



# AGC NYS Newsletter January 7, 2021

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

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### UPCOMING EVENTS

#### January 2021

- 14 [AGC STP Program – Unit 4, Contract Documents \(online or in-person\)](#)
- 19 [Killer Contract Clauses – Part One](#)
- 26 [Killer Contract Clauses – Part Two](#)

#### February 2021

- 2 [Killer Contract Clauses – Part Three](#)
- 9 [Killer Contract Clauses – Part Four](#)

### Industry News

#### Governor Updates Vaccine Distribution Plans for 'Essential' Workers

On Tuesday, Governor Cuomo updated New Yorkers on the state's COVID-19 vaccine distribution efforts. By the end of this week, the state will have distributed approximately 911,000 first doses of the vaccine to providers for administration to eligible New Yorkers. Additionally, the Governor announced that to date, 3,762 providers have applied and been approved by the state to serve as vaccination sites.

Currently, health care workers in the [Phase 1A vaccine distribution plan](#) are prioritized. In an effort to take pre-emptive steps to ensure this network of sites does not become immediately overwhelmed once the vaccine is available to the general public, the Governor is also encouraging Phase 1B essential worker groups such as police departments, fire departments, educators, and public transit organizations to begin developing plans for their workforce if possible. The more groups of essential workers able to receive vaccines through internal distribution plans, the more availability there will be for those New Yorkers seeking the vaccine through the 'retail network.' As of today, construction is not in the Phase 1B of the vaccine distribution plan.

AGC NYS members are advised that this is an evolving vaccine distribution plan and the latest updates will be available at the AGC NYS COVID-19 resource page.

#### DOL Publishes Guidance on FFCRA Paid Leave Expiration

##### Tax Credits for Voluntarily Providing Leave Temporarily Extended

The U.S. Department of Labor's Wage and Hour Division (WHD) posted announced additional guidance to provide information about protections and relief offered by the Families First Coronavirus Response Act (FFCRA). The FFCRA's paid sick leave and expanded family and medical leave requirements expired on Dec. 31, 2020.

The new guidance, in the form of [Frequently Asked Questions](#) (see questions 104 & 105) on the WHD website, addresses whether workers who did not use their leave entitlement under the FFCRA in 2020 may use such leave after Dec. 31, 2020. It also explains how WHD will maintain its enforcement authority over employers' leave responsibilities while the FFCRA's paid leave requirements were in effect, even after these leave entitlements have expired.

Additionally, the Consolidated Appropriations Act (CAA), 2021, extended employer tax credits for paid sick leave and expanded family and medical leave voluntarily provided to employees until March 31, 2021. However, the CAA did not extend employees' entitlement to FFCRA leave beyond Dec. 31, 2020, meaning employers will no longer be legally required to provide such leave. IRS has not updated its guidance yet, but existing guidance on the eligible tax credits [can be found here](#).

WHD provides additional information on common issues employers and employees face when responding to the coronavirus and its effects on wages and hours worked and job-protected leave under the FMLA at <https://www.dol.gov/agencies/whd/pandemic>. For AGC-provided resources on FFCRA and other coronavirus-related matters of significance to construction employers, visit [AGC's coronavirus website](#).

### ***Nonresidential Construction Spending Shrinks Further In November As Many Commercial Projects Languish, Even While Homebuilding Soars – NY is a Mixed Bag (mostly negative)***

*AGC Urges Quick Action on Infrastructure Funding and Protection from Meritless Lawsuits; Industry Survey Finds Widespread Pessimism about Volume of Projects Available to Bid on in 2021*

Construction spending was a tale of two industries again in November, as soaring single-family construction masked ongoing downturns in private and public nonresidential construction, according to an analysis of new federal construction spending data by the Associated General Contractors of America. AGC officials said the new figures underscore the need for new infrastructure investments and other measures to boost demand for nonresidential construction amid the pandemic.

"Private nonresidential construction declined for the fifth-straight month in November, while public nonresidential spending slipped for the fifth time in the past six months," said Ken Simonson, the association's chief economist. "Unfortunately, our latest survey finds contractors expect the volume of projects available to bid on in 2021 will be even more meager."

Construction spending in November totaled \$1.46 trillion at a seasonally adjusted annual rate, an increase of 0.9 percent from the pace in October and 3.8 percent higher than in November 2019. But the gains were limited to residential construction, which soared 2.6 percent for the month and 16.2 percent year-over-year. Meanwhile, private and public nonresidential spending slumped 0.6 percent from October and 4.7 percent from a year earlier. From a New York State perspective, construction employment in the Dutchess County-Putnam County division of the New York metro area increased by 15% (1,300 jobs) over 12 months. This was the fifth-highest percentage gain out of the 358 metro areas and divisions for which the Bureau of Labor Statistics posts construction employment data.

