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JULY 2018

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THE OFFICIAL PUBLICATION OF THE ASSOCIATED GENERAL CONTRACTORS OF OHIO

AGC of Ohio Agrees to File Amicus Briefs on Two Important Construction Issues

The AGC of Ohio Board of Directors voted in a recent meeting to file “friends of the court” (Amicus Briefs) in the Ohio Supreme Court on two important construction industry issues. Both briefs are to be filed in early July.

In 2016, the Ohio Legislature passed, and the Governor signed into law a bill outlawing the use of residency requirements from local governments on public funded projects. The City of Cleveland challenged this law and received two favorable decisions from local courts that held the bill to be unconstitutional claiming the new law infringed upon local governments to govern themselves under Ohio’s Home Rule (Charter Cities) provisions. The State of Ohio (Attorney General Mike DeWine) appealed the matter to the Ohio Supreme Court for deliberation. The Ohio Supreme Court accepted the case.

The Ohio Contractors Association (OCA) asked for AGC of Ohio participation and assistance. The AGC Ohio Board agreed. This matter is being handled by OCA and AGC member company, Ice Miller LLP (Pat Devine). (*City of Cleveland v. State of Ohio*)

In the second Amicus, the AGC Ohio Board also endorsed participating in a case involving the Statute of Repose. AGC of Ohio, joined again with the OCA, will be seeking to support another Court of Appeals decision which said the Statute of Repose applied to breach of contract actions. Other organizations involved and in support of our position are the Ohio Chapter of the AIA (American Institute of Architects) and AGC of Ohio member Charles Construction. AGC member McDonald Hopkins LLC (Pete Welin & Jason Harley) will be providing the legal work. (*New Riegel Local School Dist. Bd. of Edn. v. Buehrer Group Architecture & Eng. Inc.*)

Both of the briefs come on the heels of another amicus AGC of Ohio filed earlier this spring in conjunction with OCA and the American Subcontractors Association. This case involves who is covered by a contractor’s commercial general liability (CGL) insurance. The insurer (Cincinnati Insurance) is arguing that defective work does not constitute an occurrence. If the Ohio Supreme Court buys the insurer’s argument, claims of defective work, regardless of who performed the work, might not be covered by CGL policies. (*Ohio N. Univ. v. Charles Constr. Servs., Inc.*)

Potential Negative Impact of Recent BWC Rate Reductions for Contractors

In February, the Ohio BWC reduced workers’ comp rates by an average of 12 percent. Some contractors have found the reduction of the base rate will cause their experience modification rate (EM) to increase, even without incurring additional claims.

If you haven’t already done so, work with your TPA or risk professional to find out the rate reduction’s impact on your EM. Also, the BWC has a construction [EM Construction Cap Program](#) that can be used for bidding purposes if the change causes your company’s EM to increase over 1.0. AGC of Ohio advocated for the creation of the Cap Program when the BWC first began significantly reducing base rates under the Strickland administration after members expressed concern about the increase in their EM’s and resulting inability to bid on some projects.

Learn about the Cap Program [here](#).

CELEBRATE AGC OF OHIO'S BUILD OHIO 2018

Enter a Project in the Build Ohio 2018 Awards Program

The Build Ohio awards program recognizes AGC of Ohio members for excellence in building a particular project. The competition is open to all AGC of Ohio contractor members. A project does not have to be flashy to win an award! This year offers an excellent opportunity for contractors to submit a wide range of projects, and companies that have not entered Build Ohio before are encouraged to participate! The Build Ohio 2018 entry form can be found [here](#). For tips on preparing your entry, please visit our website at www.agcoho.com. Entry Forms are due by August 31, 2018.



Sponsor AGC of Ohio's Build Ohio Celebration

Promote your Company! Benefits for Celebration sponsors include: Your logo repeated on the big screen; inclusion in all event printed and electronic marketing materials; your company description included in the Build Ohio Preview mailed to 2,500+ construction professionals; and complimentary admissions to the Build Ohio Celebration. A sponsor form is located on our [website](#). Sponsor forms due by August 17, 2018.

Attend the Build Ohio Celebration Gala

Join us for this very special event! This years celebration is scheduled for the evening of November 9, 2018 at the Hilton Columbus Easton. The Gala will begin with a cocktail hour and hors d'oeuvres at 6:00 p.m., with dinner following at 7:00 p.m.. A program and video will follow dinner. The evening will end with at reception.



