

CORNERSTONE

OFFICIAL PUBLICATION OF THE ASSOCIATED GENERAL CONTRACTORS OF NEW YORK STATE

FALL 2021

AGC NYS WELCOMES

**AGC NYS ISSUES POLICY
PRIORITIES TO GOV. HOCHUL
(P. 38)**

GOVERNOR HOCHUL

ALSO INSIDE:

**AGC NYS 2021 SCHOLARSHIP RECIPIENTS (P. 14)
NY RECREATIONAL CANNABIS & CONSTRUCTION (P. 22)**



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AGC NYS is always looking for good action photos of those in the building and construction industry. Please provide full identification of all individuals in the photograph and e-mail them to: brayder@agcnys.org.

NEWS ONLINE ... The Cornerstone current and past issues can be accessed online at <http://www.agcnys.org>.

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CHAIRMAN'S MESSAGE

JOE K. POSILICO

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As we near the end of summer, I hope all of you were able to dodge the frequent and above average rainfall and take advantage of things opening up from where we were last year, even in the face of renewed concerns and an uptick in cases because of the Delta variant. This has resulted in the re-imposition of mask mandates and other precautions by many of our contracting agencies, and it is frustrating that we can't seem to get this all behind us. On a positive note, we were able to conduct our Annual Summer meeting at the Sagamore and were blessed with a nice turnout and great weather. I'd like to thank all our presenters who helped make this event a success! We also recently saw a return of our Annual Day at the Races PAC event at Saratoga that also had a nice turnout and was a success.

The 22nd class of AGC NYS Future Construction Leaders graduated in 2021, congratulations to all 25 of them! Let's be sure to get these graduates involved with the AGC NYS. Let's do our best to train them and educate them on everything we can so we can be proud of our future leaders. Once again, congratulations to all the 2021 Future Construction Leaders!

It's hard to believe my time as Chairman is more than half over and as we head towards the end of 2021, despite the ongoing COVID issues, there is reason for a great deal of optimism for both the Association and our Industry. Our membership continues to grow at a healthy pace, there is a substantial Federal Infrastructure Bill on the horizon that will substantially increase the available funding for public works for the next several years. We also have a new Governor, Kathleen Hochul, the first female Governor in New York State history, in place, with a new administration soon to follow. We look forward to working and partnering with our new governor to make sure our share of the funding is well utilized and can be spent more efficiently with fewer roadblocks when it comes to getting contracts executed and administered. These types of opportunities don't come along too often, and it is imperative we all get heavily involved and push these issues. Let's work together to get the money secured and projects out, and just as importantly, promote our industry and the critical improvements needed when it comes to worker safety, streamlining processes and implementing fair and reasonable contract terms and participation goals. Let's also get our insurance costs under control so more dollars are available for actual building as opposed to funding the higher insurance premiums we are faced with in New York State as a result of our draconian Scaffold Law. Please get

involved and support the AGC PAC!

Looking forward, we are planning on the return of the Annual Construction Industry Conference in Saratoga as an in-person event in December, and I look forward to seeing many of you there.

In closing, I can only say....Stay Safe, Stay Diligent, and Stay Optimistic!

Joe K. Posillico
Chairman, AGC NYS

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A MESSAGE FROM **MIKE ELMENDORF** PRESIDENT & CEO, AGC NYS

In my column in last fall's *Cornerstone*, I wrote about the ongoing uncertainty of COVID-19. As much as we all hoped those days were behind us after the encouraging developments this spring and the lifting of the restrictions we had all been living and operating under, here we are again.

There is once more continued uncertainty as I write about the trajectory of COVID-19. Cases are rising at an alarming rate, fueled by the "Delta Variant." Will we see a return of COVID restrictions and protocols? And, unlike last time, with one set of (sometimes confusing and unclear) rules from the State, will we face a dizzying patchwork of different rules and standards imposed by localities across New York? We certainly cannot rule it out, but as before, the AGC NYS staff is prepared to be your firm's resource and guide to successfully navigate whatever may come.

If you really want to talk about twists and turns, how about politics in New York? Andrew Cuomo's more than decade-long reign as Governor of New York has come to an ignominious end and Kathy Hochul is now our Governor. AGC NYS always called them as we saw them with Andrew Cuomo; when his policies were good for the industry, we said so and supported him. When they were not, worked vigorously to defend the interests of our members and AGC NYS was often among one of the few organizations willing to speak out and take the Governor on when circumstances warranted it.

Those days are now behind us—and I'll leave the post-mortem of how it all went down to the pundits. It's a fresh start for New York, and I believe it can be a fresh start for our industry. In Governor Kathy Hochul, I believe we will find a leader who will be more accessible, will listen and be receptive to ideas and input. You may recall that then-Lieutenant Governor Hochul delivered the opening remarks to last year's (virtual) Construction Industry Conference. In the first days of her Administration, AGC NYS prepared a series of recommendations to improve project delivery, construction management and the economy in New York State. It is also my hope that Governor Hochul will empower capable people in her Administration—including in the agencies—to simply do their jobs and make sure they have the resources to do so effectively. We look forward to what we hope will be a strong partnership with Governor Hochul and her Administration.

One of the greatest things of the last several months has been being able to resume in-person meetings. We have missed seeing our members. While Zoom and the like are great tools—and we will continue to use them where appropriate

as an effective and efficient means of member engagement and doing business, it is not a substitute for seeing each other face-to-face, eye-to-eye.

We had a very successful Anthony S. Santaro Golf Classic to benefit our scholarship program in June, and in August had a sold-out crowd at the Sagamore for the 2021 Summer Meeting. We had a lot of great and timely content and the post-meeting feedback was overwhelmingly positive. It was wonderful to see you all there—and I'd like to again thank our generous sponsors for making such an outstanding meeting possible:

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Saturday Morning Educational Programs – Construction Risk Partners
Saturday Reception - Milwaukee Tool
Saturday Dinner – Hinckley Allen

We are actively planning our 35th Annual Construction Industry Conference—in person—in Saratoga Springs from December 7 to 9. We wish we did not have the uncertainty of COVID hanging over our heads as we plan this event—and we will be prepared to adjust as necessary. But, with that said, we are moving full steam ahead at this point on the event and very much look forward to welcoming you all to Saratoga in December.

Whatever comes our way, AGC NYS is prepared and ready to provide the resources, guidance and information that you and your firm need to succeed, thrive and be safe. That's what we've always done, and the AGC NYS team does it with pride and aplomb.

So, remember to Call AGC First!

All the best,

Mike Elmendorf
President & CEO

AROUND THE INDUSTRY

Gov. Hochul Announces Invocation of NY HERO Act; Employers Required to Activate Airborne Infectious Disease Control Plans

Gov. Kathy Hochul announced that, in light of the continued spread of COVID-19 and its variants, the NYS Commissioner of Health has issued a designation of a highly contagious

communicable disease that presents a serious risk of harm to the public health, activating the New York Health and Essential Rights Act (NY HERO Act). The HERO Act mandates extensive new workplace health and safety protections for all employees in response to the COVID-19 pandemic. The purpose of the NY HERO Act is to protect employees against exposure and disease during an airborne infectious disease outbreak.

This designation means that the HERO Act airborne infectious disease exposure prevention plans that New York State Employers were required to have adopted by August 5 and communicated to their employees by September 6 must now go into effect.

The New York State Department of Labor (NYS DOL), in consultation with the NYS Department of Health, released an Airborne Infectious Disease Exposure Prevention Standard, a Model Airborne Infectious Disease Exposure Prevention Plan, and, most relevant to AGC NYS members, a construction industry model plan for the prevention of airborne infectious disease.

Employers had the option to adopt the applicable policy template/plan provided by NYS DOL or establish an alternative plan that meets or exceeds the standard's minimum requirements. The construction industry-specific model plan closely follows the NY Forward requirements that adopted many AGC NYS recommendations and which the industry operated under for most of the last year.

