

SPRING 2009

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Front page photo: Michigan Construction Career Days



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Letters to MITA

Dear Nancy:

I have been out with spring break trips to come back to a wonderful surprise. Thank you so much for the framed article. It will be a great addition to our lobby. I would also like to request a reprint of 250.

Michael Hiestand

*Vice President, Business Development
Lounsbury Excavating, Inc.*

Dear Rob:

Thank you for participating in our division meeting last week. It's good to hear from you and your organization discussion of common goals we have for safety and health in the workplace. I think our staff appreciates the discussion. Thanks again.

Bob Pawlowski

*Director
MIOSHA Construction Safety and Health Division*

Dear Mike:

On behalf of the Lansing Regional Chamber of Commerce Economic Club, I would like to thank you for speaking to our members on March 19, 2009. Our members were presented with sound information as the region moves forward in supporting the transportation initiatives.

We truly appreciate you taking the time out of your busy schedule to speak to our members and help raise awareness of the impact that transportation has on the economic health and growth in our region.

Tim Daman

*President, CEO
Lansing Regional Chamber of Commerce*

Dear Bob:

I was thinking on the way in this morning about engineers night, sorry industry night (only us old guys remember engineers night), and gas taxes, and MITA management trips, and all the services that MITA provides and it reminded me of what a well-oiled machine you have created that all of us benefit from. I suspect that most members take it for granted and I would like you to know that we don't.

Most of the other organizations we deal with, whether as members or something we might participate in as a non-member, you can count on something always being messed up or we are just ignored. Not with you guys, though. You know how to take care of your members and you also know how to tackle the toughest issues and shove them up the mountain and if possible over the top. The ability that MITA has for clear vision and focus and seeing issues through from beginning to end are a result of you and the people you

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Avoiding Disputes On Claims

By Eric Flessland and Jim Urban
Butzel Long

Although a construction project should be a mutually rewarding undertaking, the nature of the industry inevitably leads to adversarial relationships that can ripen into disputes. Owners and Contractors each are keenly aware of the substantial capital they must commit to a project, and the adverse effect any increase in that capital commitment would have on their bottom lines. This natural economic tension is "worsened" by voluminous contract documents which are more often than not drafted by lawyers who – while keenly attuned to risk avoidance – are often not well-versed in how construction projects are actually built. The chances that the Public Works Owner and Contractor understand their respective obligations in such contractual relationships are therefore lessened and the risk of disputes increase.

Nonetheless, that is the business in which you are engaged, and you must learn to live with these tensions and documents or be buried by them. The reality of the construction industry today is that Owners and Contractors must be aware of and be educated about claims, claims avoidance, and claims resolution procedures in order to protect their significant capital investment and hopefully lessen the rancor surrounding a claim. This article is intended to serve as a primer of the ways and means a Contractor can employ to avoid disputes over claims, and thus avoid further rewarding the men in grey suits who killed a forest drafting the vary agreements that often give rise to claims.

Claims May Be Inevitable – Disputes Are Not.

Boiled down to its essential form, a Contractor's "claim" is a legitimate request for additional compensation and/or time on account of a change in the terms of the contract. Viewed in this manner, you can see that a claim may arise under any form of construction contract, except perhaps under a pure "time and materials" agreement. More likely than not, a claim arises under a fixed price form of contract, and thus it is crucial for the Contractor to know what is required by the contract, and what is not.

In bidding on any fixed-price construction contract, a Contractor rightly assumes certain things to be inherently correct: that the Public Works Owner has had sufficient time – and used it wisely – to define the scope of work; the Public Works Owner has correctly drafted the contract specifications, designs, and contract drawings that together accurately describe and depict the work; the Public Works Owner has fulfilled any conditions necessary for the Contractor to begin work, such as obtaining County Road Commission review and approval of plans so that issuance of required road permits is not delayed; and the Owner owns the dirt, and therefore the Owner has correctly determined what site conditions are to be encountered, and accurately represented them in the contract documents. Most Contractors assume the Owner has correctly determined the time necessary to complete the work, and has allowed sufficient time from the Notice to Proceed to Substantial Completion and Final Completion deadlines that the work can be performed within that period.

If actual project conditions or circumstances render these or other assumptions invalid, then it is highly likely that a claim will arise. The "sad" truth is there are few projects today where there are no claims, negotiations and settlements before the contract is finally closed out. The key is to avoid allowing those claims to languish and/or to erupt into a full-blown dispute. A disagreement over entitlement to a claim is not necessarily a "dispute," although it is an element. Rather, a "dispute" as used in this article, refers to a project-paralyzing battle that polarizes the parties into a letter-writing campaign and most likely litigation. The old adage "this is no way to build a bridge" could not be truer.

Therefore, a Contractor must know exactly what is expected of it under the terms

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Member Voice: Do you believe the federal stimulus package will have a positive impact on your business?

From time to time we ask MITA members questions about issues of importance to the industry. Some of the answers are then published in this magazine.

Our question this time was: "Do you believe the federal stimulus package will have a positive impact on your business. The "winner," at 69 percent of the responses, was Yes, but with many reservations and concerns.

Here are samples of the responses we received:

Yes, the federal stimulus package will have a positive impact on our business.

While we expect the effect to be modest, the stimulus funds will certainly replace some of the budget cutbacks in Michigan and provide much-needed work for our state's contractors.

Dave Twombly

Wolverine Tractor and Equipment

If the road builders get enough work it will open the market on the commercial side, where many had been more aggressive without the road work. It remains to be seen as many of the home site excavators are looking to the commercial market to replace the lack of housing starts. The reality is that it will likely be another year before things begin to pick up.

Tom Gallagher

Harbor Springs Excavating

10-20 percent increase in 2009-2010 revenue

Matt Shinner

Antigo Construction

Money will be put into circulation that will aid current projects and allow for new ones also. This, coupled with better stability in the banking sector should help in restoring consumer confidence and consumer spending.

Mike Kelleher

Southeastern Equipment Co.

In the short term it will create more opportunity. But, we need a long-term solution to our road funding problem.

Steven R. Funck

Posen Construction

To a certain extent, but it depends what follows. It crunched project schedules for design, but we need something to fill in the void it has created in the second half of the year. CE is better for this year.

Paul Wade

Spalding DeDecker

Yes, we have already seen a boost in our workload. However, we anticipate that this will be short-lived and that we will return to a reduced work level after the summer without a sustainable program.

Steve S. Gravlin

Wade Trim

I believe that the stimulus package will help our business by adding projects that would otherwise be shelf jobs due to lack of funding; however, I think that more funding should be focused on pavement preservation and maintaining existing trunk lines before we turn our attention to enhancement and expansion projects.

Malcolm Smith

Terry Asphalt Materials, Inc.

I believe it will bring some additional business to our industry; but, I also don't believe it is going to bring as much to our company as I first thought. The ones that I believe will benefit the most are the ones that perform the routine maintenance items (mill and fill operations, chip and seal, crush and shape, etc.) The other key item is that there is still a large amount of excavation contractors out there that still don't have very much work or any work lined up. This is causing pricing in our industry to remain in the basement even with this stimulus money. Until the economy picks up as a whole (MDOT, municipal, commercial, residential, etc.) we won't see any significant changes. It is helping, but not as much as we had hoped for.

John Lepien

CL Trucking & Excavating, LLC

We believe the stimulus package will bring more projects out for bid in the short term. Most likely these additional projects will only prop up the infrastructure market rather than increase it.

Jesse Pero

Hoffman Bros., Inc.

It may keep us from reducing our workforce by another 25 percent, which we would likely have done. It will not allow for expansion.

**Michigan Paving and Materials Company -
Kalamazoo Division**

Continues on pg. 57

Give 'Em a Brake Safety

www.gebsafety.com

It is a pleasant surprise to see positive things promised by the stimulus to actually start happening for at least one Michigan company.

MITA Member Give 'Em a Brake Safety (GEBS), headquartered in Grandville with branches in Saginaw, Traverse City, and Marquette, is expected to add 20-30 employees during the second half of the year. That follows up an earlier than usual spring start for employees after their customary winter layoff.

"We usually bring our employees back about now, April 24, but we brought them back a month ago," said Dan Babcock, president of the company that provides work zone traffic control and safety services. "The professional team at GEBS offers services that begin with design and planning for our customers to the actual field installation and maintenance of the traffic control devices from project inception to completion."

His experience in the traffic safety business began in 1979 when he and his wife, Kathy, founded Work Safe Supply Co. In 1998 they sold it to National Equipment Services (NES). Kathy decided to stay home and raise their young children at the time while Dan began a consolidation effort for NES with the intent of building a division for NES that generated its revenue from the same activities that Work Safe performed in Michigan.

After acquiring several out of state traffic control companies over a period of four years, the traffic safety division of NES was born and was generating about \$150 million in revenue on an annual basis for corporate. About four and a half years into Babcock's stay at NES, the NES board terminated the then current chief executive officer, and the newly hired CEO brought in his own management team and Babcock was without a job. Luckily, Babcock said, his non-compete agreement had expired three days earlier so ... he and Mike Mooney, a long-time Work Safe Supply employee, left NES to start a new company, which would be named, Give 'Em a Brake Safety. The company has grown from its roots in 2003 with a handful of employees into a team of much larger proportion in 2008. Ironically, GEBS purchased back from NES/RoadSafe the assets of the old Work Safe Supply in April of 2008.

GEBS employees, many of whom had worked for Work Safe Supply prior to the NES experiment, enjoy a "family oriented" work environment, Babcock said. Key employees, in addition

to Babcock and Mooney are the Branch Managers: Ken Brandt, Paul Kennedy, Jeff MacDermaid, Larry Kitchen; Contract Administrator: Jane Anstett; Estimators: Mark VanTil; Larry Booth (Daily Rental and Sales); and Mike Rempalski (Local Government Bids).

"I am dedicated to what I do," Babcock said. "I am truly passionate about the work that GEBS performs. We can and do make a difference in the lives of the travelling public as well as the construction workers that risk their lives daily for us to create a safer more efficient infrastructure system. I am privileged to work with the people at GEBS who share my passion for our role in this industry. All of us enjoy the functions provided by MITA. It is also a pleasure working with MDOT. They have an open ear to new technologies and are always interested in making our work zones safer thru the deployment of new and better practices. They might not bleed orange like we do; but, we, like them, want to make sure the public is safe and the construction workers well protected while construction activities are underway."

GEBS's focus, Babcock said, is helping their customers be up to spec by providing outstanding service while using state of the art traffic safety tools for their contracts.

"Our motto has always been that we never say no to a customer," he said. "What I mean is that if we get a call on Friday that a company wants a plan drawn up and installed by Monday, we turn it around by Monday even if we have to carry the materials to their jobsite on our backs."

Babcock said he couldn't be more pleased with his MITA membership. A long-time MRBA member, he had his doubts about MITA, but "now I am more satisfied with MITA than I was with MRBA, and I was happy with MRBA."

"The support from the MITA engineering department (Glenn Bukoski, P.E., and Doug Needham, P.E.) is unsurpassed," Babcock said. "They both have reputable communications with MDOT and go above and beyond to help us in getting things done."

In addition to running GEBS in Michigan, Babcock is involved with his brother in the North Carolina based company, Stay Alert Safety Services, and Street Smart Rentals in Minnesota. This gives him a change of scenery and a chance to do more of what he enjoys doing.

"Life for me is about partnerships," Babcock said. "You can't accomplish anything without a team working together to push the rock forward in the same direction."

Contacting Give 'Em a Brake Safety

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94: Sign Installation, Pavement Marking
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Mike Poggi, Brad Poggi, Penny Kirk and Mike Keyes

Spring 2009 has been "bid bond central," as Brad Poggi of Pinnacle Insurance Partners LLC fondly refers to a very high level of activity with "many contractors bidding every public job that is available."

Poggi, a principal at the company headquartered in Grand Rapids, describes a couple examples of the activity: eight, 10 or more bidders vying for a single school job; and multiple bids coming in within a day of each other.

"Some of the high level of activity is due to our normal spring increase," says Poggi, who with his cousin, Mike Poggi, followed Brad's father into the business. "But much of it has to do with many schools having bond issues approved last year."

For bid bond requests that come through the office, Pinnacle's 45 full-time and 10 part-time employees work together as a team to negotiate specifications on behalf of contractors when necessary. Pinnacle is also very careful about putting their clients with financially stable insurance companies due to a continuing trend of insurance company consolidation.

"We also make a habit of finding out what the client needs," Poggi says. "You can go out and try to sell something, but you will be doing them a disservice until you find out what they need, and work from that to build a program for them. In the end, this provides good stability with the client."

In addition to bonding, surety, and insurance, Pinnacle offers financial services, such as life insurance, estate planning, buy-sell and wealth management. Since the company began in 1982, it has continued to grow while some competitors have recently been struggling. Poggi credits the following for Pinnacle's success:

- Memberships in organizations like MITA help Pinnacle stay in touch with the construction industry.
- Being active in MITA allows Pinnacle to meet with industry leaders before they begin building a business relationship.
- Focusing on a client's needs and wants rather than just on selling them a product or service helps Pinnacle build customer loyalty.

"By being a member of MITA, we exhibit at the Annual Conference, attend the Christmas parties, and establish relationships with contractors, and contractors are then more likely to talk to us later," Poggi says. "Talking to Rob, Bob, and Mike at MITA also gives us an idea of what is going on in the industry, such as knowing what topics came out of the Future Leaders brainstorming session at the Annual Conference."

Headquartered in Grand Rapids, Pinnacle Insurance Partners also has branch offices in Detroit and St. Ignace. The company is proud of its tradition of giving back to the communities in which they operate. In 2008 they proudly sponsored Kids Food Basket, St. John's Home, Mel Trotter Ministries, Camp Blodgett, The Special Olympics, Grand Rapids Pools, Degage Ministries, The Guiding Light Mission, Veteran's Home, Alternatives in Motion, DA Blodgett for Children, The American Red Cross, The National Guard and Helen DeVos Children's Hospital.

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54: Insurance, Self Insured Programs,
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By now, you've got the idea. Go somewhere. Have fun – and if you are wearing your MITA hat, have someone snap a photo of you. E-mail the photo to nancybrown@mi-ita.com and it will be published in the magazine. We have been publishing photos of MITA members hunting, traveling to India, Mexico, California... etc. Join the club!



Scott Bazinet (above) of Lowe Construction Company, Inc., Horton, was in Cabo San Lucas Mexico for the MITA Management Conference.

Craig Pasternak (at left) of Inspesol Engineering, Inc., Plymouth, on the 18th tee of Pebble Beach Golf Links in California. Photo was taken two days after the PGA National Pro-Am tourney.

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Bob Patzer

The Changing Demographics of the Construction Industry Workforce

Those of you who attended the 2008 annual meeting were fortunate to hear our keynote speaker Mark Breslin. Mark, who has a construction background, did an excellent job of explaining just how the changing employee demographics affect how our industry and how we must recognize and adapt to those changes.

In the world of construction he outlined four categories of employees: old-timers, baby-boomers, X generation; and, finally, millennium employees. The old-timers have all but evaporated and have been replaced by the boomers, most of whom are at or nearing retirement. This natural progression has cleared the way for the instant gratification and high tech X generation and the millennium group neither of which remembers black and white TV or rotary dial phones. In many cases these two groups have little or no appreciation for history or how our industry got where it's at.

