of the Mid-Atlantic and the Southeast, and California wildfires that continue to destroy towns and take lives. Most experts believe that climate change plays a significant role in both the extremity and frequency of these events which force closures and severely impact both supply and demand.

In March of 2020, the COVID-19 pandemic added to forces already in play when state governors along with state agencies ordered across the board shutdowns of businesses not considered "essential." We all remember the "toilet paper" crisis and the "gold rush" to deliver goods to meet consumer demand which further limited capacity as smaller trucking companies took their trucks off the road and long-time truck drivers left the trucking business for a variety of reasons contributing to an ever-increasing driver shortage.

Even as things began to open up in the fall of 2020, truck capacity was limited. This constrained capacity has been exacerbated by government assistance, stimulus checks, and enhanced employee benefits which stimulated the economy and increased consumer demand while shortages of raw materials, processors, and truck drivers contributed to the record high freight market which continues today.

Simply put, there is no clearcut solution or remedy for this situation. The electronic chip shortage has slowed the production of new trucks needed to keep up with demand. And the difficulties of hiring new drivers is complicated by a labor market rife with job opportunities.

It is very likely that manufacturers will continue to see a high number of tender rejections while paying premium spot prices for less service. And this state of affairs is not likely to change. According to Craig Fuller, writing for Freightwaves, we can expect to see higher-than-normal freight rates and "shippers hoping for trucking rate relief in 2022 are going to be severely disappointed."

There are, however, several steps a company can take to mitigate this situation.

First and foremost, work with logistics providers with solid track records (check their Google and DAT reviews) and strong relationships with a variety of small and mid-size fleets. Over 90% of semi-trucks on the road today come from companies with five trucks or less. These are the companies you want to work with because they tend to have long business histories, low driver-turnover, and excellent safety ratings. These smaller companies are more likely to work with manufacturers through times of disruption, keeping their rates steadier in favor of long-term relationships.

Have frank conversations with your logistics providers. Ask about dynamic pricing and short-term contract rates which can offer you a locked-in rate for a short period of time. This will keep your freight off the spot-market and allow you to budget with some degree of certainty in the shorter-term.

Take steps to elevate your shipper of choice status. This includes offering quick loading times, flexible pickup and delivery times, low rates of tender cancellation, lead time for shipment bookings, along with parking options and driver amenities. Pick one or two of these suggestions and you'll be on your way to making your facility more amenable to carriers.

Freight rates will continue to rise steadily into 2022, and with the possibility of additional extreme weather events, new variants of the COVID-19 virus, and a continuing driver and truck shortage, predictions about when freight rate relief will occur are nearly impossible to come by. The most reliable thing about the freight market is its volatility. Manufacturers that accept this volatility and act accordingly will be in the best position to navigate this environment. ◆

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IMPLEMENTING SUSTAINABLE PACKAGING IN YOUR MANUFACTURING PROCESSES

CHICAGO GLUE AND MACHINE

Consumers are making purchase decisions based on products' environmental impact. It's what the New York Times calls "conscious consumption" – an umbrella term that simply means engaging in the economy with more awareness of how your consumption impacts society at large. Shopping sustainably, with the intent to preserve the environment, is one way to consume consciously.

Today, adopting sustainable manufacturing processes, including packaging is table stakes. Your customers are no longer simply looking for sustainable products and packaging or hoping for it, they are demanding it.

Shoppers are Seeking Sustainable Solutions

This stat demonstrates just how much sustainability impacts buying behavior. Not only are consumers considering the environmental impact of the product they are purchasing, but also the packaging. Sustainability has become a widely discussed topic in our society, and shoppers understand that every item they bring into their home eventually ends up as waste.

Your customers are now making purchase decisions based on recyclability. They want to know the packaging of their favorite beverages and snacks, for example, can be recycled rather than landing up in the ocean where they cause harm to animals and ecosystems. (Sad fact: According to Plastic Oceans, one million marine animals are killed by plastic pollution each year. Your customers want to know what you are doing to lower this number.)