AGC NYS conducted a webinar on the HERO Act requirements in July. The slides from that program can be viewed at the link below.

AGC NYS has also developed a NY HERO Act poster to aid in compliance with this new law, which can be ordered here.

Furthermore, the HERO Act requires that, effective November 1, 2021, employers with "at least 10" employees must establish workplace safety committees to address airborne infectious disease in the workplace. At this time, we are still awaiting guidance from Department of Labor regarding the implementation of these committees and are engaged with ongoing discussions with the Governor's Office about this topic.

For all sites related to the HERO Act, visit www.agcnys.org/hero-act.

As always, AGC NYS will keep you informed on any related developments.

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Order forms can be found at www.agcnys.org/services/bookstore/ for this and all other safety products and publications.

Highway Workers Memorial Unveiled

As work zone safety continues to be at the forefront of discussions and practices; AGC NYS team Mike Elmendorf, Sarah Hill and Joe Hogan were invited to join Governor Hochul, NYSDOT, and NYS Thruway Authority to the unveiling the NYS Highway Workers Memorial located at the NYS Fairgrounds, built by AGC Member Economy Paving Co., Inc. AGC NYS Board Member Stephen Compagni, owner of Economy Paving, also joined AGC staff for the event. This memorial is in honor of all transportation workers killed while performing their job duties on or near New York's thousands of lane miles, including contractors, consultants, NYSDOT & NYSTA employees, municipal highway workers, and towing service employees. AGC NYS thanks the State for bringing awareness to work zone safety and paying tribute to those who made the ultimate sacrifice on the job.



photo courtesy of the Office of Governor Kathy Hochul

2021 AGC NYS/Posillico Civil Summer Meeting

Thank you to everyone who attended the AGC NYS/Posillico Summer Meeting last week in Bolton Landing. If you haven't already, please fill out the attendee survey to let us know what worked and what can be improved on for next year.

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Congratulations to our 22nd class of Future Construction Leaders, who graduated at the Summer Meeting!



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2021 AGC NYS SCHOLARSHIP WINNERS

22 SCHOLARSHIPS WORTH \$58,000 AWARDED

Brendan Manning, VP of Education and Environment

The AGC NYS Scholarship program has continued to grow and benefit the industry and the students who are preparing for careers in the construction industry. The 2021 Anthony S. Santaro AGC Scholarship Classic, our main fund-raising event that supports the scholarship program, was another huge success. Held again at the beautiful Shenendoah, Kaluhyat and Atunyote golf courses at the Turning Stone Resort & Casino, we totaled 340 registered golfers. Thanks to the generous contributions of our members, we were able to raise over \$50,000 for the AGC Scholarship Fund at the Event.

In addition to the Santaro AGC Scholarship Classic, the scholarship fund is supported by generous endowments made by the members. These funds are being distributed to the college students listed below who are pursuing degrees in Civil Engineering, Construction Management, Diesel or Construction Technology. All recipients must be entering the 2nd, 3rd, or 4th year of a two or four-year college and maintain at least a 2.5 grade point average. This past year, the AGC NYS scholarship selection committee reviewed 34 applications. The committee awarded 22 scholarships to students from 11 colleges and universities for a total of \$58,000. AGC NYS has awarded over \$1.3 million since the program began in 1988.

The Chapter awards an average of 20-25 \$2500 scholarships each July/August. Students must reapply each year for up to three years of undergraduate study; many of our winners each year are repeat winners. Graduate students are eligible for a one-year scholarship if they are studying full time for an advanced construction-related degree and are intent upon a career in the industry. Applications are received from February 1-April 15 of each year.

Student Chapter Grant

Each year since 1997, the AGC has set aside funds to assist our Student Chapters. Activities that have qualified for a grant include field trips to jobsites, Student Chapter competitions (i.e. regional management, concrete canoe, steel bridge, etc.), and the purchase of specific educational materials, such as computer software or hardware.

Grant applications must be in writing and should be as specific as possible. Applications are usually received by February 1 of each year, with selections made late February. Chapters have until the end of the current school year to be reimbursed for grant items.

The Student Chapter Grant Program is funded through member contributions and from proceeds of the Anthony S. Santaro AGC Scholarship Classic.

We would like to thank the AGC Scholarship Committee for all of their hard work in reviewing and selecting this year's winners. The Committee consists of:

Chairman: Pat DiLucia, Dolomite Group a CRH Company
Scott Collins, Tracey Road Equipment
Josh French, Fort Miller Group
Nick Fusillo, CCI Companies
Jeff Hanlon, Slate Hill Constructors
Carley Hill, CaHill Resources
Andrew Hovey, C&S Companies
Dom Izzo, Lancaster Development
Dave Kreis, Five Star Equipment
Jerry Leary, Milton CAT
Brian Mohorter, EJ USA, Inc.



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2021 AGC NYS SCHOLARSHIP RECIPIENTS



HALIMAT AKANBI
Nicholas Badami Memorial Scholarship

Hometown: Ozone Park, N.Y.
School: Alfred State
Bio: Halimat is a construction management major with aspirations to help people in need. Halimat hopes to be an agent of change and provide a better quality of life to people in economically staggering communities.



JONAS BUTZ
AGC NYS Scholarship

Hometown: Greenwich, N.Y.
School: Clarkson
Bio: Jonas is a senior at Clarkson University, majoring in Environmental Engineering. This past summer Jonas interned with Kubricky Construction Corp. and will be studying abroad at the University of Strathclyde in Glasgow, Scotland.



EVAN BALLARD
AGC NYS Scholarship

Hometown: Syracuse, N.Y.
School: Utica College
Bio: Evan is a junior at Utica College majoring in Construction Management. This summer he interned with AGC member C & S Companies. After graduation he hopes to pursue a career in Project Management.



THOMAS CALABRESE
AGC NYS Scholarship

Hometown: Lagrangeville, N.Y.
School: Clarkson
Bio: Thomas is a Junior at Clarkson studying Civil Engineering. This past summer he worked for The Wesson Group, LLC as an intern on one of their newest wind energy projects.



PATRICK BELLANTONI
Dudley Sutton Memorial Scholarship

Hometown: Hartsdale, N.Y.
School: SUNY Delhi
Bio: Patrick is entering his senior year at SUNY Delhi. He is pursuing a BT in Construction Technology and Management: Design and Building. Patrick was a project intern with at the Tully Construction Company.



ANGELIA CAVANAUGH
AGC NYS Scholarship

Hometown: Whitesville, N.Y.
School: Alfred State
Bio: Angelia has a degree in Heavy Equipment Truck and Diesel Mechanics from Alfred State and will be graduating in December with a degree in Construction Supervision. She has worked for both Dolomite and the Wayne Companies.



NICHOLAS BUDESHEIM
AGC NYS Scholarship

Hometown: Schuylerville, N.Y.
School: Clarkson
Bio: Nicholas is currently a junior majoring in Civil Engineering and playing basketball at Clarkson University. He spent this past summer interning at the Fort Miller Company as a design engineer.



NATHAN CLIMENHAGA
AGC NYS Scholarship

Hometown: Cherry Valley, N.Y.
School: Clarkson
Bio: Nathan is a senior at Clarkson pursuing a Bachelor's in Civil Engineering and minoring in Architectural and Facilities Engineering. He interned with Lamont Engineers as a Project Engineer this summer and hopes to earn his P.E. license in the future.

2021 AGC NYS SCHOLARSHIP RECIPIENTS



PATRICK COLLINS
AGC NYS Scholarship
Hometown: Fayetteville, N.Y.
School: SUNY ESF
Bio: Patrick is a senior at SUNY ESF in the Sustainable Construction Management Program. In his free time, he likes to spend time with friends as well as family, go boating, hunting, and play sports like golf.



