



Quality People. Quality Projects.

**OHIO**

NOVEMBER - DECEMBER 2018

**CONSTRUCTION**

THE OFFICIAL PUBLICATION OF THE ASSOCIATED GENERAL CONTRACTORS OF OHIO

# DEWINE MEETS WITH AGC OF OHIO BOARD AFTER ELECTION WIN

Governor-Elect Mike DeWine met with the AGC of Ohio Board of Directors and members on Friday, November 9 – three days after the contentious gubernatorial race. He spoke briefly about the campaign, thanked AGC for supporting him, and opened the floor to questions.



The Governor-Elect answered a myriad of questions. He addressed the importance of education at all levels as a means to improve the economy through education, job training and skills; and finding ways to better support and improve career tech programs. His Administration has an Innovation Ohio plan

that will incorporate more technology in government to make it more efficient and user-friendly to businesses and citizens. And, his intentions to address the opioid crisis.

DeWine-Husted was AGC of Ohio's preferred ticket for the gubernatorial race. Their campaign expressed the most interested in industry's issues. For the past two years, the DeWine/Husted team has reached out to AGC to better understand vertical construction, and the role of the Ohio Facilities Construction Commission.

# Build Ohio Celebration

AGC of Ohio held its 27<sup>th</sup> Annual Build Ohio Celebration on November 9, 2018 at the Hilton Columbus at Easton. About 300 AGC members and their guest attended the gala, where they mixed and mingled and enjoyed dinner with industry professionals from across the state.

During the celebration, AGC of Ohio recognized six contractors with a Build Ohio award for construction excellence. The companies that received the awards were announced individually after a video presentation highlighting the projects entered in their categories. Prior to being announced none of the recipients knew they were being recognized, and each had an opportunity to thank all those involved after receiving the custom Build Ohio Award.

The winning projects were chosen by a panel of retired construction professionals based on the following criteria: excellence in project management, innovation in construction techniques and materials, excellence in client service, and meeting the challenge of a difficult job. In the Specialty category, the criteria was: performance as it relates to schedule, client service excellence, meeting the challenge of a difficult job, craftsmanship, and innovations in construction techniques and materials.

The 2018 Build Ohio award winners included:

- **Renovation:** Messer Construction Co. (Cincinnati) - Music Hall Revitalization (Cincinnati)
- **Specialty Under \$2 Million:** Settle Muter Electric (Columbus) - AMMANN Asphalt Plant (Columbus)
- **New Construction Under \$20 Million:** Shook Construction Co. (Moraine) - Levitt Pavilion Dayton (Dayton)
- **Industrial/Heavy:** Kokosing Industrial, Inc. (Westerville) - Ottawa River Storage Facility (Toledo)
- **Specialty Over \$2 Million:** The Limbach Co. (Columbus) - University Hospital Air Handling Unit Replacement (Columbus)
- **New Construction Over \$20 Million:** Turner Construction Co. (Columbus) - National Veterans Memorial and Museum (Columbus)

## Thank You Sponsors!

### Platinum Sponsor

- CareWorks & CareWorks Comp

### Gold Sponsors

- Tuttle Construction Co./Touchstone CPM
- Thompson Hine & PMC

### Silver Sponsors

- Barnes & Thornburg
- Hahn Loeser & Parks
- Frost Brown Todd
- McDonald Hopkins

### Division Sponsor

Akron ~ Central Ohio ~ Cincinnati ~ Cleveland ~ Northwest Ohio ~ West Central Ohio ~ Youngstown



# OSHA Creates New National Emphasis Program for Trenching and Excavation

*Douglas J. Suter, Esq.*

Federal Occupational Safety and Health Administration (OSHA) has created a new National Emphasis Program (Directive Number CPL-02-00-161) for Trenching and Excavation due to a recent spike in trenching fatalities nationwide.

This new Program provides updated guidance and increased enforcement on the National Emphasis Program OSHA has had in place for trenching/ excavation since 1985. (CPL-02-00-269). The first three months of this new National Emphasis Program will focus on educational outreach, followed by enforcement.

Under these new guidelines, states must implement and adhere to the new Trenching/Excavation National Emphasis Program within six months, or by April 1, 2019.

Under the new Program, OSHA Compliance Officers shall initiate an inspection whenever they observe an open trench or open excavation. These observations may occur during the OSHA Compliance Officer's normal work day travel, or while engaged in other programmed or unprogrammed OSHA inspections.

Note that in addition to the "plain view" doctrine allowing OSHA Compliance Officers to issue citations for safety hazards in plain view, most Federal Courts and the OSHA Review Commission rule that the underlying injury/illness data supporting the National Emphasis Programs creates "Administrative Probable Cause" for OSHA Compliance Officers to conduct OSHA inspections under these programs.

