



Mike O'Connor Takes the Reins as NESCA President

Mike O'Connor, president of Alltek Energy Systems, Inc., was elected president of NESCA for 2011-12 at the association's May 12th membership meeting held at the Century House in Latham. Effective July 1, 2011, Mike will become NESCA's 39th president, succeeding Bill McLeod of McLeod Systems, Inc. He had previously served as NESCA's vice president, treasurer and secretary following several years of service as a director on NESCA's Board of Directors.

After graduating with an Associate's Degree in Refrigeration from Hudson Valley Community College in 1974, Mike began his career at Advance Cooler Manufacturing that same year as a mechanic. He worked his way through sales and marketing and eventually became a sales engineer designing refrigerated structures. In 1980, Mike founded Alltek Energy Systems with two partners, and began the process of building the company as a refrigeration contractor. In the early 1990s he bought out his partners and expanded the company's business opportunities by moving into the heating and air conditioning business. Today, Alltek Energy Systems employs approximately 50 individuals who design, install and service HVAC, Refrigeration, Plumbing, Mechanical and Control Systems. Alltek also operates a ductwork fabrication facility at its location at 58 Hudson River Road, Waterford.

Mike is an active member of the American Society of Heating, Refrigeration and Air Conditioning Engineers and is also a listed LEED AP with the U.S. Green Building Council. He also served for 6 years on the Waterford Halfmoon School Board and for 14 years on the Waterford Town Zoning Board of Appeals.

Also elected on May 12th were Laura Harbour of Harbour Roads as vice president, Tom McIndoe of Henderson-Johnson Co., Inc. as treasurer, and Rich Livsey of Brunswick Electric as secretary.



Incoming president Mike O'Connor (left) accepts gavel from Bill McLeod

ESSA Bills Advance in Legislature

Several program bills of NESCA's state affiliate, the Empire State Subcontractors Association (ESSA), have begun to advance in the State Legislature.

ESSA program bill S.3179/A.5022, legislation that would effectively allow subcontractors to "reopen" their lien rights and file a lien for unpaid retainage up to 90 days after the retainage was due to be released under the terms of their subcontracts, was reported out of both the Senate and Assembly Judiciary Committees on April 12th, and was subsequently passed by the Assembly on May 3rd. This bill has advanced to 3rd Reading in the Senate, the final step before a floor vote is taken.

Two additional ESSA bills were recently reported out of the Senate Finance Committee to the floor of the Senate. ESSA program bill S.3181, which would require the release of retainage to a subcontractor on public projects no later than 60 days from the completion and acceptance by the public owner of the subcontractor's work, was reported from the Finance Committee to the Senate floor on May 2nd. ESSA program bill S.3182, which would clarify when the statute of limitations for initiating payment bond claims on public projects would begin, was reported from the Finance Committee to the Senate floor on May 10th.

NESCA acknowledges and thanks the many members who have sent support letters to members of the Legislature when you've been asked to do so.



PRESIDENT'S MESSAGE

This will be my twelfth and final message to you as president of NESCA, so I'll begin this message by simply saying it has truly been a pleasure and a privilege to serve as president of this fine organization during the past year.

The past few years have not been easy ones for the construction industry. The economy remains sluggish and the job market is still trying to recover. Despite these tough times, as a member of NESCA you have a distinct advantage over subcontractors and suppliers who are not. NESCA continued to work hard this year to make sure our members were provided with every opportunity to weather the storm through ongoing legislative advocacy, up-to-date information and assistance on a variety of new rules and regulations having an impact on the construction industry, timely educational seminars and courses, and plenty of networking opportunities for our members.