It's not just the thought that counts. Shoppers aren't only saying they want sustainable products and packaging, they are putting their money where their mouth is. They will even shell out a little bit more cash if it means the item they're buying is eco-friendly. According to a survey from GlobalWebIndex, 59 percent of consumers say they would pay more for eco-friendly packaging.

Sustainable Packaging is Here to Stay

It's clear that the sustainable packaging market isn't going anywhere. In fact, it's only getting bigger. Manufacturers are faced with a decision: adapt or become obsolete. And it seems that most manufacturers are choosing the former. The Association for Packaging and Processing Technologies (PMMI) found that over 50 percent of consumer packaged goods are evaluating or implementing new materials to be more sustainable. And, as noted earlier, consumers are driving that change by looking for sustainable products and packaging. So, if your production line is not producing sustainable materials, there's a good chance your end-product will be less and less likely to leave the store shelves. At the very least, it's important for consumers to see an effort toward sustainable practices. So even if you start small, it will not only help your bottom line, but it will also make a positive impact on the planet.

Where do you get started? There are several ways you can incorporate sustainable practices into your packaging operations. PMMI reports the following efforts by CPGs:

- 89 percent are designing recyclable packaging
- 80 percent are minimizing packaging to reduce waste
- 56 percent are redesigning packaging to use more sustainable materials
- 36 percent are implementing re-use packaging
- 27 percent are choosing renewable-sourced materials

Adapting to New Manufacturing Processes

No matter which approach(es) you can take on your production line, it will require adapting the manufacturing processes. As manufacturers prioritize incorporating sustainable practices in their operations, adhesive applications may be overlooked.

There are new tank-free hot melt adhesive systems available that benefit the environment by improving production efficiencies and stabilizing glue consumption rates.

Tank free systems heat up in less than ten minutes, significantly reducing the amount of energy used at start up. Which in turn reduces the carbon footprint of the production line and the end product.

Additionally, tank-free systems maintain glue at a constant viscosity which allows the adhesive to be dispensed with the right amount of pressure, resulting in more efficient and accurate usage, in some applications reducing adhesive use up to 40 percent.

The Role of Adhesives in Sustainable Packaging

If your packaging material is changing, you'll likely need a new adhesive. There are a variety of adhesive options for consideration, including options designed to work on packages with high recycled content. These adhesives will perform as well, if not better, than previous solutions.

An ideal solution for cardboard boxes, repulpable adhesives are fully soluble in water and dissolve completely during the paper re-pulping process.

Adhesives also play a role in reducing the use of plastic packaging materials. Palletizing adhesives reduce or eliminate the need for plastic stretch wrap. And special adhesive used in conjunction with a paper fastener reduces the need for plastic rings on beverage packaging.

These and other advancements in adhesives are available to savvy manufacturers seeking to meet the demands of conscious consumption with eco-friendly products and packaging. ◆

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ILLINOIS MANUFACTURERS' ASSOCIATION

EMPLOYEES HURT AT WORK: KNOW YOUR OBLIGATIONS UNDER FMLA

GREENSFELDER, HEMKER & GALE, P.C.

When an employee gets injured while working on the job or in the workplace, and the employer learns of the injury, employers should as a matter of policy and procedure provide the employee with the information about workers' compensation coverage. But, are there other legal considerations, separate and apart from workers' compensation, that employers must consider? The answer, of course, is "Yes." Indeed, those employers subject to the Family and Medical Leave Act ("FMLA") must also consider whether the injury constitutes a "serious health condition," under the FMLA. Generally, private employers with at least 50 employees are subject to the FMLA.

Workers compensation laws and the FMLA serve different purposes: one provides medical benefits and wage replacement while the other offers unpaid leave (unless the employer mandated that paid leave be taken simultaneously with the FMLA leave) and job protection upon conclusion of the leave. In particular, workers' compensation generally allows an employee who is injured in a work-related incident to receive payments for reasonable medical care and a portion of his/her lost wages resulting from that injury. How much the employee receives and for how long depends on workers' compensation law and the kind of injury the employee suffers.