DYLAN KEHR
AGC NYS Scholarship
Hometown: Lawtons, N.Y.
School: Alfred State
Bio: Dylan is a sophomore at Alfred State in the Construction Management program. During the summer Dylan works at the Phillips Family Farm in North Collins, N.Y. where he does some part-time equipment operation.



DEREK CUYLER
AGC NYS Scholarship
Hometown: Oswego, N.Y.
School: Clarkson
Bio: Derek is entering his senior year in the Civil Engineering program at Clarkson University. He also plays baseball at Clarkson. Following graduation, he plans pursue a career in the engineering or construction industry.



JACOB LUKACZ
Jeffrey J. Zogg Memorial Scholarship
Hometown: Oneida, N.Y.
School: Utica College
Bio: Jacob is a senior studying Construction Management. He is currently a member of the Student Contractors Association (AGC), as well as a member of the National Society for Leadership and Success. He would like to do Project Management when he graduates.



RYAN DANYLUK
Anthony S. Santaro Memorial Scholarship
Hometown: New Windsor, N.Y.
School: Wentworth
Bio: Ryan is senior at Wentworth in Boston studying civil engineering. He has done two internships with Walsh Group, one on the 207th Street Sandy Resilience Project in New York City, as well as the Howard Frankland Bridge Project in Tampa, Florida.



CHRISTINA MARRA
AGC NYS Scholarship
Hometown: Carmel, N.Y.
School: Roger Williams
Bio: Christina is a sophomore at Roger Williams University in the Construction Management Program. This past summer Christina worked for Arcadis as a Construction Intern.



KEVIN DENNIS
AGC NYS Scholarship
Hometown: Palmyra, N.Y.
School: RIT
Bio: Kevin Dennis is a sophomore at the RIT, where he is studying Civil Engineering Technology. He enjoys his current co-op at the Wayne County Highway Department and looks forward to the fall semester ahead.



RACHEL RACKLIFF
AGC NYS Scholarship
Hometown: Jericho, Vt.
School: Clarkson
Bio: Rachel is a member of the Civil Engineering program at Clarkson and has a concentration in Construction Engineering and Management. She is an active member the AGC Student Chapter. This past summer she worked on a \$70 million residential project as a project engineering intern at CBG Building Company in Herndon, Va.

2021 AGC NYS SCHOLARSHIP RECIPIENTS



ROBERT SCHNEIDER
AGC NYS Scholarship

Hometown: West Coxsackie, N.Y.

School: Clarkson

Bio: Robert is entering his junior year studying civil engineering at Clarkson. He interned this summer as a field engineer with Flatiron Construction on highway widening project. He is involved with AGC, ASCE CI chapter and Concrete Canoe captain.



MICHAEL VANDERLINDE
AGC NYS Scholarship

Hometown: Wappingers Falls, N.Y.

School: SUNY Delhi

Bio: Michael is a Construction Management major at SUNY Delhi. He is currently working at Home Depot full-time, while attending school full-time, and is anticipating an internship in Colorado over the next few years.



CONNOR SCHWARTZ
Buddy Gigliotti Memorial Scholarship, Empire State Highway Contractors Association

Hometown: Syracuse, N.Y.

School: Utica College

Bio: Connor is a senior at Utica College, studying Construction Management with a dual minor in Entrepreneurship and Management. This summer Connor is interning with a residential construction company in an effort to increase his knowledge of the construction industry.



TIMOTHY WRIGHT
AGC NYS Scholarship

Hometown: Frewsburg, N.Y.

School: Alfred State

Bio: Tim attends Alfred State majoring in Construction Supervision with an associate degree in Electrical Trades. Tim is also enlisted in the Army National Guard. His goal is to one day own and operate an Electrical Contracting company in the Buffalo/Jamestown area.



JARED SMITH
Buddy Gigliotti Memorial Scholarship

Hometown: Delhi, N.Y.

School: SUNY Delhi

Bio: Jared is currently a junior in the Construction Management & Design program at Delhi. When Jared graduates he plans to work for a commercial construction company. He hopes to own his own General Contracting business of his own someday.



KATHERINE TANTALO
AGC NYS Scholarship

Hometown: Rochester, N.Y.

School: SUNY ESF

Bio: Katherine is a senior in the Construction Management program at SUNY ESF. She is a member of the Green Construction Group is working for Campus Construction Management as a project intern.

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REFLECTION ON REACHING ONE HUNDRED YEARS IN BUSINESS

Frank Suits Jr., President, Suit-Kote Corporation

This article is a reprint of an article that appeared in the Summer 2021 edition of Suit Quotes.

One hundred years in business is a special and rare milestone to reach as a company. However, thanks to a lot of hard work, perseverance, and adaptability, Suit-Kote managed to do just that.

Suit-Kote's journey began in 1921 as a road construction company. Over the last century, Suit-Kote evolved from acquiring and expanding many facilities, but also sold some locations that did not fit into the company's strategic vision. We currently encompass over twenty facilities and multiple leases that enabled us to expand our market area to include New York, Pennsylvania, Ohio, New Jersey, Connecticut, Maryland, Delaware, Massachusetts, New Hampshire, and Canada. Over the years, we employed thousands upon thousands of employees who all contributed to bringing Suit-Kote to where it is today.

Upon reflecting on the various factors which facilitated Suit-Kote to reach a centennial anniversary, I arrived at the following:

- **Employees** - Employees are the main factor in the long-term success of a business. Suit-Kote's employees have always helped pass on strong values, traditions, and knowledge.
- **Strong values and beliefs passed down through generations** Throughout the different generations of Suit-Kote employees, there are attributes of our work force and the way we do business which never wavered. These attributes include strong work ethic, integrity, humility/down to earth employees, creativity, and our ability to troubleshoot and problem solve. I am very proud of, and proud to be a part of, the culture that has been created and cultivated over time at Suit-Kote.
- **Innovation and adaptability** Over the course of a century, companies must learn to adapt and effectively implement change to survive the many obstacles. Long-term success is a delicate balance of honoring tradition, knowing your strengths, and recognizing the need to evolve.
- **Strategic acquisitions, capital investment, and shift towards vertical integration** Suit-Kote has gone through many changes throughout its history that have included some very key acquisitions and a great deal of capital investment which allowed us to become the vertically integrated company that we are today. Our industry is highly competitive,

and a crucial point to securing an advantage over our competitors is maximizing the impact of vertical integration.

- **Relationships with suppliers and customers/quality of work** We are fortunate to have strong relationships with both customers and suppliers. Regarding customers, I attribute this to our high-quality work and customer-driven focus. As it pertains to suppliers, we are blessed to have forged many solid relationships with suppliers over all facets of our business.

Especially in recent years, I have talked and wrote about our company's history frequently. I wanted to make this article about reflecting on how far we have come as a company and what has helped get us here. It has not always been easy; there have been many obstacles to overcome. Yet, I am thankful and proud of the position we are in today. Thank you to everyone, past and present, who had a hand in getting Suit-Kote to this centennial milestone!

