



Vol. 29, No. 11

(518) 869-9800

May 2011

## NESCA Officers to be Elected at May 12<sup>th</sup> Membership Meeting

In accordance with NESCA's Bylaws, the May 12, 2011 membership meeting will serve as the association's "Annual Meeting", at which time an election of officers to serve during the 2011-2012 fiscal year will be held. The term of all officers elected at the meeting will begin on July 1, 2011 and will end on June 30, 2012. All members of NESCA are encouraged to attend this meeting and cast your vote. NESCA's Nominating Committee has recommended, and the Board of Directors has confirmed, the following slate of officers for member approval:

### **PRESIDENT**

Mike O'Connor – Alltek Energy Systems, Inc.

### **VICE PRESIDENT**

Laura Harbour – Harbour Roads

### **TREASURER**

Thomas McIndoe – Henderson-Johnson Co., Inc.

### **SECRETARY**

Richard Livsey – Brunswick Electric

## Lien Rights on Retainage Legislation Reported to Senate/Assembly Floors

Legislation drafted and supported by NESCA's state affiliate, the Empire State Subcontractors Association (ESSA), which would allow subcontractors to file a lien for unpaid retainage up to 90 days after the retainage was due to be released, has been reported out of the Senate and Assembly Judiciary Committees to the floors of the Senate and Assembly. Both Judiciary Committees reported this bill on April 12<sup>th</sup> after members of the Committees received a blizzard of support letters from subcontractors throughout New York State.

Lobbying in favor of this bill (S.3179/A.5022), ESSA has argued that existing law does not provide subcontractors

with payment protection with regard to retainage. Currently, subcontractors performing work on most private construction projects have up to eight months after the final performance of the work or the final furnishing of materials to file a notice of lien for unpaid amounts due. Unfortunately, for many subcontractors, particularly subcontractors who complete their work in the early stages of a project (excavators, steel erectors, etc.), the 8-month statute of limitations for filing a notice of lien often expires not only before the construction project has been completed, but long before the payment of retainage has become due under their subcontracts. S.3179/A.5022 will cure this inequity by essentially reopening subcontractors' lien rights and allowing them a reasonable period of time to file a lien for unpaid retainage.

ESSA's attention will now turn to getting this bill placed on the Senate and Assembly calendars for a vote. Last year this bill, sponsored by Senator John DeFrancisco (R-Syracuse) and Assemblyman Michael Cusick (D-Staten Island) passed in the Senate and was on 3<sup>rd</sup> Reading in the Assembly when the legislative session concluded.

### **NESCA Membership Meeting**

**May 12, 2011**

**Century House – 6:00 p.m.**

**Election of 2011-2012 Officers**

- 6:00 Open Bar/Registration
- 6:30 Dinner: Black n' Blue Flat Iron Steak Frits
- 7:10 Business Announcements
- 7:30 **Program: "The GlobalFoundries**

#### **Second Administration Building"**

Presented by: Ryan Faulkner, Project Manager, Paul Sugnet, Senior Vice President, and Don Kramer, Senior Operations Manager, LeChase Construction Services, LLC .

**Open Bar, Dinner, Tax & Gratuities - \$45**



## PRESIDENT'S MESSAGE

We had a great turnout for NESCA's April 14<sup>th</sup> membership meeting, which included our 5<sup>th</sup> Annual Safety Awards Presentation, sponsored this year by M&T Bank. Sixty-nine (69) members, including ten from the Mid-Hudson Region and nine from the Binghamton Region, qualified for safety awards. We also had a very informative dual presentation by Chris Fuller from Turner Construction Company and Rob Gilchrist from D.A. Collins Companies, on what those companies expect from their subcontractors with regard to jobsite safety. Because this was our 5<sup>th</sup> year of presenting safety awards, Master of Ceremonies Hal Hatfield gave special recognition to seven NESCA members who have won a Gold Safety Award in each of the five years, as follows:

- Harbour Roads
- EMI Guide Rail, LLC
- Vanguard Roofing, Inc.
- Arold Construction Co., Inc.
- American Boiler, Tank and Welding
- Petrochem Mechanical Services, Inc
- Technical Building Services, Inc.