But, if the work-related injury suffered by the employee could qualify as a "serious health condition" under the FMLA, the employee has additional rights and the employer has additional legal obligations under the FMLA. The FMLA entitles "eligible" employees who experience a "serious health condition" to take up to 12 weeks of unpaid leave during a 12-month period, and in most circumstances, be entitled to return to their same job upon conclusion of the FMLA leave. To be an "eligible" employee for FMLA purposes, the employee must (1) work for a covered employer; (2) worked 1,250 hours during the 12 months prior to the start of leave; (3) worked at a location where 50 or more employees work at that location or within 75 miles of it; and (4) have worked for the employer for 12 months. The employer must notify the employee regarding the employee's eligibility within five business days of learning of the potentially FMLA-qualifying condition (i.e. work-related injury) and must provide certain other information regarding leave benefits and obligations. Failing to do so can have consequences.

One employer, learned this the hard way, unfortunately. The case involved an employee who sustained an injury to her knee while performing housekeeping services for a hospital cleaning service. The employer correctly initiated workers' compensation coverage for the accident as soon as the employee reported the injury. The employee went to the doctor's office, accompanied by the employer's representative. She initially received a medical excuse from work for four days however, she needed 11 more days off to recover and was required to use accrued company provided paid leave. The employer's representative accompanied the employee to her follow-up appointments following her injury. The employee was initially released to return to work with restrictions not to squat, kneel, or climb, and was given a light-duty position that accommodated those restrictions. Shortly thereafter, the employee was provided with a cortisone shot, referred to a course of physical therapy for six to eight weeks, and a few weeks later was released to full duty without restrictions. However, before returning to her full-duty position, unbeknownst to the doctor, the employer required her to pass an essential functions test, consisting of various physical tasks including squats. The employee experienced knee pain during the test and could not complete the test. At that time, the employee asked if she could use accrued paid leave to allow additional recovery time and then perform the essential functions test again. Her supervisor refused and the employee was fired. At no time was the employee informed of her FMLA rights or given the opportunity to take FMLA leave to recover from her knee injury. The employee thereafter sued for interference with her FMLA rights.

The trial court initially ruled in favor of the employer, but on appeal, the appellate court overturned that ruling. In its decision, the appellate court noted that workers' compensation benefits are not a substitute for FMLA leave. "[P]roviding workers compensation benefits cannot absolve an employer of all obligations under the FMLA." Indeed, an absence under workers' compensation and leave under the FMLA may run concurrently. The same principle applies to a light-duty assignment as well. The court rejected the employer's argument that the employee's acceptance of a light-duty position relieved the company of its FMLA obligations. As the court noted, the employee was entitled to decline the light-duty offer and opt for unpaid FMLA leave instead; however, she was never notified of her rights under the FMLA or given an opportunity to take FMLA leave to rehabilitate her knee.

So, what is the lesson gleaned from this case? Let's start with when should a manufacturer who is subject to the FMLA inform an employee of his or her FMLA rights? The answer is as soon as it becomes aware the employee has a condition that potentially qualifies as a "serious health condition." Let's walk through that analysis.

Section 101(11) of FMLA defines serious health condition as "an illness, injury, impairment, or physical or mental condition that involves:

1. inpatient care in a hospital, hospice, or residential medical care facility; or

2. continuing treatment by a health care provider."

Inpatient care is easy to identify; however, as the Department of Labor has noted, employers often have more difficulty ascertaining situations that qualify as a serious health condition under that second prong, involving "continu-

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ing treatment by a health care provider."

And no wonder – it's complicated. In developing the final regulatory definition of "serious health condition," the Wage and Hour Division established separate definitions for: (1) periods of incapacity due to pregnancy and prenatal care; (2) a chronic serious health condition (such as asthma, diabetes); (3) a permanent or long-term condition for which treatment may not be effective (such as Alzheimer's, strokes, terminal diseases); and (4) to receive multiple treatments (including recovery from) either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment (such as dialysis, chemotherapy, etc., section).

In addition, the three-day incapacity rule coupled with "continuing treatment" portion of the definition was clarified at section 825.114(a)(2)(i) to mean: "A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

1. Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

2. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider."