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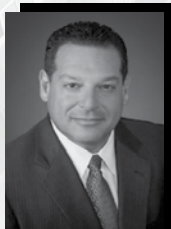
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5 POINTS - NY RECREATIONAL CANNABIS & CONSTRUCTION

Peter Simon, Total Safety Consulting, LLC

In March of 2021 New York State passed the Marijuana Regulation & Taxation Act known as the MRTA. The MRTA legalizes recreational adult use of cannabis, certain possession of cannabis and creates a regulatory framework for the cultivation, distribution, and sale of recreational cannabis in the State of New York. In addition to legalizing recreational cannabis and providing the framework for distribution and regulation, the MRTA also changed NY State Labor Law to provide protections for workers that legally use recreational cannabis outside of the workplace. This can create a difficult situation for employers engaged in high-risk industries like construction. On one hand the employer can not discriminate against an employee engaging in legal cannabis use outside of the workplace and on the other hand the employer is required to maintain a safe work environment for employees and the public. To make things even more complicated traditional biometric (urine or blood) cannabis testing does not correlate with impairment as a worker can test positive for several weeks after legal recreational use even though the worker is not impaired at the time of testing. The MRTA undoubtedly is a paradigm shift for the NY construction industry and will have an impact on industry health, safety, and drug-free workplace programs. Below are 5 key points that all employers in NY State construction should be aware of:

1) IMPAIRMENT NO DEFENSE TO NYS SCAFFOLD LAW - LABOR LAW 240/241

Generally, NYS Labor Law 240/241 holds owners and certain construction companies liable for accident involving falls from ladders, scaffolds, or height. There is no comparative negligence addressing how the worker might have contributed to the accident and certain defendants can be held absolutely liable. In the context of the MRTA, cannabis impairment by a falling worker would not be a defense to NYS Labor Law 240/241. There are a series of existing cases in NYS where courts considered worker impairment by drugs, alcohol or other intoxicants and the courts held in short that worker intoxication is not a defense to NYS Labor Law 240/241.

The MRTA creates a significant exposure for the construction industry as recreational cannabis distribution

networks are set up throughout NYS. A construction worker will easily be able to legally purchase cannabis products, consume those products prior to or during the workday and consequently function in an impaired state on a construction site. This situation is especially alarming if workers are operating heavy equipment or working at height.

Due to the potential of significant monetary liability claims resulting from impairment associated accidents, construction employers and owners cannot afford to stick their heads in the sand and ignore cannabis impairment related issues on a construction site. Willful blindness is likely to result in legal issues that could also include the violation of general duty provisions under Federal OSHA or municipal building codes such as the NYC Building Code that require places of employment free from recognized hazards and maintenance of safe sites.

2) MRTA CREATES WORKER PROTECTIONS UNDER NYS LABOR LAW

The MRTA has created NY State Labor Law restrictions on an employer's ability to discipline or remove employees from the workplace for using cannabis legally. Additionally, the MRTA limits an employer's right to refuse employment or discriminate for the use of cannabis. However, an employer can take corrective action when the employer is required to do so by Federal or State law or if the employee is "impaired" while on the job. The issue of impairment and what constitutes being "impaired" will undoubtedly be a hot button topic on construction sites and a focal point of future litigation. Already Plaintiff's lawyers are pointing out that things such as smelling like cannabis or having red eyes are not necessarily signs of "impairment" due to cannabis use. Excluding workers that are not impaired could result in discrimination claims.

NYS Labor Law 201-d(4-a) Notwithstanding the provisions of subdivision three or four of this section, an employer shall not be in violation of this section where the employer takes action related to the use of cannabis based on the following:

(ii) the employee is impaired by the use of cannabis, meaning the employee manifests specific articulable

symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position, or such specific articulable symptoms interfere with an employer's obligation to provide a safe and healthy workplace, free from recognized hazards, as required by state and federal occupational safety and health law;

3) POLICY ISSUES

The MRTA should prompt employers to revisit their site specific and company drug and alcohol policies or programs. The NY State MRTA adds to a patchwork of state and federal policies that are often different or even conflicting. An employer in NY State should evaluate and modify as appropriate their drug and alcohol policies or programs to comply with the MRTA and an employer might end up with different policies in different jurisdictions. A one size fits all policy for employers with jobs in multiple states is likely no longer feasible.

4) TRADITIONAL BIOMETRIC DRUGS ARE PROBLEMATIC UNDER THE MRTA

With the exception of some Federal or State drug testing requirements, the traditional model of biometric drug testing (usually urine or blood) does not typically work for employers under the MRTA in NY State. In a nutshell THC (Tetrahydrocannabinol), the psychoactive compound in cannabis that produces a "high" sensation, can remain in a person's body for weeks after an individual is no longer impaired or "high". This creates a situation whereby an employer could exclude a worker from a construction site or employment for a failed biometric drug test, but the employee was not impaired or "high". This would likely be a violation of the MRTA/NY State Labor Law and could give the employee(s) a cause of action against the employer for discrimination.

5) TRAINING & MODIFIED PROTOCOLS ARE NEEDED

The lack of a biometric test that objectively identifies cannabis impairment creates a difficult situation for employers. When a biometric impairment test does not exist, academics, law enforcement, employers and others are left with behavioral tests to evaluate cannabis impairment. Behavioral tests often must be performed in a clinical setting, require extensive equipment, are time consuming and are not practical for field applications.

The MRTA allows employer action when

the employee manifests specific articulable symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position.

Identifying specific articulable symptoms of impairment by supervisors requires training on what the symptoms are, how symptoms should be documented and what

corrective action should be taken in accordance with the site/company drug and alcohol policy/program. When possible, it is ideal for an employer or site to have an objective measure of impairment that measures impairment against an employee specific baseline, along with an independent and trained arbitrator of what constitutes impairment. These steps can help reduce the probability of discrimination claims against an employer while still maintaining a safe work environment.

Peter Simon is a Certified Safety Professional (CSP) with 20 years' experience in various aspects of public safety and health. Peter began his career as a professional fire fighter and emergency medical technician (EMT). Throughout the course of his career Peter has physically put construction material in place, responded to construction emergencies, evaluated buildings for public/worker safety and helped plan major construction projects around NYC.

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DO YOU KNOW?

EPISODE 6

Carla Plankenhorn, VP of Finance

AGC NYS wants you to leverage your Membership benefits by keeping you in the know on what we have here at AGC NYS.

I write often about the value of your association with AGC NYS, value realized through participation. There is great value in leveraging the products that AGC NYS is able to offer through our affiliate partners, as well.

DO YOU KNOW?

Verizon has been an affiliate of AGC NYS since 2009 and through NPP (National Purchasing Partners) has been able to offer great discounts to our Members for cellular service and equipment. Through NPP our Member companies performing a significant amount of physical construction services, as well as architects, engineers, and surveyors receive 22% off corporate calling plans, and employees receive up to an 18% discount (15%, plus an additional 3% discount if enrolled in online billing) on their plans. Pricing options are also available on data plans, accessories, and devices

It has come to my attention that Verizon also has other key products in place which may be of interest to our Members:

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Business Mobile Secure: Mobile Device Management and Network Security from Hacking/Phishing/Smishing

Business Mobile Secure is a new security bundle built to meet the security needs of small and medium-sized businesses (SMBs), particularly those with active mobile workforces. It provides simple, easy-to-set-up solutions to help protect your mobile devices from security threats.

Forty-three percent of SMBs that suffered a mobile security compromise said remediation was difficult and expensive. (Source: Mobile Security Index (MSI) Report 2020)

The multilayer security approach includes mobile device management, mobile threat defense and Wi-Fi protection, along with dedicated technical support.

- Be able to remotely lock/unlock/wipe devices
- Push Applications directly to devices
- Whitelist or Blacklist sites to control what users access for safety/security
- LookOut Mobile Secure: Secure Devices from Phishing/Smishing/hacking and other security breaches that can cost your business thousands
- \$5/mo. per device (included in some new Premium Unlimited plans)

Additionally, you our - valuable partners - may want to take this opportunity to spotlight your own company. Do you have an important milestone or anniversary, employee honors to recognize or surprising product/service that you can highlight? Let us know perhaps this will be an ideal place for a DO YOU KNOW? of your own.

Dedication to details.

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*Robert Marchione, CPA
Partner, RBT CPAs, LLP*

Are you considering purchasing an existing construction company?

negotiating. Perhaps you suggest that the seller uses some of the sale proceeds to pay off the withdrawal liability so you get a fresh start, or you might suggest a reduced selling price.

Congratulations, we hope you have your hard hat on and are ready for some (figuratively) heavy lifting. Whether this is part of your long-term plan, or you're already deep into the process, there are a lot of critical considerations you need to make before you take the plunge. One of the most overlooked factors: unfunded pension liabilities. Don't fall into the trap of being unprepared when it's negotiation time.

