

ADVANCING THE CONSTRUCTION INDUSTRY SINCE 1967

# ***NWI UNION CONSTRUCTION***

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Summer 2017



## **In This Issue:**

**The New AIA A201 General Conditions  
Leadership = Productivity**

# Moving Forward



Kevin Comerford

Director of Professional  
Development, Construction  
Advancement Foundation

This year, I have had the opportunity to walk around several jobsite witness union construction workers in action. I have to say that we have the most skilled construction workforce in the country. There is no doubt that we can stand toe-to-toe with anybody as far as pure talent is concerned. What I also noticed was the standard that exists in the industry as far as safety culture and professionalism. You would be hard-pressed to find a worker in field without their hard hat, safety glasses, reflective vests, and other vital PPE. I saw laborers in trench boxes while working below grade, ironworkers safely tied off while setting beams and carpenters securely harnessed in man-lifts. It's no wonder that the Northwest Indiana union construction industry has an accident rate that is over 75% lower than the national average.

The change in safety and professionalism on the jobsite has really evolved in the last decade. 20 years ago, construction accidents were expected. It was just the nature of the beast since construction work is inherently dangerous. Today, the expectation is that workers will work safely with proper protection to mitigate risk and go home to their families every night. That is what is happening. This is really a testament to labor and management working collaboratively with the purpose of having the best and safest workforce in the world. It makes me proud to be part of a culture that protects and cherishes our people.

Here is to a safe productive year and keep up the great work!

*Kevin Comerford*

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**Cover Photo:** A Local 395 Ironworker employed by Hampton Ironworks, Inc. connects structural steel at the new Monosol Expansion Project at the Ameriplex in Portage, IN. The Ross Group, Inc. of Portage, IN is the General Contractor on the project. Garry Gadd is the Superintendent.

## Columns

- 3**    **The New AIA A201 - 2017 General Conditions**  
by Michael F. Drewry
- 7**    **Leadership = Productivity**  
by James S. Bain
- 9**    **7 Tips For Effective Delegation**  
by Mark Breslin
- 10**   **How The Region Convinced the State to Invest in Rail Expansion**  
by Rep. Hal Slager
- 11**   **New OSHA Rule for Beryllium Exposures in Construction**  
by James J. Arendas, PhD
- 12**   **Changing The Way We Handle Bad Apples**  
by Kevin Comerford

## Featured Project

- 14**   **BMWC Constructors, Inc. - NIPSCO Unit 17/18 Dust Collector**



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# THE NEW AIA A201 2017 GENERAL CONDITIONS

**Michael F. Drewry, Partner  
Drewry Simmons Vornehm, LLP**

As part of the American Institute of Architect's ten-year cycle for issuing an updated set of contract forms, in April of 2017, a new set of AIA industry forms for construction and design were issued. Among the pivotal AIA documents is the widely utilized benchmark AIA A201 General Conditions of the Contract for Construction. These General Conditions are incorporated into the three 2017 editions of the Owner-Contractor Agreements (A101, A102 and A103) as well as into the two major 2017 editions of the Owner-Architect Agreements (B101 and B 103).

With respect to the 2017 AIA General Conditions, there are a number of major changes that have occurred along with a series of lesser changes to this document. As with every set of new AIA documents, the 2017 General Conditions differ materially from what constructors, designers and owners were familiar with from before. It will be several years before we see the full impact in practice of these new 2017 A201 General Conditions.

There are a number of overarching themes in the 2017 A201 General Conditions. There is an increased clarity on definitions and text even when there are no new rights or duties. For example, under §5.3 Subcontractor relations, the Contractor now must *require* each Subcontractor, *by written agreement*, to be bound to the Contractor by the terms of the Contract Documents, and to assume all duties to the Contractor that it owes to the Owner. Previously, it was not required to have written subcontracts. This change helps ensure that key terms are documented.

The rights, duties and obligations of the Owner have

been increased, as would be expected. Section 2.2.1 clarifies the preconstruction duty of the Owner to furnish to the Contractor evidence of the Owner's financial arrangements. It remains mandatory. What is new is that the Contractor has no obligation to commence the Work until that evidence is provided. If commencement is delayed, the Contract Time shall be extended. Under §2.2.2, dealing with these duties during construction, once work starts, the Owner shall furnish evidence only if (1) the Owner fails to make payments per the Contract; (2) the Contractor identifies reasonable concerns regarding the Owner's ability to make timely payments; *or* (3) a change in the Work materially changes the Contract Price. If the Owner fails to provide the information *within 14 days* of the request, the Contractor may stop the Work and so notify the Owner. But, if the request is made because of a material change in the Contract Price, the Contractor may only stop that portion of the Work affected by the change. If the Work is stopped, the Contract Time shall be extended and the Contract Price shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest.

