



Vol. 42, No. 12

(518) 869-9800

June 2025

Joe Jerkowski to Lead NESCA in 2025-26

Joseph Jerkowski, Chief Operations Officer of Armistead Mechanical, Inc., has been elected president of NESCA for the 2025-2026 term. Effective July 1, 2025, Joe will succeed Bryan Berry of Color Code Painting, Inc. Joe has been a member of NESCA since 2007 and has served on the Board of Directors since 2018.

Joe holds a Bachelor of Science degree in Mechanical Engineering from Northeastern University and has thirty-five years of experience in design and construction management in plumbing, HVAC and process piping. As a Professional Engineer, he is adept at managing projects from design to completion in the heavy industrial, pharmaceutical, hospital, water treatment and technology fields. Joe joined Armistead in 1994, and he is a graduate of the MCAA Advanced Leadership Institute. Joe currently holds master plumber and HVAC licenses in Rockland County and Putnam County New York.

Armistead Mechanical began a residential plumbing and heating business in Jersey City, New Jersey after World War I. The business quickly blossomed and began doing more and more light commercial and industrial work, and soon concentrated on heavier commercial and industrial construction. By 1956, the business had burgeoned into a mid-sized mechanical construction firm doing millions of dollars of business a year. Armistead was incorporated as The Armistead Corporation, focusing almost exclusively on commercial and industrial plumbing, heating, air-conditioning and process piping.

In the 1970's, Armistead relocated to a larger office space in Kearny, New Jersey with 5,000 square feet of fabrication space and more than 12,000 square feet for inventory and equipment. In 1987 Armistead Mechanical, Inc. was formed, and a branch office was opened in Newburgh, New York in 1994 to better service clients in the Hudson Valley region of New York. In 2002 the company moved its corporate headquarters to Waldwick, New Jersey. This brought the company's operation to a total of almost 50,000 square feet of office and shop space. In 2008, Armistead came full circle when a residential and light commercial plumbing, heating and air-conditioning company was added to the Armistead family of businesses. Today, the fourth generation of Armisteads is actively involved in all facets of the business.

Armistead Mechanical works with some of the most prestigious pharmaceutical, medical, industrial and technical clients whose projects require the most precise fabrication and welding available today. Depending on the requirements of the project and industry, Armistead will use stainless steel, glass, fiberglass, copper, PVC, Teflon lined piping systems, or whatever piping material is most appropriate for the project at hand.

Piping fabrication is a key component of Armistead's project management philosophy, and their project teams employ prefabrication whenever possible. It not only offers savings to their customers but provides a competitive edge and scheduling advantages. Armistead also provides 3D design assist coordination with a collaborative approach that results in higher quality, functionality, and cost savings. Their design teams include P.E.'s, Licensed Master Plumbers and HVACR specialists skilled at applying virtual design, prefabrication, and value engineering methods to meet the mechanical needs of any project.

Also elected as 2025-26 NESCA officers were Jeff Orvis of Dagostino Building Blocks, Inc. as Vice President, Rick Otis of Amsure as Treasurer, and Mike Lock of PCC Contracting, Inc. as Secretary.

Members who were recently elected to serve on NESCA's Board of Directors beginning on July 1, 2025 are:

- For 3-year terms representing NESCA's Specialty Contractors – Emma Heck of AJ Sign Company as director, and Emmy Ingalsbe of EMI Guide Rail, LLC as alternate director.
- For 3-year terms representing NESCA's Roofing, Siding, Doors, Glass & Painting Contractors – Pete Ryan of Frank J. Ryan & Sons, Inc. as director, and Glenn Ward of Express Roofing & Construction, LLC as alternate director.
- For 3-year terms representing NESCA's Interior & Exterior Finishing Contractors – Mike Muscolino of AMC Construction & Management Corp. as director, and Andy Sciocchetti of AJS Masonry, Inc. as alternate director.
- For a 1-year term representing NESCA's Utility & Excavating Contractors – Brian Bellamy of Bellamy Construction Company, Inc. as director, and Joe Vandenburg of Warren W. Fane, Inc. as alternate director.