During a discussion of this issue with a fellow "boomer" he relayed to me a comment by one of his younger employees. A statement was made that, regarding a legislative matter, the association (MITA) should have done this or that on an issue. The employer looked the Xer straight in the eye and simply informed him that indeed "he" was the association. It was unclear as to whether or not the vaccination took.

Based on this conversation we conducted our own investigation revealing that this misconception was not an isolated incident. Rather, it confirmed our suspicion that MITA must get involved with the Xers and millennium in terms of getting them involved and educated in the services and purpose of MITA. The antidote we prepared was a Future Leaders Program along with an appropriate curriculum and graduation requirements and, yes, we did grab bits and pieces of other successful programs across the country. The request for candidates was published and the maximum of 20 participants was accomplished with candidates to spare. The inaugural

class of young leaders attended their first meeting at the MITA office on Friday, April 17, 2009.

The results of the first meeting and the questions resulting from it were substantive and gratifying. Topics included the purpose of MITA and introduction to their MITA staff, our extensive list of publications and services, and an overview of MITA involvement in labor, safety, legislative issues, member-only services and engineering involvement. The questions were relevant, succinct and displayed a genuine thirst for knowledge on the part of all participants.

Graduation requirements involve attendance at all five classes between now and October 23; attendance at one board of directors meeting and the annual meeting held at Soaring Eagle in January of 2010. Future topics of discussion will be more specific and include legislation (with a visit to our state Capitol), rules and regulations both state and federal, labor law/human resources and a class titled "Our Ever Changing Industry."

The single greatest resource in our industry is clearly people. While we have made great strides in improving our productivity through technology, we have fallen short in recognizing that our workforce is in a state of change. This change is manifested not only in age differences but also in the attitudes of the Xers and the millennium group.

The future of the heavy/highway industry, your business and the association will depend on the involvement of our future leaders and their perception of just how things should be done. We are hopeful that this much needed program will provide the educational background and knowledge regarding the value of MITA to produce quality employees for the industry that we all care so much about.

If you are interested in nominating an employee for participation in next year's program, give Rob Coppersmith a call at the MITA office.

To contact Bob Patzer, e-mail him at atbopatzer@mita.com or call 517-347-8336.

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Are You Protecting Your Company Through Effective, Enforceable Employment Agreements?

By Kotz, Sangster, Wysocki and Berg, P.C.

Due to growth of competition and tightening markets, there has been an increased number of employers requiring employees to sign agreements with restrictive covenants. Such agreements can protect companies from former employees using valuable information and training which they acquired from the company and against untimely lawsuits of employment claims. Generally, these types of agreements are upheld; however, both legislation and the courts have imposed certain restrictions on the scope of enforceability.

Non-Compete Agreements

Are they enforceable? Michigan statutory law provides an employer may obtain from an employee an agreement that protects an employer's reasonable competitive business interests and expressly prohibits an employee from engaging in employment, or a line of business after termination of employment, if the agreement is reasonable as to its duration, geographical area and the type of employment or line of business covered. If a court finds the time period, geographic area or line of business is overly broad, it has the authority to revise the agreement to make it "reasonable."

To whom do they apply? Non-compete agreements apply to both employees and independent contractors; however, they must still meet the above reasonable standard.

What to do if an employee breaches or threatens to breach the Non-Compete Agreement? An employer may petition the court for an immediate temporary restraining order to restrain the employee from continuing to breach the non-compete agreement. However, the employer must prove, from specific facts shown by Affidavit or by a Verified Complaint, that immediate and irreparable injury, loss or damage will (or will continue to) result to the employer from the delay required to effect notice or from the risk that notice will itself precipitate adverse action before an order can be issued. This analysis requires the court to undertake a fact specific inquiry.

Does an employer need additional consideration for a Non-Compete Agreement? Starting or continuing at-will employment is sufficient consideration for a non-compete agreement in Michigan. However, the law regarding consideration varies from state to state.

Non-Solicitation Agreements

Non-solicitation agreements, often coupled with non-compete terms, protect an employer from former employees pilfering their staff and customers/clients after the employee leaves. Solicitation involves former employees taking affirmative action to induce, urge, or request employees to leave their employment or customers/clients to terminate

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MITA—"Your Eye in the Sky"

It seems as though anymore that we as the MITA legislative staff have a singular focus in mind, which is increased transportation funding. The amount of effort that we have put into lobbying on this issue over the course of the last three and a half years and the overall focus that we place on this high priority issue makes it seem, at times, that we do nothing else. Especially, when you review the amount of information that we turn out to the media and the legislature as well as the membership as a whole. Ultimately, the overall focus that we place on this high priority makes it seem at times that we do nothing else while downtown at the Capitol. However, you can rest assured that we are keeping an eye on the over three thousand pieces of legislation that are introduced every legislative session in order to protect the interests of the heavy construction industry on all fronts.

Granted there are probably hundreds of examples that I could give in an article such as this, because even on a daily basis we are giving input that helps to either message or manipulate the way certain pieces of legislation are written, and yet we do not publish a bulletin on every single one of those conversations. However, there are a few pieces of legislation of note that I feel are important enough to share with you:

Haul Route Restrictions

Over the years, MITA has received numerous calls of complaint regarding haul route restrictions being imposed by various townships around the state. The calls are usually pretty consistent with one

another in that a local township board of trustees has voted to limit the amount of truck traffic passing through its township by putting a restriction in place, which forces all trucks to travel an indirect route around the community. We have fought these by legal means as well as through public relations campaigns, both of which are time consuming and costly.

In 2008, a township in southwest Michigan put into place a truck route restriction through their community forcing all truck traffic into nearby surrounding communities, which forced a heated debate amongst a wide variety of groups including a handful of MITA members in that area of the state.

Late in 2008, MITA, working together with a couple of other business groups, put together language that required any township planning to put a haul route restriction in place would have to get approval from those communities where the new traffic routes would travel – thus making it more difficult to arbitrarily put one of these restrictions in place.

MITA worked diligently in the waning hours of the lame duck session in December of 2008 to make this law a reality. It is our belief that

this small effort will have a major impact on the trucking segment of our industry, which is so vital.

Statute of Limitations

Legislation seeking to reduce Michigan's statute of limitations for architects, engineers and contractors from six years to three years passed out of the state Senate in 2008, but stalled out in the House of Representatives. The legislation is necessary after a recent State Supreme Court ruling "Ostroth vs. Warren Recency" effectively doubled the period of time that an architect, engineer or contractor could be sued for negligence. MITA has worked alongside the Associated General Contractors (AGC) and the American Consulting Engineers Council (ACEC) in promoting this important piece of legislation.

Because the bill did not become law prior to the completion of the last legislative session, the effort begins again in 2009 with legislation being introduced in the state Senate. We are hopeful that this bill

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Mike Nystrom



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ACTION ALERT: Transportation Funding Initiative Needs Push During Critical Period

Developments have seemingly been slow on the transportation funding initiative in recent months, overshadowed by debate and legislative approval of the federal stimulus money for state road projects. With that action now completed, a singular focus is shifting back to the long-term funding needs, as the funding initiative reaches a critical time.

MITA members have hosted over 100 meetings with legislators in recent months and have been reporting those contacts to MITA staff on a regular basis. Legislators have mentioned those constituent contacts to MITA lobbyists almost daily. Important progress is being made!

The Senate Republican Caucus is an important focus right now. The goal is to get at least 10 votes from them on a funding package.

As with any legislative vote, legislators want to know final details, gauge public reaction to the various proposals, and be able to discuss these issues with colleagues before making a final decision.

All MITA members (Pavement Pounders) are encouraged to make

contacts now to help continue building support among all legislators (this includes House and Senate members and Democrats and Republicans alike).

MITA lobbyists continue to work at the corridors of the capitol to push the issue. Meetings have been held with new members of the Michigan House and meetings are talking place with Senate Republicans. You will continue to be apprised of developments as they happen. In the meantime, please feel free to contact Mike Nystrom at mikenystrom@mi-ita.com or Keith Ledbetter at keithledbetter@mi-ita.com or call the MITA office at 517-347-8336 with any questions or comments.

Legislative Update
continues on page 32.



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Unbalanced Bid Analysis ... What's It all About?

If you bid work in the MDOT arena you are aware that effective with the April 3 letting, MDOT began conducting unbalanced bid analysis on select projects from each letting. Some question the rationale for this "new" bid analysis often linking it to the increased scrutiny and requirements of the "stimulus projects" funded by the American Recovery & Reinvestment Act.

In reality, the Federal Highway Administration's May 1988 policy guidance on the subject of Bid Analysis and Unbalanced Bids states the requirement that State highway agencies thoroughly evaluate bids with extreme variations from the engineer's estimate, or where obvious unbalancing of unit prices has occurred. A more recent and certainly additional impetus for the department's adoption of an unbalanced bid analysis procedure was the June 2005, Auditor's Report to the State Transportation Commission. In that report the Office of Commission Audits recommended that MDOT implement "... a documented review... of the low bid for each project, to determine if the bid included unbalanced unit prices."

Since early 2006 MDOT staff and representatives from the FHWA have been meeting to develop and refine the analytical tool MDOT will use to review bids and to determine the staff resources MDOT will need to maintain an unbalanced bid review program. In the spring of 2008 a small pilot program was implemented to test the Department's analytical tool and assess their internal operating procedures. In February 2009, MDOT and FHWA agreed to conduct a one-year pilot study in which the element being evaluated at each letting will be the statistically based number of randomly selected projects for unbalanced bid review. This MDOT proposed statistically based selection of projects for unbalanced bid review is a significant departure from the federal requirement that 100 percent of the projects (state and local) be reviewed for bid unbalancing.

In establishing the framework for its unbalanced bid analysis protocol MDOT has established the following definitions:

Mathematically unbalanced bid – A bid containing lump sum or unit price bid items that do not reflect actual costs of labor, equipment, materials, plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs and other indirect costs.

Materially unbalanced bid – A bid that generates a reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost to the department.

So what does this all mean to a bidder? Will MDOT automatically reject a low bid with a penny unit bid or unit bid over the engineer's estimated unit price? What will determine when MDOT will reject a low bid?

MDOT has clearly indicated that they will not automatically reject a low bid submitted with a penny unit price. Although some state DOTs do automatically reject bids containing a penny unit bid, the federal policy guidance allows each state agency individual discretion and latitude on this matter. In maintaining its acceptance of the penny bid MDOT acknowledges a potential cost benefit afforded to the state by allowing bidders the opportunity to incorporate creativity and innovation in their bids, and by allowing bidders to

include in their bids the price advantage of "materials on hand". By accepting the penny unit bid MDOT further acknowledges they will not automatically reject a mathematically unbalanced bid (a bid containing a penny unit bid) by definition be considered a mathematically unbalanced bid if you subscribe to the belief that no item of work can be completed for a penny).

In MDOT's bid analysis process a bid containing a penny unit bid or a unit bid significantly greater than the engineer's estimated unit price, both of which could deem a bid to be mathematically unbalanced, would trigger another level of review to determine if the low bid was additionally, materially unbalanced. In determining if a low bid is materially unbalanced the analysis focuses on an evaluation of the plan quantities for the items of work where there is significant variance (+ or -) between the quoted unit bid and the engineer's estimated unit price. When a plan quantity error is found, the bids are adjusted to account for the plan quantity correction at the quoted bid unit prices. A mathematically unbalanced bid is determined to be materially unbalanced when the initial low bid is no longer the lowest bid after a plan quantity correction.

If a mathematically unbalanced low bid is found not to be materially unbalanced (low bid is still the low bid after adjustment for quantity corrections) or not to be in the best interest of the public to reject, MDOT will consider moving forward with the award of the contract in accordance with the standard specifications. The contract award will be based upon the quantities shown in the bidding documents and the low bid amount.

If a mathematically unbalanced low bid is found to be materially unbalanced, MDOT may reject the bid or they may elect to accept the bid when it is in the best interest of the public considering the consequences of re-letting the project. If the department decides to reject the low bid, they may proceed to award the contract to the next lowest responsive bidder or they may reject all bids and re-let the project. If the decision by the department is to reject the mathematically and materially unbalanced low bid and proceed with award to the next lowest responsive bidder, that award will be contingent on the outcome of any appeal by the low bidder in accordance with the standard specifications.

To ensure the continued timely award of contracts and the full and complete execution of their obligations for review of bids for unbalancing, MDOT leadership has established the unbalanced bid review process as a critical function of the highest priority at all levels of the department involved. To protect the integrity of the competitive bid process the bid tab for a project selected for unbalanced bid analysis will not be made public until the decision has been made to proceed with award of the contract to the lowest bidder. If the decision made is to reject a mathematically and materially unbalanced

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Glenn Bukoski, P.E.

Director of Safety & Workforce Development Comment

Fresh Faces: Michigan Construction Career Days 2009

For a second year, MITA played an important role in educating the next generation of young workers as to what the construction industry is all about through the Michigan Construction Career Days (CCD).

Construction Career Days is not something new; four men from Texas started it in 1999. Originally set to be a "career day" type event, they decided to take it a step further and allow participants to experience what it's like to actually operate an excavator, weld a piece of steel or hammer nails and build something. The event became a hands on lets pound nails and make dirt fly festival of sorts. Construction Career Days is now held in 28 different states and has had over 300,000 participants to date.

In 2006, a coalition was formed and the seed was planted in Michigan. Federal, state and local government along with contractors, trade associations, organized labor and other interest groups came together and after two years of planning, fund raising and occasionally begging for equipment or donations, the first Michi-

gan CCD took place. Close to 2,000 high school kids from all across the state participated in

what was to become an annual event.

The 2009 Michigan CCD proved to be even more successful than the previous year. With over 2,500 students committed to participate, we needed more equipment, more money, and more volunteers, more everything. MITA reached out to its members and CCD was able to put over 55 pieces of heavy equipment in place for kids to experience. MITA was put in charge of the equipment area, which included placing all of the equipment such that students could access it in a safe and organized manner. The weather conditions were not ideal considering there was several inches of rain leading up to the first day and temperatures were in the high 30s with wind gust of 25 mph. The

Ingham County Fairgrounds was generous enough to donate the entire infield of the grandstand area to use at our disposal. Now the task was to place large and small excavators, rubber tired back hoes, bulldozers, pavers, rollers, front end loaders, aerial lifts and cranes just to name a few on a wet infield without getting stuck and then have enough space to operate safely. This year's event truly gave a real life look at what it's like to work construction in Michigan and it was worth the effort to see each kid experience construction first hand.

Kids that I talked to over the two days told me things like "this is awesome," "I never knew construction was so much fun," and the number one quote was, "I'm definitely going to be a construction worker when I grow up." The energy and enthusiasm that was created gives hope that there will be fresh faces available to replace this industries aging workforce. It also gives those that may not have plans of college after high school another possible avenue to pursue a respectable job with benefits and opportunity for growth.

