



September 15, 2016

This newsletter is delivered electronically to our Members.

INDUSTRY

AGC NYS submits comments to the NYS DEC on Part 360 Draft Regulations (Solid Waste)

The AGC NYS officially submitted comments to the NYS DEC on the New York State's Solid Waste Management Facilities Regulations, 6 NYCRR Part 360 (Part 360). One of our biggest concerns is the proposal to eliminate the predetermined use for exempt Construction and Debris (RAP, crushed concrete and other recycled materials). This has historically been one of the best recycling efforts by our industry and most construction and material firms will be unable to comply with the proposed changes.

Another concern is regarding the definition of Containment. Soil is defined as a naturally occurring deposit. In the proposed regulations, it refers to soils 'known or suspected' of contamination without explaining if this is a determination made by visual inspection or by testing. There is no clear definition of Contaminated. There is a definition of Uncontaminated but it does not identify any standards. If these provisions become effective, soil removed from general construction sites, other than from a naturally occurring deposit, would be considered waste unless demonstrated that it's not contaminated. The handling, transport and reuse of such soils would be subject to permits/registration. SWPPPs specify BMPs for handling and stockpiling soil and construction materials.

Attempting to regulate these materials as waste with strict limits on timeframes and stockpile size is unnecessary. The AGC NYS staff met with the NYS DEC along with eight members on July 19 to discuss the issues and concerns we had with the regulation. The DEC seemed very open to changes and will review our comments along with the numerous AGC members and industry allies who are submitting comments. If they feel the changes will be significant to the regulations then they may need to re-release a revised set for a second round of public comments. [Click here](#) to see a copy of the AGC NYS comments.

AGC NYS Seeks Documentation from Onondaga County

Onondaga County has two projects currently open for bidding where they have assigned Minority- and Woman-owned Business Enterprise goals similar to those imposed by State Law upon NY State agencies. AGC NYS is seeking documentation of their legal authority to do so without a valid Disparity Study for the County.

The two letters may be accessed [here](#) and [here](#).

Also to be noted by bidders is the fact that Onondaga County has also imposed questionable employment goal percentages. Bidders should exercise due diligence in vetting the validity of these goals as well.

Last Chance – Limited Spots Remain: Register for the Anthony S. Santaro AGC Scholarship Golf Classic

The annual Anthony S. Santaro AGC Scholarship Classic only has a handful of spots left. The tournament will take place on September 20 at the nationally recognized Turning Stone Golf Courses. [Click here](#) to download a registration form.

AGC Provides More Information on Final Fair Pay and Safe Workplaces Regulation

TAKE ACTION: Urge Congress to Block Application of this EO

With parts of the Fair Pay and Safe Workplaces ("Blacklisting") Executive Order (EO) coming into effect on Oct. 25, AGC held an in-depth webinar on the more than **850 pages** of regulatory text that will expose direct federal contractors to additional sanctions and liability for their labor law violations, among other things. A recording of that webinar and the presentation can be accessed **here** and **here**. A detailed AGC analysis of the regulations can be accessed **here**. AGC members are encouraged to **contact their U.S. Representative and Senators** to support AGC legislative efforts to block the implementing regulations for this EO. **Read More** →

AGC Opposes USACE-Mandated Project Labor Agreements

This month, AGC sent letters opposing the possible use of a project labor agreement (PLA) mandate posted by the U.S. Army Corps of Engineers for construction projects at the **Seymour Johnson Air Force Base** in North Carolina and the **Wright-Patterson Air Force Base** in Ohio. **Read More** →

SAVE THE DATE: AGC of America's 98th Annual Convention coincides with CONEXPO-CON/AGG in Las Vegas, March 7 – 11, 2017

Watch for details in the coming weeks.

2016 Jeffrey J. Zogg Build NY Award Applications Now Available

Do you have a project that's been completed over the past two years that stands out above all others? Is that project one that you feel was one of your team's best? Then the 2016 Jeffrey J. Zogg Build New York Award is one that your firm should apply for. Don't hesitate. The 2016 application is now available here. [Click here](#) to download a copy. The deadline is October 7, 2016. Contact Brendan Manning at the AGC NYS with questions at bmanning@agcnys.org.

2016 CLC Leadership Development Conference - for Emerging Leaders

October 27-29, 2016 | Atlanta, GA

The **Construction Leadership Council Leadership Development Conference** is focused on sharing best practices, learning from each other's experiences, exploring challenges and solutions, and encouraging an open dialogue. There are also numerous networking opportunities. Register by **September 1, 2016** to take advantage of the early bird rate for this premier event for young professionals in the construction industry! This is one of the few industry events that exist for up and coming construction professionals so don't miss it! Speaking of, due to popular demand, our hotel block at the Hyatt Regency in Atlanta is SOLD OUT! To accommodate record registration we have secured another hotel block at the **Marriott Marquis** which is adjoined to our conference site, the Hyatt. To make reservations at the Marriott Marquis, **book online** and receive an immediate

confirmation or call the central reservation line at 1-866-469-5475 and mention the "AGC 2016 CLC LDC" to receive the discounted rate.

