



AGC NYS

Newsletter

September 3, 2020

The Associated General Contractors of New York State
10 Airline Drive, Suite 203
Albany, NY 12205
(518) 456-1134 | www.agcnys.org

Index:

Industry News

Virtual Auction..... 1
Amicus Brief 1
2020 BNY Awards 2
Partnering Awards 2
PPP Webinar 2
Operation Hardhat 2
Construction Spending 2
AGC Scholarship Open 2

Government Affairs

Wind Support Letter 3
Pacholczak MTA Testimony 3
Industry Amicus 3
Tax Deferral 3
USDOL Guidance 4

Building

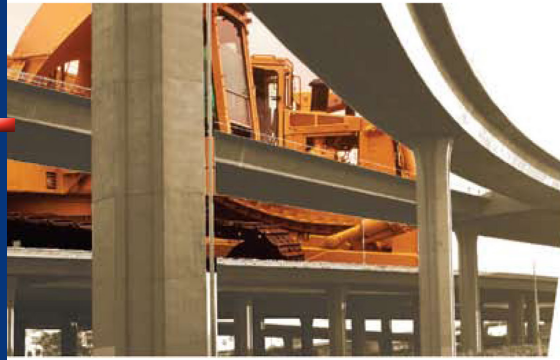
Lumber Prices 4
Spec Review Update 5

Highway

Recent Engineering Issuances 5

Safety

SST Training Deadline Extended 5
Safety Award Application 6
NYSIF PPE Credit 6



Industry News

Don't miss the AGC NYS Virtual Auctions and Virtual Cocktail Hour to benefit the AGC NYS Scholarship Program

The 2020 AGC NYS Online Auction to benefit the AGC NYS Scholarship Fund will begin Monday, September 14 and run through Monday, September 21. The web page to bid on items will be released in the coming weeks.

Items currently available include:

- Mets Luxury Box Tickets for 2021 season
Amazon Gift Cards
Turning Stone Gift Cards
Bottle of Pappy Van Winkle Bourbon
4 Yankees Legends Suite Tickets for 2021
4 NY Giants Tickets for 2021
...and much more.



If you or you firm would like to make a donation of a silent auction item please you can go online here (include a photo) or download a fill .pdf form here and return to Brendan Manning at the AGC NYS at bmanning@agcnys.org.

After wrapping up the online auction, the next day on Tuesday, September 22 at 6 PM we will be hosting a Cocktail Hour and Live Auction to raffle off the "temporary home" of the breathtaking velvet fruit and wine painting. To register, click here.

Don't forget to get the ingredients to prepare the new special cocktail developed by AGC's own Joe Hogan called:

"The Change Order" - We hope your next change order goes down smoothly and meets with approval as easily as this cocktail!

AGC NYS and Others File Amicus Brief In Matter Dealing with Issues of Great Importance to the Industry

Notice of Claim and Responsibility for Design Document Quality at Issue

AGC NYS, along with a number of other contractor associations throughout New York State, filed an Amicus brief this week with the Fourth Department Appellate Division in the case of Travelers/Dipizio Construction v. Erie Harbor Development Company. The focus of this matter deals with issues related to forfeiture of a claim by the contractor solely due to a technical error in the notice of claim and to a failure on the part of the owner to take responsibility for the sufficiency of the plans and specifications. These are two issues of great importance to the construction industry and have been the subject of legislative efforts. With regard to the issue of Notice, more and more contract documents are setting traps in the documents with near impossible notice standards to meet. In spite of the fact that the owners have knowledge of the issues and the fact that the technical failure to meet those requirements do not prejudice the owner, contractors are often unfairly hurt by these provisions.

It is important to note that there will soon be a similar matter where AGC NYS et al will file an Amicus Brief in the Third Department. In that case, the issues of Notice and Delay Damages will be front and center.

SUBMIT NOW! 2020 Jeffrey J. Zogg Build NY Awards

Entries Due October 2, 2020

Applications for the 2020 Jeffrey J. Zogg Build NY Awards are now open. [Click here for an application](#). Deadline is October 2, 2020.