Over the last five years, these seven companies collectively worked a total of 2,069,766 man hours, and had just two lost workday incidents! This represents outstanding and consistent attention to safety by these members, and I congratulate each and every one of them.

Many thanks to chairperson Judy Tomlinson and the NESCA safety committee for another successful safety awards night, and congratulations to all 69 of our 2011 award winners!

NESCA recently mailed out the annual "update forms" for members to make changes and/or corrections for your company listing in the 2011-2012 NESCA Membership Directory. Please review your listing in the current (2010-2011) Directory, complete the forms, and mail them back to the NESCA office as soon as possible. We're going to try to have the Directory put together and printed by the end of the summer. Not only do all NESCA members receive copies of the Directory, but we also send it to general contractors, architects, engineers, state contracting agencies and others. It gets a lot of use, so make sure you're listed in the Directory how you want to be listed.

Finally, so you can save the dates, NESCA will be holding a number of popular special events coming up in the near-term as follows:

- June 6, 2011 – NESCA Mid-Hudson Golf Outing at the Wiltwyck Country Club in Kingston.
- June 17, 2011 – NESCA Night at the Ballpark at the Joseph L. Bruno Stadium.
- June 22, 2011 – NESCA Dinner Cruise on Lake George.
- July 28, 2011 - NESCA Day at the Races in Saratoga.

*Bill McLeod, President*



NESCA's 5<sup>th</sup> Annual Safety Award Recipients

## NESCA NEWSLETTER

Published monthly by the Northeastern  
Subcontractors Association  
6 Airline Drive, Albany, New York 12205  
(518) 869-9800 [www.nesca.org](http://www.nesca.org)

BILL MCLEOD, President  
MIKE O'CONNOR, Vice President  
LAURA HARBOUR, Treasurer  
TOM MCINDOE, Secretary

### Directors:

GARY AROLD  
BRIAN BLAKE  
WALTER BREAKELL  
BOB BRYAR  
TOM COLLOTON  
HAL HATFIELD  
LEE KEIRSTEAD  
RICH LIVSEY  
ANGELO MUSCOLINO  
KEVIN SAGE

BEN LAULETTA  
1<sup>st</sup> Immediate Past President

TONY WHALEY  
2<sup>nd</sup> Immediate Past President

TERENCE J. BURKE  
Legal Counsel

MICHAEL MISENHIMER  
Executive Director

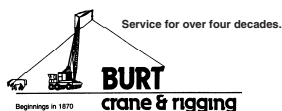
## Cranes, Riggers and Erectors



View our crane charts  
and our new website at  
[www.burtcrane.com](http://www.burtcrane.com)

- Conscientious, Well Equipped Crews
- Comprehensive Selection of Cranes
- Complete, Cost Effective Rigging, Hauling and Warehousing

We are your one stop shop providing assistance through every step of your project, from planning to completion.



5 Veteran's Memorial Drive  
Green Island, NY 12183

518-271-6858 phone  
518-271-6938 fax  
[www.burtcrane.com](http://www.burtcrane.com)

## For Contractor's Insurance, Cool knows it cold.

For 150 years we've seen  
and covered it all.

- Contractor's Liability
- Worker's Comp
- Builder's Risk
- Premium Audit Review

**COOL**  
INSURANCE MADE SIMPLE.

Cool Insuring Agency, Inc.  
Albany • Glens Falls  
1-800-233-0115



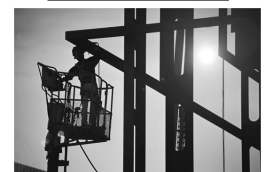
KEVIN LAURILLIARD  
ATTORNEY AT LAW  
Construction Law • Employment Law  
Corporate Law • Dispute Resolution and  
Litigation

McNamee, Lochner, Titus & Williams, P.C.  
(Established in 1863)

is a full service law firm providing a  
full range of quality legal services.

