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Navigating California’s Regulatory Maze

It’s safe to say that California is probably the most regulated state in the nation. Recognizing this fact, the AGC of California has long been a leading voice in the regulatory and legislative arenas. AGC members (and non-members, alike) derive major benefits from the leadership AGC provides by offering industry input and feedback with various regulatory agencies and boards as well as the elected officials who create and enforce the many rules and regulations governing California businesses and jobsites. Construction professionals also benefit from the many diverse training opportunities that AGC offers throughout the year to help them navigate the maze of constantly proliferating new laws and regulations.

This issue of the Constructor looks at some of the current and upcoming regulatory issues facing California contractors. I would like to touch on just a couple of changes that are coming and notify our members on how we can keep from getting behind the proverbial eight ball.

Air Quality - The California Air Resources Board amended the off-road diesel in-use regulations to require all fleets to label “both” sides of each vehicle. Both sides must be labeled “ID” by January 1, 2013. The U.S. Environmental Protection Agency (EPA) will be issuing authorization for the off-road regulation (expected later in 2011); no fleet subject to the regulation will be allowed to purchase a Tier 0 off-road diesel vehicle.

South Coast Air Quality Management District Rule 1470 – Certified Equipment permits for emergency stationary internal combustion engines must go through a rigorous application process. This regulatory process has numerous contractors and equipment manufacturers scrambling to comply with a very stringent agency policy. Without the permit contractors cannot close out their projects. Currently AGC of California along with other interested groups are meeting with SC AQMD staff to find a quick solution to this industry problem.

Storm Water Run-Off – The construction industry is concerned there will be a shortage of state-approved and qualified SWPPP practitioners (QSP) to implement the requirements of the General Construction Permit (CGP) for Storm Water Discharges beginning on September 2, 2011. As of June 15, 2011, there are approximately 6,400 active construction sites in California, and the state has approved just more than 200 QSPs. AGC is urging its members to act now and make sure your projects have trained staff deployed by the September 2, 2011 deadline. In addition, AGC in collaboration with several other building industry trade associations is urging the State Water Resources Control Board to delay the effective date of QSP training requirements until at least 3,000 QSPs are approved, which is equal to approximately one half of all active construction sites in California. Also, AGC of California is actively involved with the Caltrans Storm Water Action Plan Coalition. This Coalition will identify key elements to develop an action plan on how Caltrans will implement the state’s storm water regulations.

These are only a couple areas AGC is focusing its attention, and the good news is that AGC of California continues to be an active player working to overcome these regulatory hurdles. The association offers targeted seminars dealing with many of the latest regulatory issues. For more information on these, contact Ryan Famularo at (925) 827-2422 or e-mail famularor@agc-ca.org.

On the legislative front, the big news as of mid-June was that state lawmakers had passed a budget in record time in recent years – but no sooner was it passed by the Legislature on June 15th than it was followed by a promised veto by Governor Brown. By the time you read this, things will no doubt have changed, so stay tuned.

In closing, I would like to thank AGC’s members, advocates and staff for their seemingly tireless work with our legislators as they keep our industry informed about the impacts of local, state and national regulations. I would also encourage our members to apply for the vacant and expiring positions on our state’s various air and water boards. It is only by participating and making sure that our perspective and interests are heard that we can change or prevent unreasonable regulations.
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Redistricting – Hardly an Art Form...

By Dave Ackerman

California has always liked to do things differently.

Every 10 years the census determines how many people live in California and where. That data, up until this year, had been given to the Legislature, who in turn decided where the new lines would be drawn to elect all members to the Legislature and Congress. It was an “inside job” and usually resulted in protecting the party in power and most of the incumbent officeholders. The word “gerrymander” was often used to describe the process.

Ten years ago, the incumbent protection process in redistricting worked so well that for the last decade, only one congressional and one state legislative seat changed party hands, and for the most part, the party in control in the Primary Election also won in November.

The result was little real competition at election time. Those elected were safe to adopt the viewpoints of constituents leaning far to the left or far to the right without any political consequences, causing political gridlock in Sacramento and Washington.

However voters last year, frustrated with everything about government, trashed the old system and took it away from the Legislature. Voters created a new Citizens’ Redistricting Commission, a bipartisan 14-member group often used to describe the process.

The Commission tossed out California’s gerrymandered congressional map, setting the stage for a massive turnover in the state’s delegation and putting at risk the careers of some of California’s most powerful politicians.

California’s “citizen redistricting” produced various degrees of panic across the state’s political landscape on June 10, as the first round of congressional and legislative maps were released.

Some political experts said the maps could be a boost to Democrats in what is already one of the bluest states in the country. Democrats could reach a two-thirds majority in the Senate.

The new districts were drawn for the first time without regard to incumbents’ home addresses or party affiliation. The results are districts with fewer odd-looking arms and fingers, along with numerous incumbents who no longer live in their districts.

Although there are certain to be changes before the final maps are adopted in August, the political shift will be significant.

Displaced legislators may be forced to move to adjacent districts containing the bulk, or at least the core, of their previous constituencies. The alternative is they can simply choose to get out of legislative politics.

State legislators must live in the districts they represent, while congressional representatives are not required to.

Shake-up in Congressional Delegation May Result

The plan creates electoral troubles for members of both parties.

- Rep. Gary Miller (R), a veteran congresswoman from Orange County, is drawn into a Democratic-leaning district, while 77-year-old Rep. Elton Gallegly (R) finds himself in the same seat as fellow Republican, Armed Services Committee Chairman Buck McKeon (R).

- Rep. David Dreier (R), who chairs the House Rules Committee, is drawn into a Democratic-leaning seat.

- Rep. Howard Berman (D), the former chair of the House Foreign Services Committee, is drawn into the same district as fellow Democrat Rep. Brad Sherman (D). Sherman, possibly anticipating changes, has more than $3 million in campaign funds in the bank.

- Rep. Dan Lungren (R), a nine-term congressman is placed in an only mildly Republican-leaning seat in the Sacramento area.

- Rep. Lois Capps (D), facing a challenge from former Lt. Gov. Abel Maldonado (R), now finds herself in an only slightly Democratic-leaning district.

- In the Central Valley, Representatives Dennis Cardoza (D), Jim Costa (D) and Jeff Denham (R) are all in the same district; however, each probably won’t have to move in order to find a neighboring district they can win from.

In the State Legislature, three Democrat Sacramento Assemblymembers, all in their first term, are placed in the same Assembly district.

- Speaker John Perez (D) and freshman Assemblymember Holly Mitchell (D) are in the same district.

- Young rising Latino political stars in the Assembly, Luis Alejo (D) and Nora Campos (D), are placed into the same district in the Bay Area.

The commission designed the maps with an eye toward ending the incumbent protection-oriented mindset that defined previous rounds of redistricting in the state. In drawing the maps, the Commission drew them without regard to political incumbents and partisan considerations.

Changes Can Still Be Made

The Commission expects some modifications to be made before the final version of the district maps are released on August 15. The commission will solicit public input over the next two months before releasing the final draft.