Winners will be presented with their award at a reception in the spring of 2021, held jointly with the AIA NYS and their Excelsior Awards for Public Architecture.

If you have questions, please reach out to [Brendan Manning](#).

2020 Excellence in Partnering Award Application Now Available

The 2020 Partnering Award Application is now available for submission. **The deadline is October 21, 2020.** Awards will be presented VIRTUALLY at the 34th Annual Construction Industry Conference this December.

Please take your time in preparing your application! The application **MUST** be submitted to the Owner of the project for their approval **PRIOR** to submission.

[Please click here for a copy of the application.](#)

If you have any questions or need additional information, please contact [Sarah Hill](#).

WEBINAR: Latest Guidance on the PPP Program

Friday, September 18 | 9:00 - 10:30 a.m.

The Small Business Administration continues to issue guidance on the Payroll Protection Program and has started to accept forgiveness applications under the program. The webinar will update you on all the new developments and discuss the forgiveness application process. Speakers include Gretchen Guenther, Mark Vena and Leah Henderson from TBC CPA's and Schuyler Tilley from Key Bank who will discuss topics including updates on the program requirements, Review of the SBA applications, Review of the documents required to be included in the application, Discussion of FTE calculations and Q&A. CPEs offered with program. This is a FREE webinar for AGC NYS members.

Please indicate with RSVP if you will need CPE. [Register here.](#)

Governor Cuomo Announces 1,222 Tickets Already Issued by State Police in 2020 Under "Operation Hardhat," Exceeding Totals for All of 2019

Governor Andrew M. Cuomo today that the New York State Police have already issued 1,222 tickets during Operation Hardhat, an initiative between State Police, the New York State Department of Transportation and the New York State Thruway Authority, to crack down on work zone violations and highlight the importance of safe driving when encountering construction, maintenance and emergency operations along state highways. With at least three months left in the construction season, this total already surpasses the 1,048 tickets issued by State Troopers during all of 2019. For more information, [click here](#).

Public And Private Nonresidential Construction Spending Slump In July As Industry Employment Declines From July 2019 In Two-thirds Of Metros

Steep monthly declines in public and private nonresidential construction spending offset a surge in homebuilding in July, while industry employment decreased compared to July 2019 levels in two-thirds of the nation's metro areas, according to an analysis by the Associated General Contractors of America of government data released today. Association officials said many commercial construction firms were likely to continue shedding jobs without needed federal coronavirus relief measures. To read more, [click here](#).

AGC of America Education and Research Foundation Undergraduate and Graduate Scholarship is Now Open

Apply by November 1, 2020 - [Click here to apply.](#)

Each year the AGC Education and Research Foundation offers undergraduate and graduate level scholarships to students enrolled in construction management or construction related engineering programs. Over \$10 million

in scholarships have been awarded to more than 4,000 students attending colleges and universities across the country. Through endowments made by AGC members and supporters, as well as AGC Chapters, the Education and Research Foundation awards over 100 scholarships each year to students dedicated to pursuing a career in the construction industry. Please be sure to share this with those in the industry, interns, college faculty or anyone you may know who qualifies.

Government Affairs

STATE NEWS

AGC NYS Submits Great Lakes Wind Development Support Letter to Department of Public Service

AGC NYS submitted a letter in support to the New York State Department of Public Service about the Great Lakes Wind Feasibility Study which, would provide a broad assessment that considers wind energy development in Lake Erie and Lake Ontario. The study, development, and construction of offshore wind energy development will create thousands of direct and indirect jobs in the western New York region. New York's construction industry is a powerful economic engine during normal times; each \$1 billion invested in non-residential construction spending adds about \$3.4 billion to Gross Domestic Product (GDP), about \$1.1 billion to personal earnings and creates or sustains 28,500 jobs. [A copy of the letter is available here.](#)

Walter Pacholczak Testifies at Senate and Assembly Joint Public Hearing About the MTA