MITA would like to thank all of its members that participated by donating time, money and or equipment to the event. During these hard economic times, it is tough to "give" something away but it was not for nothing. Your generosity has already paid dividends by promoting your livelihood and attracting the next generation of construction worker. Participating members included: AIS Equipment, C&D Hughes, Cloverdale Equipment, Dan's Excavating, Fisher Contracting, Hoffman Brothers Excavating, Infrasonce Underground, MCM Management, Michigan CAT, Rieth Riley Construction, Six-S, Wolverine Tractor & Equipment, Butzel Long. Thanks also goes out to the organized labor unions that spent a great deal of time interacting with the students and they include: Michigan Carpenters Apprenticeship and Training, Michigan Laborers Training and Apprenticeship Institute, Michigan Operators Apprenticeship and Training Fund and the Plasters and Ce-

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Patrick Brown



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Director of Legislative Affairs Comment

Slow Drip or Tidal Wave? Uncertainty of Individual Water Projects Leaves Available State Financing Unused

We are never really sure from year to year whether our State Revolving Fund projects will be like a slow drip or a tidal wave. Michigan communities are poised to spend as much as \$650 million this year on state wastewater and drinking water loans—a 50 percent increase from last year. Or, the communities could spend just \$425 million. It all depends on whether the city of Detroit goes ahead with their already-approved plans for the \$225 million Upper Rouge Tunnel project.

And, herein lies a big problem.

As much as one-third of the state's revolving fund program for 2009 could evaporate with the delay or cancellation of one project. A decision about the Rouge tunnel will determine whether this is a big or a mediocre year for state underground water projects. In Detroit's case, financial woes in the city, inevitable controversy over water and sewer rate increases and an interim mayor and administration in the midst of a tight reelection bid are all factors that will play a role in determining whether the project moves forward. Ironically, if Detroit cancels or delays this project, they will miss out on the federal government picking up 23 percent of their project costs because they will no longer be eligible for the federal stimulus dollars for this project.

The scenario of not using all available state loan dollars in a given year isn't a new problem. It happens regularly. Communities often apply for State Revolving Fund money for a given year and then get hampered by financial difficulties or project delays that sideline the project until the following year or scuttle it altogether. Meanwhile, the state's available loan money that had once been earmarked for the project is no longer used. Even though the state has loan capacity in 2009 for over \$650 million, the state may actually end up spending just over half of that. There simply isn't enough time to get a replacement project pushed forward even if there was one far along in the pipeline.

We must ask two logical questions: 1) Should the state break the projects into smaller portions to help mitigate the effects of such a large project pulling out in a given year? And, 2) Do we need to seek stronger reassurance that once a community gets this far along in the loan process they will actually do the work as planned?

Part of MITA's goal is to ensure that if the state has \$650 million to loan for water projects, the communities will actually use all or most of that available money. In the past, the state has had more money available than ultimately what was lent out. Part of that has been due to project cancellations and delays. Part of that has

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Director of Technical Services Comment

Change is Inevitable

Sometimes change is for the better; sometimes it's not. However, we all know that change is inevitable. With the recent funding stream (i.e. ARRA) and discussions surrounding the upcoming reauthorization of the SAFETEA LU funding, MITA contractors are experiencing more and more new reporting criteria, tracking methods, testing requirements, and overall more project oversight responsibility.

These changes, although not always readily accepted by the contracting community, are put in place by our state and federal government and tied to those funding streams. In essence, projects funded with certain types of funding must follow certain rules and regulations. I can relate to these restrictions because they are very familiar in my household. Every week my children work for their allowance. In order to get paid they must perform the tasks they are assigned in the ways and methods that Mom and Dad command. If trash is not collected at the appropriate time or the dishes are not put away per our requirements, they will not get allowance for the week. I think we can all relate. The same rules apply with federal and state funds. We might not like the rules but we certainly want the use of these funds to improve Michigan's crumbling infrastructure.

Not all rules and regulations are spelled out in black and white. Some

mandate a general statement such as "a state must institute a program and ensure that materials reclaimed from a highway project are recycled and not placed in landfills". The specifics of the mandate are left for the technical groups within the state/federal agency to determine. With the mandate in place, any agency wishing to utilize the funds must adhere to the rules.

The difficult part comes with developing the fine details that allow the agency to meet the mandate. In the MDOT arena, the general rules (regulations) are typically mandated by the FHWA and require MDOT develop the specific methods and means for meeting the regulation. This is when MITA goes to work on your behalf. Typically, the first stab at creating the means and methods is performed behind closed doors within the MDOT community. Only after there is consensus on how they plan to move forward is MITA invited to review and participate in the process. Typically, the document that we are asked to review is, let's say "black". MITA enlists the expertise of a handful of contractors, revises the document, and resubmits a "white" version. Although we may not like the new requirements and are fundamentally opposed to the mandate, we understand we have to have a seat at the table to take part in the final outcome. With MITA's involvement there is now a "black" and "white" version on the table. This is the point that MITA sits down with MDOT (or other owner agencies), and works out the fine details of the final document.

Obviously both sides want their version but understand that the final document will be some shade of "gray". MITA's goal is to make it a light shade of gray. The process of coloring the document is not done in a vacuum or behind closed doors. As items change, MITA regularly interacts with MITA members for their input and "show stoppers". MDOT is doing the same with their region and TSC personnel. At the end of the day, like in most court cases, both parties are typically somewhat unhappy. MITA changed the document in ways that doesn't please MDOT personnel; and, conversely, MDOT would not modify certain sections/requirements that were not pleasant to MITA members.

The document is now "gray"! This is a good thing. Remember that MDOT originally created a "black" document that was written from the owners' perspective. MITA intervened and added shading. This process is not an easy process and sometimes can get quite heated; however, at the end of the day, MITA continues to be steadfast at the table and fighting for your best interest.



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TOOL BOX TALKS

Quick Coupling Device Hazards

Before you get started:

There are five basic safety tips that apply to the whole industry. If you practice these five tips, you can make a difference.

- KNOW YOUR JOB.
- BE ALERT.
- EXPECT THE UNEXPECTED.
- USE GOOD JUDGEMENT.
- ALWAYS THINK SAFETY.

These tool box talks have been designed to include all of the information your company should be able to include in a five minute session. MITA suggests that you document this activity with the sign-in sheet that has been provided and keep it on file for future reference.

Quick couplers are time-saving devices that allow for speedy attachment changes to hydraulic excavators. The popularity of these devices on jobsites has grown in recent years and with that, quick coupler related injuries.

Quick Facts:

- Quick couplers are used on hydraulic excavators because of their time-saving benefits.
- Most quick couplers have a lifting eye used to lift material.
- Excavator lifting capacity is effected by the weight of the bucket.
- Removing the bucket altogether greatly improves an operator's line of vision.
- Many contractors prefer to use a larger bucket to do the bulk of a digging project, later switching to a smaller bucket for more detailed dig jobs.
- There are a number of additional devices that can be used on a quick coupler for digging project execution.

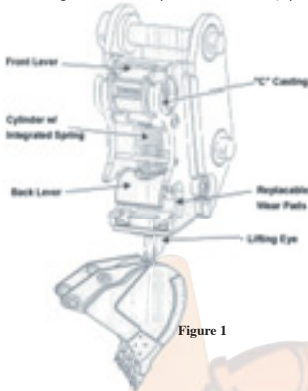


Figure 1

Hazard Factors:

- Most quick coupler accidents are caused by human error.
- Poor communication: In many cases, employers are unaware of the dangers facing operators and are also unaware of the precautionary measures and tools available to help avoid quick coupler accidents.
- Some of the most common problems are incorrectly or neglecting to retrofit the quick coupler with locking pins and double checking to be sure that it is engaged and locked properly that has led to unexpected releases, injuring employees.

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4/22/2009 Saginaw County Bad Roads Trifecta

Saginaw County won a statewide contest for the worst pothole for the second consecutive year, in addition to their 2008 award for the state's worst bridges. This series of bad luck and three statewide awards has now earned the county a "Bad Roads Trifecta," the Okemos, MI-based Michigan Infrastructure and Transportation Association (MITA) announced today.

Saginaw resident Michelle Scott received a \$318 award last week when she submitted an award-winning pothole photo of Frost Road in Saginaw Township, where a huge section of asphalt is crumbling so badly that you can literally see dirt where pavement should be.

Last July, MITA announced that Saginaw County had the worst bridges in the entire state. Over half, 49 of the county's 97 MDOT bridges were rated in poor, serious or critical condition, far and away the worst county.

"Saginaw County is literally a poster child for the worst roads and bridges across the entire state," said Mike Nystrom, vice president of public and government relations at the Michigan Infrastructure & Transportation Association (MITA). "This isn't a case of road agencies not doing their jobs adequately. Locals are literally starving for more dollars as state policymakers sit on their hands."

Adding insult to injury, Saginaw County received a measly three road projects totaling less than \$20 million from the federal stimulus package, while the needs are estimated to be in the hundreds of millions of dollars if not more. Nystrom credited state Senator Roger Kahn (R-Saginaw) with trying desperately to get more stimulus dollars for his local counties in the legislative budget process, but said, "you can't get blood from a turnip. Policymakers need to invest a lot more state money in our transportation system."

The MI Asset Management Council estimates that 346 miles of federal-aid eligible roads in Saginaw County are in poor condition. These numbers could easily double when other local roads are included.

MITA represents a broad spectrum of highway construction companies and suppliers that help build a better Michigan infrastructure from the bottom up. They have been a leading voice for securing

adequate transportation funding at the federal and state levels. For more information, visit www.mi-ita.com or www.drivemi.org.

4/2/2009 Statewide Pothole Contest Winners Announced

A coalition working to secure more funding to fix Michigan's roads and bridges today announced winners of a contest to identify the worst nerve-racking potholes in the state.

The judges chose award-winning potholes in Detroit, Muskegon, Saginaw and Haslett. To view the photos, visit www.drivemi.org.

"The stimulus was just approved for Michigan's roads, but it won't fill the potholes," said Mike Nystrom, vice president of government and public relations for the Michigan Infrastructure and Transportation Association (MITA) and co-chair of the Michigan Transportation Team (MTT). "We decided to give a few survivors of this year's pothole season their own private stimulus check."

The contest, sponsored by the Michigan Transportation Team (MTT), awarded \$318 "stimulus checks" to help offset vehicle repairs due to the poor condition of Michigan's roads and bridges. The winners were chosen from almost 50 entries from all over the state. Pothole winners were:

Service Drive on North M-10 & Howard, Detroit
Getty Street, Muskegon
Frost Drive, Saginaw
Marsh Road, Haslett

Due to plenty of rim-wrecking pothole pictures, the MTT also gave honorable mention recognition to a number of potholes across the state:

Marquette Woods Road, Royalton Township
Mudd Lake Road, Barry County
Lake Lansing Road, Lansing
Westbound 10 Mile Road between Evergreen and Lahser, Detroit
Outer Drive North of Ford Road, Detroit

The contest was part of an ongoing effort to educate policymakers that the federal stimulus money equals less than a third of Michigan's annual state transportation funding needs, as recommended by the bipartisan Transportation Funding Task Force. In addition, the stimulus will fund only individual shovel-ready projects, leaving many counties in the state without a single stimulus project.



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"No money will be available for pothole repairs and routine maintenance of Michigan's roads and bridges," Nystrom said. "Pothole-riddled roads will continue to be part of Michigan's legacy unless state lawmakers act now to provide a long-term source of state transportation funding."

MTT is a broad-based, bi-partisan partnership of business, labor, local government, associations and citizens linked with the common goal of improving Michigan's transportation infrastructure. The DriveMI campaign is committed to promoting the development and maintenance of a safe, convenient and efficient transportation network that serves the public, private and economic development needs of Michigan.

Please visit www.drivemi.org for more information on transportation funding.

3/27/2009 Michigan Legislature Approves Stimulus Funds for Roads; Long-term Road Conditions Still Bleak

Senate passage today of HB 4582 means Michigan will get its \$873 million share of federal economic stimulus funds for transportation, but it won't be enough to cover Michigan's long-term road funding needs.

"Michigan residents should applaud the legislature for their quick action, which will put people back to work and help fix some of our worst roads, but there is still much more work to be done," said Mike Nystrom, vice president of government and public relations for the Michigan Infrastructure and Transportation Association (MITA) and co-chair of the Michigan Transportation Team (MTT). "This stimulus is a Band-Aid, a one-time influx of cash. It was never intended, nor should it be considered, a long-term solution for Michigan's crumbling transportation infrastructure."

"The general public has been led to believe that the federal stimulus package would create jobs by investing in our nation's infrastructure. What most people don't know is that only three percent of the federal stimulus was devoted to our roads and bridges."

The federal stimulus money will fund only individual shovel-ready projects. No money will be available for pothole repairs and routine maintenance of Michigan's roads and bridges. Many communities will see no new dollars at all, leaving Michigan motorists to just "grin and bear it" while navigating pothole-riddled roads.

"Even if the state received this new money each and every year, it still would not be nearly enough to fund our actual needs," Nystrom said. It is less than a third of the funding increase recommended by the bipartisan Transportation Funding Task Force, which is an additional \$3 billion per year just to maintain existing pavement conditions.

The Michigan Department of Transportation estimates that there will be a steady decline in pavement conditions in Michigan even after the state spends the federal stimulus dollars.

Ironically, the 2010 state transportation budget, which is also winding its way through the legislature, actually cuts state dollars for road repair, \$344 million less than the current year's budget.

Failure to address transportation needs goes beyond road conditions, Nystrom said. Half of the states on OverDrive Magazine's recently released top 10 list of bad roads, including Michigan, have unemployment rates above the national average of 8.1 percent.

Nystrom said this fact highlights the importance of good infrastructure in a state's economic vitality.

MTT is a broad-based, bi-partisan partnership of business, labor, local government, associations and citizens linked with the common goal of improving Michigan's transportation infrastructure. The DriveMI campaign is committed to promoting the development and maintenance of a safe, convenient and efficient transportation network that serves the public, private and economic development needs of Michigan. For more information, visit www.drivemi.org.



3/17/2009 Poll shows support for investment in MI roads: 78 percent of Michigan voters say roads in poor or bad condition

Nearly three fourths of Michigan taxpayers are calling on the state government to invest in Michigan's crumbling roads, according to the results of a recent poll.

The latest Marketing Resource Group (MRG) poll found 70 percent of respondents say it is necessary to invest in Michigan's transportation infrastructure and spend more money on roads. Half of those polled, 50 percent, would also be willing to pay an additional \$5-\$10 a month to fix Michigan's roads and bridges to keep drivers safe, as long as they knew the money was guaranteed to specifically fund transportation projects.

"These numbers show it is time for Michigan's Legislature to act," said Mike Nystrom, vice president of government and public relations for the Michigan Infrastructure and Transportation System (MITA). "Our infrastructure is crumbling, and Michigan taxpayers no longer will settle for pothole riddled roads and unsafe bridges – they want an investment in our roads."

The MRG poll also shows that 78 percent of respondents feel that the current state of Michigan's roads are in poor/bad condition, with only 5 percent stating Michigan's roads were in good condition and 0 percent stating they were in excellent condition.

"Drivers across the state are feeling the effects due to the lack of transportation funding with every pothole they inevitably run over," Nystrom said. "This is the worst pothole season we have ever had and it is taking its toll on Michigan drivers. They are fed up."

Additionally the poll showed 80 percent of respondents agreed that fixing Michigan's crumbling roads and maintaining a safe transportation system would help bring jobs to Michigan and revive the struggling economy.