Even though Latinos drove the vast majority of California’s population growth in the past decade, two leading civil rights groups said the maps fail to reflect their growing influence – making it unlikely more Latinos will be elected to the Legislature and Congress.

Latinos now make up 38 percent of the state’s population and about 20 percent of voters. Currently, seven of California’s 53 congressional seats, or 13 percent, are held by Latinos; 15 of the 80, or about 19 percent, are in the state Assembly.

On the other hand, Latinos could benefit from the Democratic Party’s overall gains in Congress on issues like immigration.

The new commission is only one of several changes that will have a dramatic impact on the state’s congressional delegation. Last year, voters approved a ballot measure that implemented an “open primary” system. Under this new system, the top two vote-getters in a primary regardless of party affiliation advance. This means that lawmakers in strongly liberal or conservative districts could face difficult primary and general election races.
State Board Tackles Wide-Ranging Issues During May Meeting

AGC of California held its second State Board of Directors meeting of the year on May 12 at the Monterey Plaza Hotel in Monterey, CA.

President’s Report: President Gerry Diloli, Herzog Contracting Corp., reported that during the Executive Committee meeting the day prior, the Committee approved the modified AGC Mission Statement (which was later discussed and approved by the State Board). Among other things, the Committee established a task force to review the defined benefit plan and the unfunded liability issue, and it also began discussions on the possibility of simplifying the AGC dues structure.

AGC of America Outlook: Ken Simonson, Chief Economist for AGC of America, spoke about the outlook for construction, construction materials and where the jobs are coming back. He reported that the economy is going reasonably well and that there have been 15 months of private sector job increases. Loans for investors continue to be tight, and state and local spending is still down. In construction employment there has been a three month gain, leading to the hope that construction is on the rise and that the decline has flattened out.

CEOs Report: CEO Tom Holsman reviewed the association’s financial health, strategic scorecard updates, latest marketing efforts and organizational changes. He noted that a simplified dues structure will likely need to be revisited in response not only to member requests but also to AGC of America’s Future Financial Dues Task Force of which he is a part. In legislative news, Holsman reported that the vital Gas Tax Swap was again re-enacted due in large part to AGC’s efforts. He also reported on the 3% Independent Contractors Withholding Proposal, which could be harmful to many businesses. He updated the State Board on sponsored legislation and regulatory news, specifically on the Storm Water PPP regulation effective September 2, 2011. He noted that AGC is the only statewide organization that provides certification training for SWPPP.

Keynote Speaker: Steve Sandherr, CEO of AGC of America, discussed activities in Washington D.C., noting that congress is consumed with big budget discussions. The current state of the country, which is suffering under the deficit, it is also a necessary component for the economy. Sandherr noted that AGC of America conducts seminars with the republican caucus to remind officials of the importance of infrastructure to the nation’s economy. Sandherr also noted that AGC of America is asking the federal agency to not use Private Labor Agreements on projects over $25 million, due to the many terms and conditions. He reported on the 3% withholding requirement on businesses under the Independent Contractors Withholding Proposal and noted that while the enforcement date has been pushed back another year, it doesn’t change the strategy, and AGC of America is still working to kill the bill.

AGC Mission Statement: Following a presentation by Sr. Vice President John Nunan, Unger Construction Company, Directors approved AGC’s new mission statement to read as follows: “The mission of the Associated General Contractors of California is to be the recognized leader in providing business opportunities, education, training, resources, and advocacy for its members while advancing sound public policy for the construction industry.”

Education Foundation Update: Foundation Chair Michelle Loveall, California United Bank, reported that there are two new Education Foundation Board Members: Jon Dunn, Department of Education, and George Hannible, SKANSKA. Loveall recognized the Chico State students in attendance, the ACE mentor programs partnership, and recapped the Fresno Construction Career Awareness Day (CCAD). Education Foundation Director Erin Volk reported on the new education foundation partnership with ACE. The partnership will also include new joint programs such as a summer camp and AGC Student Chapter campus visits.

AGC of California & Social Media: Sr. Vice President John Nunan reported on the creation of the Marketing Task force geared at creating various marketing opportunities. In an effort to extend the realm of communication, AGC launched a company page on the social networking site Facebook, which can be found at www.facebook.com/AGCC.

Legislative Update: David Ackerman, DGA Associates, reported on the challenging news of the Independent Contractors Withholding Proposal, which would have a significant impact to the industry. Mr. Ackerman also reported that (as of this meeting) the Governor would be issuing his May Budget Revise. Additionally bond sales have been a concern in the state budget negotiations. He noted that if bond sales do not take place, Caltrans will be forced to shut down all projects currently under construction.
Call for Entries
To Safety Awards Competition

AGC of California’s Safety & Health Council has established Friday, August 26 as the application entries deadline for AGC’s 24th Annual Safety Awards of Excellence competition.

As the most prestigious safety recognition in the California construction industry, the awards showcase AGC member company safety achievements and recognize those who have worked so hard throughout the year to keep their employees safe. The competition is open to all members and covers work done in calendar year 2010. The awards event will be held during AGC of California’s October Fall Conference in Indian Wells.

The Safety Awards of Excellence recognize contractors for their outstanding Safety programs in the following categories:

- Contractor Safety Awards based on worker hours in California:
  - Under 200,000 worker hours
  - 200,000 – 500,000 worker hours
  - 500,001 – 1 million worker hours
  - Over One million hours

- Heavy Civil/Highway
  - Under 200,000 worker hours
  - 200,000 – 500,000 worker hours
  - 500,001 – 1 million worker hours
  - Over One million hours

- Specialty Contractor
  - Under 500,000 worker hours
  - 500,001 – 1 million worker hours
  - Over One million hours

- Safety on a High Hazard project
- Unique Safety Application
- Individual Safety Effort of a Superintendent or Jobsite Manager
- Associate member contribution to the industry

Special awards will also be presented in these additional categories:

- Safety Professional of the Year
- Professional Development Grant

The award application package is available online at the AGC website www.agc-ca.org or by calling AGC of California at (916) 371-2422. For an electronic document in Microsoft Word, email your request to smileyk@agc-ca.org.

First time applicants are encouraged to contact Kate Smiley for assistance in completing the application.
Underground Construction Company Celebrates 75th Anniversary
By Carol Eaton

Three-quarters of a century after a pair of industrious contractors boldly started their new company right in the middle of the Great Depression – one of the most economically turbulent times in U.S. history – Underground Construction Company is celebrating its 75th anniversary this year. Today the Benicia-headquartered company continues to approach its business relations with the same principles on which it was founded, emphasizing ethics and integrity, safety and quality, and always valuing its people above production.

Underground Construction Company was founded by two men with family ties to Berkeley, CA. Nelson Hyde “Notch” Chick had been working as a builder and operator. Thomas Kessler McManus had earned an engineering degree from West Point, married Margaret Fish and then traveled the Pacific Coast to keep busy in construction. Together, McManus and Chick decided to pool their resources and go after the promising utility market they saw on the horizon with work fueled by the expansion of the company that would later become Pacific Bell as well as by Pacific Gas & Electric, among others. They named their company, Underground Construction, based on what they did, not who they were – symbolic of their pragmatic nature focused on getting work done efficiently, not just making a name for themselves.