An employer is legally responsible for knowing when the FMLA might apply based on the facts available to it. In the case involving the housekeeping worker, once the employer was aware that the employee experienced an on-the-job injury that incapacitated her for more than three days and that she was supposed to have continuing physical therapy, the employer was on notice that she had a potentially FMLA-qualifying condition. That knowledge triggered the employer's obligation to provide notice to the employee of her eligibility for and rights under the FMLA.

Bottom line: employers should provide FMLA notices when an employee has a condition that could potentially qualify them for FMLA leave, regardless of other leaves and benefits that may apply. ◆

SELF-DISCLOSURES: A POTENTIAL DEFENSE AGAINST INCREASED ENFORCEMENT

MILLER CANFIELD

Whether your business enterprise is large or small, being cited for a violation of environmental laws, regulations and/or permits can be extremely expensive and disruptive. Such enforcement actions can range anywhere from orders to improve environmental safeguards and policies, perform corrective actions and invest in new equipment, step up permit compliance, or pay significant civil penalties – sometimes as high as six or seven figures.

In more serious cases, shutting down a facility or even criminal prosecution – which can result in incarceration of individuals found guilty of serious environmental crimes – is also possible. Given the complexities of environmental laws, even large and sophisticated manufacturers with dedicated teams of environmental professionals can sometimes run afoul of such requirements.

While the U.S. Environmental Protection Agency (US EPA or the "Agency") and equivalent state agencies such as the Illinois Environmental Protection Agency (IEPA) have always been diligent enforcers of the numerous environmental laws and regulations on the books, the Biden Administration has made it clear that increased environmental compliance and enforcement will be a cornerstone of its governing philosophy.

Indeed, larger issues such as addressing climate change and environmental justice, two key goals of the Biden agenda, will be supported in part by greater attention and resources being devoted to environmental enforcement. US EPA and other federal agencies with similar or somewhat overlapping jurisdiction, such as OSHA, have been fully mobilized to further both of these policies. In addition, while many federal laws are enforced directly by US EPA, state agencies like IEPA tend to follow the lead of US EPA in enforcing state-delegated federal programs or even state-specific laws and regulations.

The good news, however, is that for the last several decades, US EPA (and many state equivalent agencies) have provided an "out" for non-compliance issues that are first identified by the manufacturer and are voluntarily self-disclosed to the applicable regulatory agency(ies), before being discovered by the regulators. This policy is formally known as "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (the "Policy").

The Policy enables current owner/operators and new owners of facilities that timely self-discover environmental violations in the course of a voluntary environmental audit, and meet other requirements (such as prompt disclosure) to self-disclose such violations and thereby reduce or eliminate the typical penalties that EPA might assess if the Agency itself discovered such violations through inspections or other means. After disclosure, the violations must be promptly rectified in order to qualify. The Agency provides a web-based self-disclosure portal that can be used to make the self-disclosure if non-compliance issues are identified in the self-audit.

While many environmental professionals were concerned for the future of the self-disclosure Policy, the Biden EPA recently reaffirmed its commitment to continuing the Policy with the issuance of new guidance, even while boosting its enforcement efforts in most areas. On February 5, 2021, US EPA released this new guidance document in the form of Frequently-Asked Questions (FAQ) for issues and questions that have arisen since the publication of the Policy 20 years ago, in 2000.

The new Agency FAQs address issues such as whether or not the regulated facility must admit to a violation to self-disclose a potential issue (answer: No, "regulated entities can disclose that they 'may have' violated the law"), and if EPA can use the reported violations of a 'new owner' of a facility to pursue violations against the previous owner (answer: Yes, EPA "reserves its rights to pursue sellers where the circumstances and equities warrant.")

Many states environmental protection authorities also provide (through statute, regulation or policy) very similar benefits to self-disclosure of iden-

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tified non-compliance issues. (Illinois' environmental self-disclosure policy is found at Section 42(i) of the Illinois Environmental Protection Act, 415 ILCS 5/1, et seq.)