"While the stimulus money out of Washington has been helpful, it doesn't begin to address the full extent of the funding gap," Nystrom said. "The time is now to make a sound investment in Michigan's transportation system. If adequate long term road funding is truly a priority then the state Legislature must act now, before our roads become impassable."

METHODOLOGY

The poll was conducted by Marketing Resource Group between

Continues on pg. 65

MITA in the News

The following are excerpts of media coverage generated by MITA. Visit the news section of www.mi-ita.com to read entire stories.

4/22/2009 Saginaw News:

Price tag to fix street with state's worst pothole: \$168,000

Michelle K. Scott won \$318 for her photo of the state's worst road crater, but she's \$38 in the hole after subtracting the repair bill for her Chevy Blazer.

And if she wants Frost Drive truly fixed, Saginaw Township officials say, she'll need to shell out about \$5,700 more.

The Michigan Infrastructure and Transportation Association of Okemos awarded the worst pothole title to the Frost Drive cavity. Scott didn't have to go far to find it; the two-year-old pothole is in front of her home.

"You can hear people bottom out when they hit it," said Scott, 35.

"Two weeks ago, a Waste Management truck got stuck in the hole. The county came out last week and literally dumped white stones into the hole and put up a barricade."

Vehicles hurl stones onto Scott's property. One punched a hole in the radiator of her 2002 Blazer. To make matters worse, drivers are using Scott's driveway to get around a barricade, creating dust clouds and spewing rocks further into her yard.

Scott said she is so fed up, she's sending a copy of the repair bill for her Blazer to both the county and the township.

"The township blames the county, and the county blames the township," she said...

4/22/2009 WNEM Saginaw:

Saginaw County Wins Bad Roads Trifecta

Saginaw County won a statewide contest for the worst pothole for the second consecutive year, in addition to their 2008 award for the state's worst bridges.

This series of bad luck and three statewide awards has now earned the county a "Bad Roads Trifecta," the Okemos-based Michigan Infrastructure and Transportation Association announced Monday.

Saginaw resident Michelle Scott received a \$318 award last week when she submitted an award-winning pothole photo of Frost Road in Saginaw Township, where a huge section of asphalt is crumbling so bad that dirt can literally be seen where pavement should be.

Last July, MITA announced that Saginaw County had the worst bridges in the entire state.

Over half, 49 of the county's 97 MDOT bridges, were rated in poor, serious or critical condition, far and away the worst county.

"Saginaw County is literally a poster child for the worst roads and bridges across the entire state," said Mike Nystrom, vice president of public and government relations at the Michigan Infrastructure & Transportation Association. "This isn't a case of road agencies not doing their jobs adequately. Locals are literally starving for more dollars as state policymakers sit on their hands."

Adding insult to injury, Saginaw County received a measly three road projects totaling less than \$20 million from the federal stimulus package, while the needs are estimated to be in the hundreds of millions of dollars, if not more.

Nystrom credited state Sen. Roger Kahn, R-Saginaw, with trying desperately to get more stimulus dollars for his local counties in the legislative budget process, but said, "you can't get blood from a turnip. Policymakers need to invest a lot more state money in our transportation system..."

3/27/2009 Detroit News:

Michigan roads to get \$847 million boost

Lawmakers have given final approval to legislation necessary for the state to spend \$847 million in federal stimulus money on road projects throughout the state.

The legislation was approved 37-0 by the Senate on Thursday. Sen. Roger Kahn, R-Saginaw Township, who objected that his district is getting short shrift, held his nose while voting in favor of the bill...

3/27/2009 NBC 25:

Stimulus Funds are a Band-Aid

Senate passage today of HB 4582 means Michigan will get its \$873 million share of federal economic stimulus funds for transportation, but it won't be enough to cover Michigan's long-term road funding needs...

3/27/2009 Livingston County Press:

Michigan roads among worst in nation

According to Overdrive Magazine's "Highway Report Card," roads in Michigan are the third worst of any state.

Louisiana earned the dubious distinction of having the worst roads, followed by Pennsylvania and then Michigan. Among the ten worst roads individually, Interstates 75 and 94 in Michigan ranked Nos. 9 and 10, respectively.

The quality of our roads remains low because our state government's commitment to our roads remains low," said Mike Nystrom, vice president of Government and Public Relations for the Michigan Infrastructure and Transportation Association and co-chair of the Michigan Transportation Team...

3/26/2009 WDIV:

The Nation's Worst Roads

DING DING DING! You guessed it MICHIGAN is on the list for having some of the worst roads in the nation according to Overdrive Magazine's Highway Report Card...

3/26/2009 MITA:

MI has 3rd worst roads in nation

According to Overdrive Magazine's Highway Report Card, Michigan's roads are ranked the third worst in the nation...

3/16/2009 Detroit News:

Michigan highway projects at risk

Despite the flow of economic stimulus money to Michigan, the state will come up way short of the money it needs for roadwork by 2011, if policymakers don't find a way to add hundreds of millions of dollars to the road funding pot.

Declining state revenue from the main road repair revenue sources -- fuel taxes and vehicle registration fees -- put the state at risk of allowing more and more roads to slide into disrepair before stimulus money will temporarily come to the rescue...

3/10/2009 Detroit News:

Gov backs gas tax change

Gov. Jennifer Granholm Wednesday ramped up her support for changing the state gasoline tax from a flat 19 cents a gallon to a proportional rate that would raise more money for road repairs as gas prices rose.

Granholm, speaking to reporters, said Michigan's roads "are the pits."

"We have no long-term funding source to make sure the roads are smooth," she said.

"What we want to do is take the tax that is right now a flat tax and transform it into a percentage tax..."

2/19/2009 WILX-TV:

Pothole Hell Video Shows Awful Roads

When the mission to fix potholes hits a-- well, pothole-- take your case to the Internet.

The Michigan Infrastructure and Transportation Association has been on this crusade to get lawmakers to boost transportation funding. It's taken its pothole contest to another level.

MITA produced and posted a video on YouTube.com. It's a ride-along look at some of the worst roads in the state-- including Michigan Avenue and Willow Street in Lansing. There's also good stuff from Detroit.

"We didn't have to search far and wide to find these (potholes)," said Mike Nystrom, spokesman for MITA.





With Governor Granholm in the center of the photo on stimulus billing signing day March 31. Pictured from left to right are Sarah Hubbard from the Detroit Regional Chamber of Commerce; Ed Noyola, County Road Association of Michigan; Kirk Steudle, Michigan Department of Transportation; John Neimela, County Road Association of Michigan; Dave Worthams, Michigan Municipal League, Keith Ledbetter and Mike Nystrom, MITA; and Dennis Gillow, Operating Engineers Local 324.

Granholm Signs Legislation Authorizing \$873 Million in Recovery Funding for Road Projects

Governor Jennifer M. Granholm signed legislation March 31 authorizing Michigan to spend \$873 million of federal recovery money on hundreds of road and transit projects across the state that will create or sustain approximately 25,000 jobs. Mike Nystrom and Keith Ledbetter of MITA attended the bill signing, and Nystrom commented on the short-term impact of the legislation and the need for long-term state funding.

The legislation authorizes Michigan to spend \$873 million in money from the American Recovery and Reinvestment Act (ARRA) for a range of "shovel-ready" projects such as road resurfacing, rehabilitation and widening, bridge rehabilitation, and transportation enhancement projects. The projects were chosen by planners, engineers, and local leaders and cover every region of the state.

The bill allows spending of a total of \$873 million for Michigan transportation, with \$635.4 million directed to the state trunkline (US, I and M routes) fund, \$211.8 million directed to programs administered by local jurisdictions, and \$25.8 million directed to rural and intercity bus capital projects.

Just a few examples of projects include repair of 11 bridges over I-96 in Detroit (\$22 million), reconstruction and widening of I-96 in Kent County (\$30 million), and road reconstruction and bridge work on I-475 in Genesee County (\$26 million).

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have placed around you. My personal feeling is that MITA is the best run contractor organization that anyone could belong to in the U.S.

Scott Bazinet

Lowes Construction Company, Inc.

Dear Glenn:

Thanks for your help. We just received word that our waiver was approved. Thanks again.

Tim Balkema

Balkema Excavating, Inc.

Dear Rob:

Please accept and pass along my sincere appreciation to Danielle, Stacey and your staff at the MITA office that assisted with the Michigan Laborer's Fringe Benefit Funds' Joint Delinquency Committee Meeting, the Michigan LECET Fund's Board of Trustees' Meeting and the Michigan Laborers' Training & Apprenticeship Fund's Board of Trustees' Meeting held on February 5, 2009. You and your staff's assistance to the details of the room preparation, refreshments and meals, etc., contributed to very productive meetings.

Once again, thanks for your assistance and hospitality.

James E. Schreiber

President

TIC International Corporation

Dear Rob and Pat:

Thank you for lunch and meeting with us today. Our application for membership will be in the mail later today. I look forward to working with you. I will see you Thursday. Thanks again!

Rachel M. Snyder

BCT Benefits

Dear Rob:

I just wanted to let you know that I thought your presentation was superb! It was right on target and I know Pam was grateful for your added reinforcement of the tender subject.

Kathy Boger

Anderzack-Pitzen Construction

Dear Pat:

Just a note to thank you for the excellent presentation on construction safety last week.

I received very positive feedback from my staff as well as staff from Troy, Hazel Park, Royal Oak, our road contractor (Dilisio Contracting) and our consulting engineers - Nowak & Fraus. The 39 participants were treated to an informative and comprehensive safety review.

I appreciate your time and effort to provide this vital training to our

staff at no cost. In this era of tight budgets, such opportunities are greatly appreciated! Again, thank you for a great program!

Jim Schafer

Community Development Director, City of Madison Heights

Dear Bob:

During such difficult economic times it is comforting to know that people and organizations like yourself exist. On behalf of the entire D.W. Hill Company we wish to take this opportunity to extend our heartfelt gratitude for your patient, understanding and successful resolution to our grievance.

We are positive that your experience was a key element to the settlement that was achieved.

Dean Hill

D.W. Hill, Inc.

Dear Rob:

Thanks for coming to Grand Rapids and addressing our staff last week. You had mixed reviews (we expected that), but I also received many compliments about your presentation. It was good for us to see MITA's view on safety and what you are doing to improve safety for your members. It's all good.

Thanks again.

Patricia Meyer

Safety Manager, Construction Safety and Health Division, MIOSHA



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PROBLEM *Solver*

Utility Issue

During a routine HMA mill and fill operation, a MITA Contractor member unknowingly cut a service lead that was buried within the HMA pavement. The damage to the lead was immediately discovered but was assumed abandoned since it was located within the asphalt layers. Only after a homeowner approached the contractor and informed him of the loss of power did they realize the line was live. The contractor promptly contacted the utility company and soon the power was restored.

A few weeks later, the contractor received an invoice for the damage to the electric facility. Because the contractor had not called in a MISS DIG ticket, the utility company was holding the contractor responsible for the cost of the repair. According to the MISS DIG Act, a contractor is required to obtain a dig ticket when excavating and the utility company was considering the milling operation "excavating."

This is when MITA became involved. MITA's Engineers promptly contacted the utility company and made the point that a milling operation is not excavation and does not warrant a dig ticket. After a few lengthy discussions, the utility company agreed with MITA and the invoice was canceled. MITA has developed great working relations with many of the utility companies and stands ready to help resolve issues that surface during the everyday course of a project.

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of the contract, both before signing (indeed at the time of bidding), as well as during its execution. As anyone who has attended our seminars and listened to us over the years, already know that this knowledge must not just be limited to senior management at the home office. The estimators know their underlying bid assumptions, and must effectively communicate that information to the site supervisors who will deal with the day-to-day work. How else will they know if the actual conditions and circumstances on the project differ materially from the assumptions in the bid? Similarly, the administrative staff must know what subcontractors are expected on the project, and the site supervisors must keep the administrative staff fully informed of who is working on the project to ensure that proper waivers associated with pay requests are obtained. In short, everyone in the company must fully understand the requirements of the contract to ensure that the company faithfully performs the contract.

The increasing use of standard documents and specifications has gone a long way to assist the parties to fully understand the contract requirements, and thereby avoid disputes through simply misinterpretation. Yet, those dastardly lawyers and consultants continue to revise those documents to defeat the desired uniformity. So three simple rules can be promulgated to avoid disputes:

1. Know exactly what the contract requires – READ the entire contract, not just the technical specifications.
2. Do what the contract requires, but without interference.
3. Don't do anything else without proper documentation.

Claim Identification

As any grey-haired, grizzled "old timer" will tell you, in the "old days" constructing roads and infrastructure projects and the associated engineering works were less complicated, of conventional design, and required less specialized subcontract work. Moreover, profit margins were higher and contract prices often included contingencies. As a re-

sult, relationships between the Owner, Engineers and the Contractor, as well as between the Contractor and its subcontractors, were much closer and less formal. "Horse trading" on claims was not unusual, and the parties tended to work on a handshake. "Back then"... the history

Continues on pg. 43



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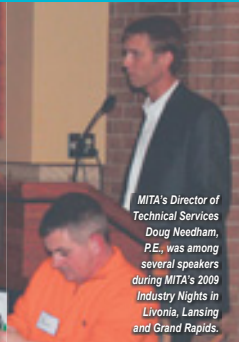
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MITA INDUSTRY

The 2009 Industry Nights provided a chance for interaction between MITA members, owner agencies and engineering firms. During our three Industry Nights (Grand Rapids, Livonia, Lansing), members networked and learned about project details from MDOT, municipalities, county road commissions, county drain commissions and engineering firms. In addition, a state funding initiative PowerPoint presentation was discussed by Mike Nystrom, MITA's vice president of government and public relations.

MITA members received a 2009 Planned Project Catalog detailing construction projects from throughout the state that are expected to be bid in 2009 and 2010. This living document can change due to numerous circumstances, such as environmental issues, right-of-way problems, permit delays, funding shortfalls, etc.

If you have any questions or would like to receive a copy of the 2009 Planned Project Catalog, contact either Glenn Bukoski, P.E., or Doug Needham, P.E., via e-mail (glennbukoski@mi-ita.com, douglasneedham@mi-ita.com) or call the MITA office at 517-347-8336.