Humble Beginnings
Like other humble beginnings, Chick and McManus literally worked out of their cars and operated from the Oakland Builder’s Exchange when they first started. A third partner, John C. “Jack” Gutleben, joined the team a few years later, bringing with him experience in buildings as well as development.

Just as the company started to grow, both McManus and Gutleben were called to serve the country during World War II, while Chick stayed behind to run the company. Underground opened its first independent office on 75th Avenue in Oakland during these years, a two-room building located near the railroad tracks.

After the war in 1946, Richard E. “Dick” Hall joined Underground Construction. He was later to become an AGC of California President, serving in 1973. Hall reinforced and instilled the high standards for safety and ethical behavior that remain as enduring values today at his company.

Underground expanded its operation over the next few decades. Among the notable projects was work on the new Bay Area Rapid Transit (BART) system around the San Francisco Bay. In the 1970s, Underground parlayed its rapid transit expertise in the Bay Area to land projects for metro systems in Washington DC and Atlanta, Georgia. The company also branched out into airport fueling work and ultimately expanded operations into nearly 40 states and Canada, following clients, and market opportunities, wherever the work took them.

Benicia Headquarters
In 1985 Jim Siler took over as company president from Dick Hall, who had worked in that capacity for nearly a quarter century. The company moved into its current headquarters in Benicia, CA in 1987, and in
the late 80s and 90s focused largely on private work in the markets of telecom, refinery, airport fueling, gas and electric work. Lynn Barr, who had joined the company in 1967, took over as president in 1995. Under his leadership, Underground went from a privately held to a publicly owned company, joining Quanta Services in 1998. Today, Underground Construction is one of 53 operating units within Quanta Services.

Current president Chris Ronco took the reins from Lynn Barr in 2003, and under his leadership the company expanded into new electrical and military fueling markets.

**Current Projects**

Today, Underground Construction Company pursues work in four major market sectors: airport fueling, industrial, telecommunications and utilities. Working collaboratively with industry leaders in each category, over the years Underground Construction Co. Inc. has installed more than 200,000 miles of copper wire and fiber optic cables, and has trenched enough earth to reach from San Francisco to New York and back again. The company’s fueling projects now pump more than 10 million gallons per day at the nation’s largest commercial airports and military installations, and its telecommunications projects have connected businesses around the world.

Two of the company’s major current projects are the P-401 – Point Loma Naval Base Fuel Storage Upgrade that Underground is constructing in joint venture with Nova Group for the U.S. Navy in San Diego, and the McCarran Airport Fuel Farm, which it is constructing for LAS Fuels Corporation. The Point Loma project includes the total reconstruction of the existing One Million Barrel fuel storage facility, encompassing construction of a new Fuel Oil Recovery and treatment facility, six new 125,000 barrel above-ground fuel storage tanks, and various supporting facilities. The project is expected to be completed in early 2013.

The scope of work at the McCarran Airport Fuel Farm involves the renovation and updating of the existing facility to current environmental standards while also increasing the capacity of the fuel system and enhancing security. Underground is adding a 65,000 BBL fuel storage tank, replacing half of the above ground piping, and adding a large underground valve manifold and vault among other things.

**Longtime Involvement with AGC**

Industry leadership has been a hallmark of Underground’s leaders through the years. Underground Construction Company not only has made major contributions to the nation’s built infrastructure, but it also has made equally significant contributions to the development of the Associated General Contractors with whom it has maintained a 74 year relationship. Both Dick Hall (1973) and Tom McManus Jr. (1990) served terms as president of the AGC of California; Hall additionally served as president of national AGC in 1986. In addition, Hall and Lynn Barr served as presidents of the Beavers, in 1990 and 2003 respectively.

Currently George Bradshaw, Vice President of Operations, is Chairman of the North Bay District of AGC of California and a member of the State Board of Directors. Bradshaw notes that the company’s extensive experience, work philosophy and core values – ethics and integrity, people, safety, service, teamwork and work ethic – can best be summed up as a company tenet known as “The Underground Way.”

“Safety is probably our greatest core value, and then we go from there,” Bradshaw notes. “It’s safety first, quality, then production. That’s one thing that we live by, and we constantly reinforce. We’ve been incident free for 18 months now, and we intend to continue that record.” The company’s focus on safety is reflected in a number of safety awards in recent years, including second place awards in its worker hour category from both National AGC and AGC of California this year.

The value that Underground places on the health and welfare of its people is clearly reflected in the extensive number of long-term employees and third generations crafts people who have and continue to work there. “I think one of our greatest assets is that we value our people, and it shows,” Bradshaw comments. “There are a lot of fathers and sons who have worked here. The average tenure of our management and supervisory staff is well over 20 years.”
AGC Leads in Regulatory Arena with Training, Outreach, Advocacy

Recent Jobsite Dust Control Seminars Latest Example of AGC’s Leadership Role Providing Training to Construction Industry

By Carol Eaton

A partnership of AGC of California and HILTI North America held two comprehensive statewide seminars June 7 and 8 that provided nearly 150 construction industry professionals and 90 companies with important information and training about the latest regulatory measures, legal climate and potential solutions to jobsite dust control.

The seminars in Northern and Southern California are among the most recent in the ongoing series of industry training opportunities offered year round by the AGC on a host of hot button industry issues. In addition to the dust control seminars, AGC offerings have included everything from fall protection to developing Injury and Illness Prevention Programs (IIPP), to helping contractors meet the new General Storm Water permit requirements through classes that provide state certified Qualified SWPPP Practitioner (QSP) Training and the Qualified SWPPP Developer Training (QSD), among other topics. The educational programs demonstrate AGC’s continued leadership in the construction training arena as well as its leadership providing advocacy and industry input with myriad state and national agencies that make the regulatory decisions impacting contractors each year.

New OSHA Standard on Horizon

In Northern California on June 7, approximately 70 construction professionals representing 50 companies turned out for the jobsite dust control solutions seminar. They heard from a diverse panel of speakers who offered their perspective on the regulatory, legal and practical aspects of combating and preventing hazardous dust, particularly crystalline silica exposure, on construction jobsites. The seminars coincided with what is expected to be a release this year of a new standard by the federal Occupational Safety and Health Administration (OSHA) dealing with occupational exposure to silica. The proposed new crystalline silica standard was reportedly submitted to The Office of Management and Budget (OMB) by OSHA on February 14, 2011, and has been under review. It has been reported that the new standard could be one of the most significant rulemakings in OSHA’s history and is expected to lower the Permissible Exposure Limits (PEL) to address the current body of research about the long term impacts of silica exposure.