The New York City division (five boroughs) of the New York metro area lost 16,700 jobs (-11%) over 12 months, second-most of all areas.

There were 10,100 payroll employees in construction employees in Dutchess County-Putnam County in November 2020, the largest total for any November in a series dating back to 1990. At the other extreme, Binghamton (3,400 jobs) and Utica-Rome (2,800 jobs) set new November lows.

(The Bureau of Labor Statistics does not seasonally adjust metro construction data, so it is not possible to make reliable comparisons between November and other months. BLS combines construction with mining and logging employment for most metros, including KC and Springfield, to avoid disclosing figures for industries with few employees; it is safe to assume nearly all of the employees are in construction.)

[Click here](#) for the link for the official AGC of America press release.

### ***Latest Highlights with PPP and Employee Retention Tax Credits***

*Wednesday, January 13 | 10:00 a.m. | FREE*

Please join us for this important zoom webinar as our panelists will cover the updates to the next round of Stimulus PPP funding and the Employee Retention Tax Credit. [You can register here](#). Our panelists will be discussing some of the changes in the second round of the Paycheck Protection Program (PPP) including the Second Draw Loan for smaller and harder-hit businesses, loan forgiveness, additional eligible expenses, deductibility of expenses and your eligibility for the Employee Retention Tax Credit.

**Moderator:** Michael Turturro, CPA, Managing Partner, RBT CPAs, LLP

**Panelists:** Chris Levy, Executive Vice President, Head of Credit, Pursuit  
Davide DiGenova, CPA, Tax Partner, RBT CPAs, LLP

### ***NYS DEC Issues Enforcement Discretion on Part 205 (Architectural and Industrial Maintenance Coatings)***

New York State Department of Environmental Conservation (Department) will exercise its authority to utilize enforcement discretion with respect to certain provisions of 6 NYCRR Part 205 (Part 205) concerning the regulation of Architectural and Industrial Maintenance (AIM) Coatings. The Department will exercise this authority as set forth below in lieu of full compliance with Part 205.

On December 12, 2019, the Department revised Part 205 to further reduce the emission of volatile organic compounds (VOCs) from AIM coatings. These revisions, effective January 11, 2020, will help reduce the formation of harmful ground-level ozone and further New York's efforts in complying with the national ambient air quality standards (NAAQS) for ozone. Among other things, Part 205 requires AIM coating manufacturers to meet enumerated VOC content limits for AIM coating categories. The revisions reduced VOC content limits for 12 existing categories, established VOC content limits for 12 new categories, and eliminated 15 categories altogether. Manufacturers have until January 1, 2021 to comply with the reduced content limits for existing categories, as well as content limits for new categories. Attendant changes were also made to definitions and to container labeling requirements for AIM coatings.

AIM coatings manufacturers in the State have been adversely impacted by COVID. In particular, manufacturers have informed the Department that COVID has disrupted and continues to disrupt their manufacturing capacity, access to raw material suppliers, and testing laboratories. As a result, manufacturers report that they will not be able to comply with the Department's January 1, 2021 compliance deadline related to reduced VOC content limits for AIM coating categories.

Acknowledging the impact on the actions and operations of New York State businesses and the regulated community due to the COVID emergency, the Department is providing under this enforcement discretion to AIM coatings manufacturers an additional 12 months, **until January 1, 2022** to: (1) comply with reduced VOC content limits for existing AIM coating categories as set forth in the Table in Subdivision 205.3(a), which was revised on December 12, 2019; and (2) continue to comply with the VOC content limits for categories otherwise eliminated as a result of these revisions as set forth in the Table in Subdivision 205.3(a); and (3) comply with new container labeling requirements as set forth in Section 205.4, which was also revised on December 12, 2019. Additionally, all definitions in Section 205.2, as revised on December 12, 2019, remain in effect, except that for the purpose of this enforcement discretion all references to products manufactured "on and after January 1, 2021" shall mean "on and after January 1, 2022."

All other provisions of Part 205 remain in effect and will be enforced. Questions regarding this enforcement discretion should be directed to Ona Papageorgiou of the NYS DEC Division of Air Resources at (518) 402-8396.

