Construction Connections
The Newsletter of the Associated General Contractors of New Hampshire
November 6, 2017

Governor Chris Sununu to Speak at the 2017 AGC of NH Annual Meeting

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U.S. EPA’s Directive to End ‘Sue and Settle’ Tactics Promises to Increase Integrity of Federal Rulemaking Process

The U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt signed an agency-wide directive on Oct. 16 that imposes steps to end the practice known as “sue and settle” – which is a quick resolution of citizen suits by environmental groups against the EPA, involving the agency’s failure to comply with statutory deadlines for issuance of regulations. Such agreements are oftentimes reached with little to no public input or transparency, EPA said, calling such a practice “regulation through litigation.” AGC of America has long expressed concern that special interest groups are using these lawsuits to force the EPA to issue regulations that advance their interests and priorities. The chief executive officer of AGC of America praised EPA for “putting an end to back room agreements ... [and] making sure that all affected parties have an opportunity to contribute to the discussion about measures needed to protect our environment.”

The Oct. 16 directive also sets a deadline of 15 days for EPA to publish public notice of legal complaints against EPA. In addition, the directive calls for improved outreach to those affected by consent decrees or settlements and aims to block attorney fees and litigation costs from being included in any deals.

New Hampshire contractors have recently been targeted by the Conservation Law Foundation (CLF) with lawsuits regarding expired stormwater permits. The New Hampshire Business Review reported on a number of NH firms that were accused last November of allegedly discharging wastewater into brooks and rivers without the proper updated permits. Targeted firms were forced by the CLF to pay legal fees as well as contribute to certain environmental groups. The association brought these practices to the attention of AGC of America.

New Hampshire DOT Statewide Freight Plan: Open House

Join the New Hampshire Department of Transportation (NH DOT) for the first NH Statewide Freight Plan: Open House.

Date: Wednesday, November 15
Time: 5:00 PM to 7:00 PM
Location: New Hampshire Department of Transportation
John O. Morton Building, Room 114
7 Hazen Drive, Concord, NH

The NH DOT Statewide Freight Plan is a strategic planning document that will define a short and long-term vision for the freight system in New Hampshire. The statewide freight plan will be multi-modal, including air, pipeline, rail, truck, and maritime transport.

At the Open House, the public can learn about and discuss freight issues and trends with industry experts, and provide input on the Freight Plan development.

For more information about this project, please contact Lucy St. John, Senior Planner, at Lucy.StJohn@dot.nh.gov, or visit the project website: www.nh.gov/dot/org/projectdevelopment/planning/freight-plan

AGC of America’s 2017 Regulatory Tracker

The primary regulatory objective of AGC of America is to help create a construction-friendly regulatory environment. The association tracks important regulatory actions pertaining to the construction industry throughout the year and has published updates. Environment issues covered in the document have been listed below.

Environment
- **Definition of WOTUS** – Redefines the term “Waters of the United States” (WOTUS) across all Clean Water Act programs – dictating what waters features are covered by the Act’s terms, permissions and permit provisions.
- **2017 Construction General Permit** – EPA’s 2012 Construction General Permit (CGP) for stormwater runoff from construction jobsites expired on 2/16/17. The 2017 CGP replaced the 2012 CGP on the same day. The final permit does not require site operators to electronically report their site-specific stormwater pollution prevention plans (SWPPPs) for public examination. The final permit does not require a “group” SWPPP for jobsites where there are multiple operators.
- **NAAQS, Ozone** – Under this rule, construction companies will feel the effects of tighter ozone limits, mainly via restrictions on equipment emissions in areas with poor air quality (direct impact), as well as additional controls on industrial facilities and planning requirements for transportation-related sources (indirect impact). Notably, nonattainment counties that are out of compliance with CAA ozone standards could have federal highway funds withheld.
- **LRRP Program Expansion to Public & Commercial Buildings** – EPA continues to attempt to expand the LRRP program to cover all work that disturbed lead-based paint in commercial and public buildings.
- **Post Construction Stormwater Rule** – EPA considered regulating stormwater runoff from completed/developed construction sites, in response to Chesapeake Bay Foundation lawsuit. Such new federal requirements would increase the cost of construction and present liability issues concerning the contractor’s legal/contractual obligations to the site and the owner after the contractor leaves the site.
• **NEPA Greenhouse Gas Guidance** – NEPA requires an assessment of the impact on the environment of a proposed Federal action including rulemakings, permitting, overarching programmatic decisions, and specific projects – including some construction projects.

• **Fish and Wildlife Service Mitigation Policy and ESA Compensatory Mitigation Policy** – The Mitigation Policy is a far-reaching policy that addresses all types of mitigation – avoidance, minimization, and compensatory or offsetting – as it pertains to mitigating the adverse impacts of projects on fish, wildlife, plants and their habitats. It encourages market-based approaches to mitigation – with a preference for conservation banking.