It should be cautioned, however, that the prerequisites and procedures that must be followed under each of the federal and (where available) state schemes are complex, and require strict adherence to ensure that a voluntary self-disclosure will qualify for the penalty mitigation benefits. Like the federal Policy, most state regulatory agencies require that the violations must be initially discovered through the course of a voluntary environmental self-audit (or other systematic discovery procedure), and some states require disclosure of the audit report itself.

Thus, caution is advised in the drafting of the voluntary audit report, as it may be obtainable by regulatory agencies down the road. Other states may require advanced notice of the intent to perform the audit as a perquisite for a successful self-disclosure, and some may even require that the audit be performed by a state-approved consultant.

Whether to disclose to the feds, the state, or both, depends on the nature of the violation and statute(s) or regulation(s) at issue, and this decision should be made in consultation with competent environmental legal counsel. It should also be noted that if conduct is discovered that may rise to the level of criminal environmental misconduct (for example, falsifying lab data or reports, or illegally discharging or dumping waste), the self-disclosure policy can still be used to shield the company from criminal charges, but does not shield the individuals who actually committed the environmental crimes.

A complete discussion of the intricacies of the self-disclosure policies of the federal government and applicable states is beyond the scope of this article, so experienced environmental counsel should be consulted before a self-disclosure is attempted – preferably even before the audit is performed, and certainly in the case of suspected criminal environmental conduct.

Over the years, the Policy and the principles of enforcement leniency in return for self-policing of environmental issues have come under attack from time to time. The publication of the federal FAQs now that the Biden administration is well under way, however, suggests continuing support of the new administration for the encouragement of regulated entities to undertake comprehensive evaluation of their environmental compliance status and improve their systems without need of Agency enforcement.

While successfully using the self-disclosure Policy can be challenging, the opportunity to discover significant environmental violations before the regulators find you (and also possibly get a break on penalties by self-disclosing such violations) is well worth considering for the relatively nominal investment in professional assistance (attorneys and consultants) that is required. ◆

MEMBERS IN THE NEWS

ADM Announces Industry's First Net Carbon Neutral Milling Operations

ADM announced on August 31, 2021 that the company has achieved net carbon neutral status for its U.S. flour milling operations. This accomplishment is an industry first of its kind and scale. The company has 22 mills around the U.S. that process wheat, sorghum and corn into flour. DM achieved net carbon neutral status at its U.S. mills through a combination of energy efficiencies, purchase of renewable energy certificates, and sequestration of carbon dioxide at the company's commercial carbon capture and storage facility.

"Consumers increasingly expect their food to come from companies that share their values," said Tedd Kruse, president, Milling & Baking Solutions. "ADM is proud of our position as a trusted and capable partner in delivering responsibly and sustainably sourced ingredients that meet heightened consumer expectations. We know that our downstream customers are interested in reducing the carbon footprint of their supply chains, and we are eager to help them meet their goals with our net carbon neutral milling network."

Data shows that consumers are more aware of carbon, and taking steps to reduce their own environmental impact, driving demand for sustainable goods and carbon labeling. According to the 2020 Euromonitor International Lifestyle Survey, 68 percent of consumers are worried about climate change, 37 percent are cutting their personal carbon emissions, 22 percent are offsetting their carbon footprint, and 67 percent support carbon labeling.

HAVI Acquires PMI Worldwide

The HAVI Group, LP, a global, privately-owned company that operates businesses providing services in supply chain, sourcing, and consumer engagement to leading global brands, on September 1, 2021 announced it has acquired Pacific Market International, LLC ("PMI Worldwide"), a global manufacturer of sustainable food and beverage container solutions. The acquisition further expands HAVI's role and offerings as a leader in product development and strategic sourcing serving the world's largest global foodservice brands.

"We are thrilled to announce the acquisition of PMI Worldwide as both companies have similar, strong cultures and values and are passionate about serving our customers in extraordinary ways," said HAVI Chief Executive Officer Frank Ravndal. "The combination of our businesses will deliver best-in-class sourcing and complementary supply chain leadership capabilities around the world."