PRESIDENT'S MESSAGE

Wow! One year seems to have passed by so quickly. Not too long ago, I remember Rob Kind handing me the gavel and me having the burden of looking out at the audience during our membership meetings and trying not to look so nervous as President of NESCA. All the past presidents shared with me one nugget of hope. They all said, it will get easier just as your term is ending. Boy was that an understatement! I want to thank all of you for rallying around me each meeting and giving me confidence. Thank you.

You will be happy to hear that one of the highlights of this past year is NESCA had record attendance at our annual Golf Outing, our Trade Show, and at our Meet the Estimators event. Also growing in attendance is our young professional's mixers which are held in partnership with Associated General Contractors of NYS. I really had my fingers crossed during this year's membership meeting we hold annually in partnership with NAWIC. That wheelbarrow was the best yet!

Our membership is just about at the 500 mark, and I like to brag about it when

I mention NESCA to others. We are rebounding from the aftereffects of COVID and it's showing in our attendance and participation. As I like to remind everyone, you are only going to get out of NESCA what you put into it. Our strength is in our numbers. The more members we are able to recruit the larger our voice will be when we are trying to get beneficial legislation passed such as the two bills we had introduced this legislative session. The first bill, you may remember, is to clarify and reinforce the full intent of the 5% retainage limit on private commercial construction projects. The 5% retainage law had previously been signed by Governor Hochul in 2023 but it needs to be clarified. The second bill would require that a payment bond or irrevocable letter of credit be posted by the private developer on hybrid projects costing over \$250,000.

Over the years, NESCA has played an important role in supporting subcontractors. NESCA's commitment to providing resources and advocating for fair contract opportunities continues to drive our mission while also providing opportunities for partnerships within our fields. If you are someone who has a business within and surrounding the construction industry, NESCA is the one organization where you won't regret joining. I still remember the first time I tried attending a NESCA meeting. I walked out of there just as fast as I walked in. I remember thinking to myself that NESCA wasn't for me. Now looking back, I wish I had joined sooner.

This is the last newsletter of my term as president, and I assure you I'm not going to cause a coup to keep my presidency. I do, however, want to thank each of you who made it to the last sentence of each of my newsletter messages. I hope I was able to inspire you

with my imperfections and charm you with my sincerity. As the president of Color Code Painting, Inc. for over 14 years I have made plenty of mistakes, but through those mistakes I've grown. Thanks again for providing me the opportunity to serve as President of NESCA. This opportunity has been a real awakening, and I really enjoyed sharing some of my insights with all of you.

Bryan Berry, President

NESCA NEWSLETTER

*Published monthly by the
Northeastern Subcontractors
Association, Inc.*

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COUNSEL'S MESSAGE

There are many reasons for a contractor to maintain and preserve project records created during the performance of a construction contract. Those reasons range from financial records reflecting cost of project performance, payment to subcontractors and suppliers, audits by the Department of Labor or State and Federal Internal Revenue Service or records documenting the cost of a changed condition or additional work performed. While not referenced frequently, but equally important, are project records created during performance of the work and maintained in hard copy but forgotten after that time period.

Many contractors do not realize that an individual suffering a personal injury arising from a construction project is granted three (3) years to commence litigation to recover damages for their injuries. If an issue stems from a material contract defect the purchaser has four (4) years within which to commence litigation to recover damages. In the circumstance

of a breach of a contract for construction services the parties are allowed six (6) years from the project completion within which to commence litigation to recover damages.

It is unreasonable to expect individuals involved on a construction project to recall specific events, or even day to day details, which occurred on the project 3, 4 or 6 years after completion. Those individuals may have been involved in the construction of several different projects in that interim period.

The creation and preservation of project records, in hard copy and in the cloud, for a minimum of the above referenced time periods are critical to prosecute or defend claims arising on a construction project.

Recently I consulted with a client regarding a situation which had arisen fifteen (15) years after the project was completed and accepted by the owner. It would be easy to conclude the situation is not within the Statute of Limitations discussed above and a contractor may not be subject to liability for any construction deficiency.

However, there are a few circumstances in which the statute of limitations does not commence until after discovery of a deficiency created during construction.

If a contractor failed to properly prepare a material surface intended to accept a different material application which results in the failure of the second application, it is possible the statute of limitations will not commence until the defect is discovered.