### ***John Hession Announces His Retirement***

"After 16 years of growing Vantage Equipment, the time has come to move on to a new chapter in my life. This has been a difficult decision, since working with Vantage's people, customers and suppliers has been some of the most satisfying experiences in the 46 years of my business career. In making this decision I have tried to ensure that whoever succeeds us in serving our market will serve our customers "with the best products, people and service."

John started in the Construction Equipment business with FMC Link Belt in 1978 in Cedar Rapids Iowa. He moved from mobile cranes to marine cranes when he joined Clyde, builder of the largest floating cranes in the world.

He first returned to Upstate New York to become Senior VP of Syracuse Supply Company, where he was a part owner and general manager of the long time Caterpillar dealership for 20 years.

After Syracuse Supply was acquired by Milton Cat, John started Vantage Equipment, taking over the former L.B. Smith New York. Helped by Todd Kaley and Jim Strigle, key managers at Syracuse Supply, Vantage Equipment has grown into a leading dealer of heavy equipment in New York State.

Alta Equipment, who acquired Vantage Equipment's heavy equipment business, is a national leader in construction and material handling equipment. They represent Volvo, Gradall, JCB, Terramac, Mauldin and many other premier

equipment manufacturers. The employees and management of Vantage will continue to serve customers in New York and be active with the AGC and other key industry organizations. Congratulations John!

## **Government Affairs News**

### **STATE NEWS**

#### **State Senate Committee Assignments**

New York State Senate Majority Leader Andrea Stewart-Cousins announced committee chairmanships for the 2021-22 NYS Legislative Session. With a supermajority in the Senate, new committees were created including Procurement - Reichlin-Melnick; Cities was split between NYC – Jackson and Other Cities – Cooney; and Libraries - Ryan. As expected, other chairs are: Transportation – Kennedy; Finance – Krueger; Corporations, Authorities, and Commissions – Comrie; Insurance – Breslin, and Labor - Ramos.

#### **Assembly Committee Assignments**

Assembly Speaker Carl Heastie announced committee chairmanships for the 2021-22 Legislative Session. Chairs include: Transportation – Magnarelli; Ways and Means – Weinstein; Corporations, Authorities, and Commissions – Paulin; Insurance – Cahill; and Labor – Joyner.

#### **State of the State Scheduled on January 11, 2021**

The annual State of the State address from Governor Cuomo is scheduled on Monday, January 11, 2021. Among the issues expected to be addressed are the state budget deficit, recreational marijuana, mobile sports betting, and raising taxes. [Governor Cuomo's State of the State address can be viewed here.](#)

### **FEDERAL NEWS**

#### **Senate Majority Leader Schumer?**

With the apparent wins by Raphael Warnock and Jon Ossoff in the U.S. Senate races in Georgia it appears that Senator Chuck Schumer will become Majority Leader. The races will be recounted but the expectation is that Warnock and Ossoff will prevail. This will result in a 50-50 split in the Senate with Vice President-elect Kamala Harris casting deciding votes on contentious legislative issues and Presidential nominations. Generally, if Senator Schumer becomes Majority Leader it will bode well for New York's fiscal problems and infrastructure funding.

#### **Construction Industry Analysis of Federal COVID-Relief Package**

AGC of America, which was heavily engaged in developing and fighting for key industry provisions of the Federal COVID-Relief Package approved by Congress and now signed by the President, has provided a detailed analysis of the sweeping legislation for the construction industry.

Significant AGC Victories for Construction Markets, Construction Firms & the Construction Workforce:

- Blocking a surprise federal tax increase of up to 37 percent on Paycheck Protection Program (PPP) loan forgiveness by overturning the IRS position barring deductions for PPP loan-forgiven business expenses;
- Enabling eligible contractors to claim tax credits up to \$14,000 per employee through an extension of the Employee Retention Tax Credit into 2021;
- Securing \$46 billion for the federal-aid highway and transit programs to help ensure ongoing and planned highway and transit construction projects move forward through at least September 30, 2021;
- Providing \$10 billion for state departments of transportation to help mitigate the impacts of transportation revenue losses on bid letting delays and project cancellations;
- Ensuring that some of the \$82 billion for public and private K-12 schools and higher education in COVID-relief is eligible for construction/renovation projects related to pandemic needs;
- Obtaining \$25 billion in tax incentives for community buildings development through the extension of the New Markets Tax Credit for five years;
- Expanding tax credits for constructing more than 550,000 multifamily housing units via the Low-Income Housing Tax Credit;
- Securing nearly \$3 billion for wastewater and drinking water infrastructure investment;
- Landing upwards of \$3.3 billion for broadband installation and removal construction activities; and

- Guaranteeing the investment of an additional \$10 billion towards harbor maintenance dredging;

For the full analysis, [click here](#).