TOP PROJECTS 2009-2010

The following chart shows some of the state's top submitters could not provide estimated costs so

SUBMITTER	AGENCY/JURIS	PROJECT/ROUTE	LOCATION
BCATS	Bay City	Independence Bridge	Over Saginaw River & Martin St.
BCATS	Bay City	Liberty Bridge	Vermont to Woodside over Saginaw River
GCMPCC	MDOT	I-69	M-24 to M-15
GVMC	MDOT	I-196	Grand River east to Fuller Ave.
JACTS	MDOT	I-94	Under Dettman Rd. & Hawkins Rd.
KATS	MDOT	I-94	West County Line to 12th St.
MACC	MDOT	GPA Local Bridge	Area-wide
SMATS	MDOT	I-675	26 bridges in Saginaw
SEMOG	MDOT	M-85	Over Rouge River, Detroit
TCRPC		Capital Preventative Maintenance (Highways)	Regionwide
WATS	MDOT	M-52	Dutch to I-94
RFT	Barry	Finkbeiner/Crane	Pttrsn-Whntvl
STH	City of Detroit	Hayes Tower Rd.	
Local Agency High Risk Rural Roads Program	Midland County Road Commission	Freeland Rd.	At Sasse Road
MDOT Local Bridge Program	St. Clair County	Wadhams Rd.	Black River (Capped Project)
MDOT Small Urban Program	Hillsdale	Mechanic Rd.	Industrial Dr. to Lake Wilson Rd.
Alpena County Road Commission	Alpena CRC	Ripley Blvd.	Grant St. to US-23
Ingham County Road Commission	Ingham CRC	Williamston Rd.	City of Williamston to Haslett Rd.
Kent County Road Commission	Kent CRC	Musketawa/White Pine Trl.	8th Ave. to W. River Dr.
Road Commission of Macomb County	RCMC	Metro P	Garfield to Groesbeck
Road Commission for Oakland County	City of Novi	Novi Rd.	10 Mile to Grand River
DWRF	St. Clair County		Port Huron
SRF			Detroit
Hubbell, Roth, Clark	City of Howell	Multi Year Rd. & DWRF Infrastructure Improvements	
Orchard, Hiltz & McCliment, Inc.	Bloomfield	Orchard Lake Rd.	From 14 Mile to Maple
Spalding DeDecker Associates	Pontiac	M-59-Widetrack to Opdyke	M-59
Wightman Jones, Inc.	City of Albion, Calhoun County	Woodlawn Blvd./Crescent Dr./Manor Dr. Reconstruction Project	
Oakland County Water Resource Commissioner	Oakland CWRC	Evergreen-Farmington Sewage Disposal System & Clinton-Oakland Sewage Disposal System Rehabilitation Project	

NIGHTS 2009



MITA Vice President of Engineering Services Glenn Bukoski, P.E., spoke during MITA's Industry Nights.



Greg Pease of Michigan CAT and other MITA members enjoyed networking at MITA's Industry Nights.

p projects for 2009 based on estimated costs submitted for MITA's 2009 Industry Night Planned Project Catalog. Some their largest projects are not included on this chart.

DESCRIPTION	COST
Painting and rehabilitation	\$1.5 million
Painting and rehabilitation	\$1.5 million
Concrete reconstruct	\$34 million
Concrete reconstruct	\$16.6 million
Trunkline safety	\$1.8 million
Construct median cable barrier	\$1.1 million
GPA local bridge	\$1.4 million
Deep overlay	\$17 million
Replace bridge	\$48 million
Repair and rebuild	\$6.4 million
Milling and HMA resurfacing, joint and crack repair	\$8.9 million
Road work	\$2.1 million
Retrofit pedestrian signals with countdown timers, add push buttons and signal retiming	\$581,000
Widen for right turn lanes, relocate/extend culvert beyond clear zone, access mgt., and add flashing beacon	\$500,000
Replace	\$6.7 million
Reconstruct	\$1.1 million
Remove HMA; place concrete pavement	\$450,000
Cold-in-place reclamation, add paved shoulder & resurface	\$1 million
Construct 10 ft wide non-motorized path including earthwork agg, Base and HMA paving, and 3 pedestrian bridges	\$2.5 million
6 lane boulevard	\$8.6 million
Grade separation	\$17 million
Replace mains; looping (future phases)	\$22 million
CSO; URT/okwd sewers future segments	\$672 million
3 miles R&R HMA paving, intermittent C&G, intermittent storm	\$6.4 million
5 lane concrete reconstruction	\$6 million
Shoulder replacement, patch and overlay. Programmed for 2010 but may get moved to 2009.	\$10 million
0.5 miles of reconstruction including storm sewer, water main replacement, concrete curb and gutter, underdrains and HMA pavement	\$550,000
Sanitary sewer construction – sump pump/footing drain disconnects and sanitary sewer and house lead rehabilitation. Quantities to be determined.	\$6 million

CONTRIBUTORS TO THE MITA'S 2009 INDUSTRY NIGHT PLANNED PROJECT CATALOG

Metropolitan Planning Organizations (MPOs)

Bay City Area Transportation Study (BCATS)
 Genesee County Metropolitan Planning Commission (GCMPC)
 Grand Valley Metro Council (GVMC)
 Jackson Area Transportation Study (JACTS)
 Kalamazoo Area Transportation Study (KATS)
 Macatawa Area Coordinating Council (MACC)
 Saginaw Metropolitan Area Transportation Study (SMATS)
 Southeast Michigan Council of Governments (SEMCOG)
 Tri-County Regional Planning Commission (TCRPC)
 Washtenaw Area Transportation Study (WATS)

Rural Task Force (RTF)

Local – Rural Task Force

Michigan Department of Transportation

MDOT Bay Region
 MDOT Grand Region
 MDOT Metro Region
 MDOT North Region
 MDOT Southwest Region
 MDOT Superior Region
 MDOT University Region
 MDOT "Big Bridge" Projects

Local Agency Projects

MDOT Local Agency Safety (STH) Program
 MDOT Local Agency High Risk Rural Roads Program
 MDOT Local Bridge Program
 MDOT Small Urban Program

County Road Commissions

Alpena County Road Commission
 Ingham County Road Commission
 Kent County Road Commission
 Road Commission of Macomb County
 Road Commission of Oakland County

Department of Environmental Quality

DEQ Drinking Water Revolving Fund (DWRP)
 DEQ State Revolving Fund (SRF)

Consultants

Hubbell, Roth & Clark (HRC)
 Orchard, Hiltz & McCliment, Inc.
 Spalding DeDecker Associates
 Wightman Jones, Inc.

Drain Commissions

Oakland County Water Resource Commissioner (Oakland CWRC)

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Ajax Paving Industries, Inc.

The National Safety Council (NSC) announced recently that Ajax Paving Industries has been honored with an Occupational Excellence Achievement Award for reporting injuries and illnesses that involved days away from work equal to or less than 50 percent of the BLS rate for their 6-digit NAICS code. This award is a component of the National Safety Council's member-exclusive Occupational Award Program, created to recognize outstanding safety achievements among members.

As an award winner, Ajax has helped set the standard for what the National Safety Council considers to be the best of the best in safety and safety performance.

For additional information on the Occupational Excellence Achievement Award and other member recognition programs, contact the National Safety Council's Motivation and Recognition Department at 800-621-7615, ext. 2366, or visit www.nsc.org.

Contractors Rental Company

Contractors Rental Company, the rental company for AIS and JDE, held town hall style meetings in February during which MITA staff spoke about the economic stimulus package. The February 25 meeting was held at the JDE New Hudson branch, at which Keith Leibetter, MITA's director of legislative services, spoke. Mike Nystrom, MITA's vice president of government and public relations, spoke February 26 at the JDE Grand Rapids branch. Dave TerBeek from CRC decided to go out of his way to order a special cake, pictured below, which was appreciated by all attendees.



Fishbeck, Thompson, Carr & Huber, Inc. Announces Corporate Merger

Fishbeck, Thompson, Carr & Huber, Inc. (FTC&H), and Wetland and Coastal Resources (WCR) have announced the two companies merged in January 2009. WCR principals and staff joined FTC&H in their Lansing, Grand Rapids, and Farmington Hills offices.

FTC&H is a professional engineering, environmental, architectural, and construction management firm. WCR is an environmental consulting firm specializing in ecological services.

G2 Consulting Group

www.g2consultinggroup.com

G2 Consulting Group is a full-service engineering firm serving Fortune 500 companies, major utilities, property owners, government agencies and leading architectural, engineering and construction firms across the United States. Based in Troy, Mich., G2 also has offices in Brighton, Mich., and suburban Chicago, Ill.

NEW CONTRACT

The Michigan Department of Transportation awarded a three-year "indefinite delivery of services" (IDS) contract to G2 Consulting Group, a geotechnical, environmental and construction services engineering firm based in Troy, Mich.

The IDS contract allows MDOT staff to call on G2 to provide engineering services for Michigan highway and road projects on an as-needed basis from Jan. 1, 2009, through Dec. 31, 2012, in an amount not to exceed \$4 million over the contract's duration.

The contract covers services that MDOT previously prequalified G2 to deliver, including:

- Asbestos investigations
- Aggregate inspection and testing
- Bituminous pavement inspection
- Density testing and inspection
- Engineering assistance
- Geotechnical engineering services
- Portland cement concrete inspection and testing
- Site investigation

In 2008, G2 was one of the first consulting engineering firms to submit information for MDOT's then-new consultant prequalification process.

"Our MDOT prequal assures clients that G2 has the necessary systems in place to provide accurate and precise testing and reports. It all adds up to higher quality information, fewer errors and ultimately, better projects," says Dave Wanlass, the G2 project manager who oversees all G2's MDOT work.

Hubbell, Roth & Clark, Inc.

www.hrc-engr.com

Hubbell, Roth & Clark, Inc. is pleased to announce the relocation of its Howell office from 3399 Grand River Avenue in Genoa Township to 105 W. Grand River in the City of Howell.

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These men and one woman are all from the National Guard. They posed inside the plane with one of Rain for Rent's Sound Attenuated Power-Prime™ pumps as it was about to be flown out with a whole fleet of Rain for Rent's flood-relief equipment to recent floods in North Dakota.

E.C. Levy Co.

www.edwclevy.com

S. Evan Weiner, executive vice president and chief operating officer of Edw. C. Levy Co., has succeeded William Clay Ford Jr. as chairman of The Henry Ford in Dearborn. Ford is stepping down after 13 years in the role.

Weiner joined the board in 2004. He serves on the boards of several other non-profits: Junior Achievement of Southeastern Michigan, Beaumont Foundation, The Parade Co. and the Cultural Alliance of Southeastern Michigan. He is also a member of the national council of the American Israel Public Affairs Committee and co-chairman of the Government Relations Oversight Committee of the Jewish Federation of Detroit.

The Henry Ford includes Henry Ford Museum and Greenfield Village, which hosts 1.5 million visitors annually.

Rain for Rent

www.rainforrent.com

EMERGENCY RESPONSE TO RED RIVER FLOOD, ND

Rain for Rent's Michigan Branch was on stand-by to send equipment, and there was emergency response support from other Great Lakes branches in Minnesota and Illinois.

On March 27, 2009, the Red River, which flows north from Southeast North Dakota into Canada's Lake Winnipeg, reached water levels that hadn't been seen in 112 years due to rain, snow, and ice that had been collecting in the river. In 1897, the Red River rose to 40.1 feet, and on March 27 it was at 40.63 feet, and was expected to crest to 43 feet on Saturday, March 28, at 24 feet above flood level.

Known throughout the Midwest to be liquid-handling solution experts, Rain for Rent deployed their North Dakota Sales Representative to the scene of the flood where the Fargo Public Works Director was communicating with the governor of North Dakota. This resulted in the governor's request for eight industrial Power Prime™ pumps to be flown into Fargo, N.D., from a Rain for Rent branch in Wyoming.

The pumps originated in Rifle, Colo., where two hours from the airport they were challenged by heavy snow and required a police escort and three snow plows to get through snow-covered roads in order to be loaded in Casper, Wyo. One C-130 military plane has been dedicated to

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make three round trips from Casper, WY, to Fargo, ND. The initial flight arrived at the Fargo airport around 7 p.m., Friday, March 27, with cargo consisting of:

- Eight 12" DV300 Power Prime™ Pumps to handle 6,500 GPM

- Two Rain for Rent service trucks

- Five Rain for Rent installers and mechanics from

Rain for Rent's Rifle, CO branch

- Pipe, hose and fittings

The Rain for Rent crew and National Guard, among others, were scheduled to work in 24-hour shifts installing the pumping systems to help save the city from potential destruction. Skilled and dedicated personnel were recruited from around Rain for Rent's national locations including their SWAT (Sewer & Water A-Team) division: installers and mechanics from the Rifle, Colo., Minot, N.D., and Minneapolis, Minn., branches.

To alleviate the flooding and high water, the Power Prime™ pumps will be set on levees and in neighborhoods where the water will be pumped away from the communities and into the Red River that flows north into Lake Winnipeg. The concerted effort of the local inhabitants and volunteers were tremendous. In six days, six million sandbags have been loaded, transported, and hand-stacked to protect property! A Rain for Rent Sales Representative described the situation, "It's a life and death drama, yet with a 'Get 'er done' attitude that typifies the Midwest."

Rain for Rent's Minneapolis, Minn., branch personnel were in Fargo, ND, since March 9, participating in flood preparedness meetings with USACE, FEMA, State, County and the City of Fargo's Director of Public Works in attendance.

An original pump order placed two weeks ago before the incident was for seven pumps; at crisis time there were thirty-eight pumps (20 DV150, 10 DV200, and 8 DV300 Power Prime™ pumps) in Fargo capable of moving 150,000 GPM.

Rain for Rent's Midwest branches have been providing flood emergency response throughout the region, including providing a 2,500 GPM pumping system to draw down the waters in the City of Davenport, ND, and a 30 MGD bypass system for the city of Ft. Wayne, Indiana.

For sales and rental inquiries, contact Rain for Rent, available 24/7, nationwide, at 800-742-7246, or visit us online at rainforrent.com.

Rieth-Riley Construction Co., Inc.

www.riethriley.com

Goshen, Ind., based Rieth-Riley Construction Co., Inc. is one of the largest paving contractors in the United States. The company's operations presently extend throughout Indiana and Michigan, with asphalt, concrete and aggregate plants throughout these markets. A wide range of site preparation and paving services are provided to public and private customers. Rieth-Riley is also among the largest and most successful of the nation's employee-owned businesses

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MANAGEMENT CHANGES

Rieth-Riley recently announced management changes. A. Keith Rose became president, effective April 1, 2009. He replaces Ronald G. Pope, who will continue to serve as chief executive officer.

Rose joined the Rieth-Riley organization in 1999 as vice president Michigan operations. Following several successful assignments, he began his most recent appointment as executive vice president operations, with the primary responsibilities of the day-to-day operations of the company. His achievements include significant growth in current and new markets, as well as the type and scope of contracted work. The growth has been achieved by internal expansion, acquisition and vertical integration. Prior to joining Rieth-Riley, Rose was area manager for Kinsley Construction, Inc., in York, Pa.

Also included in the management change is the promotion of Brian A. Inniger to corporate executive vice president. Inniger has been with Rieth-Riley since 1996, beginning his service to the company as controller. He was promoted to vice president finance/administration in 2001. He has had responsibility for finance/administration, human resources, risk management and safety.

ACQUISITION

Rieth-Riley Construction Co., Inc. acquired the Michigan and Indiana paving and construction assets of Aggregate Industries in February. This new acquisition will further strengthen Rieth-Riley's position in the southwest Michigan and northwest

Indiana markets and allow Rieth-Riley to maintain a strong level of service to their customers.

The five newly acquired properties will be merged with Rieth-Riley's current operations in these markets. Keith Rose, executive vice president operations, stated: "In spite of the current economic conditions in this area, we continue to be committed to the markets, our customers and our employees in these regions. We are excited about the opportunities we can further provide our customers in lower cost and continued quality as a result of this acquisition."

Testing Engineers & Consultants, Inc.

www.testingengineers.com

With offices in Detroit, Ann Arbor and Troy, TEC, a Detroit-based and woman-owned enterprise, provides professional environmental, geotechnical, building and infrastructure engineering consulting, and construction materials testing and inspection services.