Walter Pacholczak, Vice President of Government Affairs, testified at joint public hearing of the New York State Senate and Assembly about the Impact of COVID-19 on the Metropolitan Transportation Authority and public transportation. AGC NYS testimony focused on the challenges of working safely during a pandemic, the MTA capital program, and recommendations to improve the procurement process for contractors. The hearing was conducted by Senate Transportation Committee Chairman Tim Kennedy and the Chairs of the Senate and Assembly Corporations, Authorities and Commissions Committees. [A copy of the AGC NYS testimony is available here.](#)

AGC NYS Joins Business Community Amicus on "Nuclear Verdicts"

AGC NYS joined the broad business community [on an amicus brief](#) on so called "nuclear verdicts" with excessively high awards. The organizations represent companies doing business in New York, insurers, and civil justice organizations and have a substantial interest in ensuring that personal injury awards in New York remain predictable and stay within or below the historical range. Amici are concerned with the use of improper anchoring tactics to unduly influence juries to award increasingly high sums for pain and suffering. As a result of this practice, pain and suffering awards in New York threaten to spiral beyond their current levels. If courts continue to permit attorneys to urge juries to award amounts that vastly exceed prior sustained awards to individuals with similar injuries, and begin to affirm awards that exceeds past awards for analogous injuries, then current trends will inevitably lead to higher demands, frustrated settlements, and increased costs for taxpayers and consumers. The case involves a woman who was seriously injured after two teenagers threw a shopping cart over the railing of a fourth-floor parking garage.

FEDERAL NEWS

IRS Guidance on Payroll Tax Deferral

The United States Chamber of Commerce composed a short memo summarizing Internal Revenue Service guidance released last week related to the president's Executive Order on employee payroll tax deferral. As a reminder, the deferral period began on September 1.

Employers may suspend the withholding of the 6.2% Social Security payroll tax normally deducted from an employee's pay. The deferral only applies if the biweekly compensation (or equivalent amount for other pay periods) is less than \$4,000. The determination of whether the deferral applies is made on a paycheck to paycheck basis and only applies to wages paid during the period beginning on September 1, 2020 and ending on December 31, 2020. Employers are responsible for withholding and paying any deferred taxes. Specifically, employers "must withhold and pay the total Applicable Taxes that the [employer] deferred under this notice ratably from wages and compensation paid between January 1, 2021 and April 30, 2021 or interest, penalties, and additions to tax will

begin to accrue on May 1, 2021, with respect to any unpaid Applicable Taxes.” [Read the U.S. Chamber memo here.](#)

USDOL Releases Guidance on Teleworking Arrangements

With telework arrangements expanding in response to the coronavirus pandemic, the U.S. Department of Labor’s Wage and Hour Division (WHD) issued Field Assistance Bulletin (FAB) 2020-5 to clarify an employer’s obligation to track the number of hours of compensable work by employees who are teleworking or otherwise working away from premises controlled by their employers. [Learn more here.](#)

USDOL Releases Additional Guidance as Workplaces Reopen

The U.S. Department of Labor’s Wage and Hour Division (WHD) released additional guidance to provide information to workers and employers about how the requirements and protections of the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), and the Families First Coronavirus Response Act (FFCRA) that impact the workplace as they continue to reopen. The new guidance provides plain-language questions and answers addressing critical issues related to COVID-19 based scenarios under all three laws. [Learn more here.](#)

USDOL Provides FFCRA Guidance for Federal Contractors

The U.S. Department of Labor’s Wage and Hour Division (WHD) released additional guidance for employers with certain federal contracts regarding paid sick leave or expanded family and medical leave under the Families First Coronavirus Relief Act (FFCRA). [Learn more here.](#)

NEW YORK CITY NEWS

City Planning Commission Approves Industry City Rezoning

The New York City Planning Commission approved the rezoning of Industry City in Sunset Park, Brooklyn. The approval is an important step in order to facilitate a 6.6-million square-foot mixed-use development, known as Industry City, comprised of industrial, commercial, and community facility uses. The proposed development includes the rehabilitation of 16 existing buildings and the construction of three new buildings in two clusters that collectively occupy approximately 30 acres of land. AGC NYS and the Building Contractors Association strongly support the development of Industry City.