Since trench collapses almost always end in employee deaths or very serious injury, OSHA monetary penalties for trench/excavating violations are usually significant.

For example, in June 2018, a Cincinnati area excavating company was issued OSHA penalties of \$202,201 and was placed on OSHA's Severe Violator list after an employee working in an unguarded 16-foot excavation was killed.

There have been at least two other trenching/excavating fatalities in Ohio in the past year. Trench fatalities can subject employers to Criminal Willful OSHA fines and prosecutions, and also subject the employer to being placed on Ohio's Severe Violator List with its substantial inspection and enforcement protocols.

---

## ProMedica Headquarters Steam Plant receives Honorable Mention in Building Design & Construction magazine's 2018 Reconstruction Awards

**Walbridge, Ohio (December 4, 2018)** – The Rudolph Libbe Group has been honored with a fourth construction industry award for its work on ProMedica's downtown Toledo headquarters campus.

The ProMedica Steam Plant has received an Honorable Mention in Building Design & Construction magazine's 2018 Reconstruction Awards competition. Of 62 projects entered in the contest, 20 were selected to receive awards.

Earlier this year, the ProMedica headquarters also won the Presidential Award of Excellence in Engineering from the American Institute of Steel Construction; a Construction Risk Partners Build America Award from the Associated General Contractors of America; and an Award of Merit from Engineering News-Record Midwest.

The project included extensive renovations of the Junction Building and the historic Steam Plant, which was constructed in 1896 and is listed on the National Register of Historic Places. Rudolph Libbe Inc. served as construction manager and GEM Inc. performed structural steel and mechanical work for the two buildings.

# Contractors at Risk after Recent Ohio Supreme Court Decision, Which Could Raise Project Costs

*Pete Welin, McDonald Hopkins*

The Ohio Supreme Court recently [ruled](#) that a general contractor's commercial general liability insurance policy does not cover damages caused by the defective work performed by a subcontractor. The decision, which contrasts with decisions from courts in other states and is in the minority, has perpetuated a significant issue for Ohio's construction industry.

Contractors who believed they were covered by insurance they purchased years ago must now recognize that they are potentially liable out of their own pocket, and without any insurance coverage, for correcting defective work (and potentially any resultant damage), performed by a subcontractor. With construction defect litigation on the rise throughout the state and subcontractors who have potentially gone out of business, this is a significant risk that general contractors may now have to shoulder when they thought they had purchased insurance to cover this type of unknown risk.

It also represents a departure from what insurance companies had been providing throughout the state when they would provide a legal defense and pay for damages that may have resulted from defective work of a subcontractor.

The Court's ruling in [Ohio Northern University v. Charles Construction Services](#) was one of interpretation of the convoluted language typical in commercial general liability insurance policies. In declining to follow the majority of states that view faulty workmanship as a covered "occurrence" under the typical CGL policy, the court made clear that faulty work of a subcontractor is a business risk that general contractors can control and is not "fortuitous" and therefore not "accidental" under the language of the policy at issue. Such language is typical of that found in virtually all commercial general liability policies now in effect throughout the state.

The court went on to say that it was constrained by what it deemed to be unambiguous language in the insurance policy and that perhaps interested parties could work to have legislation adopted to define whether defective work by a subcontractor should be considered an occurrence under a policy.

So, what are construction contractors to do? Petitioning the Ohio General Assembly could lead to a change in the law, requiring that any commercial general liability policy sold in the state cover property damage caused by defective work. Based on the court's own suggestion, a change in the law is a very real possibility. But how long might that take?

Until that day, contractors must now recognize their current policies will only apply in the event of third-party personal injuries, death or property damage, with that damage only being covered if it results from a construction "accident." Contractors will be at risk where they have policies in effect today and for which defective work claims may not arise until eight, 10 or even 15 years in the future.

In addition to not paying to repair defective construction or resultant damage, it is now a real possibility that insurance companies will not continue to pay for the defense of lawsuits that involve defective work. Those cases are typically long in duration and require significant expert testimony, both contributing to the high cost of defense.

On a going forward basis, contractors should be looking to purchase endorsements to their existing policies that will cover defective work of subcontractors. That of course will mean higher premiums and that will lead to higher costs for projects. The risks that contractors are now forced to shoulder on projects that are already completed but which have not demonstrated any defective condition will only lead to higher prices on future contracts as contractors will look to protect themselves from damages they are not even aware of today.

With all this uncertainty and without insurance to cover them, construction contractors will need to rely on their own due diligence to control and mitigate risk of loss. Possibly the most important actions companies can take is to revisit their own inspection practices as well as their own subcontractor qualification practices, reduce the potential for future complaints by acting in the moment, and observe and document construction on site.

By taking the time to recognize and fix any nonconformities before they cause damage, contractors can help to ensure that any problems down the road are controlled.