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**AGC of America’s Letter to Members on Silica Rule**

**Stephen Sandherr, Chief Executive Officer at AGC of America, has issued a letter about OSHA’s respirable crystalline standard taking effect and the association’s ongoing efforts in fighting the issue. The letter is included below.**

On October 23, 2017, the U.S. Occupational Safety and Health Administration (OSHA) begins full enforcement of its respirable crystalline standard for construction. I understand the difficulties this regulation places upon your construction business. And I know that AGC and its members—like you—have a deep commitment to the safety, health and general well-being of the construction work force.

However, this silica regulation remains technologically infeasible for our industry to effectively implement on the jobsite, undermining its intended purpose. That is why AGC undertook years of extensive advocacy efforts to fight it and, ultimately, filed a federal lawsuit. A decision in that lawsuit is not expected until 2018 at the earliest. As such, AGC continues to engage the Trump administration.

In the meantime, AGC recognizes that construction companies must abide by the silica regulation, because it is the law. That is why we developed the “Respirable Crystalline Silica in Construction” webpage (https://www.agc.org/industry-priorities/safety-health/respirable-crystalline-silica-construction) with a host of resources—sample forms, webinars, flowcharts, FAQs, and more—to help AGC members understand their compliance responsibilities. I hope you will take advantage of those resources.

Rest assured that AGC continues to fight for your construction business and will provide educational resources you need to help navigate the path ahead.

Thank you,
Stephen E. Sandherr
Associated General Contractors of America

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**Governor Chris Sununu to Speak at the 2017 AGC of NH Annual Meeting - December 14**

The association will be holding its 2017 Annual Meeting on Thursday, December 14 at the Courtyard Marriott Grappone Conference Center in Concord. The event will include a cocktail reception, dinner, and a presentation by our guest speaker, Governor Chris Sununu. We will also be welcoming in the 2018 Board of Directors and AGC of NH President. The Annual Meeting is one of the association’s most popular events of the year. You won’t want to miss it!

AGC is currently looking for sponsors for the meeting. The two levels of sponsorship are Gold ($500) and Platinum ($1000). Benefits include free tickets to the event, banner display, and more.

To register or become a sponsor for the 2017 Annual Meeting, please call us today at (603) 225-2701 or submit the form on page 9. We look forward to seeing you there!

**About Governor Chris Sununu**

Chris Sununu is serving his first term as Governor of the State of New Hampshire. In addition to being the youngest Governor in the country, his 59% approval rating currently makes him one of the top ten most liked governors in the nation. He served three terms on the New Hampshire Executive Council representing 32 cities and towns in Rockingham and Hillsborough counties. In 2010, Governor Sununu led a group of investors in the buyout of Waterville Valley Resort where he worked as Chief Executive Officer. Prior to the Waterville purchase, Governor Sununu was an owner and Director of Sununu Enterprises, a family business and strategic consulting group. He focused much of his time on local, national, and international real estate development, venture technologies, and business acquisitions.

Governor Sununu grew up in Salem, NH. He graduated from Massachusetts Institute of Technology (M.I.T.) with a BS in Civil/Environmental Engineering and worked for ten years cleaning up hazardous waste sites.

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**2017 Ballots Have Been Mailed**

AGC of NH has mailed out ballots for its 2017 elections. Your participation in the election is important because it gives you the opportunity to choose who will lead the association next year. If you have any questions about the ballot, please call the AGC office at (603) 225-2701.

Please return the completed ballot in the provided envelope by November 15th.
Growing with the New England construction industry... since 1966.
The American Institute of Architects (AIA) recently released a new edition of the AIA A201 General Terms and Conditions along with the AIA A-Series agreements and Exhibits. The AIA A201 2017 edition marks the first time in AGC’s 99-year history that AIA did not solicit AGC’s input in the development of the revised document (or share an advanced copy). As a result, the AGC of America’s Contract Documents Forum formed an AIA A201 Working Group to formulate the AGC of America’s Commentary on the AIA A201 2017 edition. Unfortunately, the AIA’s A201 fundamental problems remain the same – AIA has written a document by Architects’ for architects. It should be noted that none of AGC’s top concerns were adequately addressed from the 2007 A201 edition, which AGC did not endorse.

Recently, the AGC of New Hampshire, AGC of Maine, and AGC of Vermont, jointly secured the services of Ron Ciotti and Brian Perlberg to alert our members of the revisions to this critical document and how they may impact contractors. Ron Ciotti, President of the AGC of NH and partner/construction attorney at Hinckley Allen, is not only Vice Chair of the AGC of America’s Contract Documents Forum, but chaired the AGC of America’s Working Group on the AIA A201 and assisted in drafting the AGC of America’s Commentary on the AIA A201. Brian Perlberg is Senior Counsel at AGC of America, is responsible for the AGC of America’s Contract Documents Forum, and is the Executive Director of ConsensusDocs.