As is often the case, California currently has a more stringent regulation governing the generation of jobsite dust in this state than is in effect in much of the nation; the current California standard was put into effect September 2008 and is found in the Cal-OSHA Construction Safety Orders in section 1530.1 The Standard emphasizes dust reduction systems and processes as well as effective training programs for employees and supervisors.

The Science Behind Silica Exposure

The AGC seminar was kicked off with Joel Cohen, president of The COHEN Group, San Mateo, describing the science behind silica exposure and other jobsite dust issues. According to the National Institute for Occupational Safety and Health (NIOSH), at least 1.7 million U.S. workers are exposed each year to respirable crystalline silica in a variety of industries and occupations, including construction, sandblasting, and mining. Silicosis, an irreversible but preventable disease, is the illness most closely associated with occupational exposure to the material, which also is known as silica dust.

Construction workers may be exposed to hazardous dust containing silica during construction tasks, including tuck-pointing brick, grinding concrete, breaking concrete pavement with a jackhammer, and cutting block and brick. NIOSH has demonstrated that exposure can be reduced through the use of engineering controls, including the use of local exhaust ventilation to capture dust at its source and the use of water sprays to suppress dust where it is produced, among other measures. Several of the speakers at the AGC seminars illustrated programs their companies have implemented to mitigate dust exposure of their workers.
Regulatory, Legal Perspectives

Bob Barish of Cal/OSHA Research and Standards discussed the regulatory standards currently governing dust control on construction jobsites in California. Barish emphasized that while there are some exceptions to the requirement for dust control systems, worker training is still an integral part of meeting the requirements of the regulation in this state. He pointed out how Cal/OSHA’s Consultation service is one resource for contractors to utilize to help set up a program for dealing with silica dust control on their jobsites.

Richard Finn, a trial attorney with Burnham Brown, Oakland, and group leader of the company’s Environmental law practice, offered the legal perspective on “toxic torts”. He noted that as long as employees get injured on jobsites, “general contractors will be sued,” and he discussed various ways that contractors can manage and reduce their liability and risk. Finn pointed out that while claims related to silicosis are still far from the level of asbestos related claims, the field is “in the infancy” and lawsuits are expected to only increase in future years. His advice to contractors included consulting a knowledgeable construction and environmental law attorney from the outset of setting up a program; defining and implementing solid jobsite dust control programs within each company; building solid indemnity language into all contracts with subcontractors; and making sure that a company’s record-keeping is extensive and record retention well maintained for many years after a job is completed.

How Contractors are Coping

Following Finn, a panel of three AGC member contractors gave their perspective on how they handle jobsite dust in their operations. Bill Jackson, Granite Construction Company, outlined the extensive program that Granite rolled out around 2004 in response to the changes they began to see in the marketplace.

“Somewhere around 2002, we started to see that asbestos plaintiff clients were running out of asbestos claims and beginning to take the same clients and use people for silica exposure. It was becoming difficult, and very expensive, for us to get the kind of liability insurance that we needed,” he said. “So we worked with our insurance company to develop a silica exposure program. We were really intent on changing the way we did business in a way that reduced exposure to employees, and in doing that were able to convince our insurance carriers that we were handling the exposure so well that it reduced our liability.” Granite’s current program includes: internal action level for amount of exposures permissible for its employees (a level he notes was half of Cal/OSHA’s level); protocol for how and when controls would be implemented; and a medical surveillance program for employees, among other components.

Jerry Shupe of Hensel Phelps Construction Co. and Bill Koponen of Syblon Reid also addressed how their companies have tackled the jobsite dust issues and the importance of doing so. Shupe pointed out that one positive aspect of the 1530 standards is that it specifies a hierarchy of controls for managing job site dust that starts out with eliminating or reducing the exposure as the first line of defense, followed by implementing engineering controls, then administrative or work practice and then as a last line of defense utilizing personal protective equipment.

On-Site Communication, Mitigation

Bill Koponen stressed the importance of communication with jobsite personnel. “Over-communicate with them; over-train them,” he urged. “I encourage you to bring your manufacturers (of the dust control equipment) in to give people a hands-on demonstration on the jobsite.” He added, “I think the bottom line to return on investment is, we’re all here because we care about our employees.”

Finally Marcus Oden, Senior Vice President of HILTI, gave an overview of the various “harmonized systems” offered for dust control by his company. The seminar wrapped up with a hands-on demonstration of the various dust control equipment offered by HILTI.
Host of Hot Button Regulatory Issues Challenge California Contractors

By Carol Eaton

For contractors in California and nationwide, navigating and keeping abreast of the quagmire of ever-changing, often complex regulatory requirements that govern the industry can pose a major challenge. This is particularly true for smaller and mid-size businesses; often, they may not have the depth or degree of in-house resources or specialized expertise required to understand the nuances of how to comply with new or changing regulations.

The AGC continues to be in the forefront in providing industry input and feedback on key issues with various regulatory agencies while also serving as a valuable resource for education and training on the myriad regulatory and legal issues that impact the industry.

Following are just a few of the hot button issues currently on the horizon for contractors and how AGC is responding:

**Storm Water / SWPPP** – The new General Construction Permit for Storm Water Discharges goes into effect September 2, 2011. Trained Qualified SWPPP practitioners must be deployed on job sites at that time. AGC is one of the only construction trade associations certified by the state to provide official QSP as well as QSD training, with classes scheduled throughout the year. Visit AGC’s website at www.agc-ca.org to find upcoming classes.

**Heat Illness** – With the new regulation in effect since late 2010, contractors must comply with the new Heat Illness standard in California, and inspectors have promised to be out in force conducting sweeps and comprehensive inspections with the summer season here. AGC is currently offering an updated CD for purchase to assist employers in compliance. Call (916) 371-2422.

**Air Quality** – AGC continues to assist its members in complying with the new amended off-road diesel regulations of the California Air Resources Board. In addition, AGC has recently met with the South Coast Air Quality Management District to find a solution to compliance with its Rule 1470, which requires contractors and equipment manufacturers to comply with very stringent criteria in order to obtain certified equipment permits for emergency stationary internal combustion engines.

**Lead-Based Paint Rules** – At a national level, AGC is continuing its work with a coalition of real estate and development groups (Commercial Properties Coalition) to identify issues and items that could be included in a comment package responding to the U.S. Environmental Protection Agency’s (EPA) forthcoming proposed Lead Renovation, Repair and Painting (LRRP) rule(s). These rules cover renovations of both the exteriors and the interiors of public and commercial buildings. For more on this issue, visit AGC of America online at www.agc.org.

**National 3% Withholding Requirements** – AGC is continuing to work to repeal a 3% withholding requirement that will severely impact the construction industry. In final regulations published by the IRS on May 9, 2011, the regulation essentially provided no relief from the concerns that AGC has expressed to date about the 3% withholding regarding the strong negative impact it will have on the construction industry. The only good news was that the agency has delayed imposition of the rule for 18 months, until 1/1/2013. All payments under all contracts will be subject to withholding beginning 1/1/2014. National AGC plans to continue to work as a member of the Government Withholding Relief Coalition to combat this onerous regulation. Look in upcoming issues of the Constructor for more in-depth coverage on this issue.