As a result of this significant decision that will impact the bottom line, contractors are advised to consult with their lawyers and insurance agents to find a solution, which although potentially costly, will help protect them from the cost of defective work claims.

## **AGC Continues Push for Fix to Retail Glitch**

On Oct. 9, AGC joined industry allies in urging Secretary of the Treasury Steven Mnuchin to have the Internal Revenue Service (IRS) issue interim guidance to correct a drafting error from the Tax Cuts and Jobs Act (TCJA) that accidentally changed the depreciation period for certain commercial real estate improvements to 39 years, instead of 15 years—or even less.

During the drafting of TCJA, the tax writers consolidated the restaurant, retail, and leasehold improvements (essentially the interior improvements to commercial property) depreciation schedule into a new category, now called qualified improvement property (QIP). Unfortunately, in doing so, they cross-referenced the incorrect section of the tax code that changed the depreciation schedule from 15-years (and eligible for temporary 100 percent bonus depreciation) to 39 years. This was clearly a drafting error that would normally qualify as a “technical correction” but a political stalemate has prevented passing a technical corrections bill.

As a result, those industries and companies affected by this glitch, including the construction industry, have called for Treasury to issue interim guidance to correct the problem while Congress fixes the statutory language. In August, AGC co-signed a letter to Treasury requesting action from Secretary Mnuchin on this issue, and on October 9 followed up with issuing formal regulatory comments for a Treasury’s proposed for bonus depreciation.

## **Kay Jones Promoted to Human Resources Director of the Rudolph Libbe Group**

**Walbridge, Ohio (September 26, 2018)** – Kenetta Kay Jones, of Sylvania, has been promoted to director, human resources for the Rudolph Libbe Group. In her new role, she will assist in building Rudolph Libbe Group’s talent development system, as well as continuing to oversee the company’s core human resource functions. A Rudolph Libbe Group associate since 1997, Jones holds a bachelor’s degree in human resource management from The University of Toledo and a Professional Human Resource Certification (PHR) from the HR Certification Institute and a Society of Human Resources Management SHRM-Certified Professional designation. She also serves as a board member for FrontPath Health Coalition and a board director for Sun Federal Credit Union.





## Hidden Hazards Are Lurking Don't Let Injuries and Illnesses Haunt Your Workplace!

Take action to scare up hazards and find the best ways to control them. Conduct safety walk-arounds to systematically identify and address workplace hazards. Check out the Safe + Sound Campaign resources, [Walk-Arounds for Safety Officers](#) and [Safety Walk-Arounds for Managers](#), for tips on making yours effective.

Hone your observation skills to identify and assess hazards in your workplace. Watch the Campbell Institute's webinar, [Visual Literacy: How 'Learning to See' Benefits Occupational Safety](#).

Engage your workers and promote safety with [challenges, contests, and competitions](#) to find and fix hazards in your workplace.

The Safe + Sound Campaign is organized by the Occupational Safety and Health Administration, American Industrial Hygiene Association, American Society of Safety Professionals, The Center for Construction Research and Training, National Institute for Occupational Safety and Health, National Safety Council, and Voluntary Protection Programs Participants' Association. For more information and additional resources to help you establish or improve your safety and health program, visit [the Safe + Sound Campaign website](#).

## Your AGC Membership Pays

AGC members are eligible to participate in more than 20 discount programs specially designed to meet the needs of contractors. Whether you are looking to purchase a new vehicle for your fleet or for ways to cut costs on fuel and shipping, AGC programs can save you money. Enroll and maximize the value of your membership. Learn more at <http://www.agc.org/Save>

## The Opioid Crisis & Construction

According to a recent article in [Constructor Magazine](#), Federal statistics show in 2016, 11.5 million people misused prescription opioids and 116 people died every day from an opioid-related overdose. [On this edition of the ConstructorCast](#) four industry panelist discuss the opioid epidemic, providing resources and insight on this important issue. Click here to listen to the [AGC ConstrutorCast](#).

## AGC OF AMERICA CONSTRUCTION SAFETY EXCELLENCE AWARDS (CSEA)

*Sponsored by Willis Towers Watson; Entry Deadline December 14*

The CSEA program recognizes those construction companies that excel at safety performance. It closely examines each candidate's commitment to safety and occupational health management and risk control. Unlike other safety award programs that limits the criteria to frequency rates, the CSEA selection process is considerably more comprehensive. Each application will be reviewed for evidence of: company management commitment; active employee participation; safety training; work site hazard identification and control; and safety program innovation.

Participants will be required to complete the application forms and submit them directly to AGC of America. Members of the national AGC Safety & Health Committee will review the submittals at its January conference to select the CSEA finalists. The finalists in each divisional category will then compete at the AGC National Convention for a 1st, 2nd or 3rd place award. Finalists will provide live oral presentations in front of five judges. The first, second and third place awards will be determined after the presentations. CSEA winners will be announced at the Willis Safety Awards Breakfast during the convention.