AGC NYS 30th Annual Construction Industry Conference – December 6-8, 2016

SAVE THE DATE and Save Your Seat in Saratoga

Moderator volunteers needed. Tasks are simple. Instruction provided. We need about two dozen volunteers for the numerous workshops being presented. Topics range from technical and project features to legal and managerial. Contact Karen Morrison now.

Reserve your room now for the Construction Industry Conference

Reservations are now open at the Saratoga Hilton for December 6-8, 2016 and this year you may want to book early. The hotel will be undergoing some renovation when we are there so some hotel rooms will not be available. Alternate local hotels have been set up for additional housing and shuttle services will be provided. If you want to stay on-site at the Saratoga Hilton please click here to make your reservations now <https://resweb.passkey.com/go/AGCNYS2016>

Upcoming Seminar of Interest for AGC NYS Members

AGC NYS Associate Member Jack S. Kannry, Esq., P.E., partner in the New York law firm of Warshaw Burstein, LLP and chair of its Construction Law Group, will be presenting a seminar on October 20, 2016 at the New York City Bar Association, entitled "Practical Legal Strategies for Construction Projects: Frontline Reflections of an Attorney/Engineer and Engineering News-Record Author of Related Articles." There is no charge for AGC NYS members. The seminar notice and R.S.V.P. form are available on request from jkannry@wbcsk.com.

AGC NYS Will Be Featured in Upcoming ENR Profile

ENR is currently working on the yearly AGC NYS profile piece which runs in the November issue of the widely publicized magazine. As such, Vivian Goodstein of ENR may be reaching out to you to inquire about advertising in that issue as part of the profile. Any questions regarding the profile, or to advertise in the issue, please contact Vivian via e-mail at goodsteinv@enr.com.

GOVERNMENT AFFAIRS

Governor's Office Urged to Approve Bill that Reforms Notice of Claim Provisions

A coalition of construction industry associations, led by AGC NYS and the Subcontractors Trade Association, met with the Deputy Counsel to Governor Andrew Cuomo urging approval of legislation (S.6906/A.10136) that would reform notice of claim provisions on public work. This bill passed the Senate and Assembly and awaits delivery to the Governor for either an approval or a veto.

In recent years, more state and local agencies and authorities are stipulating unfair contract notice of claim provisions that include forfeiture language which waives the contractors' right to file a claim. Examples of unfair provisions include: a comment in a project meeting is sufficient notice to start a timely notice of claim; detailed submission of all documentation and justification within 21 days for recognizing the event leads to a potential claim; and the Department (Transportation) may have actual notice of the facts and circumstances which comprise such dispute and is not prejudiced by said failure. These types of exculpatory clauses are unfair and prejudicial thereby stripping a contractors' legal right to file a claim.

This bill would allow contractors to prove their claims and allows the state and local agencies and authorities to defend against unjust claims or to claim material prejudice when appropriate. The

contractor's right to additional time or money should not be unfairly waived by mistakes made in the claims process unless it can be shown that these mistakes prejudiced the public owner's ability to manage and defend the claim.

In the coming weeks, AGC NYS members will be strongly urged to submit a support letter to the Governor, because I anticipate strong opposition from the state agencies and authorities, as well as, municipal governments.

State Senate and Assembly Primary Election Results

Incumbent Democrat State Senators fared well in most primary election contests. Among the Senate winners are: Transportation Committee Ranking Member Martin Dilan, as well as, Sanders, Stavisky, Persaud, Montgomery, Diaz and Rivera. In the most hotly contested race, Marisol Alcantara bested a field of candidates in the Bronx. Alcantara was strongly supported by Independent Democratic Conference (IDC) Leader Jeff Klein and is expected to align with the Senate Republican and IDC Majority Coalition. All of the Democrat primary winners are expected to easily win reelection in November. In open Senate seats, Republicans Jim Tedisco, Pamela Helming and Chris Jacobs won their primaries. Tedisco and Helming are expected to win in November. Chris Jacobs will face Amber Small in a very competitive election.

Most State Assemblymembers had easy primary wins with the exception of Margaret Markey and Alice Cancel who were defeated. Among the winners are: Bichotte, Brabenec, Butler, Carroll, Castorina, Glick, O'Donnell, Crespo and Bronson. In the most unusual primary election, incumbent Bill Nojay who committed suicide four days prior to primary day was victorious. The Republican county committees will convene a meeting to select Nojay's replacement for the general election.