**Jobsite Dust Control** – AGC of California recently held in-depth educational seminars on this issue. (See page 10 for more.) The federal OSHA is set to release a new crystalline silica standard in the near future, potentially one of the most significant rulemakings in OSHA’s history. As is often the case, California currently has a more stringent regulation governing the generation of jobsite dust than is in effect in much of the nation; the current California standard was put into effect September 2008 and is found in the Cal-OSHA Construction Safety Orders in section 1530.1 The Standard emphasizes dust reduction systems and processes as well as effective training programs for employees and supervisors.

For additional information on these or any other regulations governing the construction industry, contact AGC at (916) 371-2422, or visit their website at www.agc-ca.org for additional links, information, educational offerings and other assistance.

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**Calendar of Events**

**July 14**
Tri-Counties Solar Farm Project Meeting at A.J. Spurs Saloon & Restaurant

**July 15**
Online On-Screen Take Off course

**July 20**
Fall Protection CPT at Global Environmental Network, Inc., Santa Ana

**July 21**
2011 Hawaiian Luau at the Mai Tai Bar in Long Beach

**July 25-26**
CESSWI - Certified Erosion, Sediment, & Storm Water Inspector Training at National University, Ontario

**August 3-4**
CESSWI - Certified Erosion, Sediment, & Storm Water Inspector Training at AGC’s Bay Area office

**August 10-11**
Qualified SWPPP Practitioner (QSP) in Costa Mesa

**August 10-12**
Qualified SWPPP Developer (QSD) at National University - Costa Mesa Campus

**August 30-31**
CESSWI - Certified Erosion, Sediment, & Storm Water Inspector Training in Costa Mesa

**September 14-17**
2011 Safety & Health Council Annual Planning Workshop

**September 23**
Tri-Counties District 36th Annual Golf Classic at The River Course @ The Alisal
AGC Members Score Big Victory in Bridge Stem Panel Arbitration Result

By Bob Norling, Director IR-South

AGC members scored a long sought victory in a recent arbitration ruling.

The Southwest Regional Council of Carpenters filed numerous grievances against AGC contractors in late 2009 and early 2010. The common thread to all of the grievances was a claim on the part of the Carpenters alleging that panels manufactured offsite by independent offsite suppliers should have been done by Union carpenters. These panels are used by signatory contractors with Union carpenters on site to assemble forms for bridge stem walls on box girder bridges.

The grievances were eventually consolidated into a single arbitration that was held late in the summer of 2010. Rocky Miller of the firm Cox, Castle, and Nicholson represented AGC contractors before arbitrator Edna Francis.

Miller is counsel to the AGC and serves on the Union Contractors Council, the Legal Advisory Committee and the Legislative Committee.

The decision was ultimately issued by Francis in late May 2011. Thanks to the fine efforts of Miller and several AGC contractors that testified at the arbitration, the decision supported the current industry practice of purchasing the panels from independent lumberyards.

The arbitrator’s summary stated: “The contractor did not violate Section 102.6 of the 2006-2010 AGC/Carpenters Agreement by purchasing stem form panels from a commercial lumberyard (as tied to the specific facts in each grievance).” The decision relied heavily on contractor testimony establishing that industry practice meant for decades the panels were purchased by contractors from commercial offsite suppliers.

This decision is welcome news to contractors who have traditionally purchased the vast majority of their panels from commercial lumberyards to create jobsite formwork.

If you have additional questions regarding this decision or would like a copy of it, please call the AGC office in West Covina at (626) 608-5800.

AGC Meets with New Cal/OSHA Chief

By Kate Smiley

The AGC of California Safety & Health Council hosted an introductory luncheon with the newly appointed Chief of Cal/OSHA, Ellen Widess, in Sacramento on June 2nd.

Appointed by Governor Brown in early April, Widess has had a long career in environmental law and is familiar with the capitol, having been the chief of the pesticide program during Brown’s first administration in the 70’s. She has been an advocate in the area of farm workers and immigrant labor and brings a strong connection to Federal OSHA.

The intent of the lunch was not only to congratulate Widess on the appointment, but to introduce her to AGC and the Safety Council’s leadership and continue AGC’s solid working relationship with Cal/OSHA.

Most importantly, the Council reached out as a group that represents some of the leading experts in construction safety and expressed the Council’s willingness to be enlisted as a vital resource as Widess transitions to this new role. She was equally appreciative of the opportunity to meet face-to-face with AGC members, who also represent the greater construction employer community.

The strength of the Safety & Health Council has always been to foster a close professional and substantive relationship between the safety professionals and regulators, advisors and organized labor representatives. The leaders of this Council have committed themselves to regular meetings across the state and are recognized as a critical resource in sharing the professional, academic and regulatory advice on the day to day issues in the construction industry.

The Council members were able to share their thoughts with the new Chief regarding issues key to construction and to introduce to her the outstanding resources she now has access to via the Council and the greater AGC membership. The AGC Safety & Health Council remains committed to creating safe workplaces in California.

For questions on these or other safety related matters, please contact Kate Smiley, Manager, Safety, Health & Regulatory Services, at smileyk@agc-ca.org or (916) 371-2422.
New Water Regulations on the Increase in California and Nationwide

By Mark Grey, Construction Industry Coalition on Water Quality

Despite the sometimes snail’s pace of construction in California, there is at least one area that never seems to experience a slowdown: the rate at which agencies are continually churning out new water quality regulations.

In the last year alone, the U.S. Environmental Protection Agency (EPA) has established new water quality regulations and compliance mandates at a rapid clip, including: 1) Draft Construction General Permit for Stormwater Discharges; 2) Draft Construction and Development Effluent Limitation Guidelines; 3) Draft National Post Construction Stormwater Rule; 4) Guidance Memo on Incorporating Numeric Effluent Limits in TMDLs; and 5) Draft Guidance on Identifying Waters Protected by the Clean Water Act. Whew!

In California, we are just ending the first year complying with the Construction General Permit (CGP) for stormwater discharges, which went into effect on July 1, 2010. You may recall that this permit introduced many new requirements for construction job site compliance. These requirements included: changes defining legally responsible parties; turbidity (the clarity of water) and pH (the acidity or alkalinity of water) numeric effluent limits (NELs) and action levels (NALs) for stormwater runoff leaving a job site; prescriptive requirements for when and where runoff monitoring must occur; and a heavy emphasis on pre- and post-rain event process and paperwork (aka, lots of inspections and digital reporting of results uploaded to the State of California using a system called SMARTS). A summary table below shows the major changes between the 1999 CGP and the revised CGP adopted in September of 2009.