The Detroit Public Schools Department of Contracting and Procurement has renewed Testing Engineers & Consultants' (TEC) contract to provide as-needed environmental consulting services at various facilities throughout the school district.

The annual contract includes asbestos, mold and lead base paint management; indoor air quality; environmental site assessments; and underground and above ground storage tank management services.

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lesson continues ... a man's word was as good as gold – contractors and engineers honestly promised to “take care of it at the end.”

That was then...this is now. Greater competition has reduced profit margins. No one who wants to be the low bidder dare include a contingency in a bid price. Engineers are competing for projects, and thus feel “pressured” to bring projects in “on budget” or risk losing the client and gaining a reputation as “contractor-friendly”. Tightening credit and lessened tax revenues have made Owners much more anxious to hold down original capital outlay, and avoid additional costs. Owners demand certainty, and therefore their minions have revised owner-consultant agreements to take control of funds out of the consultant's hands. Those same shadowy figures append Special Conditions to standard contract forms to transfer increased liability to the contractors and subcontractors, as well as require more onerous warranties.

All of these factors give rise to a greater possibility for disputes over claims. A successful Contractor must be vigilant to recognize the situation and deal with it in a realistic, positive and sensible manner. Today, the phrase “we’ll take care of it at the end” rarely is a promise to resolve amicably the claims, but either is a threat or an invitation to waive your claims. A prudent Contractor must identify claims as they arise, document them properly, and present claims to the Owners timely. Moreover, a Contractor must appreciate the Owner's economic tensions, and tirelessly work to resolve claims before they pile up and ripen into disputes.

Sources of Dispute

Theoretically, any clause in the contract could become the basis of a claim. Yet, claims may be generally identified as falling into one of the following main groups:

1. **Differing Site Conditions.** As previous articles have discussed, a DSC Claim arises from conditions in the field that differ materially from those represented by the contract documents, or known at the time of bidding on the work, such as different soil conditions, or unknown

obstructions etc.

2. **Additional work.** Minor changes in work inevitably occur on every construction project, and virtually every contract contains provisions governing them. A minor adjustment in the construction drawings, a change in material, potential value engineering, or a

Continues on pg. 48

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Michigan Contractor & Builder Closes: MITA is MDOT approved Advertisement Location for DBE quotes

After the publication of the April 20, 2009 issue, the Michigan Contractor & Builder magazine went out of circulation. The closing of this publication left a void when soliciting for DBE quotes in an effort to fulfill MDOT's Good Faith Effort. As many of you are aware, the MITA website is an MDOT approved advertisement location for your Good Faith Effort.

You may submit ads for this site by submitting the adjacent forms, which are also located on the MITA website at http://www.mi-ita.com/news_2.asp?page=news

&disp=2&id=2123&type=8.

And just as a reminder, we want to let contractors know they can view upcoming projects on the MITA Ads website (www.mitaads.com). The site is up and running and will continue to see an influx of project advertisements due to the closing of MC&B. If you have other specific questions, please contact either Stacey Willis (staceywillis@mi-ita.com), or Doug Needham, P.E., (douglasneedham@mi-ita.com) or call them at the MITA office: 517-347-8336.



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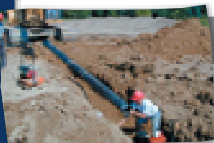
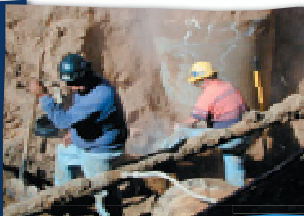
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WHAT'S WRONG WITH THIS PICTURE:

With the state receiving so much stimulus money for roads and bridges, why do they keep asking for more???

The Washington politicians told the general public that they would stimulate the economy by investing in our nation's infrastructure. Yet, only three percent of the stimulus package went for roads and bridges!

How much will the federal money help the state trunkline system? In the chart below, the black line shows the expected deterioration of pavement conditions over the next five years due to the state's collapsing road funding system. The pink line shows the expected pavement conditions even after the stimulus dollars. The one-time stimulus is less than a third of what is estimated to be needed every year.



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Avoiding Disputes On Claims

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design error, among a myriad of other reasons, can result in a scope change. Because such changes are considered usual and normal, the Contractor and the Owner often pay little attention to the applicable provisions in the contract, the impact of the change on other work, and the actual cost of the scope change. Yet, scope changes are one of the most fertile grounds for disputes in the industry.

Formal change orders under the usual provisions of a construction contract can resolve certain cost issues if scope changes occur. However, if a Contractor has not realized the impact that a scope change has on other work, a formal change order may result in a Contractor unknowingly release the Owner from delay, disruption, or acceleration changes. These claims may account for substantially more cost recovery than the actual cost of performing the scope changes. A Contractor who unwittingly waives a claim may feel the Owner has "trapped" him, and a dispute may boil over. It is therefore imperative for the Contractor to understand the change order provisions of the contract as well as appreciate the full impact of a scope change on other work.

3. Delays. A delay, in its most basic form, involves an increase in the time needed to complete the project beyond what was contemplated at the time the contract was signed. There are generally two types of delays: excusable and nonexcusable. Excusable delays

are beyond the Contractor's control. Excusable delays may either be compensable or noncompensable. It is generally foreseeable that there will be delays in completing almost any construction contract, and a Contractor will not be compensated for delays that are simply the result of increased difficulty of completion. In fact, the courts have ruled that contractors assume the risk of "reasonable" delays on projects. However, delays caused by owner interference, or by one of its agents, would be both excusable and compensable. A prime example is failure to give access to the site of the work in a timely way, or failing to coordinate the activities of multiple contractors. An Owner may cause a compensable delay by providing defective drawings, or failing to approve shop drawings in a timely manner.

Nonexcusable delays are the fault of the Contractor, who may be liable in damages to the Owner. These damages may be computed based on the Owner's actual damages suffered as a result of the delay, or may be computed as contractually stipulated liquidated damages.

Most standard contracts contain "no damage for delay" clause that provides a list of excusable but noncompensable delays. For instance, the clause typically provides that delays caused by labor disputes may be excusable but not compensable. Delays caused by labor shortages, however, may be nonexcusable. Usually the clause attempts to insulate the Owner from damages due to its interference, but that portion of the clause is not enforceable. Generally speaking, a delay beyond the control of both parties will be excusable and noncompensable.

4. Contract time. Claims for acceleration and disruption either involve a change in the time anticipated for the performance of the contract, or a change in the manner anticipated for performance. Each claim has its own distinct elements. Acceleration involves a speeding up of the work process. When a project is accelerated, the work is accomplished in less time than was originally anticipated or budgeted. The Contractor is usually expected to overcome this "shorter" construction period by working overtime, hiring additional crews, or both. Equipment and supervisory costs typically increase when a project is accelerated. Acceleration claims may arise when the Owner directs the Contractor to speed up the pace of the work. If the Owner is responsible for the schedule slippage that must be overcome, the Owner is responsible for the acceleration costs. The Owner may also constructively accelerate a project by forcing the Contractor to increase the pace of the work to meet a project schedule that has not been extended. Although the Owner may not directly order the Contractor to accelerate, the Owner effectively does so when it requires the Contractor to complete the project under the original timetable, even though an excusable delay has caused the work to be completed in less than the originally budgeted time or duration. For example, an Owner's instruction to incorporate additional work without a corresponding time extension, especially if the work is on the critical path, is tantamount to an instruction to accelerate

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Michigan's Top Engineering and Surveying Projects Recognized at Annual Excellence Awards Ceremony

The American Council of Engineering Companies of Michigan (ACEC/M) and the Michigan Society of Professional Engineers (MSPE) recently honored 12 firms and six individuals for engineering and surveying excellence during the associations' annual awards ceremony.

On February 28, industry professionals and guests gathered at The Inn at St. Johns in Plymouth to recognize outstanding Michigan engineering and surveying projects from the past year. Since 1965, firms have competed to receive ACEC/M's and MSPE's top honor – the prestigious Eminent Conceptor Award.

This year's engineering Eminent Conceptor winner was Grand Rapids-based URS Corporation for the new interchange project along I-96 at 36th Street in Cascade Township. The interchange ties into the extension of 36th Street, providing improved access into the area surrounding Gerald R. Ford International Airport.

The surveying Eminent Conceptor winner was Saginaw-based Spicer Group for the innovative US-141-MDOT Design Survey in Iron Mountain. Spicer used 3D depth-sounding equipment, laser scanning-technology and conventional surveying techniques to collect data that allowed its client to observe a hydraulic model and structure scan of the bridge on a computer and view hundreds of types of measurements.

Five firms were honored with the Honorable Conceptor Award, the second-highest award of achievement: Fishbeck, Thompson, Carr & Huber for the Delta Township District Library project; Wade Trim for the Van Buren Equalization Basin and Forced Main project in Van Buren Township; NTH Consultants for the Detroit River International Crossing project in Detroit; RS Engineering for the M-63 Bridge over Higman Park Road Reconstruction in St. Joseph, Benton Harbor and Benton Township; and ROWE Professional Services Company for the Lincoln Bridge Replacement project in Cheboygan.

Three Merit Awards for engineering were presented: Tetra Tech and C2AE for the Michigan Avenue Engineered Rain Gardens in Lansing; Spalding DeDecker Associates for the Trenton Sanitary Sewer Overflow Elimination Program in Trenton; and Tetra Tech for its Scent-trained Canine and City of Lansing Project Performance Certification. Two Merit Awards for surveying were presented: Hubbell, Roth & Clark for the Combined Sewer Tunnel Survey and Inspection project in Oakland County; and Spalding DeDecker for the SeverStal NA Blast Furnace "C" Rebuild project in Dearborn.

The Judges' Choice Award for Board Design was given to Tetra Tech for the Michigan Avenue Engineered Rain Gardens entry.

This year's Vernon B. Spalding Leadership Award was presented to Everett S. Thompson, PE, PS, to honor an engineering career that spanned more than 40 years. The Felix A. Anderson Image Award was presented to Stephen M. Wagner, who introduced many programs and events during his 34-year service as ACEC/Michigan Executive Director.

MSPE honored four outstanding engineers: Christian G. Youngs, PE, for Professional Engineer in Government; Christopher E. Campbell, PE, for Professional Engineer in Private Practice; Herbert A. Spence III, PE, for Professional Engineer in Construction; and Mahmoud E. El-Gamal, PhD, PE, for Professional Engineer in Higher Education.

The 2009 Engineering & Surveying Excellence Program offers the opportunity to showcase the year's best engineering and surveying achievements to an audience of peers, clients and decision makers at all levels. Eminent and Honorable Conceptor award winners are eligible to compete at the National ACEC competition in Washington, D.C.

For more information on the projects submitted and award winners, please contact the ACEC/M offices at (517) 332-2066 or visit the ACEC/M Web site at www.acecmi.org.

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Avoiding Disputes On Claims

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in order to meet the contract completion date.

Focus on Timely Claim Resolution

While others may differ, our experience is that a claim arises before a dispute, and when either party fails to recognize what is required of them under the contract, or "reacts" to a claim situation in an overly or unnecessarily aggressive manner from the outset, a claim likely ripens into a dispute. More typically, however, the dispute results because the paper work invariably falls behind the progress of the work. A prudent Contractor, however, stays current with its record keeping, provides notice of claim within the periods referenced in the Changes Clause, and insists that the issues be addressed and resolved now.

Changes cannot be processed without agreement on prices. Subcontractor prices are difficult to obtain, especially if the real cost is out of all proportion to the work required. Documentation for regulatory approvals has a notorious habit of getting bogged down somewhere. Even progress meeting minutes, wherein everyone agreed to do certain things in a certain sequence, somehow fail to appear until the following meeting, when it is all over!

These all too familiar circumstances are a recipe for a later dispute. What started out as a minor issue – something that might be resolved by early agreement at the time of the work – gradually grows out of all proportion and becomes the basis for a formal claim and then a full

blown dispute. For its part, a Contractor should only make a claim after careful consideration, in a formal and objective manner, of precisely the contractual grounds, how much money is being sought and how that sum is arrived at, and the corresponding time extension to the contract, if appropriate. That is asking a lot of a Contractor that simultaneously is attempting to put pipe in the ground, or pavement in place. Yet, you must.

Very often a Contractor does not know the real cause for claim until some time after the events that have given rise to the situation. A typical case involves the "ripple" or accumulated impact of a series of changes, each of which may appear minor, but collectively have a disrupting effect out of all proportion to the work involved. Other changes may give rise to a re-scheduling of work, with consequent loss of productivity. Often, these impacts are difficult to determine until some time later.

Notwithstanding, the prudent Contractor will be constantly vigilant for the types of situations described, and will give the earliest possible warning to the owner, of his intent to claim and the anticipated grounds for doing so. In this way, under most contracts, the Contractor is able to preserve his rights to claim until such time as the necessary information can be collected and appropriate analyses conducted.

Record Keeping

Obviously, the extent of record keeping required for a particular

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**N E W S**

The American Road and Transportation Builders Association (ARTBA) was founded in 1902 and is the only national association that exclusively represents the collective interests of all sectors of the U.S. transportation design and construction industry.

www.artba.org

ARTBA Sues EPA to Protect Transportation Construction Industry Firms

Seeking to prevent the U.S. Environmental Protection Agency from making a final determination that allows states to restrict or ban the use of certain heavy construction equipment under the Clean Air Act (CAA), the American Road & Transportation Builders Association Transportation Development Legal Advocacy & Education Center (ARTBA-TDLAEC) April 17 sued the federal agency.

EPA authorization of state preemption of the CAA could render unusable billions of dollars of construction equipment on job sites nationwide, require contractors to purchase new or retrofitted equipment, and result in a morass of conflicting state-by-state regulations impacting transportation construction as well as a marked increase in the costs of infrastructure projects, ARTBA-TDLAEC said in a brief filed with the U.S. Court of Appeals for the District of Columbia Circuit arguing the CAA does not allow state control levels. The court has jurisdiction on CAA cases.

The lawsuit is the launch case for the ARTBA-TDLAEC, the only entity in the U.S. that exclusively focuses legal activities to help ensure that approved state, regional and local transportation plans and projects move forward expeditiously. It monitors and becomes involved in environmental and business issues that have the potential to impact the planning, design and/or construction of transportation infrastructure projects.

"Whether it's building or maintaining public transit, high speed rail, interstate highways, city streets or bridges, every element of our transportation infrastructure network relies on heavy equipment," ARTBA Assistant General Counsel Nick Goldstein said. "Amidst an economic recession, we should be taking every step to maximize the return on public infrastructure investment. Permitting a hodge-podge of state rules—many far more restrictive and costly than others—complicates the ability of our industry to reduce congestion, improve infrastructure and add new transit, road and bridge capacity."

Due to the enormous expense of replacing the affected in-use off-road construction equipment—in some cases more than \$1 million per machine—the cost of vital transportation and infrastructure projects will increase if EPA does not act to prevent states from enacting individual controls, the association's brief said.

In addition, construction firms rely on the value of their construction equipment as assets to finance the purchase of new equipment and to secure bond financing to conduct public project work.

By simultaneously eliminating the value of existing equipment and forcing companies to buy newer equipment, preemptive state-level controls, such rules currently enacted in California, make compliance impossible. Companies will

not be able to afford new equipment or bond additional work.