The following are five of the critical changes to the AIA 201 2017 edition which Ron and Brian warned our members to watch out for:

1. **Contractor is Responsible for Unsafe Owner-Directed Means & Methods**: The Contractor is now responsible to correct and supervise any of the Owner’s or Architect’s directed means and methods that it determines are unsafe (§3.3.1). AIA has taken a very problematic provision and made it worse.

2. **Termination for Convenience Leaves General Contractors Short and in the Middle**. A Contractor is no longer entitled to lost overhead and profit on unperformed work when an Owner terminates the contract for convenience. Instead, the Contractor must negotiate a Termination Fee prior to the start of work. However, in the AIA A401 Subcontract, a Subcontractor is still entitled to lost overhead and profit on unperformed work. This leaves the General Contractor in a precarious position (§14.4). Therefore, avoid or modify the AIA subcontract for consistency.

3. **Insurance Exhibit**. This new Exhibit A is a major change and now most, but not all, insurance requirements are contained in the exhibit. The insurance exhibit provides for a perfectly insured project with the only problem being that the required insurance may not be readily available in most markets and for most contractors. The consequences are likely to fall on the Contractor for any failures to meet these idealistic requirements.

4. **Notice the New Broad Notice**. There are different requirements for giving notice generally versus giving notice when a claim is involved. AIA’s definition of a claim is extremely broad. You will likely not want to risk waiving your claim rights if you guess wrong on which notice to provide, so when in doubt, use the notice process outlined for a claim, and remember that hand delivery or email is not acceptable notice without revising the new contract terms.

5. **Mandating Other AIA Branded Contract Documents or Suffer Consequences**. For the first time ever, AIA uses standard language that will impact your substantive legal rights and claims based solely upon the AIA contract documents branding of certain documents (§1.7). What should AGC members do facing the possibility of the AIA A201 2017 edition or even the 2007 edition? One option is to proactively engage Owners before the A201’s use is decided and consider using ConsensusDocs standard construction contracts, which are endorsed by AGC as well as major Owner’s groups. Alternatively, AGC members can download a free members-only Commentary of the new AIA A201 at www.agc.org/contract, or contact either Ron Ciotti at Hinckley Allen or Brian Perlberg at the AGC of America to discuss the provisions in greater detail. A prudent contractor will consider alternative contracts or alternative provisions.

"Critical changes to the AIA A201" provided by Ron Ciotti and Brian Perlberg.
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Associated General Contractors of NH 68th Annual Meeting

Thursday, December 14, 2017
Courtyard Marriott Grappone Conference Center - Concord, NH

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Name on Card: _______________________________________________
Exp. Date: _________ Security Code: _________ Billing Zip: _________

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• honorable mention in the evening’s speech

Gold
• 2 free seats at the 2017 Annual Meeting
• honorable mention in the evening’s speech
• company listed in the evening’s program and PowerPoint presentation
Join us for a special evening featuring the induction of the 2018 AGC of NH Board of Directors and keynote speaker, Governor Chris Sununu:

Chris Sununu is serving his first term as Governor of the State of New Hampshire. He served three terms on the New Hampshire Executive Council representing 32 cities and towns in Rockingham and Hillsborough counties. In 2010, Governor Sununu led a group of investors in the buyout of Waterville Valley Resort where he worked as Chief Executive Officer. Prior to the Waterville purchase, Governor Sununu was an owner and Director of Sununu Enterprises, a family business and strategic consulting group. He focused much of his time on local, national, and international real estate development, venture technologies, and business acquisitions.

Governor Sununu grew up in Salem, NH. He graduated from Massachusetts Institute of Technology (M.I.T.) with a BS in Civil/Environmental Engineering and worked for ten years cleaning up hazardous waste sites.
New Hampshire Experienced
Fifth-Highest Increase
of Construction Jobs in Nation

According to AGC of America’s latest data on state employment rankings, New Hampshire ranked the 5th highest growth rate in the country in the past twelve months. The report compares data from September of 2017 to September of 2016, which shows an overall growth rate of 10.2% in construction employment. The only other New England state to outgain NH was Rhode Island, which ranked second in the nation.

Despite the yearly gain, New Hampshire lost jobs between August and September. The data shows the state losing some 500 jobs last month, one of the biggest drops in the region for that period. The New England state to have the highest one-month gain was Vermont, which increased by approximately 400 construction jobs.

The chart below compares New England states and rankings, while the list on the following page shows the rankings of all states nationally.