For example, during the past year NESCA provided members with regular updates and information about the newly enacted Construction Industry Fair Play Act, which is intended to curb

employee misclassification fraud in the construction industry by creating a presumption of employee status unless an employer meets specific criteria for classifying a worker as an independent contractor. NESCA also kept members fully apprised of the NYS Wage Theft Prevention Act, which requires all employers to provide employees at the time of hire and on or before February 1st of each year, notice of the employee's rate of pay and other information in English and in the primary language of the employee. NESCA sent members numerous updates on the NYS Diesel Emissions Reduction Act (DERA). The association also worked closely with other construction organizations to successfully lobby for a two-year extension of the compliance date, and will continue to lobby for full repeal of DERA for the construction industry.

The above are just three examples of the "visible" activities engaged in by NESCA during the last twelve months. NESCA also performs many not so visible activities which benefit members tremendously. Behind-the-scenes, NESCA reviews literally every bill introduced each year in the Legislature and analyzes all construction-related bills for their impact, positive or negative, on our members. During the course of a typical legislative session, that's over 10,000 Assembly bills and more than 6,000 Senate bills which are monitored by NESCA staff. Our staff also prepares legislative memoranda in support or opposition to many of the construction-related bills, particularly those which show signs of passage and/or those with a particularly acute impact on subcontractors and suppliers. This work done by NESCA, while not particularly visible or apparent to members, is extremely important for all of us.

The point I am making is, there are so many ways NESCA benefits the

construction industry, and many ways NESCA can assist your individual business on a direct basis as well. But even if you don't take full advantage of the direct assistance NESCA can provide, at least realize that NESCA is constantly and diligently working behind-the-scenes to fight for all of us each and every day. Please remember this when you receive your invoice for 2011-12 membership dues.

Thank you very much for the opportunity to serve as NESCA's President.

Bill McLeod, President

NESCA NEWSLETTER

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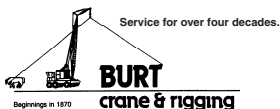
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Court Holds Prevailing Wage Clause in OGS Lease Violates Separation of Powers Doctrine

On April 29, 2011, the Supreme Court of New York, Appellate Division, Fourth Department, decided Ellicott Group v. State of New York Executive Department Office of General Services. In this case, OGS adopted a policy whereby all of its standard lease agreements would include a prevailing wage law clause. OGS admitted that the clause would require the payment of prevailing wages even where such work might not meet the technical definition of public work as required by Labor Law Section 223. The Appellate Court found that the owner established that the lease did not involve public work, and thus established that OGS was not authorized under Labor Law Articles 8 and 9 to include the prevailing wage provision.

Public Buildings Law Section 3(12) authorized OGS to lease buildings and office space for state agencies by such terms and conditions as he or she deemed most advantageous to the State. However, by including the prevailing wage clause in the lease, OGS was violating the separation of powers doctrine. OGS as an administrative body, usurped the role of the legislative body by adopting a policy mandating the inclusion of the prevailing wage clause in all leases. The Court concluded that it was for the legislature, not OGS, to define the parameter of when prevailing wages should be paid.

Terence J. Burke, NESCA Counsel

Take Advantage of Your Workers' Compensation Construction Credit

As many NESCA members are aware, in 1993 New York State implemented a program to address premium differences between high wage and low wage paying employers in the construction industry. **The Construction Classification Premium Adjustment Program (CCPAP)** provides premium credits to eligible employers regardless of their carrier and can be as much as 10% or greater.

Aon Risk Solutions, Inc., NESCA's Workers' Compensation Safety Group Manager, is pleased to take this opportunity to remind the association members to file your PAP applications **On LINE & On TIME** with the New York Compensation Insurance Rating Board. The Rating Board highly recommends employers apply online for your PAP

credit. Please go to: <http://cpap.nycirb.org> to apply. In order to ensure a credit, it is imperative the correct quarter payroll is used and that all instructions are followed, especially with reference to Limited Payroll.

