

CONSTRUCTOR

THE CONSTRUCTION MANAGEMENT MAGAZINE

AUGUST 2004

BUILDING YOUR QUALITY OF LIFE

WOULD YOU LET YOUR SON WORK IN THIS TRENCH?

Inside: a story you will
never forget.



**BUILDING
YOUR
QUALITY
OF LIFE**



Also inside:

Practicing Safety in the Trenches
Trenching Safety Products
AGC's Municipal Utilities Division
Pipebursting Technology

CONSTRUCTOR

THE CONSTRUCTION MANAGEMENT MAGAZINE

August 2004 VOLUME LXXXVI, NO. 8 www.agc.org

- 3 PRESIDENT'S MESSAGE** AGC President Jim Waltze.
- 5 PERSPECTIVE** AGC Chief Executive Officer Steve Sandherr.
- 6 MANAGEMENT RESOURCES**
- 11 THE 2004 AGC MIDYEAR MEETING:** "Focus on '05—Prepare for Change."
- 14 OFF TO THE RACES!** AGC PAC boasts growing ranks of 25-year member contributors.
- 18 REDUCING WORK ZONE-RELATED CONGESTION** FHWA is creating solutions that will improve safety in and around work zones.
- 22 MARKETING TO WIN** AGC and FMI Corporation team up to offer one-day seminars on AGC's new interactive CD-ROM marketing tool.
- 24 AGC'S MUNICIPAL & UTILITIES DIVISION** Providing solutions for America's underground infrastructure needs. *A profile.*
- 26 H.R. SOLUTIONS** Conducting proper workplace investigations: How to respond to complaints of employee misconduct.
- 27 GROUND MOVEMENTS DURING PIPEBURSTING** A new study from the forefront of the trenchless industry looks at the impact on utilities.
- 28 A COMMITMENT TO SKILL, INTEGRITY, AND RESPONSIBILITY THROUGH CONTRACTS** AGC's Municipal & Utilities Division and Contract Documents Committee spearhead historical involvement with the EJCDC.
- 29 SAFETY IN THE TRENCHES** AGC does its part to prevent trenching and excavating fatalities. What you should know.
- 30 A TRENCH COLLAPSES. A WORKER IS KILLED. IS IT A CRIME?** A story you will never forget. Read, share, discuss, send to others.
- 33 AGC TRENCH SAFETY PRODUCTS** Is your program as good as it can be? These are the tools that can help you get it there.
- 41 NEW TECHNOLOGY**
- 46 CLASSIFIED ADS**
- 48 ADVERTISERS' INDEX**

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AGC PRESIDENT JIM WALTZE



"Involvement in AGC of America provides us with a unique opportunity to identify national trends, and proactively position ourselves to address issues prior to their arrival in our market. There is also a phenomenal networking opportunity as well as the ability to impact our industry as a whole."

—Mark Guetzko, Chairman,
AGC's Specialty Contractors Council

Want to increase your profitability? You may be overlooking a huge resource that's right under your nose: AGC's specialty contractors. Our strategic plan stipulates that our association represent the entire construction industry, and with 12,000 specialty contractor members, AGC is in fact the largest subcontractor association in the nation.

What do these members bring to the table? Excellence. Expertise. Experience. Familiarity. Proximity. Loyalty. Skill. Integrity. Responsibility. AGC specialty contractors put their reputation on the line every time they perform a job for an AGC general contractor. Having the best subcontractors in our camp greatly expands AGC's reach and clout in the halls of Congress, and it helps us find win-win solutions on thorny issues like prompt pay and broad-form indemnity.

For all of those reasons and many more, AGC National and many chapters are encouraging specialty contractors to play a larger role in AGC affairs.

One seat on the AGC Executive Board is reserved for the chair of the Specialty Contractors Council, and we're proud to

Working to Make a Difference:

Increase your profitability by plucking the overhanging fruit!

have Mark Guetzko of Seedorff Masonry Inc., Strawberry Point, Iowa, currently serving in that dual leadership role.

To increase specialty contractor participation, I also appointed past chair Dan O'Brien of Current Electrical Construction Co., Portland, Oregon—the capable chair of AGC's Open Shop Committee—to serve on the Board this year. Further, almost every national committee has a specialty contractor member on its roster with whom members regularly consult in regard to contract documents, legal, legislative, and educational issues, and a wide range other important topics.

When is the best time to research specialty contractors? *Now*. Don't wait until you're burning the midnight oil, feverishly putting a bid package together and desperate for another subcontractor bid or a critical piece of information that could determine your profit on the job. Get to know the specialty contractors at your chapter today. Make friends. Invite them to lunch, golf, whatever.

It has often been said that the American business philosophy is "If we do business, we can be friends," while the Ori-

ental approach is topsy-turvy: "If we become friends, we can do business."

Well, somebody got it wrong when they applied that cliché to the American construction industry, because I believe nine out of 10 contractors will tell you ours is a business built on relationships and trust. So establish those critical relationships today and find the partners that will help you increase your bottom line and theirs at the same time, making each of you and—most importantly—the owner a winner every time.

Supplier/Service Providers Council. Now let's talk about the future. Imagine a world in which every last building component, no matter how small, comes tagged with an electronic product code so tiny you could fit 10 inside the "D" on a dime. Instead of ripping out a wall to find and fix a problem, a contractor could pinpoint precisely where a failed product is by passing a scanner over the wall. Like a surgeon performing laparoscopy, he could fix the problem by making a tiny hole in the wall at minimal time, expense, and injury to the building.

Science fiction? Hardly. The technology is here today, and you need to bone up on it to stay competitive. You can do just that at AGC's Midyear Meeting in Phoenix at the Supplier/Service Providers Council Session (see sidebar at left).

Expertly led by Chair Hoyt Lowder of FMI Corporation, Tampa, Fla., the 13,500 members of this council are another greatly underused resource, and we are determined to give them a much higher profile within the association as well. Earlier this year we launched the AGC Audit Committee, designating that it always be chaired by a service provider in the accounting field. Our first Chair, Patsy Fitzpatrick of Moss Adams LLP in San Francisco, Calif., is serving most capably.

Where can you find a complete directory of all AGC specialty contractors, suppliers, and service providers across the nation? You've probably got one almost at your fingertips: CONSTRUCTOR magazine's annual *Directory of Membership & Services*. You can also find them on the Web, of course, at www.agc.org. Remember—it's good business to do business with an AGC member.

—By Jim Waltze, the 2004-2005 president of the Associated General Contractors of America. Waltze is also president and chief executive officer of The Griffith Company, Santa Fe Springs, Calif.

**DON'T MISS THESE SPECIAL SESSIONS
AT AGC'S MIDEAR MEETING
IN PHOENIX! REGISTER ONLINE NOW
AT WWW.AGC.ORG. FOR MORE
INFORMATION, SEE PAGES 11-13.**

THE CHANGING FACE OF THE ADDITIONAL INSURED

Specialty Contractors Council Session, 2 p.m., Friday, Oct. 1. Specialty contractors and general contractors will find out the additional insureds and related risk issues you may face in 2005. A panel of industry experts will discuss how you can better prepare for 2005 market challenges.

ARE ELECTRONIC PRODUCT CODES (EPCs) IN YOUR FUTURE?

Supplier/Service Providers Council Session, 10:30 a.m., Friday, October 1: The adoption of Electronic Product Codes and RFID technologies have become a business imperative for the U.S. Department of Defense, Wal-Mart, and hundreds of major corporations. Learn how this new technology will impact the industry and how suppliers and service providers can leverage this technology to their competitive advantage.

—Presented by Peter W. Staaterman, Partner and Founder of TradeRoots Systems, LLC

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86TH YEAR OF PUBLICATION

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SOME "ACCIDENTS" NEED NOT HAPPEN

A good magazine cover is designed to scream: "Pick me up and read me!" If you're reading this, that could be the reason. I hope so, and I encourage you to read the article on page 30 that chronicles the end of a young life in a trench at a construction site.

What makes this story so compelling is that it describes a tragic event that could have been and should have been prevented. A young man with little experience and training is placed in an unshored trench by an employer who appears not to have realized that he has moral and legal obligations to ensure his safety. It is a story that should be shared with every one of your project managers to demonstrate to them the consequences of ignoring not just safety regulations but common sense.

The reaction of some who read this article, which has been reprinted from the *New York Times*, is predictable: "We need more regulations and rules to protect employees." In this instance, nothing could be farther from the truth. There are pages upon pages of OSHA regulations that spell out the proper ways to make a trench safe. On any given day, there are probably hundreds, if not thousands, of trenches dug on construction sites across America. Yet, last year, only 53 workers were killed in trenching accidents. The word "only" is used as a means of comparison to demonstrate the obvious point that the vast majority of construction employers recognize their obligation and do the right thing day after day in trench after trench. Anyone with a conscience, however, would argue that those 53 deaths in 2003 were 53 too many.

What about the employers of the 53 workers who died in trenches last year—did they cut corners? Did they ignore the rules? Were they not cognizant of the inherent risk in sending their employees into an unprotected ditch? How do we reach them? What do we tell them? How do we get them to do the right thing? Perhaps the first thing we do is ask them the question that is posed on this cover: *Would you let your son (or daughter) work in this trench?* If every contractor looked at a trench with this question in mind, we might just reach the zero tolerance that the industry's workers deserve.

—By **Steve Sandherr**, chief executive officer, *The Associated General Contractors of America*

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MANAGEMENT RESOURCES



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BELIEVE IT OR NOT! DID YOU KNOW... that you can read each issue of CONSTRUCTOR online and even print pages right off the site in color? It's true! Access it through the AGC website or go straight to the magazine at this address: www.constructor.magazine.com.

AGC WINS KUDOS IN OSHA CHALLENGE PILOT PROGRAM

AGC has received a Certificate of Recognition and Appreciation from the Occupational Safety and Health Administration (OSHA) for "leadership in safety and health as a charter participant in the Challenge Pilot."

The OSHA Challenge Pilot program is a graduated step-by-step process, which provides employers a "roadmap" towards attaining Voluntary Protection Program (VPP) status. Approval into VPP is OSHA's official recognition of the outstanding efforts of employers and employees who have implemented a comprehensive safety and health management system and achieved exemplary

occupational safety and health performance. AGC has agreed to become an administrator for the OSHA Challenge Pilot program, which will allow contractors to begin the application process

towards becoming VPP certified.

Initially only 10 AGC Chapters will serve as challenge coordinators to work with challenge candidates. Since this is a

(continued on page 8)

SAVE THE DATE: AGC'S REGIONAL ENVIRONMENTAL SEMINAR TO BE OFFERED SEPT. 9 & 10 IN CHARLOTTE, N.C.

Who should attend?

Highway contractors and state department of transportation officials in EPA Region 4 (Ala., Fla., Ga., Ky., Miss., N.C., S.C., & Tenn.).

What you'll learn:

- **Transportation environmental stewardship**—Communication and fulfillment of a project's environmental commitments;

- **Environmental management systems**—Communication and implementation of a DOT's EMS throughout the planning and construction phases;

- **Context sensitive design**—Integration of highway development with communities and the environment;

- **Environmental permits and clearances**—Responsibilities for obtaining environmental permits and clearances: design/build vs. design/bid/build;

- **Environmental concerns and requirements for offsite locations**—Federal government jurisdiction over offsite locations associated with highway construction;

- **Stormwater**—Meeting permit requirements; erosion and sedimentation control;

- **Inspection and enforcement**—What to expect during environmental inspections; enforcement options;

- **Communication and partnering**—The key to compliance and meeting project goals; and

- **Regulatory and legislative outlook.**

When you'll learn it:

- Thursday, Sept. 9, afternoon sessions from 1 p.m. to 5 p.m. and networking reception from 5:30 p.m. to 7:30 p.m.;

- Friday, Sept. 10, full-day sessions from 8:00 a.m. to 4:00 p.m.

Where you'll learn it:

All events will be held at the Charlotte Executive Park, 5700 Westpark Drive, Charlotte, N.C. 28217. Phone: (704) 527-9650. Call hotel for reservations by Aug. 19 to receive the group rate. Ask for the "Regional Environmental Seminar" room block.

For more information:

Contact Melinda Tomaino Flores at (703) 837-5415 or tomainom@agc.org.

PRESENTING: AGC CONSTRUCTION FUTURES "BACK TO SCHOOL" SPECIAL!

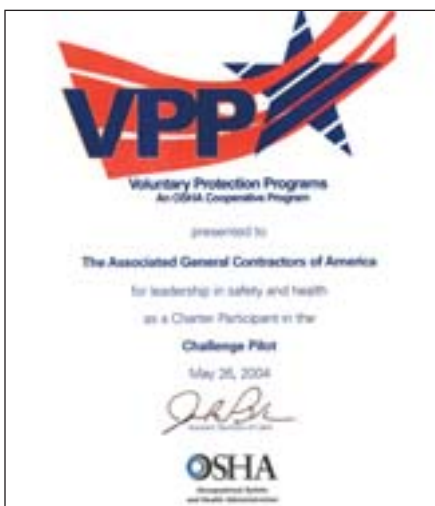


Receive a FREE Build Up! Toolkit Compliments of CONSTRUCTOR magazine for every three toolkits purchased (any combination of On Site! or Build Up!) between August 1–October 31, 2004.

BUILD UP! As a bonus, increase your order and receive additional free Build Up! kits. (FREE and BONUS kits will be issued on orders as they are received. Credit will not be given for multiple orders received during the Back to School Special.)

Check the AGC website for the 2004 Construction Futures "Back to School" Special Order Form or call (703) 837-5410 to have a copy sent to you.