The ARTBA litigation is supported by the Outdoor Power Equipment Institute and the Construction Industry Air Quality Coalition members, which include four southern California trade associations: Associated General Contractors, Building Industry Association of Southern California, Engineering Contractors Association and the Southern California Contractors Association.

EPA is joined in contesting the litigation by the National Resources Defense Council, California Air Resources Board, South Coast Air Quality Management District and the American Association of Railroads. They are expected to submit their own legal briefs later this year.

Oral arguments in the case could be heard as early as fall of this year. A decision could come by late 2009 or early 2010.

Established in 1902, ARTBA represents the U.S. transportation design and construction industry in the Nation's Capital. Since 1993, ARTBA has won several victories on the transportation construction industry's behalf in cases involving the CAA and wetlands regulations. All told, ARTBA's legal involvement in federal regulatory issues and litigation has allowed nearly \$50 billion in approved-yet-challenged-state, regional and local transportation projects and plans to move forward.

A copy of the TDLAEC brief can be accessed online in the "Advocacy and Education Center" section of www.artba.org.

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construction job will depend on the type of contract. However, some record keeping will be required in any case because it is:

1. Required by law
2. Required by the terms of the contract
3. Needed to control the on-going work
4. Needed as data for estimating future work
5. Needed for preserving the Contractor's rights under the contract

The first item may be ascertained by referring to the authorities having jurisdiction over the place of the work. The second may be determined by a thorough reading of the contract documents, both in terms of the administrative requirements contained in the general and special conditions, and the technical requirements contained in the specifications. The third, fourth and fifth items are for the Contractor to decide, and depend largely on his disposition.

Perhaps the best case that can be made is that, if the Contractor wishes to remain profitable he must maintain control of his on-going work, and control of on-going work requires on-going records. Some records may need to be kept daily, others weekly, and still others monthly. Different frequencies are appropriate for different records, but the key is that all such records **must be on-going**.

Comprehensive Project Records

Comprehensive project records are a crucial element in avoiding a claim becoming a protracted dispute. You can look at it in whichever way you like --- from a "cold war" perspective of "my guns are bigger than yours so a battle is the last thing you want" to the more cooperative view that being able to produce everything a skeptical engineer and owner could desire will produce a reasonable reaction to the claim. Either way, comprehensive project records are key to the effective and hopefully quick resolution of a claim. Your project record system should track every aspect of the project such as contract documents, change orders and change quotes, drawings and revisions, all shop drawings, revisions and submittal logs, cost accounting, daily activity logs tracking labor, equipment, materials, production, events, meeting minutes, progress photographs, reports and consultant reports, force account records per force account item, time extension requests, schedules and schedule updates and all forms of written communications with the owner, engineer and subcontractors. The size and complexity of the construction project will drive the size and complexity of your records system. The project records should be assembled into blocks of like subject matter. This approach combined with an Index of all the Project Record Files greatly facilitates ease of filing and subsequent recall. Depending on the size and complexity of the project and the work load of the project manager, consideration should be given to employing a clerical staffer to support record retention. While a complete description and explanation of each record category exceeds the space available, a few of the records types are worth elaborating upon.

Original Records

For the prudent Contractor anxious to stay solvent, records are required for estimating future work, and for protecting his contractual rights as issues arise during the course of the work. A Contractor that supports a claim with detailed, fully substantiated entitlement and damage calculations sets the discussion on the right path. However, reliable data is difficult to develop from records created after the fact. Even the best of memories are imperfect, and contemporaneously prepared written record serve to provide a solid reminder. Data may be extracted, analyzed and presented in a different light, but satisfactory records cannot be created later.

Instant memos

All verbal directives should be committed to writing immediately and exchanged with the other party. This serves to keep the other party properly informed, clarify understanding if the instructions were ambiguous, of course, to preserve contractual rights.

Personal diaries

Diaries can provide a wealth of information. Unfortunately, they tend to be overlooked, either because the pace is so hectic that there is not time to keep one current, or alternatively, there seems to be so little of importance going on that it hardly seems worth writing! In any case, what should be recorded are solid facts such as the make-up of various

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crews, subcontractors and equipment on site, work re-allocation and for what reasons, delivery problems, weather conditions, visitors to the site, discussions, and seemingly innocuous comments about the work. Needless to say, what should be avoided, are personal opinions and derogatory remarks.

We have often talked about the fact that project managers and foreman are often so pressed by event or are naturally disinclined to write lengthy summaries of the activities in any given day. This often results in critical information being lost. A voice activated tape recorder with which the project manager or foreman can voice record the events of the day on the drive home may will greatly enhance capturing critical information that would otherwise be lost.

Photographs

Imagine a Differing Site Condition claim where a glacial esker intersected an open cut trench, and channeled water into what had been advertised as dry sandy clay. The tenor of a discussion regarding that claim will likely be drastically different if the Contractor has a photograph of the esker – better still if the inspector is pointing to it! We have long advocated that Contractors issue their foremen digital cameras that record the date, and that the foremen keep that camera next to the stack of speedy memos and daily production logs. Moreover, the foreman needs to use that camera on a routine basis and whenever a claim situation arises.

For record purposes, photographs must show what is actually going on at the time with the location and view point identified, and should be dated and photographer's name recorded. Also the photographer should realize that it is the content, and not the artistic effect, that is the most important.

Computer Application

Get data organized as early in the job as possible, and then commit to consistent maintenance, regular backup and off-site storage. If this is done meticulously, the subsequent saving in time through search and find, or through spread sheet and database design and use, can be invaluable. Even a common Speedy Memo can be produced faster on a PC, with the added advantage

that it can be put in storage in a manner that can be readily traced.

Managing the Records

As well as managing the files, the records themselves also need managing. Some simple rules can help as follows:

1. Determine what records are to be kept, and how. Establish logs

Continues on pg. 56

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MITA Political Action Committee

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"All that is necessary for evil to triumph is for all good men to stand by and do nothing."

— Sir Edmund Burke

This quote is as relevant now as it was when Burke coined it some 100 plus years ago. When it comes to the legislative arena your survival and ability to make a profit is tied directly to your aggressiveness in financing the campaigns of those who understand the difficulties associated with Michigan's heavy/highway construction industry. Contrary to what you may think, through the collective power of MITA you can affect the legislative process.

The primary focus of MITA's legislative agenda will be long-term, adequate and stable funding for Michigan's supporting infrastructure. It is essential that we convince our elected officials that public works are an investment in our future, improves the quality of life and provides real and meaningful job programs and tax stream. The "no new tax" platform and attitude of many politicians must be changed and this change will require a calculated not emotional approach to this issue. Before we get to this mode, we must have the ear of those who control state government. It is your PAC dollars, and yours alone, that will allow MITA to open the necessary doors in Lansing in our mission to convince lawmakers as to the importance of funding infrastructure improvements.

We need your commitment and investment in MITA-PAC today! Those of you who are content with "letting the other guy carry your weight" are only cheating yourself and short changing our industry.

Send your personal check or money order now to MITA PAC and remember that democracy is not a spectator sport.

What is MITA PAC?

The MITA POLITICAL ACTION COMMITTEE is the legislative voice of Michigan's heavy construction industry. MITA PAC is the most effective tool our industry has to support candidates who will fight for contractors in the Michigan legislature. Your financial support of the MITA PAC gives all of us who care about the future of heavy construction and free enterprise a strong influence in the political process.

Why Do We Need a PAC and Why Should I Support It?

The infrastructure and transportation construction industry survives on public funding. Without your support, our level of influence to promote adequate public funding is diminished. We must also fight negative public policy. Our industry is also constantly under attack in the Michigan legislature. Not a day goes by that some legislators in the Michigan House and Senate aren't proposing legislation that would boost our workers' compensation costs, negatively impact our labor force, raise taxes on personal property, increase business liability – the list goes on and on. Our ability to provide jobs and protect our bottom line is profoundly affected by the legislative and regulatory process.

If we do not prevail in the legislative and regulatory process, we will cease to exist in our business as we know it. We will not be able to provide jobs. We may not be in business!

We have full-time lobbyists fighting for us in Lansing and communities around Michigan. We have spent a great deal of time educating the men and women who decide our fate in Lansing. However, term limits have made this task even harder and there are still some lawmakers who may not have a grasp of our issues or the impact that their decisions have on our industry and you. But, the law allows us to band together under MITA PAC. Instead of lobbying elected officials who don't know

or don't care about our ability to provide jobs, our PAC allows us the opportunity to find and fund candidates who believe in us and our employees. The MITA PAC is now one of the top PACs in Michigan. But, only 20 percent of our members provide 100 percent of the funds raised to support candidates who will fight for us – all of us. If the 80 percent of our members who don't participate gave just \$200, we would be an even more potent force for the heavy construction industry.

Do Candidates Really Need Our Help?

Absolutely! Each State House district has 87,000 people in it. Each State Senate district has 250,000, and Michigan has over nine million people. Just as we need to advertise our services, every candidate for office must be able to communicate with tens of thousands of voters. This takes money. Lots of it. Money for brochures, TV ads, radio ads, billboards and other devices. Our PAC can help the candidates we support get their message out and get elected. These are the elected officials who will listen to us and champion our issues.

What Can I Do?

MITA PAC needs your financial support. We are asking every member to step up and contribute. Don't let others carry your load.

Make Your Voice Heard. Support the MITA PAC.

"Those who choose not to be involved in democracy are doomed to be controlled by those who do."

— Abraham Lincoln

MITA PAC Contribution Form



Yes, I will support MITA's effort to elect candidates who will fight for contractors.

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Non-salaried, non-managerial, and union members are prohibited by law from contributing to MITA PAC.

Note: PAC Contributions are not tax deductible.

If you have questions regarding the MITA PAC, please contact Mike Nystrom, MITA vice president of government and public relations at mikenystrom@mi-ita.com or call 517-347-8336.

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MITA would like to express our appreciation to those members who contributed after the printing of this publication.



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Avoiding Disputes On Claims

Continued from pg. 53

of the records, so that they can be found, referred to and/or followed up as required. Well organized contractors establish standard reference lists and coding for all their contracts. This greatly facilitates managing, analyzing and comparing contracts.

2. Once the records have been identified, ensure that they are in fact set up, maintained and used for managing the job.
3. Review the record keeping system from time to time, because records have a habit of growing in unexpected ways - like half the correspondence showing up under *Miscellaneous*, and the other half under *General*. In addition, some records may become obsolete or redundant, and should be discontinued. Unnecessary record keeping can waste a lot of time and money.
4. Records also take up space and equipment. Determine the useful life of the different components, and take a systematic approach to record disposal.
5. Take steps to ensure accuracy, reliability and hence credibility. Unreliable records can be quite useless, as well as a waste of money, and possibly even detrimental.

Useful Tips for Staying out of Trouble

The following tips are suggested for keeping a Contractor out of trouble:

1. Develop a master schedule and a more detailed schedule that

fits the required dates in the contract. Then develop "short-term plans", especially with the help of major or critical subcontractors.

Distribute this schedule information to all concerned, including the owner and his consultants, so that everyone knows what is expected of them, and can plan their work effectively and economically. After all, the object of the exercise is for everyone to make money. Monitor and up-date the schedule on a regular basis. If you or your subcontractor causes a delay to the work, do something about it. If the owner or his consultants cause a delay, notify them promptly, politely but firmly, in writing.

2. **Avoid an impossible bid**, or subcontractor price, even in a tight bidding situation, when you know the sub cannot do the work for the money.
3. Make sure that not only the Contractor's general forces, but also each of the subcontractors can perform their work **without interference or delays** by any others. Where close coordination is required, make sure there is proper communication taking place at a level that can have a positive impact on the work.
4. As general contractor, **coordinate the entire work**, including that of subcontractors, by taking charge and ensuring that all activities are effectively organized
5. Create a Master Sworn Statement before starting work, listing each subcontractor and supplier expected on the project, and require each subcontractor to prepare the same document. Check the Master Sworn Statement against not only each pay request and accompanying sworn statement from subcontractors and suppliers, but also regularly against Foremen Daily Reports to ensure no surprise payment bond claim surface.
6. According to the old axiom, remember that **time is money**. This is just as true for the owner, the consultant, the Contractor and all the subcontractors.

Those of you who have attended our seminars over the years have heard many times that a protracted claim proceeding or lawsuit is nothing more than confirmation that all reasonable efforts at problem solving and claim resolution have failed. The tips provided in this article will hopefully enable you to enhance the likelihood of successful problem solving and claim resolution early in the process and keep you out of the courthouse and on the job where you can devote your resources to what you do best - - - build successful and profitable projects.



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Member Voice:

Do you believe the federal stimulus package will have a positive impact on your business?

Continued from pg. 11

No, the federal stimulus package will not have a positive impact on our business.

The immediate and short-term influx of money does not warrant long-term growth or hiring. It has created a short-term "panic" mode to meet deadlines, with no expectation to sustain production through 2009.

Funds like these are highly unlikely to make it this far North. There are not enough votes up here to make a difference in any election.

Ken Cordes

Cordes Excavating, Inc.

We live in an area with the highest unemployment in the state and 95 percent of the money is going to metro areas. It's a shame.

Although it will certainly help this year, the underlying problem of funding infrastructure repairs has not gone away. The stimulus (not) package cost every man, woman and child about \$2,500, which will have to be paid back with interest at some time. Long term, our business will have to compete with much higher interest rates as rates rise to entice other countries to continue to buy our massive debt. Like a desperate addict, this bill borrowed (stole) money from our children and their children to feed our habit today. I hope they will forgive us for the higher taxes and lower standard of living they will have to endure.

Jim Zalud

The Isabella Corporation

No, because it is not putting new people to work or creating a need to purchase new equipment. It is simply bringing back the people that have been seasonally laid off. In addition, the state did not add to the MDOT work. They put out jobs under the stimulus money that would have been put out if that money had not been offered. The stimulus should have increased the available work. Instead, it just put work out that now does not require state matching funds.

Chris Campo

Wells Fargo Equipment Finance

It seems that most of the money is going for bridge repair. The only hope is that it will get some of the larger contractors out of market and some work will trickle down. Our odds may be better at the crap table.

Tom Ford

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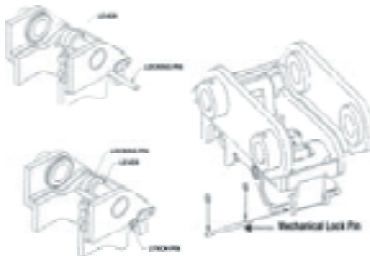
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Inspection: Have a trained employee check the quick coupler to see if there are any visible signs of a potential unexpected release. Check the installed locking pin to make sure that all precautionary measures have been met.

A Secondary System: Having a manual or automatic independent secondary system is a great way to have extra assurance that a bucket (or work tool) won't unexpectedly cause injury should the primary system fail to prevent an attachment from being a hazard.

Consistent Maintenance: Following manufactures' recommended maintenance guidelines promotes testing the coupler prior to actually putting the coupler to use and can tip off the user to any potential problems.

Training: Knowledge is power! Employees should be trained and required to follow the following aspects of quick coupler operations safety:

1. Follow proper quick coupler operation protocol for attachment engaging.
2. Conduct frequent visual inspections.
3. Connection testing.