AGC of Ohio Education Foundation Awards \$30,000 in Scholarships

The AGC of Ohio Education Foundation recently awarded twenty-eight \$1,000 scholarships and one \$2,000 scholarship to college students pursuing construction related degrees. Applications were received from fourteen colleges and universities across the state for the 2018-2019 scholarships. A panel of construction professionals selected the scholarship recipients based on their cumulative grade point average, work experience, extra-curricular activities and achievements, financial need, and an essay. The 2018-2019 scholarship recipients are: [See attached sheet](#)

Applications for the 2019-2020 academic year will be posted to the AGC of Ohio website in early September.

For information on how your company can sponsor a scholarship under the auspices of the AGC of Ohio Education foundation, please contact Parker Brown at (614) 486-6446 or parker@agcoho.com.

AGC of Ohio Recognizes Members' Safety Efforts During Luncheon

Thank you to all who attended the 15th annual AGC of Ohio Safety Luncheon! The event was held on June 22 at J.Liu Restaurant in Worthington.

AGC of Ohio Safety Committee Chair Scott Ritter kicked off the event and presented the awards. In honor of the 15th year since the formation of the safety committee and the first Safety Luncheon, long-time participant Mark Hoffman of Rudolph Libbe provided some historical perspective on AGC's safety efforts – the creation of the safety committee, some of its accomplishments, and its goals of education, advocacy and networking. Mark was the first safety committee chair.

Five companies received National AGC Safety Awards Certificates of Commendation for having either a zero incidence rate or a rate 25 percent lower than its division average. They included Donley's Inc., Lincoln Construction, Panzica Construction, TP Mechanical Contractors, and Tuttle Construction.

AGC of Ohio awarded Ohio Construction Safety Excellence Awards to companies for their overall safety and health programs. After being recognized, each company had the opportunity to say a few words about a unique or innovative aspect of their safety efforts. The winners were:

- LIMBACH COMPANY, LLC: Specialty
- LINCOLN CONSTRUCTION, INC: Building, Under 100,000 Work Hours
- TUTTLE SERVICES, INC: Building, 100,000-250,000 Work Hours
- ELFORD, INC: Building, 250,000-500,000 Work Hours
- DONLEY'S INC: Building, Over 1 Million Work Hours

Congratulations to all those recognized!

EVENT:



LUNCHEON:



MEETING:



OFCC Provides “Patch” for Indemnity Issue in CM-R Contract Documents

AGC of Ohio sent an email to members in May about changes in the Ohio Facilities Construction Commission’s [Construction Manager at Risk \(CM-R\) Contract](#) that contained indemnity language (Sections 10.6.5 and 10.6.5.1) that could void a construction manager’s insurance coverage for a public project.

After a workgroup of AGC members met with the OFCC to educate them about issue (as well as other changes in the CM-R contract that could be problematic for contractors), OFCC sent information about an interim fix for the indemnity issue. As in interim patch, OFCC is going to remove the 10.6.5 insert that was added in the 2018 CMR updates removed. This will not change anyone’s statutory obligations or requirements, but hopefully will relieve current pressure while matters are further considered.

The change:

10.6.5 As part of the CM’s duty to defend the State and Contracting Authority under **Section 10.6** the CM or the CM’s insurer (as applicable): (1) must confer with the Ohio Attorney General's Office ("Attorney General") concerning the representation requirements for the Contracting Authority or any other State entity statutorily represented by the Attorney General; (2) must seek Attorney General approval of any settlement but only to the extent that such settlement involves a material commitment or concession by the State and/or Contracting Authority

Thanks to all who provided feedback and to those who have been involved in the meetings! Other CM-R contract changes add significant risk to construction managers. AGC of Ohio will continue to keep members apprised as we work with OFCC to improve the contract. In the meantime, be sure to thoroughly review the OFCC documents before signing them, as well as consult with your insurer and legal counsel about them.