677 Broadway • Albany, New York 12207  
(518) 447-3292  
<http://www.mltw.com>

## RAISE THE BAR



At Teal, Becker & Chiaramonte Certified  
Public Accountants, P.C. we work hard  
to help our clients build solid financial  
foundations. We equip you with the most  
up to date tools needed to ensure your  
company's financial success.

Our firm is built on lasting values...

TRUST  
HONESTY  
INDEPENDENCE  
TEAL  
BECKER  
& CHIARAMONTE  
CPAs, P.C.

7 Washington Square, Albany, NY 12205  
518-436-6063 / FAX 518-436-3975  
[www.tbcpa.com](http://www.tbcpa.com)

A member of TD Ameritrade.  
A national network of independent and non-affiliated member firms.

## Court Grants Plaintiff Certification as a Class Action under Article 3-A Lien Law

On April 14, 2011, the Supreme Court of New York, Kings County, decided Access Plumbing Court on behalf of itself and on behalf of all persons entitled to share in the trust funds received by the defendants pursuant to Lien Law 3-A in connection with the construction at 1180-84 Brighton Beach Avenue, Brooklyn, New York, plaintiff against 1184 Brighton Development, LLC, et. al.

A central issue in this case was the plaintiff's attempt to get class action certification, a condition necessary to bring a Lien Law Article 3-A diversion of trust funds action.

Plaintiff seeking class action certification, noted that under Lien Law §77(1), a trust arising under Lien Law Article 3-A must be enforced by the holder of any trust claim "in a representative action brought for the benefit of all beneficiaries of the trust." Lien Law §77(1) specifies that in any such action, "the practice, pleadings, forms and procedure shall conform as nearly as may be to the practice, pleadings, forms and procedure in a class action as provided in [CPLR] article nine....; provided, however, that in determining whether the prerequisites of a class action have been satisfied, the provisions of [CPLR 901(a)(1)]...may be waived at the discretion of the court."

CPLR 901, entitled "Prerequisites to a class action," provides, in subdivision (a), that one or more members of a class may sue as representative parties on behalf of all if the following prerequisites are met:

1. The class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;
2. There are questions of law or fact common to the class which predominate over any questions affecting only individual members;
3. The claims or defenses of the representative parties are typical of the claims or defenses of the class;
4. The representative parties will fairly and adequately protect the interests of the class; and
5. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Plaintiff requested that, in accordance with Lien Law §77(1), the prerequisite of numerosity set forth in CPLR 901(a)(1) should be waived. Plaintiff contends that it has met all of the other prerequisites of CPLR 901(a).

The court found that this action may be maintained as a class action, and the class shall be deemed to consist of all persons

and/or entities which provided materials and/or services for the improvement of the premises, and whose claims accrued on or before September 16, 2008 (the date of completion of construction). The court waived the requirement of numerosity in accordance with Lien Law §77, and required that notice be provided to potential trust beneficiaries and an opportunity provided to them to come forward.

*Terence J. Burke, NESCA Counsel*

## DERA Compliance Deadline Extended

During the recently concluded State Budget deliberations, NESCA and other construction industry organizations pushed for the inclusion of language in the Budget that would have repealed the Diesel Emissions Reduction Act (DERA) of 2006. In fact, the Senate had included repeal language in an earlier version of the transportation and economic development budget bill, but as expected, the Assembly proved to be an impediment to outright repeal.

However, when the negotiations between the Senate and Assembly were concluded, the final budget did include a measure of good news; a two-year extension of the DERA compliance date. That is, **contractors, subcontractors, and suppliers now have until December 31, 2012 to retrofit diesel vehicles** which are used on projects for state agencies and state public authorities.

During this two-year reprieve, NESCA will continue efforts to find a permanent solution to the diesel retrofit problem.