Why are unfunded pension liabilities my problem now?

You know the saying once you own it, you own all of it – the good, the bad, and the ugly? You need a clear financial picture of what you're walking into. There's no room for surprise costs popping up, and unknown unfunded liabilities can quickly become your responsibility. With nearly 40 percent of all multiemployer defined benefit (DB) plans operating in the construction industry, you probably already know these plans tend to be poorly funded. A 2020 federal study even revealed that the multiemployer insurance program is highly likely to become insolvent by 2025.

Ask yourself, is this an asset or a stock sale?

If it's an asset sale, successor liability law typically states that the buyer won't assume the seller's corporate liabilities. Usually in this type of sale, the withdrawal liability stays with the seller, who can then dissolve. However, in certain cases, courts have found successor liability for the buyer in an asset acquisition.

If it's a stock sale, a withdrawal from a multiemployer pension plan typically isn't triggered, as long as there is no interruption to the obligation of the sold entity to contribute to the plan.

What can you anticipate from the seller?

It's not uncommon for sellers to categorize withdrawal liabilities as irrelevant to deal pricing. But certain situations arise where liability can be triggered against the wishes of the employer, or without any affirmative action, such as a union decertification, a significant business downturn, or an asset sale. It's always a best practice to ask the seller to go back to the unions and find out what the withdrawal liability is in advance. Once you have this insight, get to

How can buyers protect themselves?

Because a company's financial statements are not required to disclose the amount of pension plan liability in the event of withdrawal, buyers often overlook the amount of any such potential liability when setting the purchase price at the bid stage. This can wind up being a huge mistake. Remember, you want the price of the sale to suitably account for potential liability. If a recent estimate of the company's potential withdrawal liability is unavailable, collect information so an expert can estimate withdrawal liability exposure. Protect yourself by reviewing the plan's level of funding, a detailed history of the target company's contributions to the plan, and information about the plan's contributing members. It's also critical to find out the number of unions the company participates in.

What other steps should I take?

Keep in mind there are certain exceptions for construction employers, and the recent American Rescue Plan Act provided funding for some of the severely underfunded pension plans which may eliminate or reduce the liability for some employers. The new financial-assistance program is expected to funnel about \$94 billion to more than 200 eligible multiemployer plans, according to the Pension Benefit Guaranty Corp. Ultimately, every union contract is different. Consider special purchase agreement provisions: an agreement that sellers will pay withdrawal liability assessments, broad indemnification rights, or purchase price adjustments. It might make sense to establish an escrow account to cover potential liability. Most importantly, always consult with a team of financial professionals and legal representatives to navigate this issue so you set your company up for success.

RBT CPAs, LLP is the largest CPA firm in New York's Hudson Valley, offering a wide array of services like financial planning, technology consulting, business valuation, and pension consulting. RBT serves the accounting needs of the people of the Hudson Valley and the New York metropolitan area out of Newburgh, N.Y.



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THE BIPARTISAN INFRASTRUCTURE BILL: WILL IT PASS AND WILL IT HELP

Stephen E. Sandherr, CEO, AGC of America



Last month, 69 Senators, including 19 Republicans, voted to pass the kind of infrastructure bill that politicians have long promised and until now failed to deliver. But its final enactment is far from certain as the measure faces an unclear fate in the House, where its passage will likely be contingent on the fate of a far larger \$3.5 trillion “social infrastructure” measure.

The bill, formally known as Infrastructure Investment and Jobs Act, provides a \$1.2 trillion investment in our nation’s roads, bridges, passenger rail systems, transit systems, water infrastructure, broadband, airports, and ports. Interestingly, the bill provides record levels of federal investments in building and maintaining America’s physical infrastructure without imposing tax increases on construction companies.

Among other things, the bill includes a 5-year surface transportation reauthorization which would provide a \$311 billion investment in the nation’s roads and bridges, which is an increase of \$85 billion over current funding levels. The measure also includes a one-time \$36 billion investment dedicated to repairing and rebuilding the nation’s aging bridges.

The bill also provides funding to expand access to broadband in rural areas. In addition, it provides long-term dedicated funding so states can plan for major infrastructure projects. And it provides funding for a broader range of “infrastructure” projects that will boost demand for building projects not typically included in other infrastructure measures.

The measure also makes the policy of “One Federal Decision” permanent by holding agencies accountable and requiring timelines and page limits on large environmental documents. This is something former President Trump launched via an executive order. The bill also makes other improvements to the federal permitting process by allowing utility relocation prior to the environmental reviews being completed and makes the federal permitting council permanent.

Even with strong, bipartisan support for the measure, its fate is far from certain. Fewer Republicans in the House are likely to support the measure while many progressive

Democrats seek to hold the measure hostage until passing the so-called \$3.5 trillion social infrastructure measure. As of writing this column, the House is moving forward on both “infrastructure” measures thanks to a non-binding promise to vote on the actual infrastructure bill by the end of September.

AGC of America is working aggressively to get the measure through the House. We have been sending weekly Action Alerts to member firms, encouraging construction professionals to urge their Congressmen and women to vote for the bill. We are supplementing these efforts with targeted digital advertising, social media, radio media tours and earned media.

The reason we are pushing for passage of this bill is that it will provide needed boosts to demand in construction. This new demand will offset the declines in non-residential construction activity that AGC chief economist Ken Simonson has been tracking since the onset of the pandemic. It will also benefit the broader construction industry by making our overall economy more efficient, thereby boosting demand for even more construction activity.

The best way to make sure this bill passes in the House, however, is to make sure you are contacting your members of Congress and telling them to give our industry a key role in rebuilding our infrastructure and our economy.



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AGC OF AMERICA NATIONAL CONVENTION - SEPTEMBER 21-23 ORLANDO, FLORIDA

Dennis Kiefer, Member Services Director

The AGC Annual Convention provides contractors of all sizes and markets

the opportunity to gain a competitive advantage, to help protect key business interests, make important industry connections, prepare for industry disruptions, gain business-critical insights into the issues most affecting their operations.

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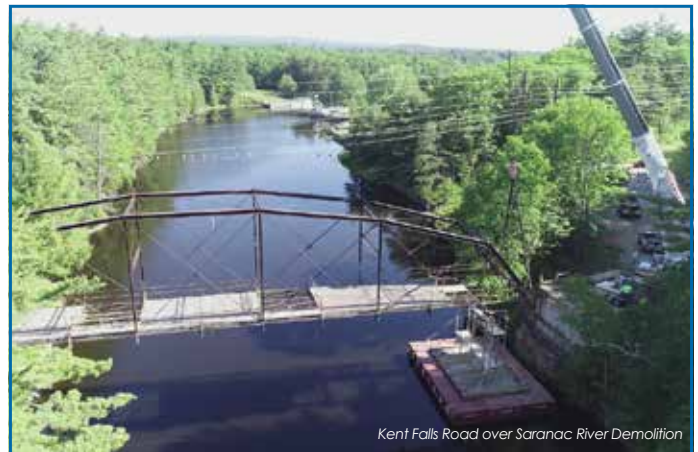
The AGC Equipment, Technology & Construction Solutions Expo provides a one-of-a-kind opportunity for your whole team to meet with more than 100 leading industry suppliers showcasing the latest tools, solutions and equipment to power your construction business.

You can register for the National Convention on the AGC website at convention.agc.org.