DAS Equal Opportunity Division to Graduate Ohio EDGE Participants

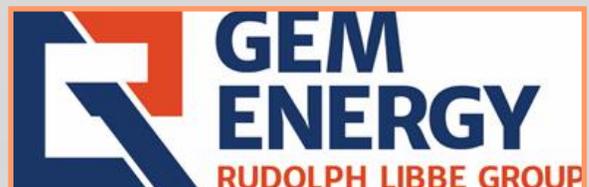
This year, the Ohio Dept of Administrative (DAS) Services [Equal Opportunity Division](#) will be notifying approximately 89 companies that they will be graduating from the Encouraging Diversity, Growth and Equity (EDGE) program due to time limitations. The maximum amount of time a certified business or business owner may participate in the EDGE program is 10 total years. To help educate EDGE certified businesses and those that hire them, DAS has released the [EDGE Graduation and Participation Time Limits](#) document highlighting EDGE’s graduation and time-limit policy, as well as post-graduation information and resources.

Since its inception in 2003, the EDGE program has certified more than 4,700 businesses. Learn more about EDGE certification [here](#). Access the document about EDGE time limits [here](#).

GEM Energy Associate Receives National Industry Recognition

Walbridge, Ohio – Rick Grant, a GEM Energy service technician, received 3rd place/honorable mention in the 2018 James J. Willis Craftperson of the Year awards competition presented by The Association of Union Contractors (TAUC). Grant joined GEM Energy in 2015 and is a 20-year member of Local 50 Plumbers, Steamfitters & Service Mechanics.

The James J. Willis Craftperson of the Year Award was created in 1989 to honor outstanding labor management cooperation and quality craftsmanship in the construction industry.



BWC NEWS COURTESY OF AGC OF OHIO GROUP WORKERS COMP THIRD PARTY ADMINISTRATOR CAREWORKS COMP



Important Dates and Upcoming Deadlines :

July 1-August 15, 2018: For the 2017 policy year, 7/1/17-6/30/18, true-up reconciliation may be done beginning on 7/1/18 and must be completed by 8/15/18. It is very important that the true-up is done timely or BWC may lapse your coverage and/or remove your company from any alternative rating programs. Please see the article below for further details.

July 31, 2018:

- Final day to **join a safety council** for the 2018 policy year.
- Deadline to complete **DFSP accident analysis training** for 7/1 program start date (initial year only!). Please note that new supervisors have 60 days from the date of hire to complete.

Deadline to complete the **online safety management self-assessment (SH-26)** for a 7/1 start date for both the DFSP program and the ISSP program.

Other News:

Changes to Go Green Rebate: Beginning with the 2018 policy year, in order to be eligible for this 1% rebate (up to \$2,000) you will need to complete your true-up online and pay any balance owed at that time. Also, it's necessary to opt in to receive invoice email notifications to qualify, once that option becomes available early this summer (these notices alert you when the next invoice is available online.)

2019 Program Offers: Every year CareWorksComp evaluates your company for the best fitting alternative rating programs that we can offer you. During the next few months, we'll be sending program invitations and renewal notices in anticipation of fall 2018 deadlines. In some cases you will receive invitations to both group rating or group retro programs. Please know that we are available to discuss program details and the most appropriate fit for your business.

Two Hour Group Safety Training: The deadline to fulfill the 2017 Two Hour Group Safety Training Requirement is 6/30/18. If you still need to complete the training, you may do so on BWC's website, <https://info.bwc.ohio.gov/wps/portal/bwc/site/safety/safety-courses/safety-courses>. If you are part of AGC of Ohio's group rating program and have completed the training but have not notified CareWorks Comp, please send that documentation to twohourtraining@careworkscomp.com **Note:** *If you completed the training at one of the CareWorks Comp seminars or through video, CareWorks Comp has already documented your participation...not necessary to send it again.*

Premium Rebate Approved by BWC Board: The \$1.5 billion rebate was approved in May and eligible employers will receive **85%** of their 2016 premiums paid. In order to be eligible, any overdue premiums or outstanding BWC balances must be paid by 6/8/18, as well as any outstanding payroll reports submitted. Rebate checks will be sent in early July, unless your business participated in a Group Retrospective rating program in Policy Year 2016, in which case your rebate will be sent by early November. **Housekeeping note:** *If you haven't done so in a while, now is a good time to check the BWC website to be sure your mailing address is correct so that you receive the rebate check to the right address!*

OSHA 300 Logs: Employers have until July 1, 2018 to report their Calendar Year 2017 Form 300A data to OSHA. All covered establishments must submit the information by July 1, 2018. *Remember, not all establishments are covered by this requirement.* If you had 20 or more employees at any time during the year and your North American Industry Classification System (NAICS) code is one of those covered, then you are required to report. Most employers in the construction and manufacturing industry are required to report. To review which establishments need to provide their 2017 data, [click here](#).