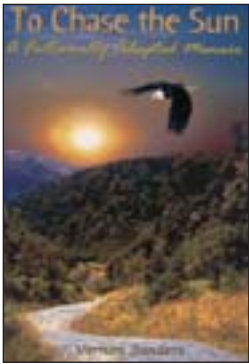
Purchase a combo of:	Receive	Bonus	Total kits
3 Build Up! or On Site! kits	1 FREE Build Up! kit	-----	4
9 Build Up! or On Site! kits	3 FREE Build Up! kits	1 BONUS Build Up! kit	13
18 Build Up! or On Site! kits	6 FREE Build Up! kits	2 BONUS Build Up! kits	26
36 Build Up! or On Site! kits	12 FREE Build Up! kits	3 BONUS Build Up! kits	51
54 Build Up! or On Site! kits	18 FREE Build Up! kits	4 BONUS Build Up! kits	76



MANAGEMENT RESOURCES

pilot program it is recommended that chapters selected as challenge coordinators work with only one or two candidates. The challenge coordinators review submitted materials for completeness before forwarding to the OSHA Regional Challenge Coordinator. Challenge coordinators will be suggesting ways to improve the forms and processes being used to administer the Challenge Pilot program, which will last one year.

WORLD WAR II HISTORY OF AGC CONTRACTOR FRED C. CULPEPPER DRAMATIZED IN "TO CHASE THE SUN"



It's safe to say that Atlanta physician Vernon Sanders always looked up to his older cousin, the late Fred C. Culpepper. Sanders, who has published scientific articles in two of the nation's most prestigious medical

journals—the *New England Journal of Medicine* and the *Annals of Internal Medicine*—has now turned his talents to fiction, and the result is compelling—particularly for those who enjoy accounts of the Second World War.

In *To Chase the Sun: A Fictionally Adapted Memoir*, Sanders follows the combat trail of Culpepper, a member of the "Screaming Eagles" 101st Airborne Division. The book follows Culpepper from the hedgerows of Normandy to Hitler's mountaintop redoubt, the "Eagle's Nest," near Berchtesgaden.

While key facts in the book are true and based on knowledge garnered over a lifetime of family ties and more than 70 hours of taped conversations, the narrative is cast as "a fictionally adapted memoir," because Sanders has put himself in the shoes of his cousin, writing the book in first person and filling in missing details and interpreting his thoughts. All in all, it makes for a powerful yarn.

Following the end of the war, Culpepper, a graduate of the Virginia Military Institute, returned home to Monroe, La., started a family, and became a general contractor. He became president of Ford, Bacon, &

Davis, growing it into a large and profitable company, which later sold. At the time of his death in 2002 at age 83, Culpepper was the chief executive officer of Breck Construction Co. Inc. (AGC), also in Monroe.



Fred C. Culpepper

Get more information or purchase a copy at www.sunchaser.us. Copies can also be purchased at www.1stbooks.com or amazon.com. The author can be reached at (770) 396-8072 or dr.v@mindspring.com.

TED BUDD WINS UNDERGROUND CONSTRUCTION AWARD

In an issue in which we focus on underground construction, it is fitting to note

that Ted Budd, vice president of the Underground Group, Kenny Construction Company, Wheeling, Ill., has been named the 2004 "Outstanding Individual in the Underground Construction Industry" by the American Underground Construction Association.

AGC ANNOUNCES 8TH ANNUAL CONSTRUCTION FINANCIAL MANAGEMENT CONFERENCE IN LAS VEGAS, OCT. 28-29, 2004

AGC and the Construction Financial Management Association (CFMA) will partner again to offer the Construction Financial Management Conference, two days of seminars focusing on financial aspects of the construction industry. Held at Caesar's Palace in Las Vegas on October 28-29, 2004, the conference will feature more than 20 sessions on topics such

(continued on page 10)

COOL STUFF! BESTSELLERS FROM THE AGC e-STORE

1. Project Delivery Systems for Construction – NEW! This textbook provides detailed information on traditional and alternative project delivery systems and comes complete with self-tests and case studies to emphasize points covered in the text. 190 pages. 2004. **AGC Item No. 2915 AGC Members: \$89.00 Retail: \$133.50.**

2. Manual on Uniform Traffic Control Devices (MUTCD Parts 1, 5 and 6)- 2003 Edition – NEW! The Federal Highway Administration has totally revised the Manual of Uniform Traffic Control Devices (MUTCD) Parts 1, 5, and 6 Temporary Traffic Control, and you are required to know about these new specifications and meet them. This book is a must-have for contractors involved in highway construction. More than 100 pages. 2003. **AGC Item No. 3509 AGC Members: \$25.00 Retail: \$37.50.**

3. AGC Guide to Federal Construction Contracting – NEW! A must-have for anyone involved in the Federal market. Contains the best information in locating Federal work, types of Federal contracts, small business concerns, payment procedures, and more! 230 pages. 2004. **AGC Item No. 3606 AGC Members: \$75.00 Retail: \$112.50.**

4. OSHA Safety & Health Standards for Construction (OSHA 29 CFR 1926 Construction Industry Standards) NEW! Contains a complete listing of Occupational Safety and Health standards applicable to construction. Easy to read and use—a must for every jobsite. 482 pages. 2004. **AGC Item No. 125 AGC Members: \$35.00 Retail: \$52.50.**

5. Construction Toolbox Safety Talks Volume II. Contains more than 100 updated Safety Talks! Designed to assist supervisory personnel in conducting construction safety toolbox talks and meeting training requirements. 452 pages. 2001. **AGC Item No. 130.2 AGC Members: \$115.00 Retail: \$172.50.**

6. Marketing Your Firm: A Proven Process for Contractors. This interactive CD is packed with more than eight hours of quality training with state-of-the-art exercises and realistic case studies to show you how to take control of your company's internal and external operations. Purchase yours today and position your firm to get the business you want! **AGC Item No. 3546 AGC Members: \$249.00 Retail: \$375.00.**

AGC CONSTRUCTION LEARNING TOOLS—3 EASY WAYS TO ORDER
Toll Free: (800) 242-1767 Fax: (703) 837-5405 Online: www.agc.org/e-STORE



as new statements and standards from the Financial Accounting Standards Board (FASB), insurance and risk management, the fun-

damentals of valuation and enhancing value, and leadership workshops.

"This is a valuable conference especially designed for construction CFOs that will help companies large and small improve their bottom line," says Richard Forrestel Jr., chairman of the Conference Steering Committee and chief financial officer for Cold Spring Construction in Akron, N.Y.

Please contact Heidi Blumenthal at (202)547-8892 or blumenthalh@agc.org

for more information.

UNION LEADER MCCARRON TO SPEAK AT AGC MIDYEAR MEETING

United Brotherhood of Carpenters General President Douglas McCarron will speak at a *Special Forum on Union District Council and Trust Fund Consolidations* during AGC's 2004 Midyear Meeting in Phoenix. The Union Contractors Committee-sponsored forum will be held on September 30 at 9:30 a.m. Mr. McCarron has been asked to address the rationale behind the current movement of consolidations and the objectives that the trades hope to accomplish.

The forum will feature a panel of AGC chapter representatives who will provide management perspectives and share lessons learned from recent or current consolidations.

For more information about the



Midyear Meeting, see pages 11-13 or visit the AGC website at www.agc.org.

SOME DIFFERENCES BETWEEN CONSTRUCTION CONTRACTING IN THE U.S. AND MEXICO

Mexico is proving to be a market in which an increasing number of U.S. contractors are expanding to increase revenue. Although construction methods and materials in Mexico may be similar to those employed in the U.S., the legal system and business culture are significantly different and warrant careful planning before a contractor decides to dive into the Mexican construction market.

The Mexican legal system is different from the U.S. in that, in many cases, there is not a body of common law that governs actions and contracts along with statutory requirements. Simply put, there is no Mexican version of the Spearin Doctrine or the Eichleay Formula. In Mexico, judges generally do not follow case law precedent in ruling on a case's merits. Instead, Mexican judges review the statutes and determine which statute applies to the particular case before it. The judge then applies that statute to the case and rules accordingly.

More immediate concerns for companies that want to successfully expand their business operations into Mexico are the cultural differences that they will face from the first day of operation in Mexico. One of the first considerations companies wishing to expand into Mexico have to make is what type of direct corporate presence they should have. Some of the options available are to form a foreign subsidiary, open a branch office (generally not recommended), or form a joint venture or partnership with a Mexican company. There are tax and legal implications for each type of entity, which should be reviewed before a decision is made.

Considering the difficulty of collecting progress payments when working outside of the U.S., companies should look for alternative payment avenues, such as letters of credit.

One of the most important cultural differences for U.S. companies is the difference in dealing with business people in Mexico. Mexico has a very formal business culture where

seniority, politeness, and personal meetings are very important to establishing and maintaining good working relationships. After a contract is executed, a continued personal relationship is paramount to the success of the business relationship.

Bringing employees to Mexico to work on a project is another aspect of doing business that U.S. companies must address. A company and its employees will need to determine what type of visa to apply for, whether it is a Temporary Visa (FM-2), which allows a person to work in Mexico for an indefinite period of time if it is their intention to return to their home country; an Immigrant Visa (FM-3), which is granted to individuals who are relocated to Mexico for an indefinite period of time; or a NAFTA Business Visa (FMN), which is granted to individuals to work on a specific project for a short period of time.

Another difference that U.S. companies may not be aware of is that on payday, Mexican workers are paid cash at the jobsite. This entails bringing an armored car with armed guards to the jobsite to pay each worker.

This article just touches on the many differences that U.S. companies have to be aware of when doing work in Mexico. However, the Mexican construction market can prove to be quite profitable. U.S. companies wishing to take advantage of this market must do their homework before assuming this risk.

FOR INFORMATION ON AGC'S INTERNATIONAL CONSTRUCTION DIVISION

Log onto www.agc.org or contact Marco Giamberadino at (703) 837-5325 or giamberm@agc.org.

FOR MORE INFORMATION

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THE 2004 AGC MIDYEAR MEETING:

“Focus on ‘05—Prepare for Change”

Are You Ready for Change? The AGC 2004 Midyear Meeting—Focus on ‘05 — Prepare for Change—is quickly approaching, and this year’s agenda is filled with exciting new events and learning opportunities. Simply put, it is not your ordinary AGC Midyear Meeting.

WHY THE THEME “PREPARE FOR CHANGE”?

In April 2004, AGC surveyed over 11,000 random members via a Web survey to determine their preferences for AGC meetings. Of those responding, nearly 35 percent indicated their primary reason for attending AGC meetings is for educational programs, followed by 23 percent who indicated the ability to network was their primary reason for attending.

Based on member feedback, AGC has prepared for change by modifying the 2004 Midyear Meeting to give members what they want. AGC has sought out top-named speakers, included more educational sessions, and has assembled some of the finest economic and political experts to help you prepare your business plan next year.

HEAR IT FIRST

This year’s Midyear Meeting will focus on the coming year to help AGC members better understand the political, economic, and marketplace changes expected in 2005. In fact, the economic forum scheduled for Saturday, October 2nd, will be the very first industry-wide economic outlook for 2005 available anywhere. The forum will feature a keynote address by FOX News

**REGISTER ONLINE NOW
AT www.agc.org!**

Look for “AGC’s 2004 Midyear Meeting” under “Featured Events” on the homepage.

Channel’s financial expert Neil Cavuto, followed by a panel of construction industry economic professionals who will discuss, forecast and highlight the various economic trends you can expect in the coming year that will affect your bottom line.

RELAX. RECHARGE. RELATE.

Instead of the typical downtown hotel, AGC has chosen the J.W. Marriott at Desert Ridge Resort and Spa in Phoenix to host the event. This resort offers majestic views of the McDowell Mountains, along with the Wildfire Golf Course, Tennis Center, four acres of turquoise pools, and the world-famous Revive Spa with health center and salon. Conscious effort was made to leave specific blocks of time during the meeting to relax, recharge your batteries, and network with your peers in the stellar beauty of the desert southwest.

COME ONE, COME ALL!

AGC realizes that your time is valuable, and time away from home or the office can be difficult. Therefore, we encourage you to bring your work team, your spouse, or your entire family with you. As

incentive, registration discounts are available for additional registrants from your company, and AGC is waiving the registration fee for spouses and children under 18. That’s right, spouses and children are FREE!

ONE DAY RATES

While AGC encourages everyone to take advantage of the quality educational sessions offered throughout the entire three days of the Midyear Meeting, we know you’ve got a busy schedule. Therefore, for those of you short on time, AGC is offering a new one-day registration rate allowing you to attend the sessions you are most interested in and catch the first flight home.

REGISTRATION AND HOTEL INFORMATION

To register, simply complete the registration form located on page 13 and return it to AGC, or save time and register online at www.agc.org (click on “Register for an Event”). AGC Members should login before registering in order to access the discounted member registration rates. Early Bird rates apply on all registrations received on or before August 15, 2004, so ACT FAST!

Hotel reservations should be made directly with the JW Marriott Desert Ridge by calling (480) 293-5000. Please be sure to identify yourself as an AGC Midyear Meeting attendee to receive the discounted room rate.

QUESTIONS?

Contact Meeting Services at (703) 837-5304 or e-mail meetings@agc.org.