**At the time of this writing, the AGC National Convention was scheduled as an in-person meeting with networking and educational opportunities. If conditions have worsened with regards to the COVID-19 pandemic, travel and meeting restrictions may have been implemented. We encourage you to visit the AGC of America website for the most current convention status.*

TUESDAY, SEPTEMBER 21, 2021

WHAT	WHEN	WHERE
Construction Safety Excellence Awards Judging	7:00 AM - 5:00 PM	Orlando World Center Marriott
Convention Registration / Information Desk Open	8:00 AM - 3:30 PM	Orlando World Center Marriott
AGC Contractor's Prayer Breakfast • Tutorial Event	8:30 AM - 9:30 AM	Orlando World Center Marriott
Understanding OSHA's Multi-employer Citation Policy • Safety, Health, and Environmental	9:00 AM - 9:45 AM	Orlando World Center Marriott
Lean Safety: Improving your Safety Culture with Lean Management Tools • Safety, Health, and Environmental	10:00 AM - 10:45 AM	Orlando World Center Marriott
Building Division Leadership Meeting • Construction Leadership	10:00 AM - 12:00 PM	Orlando World Center Marriott
Federal & Heavy Construction Division Leadership Meeting • Federal & Heavy Construction	10:00 AM - 12:00 PM	Orlando World Center Marriott
Highway and Transportation Division Leadership Meeting • Highway, Transportation, and Infrastructure Construction	10:00 AM - 12:00 PM	Orlando World Center Marriott
Utility Infrastructure Division Leadership Meeting • Highway, Transportation, and Infrastructure Construction	10:00 AM - 12:00 PM	Orlando World Center Marriott
Lean the Big Stick & Make it Happen: How to Integrate HSP principles with BBS • Safety, Health, and Environmental	1:15 PM - 2:00 PM	Orlando World Center Marriott
Improving Safety Through Technology: A Tactical Guide to the Best Investments • Safety, Health, and Environmental	2:15 PM - 3:00 PM	Orlando World Center Marriott



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CALL AGC FIRST: MORE THAN JUST A SLOGAN

Brooke Rayder, Director of Communications

While I'm one of the newer faces on the AGC NYS block, we're an association that prides ourselves on providing around-the-clock service based on years of experience. One of the first phrases I was introduced to when I started working at 10 Airline Drive was, "Call AGC First!" And although the last 1.5 years has been a whirlwind for all of us, our dedication to that commitment has never been stronger.

COVID-19 has thrown a lot of new things our way, and that applies across the board: new contract provisions, regulations to decipher, hoops to jump through. It's new territory for all of us, but AGC NYS still stands ready to answer your questions. Even if we have questions ourselves, our network of industry professionals and relationships with public agencies are the foundation of everything we do. You are dues-paying members of our association, so put those dollars to work!

We're here for your big questions and your feedback too. We adapted to the terms of engagement dictated by the COVID-19 pandemic: Zoom Town Halls, a virtual Construction Industry Conference. The great part of virtual interaction is that more people can participate, from Buffalo to Long Island, and that participation doesn't have to be dictated by travel. However, we've heard from many members that the digital space is getting a little exhausting, you're excited to get back to meeting in person. No where was that excitement more evident than at our Summer Meeting this year at the Sagamore in Bolton Landing. Every event had a family reunion feeling. Based on our membership survey, that was a welcome feeling!

As we continue to maneuver the COVID-19 pandemic, I've started applying "Call AGC First!" to not just the larger, major emergencies but also to our transition back to what might be normalcy. We'll do our best to field your questions and concerns as we conclude 2021.

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ALIGNMENT OF FOCUS – A FOUNDATIONAL TOOL FOR PROJECT TEAM COLLABORATION

Joe Hogan, CDT, VP of Building Services



Ponder for a moment the number of organizations involved in a current construction project you are involved in. As to the Owner, even if there is only one entity there are usually at least two distinct parts – facilities and operations. Is there an owner's rep – CMA, Program Manager? How many design firms are involved – principle design firm, sub-consultants, inspectors? Now to the contractors. How many subcontractors, sub-subcontractors, suppliers are engaged on the project? Are there separate prime contractors? From there, think about the number of key players from each organization. There are likely at least two from each organization. Pretty soon, the numbers could seem daunting.

Given the numbers, what strategies do you employ to ensure that the entire team is on the same page and rowing in the same direction?

- Is it merely a belief that team members observe that which is before them and reach the same conclusion about what is happening and what needs to happen in the near term? If that is the case, I encourage you to look back on my column in the Spring 2021 Edition of Cornerstone

about 3rd Level Thinking. As you will note from that article, 1st and 2nd

level goals, objectives and biases color such perceptions. Indeed, even alternative sources of information – some factual, some not – will color perceptions of what is happening and what needs to happen.

- Is it a view that the team members have seen, read, understand and believe the CPM schedule? Is that realistic? Does the CPM cover all the issues of what is happening and what needs to happen?
- Do you rely on the standard job meeting and the 3-week look ahead? I'll discuss job meetings in more detail in an upcoming column but for purposes of this article, how much of the team that you've counted are engaged in that meeting and discussion?
- Have you incorporated Lean principles and you are utilizing "Pull Planning" techniques? Depending on the degree the entire team is engaged in the process, that may well be optimal. What I will discuss, however, is a somewhat more rudimentary form of "Pull" but is also

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a process that can help to root out biases, superior information and misinformation.

The Process of “30 Day Focus” asks the team a basic and prospective question – What has to Happen on this Project in the Next 30 Days?

Effectively, this process takes the work of the 3rd Level Thinking overall project goals discussed in the Spring 2021 Edition of Cornerstone, expands the team and breaks that into bite sized chunks. In fact, the basic question about what needs to happen in the next 30 days contains the notion that achieving those short-term goals are critical to staying on path to achieving the long-term/project completion goals.

Let’s take a deeper dive into what the “30 Day Focus” process looks like.

For this process, as much of the team’s key members as possible are assembled. Yes, that includes subcontractors – at least the key subs/trade partners currently or very soon to be active on the project. Those team members are keen to hear and be heard relative to the project focus and their perspective can be very valuable. I think back on a school project in Brooklyn where the subcontractors clamored to be in the trailer and part of the process. At one point, where the project was dealing with a particularly difficult issue relative to approval to drive piles, it was an idea from the masonry subcontractor that saved the project.

With the team assembled, ask those present to write down the top 1 or 2 things that need to happen in the next 30 days. Based on Pareto’s Law (the 80/20 principle) I afford just 60 seconds for that task before I go around the room and ask for their top priority. I then go around a second time and ask for the 2nd priority. A list is generated on a white board or flip chart. It sounds like a daunting process that will generate a very long list but, particularly where communication is good, many will be seeing the same priorities. I recall that same Brooklyn school project where team members would try to guess where I would start in asking for the number one priority so they could be near the beginning. “I don’t want someone else to steel my thunder” was a common, light-hearted refrain.

With the list generated, it is then time to go back to the to each one and, where appropriate (it’s not needed in every case), ask what stands in the way of that item being accomplished/ what are the constraints. It might be predecessor work, an outstanding RFI, submittal approval or some other issue. This is where the communication standards discussed in my column in the Summer 2021 edition of Cornerstone comes into play. Start with the end in mind for each item then ask for commitments relative to each of the identified constraints. Remember the questions that need to be answered – What is to be done? Who is to do it? When is it to be done?

All that information and commitments are part of the list that can be tracked. Subsequent meetings should revisit the list and commitments from the previous meeting to determine who has kept their commitments and how the team is progressing. It is noteworthy that the more commitments

that had been kept, the shorter that part of the meeting is. The process will provide a window into a variety of key pieces of information such as:

- Are team members taking on more than they can handle? Should they delegate more?
- Is the team over-aggressive in focus/commitment?
- Are commitment dates real? Clue – if most commitment dates happen to fall on the meeting date, they are probably not a believable date.
- Are there team-members that habitually fail to keep commitments?
- Is the team adequately identifying constraints?

As a final note about this process, there are important aspects of effective teams in this process that should be watched for in the process of generating the list.

- An outsider will be hard-pressed to discern who the contractor, designer, subcontractor, owner, etc. is
- No-one will say “Why didn’t you put this item on the list?”
- No-one will say “Mind your own business, it’s not up to you to point this item out.”