## **NEW YORK CITY NEWS**

### **Mayor de Blasio Declares Special Election Date for the 15th and 11th Council Districts**

Mayor Bill de Blasio declared Tuesday, March 23, 2021, as the date for the 15th and 11th City Council Districts special elections. The Council Member will serve until December 31, 2021. The vacancies were a result of the election of Congressman Ritchie Torres and appointment of Andrew Cohen to the New York State Supreme Court.

## **Education News**

### **Killer Contract Clauses, 8-week Webinar Series**

Beginning January 19 the AGC NYS, NESCA and ECA will be holding a joint online educational series on Killer Contract Clauses. This has been a very well attended program through the years (in-person) and features some of the top construction attorneys in New York. Please join us for this informational series of webinars. The registration links are available below. The programs include:

**January 19, 2021** – -“Vague/Open-Ended Scope of Work Provisions” and “Dispute Resolution Provisions”  
-Kevin Laurilliard – O’Connell and Aronowitz

**January 26, 2021** – -“Incorporation by Reference Provisions” and “Changes & Extra Work” -Walter Breakell – Hinman, Howard & Kattell, LLP

**February 2, 2021** – -“Conflicts & Ambiguities in Contract Documents” and “Waiver Provisions” -Michael Catania – Catania, Mahon & Rider, PLLC

**February 9, 2021** – -“Notice & Recordkeeping Provisions” -Joel Howard – Couch White, LLP

**February 16, 2021** – -“Indemnification Provisions” and “Additional Insured Provisions” -William Greagan – Goldberg Segalla, LLP

**February 23, 2021** – -“Retainage Provisions” and “Prohibition Against Stopping Work for Non-Payment” -Frank Brennan – Nolan, Heller & Kauffman, LLP

**March 2, 2021** – -“DBE, MBE & WBE Provisions”- Jennifer Harvey – Couch White, LLP

**March 9, 2021** – -“Contingent Payment Provisions” and “Contract Termination Provisions” -Gregory Spaun – Welby, Brady & Greenblatt, LLP

### **New Spring Dates Added for LEAN Education Program Online**

A another new round of LEAN Construction Education Training will be held online via zoom with instructor Colin Milberg beginning in March. Lean Construction is based on the holistic pursuit of continuous improvements aimed at minimizing costs and maximizing value on a construction project: planning, design, construction, activation, operations, maintenance, salvaging, and recycling. The sessions will meet from 12pm to 3pm EST on Tuesdays and Thursdays beginning March 23, 2021 (see dates below). The course requires you to use a PC or Mac (no tablets or phones) with a webcam and mouse. [Click here](#) for more details and a registration form.

Units 1 & 2: 3/23, 3/25 & 3/30 from 12pm – 3pm EST each day  
Units 3 & 4: 4/1, 4/6 & 4/8 from 12pm – 3pm EST each day  
Unit 5: 4/13 & 4/15 from 12pm – 3pm EST each day

Unit 6: 4/27 & 4/29 from 12pm – 3pm EST each day  
 Unit 7: 5/4 & 5/6 from 12pm – 3pm EST each day  
 Exam Prep (Optional): 5/11 (2 hours, TBD)

## **Building News**

### ***The COVID-19 Construction Site – Keeping People Safe and Getting the Work Done***

*Thursday, January 21, 2021 | 3:30 PM to 5:00 PM | \$35, EARLY BIRD \$15 (1/8), STUDENTS FREE*

Panel Speakers/Q&A to share and discuss their experiences mobilizing crews and managing a COVID construction work site. With an owner moderating, learn from the experiences and opinions of a large GC, a medium size building trades contractor, and a small road/bridge works contractor as they discuss how they survived and thrived in 2020 and prepare for 2021. We'll start the session with introductions and each speaker discussing a set of prepared questions, and then open the floor to your questions and experiences. [REGISTER HERE.](#)

#### **Presenters:**

Joe Gross, Owner - Gross Electric  
 Brian Hanlon, Vice President - Slate Hill Constructors  
 Beth DiBattista, Deputy Operations Manager - Turner Construction Company

### ***Murnane Building Contractors Announces Senior Leadership Promotion***

Murnane Building Contractors is pleased to announce the promotion of Michael J. Murnane to the position of President, assuming responsibility for all operations, and day-to-day management of the firm. Former Murnane President, Patrick Murnane, Sr., will remain with the firm in the role of Chief Executive Officer.