SCHEDULE at a glance

	Wednesday, September 29	Thursday, September 30	Friday, October 1	Saturday, October 2			
7:00		Committee Day. <i>Committee meeting business sessions will be listed in onsite program.</i>		National Leadership Breakfast for Chapter Presidents, Vice Presidents and Chapter Executives			
7:30							
8:00		Midyear Meeting Kickoff with Continental Breakfast					
8:30			Professional Development Sessions	Personal Development Seminars			
9:00		Professional Development Sessions	Host Hospitality	Board of Directors Session Featuring Neil Cavuto (Open to all attendees)			
9:30							
10:00			Personal Development Seminars				
10:30					Economic Forecast Forum	Personal Development Seminars	
11:00							
11:30							
12:00		Luncheon for all attendees	Luncheon for spouses with speaker	Luncheon for all attendees with political speaker			
12:30							
1:00	AGC Registration Opens	Professional Development Sessions		Professional Development Sessions	Personal Development Seminar	Bill Ratz Memorial Golf Tournament	Optional Tours
1:30			Leadership Forums				
2:00						Optional Tours	
2:30							
3:00		Executive Leadership Council		Optional Tours			
3:30		Professional Development Sessions					
4:00							
4:30							
5:00							
5:30							
6:00	Welcome Reception for all attendees			TGIF Party—Beer and Wine and Light Snacks	AGC Western BBQ for all attendees		
6:30							
7:00							

AGC Midyear Meeting Registration Form

September 30–October 2, 2004 • JW Marriott Desert Ridge Resort and Spa • Phoenix, Arizona



Complete and return to AGC of America, Convention and Meeting Services Department
333 John Carlyle Street, Suite 200, Alexandria, VA 22314 • Telephone: (703) 837-5304 • Fax: (703) 837-5403

Please type or print clearly. **SAVE TIME! REGISTER ONLINE AT WWW.AGC.ORG**

AGC Member ID Number (Questions: contact Rockkie Dunton at 703-837-5304)

Last Name First Name MI Nickname for Badge

Title Company Name

Mailing Address

City State Zip

E-mail Address Phone Number Fax Number

Spouse/Guest Last Name First Name Nickname for Badge

Children's Last Name First Name (s) Age(s) Nickname for Badge
must be under 18

Registrant's Affiliation with AGC of America (check one):

- Chapter President Chapter Vice President Board of Directors Committee Chair Committee Member
- General Contractor Specialty Contractor Supplier/Service Provider Chapter Staff Guest Sponsor
- Student Chapter Member Educator Speaker Press Young Constructor Non-Member

Registration Fees (circle all that apply)

	Early Bird (Through August 15, 2004)	Regular
AGC Member	\$550	\$675
Additional AGC Member from same firm	\$400	\$525
Spouse/Guest/Child under 18	FREE	FREE
Non-Member	\$700	\$825
Additional Non-Member from same firm	\$550	\$675
Daily Fee (select day) <input type="checkbox"/> Thursday <input type="checkbox"/> Friday <input type="checkbox"/> Saturday	\$250	\$375

Total payment \$ _____

Midyear Cancellation Policy: Full refunds will be granted to requests received in writing to AGC of America (post-marked or faxed by Midnight) on August 20, 2004. A refund, less \$100.00 for each registrant, will be granted to written requests received at AGC of America from August 21, 2004 to September 15, 2004. Cancellations will not be accepted over the phone. Written notification is required. **NO REFUNDS WILL BE GRANTED AFTER SEPTEMBER 15, 2004.**

Payment

Credit Card Type: MC Visa Amex Exp. Date. _____

Credit Card Number _____ Signature _____

Check Enclosed (Payable to AGC of America)





AGC PAC BOASTS GROWING RANKS OF 25-YEAR MEMBER CONTRIBUTORS

With the 2004 PAC fundraising year well under way, a new breed of contributor is emerging from the humble beginnings of the AGC PAC 535 Club—the 25-year 535 Club member. The 535 Club is a group of dedicated AGC members committed to the political welfare of the industry who contribute at least \$1,000 to AGC PAC every year. The Club's name derives from the PAC's goal to elect 535 U.S. representatives and senators who are willing to give the construction industry a fair hearing on industry issues.

THE PIONEERS OF 1978

In 2002, an elite group of five founding 535 contributors (remaining from the original group of 24) reached their 25-year anniversary as consistent supporters at the 535 Club level. Having contributed at least \$1,000 a year between 1978 (the year of AGC PAC's inception) and 2001, these five exceptional individuals were Ival R. "Bud" Cianchette, chairman emeritus of Cianbro Corporation, Pittsfield, Maine; Richard S. Pepper, chairman of the Pepper Companies Inc., Chicago; James D. 'Doug' Pitcock,



Richard and Roxelyn Pepper are the first husband and wife to share 25-year member status in AGC PAC's 535 Club; Richard became a 25-year member in 2002, and Roxelyn became one this year. Roxelyn is also the first "contractor spouse" (independently holds 535 Club membership) to have reached the 25-year threshold.

president & CEO of Williams Brothers Construction Co. Inc., Houston; Dan P. Shepherd, executive vice president of Shepherd Construction Company Inc., Atlanta; and Tim D. Word, manager of Dean Word Company Ltd., New Braunfels, Texas.

The watershed accomplishment of this distinguished group was honored with award presentations at AGC's 83rd annual convention in Las Vegas, Nev., in 2002.

A GREAT TRADITION IS BORN

The year 2003 opened the door for a second group of AGC PAC members who were eligible for 25-year, 535 Club status recognition. This remarkable group of individuals included Warren Diederich, chairman of the Board of Industrial Builders, Fargo, N.D.; Richard E. Forrestel, Sr., chairman of Cold Spring Construction Company, Akron, N.Y.; Richard E. Hall, chairman of Underground Construction Company, Benecia, Calif.; and James Pizzagalli, co-chair of Pizzagalli Construction, South Burlington, Vt. This year, 2004,

(continued on page 16)

CONGRESSIONAL PRIMARIES CALENDAR

Date	State	Register	Date	State	Register
AUGUST			14	Washington, D.C.	30 Days Prior
3	Kansas	15 Days Prior		Massachusetts	20 Days Prior
	Michigan	30 Days Prior		Minnesota	21 Days Prior & Election Day by 5 p.m.
	Missouri	28 Days Prior		New Hampshire	10 Days Prior
5	Tennessee	30 Days Prior		New York	25 Days Prior
10	Colorado	29 Days Prior		Rhode Island	30 Days Prior
	Connecticut	14 Days Prior		Vermont	12 p.m. two Sats. Prior
17	Wyoming	Day of	18	Wisconsin	Day of
24	Alaska	30 Days Prior	21	Hawaii	30 Days Prior
31	Florida	29 Days Prior		Washington State	30 Days Prior
SEPTEMBER			NOVEMBER		
7	Arizona	30 Days Prior	2	Louisiana	30 Days Prior
	Nevada	30 Days Prior			
11	Delaware	20 Days Prior			



six more individuals meet the silver anniversary milestone: John S. Alberici, chairman of Alberici Group, Inc., St. Louis, Mo.; Robert H. Boh, chairman of Boh Brothers Construction Co., LLC, New Orleans; Jack Freshour, president of Freshour Construction Company Inc., Cabot, Ark.; Robins H. Jackson, president of Aspro Inc., Waterloo, Iowa; Roxelyn Pepper of The Pepper Companies Inc., Chicago; and James W. Supica, president and treasurer of United Construction Company Inc., Lenexa, Kan., will find their names etched in 535 Club history, also.

535 CLUB MEMBER PERKS

Over the years the benefits for club members have evolved from social functions at the annual meetings (a luncheon at the Midyear Meeting and a black tie dinner event at the AGC Convention) to a Clubroom set up especially for 535 Club members. At both of AGC National's big annual events, the Club-

room is a place where members can both relax and do business from 7 a.m.–5 p.m. daily. The room is provided as an alternative hub for Club members as they navigate their way to and from scheduled workshops and meetings. The Clubroom provides a restful place to have lunch, meet with colleagues, or conduct company business, and provides access to computers, telephones, and fax machines.

THANK YOU TO ALL DONORS TO AGC PAC!

We applaud our 535 Club members who have reached the 25-year milestone and who each represent at least a quarter century of generous commitment to the industry. Although our 535 Club contributors reflect the core strength of AGC PAC, every contributor represents the mortar and brick that maintains AGC's formidable legislative clout. Our sincere thanks to all of you who consistently give to AGC PAC, and who helped us

reach the enviable position of "million-dollar PAC" in 2003. We thank you for helping us to keep our competitive edge and to provide support to industry-friendly candidates—candidates who have a say in the guarantee of the survival of our industry and our livelihood. See you in the 535 Clubroom in Scottsdale, Ariz., Sep. 30 to Oct. 3, and "We'll leave the light on for you."

—By **Cecelia Casey**, AGC associate director, Congressional Relations

FOR MORE INFORMATION

Visit our website at www.agc.org under the government affairs link and AGC PAC if you would like more detailed information about the 535 Club, or contact Rebecca Nichols, AGC director, Congressional Relations/PAC and Grassroots.

Call: (202) 547-5013

E-mail: nicholsr@agc.org

TO MAKE A DIFFERENCE IN NOVEMBER, GET THE RIGHT TOOLS!

Having the right tools makes all the difference in politics as in construction. For that reason, AGC offers all the tools that you need to become more politically active right on our website. Log on to the all-new www.agc.org, and from the homepage click on the link for "Government Affairs." On the next page, click on the link for the "LEGISLATIVE ACTION CENTER." From there you can:

- Register to vote;
- Learn about the voting records of your elected officials;
- Research your candidates;
- Take action on issues critical to the industry (TEA-21 reauthorization, clean and safe water, and more);
- Get all the information you need to conduct a "Get Out the Vote Drive" at your company; and
- Find your primary and general election deadlines for both the congressional and presidential races!



LOG ON TODAY, AND COMMIT TO BEING MORE POLITICALLY INFORMED AND ACTIVE FOR THE 2004 ELECTIONS!

REDUCING WORK ZONE-RELATED CONGESTION

FHWA IS CREATING SOLUTIONS THAT WILL
IMPROVE SAFETY IN AND AROUND WORK ZONES



Highway congestion threatens the mobility that is so essential to our nation's economic vitality, the quality of the air we breathe, and the satisfaction of highway users. Indeed, a Texas Transportation Institute study estimated that the cost of congestion in 75 of the nation's large urban areas in 2001 was \$69.5 billion. Corresponding to the dollar losses were 3.5 billion hours of delay and 5.7 billion gallons of excess fuel consumed.

Simply put, congestion occurs when traffic demand exceeds available capacity. Causes of recurring congestion include insufficient capacity, unrestrained demand, and ineffective management of capacity (such as poor signal timing). Causes of nonrecurring congestion include work zones, incidents, weather events, special events, and emergencies.

From the user's perspective, highway construction work zones are among the more irritating causes of nonrecurring congestion. At any time during the peak construction season, work zones are in force on 20 percent of the National Highway System, and they are the cause of 24 percent of the nonrecurring congestion on our nation's highways. Even more important is the impact of work zones on the safety of the motoring public and the construction workforce. In 2002, 1,181 fatalities and more than 52,000 injuries resulted from crashes in work zones.

The importance of this problem is

The fact that traffic congestion is on FHWA's "vital few" priorities list reflects the agency's seriousness about solving the problem.

reflected in the fact that mitigation of traffic congestion and improving highway safety are two of the Federal Highway Administration's (FHWA) "vital few" focus areas. To address the "congestion vital few" priority, FHWA is working toward three specific objectives over the next five years.

The first objective is to mitigate the overall impacts of congestion through effective local partnerships. The goal is to establish at least 52 state and local partnerships focused specifically on implementing state and local strategies for the mitigation of congestion—an average of one per federal-aid division office. During the first year, the focus is on establishing the partnerships. During the second through fifth years, FHWA will identify strategies and gaps and implement mitigation measures.

The second objective is to reduce work zone delays over the next five years by ensuring that all 50 states, the District of Columbia, Puerto Rico, and Federal Lands offices are engaged in aggressively anticipating and mitigating the congestion caused by work zones. The target is for all 50 states to implement aggressive work zone initiatives by 2007, as measured in part by a national Work Zone Self-Assessment process initiated in 2003.

The third objective is to reduce incident delays over the next five years by ensuring that all states, the District of Columbia, Puerto Rico, and Federal Lands offices are engaged in aggressively anticipating and mitigating congestion caused by traffic incidents. FHWA will determine the current performance baseline during the first year, and will focus on up to 30 states containing the largest 75 metropolitan areas to implement aggressive programs to manage traffic incidents by 2007, as measured in part by FHWA Office of Operations Traffic Incident Management Self-Assessment Tool, and thus to mitigate congestion caused by incidents.

STRATEGIES FOR SUCCESS

Real solutions to the challenge of work zone congestion come from a fundamental change in the way projects are planned, estimated, designed, bid, and, finally, constructed. A comprehensive approach to work zone management includes policies, safety and mobility assessments, and transportation management planning.

Work zone safety and mobility policies are necessary to support systematic consideration of work zone impacts across all

(continued on page 20)

stages of project development and address the safety and mobility needs of road users and workers. In 2003, FHWA provided an assessment tool that was used by each state to conduct a work zone self-assessment. Through this self-assessment, states established a baseline of the current state of their practice and identified future efforts for improving work zone quality.

Work zone safety and mobility assessments are necessary to understand the type, severity, and extent of the work zone impacts associated with various project alternatives and to incorporate appropriate mitigation measures and strategies in project design, construction, transportation management and operations, and traffic control. FHWA developed "QuickZone," an easy-to-use delay estimation tool designed to assist transportation professionals in assessing the impacts of work zones on vehicle travel. QuickZone can help the user determine the times of day and times of year that are best for a given project, as well as the best approach for managing traffic.

Transportation management planning is an essential part of the equation to reduce congestion and crashes resulting from work zones. This process usually culminates in a Transportation Management Plan (TMP) that can include a variety of elements such as traffic control, transportation operations, and public information and outreach strategies to help mitigate work zone impacts. Within a TMP you can find a temporary traffic control plan that recommends strategies to handle traffic flow safely and efficiently through the actual work zone and operational strategies that focus on the use of incident management, intelligent transportation systems (ITS), travel demand, and public information and outreach strategies to communicate information about the project and expected impacts to road users.

SPECIFIC TECHNIQUES AND TOOLS

Intelligent Transportation System Technologies. Intelligent Transportation System (ITS) technologies in and around work zones are recommended to mitigate the impact of work zones on traffic. An FHWA publication, *Intelligent Transportation Systems in Work Zones: A Cross-Cutting Study* (FHWA-OP-02-025), discusses the application of ITS in work zones in four locations, plus benefits and lessons learned. In 2004, FHWA plans to publish a guide for implementation of ITS in work zones and detailed case studies of four types of ITS applications in work zones.