Founded in 1983, PMI Worldwide has a longstanding reputation for excellence with its customers, providing innovative beverageware and food container solutions to global foodservice brands and retailers. Their two most recognizable consumer brands are Stanley® and Aladdin®, sold in over 60 countries around the world. PMI Worldwide employs more than 700 people in seven countries.

"I am incredibly proud of the PMI team and their achievement of phenomenal growth," said PMI Worldwide CEO Bob Keller. "We're excited to join the HAVI team to become an even stronger global company. HAVI's purpose, values, and focus on sustainability closely align with ours. The combination of the two companies creates even more value for customers and opportunities for future growth and innovation."

25 Years of Illinois Manufacturing Excellence: IMEC Celebrates Manufacturers and Their Commitment To Future Competitiveness

IMEC was founded in 1996. It was the same year the DVD debuted, Microsoft introduced Windows NT and NASA launched its Mars Global Surveyor to map the planet from its orbit. The vibe of '96 included people moving to the Macarena and hoarding Tickle Me Elmo stuffed animals. All the while, IMEC saw its mission, which remains intact today: to drive growth through enterprise excellence for Illinois manufacturers.

To honor Illinois manufacturers and partners, IMEC plans to give back to its manufacturing family by highlighting the industry moments, people, trends and future predictions. From now until mid-December, IMEC will feature 25 unique perspectives about the Illinois manufacturing story. These original compositions will take the form of historical essays, videos, intimate conversations with manufacturing veterans and Friday Fun postings with a twist.

Manufacturing by 2050 will become more technology driven, according to David Boulay, IMEC president. "The average machine tool will be fully automated and more capable, multitasking will be nearly universal and 3D printing will play a more prominent role on the manufacturing floor."

Manufacturing will see more digitization and connectivity in its processes and raw materials will play a lesser role because of 3D printing, said Boulay. Today, manufacturers rely on blocks, sheets and bars while 3D printing is not limited to those raw materials, nor is it limited to shapes it can create.

"In reality, however, the next 25 years will be driven by our manufacturers and their customers," said Boulay. "Technology will play an important role, which it has done since the industrial age, but it's the men and women inspiring manufacturing who will make the biggest difference. We look forward to helping them achieve greater global success, in whatever shape that takes."

PLZ Aeroscience Acquires 220 Laboratories to Expand Full-Service Personal Care Capabilities

PLZ Aeroscience Corporation ("PLZ"), North America's largest independent specialty aerosol and liquid product manufacturer, announced on July 12, 2021 the acquisition of 220 Laboratories ("220 Labs"), a leading innovator and formulator of hair,

skin and body products. With this combination, PLZ can now offer its customers an end-to-end suite of solutions, from new product ideation and formula development to the custom manufacturing of aerosol and non-aerosol products. Financial terms were not disclosed.

The acquisition of 220 Labs is PLZ's fourth acquisition in the personal care industry in the last two years. In total, PLZ now operates seven personal care facilities across the United States and Canada.

Founded in 1991, 220 Labs manufactures a variety of aerosol and non-aerosol personal care products including dry shampoos, conditioners, and body sprays. The company is known as a market leader in product development and has a long track record of innovation. 220 Labs operates out of a 200,000 square foot FDA-registered facility in Riverside, California.

"We are thrilled to welcome 220 Labs to our company as we continue to establish PLZ as the partner of choice for personal care brands in North America," said Aaron Erter, PLZ's President and CEO. "220 Labs is a renowned innovator and formulator within the personal care industry. We look forward to leveraging these capabilities across our combined enterprise to strengthen the value proposition we bring to our customers."

Siemens, Dow and MxD Partner to Enhance Digitalization in the Process Industries with Process Automation Test Bed

SIEMENS

Siemens is collaborating with Dow to showcase the future of automation with a process industry test bed at MxD, a state-of-the-art advanced manufacturing institute and innovation center near downtown Chicago. This new test bed offers a hands-on demonstration of how innovative software and IoT come together with hardware to accelerate digitalization for the process industries. Companies can now see firsthand how to design, monitor and maintain their products more effectively, efficiently and, even remotely, using data and digital tools.