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Are You Protecting Your Company Through Effective, Enforceable Employment Agreements?

Continued from pg. 19

their business relationship with the company. These agreements are likewise enforceable if they meet the same reasonableness standards of non-compete agreements.

Confidentiality Agreements

What are they? Confidentiality Agreements prohibit an employee from disclosing the employer's private, confidential or trade secret information to third parties. These may continue during and after termination of employment.

Uniform Trade Secrets Act ("UTSA"). In the event employees do not sign a separate confidentiality agreement, the UTSA provides employers with statutory recourse against those who use or obtain "trade secrets" through improper means and/or disclose this information unlawfully. "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that is both of the following:

- (i) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (ii) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy

As generally set forth in the UTSA, to be a protectable, confidential or trade secret, the information must have competitive value because it is not generally known to competitors. Further, the employer must have taken reasonable steps to protect against its disclosure.

Reduced Statute of Limitations Agreements

Law suits based on employment discrimination are subject to statutes of limitations. The statute of limitations is a law which limits the amount of time

during which a lawsuit may be filed. The effect of a statute of limitations is that when the time for filing a lawsuit has expired, the claim is permanently barred. In other words, once the statute period has lapsed, the claimant can no longer receive any financial compensation whatsoever, regardless of the merits of the claim. The statute of limitations in Michigan for bringing employment discrimination or tort based claims is three (3) years from the date of the discriminatory act(s) and six (6) years for breach of contract.

Michigan permits the term of the statute of limitations for employment related claims to be shortened or lengthened by contract between the parties. Michigan has upheld the provision in an employment contract (including an employee handbook and application), limiting the time for bringing claims against the employer to six months (180 days). The provision must be clearly stated in an employee handbook or application and may not be unilaterally changed by either party.

Conclusion

Employers must carefully draft employment contracts which contain non-compete, non-solicitation and confidentiality restrictions if they intend to enforce them. Agreements which contain overly broad and far reaching restrictions are likely to be viewed as unenforceable by the Courts. Thus, it is important to review your agreements to ensure they are compliant with the ever changing employment laws.

Heather G. Ptasznik | John T. Below

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will move on to the governor's desk and become law thereby protecting our industry from frivolous lawsuits in the future.

Contractor Disbarment

Routinely there are legislators who feel that they must protect the general public by introducing legislation that would disbar contractors from doing certain types of work for the most basic of violations.

In 2009 it seems as though the democratically-controlled House of Representatives has been on an all out assault against the construction industry with three different packages of bills being introduced that in one way or another penalize contractors who are even "accused" of violating certain rules or statutes.

The first bill, HB 4282, introduced by Representative Fred Miller (D-Mt. Clemens) would disbar a contractor from doing work for the Department of Management and Budget (DMB) if that contractor had a willful or persistent offense under a variety of state public acts including MIOSHA and the state Prevailing Wage Act. The problem with this is not that we are out to protect the bad apples; it is that many contractors across the state have been accused of MIOSHA or Prevailing Wage violations that were then appealed and ultimately thrown out.

Another set of bills includes similar repercussions but would apply to any publicly funded work in the state, not just DMB. At a minimum MITA was able to get an amendatory language in the legislation that the violations had to be "repeated and intentional."

Finally, there is also a package of bills regarding False Claims that would penalize a contractor if they submitted a false claim. Under the definition of this legislation, a false claim could include a quantity estimate that is done during the course of a project prior to different final quantities being calculated at the end of the job.

As ridiculous as some of this legislation might seem, misguided legislators constantly put forth legislative language that they believe would rid the state of the "bad actors" from bidding on publicly funded contracts. Unfortunately, the effect of these pieces of legislation would be to give bureaucrats the authority to ban quality contractors with the best track records who may have made inadvertent mistakes in their business practices.

Although MITA reports frequently to the membership about our state funding efforts, it is often regulatory legislation like these listed above that is quietly being considered behind the scenes that can have the most dramatic impact on the heavy construction industry. If MITA does its job lobbying, these issues will never surface beyond initial legislative discussions. Although we talk about the issues that we want to get passed, the issues that we are promoting usually end up in the minority, and the majority of issues that we work on at the Capitol end up being issues that we fight against and hope to ultimately defeat. The MITA lobbying staff works diligently to ensure contractor interests are protected whether the issue is headline news or just another ill-conceived legislative idea.

To contact Mike Nystrom, email him at mikenystrom@mi-ita.com or call 517-347-8336.

Vice President of Engineering Services Comment

Continued from pg. 23

low bid and proceed with award to the next lowest responsive bidder, the bid tab for that project will not be made public until the completion of any appeal proceeding initiated by the lowest bidder. Bid tabs for rejected bids will not be made public.

Throughout our discussions with MDOT staff and the FHWA representatives on the subject of unbalanced bid analysis MITA has remained steadfast in advocating that the owner has an obligation to insure the accuracy of quantities presented in the bidding documents. Although we acknowledge bidders have a pre-bid responsibility to report discovered quantity errors and omissions, and that they are prohibited from taking advantage of any discovered quantity errors or omissions in their bid, we respectfully reserve our rights when the owner answers to a pre-bid questions about the accuracy of a quantity is "Bid it as you see it".

To contact Glenn Bukoski, P.E., e-mail him at glennbukoski@mi-ita.com or call 517-347-8336.

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Michigan Construction Career Days Photos



Pat Brown, MITA's director of safety and workforce development, participated in the 2009 Michigan Construction Career Days at the Ingham County Fairgrounds April 21-22.

Director of Safety & Workforce Development Comment

Continued from pg. 24

ment Masons Local 16. Without the help from these individuals in their respective trades, students would not have had a real life hands on construction experience. And to prove what an outstanding job everyone did, one of the CCD founders Humberto Martinez was quoted as saying, "this is one of the most organized, well laid out CCD's that I have ever seen".

For more information about Michigan CCD, go to miccd.com or if you would like to participate in the future, contact me at patrickbrown@mi-ita.com.

If you have any questions or comments, contact Pat Brown by e-mail at patrickbrown@mi-ita.com or call 517 347-8336.

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UNEARTHING POSSIBILITIES

Director of Legislative Affairs Comment

Continued from pg. 25

also been because communities have been strapped for cash and wanting to delay infrastructure investments.

A few years ago, MITA promoted legislation to offer \$40 million in free grant money for municipalities doing pre-engineering work on revolving fund projects. In return, the local governments were required to begin work within a specified time period. The free money was used to pay up-front project costs and was offered as an incentive to entice locals to begin work sooner rather than later. It had the desired impact.

As we look for new ways to encourage infrastructure spending on our water projects, MITA is considering a three-pronged strategy that would include future expanded use of grants for local governments.

In recent years, MITA has also been successful in putting pressure on policymakers for greater investment by the use of the mass media. We have used the incidences of beach closings and sewer overflows during rain events as an opportunity to highlight our inadequate wastewater infrastructure. We are also looking at more ways to use DEQ enforcement actions against local governments to require them to repair sewer systems that are contaminating the environment. In cases such as Detroit, Grand Ledge and Lansing, much of their work is being done because of government mandates.

MITA stands ready to crank up the spigot on that leaky drip so that our state can experience a tidal wave of new work to clean up our state's environment and put our people back to work.

To contact Keith Ledbetter, e-mail him at keithledbetter@mi-ita.com or call 517-347-8336.



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March 4 and 10 among a random sample of 600 likely voters in Michigan. Given the sample size of 600 and the method of random selection, the statistical margin of error can be reliably set at plus or minus 4.1 percent within a 95 percent degree of confidence.

2/12/2009 Road Group Offers Cash for Pothole Pictures

A coalition working to secure more funding to fix Michigan's roads and bridges today announced they are kicking off their third annual contest to identify the worst potholes in Michigan. The Michigan Transportation Team (MTT) will be awarding \$318 in cash for drivers who submit pictures of the worst teeth-rattling potholes in the state.

Driving on crumbling and congested roads costs each Michigan motorist an average of \$318 per year, according to The Road Information Program (TRIP) out of Washington D.C.

"There are some real rim-busters out there already, and it's only February," said Mike Nystrom, vice president of government and public relations for the Michigan Infrastructure and Transportation Association (MITA) and co-chair of the Michigan Transportation Team (MTT). "We thought last year was bad, but we've got a rough spring in store."

Due to the stiff competition, the MTT will be awarding four regional winners this year in northern, western, southeastern and central Michigan.

To enter, residents must take a picture of the worst potholed road or crumbling bridge and upload it to www.drivemi.org. The general public can vote on their favorite choices and pothole contest winners will be decided on March 30.

"The contest is a fun way to highlight a serious problem, but there is nothing fun about dodging enormous potholes and driving on dangerous roads," Nystrom said.

The contest is part of an ongoing effort to educate policymakers that the dire condition of Michigan's roads are a serious threat to public safety and a roadblock to business development in the state. MTT is pushing to end legislative inaction and asking legislators to address the lack of transportation funding that puts Michigan drivers at risk.

A recent study by the Michigan Transportation Funding Task Force (TF2) says that the state needs to double its transportation funding from \$3 billion a year to \$6 billion a year in order to make just basic improvements in pavement conditions and congestion. The dire needs of our roads and bridges is due to decades of neglect. Now, the situation is getting even worse because gas tax revenues are plummeting. Since 2002, revenues have declined by almost 12 percent.

"We're turning a negative into a positive; hit a giant pothole and you could be \$318 richer," Nystrom said.

MTT is a broad-based, bi-partisan partnership of business, labor, local government, associations and citizens linked with the common goal of improving Michigan's transportation infrastructure. The DriveMI campaign is committed to promoting the development and maintenance of a safe, convenient and efficient transportation network that serves the public, private and economic development needs of Michigan. For more information visit www.drivemi.org.



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MITA 2009 Event Calendar

JUNE

June 9, 2009

Board Meeting

Country Club of Lansing
8:30 a.m.

June 10, 2009

Central Michigan Golf Outing

Eagle Eye Golf Club

JULY

July 16, 2009

Southeast Michigan Golf Outing & Silent Auction

July 23-26, 2009

MITA Summer Conference

Boyne Mountain

AUGUST

August 11, 2009

Board Meeting

MITA Office
1:00 p.m.

OCTOBER

October 13, 2009

Board Meeting

Hunter's Ridge Hunt Club
8:30 a.m.

DECEMBER

December 2009 Date TBA

Western Michigan Holi- day Party

11:30 a.m.

December 11, 2009

Board Meeting

Country Club of Lansing
8:30 a.m.

December 11, 2009

Central Michigan Holiday Party

Country Club of Lansing
11:30 a.m.

December 18, 2009

Southeastern Michigan Holiday Party

11:30 a.m.

For details on any event, contact Danielle Coppersmith, events coordinator,
daniellecoppersmith@mi-ita.com or visit the events section of www.mi-ita.com.



BID LETTINGS

Friday, June 6

Friday, July 10

Friday, August 7

Friday, September 4

Friday, October 2

Friday, November 6

Friday, December 4

MITA BOARD MEETINGS

June 9, 2009, Country Club of Lansing, 8:30 a.m.

August 11, 2009, MITA Office, 1 p.m.

October 13, 2009, Hunters Ridge, Oxford, 8:30 a.m.

December 11, 2009, Country Club of Lansing, 8:30 a.m.



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3/27/2009	MITA Protects Contractors from Being Barred from State Contracts
3/19/2009	Transportation Stimulus Funding Bill Passes MI House
3/13/2009	MDOT, MDEG Announce \$1 Billion in Stimulus Projects
3/5/2009	Proposed Unemployment Insurance Changes Would Get Rid of Solvency Tax

MEMBERSHIP BULLETINS

5/13/2009	MITA Members Encouraged to Attend Press Conference Tomorrow
5/12/2009	Western Michigan Golf Outing Reminder
5/8/2009	2009 MITA Summer Conference at Boyne Mountain. Sign-up Now!
4/23/2009	2009 MITA Western Michigan Golf Outing
4/23/2009	Get in on the savings and be a sponsor at each of the MITA golf outings
4/23/2009	In Memoriam of Andrew Zynda
4/17/2009	Updated: In Memoriam of Dick Wells
4/15/2009	Member Voice: Will Stimulus Package Help Your Business?
4/9/2009	Economic Stimulus Projects - An Update
4/8/2009	Stolen Equipment Notice
4/8/2009	Presidential Gala-Sign up & Reserve Your Room Now
4/2/2009	April 3, 2009 Bid Letting Item Change

3/31/2009	Granholm Signs Legislation Authorizing \$873 Million in Recovery Funding for Road Projects
3/25/2009	Equipment Needed
3/20/2009	Future Leader Development Program Filing Deadline Approaching
3/20/2009	Metro Industry Night Reminder
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2/25/2009	Memorial Gathering for Jack Hilkner

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5/13/2009	MDOT to Host Prevailing Wage Seminar
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4/16/2009	MDOT Seasonal Weight/Load Restriction Bulletin #8 - April 16, 2009
4/15/2009	Michigan Contractor & Builder Closes Prevailing Wage Questions for Vacs and Sweeper Operators
4/13/2009	MDOT Seasonal Weight/Load Restriction Bulletin #7 - April 14, 2009
4/9/2009	MDOT Spring Weight Restriction Bulletin #6
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3/12/2009	Fraudulent USDOT Faxes/Email Resurface
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3/10/2009	MDOT Stops Mailing Pay Estimates
3/9/2009	2008 Michigan Erosion Control Workshop
3/2/2009	FieldManager Contractor is now available!
2/27/2009	FUSP/CA/M/NPDES/SESC Update
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2/11/2009	MDOT Seasonal Weight/Load Restriction - February 12, 2009

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5/7/2009	Appeals Update
4/29/2009	MITA Trench Safety DVD
4/1/2009	New Installation of Tool Box Talks Now Available
3/2/2009	Appeals Update

MICHIGAN LABORERS' TRAINING & APPRENTICESHIP INSTITUTE



Grant Charlick, an apprentice program graduate out of Laborers Local 1076 and an employee of Skanska, USA, considers MLTAI and the Construction Craft Laborer apprenticeship program an important part of his professional growth.

Charlick stated, "Having passed a college calculus class I expected that there was very little MLTAI could teach me about math, but with their unique approach to teaching I learned how the mathematic principles I learned in college apply in the real world. College didn't teach me that. Also, the wide variety of subjects taught at MLTAI as well as the variety of experience I've gained as a result of working for a general contractor has prepared me to take advantage of advancement opportunities that could come my way in the future."

Michigan Laborers' Training and Apprenticeship Institute provides training to apprentices and journey persons alike. Our instructors have a wide range of field expertise to provide our members with top-notch training using cutting edge technology. Our state-of-the-art training facilities located in the cities of Wayne, Perry and Iron Mountain accommodate on average 2,500 members annually. Courses range from 2 hours to 120 hours in length and include environmental training, construction training, life skills courses as well as on-line courses.

Graduates reaching Journey worker status can be granted college credits at virtually all of Michigan's community colleges.

MLTAI and the Construction Craft Laborers apprenticeship program produce Laborers skilled in their field, dedicated and trained. When Grant was asked what it takes to be a successful Laborer he said, "You have to show up every day in the right state of mind, with a proper attitude and be dependable, punctual and trustworthy. You have to bring your 'A' game every day".

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