Full Closures. Experience has shown that the use of full road closure during rehabilitation can reduce both crashes and work zone congestion. In this kind of project, the roadway is closed, traffic rerouted, and the contractor given full access to the roadway with the expectation that construction time will be reduced dramatically. An FHWA brochure, *Shorter Duration, Safer Work Zones, More Satisfied Travelers: Successful Applications of Full Road Closure in Work Zones* (FHWA-OP-03-086), and a study report, *Full Road Clo-*

At any time during the peak construction season, work zones are in force on 20 percent of the nation's highways, and they are the cause of 24 percent of the nonrecurring congestion. In 2002, 1,181 fatalities and more than 52,000 injuries resulted from crashes in work zones.

sure for Work Zone Operations: A Cross-Cutting Study (FHWA-OP-04-009), discuss the use of full closure, including benefits and lessons learned at six locations.

Other Initiatives. Other initiatives underway include an update of the FHWA publication, *Work Zone Operations Best Practices Guidebook* (FHWA-OP-00-010), which shares success stories and lessons learned. Best practices covered include policies and procedures, public outreach, contracting, construction methods, enforcement, and ITS. The FHWA Work Zone Program is partnering with states to conduct a series of "Making Work Zones Work Better" workshops to share information on new and emerging technologies and practices focused on reducing congestion and crashes in and around work zones. Work zone training topics are being updated and expanded through the National Highway Institute to address planning for work zones, design and execution standards to improve mobility and safety, and using law enforcement in work zones. In addition to these initia-



An Intelligent Transportation System (ITS) technology.

tives the FHWA Work Zone Program is working on Public Communication and Outreach strategies, TMP development guidance, work zone safety and mobility assessment and analysis procedures, effective corridor planning for work zones, and improved nighttime lighting for construction processes.

ACHIEVING THE CONGESTION "VITAL FEW" GOAL

As much of our nation's transportation infrastructure approaches the end of its service life, the need for preservation, rehabilitation, and maintenance will certainly increase. At the same time, traffic continues to grow and create more congestion. The combination of more work zones and heavier traffic volumes will result in more impacts on mobility and safety of the traveling public. The challenge before the highway community is not to eliminate work zones, but to reduce their impact on safety and mobility. This goal can be accomplished by applying a variety of strategies to decrease the need for work zones and their duration, and to improve the operational and safety characteristics of those that are necessary. Through the Work Zone Program, FHWA will continue to provide progressive tools, strategies, standards, and measures to enhance work zone performance and ultimately improve safety and mobility on our roadways.

—By **Scott L. Battles, R.A.**, the team leader of FHWA's Work Zone Mobility and Safety Product Team in the Office of Transportation Operations in Washington, D.C. His responsibilities include the development and dissemination of work zone mitigation strategies that consider the impacts on road users and workers to improve safety and mobility.

FOR MORE INFORMATION

Contact Scott Battles.

Call: (202) 366-4372

E-mail: scott.battles@fhwa.dot.gov

MARKETING TO WIN

AGC AND FMI CORPORATION TEAM UP TO OFFER
ONE-DAY SEMINARS ON AGC'S NEW,
INTERACTIVE CD-ROM MARKETING TOOL

Staying ahead of today's competition requires contractors to navigate downturns and shifts in markets, while maximizing profits, motivating employees, and understanding client relationships. To help you master this challenging business tightrope act, AGC has developed a CD-ROM, *Marketing Your Firm: A Proven Process for Contractors*.

AGC responded directly to its members in gearing this resource specifically to the needs of small to medium-size construction firms in the areas of building, utility, highway, heavy, and specialty contracting.

To take command of this new tool and the powerful knowledge it contains, you can enroll in the one-day seminar on *Marketing Your Firm*, offered by AGC in partnership with FMI Corporation.

This comprehensive AGC/FMI one-day training experience will help you:

- Increase your job profits;
- Maximize investments in your business;
- Increase your website hit rates;
- Maximize your employees' productivity;
- Attract more work and a better mix of work and balance of work; and
- Ensure a reliable work flow—no matter what the economy serves up next.

Each one-day seminar is led either by FMI's Cynthia Paul or FMI's Hoyt Lowder. The seminars will:

- Provide participants with a frame-

"Are you looking for a new business opportunity? Undertaking a new marketing plan, or building on your existing one? Search no further—the AGC/FMI seminar and AGC's new *Marketing Your Firm* CD-ROM are invaluable tools to help you make it happen."

—Thomas Schaefer, who is president of Henkel Construction of Mason City, Iowa, and who recently attended the seminar held in Iowa.

work for the marketing process and the context for successful marketing practices today;

- Offer a special FMI lead session on components of the CD-ROM, *Marketing Your Firm*;

- Facilitate practice sessions on *Marketing Your Firm* in open workshop; and

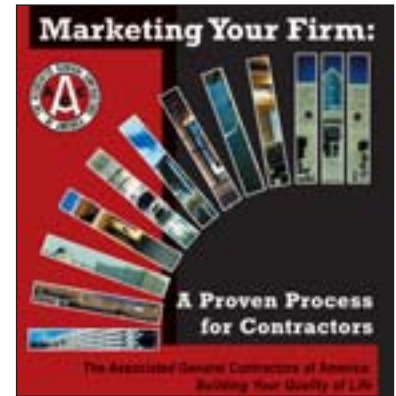
- Conduct a wrap-up session to collect individual firm action plans, which will provide the basis for follow-up two months later with each firm to reinforce that *Marketing Your Firm* is actually being used and to document success.

FOR MORE INFORMATION

Contact Kathy Mapes Hoffman at (703) 837-5376 or mapesk@agc.org.

MARKETING YOUR FIRM: A PROVEN PROCESS FOR CONTRACTORS

AGC'S NEW, INTERACTIVE CD-ROM



Staying ahead of today's competition requires a construction company to develop every competitive edge. The Associated General Contractors of America (AGC) has developed this CD-ROM to share proven, fire-tested ideas about how to take control of a company's internal and external operations and to keep the business machinery running smoothly.

The CD-ROM contains eight hours of material, including the following:

- An eight-step process to learn the methods of successful marketing;
- Insightful, interactive exercises;
- Interviews of AGC contractors;
- Realistic case studies;
- Electronic work sheets and note boards to record your plan; and
- State-of-the-art, fully animated marketing scenarios.

Recommended: computer with 140 MB RAM and Windows 98 or higher.

Order CD-ROM by contacting (800) AGC-1767 or www.agc.org. Ask for *Marketing Your Firm: A Proven Process for Contractors* (AGC Order #3546). For more information on seminars or a free demo of this CD-ROM, go to www.agcmarketing.org.

UPCOMING AGC/FMI MARKETING SEMINARS



A peek inside the CD-ROM...

There are three upcoming one-day seminars on AGC's new CD-ROM "Marketing Your Firm: A Proven Process for Contractors":

September 21, 2004—Madison, Wis.

For more information, contact Laura Cataldo at the AGC of Wisconsin. Call: (608) 221-3821. E-mail: cataldo@agcwi.org.

October 15, 2004—Lincoln, Neb.

For more information, contact Walt Broer of the Nebraska Building Chapter, AGC. Call: (402) 697-8411. E-mail: neagc1937@aol.com.

November 9, 2004—Rockford, Ill. For more information, contact Pat Lamb at the Northern Illinois Building Contractors Association. Call: (815) 229-5636. E-mail: pat@nibca.org.

For news of upcoming seminars and more information, go to www.agcmarketing.org.

AGC'S MUNICIPAL & UTILITIES DIVISION

PROVIDING SOLUTIONS FOR AMERICA'S UNDERGROUND INFRASTRUCTURE NEEDS



The Municipal & Utilities (M & U) Division provides management and market services to contractors who construct water-and-wastewater, underground-utility, site-preparation, and other types of public works projects.

The Division monitors and serves as liaison to other water, wastewater, and utility owner and user groups in the public and private sectors. Activities and issues of specific interest to the Division include the following:

CLEAN WATER AND DRINKING WATER FUNDING



AGC's message: Increased funding is needed to eliminate the gap between available funds and the demonstrated need for these critical infrastructure programs.

The Environmental Protection Agency's (EPA) comprehensive Gap Analysis reports, assuming no growth in revenues, that the total need for clean water—in both capital and operations and maintenance—exceeds \$270 billion over 20 years. For drinking water, the gap approaches \$265 billion for the same period. The Congressional Budget Office, Office of Management and Budget, and several private studies concur.

Having financed drinking water and wastewater facilities nationwide for the last 17 years, the State Revolving Funds

(SRF) programs are some of the country's most successful federal environmental programs. Legislation addressing water infrastructure needs should also create a long-term, sustainable source of federal funding, adequately finance state revolving funds, and streamline federal requirements so that states can prioritize individual state needs.

AGC and the associations involved in the Water Infrastructure Network lobby Congress and have released reports that spurred the introduction of legislation the past three Congresses to bolster the SRF programs to begin to address the funding gap by examining methods to develop a long term sustainable method of funding.

COMMON GROUND ALLIANCE



The Common Ground Alliance (CGA) is a nonprofit organization dedicated to underground facility damage prevention. AGC is the sole construction industry sponsor of CGA, and has assisted CGA in promoting three digit dialing for one-call. Pipeline Safety legislation signed into law by President Bush calls for "establishment of a 3-digit nationwide toll-free telephone number system to be used by State one-call notification systems."

The CGA's 15-to-25-member board of directors represents all stakeholders in the one-call process. AGC's CGA board representative is Vic Weston, president of

Tri-State Road Boring in Baton Rouge, La., who has held many leadership positions within national AGC (including M & U Division chair) and Louisiana AGC. Weston protects contractor interests as the board deliberates one-call best practices and how to increase public awareness of the importance of one-call systems. Brad Barringer, BRS Inc., Richfield, N.C.; Roy Weaver, Rast Construction, Birmingham, Ala.; Allen Gray, Carolinas AGC; and Stu Megaw, AGC of America, serve on the committees that report to the CGA board.

CONTRACT DOCUMENTS

Municipal & Utilities Division representatives were instrumental in moving AGC to sign a memorandum of understanding with three national engineering societies, including the National Society of Professional Engineers (NSPE), the American Council of Engineering Companies (ACEC), and the American Society of Civil Engineers (ASCE), to become a fourth sponsoring organization of the Engineers Joint Contract Documents Committee (EJCDC).

E-XCAVATION M@TTERS

The Division distributes a weekly one-page e-mail bulletin—featuring Web links and e-mail addresses to consult for additional information—as a resource for AGC utility contractors. Topics include legislative and regulatory mat-



ters, excavator resources, educational and networking opportunities, damage prevention, and AGC advocacy efforts on behalf of the professional excavating community.

LOCATEACCURATELY.COM



AGC believes in the concept of "shared responsibility" among all stakeholders in the one-call process. Not only should excavators follow all appropriate procedures and dig

with care, all underground facility owners should participate in the one-call process, and locators should be held responsible for accurately locating those facilities. AGC is leading a subcommittee of the Common Ground Alliance, which is putting together an awareness and education program designed for facility locating personnel and contract locators based on the AGC concept of Locate Accurately.

National AGC, in cooperation with Carolinas AGC, developed LocateAccurately.com—a website dedicated to public safety and underground facility protection. The website gives access to excavator resources such as state one-call laws, the American Public Works Association's standard color code, Web and telephone links to one-call centers nationwide, and jobsite weather forecasts. The site also supplies AGC's position on underground facility damage prevention and information on AGC's excavation safety products. This year the site became interactive and it allows AGC members to file damage reports so that AGC can collect data to determine the root causes of damages, which historically are blamed primarily on "third party" damage.

M&U DIVISION COMMITTEES

Trenchless Technology Committee Mission: To provide members with up-to-date information on the various techniques and developments in the field of trenchless technology.

Joint committees. Division joint committees provide a forum for matters of mutual interest to AGC and partnering organizations:

- ❑ American Council of Engineering Companies/AGC Joint Committee;
- ❑ American Public Works Association/AGC Joint Committee;
- ❑ American Water Works Association/AGC Joint Committee;

Partnering and outreach. Through the efforts of our joint liaison committees, AGC has signed formal partnering agreements with the following associations:

- ❑ American Council of Engineering Companies
- ❑ American Public Works Association
- ❑ American Water Works Association

The Division exhibits and presents annually for these partners and other groups.

Educational presentations. The Municipal & Utilities Division has taken a leadership role in ongoing educational outreach. The Division has presented to

sister associations and other groups both in person and by nationwide satellite videoconference on topics such as the following:

- ❑ Alternative Dispute Resolution;
- ❑ Preventing Excavation Damage;
- ❑ Construction Safety;
- ❑ Perspectives on the Design-Build Project Delivery System; and
- ❑ Appropriate Risk Allocation.

LOBBYING CONGRESS AND FEDERAL REGULATORY AGENCIES

Division representatives have testified before the U.S. Senate, the U.S. House of Representatives, and federal agencies to advocate the following:

- ❑ Increased investment in the nation's water and wastewater infrastructure;
- ❑ Increased annual funding for the Clean Water State Revolving Fund;
- ❑ Increased annual funding for the Drinking Water State Revolving Fund; and
- ❑ Develop a long-term sustainable funding method for water and wastewater infrastructure.

CONGRESSIONAL APPROPRIATIONS

The Division works with Congress each year during the appropriations process to ensure that funds authorized are provided in the budget. Historically, AGC has effectively helped to obtain increases in funding levels.