To qualify for a credit in New York:

- You must have employees who earn an hourly wage of **\$15.50** or more in one or more of the eligible class codes.
- You have until **your expiration date** to file, however if you are filing within your current policy term you will be required to adhere to additional rules and be subject to Rating Board approval.
- The program uses the third quarter (July, August, & September) payrolls as shown below:

<u>Policy Effective Date</u>	<u>Third Quarter Payroll</u>
April 1, 2011 – March 31, 2012	2010
April 1, 2012 – March 31, 2013	2011

ESSA Safety Group #560 Declares 30% Dividends

As NESCA members, you are eligible to apply for membership in the Empire State Subcontractors Association Workers' Compensation Safety Group. This year the group declared a 30% dividend and continues to offer up to 25% advanced discounts. Since the formation of the Safety Group in 1994 by NESCA and its sister chapter in New York City (STA), participating member policyholders have enjoyed total dividends of \$25,522,121 and total advanced discounts of \$19,033,588.

At an April 13th annual meeting of the Safety Group executive committee, Safety Group Manager John Frizalone reported that over the 17 years of its existence, the Safety Group has been able to build a very healthy and sizable contingent balance (retained earnings) which this year was in excess of 200% of the annual premium volume. This has enabled the declaration of not only this year's sizeable dividend but creates confidence for future strong dividend performance.

To learn more about the advantages of participating in one of New York State's most successful Workers' Compensation Safety Groups, please contact:

John Frizalone, Director of Workers' Compensation
Aon Risk Solutions, Inc.
Construction Services Group
Email: john.frizalone@aon.com
Phone: 516-396-4401

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Contact: Lisa Buzby

The Berlin Steel Construction Company

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Kensington, CT 06037
(860) 828-3531; FAX: (860) 828-5253
Contact: David Hunt

Dimension Fabricators, Inc.

2000 7th Street
Scotia, NY 12302
(518) 374-1936; FAX: (518) 374-4830
Contact: Scott Stevens

WPNT Construction, LLC

289 Maple Avenue
Selkirk, NY 12158
(518) 767-2001; FAX: (518) 767-2034
Contact: Larry Tune

Calendar of Events

June 2, 2011

*Board of Directors Meeting
Century House, Latham, 6 pm*

June 6, 2011

*Annual Mid-Hudson Golf Outing
Wiltwyck Golf Club, 11 am*

June 17, 2011

*NESCA Night at the Ballpark
Joe Bruno Stadium, 7 pm*

June 22, 2011

*NESCA Dinner Cruise
Lake George, 5:30 pm*

Question of the Month

Q. On a public project subject to the New York State prevailing wage law, if a worker receives different hourly rates during the course of a day because he is performing different tasks, what overtime rate is paid when overtime pay is required?

A. The New York State prevailing wage law is governed, not just by statute, but also by the State Constitution. Workers on public projects are not permitted to work more than 8 hours in a day or more than 5 days in a week unless a dispensation is granted by the Department of Labor to work overtime. A dispensation may be granted in the case of an extraordinary emergency or danger to life or property. A request for a dispensation must be signed by the public body certifying that a delay in completion would result in serious disadvantage to the public. Whenever a dispensation is granted, all work performed in excess of 8 hours per day and 5 days per week shall be considered overtime work. The overtime rate paid on public projects is one and one-half times the prevailing rate of wage. Supplements on overtime work should be paid at the straight-time rate unless more stringent requirements are found in the collective bargaining agreement and posted in the wage rate schedule. Violation of the overtime provisions is a misdemeanor and can be punished with a fine of not less than \$500 and not more than \$1,000 per person, per day. In the case where a worker receives different hourly rates during the course of a day, overtime pay is calculated based on the rate classification worked during the overtime hours.

Don't forget to register!

★NESCA's 16th Annual Mid-Hudson Golf Outing★
June 6, 2011, Wiltwyck Golf Club, Kingston, New York, 11 am

★NESCA's Night at the Ballpark★
June 17, 2011, Joseph L. Bruno Stadium at
Hudson Valley Community College, 7 pm

★NESCA's Lake George Dinner Cruise★
Aboard the Lac du Saint Sacrement
June 22, 2011, 57 Beach Road, Lake George, 5:30 pm

To register or for more details, call the NESCA Office at 518-869-9800

Member Anniversaries

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