If steel decking was not completely primed per specifications and nonetheless was covered with fireproof material prior to inspection, the project is then completed and accepted by the owner without discovery of the improperly primed decking. If a failure to properly prime the decking results in a subsequent failure of the fireproofing to adhere to the decking, and a resultant fire many years later breached the decking causing either death or property damage, the contractor may still be exposed to liability for the defectively primed steel decking.

This liability arises due to the statute of limitations not commencing until the discovery of the primed deck deficiency. That discovery occurred at the time of the fire many years after project completion. The contractor will now experience another six (6) years of exposure before the project owner loses its ability to sue for recovery of its damages.

The importance of record preservation is amplified due to the extended period of potential liability and the possibility the contractor may not be insured for the deficiency. The records will be critical to investigate and develop evidence in defense of the non-primer allegation.

Walter G. Breakell, NESCA Legal Counsel

State Budget Includes Policy Measures That Impact Construction Employers

The recently passed NYS Budget contains several policy issues that will have a direct impact on construction employers. As follows are some of these issues:

Frequency of Pay Claims - Section 191 of the New York Labor Law requires employers of employees who fall under the broad definition of "manual worker" to pay such employees weekly. Prior to 2019, frequency of payment claims against an employer were

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(continued from page 3) brought by the NYS Department of Labor, and if DOL found that an employer violated the frequency of pay law, it typically issued a relatively modest civil penalty and a directive to pay manual employees weekly.

That changed in 2019 when New York's Appellate Division, First Department held that a manual worker could bring a suit in court seeking damages for not being paid on a weekly basis. This resulted in a wave of "frequency of pay" litigation claims. The reason is, Section 198 of the Labor Law allows individuals to recover liquidated damages of up to 100% of the total amount of any unpaid wages. So, for example, a manual worker paid \$2,000 biweekly, instead of \$1,000 weekly, would seek liquidated damages in the amount of \$1,000 for each week he was not paid weekly – even though the employee received their full pay every other week. And because of New York's long, six-year statute of limitations for such claims, this created a significant amount of liability for any employer that did not pay manual workers weekly.

Fortunately, the recently enacted state budget contains language that limits the damages for frequency of pay claims for first violations. For a first violation, an employer will only be subject to damages for interest foregone by the manual worker as a result of wage payment every two weeks, instead of every week.

However, for an employer that has been subject to one or more previous findings or orders for pay frequency violations, liquidated damages will continue to apply.

DOL Enforcement of Wage Theft - The enacted State Budget contains an amendment to the Labor Law that confers new enforcement powers on the Commissioner of Labor regarding wage theft. This legislation authorizes the Commissioner to issue a warrant directed to a County Sheriff, commanding the Sheriff to levy upon and sell the real and personal property of an employer who has defaulted in the payment of wages. The Sheriff shall file the warrant with the County Clerk where it shall be docketed and shall become a lien upon the title to both real property and personal property of the employer.

Unemployment Insurance Debt - Businesses across New York will no longer be saddled with paying down the State's federal unemployment insurance loan debt. The debt has accrued since the COVID-19 pandemic, when New York exhausted its Unemployment Trust Fund and borrowed \$11 billion from the federal government to pay a tidal wave of unemployment claims. Ever since, the State has assessed businesses with a surcharge to pay down the debt but was still years away from paying off the remaining \$6.2 billion. The State will use \$8 billion of its reserves to pay off the debt and actually add to the unemployment trust so that it can pay off claims without going back into debt. Laid off workers will also benefit because the maximum unemployment benefit had been frozen due to the federal loan. NYS law requires that unemployment benefits remain frozen when the system is in debt, so the maximum weekly unemployment benefit has, since 2019, been capped at \$504. The budget agreement will increase weekly benefits to a maximum of \$869 effective October 6, 2025, with additional increases in future years.

MWBE Program - The Budget contains an amendment extending the authorization of the State's MWBE program to July 1, 2028. Further, a new disparity study must be conducted by Empire State Development by May 1, 2027. Also, the State Finance Law was amended to increase the dollar amount for which state agencies may purchase commodities or services from certified MWBE without competitive bidding from \$750,000 to \$1.5 million.

NESCA Membership Milestone Anniversaries

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O'Connell and Aronowitz – 5 Years

OGGI Concrete Forms & Accessories, Inc. – 5 Years

Kinsley Group – 10 Years

M&T Equipment Finance Corporation – 10 Years

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