LIAISON WITH FEDERAL AGENCIES

The Division maintains a working relationship with the U.S. Environmental Protection Agency (EPA) on its wastewater treatment grant program and state revolving loan fund programs. AGC also works with EPA on regulations that affect contractors, such as storm water runoff and clean air sanctions.

OSHA Trenching Initiative Task Force In response to an increase in the number of trenching fatalities, AGC is working on the OSHA Trenching Initiative Task Force to help reduce trench-related accidents. AGC is spearheading efforts with industry partners to get the word out on trenching and shoring safety. AGC has coordinated efforts to encourage the Common Ground Alliance (CGA) and One Call Systems International (OCSI) to distribute materials in both Spanish and English outlining OSHA regulations for safe trenching and shoring. Both CGA and OSCI have agreed to work with AGC. OSHA Trench Safety Quick Cards and posters will be distributed free of charge through AGC chapters, during CGA presentations, and at participating

2004 AGC MUNICIPAL & UTILITIES DIVISION CHAIRS



John Blevins
CHAIR, AGC MUNICIPAL & UTILITIES DIVISION
VICE PRESIDENT, B.L. HARBERT INTERNATIONAL, LLC, BIRMINGHAM, ALA.

He has served on the following for national AGC Finance

Committee, Membership and Administrative Committee, American Council of Engineering Companies/AGC Joint, Municipal & Utilities Coordinating Committee, Strategic Plan Implementation Team, Equal Business Access Committee, and Young Constructors Forum. He is a member of the Board of Directors, chair of the WWEMA-ACEC-AGC Joint, and serves on the AGC National Executive Board.



Bill Moe
VICE CHAIR, AGC MUNICIPAL & UTILITIES DIVISION, W.G. MOE & SONS, PORTLAND, ORE.

He has served on the following for national AGC: Legislative Action Committee, Union

Contractors Committee, Membership Administrative Committee, Safety & Health Committee, Finance Committee, Municipal & Utilities Coordinating Committee, and Equal Business Access Committee. He has served as president of the Oregon-Columbia Chapter, AGC, co-chaired the American Waterworks Association, and is on the AGC National Executive Board.

One-Call centers nationwide. AGC is offering resources to OSHA such as identifying which AGC chapters offer trenching safety or "Competent Person" training, and offering AGC trenching and shoring safety materials for OSHA review and possible use in upcoming awareness efforts.

FOR MORE INFORMATION

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CONDUCTING PROPER WORKPLACE INVESTIGATIONS:

HOW TO RESPOND TO COMPLAINTS OF EMPLOYEE MISCONDUCT

Employers must have effective procedures in place to enable employees to report discrimination, harassment, or other unlawful activities, and to guide the employer in investigating allegations. Recent changes in federal law concerning disclosure of investigations make it more important than ever for employers to understand this area. When a workplace investigation is initiated, an employer should take the steps outlined below.

DECIDE WHO WILL CONDUCT THE INVESTIGATION

An in-house investigation ensures a quick response for a large company with sufficient resources. If company personnel lack the necessary training to conduct an investigation, or if internal politics raise questions of fairness, then the employer should look elsewhere for an investigator.

Hiring an outside investigator or using outside counsel could alleviate problems presented by in-house investigations. A properly trained, impartial investigator could lead employees to have more faith in the fairness of the complaint resolution process. Remember that the investigator could be called as a witness if a lawsuit is later filed.

CONDUCT A PROMPT INVESTIGATION

The investigation must be prompt and effective. A timely response usually begins the same day officials receive notice of a complaint. Courts have also found responses timely beginning a few days after a complaint is made.

It is not always appropriate to wait to investigate until an employee makes a formal complaint. In one case, a court held that an investigation initiated on the same day an employee filed a complaint was untimely because the company president knew of the problem prior to the employee's formal report.

STEPS FOR CONDUCTING AN EFFECTIVE INVESTIGATION

When conducting an investigation of a complaint, certain steps should be followed:

- **Notify appropriate human resource personnel immediately and ask the complainant to put the allegations in writing.** Certain information must be disclosed to investigate the complaint. Ask the complainant for the specifics of the incident and a list of witnesses who can corroborate the allegations. Explain the "no retaliation" policy and inform him or her to contact you immediately if he or she feels someone has taken adverse action against him or her.



WHEN AN EMPLOYEE COMPLAINS OF DISCRIMINATION, HARASSMENT, OR OTHER MISCONDUCT, A COMPANY MUST TAKE PROMPT, REMEDIAL ACTION.

Do not instruct the complainant to keep the complaint confidential because, according to a recent decision by the National Labor Relations Board, doing so may run afoul of the National Labor Relations Act (NLRA) (even for non-union employers). You can, however, develop a narrowly-tailored confidentiality policy that could limit tortious claims, such as negligent investigation and defamation, without infringing on NLRA-protected rights.

- **Obtain personnel files for the complainant and the accused to review for possible prior related incidents.** Interview the accused. If represented by a union, the employee has the right to have a union representative present upon request. Review the allegations and get a specific response for each. Ask the accused to identify witnesses who will corroborate his or her view of the facts. Explain the "no retaliation" policy, the investigative process, and the anticipated time frame for resolution. Determine if the accused needs to be put on administrative leave or transferred during the investigation.

- **Separately interview witnesses and explain why they are being interviewed.** Ask open-ended questions, rather than leading questions, to see what information they have. Review the specific allegations and determine if they have firsthand knowledge. Ask them for information, to identify other possible witnesses, and explain the "no retaliation" policy.

- **Determine the result and act upon it.** If a non-attorney conducts the investigation, he or she should

consult with an attorney, because the final report could be discoverable in later litigation.

If the allegations are substantiated, the accused should be given a detailed explanation of the discipline and an opportunity to ask questions. The complainant should be told, in general terms, the results of the investigation and the discipline. The company is not required to give the complainant a detailed explanation of the imposed discipline.

If the allegations could not be proven due to a "he said/she said" situation, the complainant should be notified of this and informed that the company will review relevant policy with the accused. In either scenario, thank the complainant for bringing the matter to your attention, and encourage him or her to report similar concerns in the future.

- **Comply with the Fair Credit Reporting Act (FCRA), which now includes new disclosure requirements relative to workplace investigations.** Under the FCRA, workplace investigations conducted by third-party investigators qualify as investigative consumer reports. The FCRA section 603(x)(2) now requires that an employer requesting an investigative consumer report and taking adverse action based on that report must disclose a summary to the employee containing the "nature and substance of the communications upon which the adverse action was based." The employer is not required to give the affected employee a copy of the report obtained but simply a comprehensive summary of the findings.

- **Prepare closure memos for the accused and the complainant to confirm the investigation has been completed.** List the resulting discipline, if any, and restate the "no retaliation" policy. Review applicable company policies regardless of the outcome. Ask both parties to sign a memo stating that they have been informed of the outcome and are satisfied with the resolution.

CONCLUSION

When an employee complains of discrimination, harassment, or other misconduct, a company must take prompt, remedial action. This includes conducting a proper investigation and taking appropriate follow-up measures. Doing so helps establish a comfortable workplace, helps to avoid litigation, or can provide a defense should litigation ensue.

—By Snell & Wilmer's employment law practice.

FOR MORE INFORMATION

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AT THE FOREFRONT OF TRENCHLESS TECHNOLOGY

A NEW STUDY LOOKS AT THE IMPACT ON UTILITIES DUE TO GROUND MOVEMENTS DURING PIPE BURSTING

Trenchless technology provides a wide range of methods and applications including methods for new installation, rehabilitation, and replacement of underground utilities. In order to minimize surface disruption and reduce traffic congestion in urban areas, trenchless techniques are often considered for pipe construction, rehabilitation and renewal of existing services, and installation of new services. Other advantages of using trenchless techniques are the improvement in public safety, speed of operation, prevention of short-term and long-term damage to road pavement, and improved public relations. Pipe bursting is a well-established trenchless method for the replacement of worn out and undersized gas, sewer, and water pipelines. In a typical installation, the bursting head with a replacement pipe attached is launched from the insertion pit and pulled by a cable or pulling rod from the pulling pit. The bursting head can receive energy to break the old pipe from the pulling cable or from pneumatic or hydraulic power.

A STUDY OF THE PIPE BURSTING PROCESS

Ground displacements are of primary concern when replacing pipelines in close proximity to existing buried utilities and structures. This article presents some of the results from the research conducted to simulate the cavity expansion within the soil caused by the pipe bursting process and the displacements of the soil in the vicinity of the burst pipe and at the ground surface. Soil parameters such as bulk modulus, shear modulus, elastic modulus, Poisson's ratio, dilation angle, and friction angle are varied in the simulations to investigate the effects of these parameters on the soil displacements due to pipe bursting.

SIMULATING THE BURSTING OPERATION

In this study, the bursting operation is simulated as a two-dimensional expansion of the existing cavity. A section perpendicular to the axis of the old pipe is considered to determine the displacements of the surrounding soil due to the bursting process. No surface layer (representing a stiffer road pavement layer) was included in the analysis, and hence the

Pipe bursting is a well-established trenchless method for the replacement of worn out and undersized gas, sewer, and water pipelines. In a typical installation, the bursting head with a replacement pipe attached is launched from the insertion pit and pulled by a cable or pulling rod from the pulling pit.

results are more applicable to an open ground condition. The outside diameter of the old pipe considered was 204 millimeters (8-inch) with a cover depth of 1.10 meters (43-inch) from the axis of the old pipe. The old pipe was upsized to a 304 millimeter (12-inch) outside diameter pipe. The simulated displacements of the soil at different points on the ground surface and at a distance of 0.3 meters (1-foot) above the axis of the old pipe were determined. The analyses were carried out for dilation angles of zero-degrees and 10-degrees corresponding to loose and dense sand. One useful measure found—to describe the effects of the variation in soil parameters—was the “extent of heave.” This term is used to describe the lateral extent of points on the ground surface that undergo vertical movement.

THE RESULTS

The ground movement for gravel and sandy gravel with silt or clay fines were higher as compared with the silt and clay soils. The soil movement was concentrated in a wedge-shaped zone between the centerline of the old pipe and the soil surface. In dense sand, the outward and upward effects dominate the displacement pattern in shallow pipe bursting with considerable dilation occurring in the soil above the burst pipe. Higher bulk modulus and higher elastic modulus both lead to

higher ground displacements. Comparing soil types, the ground heave is highest in dense sand as compared to gravel, clay, and silt soil. The ground heave in loose sand is less than the ground heave in clay soil but is higher than in the silt soil simulated. The ground movements obtained from the simulation tests were compared to the actual ground movements measured at the Trenchless Technology Center Test Site.

CONCLUSIONS

The simulation results have produced a clearer understanding of the effects of soil properties on the ground movements due to pipe bursting. In simple terms, the stiffer and more dense the soil is, the lower the ability to accommodate the cavity expansion within the soil caused by the pipe bursting. Consequently, significant ground movements extend further from the burst pipe. In order to limit ground movements away from the pipe, it is necessary to provide space for the displaced soil to move into. For example, to limit lateral movements in a particular location, it may be possible to cut a narrow trench close to the pipe to be burst thus allowing the soil expansion to move into the space created by the trench and limit soil movements beyond this point. The users should determine if the trench walls need to be braced in certain conditions.

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—By **Aziz Saber, Ph.D., P.E.**, assistant professor, Trenchless Technology Center, Louisiana Tech University, Ruston, La.

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A COMMITMENT TO SKILL, INTEGRITY, AND RESPONSIBILITY THROUGH CONTRACTS

AGC'S MUNICIPAL & UTILITIES DIVISION AND CONTRACT DOCUMENTS COMMITTEE SPEARHEAD HISTORICAL INVOLVEMENT WITH THE EJCDC

In July 2003, AGC Past President Jack Kelley III, PE, CPC, Nickerson & O'Day, Bangor, Maine, signed a memorandum of understanding making AGC the fourth sponsoring organization of the Engineers Joint Contract Documents Committee (EJCDC). The other three participating organizations are the National Society of Professional Engineers (NSPE), the American Council of Engineering Companies (ACEC), and the American Society of Civil Engineers (ASCE). This marks the initial milestone in a long-term commitment to develop and publish high-quality standard contracts and related documents.

AGC PARTNERS IN THE EJCDC DOCUMENT PROCESS

AGC will participate in the development of EJCDC standardized forms. "We are excited to be a partner in the EJCDC document process," says Chris Matthews, president of Chris Matthews Construction Inc., Birmingham, Ala., and AGC delegation chair to EJCDC. "EJCDC forms often are the first choice for engineered construction projects in large part due to their careful consideration of owner, engineer, and contractor interests and their balanced apportionment of risks and responsibilities." As a partner with EJCDC, AGC enjoys the same participatory rights and responsibilities as NSPE, ACEC, and ASCE, including:

- Sharing in the legal and administrative costs of EJCDC;
- Appointing four voting delegates to participate in EJCDC;
- Assigning professional staff to participate in EJCDC;
- Seeking opportunities to strengthen industry participation in and recognition of EJCDC documents; and
- Having the ability to sell EJCDC documents to its members.

AGC's sponsorship of EJCDC indicates substantial involvement in another premier industry contract documents program and presents an opportunity for its own documents program to benefit from a relationship with engineering societies. AGC will continue to develop, sell, and promote standardized contracts and related materials generated by its contract

"THE NEW RELATIONSHIP WITH
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documents program. Each group will draw on the other for insight and expertise, including pursuing mutual development of new and revised contracts. "The new relationship with EJCDC shows AGC's leadership and dedication to uniting the industry and building consensus on critical contracting and risk allocation issues," says Paul Hoffman of Hoffman LLC, Appleton, Wis., and chair of AGC Contract Documents Committee.