Contractors experienced a relatively wet rainy season up and down the state compared to average conditions between July of 2010 and June 2011. (See summary table on page 15 for major California cities). In general, most locations received three to five inches of rainfall greater than the 30-year average, with December and March being really wet months. In talking with contrac-

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### California Construction General Permit: Comparison of Requirements Between 1999 and 2009 Permits

<table>
<thead>
<tr>
<th>Issue/Requirement</th>
<th>1999 Permit</th>
<th>2009 Permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iterative BMP Approach</td>
<td>Permit based on Iterative BMP Approach applied to the maximum extent practicable (MEP)</td>
<td>Moves away from MEP standard to include numeric performance measurements demonstrating compliance</td>
</tr>
<tr>
<td>Risk Approach to Establish BMPs</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Numeric Effluent Limit</td>
<td>No</td>
<td>Yes, Risk Level 3 sites for turbidity and pH; trash and organics prohibition</td>
</tr>
<tr>
<td>Numeric Action Level</td>
<td>No</td>
<td>Yes, Risk Level 2 and 3 sites for turbidity and pH</td>
</tr>
<tr>
<td>Construction Site Discharge Monitoring</td>
<td>No monitoring required unless visual observations indicate pollutant source</td>
<td>Requires monitoring at Risk Level 2 and 3 sites when the amount of rainfall is greater than 0.5 inches (a qualifying event)</td>
</tr>
<tr>
<td>Receiving Water Monitoring</td>
<td>No</td>
<td>Requires monitoring in a receiving water when NEL is exceeded at a Risk Level 3 site</td>
</tr>
<tr>
<td>Bioassessment Monitoring</td>
<td>No</td>
<td>Yes for Risk Level 3 sites greater than 30 acres and discharging to sensitive receiving water</td>
</tr>
<tr>
<td>Design Storm for Compliance</td>
<td>No</td>
<td>Yes, 5-year 24-hour storm for NALs and NELs 10-year, 24 hour storm when using ATS</td>
</tr>
<tr>
<td>Requirements for sizing and using Advanced Sediment Treatment Systems (ATS)</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>SWPPP Developer and SWPPP Practitioner/BMP Inspector Training Requirements</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Post-Construction Runoff Reduction Requirements/Measures</td>
<td>No</td>
<td>Yes, for sites not located within MS4 Phase I or Phase II communities that have post- construction runoff reduction requirements</td>
</tr>
<tr>
<td>Documentation of Rain Event Readiness Measures</td>
<td>No, voluntary preparation of weather-triggered action plans</td>
<td>Yes; Rain Event Action Plan (REAP and forms) required for every rain event with a greater than 50% probability of occurrence</td>
</tr>
<tr>
<td>Electronic/digital submission of Documents (SWPPP) and Required Reports</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>
tors and builders, we’ve found that most job sites performed some form of construction site runoff monitoring for turbidity or pH – either for NAL or NEL compliance.

Since annual reports are not due to the State Water Resources Control Board until September 2011, we won’t know the actual number of sites that reported any NAL or NEL exceedances. However, we’ve learned through talking to many contractors and builders over the winter of 2010-2011 that they are generally aware of the new CGP requirements and are adapting and making a concerted effort to train site management and laborers to properly perform the new sampling and monitoring requirements. As of April 2011, there were about 6,400 permitted construction sites in California. Stay tuned later in the year for a summary of the first year’s monitoring results.

In California, we always seem to be on the leading edge of new regulations affecting the construction industry, with the rest of the U.S. typically catching up and using California as a guidepost. This is certainly the case when it comes to what the EPA is doing to enact ever more stringent water quality requirements on construction sites and placing requirements on the project after it’s built. The EPA has just released a draft of its version of the Construction General Permit for stormwater discharges and is accepting comments through June 24, 2011. This permit applies to four U.S. states, Native American Lands, Washington D.C., and various U.S. territories. Despite its limited applicability, this permit serves as the “basement floor” for construction permits throughout the nation, where the EPA has delegated permitting authority to the states (such as California).

**Major Proposed Changes From EPA**

<table>
<thead>
<tr>
<th>DRAFT Federal CGP Elements</th>
<th>Requirements/Measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicability</td>
<td>Idaho, Massachusetts, New Hampshire, New Mexico, Dist. of Columbia, Puerto Rico, U.S. Territories, Indian Lands, and limited areas</td>
</tr>
<tr>
<td>Buffers</td>
<td>For “Waters of the U.S.” maintain a 50-foot vegetated buffer or install erosion and sediment controls achieving equivalent protection as a 50-foot vegetated buffer</td>
</tr>
<tr>
<td>BMP Design and Installation</td>
<td>Prevent storage pile contact; stabilize site entrances 50-feet from perimeter; install storm drain inlet protection; provide surface discharge for sediment pond outlet; install BMPs prior to site disturbance (except initial site clearing)</td>
</tr>
<tr>
<td>Prohibited Discharges</td>
<td>Concrete/stucco, paint, form oils, fuels and vehicle lubrication, soaps or solvents, solid debris/garbage; requires secondary containment and leak proof storage</td>
</tr>
<tr>
<td>Corrective Action Process</td>
<td>Take corrective actions when BMPs fail or are insufficient in number or type to control sediment discharge; 24-hour documentation of problem and corrective action required; new or additional BMPs must be operational within 7 days following discovery</td>
</tr>
<tr>
<td>Numeric Turbidity Limits</td>
<td>When EPA promulgates Effluent Limit Guidelines—aka ELG (sometime in 2011-2012), will be required for sites &gt; 20 acres when CGP is adopted; &lt; 10 acres trigger compliance after Feb 2014. Some exceptions apply; ELG limit of 280 NTU challenged and EPA currently reconsidering limit; exceedance of ELG is a permit violation</td>
</tr>
<tr>
<td>Sampling Stormwater Runoff</td>
<td>Required when ELG turbidity limit is folded into CGP; 3 samples per day required, with first sample taken within 1st hour of discharge; samples must be taken at each point of discharge from the site and downstream of disturbance and BMPs; compliance storm=2-year, 24-hour event</td>
</tr>
<tr>
<td>Electronic Reporting of Sampling Results</td>
<td>Submit once per month to EPA using electronic reporting system; location, date, average values, and exceptions in reporting to be noted in report</td>
</tr>
<tr>
<td>Discharges to Impaired Waters</td>
<td>If site discharges to 303(d) listed water body, rapid site stabilization required; stepped up inspection frequency; benchmark monitoring</td>
</tr>
</tbody>
</table>

Practically speaking, the permit mirrors what we have experienced in California regarding more prescription of what to do and when to do it using job site best management practices, numeric limits to demonstrate compliance with permit terms, and requiring stepped up inspections and follow up actions when erosion and sediment controls BMPs don’t perform up to expectations. A summary table in the chart above shows the major proposed changes from EPA. Remember, these are proposed requirements that are subject to change during the comment period, and would not be reflected in any California permit requirements until the California CGP is re-opened (highly unlikely) or until the permit comes up for renewal in 2014.

Mark Grey, Ph.D., is the technical director for the Construction Industry Coalition on Water Quality (CICWQ). In this role, Dr. Grey provides technical expertise and water quality permit consultation to four construction industry trade associations in southern California representing more than 2,000 member companies. Over the past five years he has been helping contractors understand and adapt to the new water quality regulations in California, including the revised Construction General Permit and municipal separate storm sewer system permits (MS4).