Today, most of the process industry operates on methods and workflows that have remained relatively untouched for the last 30 years. This new test bed offers a glimpse of how Siemens is helping customers prepare for the future of process automation. From web-based process control on the plant floor with a tablet, to global collaboration in real time and integrated modular automation, digitalizing the process industries will continue to blur the lines between the digital and real worlds. For the connected mobile worker, augmented reality glasses and tablets can offer digitalized documentation for quicker and easier access to safety manuals and maintenance forms that can boost productivity, R&D and compliance.

Employing a comprehensive selection automation technology, Siemens is helping bring the test bed to life. SIMATIC PCS neo process control technology, Siemens' innovative distributed control system (DCS), provides operators simple and secure access, making remote operation easier than ever before. Maintenance teams benefit from device-independent access, with actionable diagnostic and maintenance information accessible from their tablets, laptops, or multi-monitor stations. For engineering, efficient web-based collaboration opens new possibilities by working in parallel. Whether it is hardware planning, control logic, or operator displays, all tasks can be engineered in any workflow with flexibility that not only adapts to the availability of staff, but to the location as well. Integrated into SIMATIC PCS neo, Siemens' smart field instrumentation oversees the operation of the process and provides advanced health, operation, as well as diagnostic data to ensure reliable and safe operation.

Smalley wins GM Supplier Quality Excellence Award for 9th consecutive year

SMALLEY
THE ENGINEER'S CHOICE®

Smalley received the 2020 General Motors Supplier Quality Excellence Award for the 9th consecutive year. Out of the thousands of GM suppliers, only a small percentage receive this prestigious honor. The Supplier Quality Excellence Award is presented to suppliers who have met or exceeded a stringent set of criteria ranging from production to delivery.

"Despite the challenges of getting through unprecedented times in 2020, we are both honored and proud to receive the GM Supplier Quality Excellence Award. We will continue to strive for excellence and earn the trust of our partners, suppliers, and global customers each day." said Daniel Greenhill, Customer Quality Manager.

Smalley is a quality-driven organization that provides the highest quality retaining rings and springs. Smalley's parts have been used in the Automotive industry for over 100 years in everything from steering systems to transmissions. Smalley's latest automotive innovation, the Revolox Self-Locking Ring, enables engineers to design for high RPM requirements cost-effectively and with ease of assembly for high volume applications.

Zebra Technologies Completes Acquisition of Fetch Robotics

ZEBRA

Front line business firm Zebra Technologies announced August 10, 2021 it has completed its acquisition of the cloud-driven autonomous mobile robot (AMR) startup Fetch Robotics.

Fetch's AMRs have several functions, including "optimized picking in fulfillment centers and distribution centers, just-in-time material delivery in manufacturing facilities and automating manual material movement in any facility," Zebra said in the announcement.

Based in Illinois, Zebra has clients in retail and eCommerce, manufacturing, transportation and logistics, healthcare, public sector and other industries, working with more than 10,000 partners across 100 countries.

"The acquisition of Fetch Robotics will accelerate our Enterprise Asset Intelligence vision and growth in intelligent industrial automation by embracing new modes of empowering workflows and helping our customers operate more efficiently in increasingly automated, data-powered environments," Zebra Technologies CEO Anders Gustafsson said last month.

Gustafsson added that the deal would also expand on his firm's mission of optimizing the supply chain "from the point of production to the point of consumption."

The company hopes the acquisition will help facilitate Zebra's expansion in intelligent automation, which fits with the company's focus on robotics in driving improved efficiency. Zebra says it works to offer seamless integration without warehouses and manufacturers having to upgrade or revamp their infrastructure. ◆

NEW IMA MEMBERS

BRANDT INDUSTRIES INC
Crystal Lake, IL

FKM USA NORTH AMERICA
Frankfort, IL

HARPER COLLEGE
Palatine, IL

OBSIDIAN MANUFACTURING INDUSTRIES, INC.
Rockford, IL

REND LAKE COLLEGE
Ina, IL

ROESLEIN & ASSOCIATES, INC.
Red Bud, IL

STAR DIE MOLDING INC
Elk Grove Village, IL

TIMBERLINE FISHERIES
Marion, IL

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