Click [here](#) to access the CSEA application; you will be directed to Formsite, the application platform. You must create an account to view/complete the application. *You will also see an option to download a PDF of the application.*

Applications are due on **Friday, December 14**. Direct questions about the application process to Nazia Shah at [nazia.shah@agc.org](mailto:nazia.shah@agc.org) or (703) 837-5409 or Andrea Ashley at AGC of Ohio (614) 486-6446 or [andrea@agcoho.com](mailto:andrea@agcoho.com).

## OSHA CLARIFIES POSITION ON DRUG TESTING AND SAFETY INCENTIVE PROGRAMS

In line with AGC recommendations, the U.S. Occupational Safety and Health Administration (OSHA) issued an October 11 [memorandum](#) clarifying the agency's position that its rule prohibiting employer retaliation against employees for reporting work-related injuries or illnesses does not prohibit workplace safety incentive programs or post-incident drug testing.

The agency expressed a belief that many employers who implement safety incentive programs and/or conduct post-incident drug testing do so to promote workplace safety and health. Any action taken under a safety incentive program or post-incident drug testing policy would only violate OSHA's anti-retaliation rule if the employer took the action to penalize an employee for reporting a work-related injury or illness rather than for the legitimate purpose of promoting workplace safety and health.

## ConsensusDocs Webinar: Successful Construction Contracts

*December 6, 2018 | 1:00 PM EST*

Studies demonstrate that fair, best practice contracts, achieve superior construction project results versus the one-sided, outdated, and siloed clauses that lead to claims and litigation. What are the most important clauses that you should prioritize in negotiations to set a foundation for success, and which clauses to avoid?

The two-main standard construction contract documents, AIA and ConsensusDocs, take different approaches in some areas and similar approaches in others. Learn how you can leverage the advantages in standard construction and architectural agreements to improve your bottom-line.

[Click here to register for this free webinar.](#)

# 2019 AGC OF OHIO CONVENTION

Join your fellow AGC members in warm and sunny Costa Rica from March 10—16 for the annual AGC of Ohio Convention. The group will be staying at The Westin Playa Conchal Beach & Golf Resort set between the exotic forests and unspoiled beaches of Costa Rica's North Pacific Riviera.



The annual convention provides contractors the opportunity to build business relationships with other contractors from all over the state of Ohio. In addition, business sessions are held each weekday morning that address topical issues for the Ohio commercial construction industry.



Cost for the seven-day convention is \$4,275 for per couple for the Deluxe Junior Suite. The resort is all-inclusive, so all food, drinks and taxes are included in the cost.

Conchal boasts what some consider to be the most beautiful white sand beach on the Costa Rican Pacific coast.

Reserve Conchal Golf Course nestled between striking Pacific coast beaches and lush gardens, the challenging 18-hole, par 71 Robert Trent Jones II course will awaken your sporting spirit. Tee off amidst the beauty of Costa Rica.



- Activities: Water sports including boating, fishing, snorkeling, scuba diving, kayaking, sailing and surfing. · Jogging/fitness trail, nature preserve, sauna and bike rentals. Horseback riding along a beach and ATV rides through the mountains and jungles.
- Nightly shows

**For more information, contact Rich Hobbs at AGC of Ohio**

**(614) 486-6446 or e-mail [rjh@agcohio.com](mailto:rjh@agcohio.com).**



## Upcoming Events

### ConsensusDocs Webinar: Successful

#### Construction Contracts

December 6, 2018 | 1:00 PM EST

Learn More: [andrea@agcoho.com](mailto:andrea@agcoho.com)

### AGC of America Construction Safety

#### Excellence Awards (CSEA)

Sponsored by Willis Towers Watson

Entry Deadline December 14

More Questions: [andrea@agcoho.com](mailto:andrea@agcoho.com).

### AGC of Ohio Convention

March 10 – 16, 2019

The Westin Playa Conchal Beach & Golf Resort

Playa Conchal, Costa Rica

Learn More: [Rjh@agcoho.com](mailto:Rjh@agcoho.com)

## 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](mailto:editor@agcoho.com).

## SAVE MONEY!

[Businesses and Employees](#)

Support the  
AGC of Ohio  
Education Foundation



## **BuildingOHIO**

*The official publication of the*

**ASSOCIATED GENERAL  
CONTRACTORS OF OHIO**

1755 Northwest Boulevard  
Columbus, Ohio 43212

Ph: 614-486-6446 • Fax: 614-486-6498

[www.agcoho.com](http://www.agcoho.com)



I Build America - Ohio 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.

[www.ibuildohio.com](http://www.ibuildohio.com)