**Rainfall Summary for Select California Cities**

<table>
<thead>
<tr>
<th>City</th>
<th>1971-2000 Average (inches)</th>
<th>July 2010 to June 2011 (inches)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Redding</td>
<td>35.58</td>
<td>34.45</td>
</tr>
<tr>
<td>Sacramento</td>
<td>17.95</td>
<td>22.47</td>
</tr>
<tr>
<td>San Francisco</td>
<td>21.47</td>
<td>27.86</td>
</tr>
<tr>
<td>Fresno</td>
<td>11.24</td>
<td>15.61</td>
</tr>
<tr>
<td>Los Angeles</td>
<td>15.24</td>
<td>20.19</td>
</tr>
<tr>
<td>San Diego</td>
<td>10.76</td>
<td>12.59</td>
</tr>
</tbody>
</table>

Source: [http://www.weather.gov/climate](http://www.weather.gov/climate)
Reyes Wins Constructor Award for San Diego Project

(EDITOR'S NOTE: THIS WRITE-UP CORRECTS INFORMATION IN THE APRIL/MAY ISSUE OF THE CONSTRUCTOR, WHICH MISTAKENLY INCLUDED A DESCRIPTION OF REYES' AWARD WINNING PROJECT IN THE SAME CONSTRUCTOR AWARDS CATEGORY FROM THE PREVIOUS YEAR. WE APOLOGIZE FOR THE ERROR.)

Reyes Construction, Inc. won this year’s AGC of California Constructor award in the category of Excellence in Project Management – Projects $10 Million or Below for the Seismic Retrofit and Painting of First Avenue Bridge over Maple Canyon project in San Diego.

Reyes faced stringent architectural, environmental and constructability challenges in its successful completion of this project. The job required the contractor to construct various improvements to restore the original architectural beauty of the bridge while also satisfying the “no collapse” criteria set-forth by the State of California during a seismic event.

The project scope included the removal of existing lead paint, repainting the entire bridge structure to its original color, restoration of the original cast iron hand railing, seismic retrofit of the concrete foundation, seismic retrofit of the substructure and steel truss arch, rehabilitation of the concrete bridge deck, installation of light fixtures to match the design and placement of the original fixtures, and utility relocation where necessary.

Through innovative construction techniques and by working cooperatively with the City of San Diego, the project’s architect, regulatory agencies and subcontractors, Reyes Construction was able to overcome the various environmental challenges and stringent architectural requirements that were in place due to the project’s location and historic designation. Among the requirements was replicating the look of an 80 year old sidewalk with new concrete; recreating the appearance of rivets in the replacement of steel members by utilizing special bolts; creating a “board formed” finish concrete appearance with the use of form liner; and using special architectural patching methods to repair spall on the historic concrete pylons.

Additionally, Reyes was able to leverage its award winning safety and quality control programs to ensure the project was completed with no lost time injuries, within budget and ahead of schedule. The project was also the recipient of the American Public Works Association (APWA) 2010 “Project of Year Award” in the Historical Restoration/Preservation category.
THE VOICE OF THE CONSTRUCTION INDUSTRY

Building Division Hears Latest from OSHPD

Chairman Dave Higgins of Harbison-Mahony-Higgins Builders, Inc. led the Building Division meeting on May 11 in Monterey.

OSHPD Update: Paul Coleman, Deputy Director of the Office of Statewide Health Planning and Development, provided an update on OSHPD activities, including: plan review and construction values, work currently under construction, FDD realignment, seismic compliance, SB 499, potentially non-compliant hospitals, SB 90, energy / green buildings, special seismic certification preapproval, and new 2010 code cycles.

AGC Legislative Update: Dave Ackerman, DGA Associates, updated the Building Division on a variety of legislation that was currently in the pipeline. At the time of the meeting, just a few of these bills included:
- AB 780 (Charles Calderon) – Sales Tax on Fixed Price Contracts – would require public agencies to reimburse contractors who entered into fixed price contracts prior to enactment of an increase in the state sales tax.
- AB 474 (Evans) would prohibit the use of “type 1” indemnity clause in construction contracts. (AGC strongly opposes)
- SB 475 (Wright) would clarify the procedures for local agencies to enter into public / private partnership projects (P3) and allow the P3 agreements to be for a term of up to 50 years. (AGC supports)
- SB 600 (Rubio) would require school districts to use one of two options to pre-qualify contractors. (support)

QSD / QDP Qualified SWPPP Developer: John Hakel, AGC, gave a brief overview of AGC of California’s training opportunities and dates to attend “Qualified SWPPP Developer / Qualified SWPPP Practitioner” training. AGC is the only statewide construction trade association certified to provide the training in California.

AGC National Update: Chairman Dave Higgins discussed with the division members the continuous cross-pollination that the AGC of America and AGC of California have regarding educational programs. Discussions centered on BIM and the levels of educational opportunities.

Prepared by Building Division Director John Hakel

Storm Water Regulations, Pension Funding Liability Issues Top Joint Engineering Division’s Agenda

During a combined meeting of AGC of California’s two Divisions on May 11 in Monterey, directors heard an update on the new Storm Water Permit and its impacts to contractors from Mark Grey, PhD, consultant to the Construction Industry Coalition on Water Quality (CICWQ), and Steve Blois, Ventura County Water Board member. Jerry Shupe, Director of Safety & Health for Hensel Phelps Construction Company, gave a presentation on Achieving Safety Excellence.

Jt. Engineering Division Chair Jim Troup, Monterey Mechanical, then led the separate Joint Engineering Division meeting.

Every Day Counts: Matt Schmitz, Special Assistant to the Division Administrator at the Federal Highway Administration (FHWA) provided an overview of the Every Day Counts (EDC) initiative, which is to do things more quickly with the resources on hand. For more information on this initiative, visit www.fhwa.dot.gov/everydaycounts.

Legislative Update: Dave Ackerman, DGA Associates, noted that there is a bill going through the Legislature that AGC is supporting and which will allow Caltrans to continue to do the pilot project it has with FHWA. It also would allow Caltrans to do both the federal environmental review and the state CEQA (California Environmental Quality Act) review simultaneously. The bill has passed the Transportation Committee and was ready to be voted on by the Assembly at the time of the Joint Engineering meeting in May.

Ackerman also gave an update on transportation funding and California budget. The State Treasurer sold enough Prop 1B bonds last fall to carry existing Caltrans projects through the end of this year fully funded.

Unfunded Liability and FASB Update: AGC CEO Tom Holsman, AGC Director of Industrial Relations, North, Sean O’Donoghue, and Rocky Miller, Cox Castle, provided an update of plan funding liability and discussed what is happening with the unions around the state.

Project Showcase: The project team from the Oakland Touchdown project – SFOBB, including Chris Smith, MCM Construction, Amar Bata, Caltrans, and Hazzaa El-Mahmoud, Caltrans, provided an update on the high profile project and discussed how it has benefitted from partnering.