I’m reminded of a meeting where an Owner asked if he could generate the entire list to see how well he had been communicating with the team on the project. All agreed that he was spot-on relative to where the project stood and what the priorities were.

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AGC NYS ISSUES POLICY PRIORITIES TO GOVERNOR HOCHUL – LEGISLATION, POLICY, AND 2022 RECOMMENDATIONS



Walter Pacholczak, VP of Government Affairs

AGC NYS issued the 2021-22 Initial Construction Industry Priorities and Recommendations to our new Governor Kathy Hochul. The AGC NYS 2021-22 Initial Construction Priorities & Recommendations document includes legislation headed to the Governor's office for approval or veto, policy recommendations to improve the state procurement process, and recommended statutory changes in 2022.

AGC NYS has built a constructive relationship with Governor Kathy Hochul, as she was the keynote speaker at the 2020 Construction Industry Conference and had a recent conversation about industry priorities with the Governor in Syracuse. With the 2022 New York State Budget, legislative session, and redrawing of Congressional, state Senate, and Assembly districts, AGC NYS is poised to continue working and building a strong relationship with Governor Hochul and her team.

SUMMARY OF AGC NYS 2021-22 INITIAL CONSTRUCTION PRIORITIES AND RECOMMENDATIONS TO GOVERNOR HOCHUL

Recommendations on Legislation Pending Action by the Governor

SPEED VIOLATION MONITORING SYSTEMS IN WORK ZONES (A.485-B/S.4682-B)

Establishes a demonstration program implementing speed violation monitoring systems in work zones by means of photo devices; relates to notices of liability and the adjudication of certain traffic infractions involving the use of photo monitoring devices. This bill will increase the safety of workers in work zones.

NYSDOT ANNUAL ROAD AND BRIDGE CONDITIONS REPORT (A.4010-B/S.199-B)

Requires an annual report be made regarding highway and bridge conditions, capital program letting and implementation, capital program accomplishments, and non-MTA downstate suburban and upstate transit capital programs. This bill will help inform the Legislature and public as to where funds are needed and are being appropriated to help repair and maintain New York's roads and bridges.

MTA ELECTRONIC BIDDING (A.7707-A/S.6995)

Allows the Metropolitan Transportation Authority (MTA) to use electronic bidding for public work contracts. During the COVID-19 pandemic, the MTA used electronic bidding more widely under Executive Order 202. Electronic bidding is both allowed and encouraged under the Federal Acquisition Regulation and is allowed by Federal Transit Administration, one of the MTA's major funding partners. Electronic bidding is a valuable tool for MTA procurement.

WAGE THEFT: (A.3350-A/S.2766-C)

Provides that a contractor making or taking a construction contract shall assume liability for any debt resulting from making a wage claim, owed to a wage claimant or third party on the wage claimant's behalf, incurred by a subcontractor at any tier acting under, by, or for the contractor for the wage claimant's performance of labor. This bill is a misguided attempt to shift the blame from unscrupulous subcontractors to the general contractor or construction manager without any knowledge or legal authority to know of such a wage violation.

PREVAILING WAGE ON AGGREGATE DELIVERIES (A.1106-B/S.255-B)

Requires prevailing wage to be paid for work performed on a public works project for any work involving the delivery to and hauling of aggregate supply construction materials, as well as any return hauls, whether empty or loaded and any time spent loading/unloading. This bill would create a logistical conundrum for contractors and subcontractors because the delivery and hauling of construction aggregate can originate in-state or interstate and can be split into multiple loads for public or private work. Imposing a prevailing wage on a product that can originate in or out of New York State would completely contradict the policy implemented on the federal level by the Davis-Bacon Act.

CONSTRUCTION ADVISORY COUNCIL (A.6232-C/ S.4323-C)

Provides for an independent advisory council that will study the current public contracting process, adopt recommendations, and issue a report about best practices in four issue areas: damages incurred by contractors,

subcontractors and other parties due to delay in payments by public project owners or managers; substantial completion as it is defined in subdivision 1 of section 139-f of the state finance law; public works contracting issues affecting minority and women contractors and subcontractors; and retainage in public works contracts. While well-intentioned, this bill would establish an ineffective seventeen-member advisory council to address public procurement issues such as delay damages and timely notification.

General Policy and Statutory Recommendations

HIRE GOOD PEOPLE AND EMPOWER THEM TO DO THE JOB

This speaks for itself. Hire good people, set the tone, empower them to do the job and give them the confidence to do so. AGC NYS is encouraged by Governor Hochul's comments and tone on this subject so far.

NYSDOT ENGINEERING STAFFING LEVELS

NYSDOT staffing levels are threatening the delivery of the current, historic capital program, which is a particularly ominous condition considering the coming Federal Infrastructure Bill. Experienced engineering staffing levels at NYSDOT are at historically low levels, threatening the ability of the Department to deliver its current, historic capital program, not to mention what we hope will be an historic influx of funding from the federal infrastructure bill. AGC NYS recommends quickly filling and making permanent key NYSDOT positions and add design and engineering capacity, both in house and on a consultant basis, to ensure successful program delivery.

LACK OF CAPITAL PROGRAM TRANSPARENCY

A complete lack of transparency pervades both the status of capital program delivery, as well as the needs and conditions of the NYSDOT system. AGC recommends transparency on what is being delivered and what is needed will better serve the interests of the public and the industry— and will help the Executive and Legislature make more sound funding decisions.

EXECUTIVE ORDER 192

Executive Order 192 is in effect and poses unmanageable risk and a denial of due process to all vendors (not just in construction) doing business in New York. It is emblematic of the abusive, bullying, and heavy-handed approach that has become all too familiar in recent years, and which should be dispensed with under a new Administration. AGC NYS urges Governor Hochul to rescind or modify Executive Order 192.

PUBLIC SUBSIDY BOARD - EXPANSION OF PREVAILING WAGE TO ECONOMIC DEVELOPMENT PROJECTS

Part FFF of the 2020 TED Budget Bill expanded the application of prevailing wage to various private construction projects that receive economic development aid and other public incentives. The law also created a "Public Subsidy Board" that was to be empaneled by April 1, 2021. This Board has yet to be created, even though one of its primary responsibilities is to assess the economic feasibility and impact of the overall law's January 1, 2022, date and potentially delaying the same. The Public Subsidy Board should be immediately empaneled so that it can perform its functions under the law.

CONSTRUCTION INDUSTRY WORKFORCE DEVELOPMENT AND INCREASING DIVERSITY

The construction industry nationwide has struggled with workforce shortages for the last decade. This problem has worsened because of COVID-19 disruptions and comes at a time when the industry is prepared for what looks likely to be record levels of investment in a broad array of infrastructure. AGC NYS believes the real potential lies in construction industry workforce development. Aligning an industry that has both growing workforce shortages and the very real potential of a significant increase in work—and which offers lucrative and interesting careers that do not necessarily require a 2- or 4-year college education—with individuals in need of opportunities, particularly in historically underserved communities—is an approach far more likely to bear fruit.

PROVIDE AGENCIES THE ABILITY TO UTILIZE THE CM AT-RISK PROJECT DELIVERY METHOD

While it is laudable that New York State recently modernized its procurement laws for State Agencies, Public Authorities and Public Benefit Corporations to allow for the use of the design-build methodology, there is a glaring omission that places New York State behind many other States. Construction Management/ CM at-Risk (sometimes referred to as CMc or CM as Constructor) is a very valuable project delivery method – particularly with building construction – both on the public and private construction market.

PROPERLY EMPOWER AND PREPARE OF DESIGN/BUILD PROJECT DELIVERY

New York State can certainly improve by allowing the CM at-Risk project delivery method but, as it stands, they have recently been afforded the ability to utilize the design build methodology. It is a powerful tool to help delivery important projects for the State of New York if the agencies are fully equipped to use it.