WITH CONCURRENT GOALS, AGC AND EJCDC ARE AN EASY FIT

"When you think about it, this was an easy fit—AGC has been an active observer of EJCDC during their documents process, and has endorsed select EJCDC documents," says Bill Ernstrom, general counsel of Alberici Construction, St. Louis, Mo., and outside counsel for AGC's Contract Documents Committee. "It shouldn't come as a surprise that EJCDC and AGC's Contract Documents Committee (CDC) share similar missions and risk allocation philosophies." EJCDC's Orientation Manual provides the following mission statement:

"EJCDC is a coalition of stakeholders in the project delivery process who develop and endorse quality contract documents and encourage their use through education and promotion."

It also states that, in the development of construction documents, "EJCDC strives to ensure that each document:

- Objectively and fairly represents all parties;
- Recognizes and respects the separate interests, capabilities, and roles of all parties; and
- Provides for an acceptable, professionally and nationally recognized, level of engineering practice."

Such a philosophy is consistent with AGC's CDC mission: "CDC will be recognized as the leader in providing and continually improving balanced contract documents for the construction industry by:

- Being aware of the needs and concerns of all AGC members and chapters;
- Advocating equitable risk allocation between owners, architects, engineers, and contractors;
- Creating and endorsing a comprehensive family of documents and educating all parties in their use;
- Providing critical information to the industry on contract documents issues; and
- Reinforcing AGC's commitment to skill, integrity, and responsibility through contracts."

Like AGC, EJCDC strives to garner industry and stakeholder input into its document development process. Construction industry groups, such as the American Bar Association, American Public Works Association, Construction Specifications Institute, and professional liability insurance carriers, participate in their meetings and provide input to develop and refine contracts and documents. Presently, EJCDC prepares and publishes documents under the following seven families: construction related documents; engineering services agreements; procurement related documents; multi-prime design agreements; design build documents; guides and narratives; and environmental documents.

CONCLUSION

If the excitement of AGC's Municipal & Utilities Division members who are immediately involved in this relationship is any indication of its future, its future is indeed bright. "We are beginning an unprecedented relationship that will undoubtedly benefit the Municipal & Utilities Division," says Matthews.

—By **Mark McCallum**, AGC senior counsel & executive director, Programs & Industry Relations

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SAFETY IN THE TRENCHES

AGC DOES ITS PART TO PREVENT TRENCHING AND EXCAVATING FATALITIES

When the *New York Times* published a three-part series of articles in December 2003 titled "When Workers Die," detailing the case of a plumbing apprentice who died in a collapsed trench, AGC took immediate action and voiced its concern for trench safety. AGC CEO Stephen Sandherr wrote a letter to the editor declaring the death of the plumber's apprentice both tragic and completely preventable. AGC further responded by proposing a cooperative effort with the National Institute for Occupational Safety and Health (NIOSH) and the Occupational Safety & Health Administration (OSHA) to demonstrate that all three groups take trenching and excavating safety issues seriously.

Only one month after the *New York Times* article, the AGC Safety and Health Committee, in cooperation with its Municipal & Utilities Division, met with NIOSH and OSHA staff to discuss trench safety and began to develop a trench safety awareness campaign. AGC believes that current excavation regulations provide sufficient worker protection and that all contractors must be educated on proper safety standards.

AGC, NIOSH, and OSHA developed an education strategy for contractors working with trenching and excavation projects to identify hazardous situations and protect employees. In early February, AGC wrote to John Henshaw, assistant secretary of Labor and OSHA administrator, and Dr. John Howard, NIOSH director, pledging its support to develop a National Trenching Safety Campaign and its commitment to finding creative solutions to eliminate excavation and trenching fatalities.

UNDERSTANDING THE PROBLEM

In 2003 alone, 53 trenching and excavation fatalities were reported to OSHA. Statistics reveal that 69 percent of the fatalities occurred in trenches between five and nine feet deep, 62 percent of the deceased had received no trench safety training, and 50 percent of them had worked for their employer less than one

year. Additional statistics from the fatality case files show that 75 percent of the reported trench-related deaths were caused by trench cave-ins where no protective devices or practices were used.

Subpart P of the OSHA regulations requires all employees in trenches greater than 5 feet deep to be protected from cave-ins by an adequate protection system at all times. The only exception is an excavation in stable rock that has been examined by a "competent person." OSHA defines a competent person as one "who is capable of identifying existing and predictable hazards in the surroundings...and has the authorization to take prompt corrective measures to eliminate them." OSHA requires any company that performs excavations to have each excavation, adjacent areas, and protective systems inspected daily by a competent person prior to the start of each work shift.

WHAT EDUCATIONAL TOOLS ARE AVAILABLE?

As AGC initially proposed, an OSHA Trenching Initiative Task Force formed and first met in April. It was composed of AGC, OSHA, NIOSH, and a diverse group of trade associations and unions, including the National Utility Contractors Association (NUCA), the International Union of Operating Engineers (IUOE), Construction Safety Council, National Association of Homebuilders (NAHB), and Laborer's Health & Safety Fund of North America (LHSFNA). The task force reviewed statistics from the 53 trenching and excavation fatalities reported to OSHA in 2003 and discussed existing educational information including the OSHA and NIOSH websites, training programs, increasing contractor awareness of trenching hazards, and methods to enhance inspections and enforcement.

HOW CAN WE BEST CHANNEL THESE TOOLS?

The OSHA Trenching Initiative Task Force met again in May to discuss ideas and initiatives to help the construction industry reduce trench-related fatalities.



An example of a trench box with a ladder to provide a safe entry for the employee. Note: the wood cross brace at the near end of the box prevents access to the unprotected area of the trench.

AGC pledged to work with the Common Ground Alliance (CGA) and One Call Systems International (OCSI), facilitate distribution of OSHA Trench Safety Quick Cards and posters to AGC Chapters, determine which AGC Chapters offer trenching safety or "Competent Person" training, and provide the Task Force with a list of AGC's trenching safety materials, services, and resources to improve trenching and excavation safety in the industry.

CONCLUSION

AGC believes there are no technological barriers to preventing trench cave-ins. Trench boxes and other equipment are available for rent or purchase. In addition, sloping and benching can also be used to protect workers. It is essential for a competent person to be trained in soil classification, sloping and benching, shoring, confined spaces, hazardous atmospheres, and emergency rescue. Many companies offer competent person training classes for less than a few hundred dollars—much less than the cost of a life.

—By **Edward Pachico**, AGC associate director, Safety & Health Services

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75 percent of the reported trench-related deaths were caused by trench cave-ins where no protective devices or practices were used.

A TRENCH CAVES IN; A YOUNG WORKER IS DEAD.



IS IT A CRIME?

At AGC's 2004 Convention in Orlando, representatives from the Safety & Health Committee met with the leaders of the Municipal & Utilities Division to discuss trench safety and to see a graphic, heartwrenching presentation on the trench-collapse death of a worker. Subsequently, AGC approached OSHA with the idea of forming a trenching initiative team to help prevent these needless deaths. OSHA agreed and AGC is now helping lead an industry team working to improve trench safety through educational initiatives. The story that follows relates much of what AGC leaders heard at that presentation in Orlando. It is reprinted with permission from the New York Times and tells a true story of the tragic and senseless loss of one man's life. Someone's worker. Someone's son. Someone's father.

CINCINNATI

As the autopsy confirmed, death did not come right away for Patrick M. Walters. On June 14, 2002, while working on a sewer pipe in a trench 10 feet deep, he was buried alive under a rush of collapsing muck and mud. A husky plumber's apprentice, barely 22 years old, Mr. Walters clawed for the surface. Sludge filled his throat. Thousands of pounds of dirt pressed on his chest, squeezing and squeezing until he could not draw another breath.

His mother, Michelle Marts, was the first in his family to hear.

"You just stand there like you're suspended in blank space," she said of that moment. She remembers being enveloped by a paralyzing numbness. He was her only child. She could not hear or breathe or move. Was this, she found herself wondering, what Patrick felt?

She called Patrick's father, her ex-husband, Jeff. "It literally knocked me off my feet," he said. "I lay there, right there on the floor, screaming and crying."

Mrs. Marts next called Patrick's wife, Crystal. "I remember running upstairs and just hugging my kid and thinking, 'How am I going to tell her,'" Ms. Walters said.

Soon after, an investigator from the coroner's office called Mrs. Marts. He could not have been nicer. Such a tragedy, he said. But by then, the first insistent questions had begun to form. Her son had often spoken about his fear of being buried alive. He had described being sent into deep trenches without

safety equipment, like the large metal boxes placed in excavations to create a sheltered workspace.

“Was there a trench box?” she asked the investigator. He paused, she recalled. “He says, ‘Ma’am, no safety procedures were followed. None.’”

“He was just so disgusted.”

Other officials shared his disgust, starting with the federal safety investigator who stood over the trench that night as Patrick Walters’s body was pulled from the mud. Only two weeks before, the same investigator had caught men from the same company—Moeves Plumbing—working unprotected in a 15-foot-deep trench, a blatant violation of federal safety laws.

One of the men was Patrick Walters, who, when questioned by the investigator, had described a host of unsafe work practices.

“They don’t like me on these jobs a lot,” Mr. Walters had volunteered, according to a tape recording of the interview.

“Why is that?”

“Because, I don’t like getting in the holes—even with a box.”

The inspector’s boss, the federal Occupational Safety and Health Administration’s top official in Cincinnati, was angry too. He knew Moeves Plumbing well. In 1989, he had confronted the company over another death. The circumstances were nearly identical: a deep trench, no box, a man buried alive.

But their professional disgust could not touch the pure rage of Patrick Walters’s parents. A veteran plumber himself, Jeff Walters knew the treachery of trench walls. Moeves Plumbing would deny any wrongdoing and tell OSHA it was trying to do the right thing on safety. But to Jeff Walters, sending an untrained, unskilled apprentice into an unprotected, unstable, rain-saturated, 10-foot-deep trench was flat-out criminal.

“You done killed my boy!” he recalls screaming that night on the phone to Moeves Plumbing.

His first instinct was revenge by shotgun. His wife and members of his church intervened. They prayed and wept, and then they resolved to seek their justice from the authorities instead.

The entire family mobilized around this goal. Over the next six months, they gathered records, interviewed witnesses and learned all they could about OSHA. Blue collar and self-reliant, they did not expect much from government. Indeed, their research turned up plenty of unflattering descriptions of OSHA. Inept. Timid. Overmatched. Jeff Walters knew OSHA



as the guys who would sweat the small stuff—show up at a job site and write up a \$5,000 fine for a frayed power cord.

Even so, year after year, grieving families across America depend on OSHA to stand for them, and for their dead. Surely, the Walters family reasoned, if OSHA had any purpose at all it was to keep employers from repeatedly killing workers by flouting safety rules.

It is a federal crime for an employer to cause a worker’s death by willfully violating safety laws. To initiate a prosecution, OSHA must first refer the case to the Department of Justice. Yet, even in the very worst cases, that is something the agency does only a small fraction of the time.

To the Walters family, though, it seemed like such a small thing to ask for—a simple request from one bureaucracy to another to take a look, consider the evidence and decide whether to prosecute. That was it.

“It looked like an open-and-shut case,” Mrs. Marts said. “No box. Put down in a hole. Buried alive.”

AN APPRENTICE LOOKING TO PLEASE

There was still mud in his ears.

Patrick Walters was laid out in his coffin for the visitation, his face puffy and bruised, his ears still flecked with dried bits of clay. They all noticed.

“Mom, can I put this in with Dad?” Crystal Walters’s 4-year-old daughter, Christen, asked, holding up one of her drawings.

Patrick Walters was not Christen’s father, but he had raised her as his own. Young, financially pressed and prone to quarrel, Patrick and Crystal Walters had married in 2000; they were separated at the time of his death, but still trying. “I loved him,” Ms. Walters, 22, said. “Still do.”

Looking at him there that day, Ms. Walters found the whole thing incomprehensible, she said. With his linebacker build and nonstop motor, her husband had seemed so indestructible.

But it was dangerous work, and he had known it. He told his mother of being

buried to his waist in one trench. He told his father of being lowered into trenches on the bucket of a backhoe, leaving him no ladder to escape a collapse. “I just ask God never to let me die that way,” he said to his wife.

His family urged him to put up a fuss. But he pointed out that he was only an apprentice, easily replaced. If he was seen as a troublemaker, he worried, his bosses would find an excuse to get rid of him. Their attitude, he told his father, was “either do it or go home.”

And in truth, he did not have many better alternatives. His troubles in school had begun when he was 10, the same year his parents’ marriage broke up. By 16, he was running afoul of the law. An episode involving stolen guns and then a police chase resulted in a stretch in juvenile detention.

“The best thing that ever happened to him,” his father said.

Still, an arrest record and a G.E.D. earned him only dead-end temporary jobs in factories. He cleaned animal cages. Whatever the dangers, he saw Moeves Plumbing as his big break.

Small and family owned, about 50 employees, Moeves (pronounced MAY-vis) had agreed to pay for his four-year apprentice program. That would mean a plumber’s license and \$25 an hour and a decent middle-class life for him and Crystal and Christen.

“He was looking at Moeves like this is my road, my way forward,” his father said. There was even talk of them one day forming Walters & Son Plumbing.

It was a hard road for \$8.50 an hour. But he stuck with it. He put in hard days on the job, then went to school three nights a week. School records show that he missed only three classes. His grades were good.

“A miracle,” his mother said.

His father saw a boy becoming a man.

THE PHYSICS OF THE TRENCH

On May 31, 2002, a local fire chief called the Cincinnati OSHA office to complain that men were installing a storm drain in an unsafe trench. Charles Shelton, a veteran OSHA compliance officer, was at the scene in less than an hour.

Every trench is a potential death trap. Trench walls give way at any time, often without warning. The deeper the trench the greater the risk, which is magnified further if the soil is loose or wet. Hundreds are killed or injured in trenches each year.

That is why federal safety laws require employers to take special precautions for trenches deeper than five feet. The walls must be sloped back at a safe angle or

shored up with bracing. If a trench box is used instead, it must be big and sturdy enough to withstand the tremendous forces of a collapse. A “competent person”—someone trained in excavation safety—must inspect the trench before work begins and then daily thereafter.