In announcing the promotion, Murnane CEO, Patrick Murnane, Sr. stated, "Mike Murnane has demonstrated that he is more than ready of this new challenge based on his leadership and development of our newest office in the Capital District."

"I'm very excited to take on this new challenge," said Michael Murnane. "Working with our excellent team of construction professionals, I'm looking forward to continuing to build on Murnane Building Contractors' 'Tradition of Excellence' and the legacy established more than fifty years ago by my grandfather, Jim Murnane."

Michael Murnane holds a B.S. in Civil Engineering from Bucknell University and an M.B.A. degree from Columbia University. He has over 10 years of combined executive leadership and experience in management of construction projects in Boston, New York City and Albany.

Murnane previously served as Vice-President of Murnane's Clifton Park office, which he was responsible for establishing in 2015. He has been instrumental in the successful construction of landmark projects in the Capital District region including the new Schenectady Train Station, and the Atrium for the Times Union Center in downtown Albany. Murnane's Clifton Park office recently completed a new \$16.5 million Public Safety Building for Saratoga County.

## **Highway News**

### ***Recent Engineering Issuances Posted by NYSDOT***

#### **EB 20-060 Fuel, Asphalt & Steel Price Adjustments (January 2021)**

*Effective Date: January 1, 2021*

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

#### **EB 21-001 Asphalt Price Adjustment Conversion Factors**

*Effective Date: May 1, 2021*

Updated the pay item numbers for the asphalt price adjustment conversion factors. This updated table will replace the existing one that is included in the contract proposals.

### ***Call for Participants!***

#### **AGC-DOT Spec Committee:**

The AGC-DOT specifications committee or "Spec Committee" is the highway groups' most active committee; it is a forum for active problem solving. This committee is comprised of around 20 NYSDOT & Thruway employees and over 50 AGC members representing various types of work. Typically, this group meets 4-5 times per year, a valuable face-to-face interaction providing our members the opportunity to interface with different departments at the state agencies, with task group meetings intermittently throughout the year. If you are interested in joining, please contact Sarah ([shill@agcnys.org](mailto:shill@agcnys.org)).

#### **AGC Lettings Task Group**

Please join AGC as we discuss possible upgrades to our system with advanced letting and lettings notifications. How do you use our letting information? How can we better present information for your use? Suggests, comments and discussions are always welcome. Contact Sarah ([shill@agcnys.org](mailto:shill@agcnys.org)) to join this group.

#### ***NYSDOT Offers Free Bid Quote Preparation Software***

AASHTOWare Project Bids™ is offered free of charge for download and installation to all bidders on NYSDOT Capital Construction projects. In order to submit the most accurate bid document possible and to avoid costly bid errors, firms that submit hard copy bids, either bids in person or by mail, are encouraged to prepare their paper bids using the AASHTOWare Project Bids™ software (.ebsx files). This is the software used for bids submitted through Bid Express, and allows paper bidders to enjoy the same quality bid quotes as those submitted electronically. Once your bid quote has been entered, save the .ebsx file to a cd/dvd or flash drive, and include with your printed itemized bid. Additional information is available at [Electronic Bid System](#), or contact [Robert.Kitchen@dot.ny.gov](mailto:Robert.Kitchen@dot.ny.gov), (518) 457-2124.

### ***Safety News***

#### ***AGC NYS Compliance Poster Updated for 2021***

As usual, there were some changes to the New York State required postings, including the latest edition of the New York State Minimum Wage.

AGC NYS is currently updating our popular all-in-one Compliance Poster to include these updates. We are in the process of printing new posters and they will be available soon. We will update the membership when those posters are in stock and ready to ship.

Don't forget about our other safety products which can all be found on our website at [www.agcnys.org/bookstore](http://www.agcnys.org/bookstore).

#### ***NOW OPEN: 31st Annual National AGC Safety Awards (NASA) Applications***

The Associated General Contractors of America (AGC) announces its 31st Annual National AGC Safety Awards (NASA) Program. The deadline for submission of your Chapter entries to AGC is **February 15, 2021**. A Chapter must submit an entry on behalf of the AGC member company. Each chapter will be e-mailed an electronic application form on or before **January 6, 2021**. For more information, [click here](#).

The National AGC Safety Awards (NASA) program has been an ongoing effort since 1991 to offer AGC members an opportunity to evaluate their safety record. The NASA compares an AGC member's safety record with other AGC members according to the member size and construction type. Additionally, the NASA provides a great opportunity for members who have excellent safety records to compete for nationally recognized awards. For the application, [click here](#).