SUPPORT STANDARDIZED STATE CONTRACTING TERMS AND CONDITIONS

Efforts should be started to standardize the construction contracts and general conditions among such agencies as OGS, DASNY, SUCF and others (see recommendation above). Part and parcel of that effort should be fair and equitable terms and conditions that maximize competition while minimizing dispute, lien, and defect.

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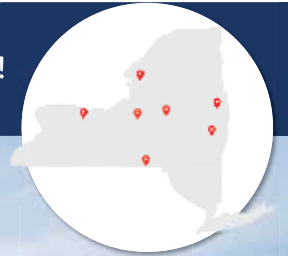
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WHY DOES OSHA SPEND SIGNIFICANT RESOURCES CONDUCTING INSPECTIONS AT CONSTRUCTION WORKSITES?

Jim Redmond, Safety Director

AGC staff has been receiving numerous calls from the membership regarding OSHA inspections that they are dealing with. The uptick in construction inspections was anticipated as COVID-19 inspections dwindle, allowing the Secretary to reallocate enforcement resources to other industries. Typically, OSHA spends over fifty percent of their enforcement efforts in the construction industry. OSHA's allocation of resources is based on numbers and statistics, as the Secretary makes the determination as to where their presence is most needed.

As all of us are aware, construction is one of the most dangerous occupations. Construction sites are evolving, and employee exposures change constantly. Unlike a general industry setting, where employees are faced with the same hazards daily, construction projects present unique challenges. Employers and employees need to be on top of their game so anticipated exposures are identified and measures taken to protect employees performing the work.

Having been with the AGC for over 27 years, I know firsthand how hard our members work at making sure their employees are properly trained and equipped to safely perform their work. Safety in our industry is not taken lightly and an enormous amount of resources and treasure are spent to keep employees safe. Again, the unique safety challenges that present themselves in the construction industry are unlike any other occupation. To shed some light on this, there are some facts provided by the Bureau of Labor Statistics (BLS) and the Occupational Safety and Health Administration (OSHA), that are worthy to note as it pertains to construction and the occupational hazards it presents.

- A total of 1,061 construction workers died on the job in 2019.
- 6 percent of the United States labor force is employed in the construction industry, but 20 percent of worker fatalities occur in construction. One in Five deaths among workers are in the construction industry.
- The four leading causes of construction deaths are falls, struck by equipment, caught in between, and electrocutions. These "Fatal Four" causes account for over 60% of all construction related deaths.
- Falls account for 33 percent of all construction deaths.
- Annually, 9.7 of every 100,000 construction workers suffer a fatal injury.
- Annually, 1.7 percent of construction workers suffers

an injury that results in lost time.

- In 2019, construction employees ages 25-34 were most likely to sustain an injury while at work.
- 8.5 percent of all injuries that resulted in lost workdays were in construction. Injury rates in construction are 71% higher than injury rates across all industries on average.
- In 2019, more than 130,000 construction workers missed days of work due to injuries.
- Over 60 percent of construction accidents occur within an employee's first year of work.
- OSHA penalties can cost up to \$136,532 for safety violations.
- In 2019, the highest recorded OSHA fine was issued to a contractor for \$1,792,726 for violations related to a fatal fall.

The statistical numbers provided by the BLS, and OSHA demonstrate just how dangerous of an occupation the construction industry is. AGC NYS's members are aware of the occupational hazards this industry presents to their workforce and are constantly engaged to ensure employees are safe. Contractors recognize the importance of looking forward and pre-planning for upcoming work so employees are equipped with the appropriate safety equipment so tasks can be performed in a safe manner. Preplanning is key and must be on everyone's mind from the project managers, superintendents, foremen, and all field personnel.

So, the reason OSHA spends so much of their enforcement activities in the construction industry is because of occupational fatality and injury statistics. These statistics guide the agency as to where resources are to be allocated. The construction industry numbers reflect the unique challenges this industry is up against. It is not a black eye to construction or reflects an attitude that safety doesn't matter. To the contrary, construction employers work diligently and take safety seriously. Construction workers are a tight knit group. The construction industry and all those that it employs, is a family of sorts. Families look out for each other and AGC NYS encourages all our member firms and their employees to treat one another as family and to do our part to work safe.

Please reach out to AGC NYS if your company has any questions or need assistance regarding any OSHA inspections that you may have received. Feel free to contact Jim Redmond at 585-370-1853 or Dennis Kiefer at 518-376-8221.



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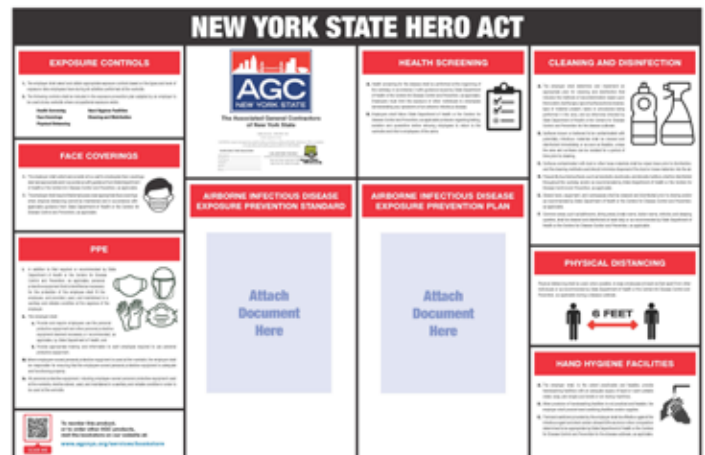
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35TH ANNUAL CONSTRUCTION INDUSTRY CONFERENCE: **WE'RE BACK (IN-PERSON!)**

Sarah Hill, P.E., VP of Transportation and Technical Services

While the 2020 Industry Conference was no doubt new, innovative, and very successful in its Virtual platform – we are happy to announce we will be back in action this December in Saratoga Springs! *

Wednesday December 8th we will kick off with a welcome message followed by this year's keynote: David Sarkus, MS, CSP "The Safety Coach®". David Sarkus is the President and founder of David Sarkus International, a leading health and safety management consulting and training firm. He has nearly 30 years of occupational health and safety management experience in large, diversified industrial settings. Experience, education and leadership qualities have allowed him and his firm to successfully apply strategies and tactics within a number of varied mainstream work-processes.

David Sarkus has helped maintain and improve the quality of life for thousands of workers while managing large programs and processes in a wide variety of settings. Their approaches are tailored to meet your specific needs. We can help you move toward and embrace excellence in safety. The work engaged through David will readily be seen as a valued-added investment in your work force with a cost-effective orientation.



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- Crane Safety Training, ACI Flatwork and Anchor Testing, Work Zone Flagger and Supervisor Trainings
- And much, much more... We look forward to seeing you LIVE in Saratoga in December!

**COVID Restrictions may impact the event, as of August 2021 the full event is being planned. The membership will be notified of any changes as the event date approaches.*

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Details to follow! Stay tuned for more information on our exciting programs and keynote speakers.



CONSTRUCTION LEADERSHIP COUNCIL

A NEW GENERATION OF LEADERSHIP

MISSION:

The AGC NYS Construction Leadership Council Committee (CLC) is intended to cultivate the next generation of New York's construction leaders through professional development, networking, and community involvement.

- The CLC allows mid-career construction professionals to learn, network, socialize, and exchange ideas on issues they face every day.
- Learn how the next generation can get more involved with the AGC NYS and stay active in the industry.
- The CLC is open to all interested AGC NYS members

PURPOSE:

- Open forum to exchange ideas.
- Entry into AGC to promote new member involvement.
- Foster a strong network among peers.
- Create and promote industry innovation.
- Discuss the most important issues and provide feedback to AGC leadership.
- Structure AGC for the future.

Interested?

Contact Brendan Manning
bmanning@agcnys.org
or call (518) 456-1134





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