From a parking lot, Mr. Shelton watched the workers from Moeves Plumbing. One was Patrick Walters. Mr. Shelton approached with a video camera. The trench, about 15 feet deep, was neither sloped nor shored. There was a box, but it was far too small—only eight feet tall—to be effective. And Mr. Shelton had seen men working outside even that undersize shelter.

He shut the job down on a Friday afternoon. On Monday, at 9:22 a.m., he turned on his tape recorder to interview Patrick Walters. “Employees were working in an excavation that was unprotected,” Mr. Shelton began, “and I’ve got this young man, he was exposed to the trench.”

His voice was noticeably nervous, but Patrick Walters described a company that did not follow the basic requirements of trench safety. He told of supervisors who tolerated dangerous shortcuts and made little effort to enforce safety rules.

Mr. Shelton asked about safety meetings. “We’ve had a couple,” Mr. Walters said. “They don’t do it regularly anymore.” He then volunteered that the company no longer had a safety manager.

“How long has he been gone?”
“I can’t remember. It’s been a while since we had one.”

IT HAD BEEN MORE THAN THREE MONTHS.

The safety manager, Robert W. Schum, who left Moeves Plumbing with his son and formed his own company, said in a recent interview that his duties had actually involved “very little safety.” His main job, he explained, was managing the warehouse. Sometimes he would check toolboxes for frayed power cords. That was about it. In some two years as safety manager, he said, he could not recall giving any training on trench safety.

The month after he left, Moeves Plumbing sent three supervisors to a training course on trench safety. Two of them—including the field supervisor for all Moeves trench crews—subsequently supervised the digging of the very trench that now so troubled Charles Shelton.

In his inspection report, Mr. Shelton wrote that he had recommended several immediate changes. Moeves Plumbing needed “someone competent in trenching” to train workers or “at least to iden-



tify good and bad trenches and to provide trench protection and enforce compliance,” he told a senior company official.

His advice went unheeded. But the company’s owner, Linda Moeves, did take one step. She called the OSHA director in Cincinnati, William M. Murphy, to complain.

“She was agitated,” Mr. Murphy recalled. Mr. Shelton had asked for records to show that she was training employees in trench safety and seeking to enforce safety rules. “Why does he need to be asking to see these records?” Mr. Murphy recalled her asking.

He remembers telling her she would do well to show that she had trained her employees properly. “And she said, ‘You know that since that last case we’ve been trying to do the right thing.’”

SAME COMPANY, ANOTHER DEATH

Bill Murphy had not forgotten that last case, 13 years before.

Over more than two decades as the agency’s chief in Cincinnati, Mr. Murphy had become a legendary figure within OSHA. He and his office had repeatedly received OSHA’s highest awards for aggressive enforcement. His personal history gave him an appreciation for the lives of men like Patrick Walters. He was raised in Scott County, Tenn., one of the poorest counties in the country. The son of a coal miner and farmer who fathered 22 children, he was the first in his family to graduate from high school.

“None of us are smart,” Mr. Murphy, 61, said in an interview. “We just work harder.”

He knew about death on the job firsthand. One of his half brothers had been electrocuted on a power line; another had fallen to his death erecting steel decking. In one of his first jobs, in an aircraft plant, an explosion killed two men in his work area. Soon after, he went to work for OSHA.

When Mr. Shelton told him about the problems at Moeves Plumbing, Mr. Murphy’s mind reeled back to 1989, to that last case and to how afterward Linda Moeves had pledged to do the right thing.

Clint Daley, an inexperienced laborer just like Patrick Walters, had been digging a sewer line with a backhoe operator named Dan Callahan. The trench, 12 feet deep, was neither sloped nor shored. There was no trench box. Mr. Daley was in the trench when the walls cracked. Mr. Callahan shouted a warning.

“By the time he got turned around, it caved in,” he said later in a deposition.

What made Clint Daley’s death particularly outrageous to Mr. Murphy was that his inspectors had three times before warned Moeves Plumbing’s crews about trench safety—in 1984, 1985 and 1986. They had issued safety pamphlets, and a \$700 fine.

Yet Moeves Plumbing had not bought any trench safety equipment. Nor had it provided any safety training, on trenches or anything else.

Mr. Murphy might have referred the Daley case to the Justice Department for prosecution. He had, after all, concluded that Clint Daley died because Moeves Plumbing willfully violated safety rules. But Mr. Murphy’s response was tempered by his assessment of Linda Moeves.

Her husband, the company’s founder, had died in 1987, and though she had helped out in the office, it was not clear she had the skills to run a plumbing business. Her prior job was social director of a racket club.

Mr. Murphy admired the way she had hung tough in the cutthroat contracting world. And when she was interviewed by OSHA about Mr. Daley’s death, she pleaded ignorance—about the prior OSHA warnings, about the \$700 fine, even about there being federal safety rules for trenches.

“She was too willing to trust her employees to do the right thing,” Mr. Murphy said.

Mrs. Moeves promised deep changes. She quickly enrolled in a trenching safety seminar. She bought hydraulic shoring equipment. She saw that her supervisors and backhoe crews learned trench safety. There would be regular safety meetings, a new safety director and a safety committee to correct hazards.

She also established a written safety policy. Trenches deeper than four feet would be sloped or shored “as required by OSHA standards,” the policy said. What’s more, trenches would be inspected daily by either Mrs. Moeves or a field supervisor. Employees who broke the rules would be disciplined, and even fired after a fourth offense.

Ultimately, Mr. Murphy fined Moeves Plumbing \$13,700 for the violations that killed Mr. Daley.

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SPANISH VERSION

ITEM NO. 3206S

SPANISH VERSION

ITEM NO. 440S

Over the next three years, Moeves Plumbing was inspected five times and cited for seven relatively minor violations. Mr. Murphy concluded that Mrs. Moeves had learned a painful lesson.

Now, Mr. Shelton's inspection raised some pointed questions about the permanence of that lesson. Court records show that Moeves Plumbing's safety committee had not existed for years. Nor were there records of any trench inspections or of employees being disciplined for safety violations. Several Moeves workers said they could not recall Mrs. Moeves or her supervisors ever directing them to take precautions against trench collapses.

"I was unpleasantly surprised," Mr. Murphy said. "I had thought she had gotten her act together."

WET, DEEP AND DEADLY

About a week after Charles Shelton's inspection, Moeves Plumbing received a work order for a routine job running sewer and water lines into new homes about 40 miles north of Cincinnati.

The job was assigned to John F. Kehrer, 49, an experienced backhoe operator. Patrick Walters typically worked as Mr. Kehrer's helper, doing the dirty work of laying, cutting and connecting pipes after Mr. Kehrer dug the trench. In a recent deposition given to lawyers for the Walters family, Mr. Kehrer described Patrick Walters as a hard worker who had never refused an instruction.

On the first day of this job, though, Patrick Walters was unavailable. He had gone for treatment after being hit in the back by a backhoe bucket. A doctor prescribed painkillers and cleared him for work.

With another helper, Mr. Kehrer started to dig. In his deposition, he said seeping water had made him worried.

"It's never safe when there is water in there," he explained.

"Why?"

"Because everything is so unstable."

The trench was at least eight feet deep. Still, he said, they took no precautions.

Mr. Kehrer insisted in his deposition that he was not competent to assess the hazards. Yes, he had taken a 10-hour trench safety class with a prior employer. But he also said that he had forgotten most of what he learned, and had received no safety training in six years at Moeves Plumbing.

The next day, Mr. Kehrer returned to finish the job with Patrick Walters. There had been more rain overnight, a downpour that filled the trench. It took hours to pump the water out. Then he started to dig.

Moeves Plumbing's safety policy—the



one instituted after Clint Daley's death—called for a field supervisor to inspect trenches daily. According to Mr. Kehrer, though, no supervisor inspected this trench.

By early afternoon the trench was 10 feet deep. Its walls—saturated with rainwater—were neither shored nor sloped. There was no trench box, no ladder. It was time to cut a sewer pipe, the helper's job.

Mr. Kehrer said he did not actually order Patrick Walters into the trench. "He knew what to do," he said. But he acknowledged doing nothing to stop him, though he knew enough to recognize that the trench violated federal safety laws.

"I just did not think anything was going to happen, plain and simple," he said.

Mr. Kehrer told an investigator that he felt his backhoe start to shift. It slid toward the trench as the walls began to collapse. He barely had time to yell a warning.

In one great whoosh of mud, Patrick Walters was gone.

THE INGREDIENTS FOR A PROSECUTION

It took more than seven hours to dig out the body. He was found pitched forward at the waist, knees buckled, hands reaching upward. Charles Shelton was there.

"I can't believe it," Mr. Shelton would tell Mr. Murphy. "I just talked to him."

Again, Mrs. Moeves pleaded ignorance. She told Mr. Shelton that no one had informed her that his inspection uncovered any safety flaws. "I feel that we have a very good safety program," she added.

The men from OSHA were unimpressed.

"Employees take their cues from the leaders of the company," Mr. Murphy said. And despite all Mrs. Moeves's promises, he added, "here the leader of the company was not providing training, was not insisting that things be done the proper way."

What made these failures particularly egregious, Mr. Murphy believed, was that Moeves Plumbing should have known better, given how routinely it dug trenches. Mr. Shelton was not permitted

to be interviewed for this article, but records show that he told a police officer that he was considering pushing for criminal charges.

His boss was, too.

Mr. Murphy had long felt that OSHA needed to do more to encourage criminal prosecution. If a company "cheats on paying their taxes," he said, "we will charge them with a felony. Why would we be afraid to do that if they take one of their employees' lives?"

Over the years, he said, he had seen too many companies pay insignificant fines and keep on committing the same violations with the same results.

"You've got to put people in jail," he said.

Yet there was a problem: "Nobody in OSHA has ever really been interested in prosecuting these kinds of cases."

The reasons were complex—scarce resources, fear of bad publicity, a collective belief that the Justice Department does not like these cases—but the result, he said, was layer upon layer, year after year, of endless review.

And then there were the lawyers.

OSHA is not allowed to refer a case to Justice without approval from its own lawyers, who are Labor Department solicitors. Mr. Murphy was not alone in viewing the solicitors' office as a "black hole"—where cases simply disappeared because the lawyers were too busy, too eager to settle or too intimidated, particularly if the employer was a powerful corporation.

"The No. 1 problem in OSHA is you have to fight with your own people to prosecute these cases," he said, adding: "Very few were taken up. Sometimes I'd know why. Sometimes I wouldn't."

But after 23 years, Mr. Murphy was adept at working the system to get his way. And in this case, the strategy was first to persuade the regional office in Chicago and the national office in Washington that Patrick Walters's death should be treated as a "significant penalty" case. In OSHA-speak, that meant the fines would be at least \$100,000.

If the case was deemed "significant," he reasoned, there would be a better chance of referral to the Justice Department. Even this would take a real fight. But, he added, "It was a rare thing that I went forward with what I believed to be a significant case and someone in regional or Washington decided not to concur."

ONE FAMILY'S CALL TO ACTION

"One huge hurt as one big circle" is how Patrick Walters's stepsister, Jeanie Menz, had put it.

The family rallied around the goal of finding out who was responsible for what went wrong. Aunts, uncles, cousins, step-parents—everyone pitched in.

On OSHA's Web site, Ms. Menz found the agency's fatality inspection procedures. One document caught their attention: "Referral for Criminal Prosecution."

No one was quite sure how to proceed, though. They made lists of media contacts and legislators. They brainstormed lists of questions for possible witnesses. A contingent drove to the collapse site and spoke to construction workers, including some who had tried to save Patrick.

"Where did he die?" his mother asked.

"Right where you're standing, ma'am," came the reply.

Crystal Walters wanted answers, too. Yet she also found herself quietly raging at her husband for setting aside all his fears and complaints and climbing into that trench.

"But he was young," she said, "and he thought he was made of steel."

The family shared the sense that friends and neighbors did not understand the depth of their disgust and anger. Even in gestures of sympathy, people caused unintended hurt simply in the way they described his death: Act of God. Accident. Fate.

"My boy got killed is the way I put it," Jeff Walters said.

No, he would say, Mrs. Moeves did not mean for his son to die. But neither does the guy who knocks back a bottle of booze, then goes for a spin and kills his neighbor's child. Either way, he insisted, death was a foreseeable result of reckless behavior. "Any other way," he said, "if somebody kills somebody they go to prison."

But who would hold Mrs. Moeves to account?

Sorting through Patrick Walters's belongings, they found Charles Shelton's business card. Jeff Walters called and left a message.

On the Web, they discovered a support group called Fight, or Families in Grief Hold Together, founded by Ron Hayes, an Alabama man whose son was killed 10 years ago working in a corn silo.

Mr. Hayes is often brutal in his assessments of OSHA. ("Organized crime from top to bottom, son.") But he also considers John L. Henshaw, the agency's administrator, a friend. Mr. Henshaw named him to the National Advisory Committee on Occupational Safety and Health.

Mr. Hayes takes several calls a week from families reeling from a death on the job, wondering what to do next. On Aug. 1, 2002, the call came from Jeff Wal-



ters's second wife, Marian. By coincidence, Mr. Hayes was going to be in Cincinnati that week. He agreed to meet for dinner.

Jeff Walters and Ron Hayes have equally vivid memories of that night. They met at a Chinese buffet and felt an instant bond. They were both plumbers. Both of their boys were named Pat, and both had died young. And both had been buried alive.

"You need a willful violation in this, Jeff," Mr. Hayes said that night. "If you don't get the willful, then you don't get the Justice Department investigating."

Even so, he warned, the odds were long. OSHA classified only a tiny percentage of violations as willful, and far fewer were prosecuted. The family would have to be knowledgeable and absolutely determined.