## DOL Pay Notice Templates Available

We have previously reported to NESCA members that on December 13, 2010, former Governor David Paterson signed into law the "Wage Theft Prevention Act". Among other things, this law created new employer obligations to notify employees of their wage rates and other pay-related information and obtain signed acknowledgements back from employees. The Department of Labor templates for the notice and acknowledgement forms as well as instructions for their use are now available on DOL's website and may be found under "Wage Theft Prevention Act Forms" at:

<http://www.labor.ny.gov/formsdocs/wp/ellsformsandpublicatio ns.shtml>

### Minimum Premium Workers' Compensation

If you have no employees and exclude yourself from coverage, **\$996** is the cost for our certificate only minimum premium policy. Call for details.

**devineinsurance.com**  
Specializing in  
Contractor Coverages  
1-800-805-0438

### Kwik Space Versatile Office & Storage Rentals

**SMALL SITE OFFICES**  
8x24 1-Room / 8x32 2-Room  
**OFFICE STORAGE COMBO**  
8x32 w/ 8x10 Office & 8x18 Cold Storage  
**LARGE SITE OFFICES**  
10x40 / 10x50 2 & 3-Room  
12x60 & 24x60  
12x44 2-Room / 12x60 3-Room  
**MOBILE/MODULAR COMPLEX  
OR HAVE IT BUILT TO YOUR SPACE**  
\*\*\*\*\*  
**20' & 40' Ground Level Containers**  
**40' • 45' • 48' Dock Level Trailers**  
**SHEDS/GARAGES/GAZEBOS/  
POOL HOUSES**

RENT OR BUY .....ONE CALL DOES IT ALL  
**1-800-345-6264**

"BUILDING THE FUTURE - TOGETHER"



Installation of doors, bathroom partitions & accessories

Commercial doors & frames hardware

Drywall, insulation and framing

Acoustical ceilings, walls & Isolation products

Millwork

36 Railroad Avenue • Albany, NY 12205  
(518) 729-1122 • Fax (518) 453-9527

7 Pruyens Island, Glens Falls, NY 12801  
(518) 798-7245 • Fax (518) 793-8397

**CIS** Construction Information Systems, Inc.  
609 Route 146A  
Clifton Park, N Y 12065  
www.consinfo.com

*Experienced Professionals with an Outstanding Reputation*

Streamline your business processes with:  
**Sage Timberline Enterprise**  
**Sage Timberline Office**  
**Sage Master Builder**

**Call for your consultation today**  
**518-373-9005**

**Construction Software Consultants, Since 1988**  
Implementation - Training - Computers  
System Conversions  
IT Services - Networking - Consulting

## Welcome New Members

**Adirondack Spray Foam, Inc.**  
83 Rowland Street  
Ballston Spa, NY 12020  
(518) 528-7831; FAX: (518) 884-9851  
Contact: Kevin Theriault

**M. Cristo, Inc.**  
20 Old Troy Road  
East Greenbush, NY 12061  
(518) 365-2307; FAX: (518) 477-7712  
Contact: Ronald Martin

**JC Structures, Inc.**  
600 Consalus Avenue  
Schenectady, NY 12306  
(518) 357-4211; FAX: (518) 356-1850  
Contact: Joe Ciliento, Jr.

**Standard Insulating Co., Inc.**  
9488 River Road  
Marcy, NY 13403  
(315) 738-1424; FAX: (315) 732-2304  
Contact: Charles Scholl

## Question of the Month

**Q.** I believe I heard at one of NESCA's seminars that New York State law requires the general contractor to pay subcontractors within seven days of receipt of payment from the owner. Is this correct? I've just received several contracts that state payment will be made in fifteen days.