Prepared by Joint Engineering Division Director Sam Hassoun
AGC CEF, ACE Mentor Program Announce California Partnership

The AGC Construction Education Foundation (AGC CEF) recently announced an official partnership with the ACE Mentor Program in California (ACE). While the two organizations have partnered on the national level and have worked closely on local levels for years, this is the first formal statewide partnership between an AGC state chapter and ACE Mentor affiliate. AGC CEF and ACE, will work together to address the full pipeline of workforce regeneration from high school through training and/or post-secondary education.

AGC members and ACE affiliates and mentors can look forward to seeing a number of statewide joint ventures, including:

• Formation of an ACE Student Scholarship Fund administered by the AGC Education Foundation.
• AGC CEF will provide speakers and student chapter support for the ACE Mentor Summer Camp in July 2011.
• ACE will exhibit and provide student volunteers for AGC CEF Construction Career Awareness Day Events (TBD - October 2011).
• Development of an exciting new project; the ACE/AGC Student Chapter Exchange Program which will provide ACE students the opportunity to tour college campuses with active AGC Student Chapters and for AGC Student chapter members to showcase their work and provide mentorship.
• Development and submission of grant applications with the goal of funding additional staffing, scholarships and joint projects.
• AGC CEF/ACE Partnership “Kick-Off” Reception is planned for July 7 in Sacramento.

AGC CEF Board of Directors Chairperson, Michelle Loveall commented, “The partnership just makes sense; it makes sense for both organizations when it comes to maximizing resources and time, and it makes sense for our members who want support both organizations. More importantly, it makes sense for the young people we strive to serve by increasing the level of quality programs and scholarships we can provide. Together we can make a greater impact.”

For more information on the AGC CEF, visit www.agc-ca.org/cefoundation.aspx. To learn more about the ACE Mentor Program, visit www.acementor.org.

AGC of California has announced the official launch of its Facebook page.

During the Spring Board meetings in May, AGC Sr. Vice President and representative of the Marketing Task Force, John Nunan, discussed the launch of the new Facebook page as an effort to extend the realm of communication within the association and to the greater community. The page enables the association to quickly update members on events, updates within the organization, and other pertinent information.

To follow AGC on Facebook, “like” the page at www.facebook.com/AGCC. AGC of California’s district and state representatives and leadership met in Monterey on May 11th.
Resolution Needed for ‘Unlicensed Contractor’ Issue
By David Kalb, Capitol Services, Inc.

Picture this: a large general contractor has just completed a project. A dispute arises with the owner (or a subcontractor) as they sometimes do. Discussions begin; negotiations stall; attorneys are hired and a court date is set. Halfway through Discovery, you find out the “other side” has learned that your CA contractor’s license was suspended for several weeks during the project. Now they’re not only requesting that the court throw out the case, but that all monies you were paid from day one be returned.

Most, if not all, attorneys who have represented a contractor (plaintiff or defendant) in a dispute know about Business and Professions Code 7031. This Code Section was adopted in 1929, the first year of the CSLB’s existence. Since that time, there have been over a dozen amendments. State courts have ruled on a variety of issues regarding what constitutes an “unlicensed” contractor and have expanded the reach of this statute to the point where it is commonly used – both legitimately and as a threat – in many construction cases.

Questions have arisen regarding the definition of “duly licensed” in subsection (a) and “unlicensed” in subsection (b). Under 7031(a), an action cannot be brought before the court if a contractor is not “duly” licensed. This generally involves contractual disputes for monies allegedly owed. 7031(b), added in 2001, also allows for full restitution (disgorgement) of all monies already paid. The law states, “A person who utilizes the services of an unlicensed contractor may bring an action in any court...to recover all compensation paid to the unlicensed contractor for the performance of any act or contract.” The idea was to strongly deter those that had no contractor’s license from contracting in this state. To date California appellate courts have ruled that a contractor could be deemed “unlicensed” for failure to: hold a license at the time a contract was signed; maintain workers’ compensation insurance; or properly employ a qualifying individual or operate as a corporation when no license existed for that specified entity.

Processing Backlog Can Spell Trouble for Contractors
A few years ago I brought up the issue with the CSLB that some contractor licenses had expired due to a processing backlog (which today is almost non-existent). One situation involved a contractor who sent his license renewal application to the Board several weeks prior to the due date. It was rejected and returned to the contractor for corrections. The contractor fixed the problem and sent his renewal back to the Board, whereupon it was processed and renewed. However, with the back and forth this contractor did not realize his license had expired for five days – an expiration that FOREVER will be in the official record. Had he known, a request for a RETROACTIVE renewal could have been filed within the requisite 90 days.

Most construction lawyers routinely request a Verified Certificate (certified license history) from the CSLB. Upon review, this expiration was discovered and will likely be used against the contractor if a determination is made that he was “unlicensed” during a portion of the contract. Unless the attorney representing the contractor can convince the court at an evidentiary hearing that the brief expiration falls under the judicial doctrine of substantial compliance in 7031(e), the contractor could be required to return all monies for work previously performed. Does this mean that an unfavorable ruling would impact ALL projects performed during this same period? Are these projects now subject to 7031(b) disgorgement litigation?

Law’s Intent
A thorough review of the legislative history of 7031(b) shows clear intent to severely punish “unlicensed contractors”. Was it also the intent of the Legislature to similarly punish ‘duly’ licensed contractors who may have had a lapse in their license during a portion of a project or are licensed in good standing but working outside their classification? To my knowledge, there is no case law regarding these last two points. However, some attorneys I’ve spoken with believe these issues may eventually make their way to the court’s docket.

I’m not an attorney. My background is that of a contractor’s licensing consultant who has assisted hundreds of attorneys and thousands of contractors over the past 30 years on a wide variety of licensing issues.

It is not my intent to fault the Courts, but rather to bring up this critical issue and start a dialog. I cannot say what’s the best avenue to pursue and how a final amended 7031 should read. My point: our elected officials should revisit this code section with input from the Contractors Board, legal community and construction industry. If action is not taken by the Legislature, the courts almost certainly will. For contractors throughout the state, the time for further clarification has arrived.

AB 249 Introduced
AB 249 (Berryhill), introduced in February, is a start; however, whenever major changes are proposed, fighting will likely ensue. This legislation has already been amended twice and, after a detailed discussion with many stakeholders at the Capitol, appears to now be a “2-year bill”. Numerous issues were discussed including one to allow disgorgement ONLY for the time a licensee was not in good standing (i.e. suspended or expired).

The above issues may be of passing interest to some readers – until they affect your company. As a licensed General or Specialty contractor in good standing, would you want to be subject to the same severe consequences as the “contractor” who never held a license? The construction industry needs a clearer picture of what constitutes a “licensed” and “unlicensed” contractor.

David Kalb, President of Capitol Services, Inc., Sacramento, CA. He can be reached at (866) 443-0657 or at david@cutredtape.com.

GUEST COMMENTARY
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Announcing the AGC of California and McGraw-Hill Construction Market Builders Program

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