Jeff Walters finally got through to Mr. Shelton. "We need a willful violation against Linda Moeves," he recalled telling him. "She's already killed one person. Now she's killed Patrick."

Mr. Shelton, he said, seemed to share some of his anger.

"I felt like there was a guy out there who was really trying to do his job."

A SHRINKING POOL OF ALLIES

That same month, though, the Walters family lost an important ally. Bill Murphy retired from OSHA on Aug. 2, 2002.

And there was a further complication: Linda Moeves's friendship with Richard T. Gilgrist, then one of three assistant area directors rotating through Mr. Murphy's job while a decision was made on a successor.

Mr. Gilgrist's boss, the regional administrator in Chicago, Michael G. Connors, said in an interview that Mr. Gilgrist had called him after the inquiry was "fairly well completed" to discuss an "unusual situation."

According to Mr. Connors, Mr. Gilgrist described what had happened and explained that while his office was planning to push for a "significant penalty" designation, it was recommending a

willful violation only for the first incident, involving the 15-foot trench, not for Patrick Walters's death.

But he also said that Mrs. Moeves was a neighbor, and so he was recusing himself from the case. "I believe he absolutely pulled out of the case and did nothing on it after I talked with him," Mr. Connors said.

Mr. Gilgrist's conflict alone, Mr. Connors said, raised something of a red flag. But he also found it "unusual" that the Cincinnati office "would go willful on the nonfatality and then not see willful on the second case."

"I said send the cases up," he recalled.

Mrs. Moeves, meanwhile, had hired Robert A. Dimling, the premier OSHA defense lawyer in town, a man well practiced at extricating clients from OSHA's crosshairs.

One example of his savvy came not long after Mr. Murphy retired. The lawyer, who would not comment on the case, helped arrange for Mr. Murphy and Mrs. Moeves to meet over lunch, where Mr. Murphy offered "to entertain the idea" of helping Moeves Plumbing, Mr. Murphy recalled.

For a \$5,000 annual retainer, he could become Mrs. Moeves's OSHA consultant, training her employees and advising her on future matters, including inspections. Mr. Murphy said he made it clear that he could not help on the Walters case. But his reputation, he told her, could ensure that her company was "well respected" at OSHA.

"In my view," he explained, "this was a way to help fix the problems in a comprehensive way."

Mrs. Moeves agreed to consider the offer, he said, but she ultimately did not accept.

The Walters family began to detect a shift in tone from Mr. Shelton. He sounded defensive, Jeff Walters recalled, and suggested that OSHA might not recommend criminal charges. Mrs. Moeves, the inspector noted, was promising safety improvements.

The family pinned its hopes on Ron Hayes, who took the case directly to the top. In late August, he had lunch with John Henshaw, the OSHA chief, at the Alabama Governor's Safety and Health Conference.

Mr. Hayes recalled handing Mr. Henshaw a folder with a photograph of Patrick Walters and documents about Moeves Plumbing. Mr. Hayes said he explained about Clint Daley's death, and about the OSHA inspection two weeks before Patrick Walters's death, and about how, from what he could tell, it pretty

much looked as if a 22-year-old had been sent into a death trap.

"He said, 'Ronnie, this is horrible,'" Mr. Hayes recalled.

"And I said, 'Yeah, John, and these are the people you need to prosecute. I'm depending on you to watch this one.'"

Mr. Hayes said he told Mr. Henshaw that the case was not just about the Walters family. The best way to stop other employers from doing the same thing, he argued, was to bring more prosecutions. Why not start with Moeves Plumbing? ("Asked him to make this happen—this case is bad," Mr. Hayes would write in his daily log.)

"I honestly begged," he said. "I couldn't have done anything more than get down on my knees."

Mr. Henshaw did not commit himself, Mr. Hayes recalled. He suggested the family might have better luck with the local district attorney. Yet he also agreed to look into the matter, Mr. Hayes said.

Mr. Hayes left feeling optimistic. He viewed the OSHA bureaucracy as the main obstacle. So he had made an end run. "How much higher can you get?" he asked. "I had such high hopes with John."

The Walters family did, too, especially after Mr. Henshaw wrote to Jeff Walters on Oct. 9, 2002, offering "my heartfelt condolences" and assuring him that OSHA was still investigating.

"Given our mission of providing safer workplaces," he wrote, "we feel each worker's death as a personal loss and tragedy."

HANGING HOPES ON A SINGLE WORD

On Nov. 26, 2002, nearly six months after her husband's death, Crystal Walters received a letter from OSHA notifying her of the results of its investigation. She read it slowly, carefully, searching each paragraph, each line for one word: willful.

OSHA actually issued two sets of violations—one for the trench that killed Patrick Walters, one for the trench inspected two weeks before. In each case, Moeves Plumbing was assessed several serious safety violations for failing to train employees in trench safety and to ensure that trenches were inspected by a "competent person."

Furthermore, OSHA found that Moeves Plumbing committed one willful violation at each trench by failing to provide protection against a collapse. It was exactly the same willful violation that had killed Clint Daley.

"We got the willful," Crystal Walters yelled over the phone to her father-in-



law. "Awesome."

In a flurry of calls, word spread through the entire family. The letter, they all believed, was vindication for their months of sleuthing, proof that what happened was not just some act of God. Now it was a matter of pressing OSHA to refer the case to the Justice Department, and then pressing the Justice Department to prosecute.

"We had everything that we needed," Jeff Walters said.

THE JUBILATION LASTED ALL OF ONE DAY.

It died in a four-page agreement signed on Nov. 27 by Mr. Dimling and the acting area director, Dennis A. Collins. In exchange for Moeves Plumbing's promise not to fight in court, OSHA agreed to one crucial change: The word "willful" was stricken from the violations in Patrick Walters's death.

In its place, OSHA substituted the designation "unclassified"—a term of art invented more than a decade ago by some of the nation's top corporate defense lawyers.

Their clients resented the stigma—not to mention the legal risks—associated with being labeled a "willful" violator of federal safety laws. So the lawyers dangled a carrot: If OSHA would replace the pejorative "willful" with the nonjudgmental "unclassified," their clients would pay higher fines and make substantial safety improvements.

In recent years, though, OSHA has been less and less zealous about collecting those carrots. In the case of Moeves Plumbing, OSHA agreed to cut its fines 40 percent, from \$90,000 to \$54,000. Moeves Plumbing could pay in four annual installments, with the first not due for another year. It was not required to admit any wrongdoing.

It did, however, agree that employees working in trenches would complete a 30-hour OSHA training course. And it would hire a consultant to perform random trench checks for two years.

On her lawyer's advice, Linda Moeves canceled an interview for this article. But

in a brief discussion with a reporter in her offices, she expressed sympathy for the Walters family and defended her company's safety practices. She said she knew that Patrick Walters's relatives had pushed hard for prosecution, and that OSHA had given strong consideration to a criminal referral.

But no employer, she insisted, cares more about the welfare of her workers than she.

ANATOMY OF A DECISION

It was heartbreaking and baffling all at once. No willful violation. No criminal referral. Just like that. Crystal Walters burst into tears. Michelle Marts did, too. They all had the same questions: How could it happen so fast? Why weren't their voices heard? Where was John Henshaw?

"I got swept under the rug," Jeff Walters said. "Like I'm not important."

It was a sickening feeling, they said, this sense that Linda Moeves had gotten away with it and that their government had been complicit. Why else drop the "willful" only on the violation that killed Patrick?

Mrs. Marts remembers Crystal Walters reading her OSHA's brief form letter of explanation. "It should be pointed out that the OSH Act contains no provisions allowing OSHA to impose greater penalties when accident or death is involved," it said.

Yes, it was true that OSHA could not increase its civil fines just because someone died. But didn't the rules explicitly permit OSHA to ask the Justice Department to file criminal charges when death is involved?

"We were both just dumbfounded," Mrs. Marts said. "No explanation. No nothing."

PEELING BACK THE LAYERS IS NOT EASY.

Ed Frank, a Labor Department spokesman, said OSHA could not find any records related to its decision not to seek criminal charges against Moeves Plumbing. Among officials involved in the case, only Mr. Connors, the Chicago regional chief, was made available for an interview.

Still, from interviews with him and with the retired Mr. Murphy, as well as an examination of the available record, a much clearer—and at the same time profoundly befuddling—picture of what happened inside OSHA begins to emerge.

OSHA's final determination seems almost perverse. To begin with, the Chicago office would determine that the violations that killed Patrick Walters were more flagrant than Cincinnati thought—yet would reduce the punish-

ment. Stranger yet, Mrs. Moeves escaped a criminal referral not because of anything she did right, but because of something she did wrong.

And in the end, OSHA would say that it had achieved “a good solution” by obtaining promises of additional vigilance and training—the same promises Bill Murphy extracted after Clint Daley’s death in 1989.

When the Cincinnati office’s formal recommendation came in, Mr. Connors said, it was much as Mr. Gilgrist had suggested that summer: it called for willful violations for Charles Shelton’s first inspection only, on the ground that work had gone on under the noses of the two supervisors just trained in trench safety. Even so, the area office did recommend a “significant penalty” for both cases—\$101,500—which would have led to a review by Mr. Henshaw.

Mr. Connors said that he and his assistants in Chicago disagreed with the Cincinnati office on both counts. First, they believed that the violations that killed Patrick Walters were indeed willful.

By law, a willful violation means the employer demonstrated either “intentional disregard” or “plain indifference” toward safety laws. Given the history—indeed, the very recent history—of trenching violations by Moeves Plumbing, Mr. Connors said he and his aides saw strong evidence of plain indifference, even if they could not prove that Mrs. Moeves was personally aware of the trench’s unsafe conditions.

Yet having decided that Moeves Plumbing had again killed a worker by willfully violating safety laws, the Chicago office decided that the case did not warrant a significant penalty. It reduced the proposed fine from \$101,500 to \$90,000. It also considered and rejected seeking a Justice Department review for possible prosecution.

Mr. Connors said he and his aides had argued long and hard to persuade the Cincinnati office that Patrick Walters’s death warranted a willful violation. Wasn’t he troubled, then, when the Cincinnati office, without his blessing, promptly dropped the willful designation in its settlement?

“THESE ARE ALWAYS A NEGOTIATION,” HE SAID.

Recently, the Labor Department’s top lawyer circulated a directive restating what he called a basic principle: “special consideration” should be given to referring cases “where the employer’s conduct is particularly egregious, such as where the employer has a history of sim-



ilar violative conduct or of disregarding safety warnings.”

Moeves Plumbing’s history was considered, Mr. Connors said. But more important, he argued, was being able to show that Mrs. Moeves had “specific knowledge” that her men were working in an unsafe trench. Put another way, having censured Mrs. Moeves for violating a central principle of trench safety—making sure the job was inspected and deemed safe—OSHA then decided that she should be spared prosecution because that same failure meant she was not aware of the trench’s perils.

“The tragedy of this was it was clearly preventable,” Mr. Connors said. “Had the company followed the rules, this young man didn’t have to die. And nobody feels good about that. We’d love to take it as far as we could and to somehow comfort the family. But I don’t know there’s anything that we had here that we could do that. And no, we don’t feel good about that.”

As for John Henshaw, he said in an interview that he had no role in deciding the case. He recalled Mr. Hayes showing him Patrick Walters’s photograph at lunch, he said, but he did not remember Mr. Hayes laying out what had happened and beseeching him to refer the case to the Justice Department.

His recollection, he said, was that Mr. Hayes, “a friend of mine,” asked him only to make sure Jeff Walters received a condolence letter. The Walters family did not realize it, but it was a form letter that had given them so much hope.

“Ron may have been trying to tell me something,” Mr. Henshaw said. “But what I told him was that I don’t get involved in these cases. These are done at the regional and area level.”

ANGRY, UNSATISFIED, DETERMINED

Patrick Walters’s family has a new plan. Step 1 is to use the civil courts to put Linda Moeves out of business. Step 2 is to use any money won from Moeves Plumbing to mount a campaign against OSHA.

“I’m going to take it, and I’m going to move to Washington and lobby against OSHA from now until the day I die,” Jeff Walters, 47, said. “I’m coming after them.”

Their chances of winning are remote.

Ohio’s workers’ compensation laws broadly shield Moeves Plumbing from civil liability, even if its negligence caused Patrick Walters’s death. To win the suit, filed in state court, the family must prove that Moeves Plumbing committed an “intentional tort”—that it sent Patrick Walters into that trench knowing death or injury was “substantially certain to occur.”

Here again, OSHA’s actions benefited Moeves Plumbing. By dropping that one willful designation, OSHA made it more difficult to prove an intentional tort.

But Ron Hayes says there is no dissuading Jeff Walters from his plan.

“This man will be a bitter man for the rest of his life,” he said. “No. 1 because his son was killed. And No. 2 because his government betrayed him, and like so many others out there the anger just continues to build and build.”

If her former husband is focused on changing the system, Mrs. Marts, 45, confesses that she is still battling fantasies of revenge. One involves Linda Moeves buried to her neck in mud. For months, Mrs. Marts has lived on the brink of breakdown.

What eats at her, she said, is that she cannot stop thinking about how her boy died. When she gets into an elevator, she holds her breath as long as she can. She imagines him under all that mud, holding his breath.

She still has not washed his pillow cases or his old clothes, clinging to his fading scent as long as she can. She listens often to his interview with Charles Shelton, to his smoker’s cough and his nervous laugh. She visits the cemetery nearly every day, tidying up, rearranging the flowers.

It was a lot of money, but after Patrick died the family agreed that his final resting place would have to be in a mausoleum, not six feet under.

“There’s no way I was going to put him in the ground again,” his mother said.

—By **David Barstow**, a reporter for the New York Times. Barstow and colleague Lowell Bergman received the 2004 Pulitzer Prize for public service for an unrelated series of articles on death and injury at the McWane pipe foundries.

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