Building News

Lumber Prices Spiking

Based on a question from a Member dealing with massive lumber price increases, we reached out to AGC of America’s Chief Economist Ken Simonson for the latest news on this issue. He noted that sources have indicated lumber, plywood and OSB prices appear to have reached record high levels with “unprecedented price increases in a short time.” Related to what we wrote about in the last newsletter, the industry is also experiencing record-long forward delivery dates. Ken notes that several factors are contributing to this spike:

- Mill shut downs in the Spring due to lack of demand from homebuilders or virus outbreaks. Now that most have re-opened, production may have dropped due to difficulties getting employees back and greater spacing requirements.
- Demand has soared from homebuilders, professional and do-it-yourself remodelers and, businesses renovating to deal with virus related issues – i.e. office partitions and restaurant decks.
- President Trump has re-imposed tariffs on Canadian softwood lumber.
- Deliveries from Canada have experienced border-crossing delays or a lack of truckers.

Shortly after receiving this news, we heard from another member relative to this spike in lumber prices and also noted similar with glass.

Ken notes that he expects these impacts to be felt well into 2021. We would encourage you to subscribe to Ken’s DataDigest to stay up to date on some of these issues.

This brings us to the contractual questions about relief relative to price and schedule. That will, of course, be very contract and owner reasonableness dependent. As written in the last NL, we are heartened by what we have

heard from our members in the survey about the reasonableness of most owners they deal with. As one member notes, however, there is worry that the price spikes may get to the point of scuttling the project. None-the-less, we would note that ConsensusDocs 200.1 contains the only standard price escalation clause in the industry.

Did I Speak Too Soon?

Onerous Provisions Found in Recent Spec Review

In the last newsletter I wrote about building member survey results and how I was relieved that our members were not finding many issues with onerous contract language related to COVID-19. Not long after that newsletter went out, I received a request to review the bidding and contract documents for the Halfmoon-Waterford Fire Station project. Found in those documents were provisions that would prohibit any relief for the contractor relative to COVID-19 impacts, rules and regulations no matter whether based on the current situation or changes in the future. [Click here to read the review.](#)

Highway News

Recent Engineering Issuances Posted by NYSDOT

EB 20-043 Fuel, Asphalt & Steel Price Adjustments (September 2020)

Effective Date: September 1, 2020

Provides information to be used in computation of progress and final payments for the fuel, asphalt, and steel price adjustment pay items.

EB 20-044 Traffic Monitoring Standards for Non-Motorized Short Count Data Collection

Effective Date: August 25, 2020

The primary purpose of these standards is to ensure data from Non-Motorized traffic monitoring activities undertaken pursuant to, or as part of, contractual agreements involving funds administered and/or provided by New York State is in conformance with New York State standards established for Non-Motorized traffic count data collection. The standards will require data received by the NYSDOT Highway Data Services Bureau is in uniform data formats. This ensures that the data is available for use at all levels within and outside the Department.

EI 20-017 Revised Standard Specifications, Section 703 Aggregates

Effective Date: January 1, 2021

Section 703 contains the specifications and requirements for fine and coarse aggregates in portland cement concrete (PCC) and hot or warm mix asphalt (HMA). It is being updated for clarity and to reflect current testing and approval requirements. The two major changes are the establishment of test limits for size No. 1 coarse aggregate, and elimination of requirements for screened (uncrushed) gravel.

Safety News

NYC City Council Extends SST Final Training Deadline

The New York City Council voted to extend the final SST deadline from September 1 this year to March 1, 2021. In light of the pandemic that has continued to limit the ability for workers to get to training centers, we applaud the council's decision to extend the deadline to next spring. The NYC DOB has been in support of this extension since there were rumors a few weeks ago.