<table>
<thead>
<tr>
<th></th>
<th>Sep-16</th>
<th>Jul-17</th>
<th>Aug-17</th>
<th>Sep-17</th>
<th>#</th>
<th>%</th>
<th>rank</th>
<th>#</th>
<th>%</th>
<th>rank</th>
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<tr>
<td>Connecticut</td>
<td>58,700</td>
<td>58,700</td>
<td>57,700</td>
<td>56,200</td>
<td>-1500</td>
<td>-2.67%</td>
<td>6</td>
<td>-2,500</td>
<td>-4.3%</td>
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<tr>
<td>Maine</td>
<td>26,800</td>
<td>29,000</td>
<td>28,700</td>
<td>28,500</td>
<td>-200</td>
<td>-0.70%</td>
<td>3</td>
<td>1,700</td>
<td>6.3%</td>
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<tr>
<td>Massachusetts</td>
<td>145,700</td>
<td>148,400</td>
<td>149,200</td>
<td>151,900</td>
<td>2700</td>
<td>1.78%</td>
<td>2</td>
<td>6,200</td>
<td>4.3%</td>
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<tr>
<td>New Hampshire</td>
<td>25,600</td>
<td>28,500</td>
<td>28,700</td>
<td>28,200</td>
<td>-500</td>
<td>-1.77%</td>
<td>4</td>
<td>2,600</td>
<td>10.2%</td>
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<tr>
<td>Rhode Island</td>
<td>18,300</td>
<td>20,300</td>
<td>21,200</td>
<td>20,800</td>
<td>-400</td>
<td>-1.92%</td>
<td>5</td>
<td>2,500</td>
<td>13.7%</td>
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<tr>
<td>Vermont</td>
<td>15,200</td>
<td>14,900</td>
<td>15,000</td>
<td>15,400</td>
<td>400</td>
<td>2.60%</td>
<td>1</td>
<td>200</td>
<td>1.3%</td>
<td>5</td>
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</table>

Source: https://www.agc.org/sites/default/files/Files/Communications/State_Empl_201709_Rank.pdf
### State Construction Employment (seasonally adjusted), Ranked by Latest 12-month % Change

<table>
<thead>
<tr>
<th>State</th>
<th>September 2016</th>
<th>October 2016</th>
<th>November 2016</th>
<th>December 2016</th>
<th>1-month gain or loss</th>
<th>2-month gain or loss</th>
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<tr>
<td><strong>Total</strong></td>
<td>821,500</td>
<td>822,600</td>
<td>824,000</td>
<td>825,200</td>
<td>2,500 .3%</td>
<td>1,200 .3%</td>
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<tr>
<td><strong>New England</strong></td>
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<tr>
<td>Massachusetts</td>
<td>512,000</td>
<td>515,500</td>
<td>517,200</td>
<td>519,000</td>
<td>2,500 .5%</td>
<td>1,200 .5%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>260,000</td>
<td>280,000</td>
<td>280,200</td>
<td>280,400</td>
<td>2,500 .7%</td>
<td>1,200 .7%</td>
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<tr>
<td><strong>Mid-Atlantic</strong></td>
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<tr>
<td>Pennsylvania</td>
<td>234,000</td>
<td>244,500</td>
<td>246,000</td>
<td>247,000</td>
<td>2,500 .8%</td>
<td>1,200 .8%</td>
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<tr>
<td>Indiana</td>
<td>193,000</td>
<td>197,500</td>
<td>200,000</td>
<td>202,500</td>
<td>2,500 .9%</td>
<td>1,200 .9%</td>
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<tr>
<td>Mississippi</td>
<td>43,000</td>
<td>44,000</td>
<td>44,500</td>
<td>45,000</td>
<td>2,500 .1%</td>
<td>1,200 .1%</td>
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<tr>
<td><strong>West South Central</strong></td>
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<tr>
<td>Arizona</td>
<td>171,500</td>
<td>173,000</td>
<td>175,000</td>
<td>176,000</td>
<td>2,500 .2%</td>
<td>1,200 .2%</td>
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<tr>
<td><strong>Mountain</strong></td>
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<tr>
<td>Idaho</td>
<td>36,000</td>
<td>37,000</td>
<td>38,000</td>
<td>39,000</td>
<td>2,500 .3%</td>
<td>1,200 .3%</td>
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<tr>
<td><strong>Pacific</strong></td>
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<tr>
<td>Oregon</td>
<td>90,000</td>
<td>90,500</td>
<td>91,000</td>
<td>91,500</td>
<td>2,500 .4%</td>
<td>1,200 .4%</td>
</tr>
</tbody>
</table>

*Mining and logging is combined with construction.

AGC of New Hampshire

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