**A.** You are indeed correct. Payment by general contractors to subcontractors on both public and private projects in New York State is required to be made within seven (7) days after the general contractor has received payment from the owner. Section 139-f State Finance Law (state agencies) and Section 106-b General Municipal Law (cities, towns, school districts, etc.) cover payment to subcontractors on public work and are virtually identical. Both of these laws state that within seven calendar days of the receipt of any payment from the public owner, the contractor shall pay each of his subcontractors and suppliers proceeds from the payment representing the value of the work performed and/or materials furnished and reflecting the percentage of the subcontractor's work completed or the material supplied in the requisition approved by the owner and based upon the actual value of the subcontract or purchase order less an amount necessary to satisfy any claims, liens or judgments against the subcontractor or supplier which have not been suitably discharged and less any retained amount. Payment on private projects is governed by Section 756 General Business Law, and this law also requires payment to be made within seven (7) days after the general contractor has received payment from the owner. In addition, all three of these laws include interest penalties for payments made after the 7-day payment period.

### Calendar of Events

**May 12, 2011**

*Board of Directors Meeting*  
Century House, Latham, 5 pm

**May 12, 2011**

*NESCA Membership Meeting*  
Century House, Latham, 6 pm

**June 6, 2011**

*Mid-Hudson Golf Outing*  
Wiltwyck Golf Club, 6 pm

**June 17, 2011**

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

**June 22, 2011**

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

### Member Anniversaries

Everett J. Prescott, Inc. – 5 Years

Esserman & Pelter, LLP – 10 Years

Rondout Electric, Inc. – 10 Years

Commercial Interiors, Inc. – 15 Years

Donnelly Construction, Inc. – 15 Years

Pollard Excavating, Inc. – 15 Years

Amsterdam Overhead Door Co., Inc. – 25 Years

Cool Insuring Agency, Inc. – 25 Years

Duke Concrete Products, Inc. – 25 Years

Warren W. Fane, Inc. – 25 Years



#### ATTORNEYS AT LAW

"Providing clear, concise, and responsive answers to complex issues"

A full service law firm specializing in:

- Contracts & Construction Law
- Corporate & Business Law
- Real Estate
- Commercial Collections & Litigation

10 Airline Drive, Suite 205  
Albany, New York 12205  
Phone: 518-869-5552  
Facsimile: 518-869-4222  
Visit us at [www.breakell-law.com](http://www.breakell-law.com)

**Albany Winwater Works Co.**  
Tel: (518) 438-9717  
Fax: (518) 438-9713  
Email: [wcdietrich@winwaterworks.com](mailto:wcdietrich@winwaterworks.com)  
[www.albanywinwaterworks.com](http://www.albanywinwaterworks.com)

**Winwater Works** is a leading distributor of waterworks and utility supplies to contractors and municipalities in the country with 29 locations across the country.

Supplying all of your Water, Sewer & Drainage requirements...  
**WHEN you need them, WHERE you need them!**

**ALBANY Winwater COMPANY**

**NOW AVAILABLE**  
48" Sanitary Manholes  
We CORE & BOOT  
Per your approved draw

- Water Pipe & Fittings
- Sewer & Drainage Pipe
- Geotextile for Drainage & Stabilization
- Erosion Control Blankets
- Fire Hydrants, Valves, Tapping
- Estimating & Project Planning

We're more than a gas company.

**We're a solutions company.**

**onoble**  
GAS SOLUTIONS

**Corporate Office**  
Albany Store  
20 Center Street  
Albany, NY 12204  
Phone (518) 465-5229  
Fax (518) 465-0039

**Kingston Store**  
18 Downs Street  
Kingston, NY 12401  
Phone (845) 338-5061  
Fax (845) 338-7422

[noblegassolutions.com](http://noblegassolutions.com)  
(800) 328-9329

**JOHN MULLINS**

**Rigging & Hauling, Inc.**

*Rigging Specialists Since 1870*

Crane Service to 330 tons  
Boom lengths to 425 feet  
Heavy Hauling to 300 tons  
Forklifts to 80,000 lbs.  
Hydraulic Gantries to 200 tons  
Warehousing

1 Pine Street Green Island, NY 12183  
(518) 273-0771 · (800) 649-5247 · (518) 273-3780 Fax

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