In an e-mail received last evening from DOB, it was noted that this legislation will go into effect September 26 but that it is retroactive to September 1.

Given the above, DOB notes that until March 1, 2021, only the current training requirements will be enforced on sites requiring DOB-licensed safety professionals. As the full 40 hour requirement will go into effect March 1, 2021, DOB encourages workers to get that training sooner rather than later.

Worker training requirements and approved training providers, along with all things SST can be found on the [NYC DOB website here.](#)

2020 AGC NYS Chapter Safety Award Application Now Open

The AGC NYS Safety Excellence Award recognizes and honors AGC NYS Members for having and implementing outstanding safety programs. Awards will be given to AGC NYS Members with excellent safety programs that meet the stringent minimum criteria, criteria which exceed industry standards, and also demonstrate excellent safety practices in the field.

Award recipients will be honored during the VIRTUAL 2020 AGC NYS Construction Industry Conference. They will also be recognized for their efforts in the winter edition of the AGC NYS Cornerstone magazine.

If your company is interested in applying for the AGC of America Safety Excellence Award, **YOU MUST APPLY FOR THE AGC NYS AWARD.** Winning applications of the AGC NYS Safety Excellence Award will be reviewed for qualifications for the AGCA Safety Excellence Award, but are not automatically enrolled. The AGCA award is based on your company's severity rate according to the National Average chart that is included with this packet. You must include those numbers on this application as well. The AGCA Safety Excellence Award program information will be mailed later this year.

Questions? Please contact Dennis Kiefer at (518) 456-1134 or via email to dkiefer@agcnys.org. The 2020 application is [available here](#).

NYSIF Policyholders May Be Eligible for up to \$500 in Credit for PPE Purchases

New York State's largest workers' compensation carrier – the New York State Insurance Fund (NYSIF) – introduced a new COVID-19 Personal Protective Equipment (PPE) Premium Credit Program that will make it more affordable for its policyholders to get back to business. Under the new initiative, current workers' comp policyholders can earn a 5% credit of their annual premium on the purchase of PPE, with a maximum reimbursement of \$500.

The program is designed to help offset the cost of vital PPE and safety-related items needed to help protect workers from the COVID-19 virus. Eligible equipment includes masks, goggles, gloves, gowns, hand sanitizer and other COVID-19 safety related items.

NYSIF is requiring that policyholders apply for the PPE Credit online through their website. Do you have an online login with NYSIF? If so, you can easily apply for the credit by logging into your NYSIF account and [going here](#). If you do not have an online login yet, you will need to [create one here](#). In order to create your online login, you will need information that can be found on your most recent policy information pages.

Once your account is created, you will be able to go to [the PPE Credit page](#) and submit your receipts through the system. NYSIF will review the documents and apply a credit based on the findings. The credit is up to 5% of the manual premium, with a maximum credit of \$500. For more information, [click here](#).

The AGC of NYS Safety Group #550, involves nearly 50 AGC NYS Member firms who are enrolled in the program. Loss control is provided by AGC NYS Safety & Construction Services, and the group is managed by Ross Gnesin and [G.C.G. Risk Management, Inc/NFP](#). As the insurance market continues to tighten, the AGC NYS Workers' Comp Safety Group #550 can be an attractive alternative to your current coverage.

The AGC Safety Group #550 in the State Insurance Fund seeks those safety-minded members who adopt our team approach to loss & control, and aggressive claims management. All claims are filed through the offices of GCG Risk Management, Inc., which utilizes a self-pay medical program for small claims, improving both the experience rating of the member, and dividend performance for the entire group. As specialists in the Workers' Compensation field for decades, GCG/NFP brings an approach which goes well beyond the traditional insurance broker. In fact, our member's insurance agents use us as a resource to protect their investment in their client's performance. With the combination of a 25% discount, most recent dividend of 35% (with an average dividend of nearly 30% over our history), members of AGC Safety Group #550 are saving over 50% on their premiums ANNUALLY.

To learn more please contact our office or [visit G.C.G.'s website](#).