BUILDING

Erie County Responds Positively to Recent Spec Review

AGC NYS recently authored a short spec review relative to an Erie County Project – Buffalo & Erie Public Library 2016 Auditorium Renovations Phase I. The review only focused on one issue, coordination responsibility being passed to the contractor for general construction on a multi prime project. You can view a copy of our letter by [clicking here](#). By and large, the responses we look most for are the addenda changing the documents. In this case, we had seen such an addendum issued but we also received a letter advising us of the change. We are very appreciative of such a letter and thought we should pass it along. [Click here](#) to view a copy of the letter.

Register Now for the AGC NYS Building Regional Meetings

Central NY, Northern NY, and Rochester Events all Set

As reported in the last newsletter, AGC NYS Staff and the Building Board of Governors are in the process of planning Building Regional Meetings throughout the State for Fall/Early Winter. The general theme this year will be economic development where we hope, in most regions, to have one or more of the Regional Co-Chairs of the NYS Regional Economic Development Council speak about their economic development outlook for the region and the activities of their Regional Council. Below are some details about those programs we have locked down:

- ***Northern New York – September 19th, noon-2PM.*** NYS Regional Economic Development Council North Country Co-Chairs Anthony Collins, Ph.D, President, Clarkson University and Garry Douglas, President, North Country Chamber of Commerce will offer their perspective

on what is happening with the Council and in the Region and engage in conversation with the Members about what AGC NYS and its' Members can do to help the effort. The luncheon will be held at Ives Hill Country Club in Watertown.

- **Central New York - September 19th, 6-8:30PM.** NYS Regional Economic Development Council Central New York Co-Chair Rob Simpson, President of CenterState CEO will offer his perspective on what is happening with the Council and in the Region and engage in conversation with the Members about what AGC NYS and its' Members can do to help the effort. The cocktail reception and dinner will be held at the Sheraton Syracuse University Hotel & Conference Center
- **Southern Tier – October 24th, noon-2PM.** NYS Regional Economic Development Council Southern Tier New York Co-Chair Tom Tranter, President & CEO of Corning Enterprises will offer his perspective on what is happening with the Council and in the Region and engage in conversation with the Members about what AGC NYS and its' Members can do to help the effort. The luncheon will be held at the Elmira City Club. Stay tuned for more details and the registration.
- **Rochester – October 25th, noon-2PM.** NYS Regional Economic Development Council Finger Lakes Co-Chair Dr. Anne Kress, President, Monroe Community College, will offer their perspective on what is happening with the Council and in the Region and engage in conversation with the Members about what AGC NYS and its' Members can do to help the effort. This luncheon will be held at the Genesee Valley Club.
- **Long Island – October 27th, noon-2PM.** Suffolk County Executive Steve Balone will address the membership. Location and details to be determined, stay tuned.

Please go to our Calendar Page <https://www.agcnys.org/calendar> to register online for any of these meetings. Please click on the location listed below, for a registration form for each meeting.

[North Country Building Membership Meeting](#)

[Central NY Building Membership Meeting](#)

[Rochester Building Membership Meeting](#)

Don't Miss Out: Registration Now for AGC's 2016 BuildCon

October 18-19, 2016 / Atlanta, GA

Registration is open for AGC of America's premier Building Contractor's event! [BuildCon 2016](#) brings together high-level leaders in the building construction industry to share, learn and discuss the issues that are essential to them and their business.

This year BuildCon co-locates with [BIMForum](#), allowing attendees to interface with Designers, Specialty Contractors, Engineers and Owners to talk about the issues that matter most.

Building Session Highlights Include:

- The Hidden Risks of Design-Assist
- Transforming BIM & Lean into Risk Management
- BIM for Business Development
- Which Standard Form Design-Build Contract is Right for You and Your Project?
- And Much More

[Register now](#) and remember to bring your BIM professionals; this is one event you won't want to miss!

Note – The AGC NYS Building Board of Governors will hold its Fall Meeting in Atlanta on the afternoon of October 17th in conjunction with BuildCon 2016.

HIGHWAY

[NYS DOT Issues New Section 608 – AGC NYS Comments Remain Unaddressed](#)

[EI 16-017 Revisions to Standard Specifications Section 608 – Sidewalks, Driveways, Bicycle Paths, and Vegetation Control Strips.](#)

Under this new issuance, Contractor responsibility is increased and ACI certification requirements are expanded. Effective with Lettings on or after January 1, 2017

Recent focus on the correct installation of Americans with Disabilities Act (ADA) compliant pedestrian facilities has resulted in revisions to the Standard Specifications. Due to the complexity and tight tolerances, a requirement for American Concrete Institute (ACI) certification as a Concrete Flatwork Technician was added for construction personnel performing installation of sidewalks and driveways. The requirement for ACI certification as a Concrete Flatwork Finisher for construction personnel supervising installation was revised to apply to a quantity of 10 cubic yards of sidewalks/driveways, down from a quantity of 65 cubic yards.