Ohio BWC Payroll True-Up Reports

The Ohio Bureau of Workers' Compensation (BWC) requires that employers reconcile their actual payroll following each policy year.

The BWC establishes each employer's estimated annual premium (EAP) based on the most recent payroll that you reported to the BWC, or for a new employer, based on the 12-month payroll estimate that you provide.

At the end of the policy year, the BWC must "True-Up" the payroll report to ensure that the estimated premium was used for the previous policy year. Therefore, each employer must file a true-up report that reflects the actual payroll for the policy year. This report must be completed online and can be accessed (along with additional information and instructions) through this link: [Payroll true-up report](#)

If your actual (true-up) payroll exceeded the estimated payroll, then you will owe the BWC additional premium. If your actual (true-up) payroll is less than your estimated payroll, you will receive a credit of premium dollars. Employers must submit a payroll true-up report even if it has zero payroll.

Private employers will receive payroll true-up notices in July, and they must complete their report to BWC and pay any outstanding balance, by August 15. Those who do not complete the True-Up process on time will be disqualified for all BWC Discounts and Rating Programs for that year.

Ohio EPA News

Webinar on New Construction Storm Water General Permit

The Ohio EPA's Division of Environmental and Financial Assistance on May 16 hosted a [webinar](#) highlighting the revisions to Ohio's National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges of Storm Water Associated with Construction Activity. The [new permit](#) will be in effect for five years, expiring on April 22, 2023. Access the webinar about the permit changes on YouTube [here](#).

AGC of Ohio was part of a coalition of six industry and business groups that jointly submitted comments on the proposed rule changes, which resulted in many revisions to the final permit, making it more workable for the construction and development industries.

Revised Wetland Antidegradation and Wetland Water Quality Standards

After a three-year process, the Ohio EPA on May 1 adopted three revised rules to its Wetland Antidegradation and Wetland Water Quality Standards: [wetland definitions](#), [wetland narrative criteria](#) and [wetland antidegradation](#). The new rules are effective July 30.

During the rulemaking process, Ohio EPA made some changes at the request of AGC and other stakeholders that lessened some of the liability and compliance burden after the first round of comments a few years ago. AGC submitted additional comments on the last revision that was released this year, but no further changes were made. Click [here](#) for final versions of the rules in Ohio Administrative Code (OAC) 3745-1-50:54.

To coincide with the revised rules, changes are required to the 401 WQC application form, impact tables, and application instructions. The rule changes included changing terms and definitions to establish consistency with the Federal Mitigation Rule, updating the mitigation hierarchy to be consistent with Ohio Revised Code (ORC) 6111.30 and the Federal Mitigation Rule, adding mitigation monitoring requirements, and application requirements for deviations from the mitigation hierarchy (see OAC 3745-1-54(E)(2)).

The new 401 WQC application form, impact tables, and application instructions, are posted on the DSW 401 website [here](#). Once the new rules become effective on July 30, 2018, the new forms (dated 06/2018) should be used. Ohio EPA will continue to accept the old application forms and impact tables (dated 12/2016) until October 30, 2018 (three months from the effective date) after which the new application form will be required. However, once the revised rules are effective, the new application requirements, outlined in the application instructions, will be in effect and will be expected for all submittals.

Upcoming Events

AGC of Ohio Safety Meeting

September 28

AGC Office: 9:00 a.m. - 12:00

FORM I-9 and E-Verify Two-Part Webinar Series

July 11, 2018 | 2:00 – 3:30 PM

[Register Here](#)

2018 Build Ohio

November 9

Hilton at Easton

Learn More: Parker@agcoho.com

AGC of Ohio Safety Meeting

November 16

AGC Office: 9:00 a.m. - 12:00

ConstrucTalk

Do you have new employees or has someone received a promotion?

Has your company received an award or recently done anything newsworthy that you would like to share?

Send your information to Taylor Hobbs at editor@agcoho.com.

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is a movement to generate pride and respect for the construction industry, and to recruit young people into the industry as a rewarding and valuable career.

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BuildingOHIO

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