Read the issuance here:

https://www.dot.ny.gov/portal/pls/portal/mexis_app.pa_ei_eb_admin_app.show_pdf?id=12231

[Former DOT Secretary Peters to Address Highway and Transportation Construction Conference](#)

Mary Peters, Secretary of Transportation in the Bush Administration is one of many outstanding speakers who will address the 2016 Highway and Transportation Construction Conference. Secretary Peters will discuss, "Transportation Future: Where is Transportation Heading, How will the Infrastructure be Funded" which will lead to a discussion about how the federal Highway Trust Fund should be fixed moving forward. A list of additional speakers will address: Successful State Funding Initiatives and Strategies, Cyber Security: Is your company safe from hackers, ransom ware and other cyber threats?; Digital Technologies in Construction: Impacts and Trends; Developments in AASHTO Site Manager/Bid Express Software; EConstruction: Progress on Paperless Projects-Sharing Electronic Data.

The conference is scheduled for Nov. 3-5 in Phoenix, Arizona at the JW Marriott Desert Ridge Resort.

Read More →

2016 Fall Regional AGC NYS Highway Membership Meetings – Registration Now Open

NYSDOT and Thruway officials are invited to the meetings which will include informal roundtable discussions as well as a meal to feed our brains! Guest speakers to be announced.

Binghamton - Region 9	October 4	8:00 am Breakfast followed by Roundtable
Watertown - Region 7	October 12	5:00 pm Roundtable followed by Reception/Dinner
Syracuse - Region 3	October 13	5:00 pm Roundtable followed by Reception/Dinner
Buffalo - Region 5	November 9	5:00 pm Roundtable followed by Reception/Dinner

Registration forms can be downloaded by clicking on the meeting date. To register online [click here](#) to go to our calendar and scroll down for the meeting you would like to attend.

If you have items you would like discussed at the Roundtable please contact Karen Morrison at 518.456.1134 or via email to Morrison@agcnys.org

FHWA Announces Grants to States for New Highway Funding Testing

The Federal Highway Administration (FHWA) announced last week that eight projects in seven states will receive \$14.2 million in grants to explore alternative user fee mechanisms to help sustain the long-term solvency of the Highway Trust Fund. AGC is a member of the Mileage Based User Fee Alliance which has been closely monitoring the application process for this program and is encouraged that the grant awards focused on addressing barriers to implementing user-based fees such as public acceptance, privacy concerns, equity and geographic diversity. The projects included in these grant awards will pilot a variety of options, including on-board vehicle technologies to charge drivers based on miles traveled and multi-state or regional approaches to road user charges. **Read More** →

Note from AGC NYS: While a multi-year funding program has been set in place, both nationally and statewide, the fact remains that the revenue streams as currently structured cannot provide the sustained support our transportation infrastructure needs. The time is now to define a new revenue formula and a better method for dedicating the dollars to the transportation system – not debt and myriad other uses. We cannot settle for Groundhog Day.

New York is not one of the states stepping up to the grant opportunity but, a number of years ago, they did participate in a study of Mileage Based user Fees.

That report can be found here:

<https://www.dot.ny.gov/divisions/engineering/technical-services/trans-r-and-d-repository/C-10-22-21144%20Mileage%20Based%20User%20Fees%20Final%20Report%2029June12.pdf>

Here is a July 2016 report generated by a study at Texas A&M:

<http://d2dtl5nnlpfr0r.cloudfront.net/tti.tamu.edu/documents/PRC-15-40-F.pdf>

Please consider this information and initiate conversation with your State and National legislators. We need substantial, sustainable revenue for infrastructure.

SAFETY

AGC CEO Challenges Controversial Drug and Alcohol Testing Policy During Meeting with Head of OSHA

On Aug. 30, AGC met with the head of the Occupational Safety and Health Administration (OSHA) and several of his key deputies on the agency's new recordkeeping regulation. That regulation has become the subject of much discussion and great concern as OSHA has expressed its intention to promulgate enforcement policies that go well beyond the plain language of the rule itself, and specifically to interpret the rule to prohibit mandatory post-incident alcohol and drug testing. AGC recommended that the agency take the time to collect more information on these programs and how they actually work before jumping to any conclusions. Notably absent from the agency's rulemaking was any request for such information. AGC will submit a follow-up letter to OSHA, restating AGC's position.

AROUND THE STATE

Karen was in Buffalo for a meeting with members and NYSDOT's regional executives.

Mike, Joe and Walt were in New York City for a Building Membership reception.

Walt was in Rochester and Long Island for political events.