Another limitation on the Owner is with respect to the Owner's right to carry out the Work, under §2.5. The Owner's right to carry out the Work and back-charge the Contractor now are both subject to the Architect's prior approval.

The role of the Architect has been modified. There are more specific duties on the Architect during the Construction Phase. In addition to the duty to approve the Owner's right to carry out the Work, under



§1.1.8, the Architect, not the Initial Decision Maker (“IDM”), now has the duty to certify grounds for termination of the Contractor. Likewise, under §4.2.3, with respect to site visits, the reporting duties of the Architect have increased. Now the Architect is required to *promptly* report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the updated schedule, and (3) defects and deficiencies observed in the Work.

The obligations of the Contractor also have been increased and its rights modified under the 2017 A201. Under the warranty provisions of §3.5.2 all material, equipment or other special warranties now must be issued in the name of the Owner, or be transferable to the Owner. Warranties shall not commence until the date of Substantial Completion per §9.8.4. This should decrease the warranty scope gap issue for the Contractor over what presently exists when a manufacturer’s warranty runs before that of the Contractor. Contrast that beneficial change for the Contractor with the new §3.7.4, where the notice time for the Contractor to inform the Owner and Architect of a differing site condition is now reduced from 21 days to 14 days.

In terms of schedules, under §3.10.1, the Contractor’s schedule requirements are expanded. The construction schedule must include (1) the date of commencement of the Work, interim milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the duration of each portion of the Work. Under the Contractor’s submittal schedule, under §3.10.2 the Contractor not only is to submit a submittal schedule, but provide submittals in accordance with the approved schedule. If the Contractor fails to provide submittals per the approved submittal schedule, the Contractor is not entitled to a Contract Time or Price adjustment based on the time it takes to review the late submittals.

With respect to progress payments and payment claims, under §9.6.8, if the Owner has paid properly, the Contractor must defend and indemnify the Owner from all loss and liability arising out of any lien claim or other claim for payment by any Subcontractor or supplier of *any tier*. This indemnity obligation includes attorney fees and litigation expenses. Note, this is a separate indemnity right and right to attorney fees for the Owner. Upon receipt of a notice of a lien claim or payment claim, the Owner must notify the Contractor. If approved by the

court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted. The effect of this provision is that it memorializes state statutory release of lien bond off procedures. This clause also *expands* the coverage beyond lien claims to any payment claim, which *increases the protection for the Owner and risk for the Contractor* because it applies to lower tier claims.

Another risk added to the Contractor involves remedying damage to the Work. Now, under §10.1, the Contractor must remedy any damage and loss to the Work or other property at the site or adjacent to it, *even if it was not caused by Contractor and its subcontractors but by the acts or omissions of the Owner or Architect or anyone for whose acts they are responsible*. The Contractor’s *remedy is to make a Claim* for the cost to remedy the damage or loss but it must do the work. This provision directly adds a risk to the Contractor who previously had no duty to remedy damage to the Work for which it was not responsible.

The new General Conditions also reflect a push to document all notices in writing and eliminate verbal notifications. Under §1.6.1, all notices must be written. Verbal notices are not recognized. The use of electronic transmissions is recognized for regular Project communications. Written notices must be by delivery in person, regular mail or *electronic transmission*. This recognizes modern use of emails for project communications other than claims.

As for overall communications, under §4.2.4, the Owner and the Contractor now have an affirmative duty to *include* the Architect on *all communications* that relate to or affect the Architect’s services or professional responsibilities. Also, the Owner is required to promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project.

Claim notice requirements have tightened considerably, reflecting recent case law. Claims are now treated differently from other project notices and communications. A new §1.6.2 addresses formal claim notices. Written claim notices are *deemed served* only if they are delivered by certified or registered mail, or by courier providing proof of delivery. This makes the type of delivery a potential condition precedent to a valid claim. It also provides a potential waiver defense to what otherwise may be a valid claim. The effect of this new provision is to likely increase

the number of formal claim notices.

Under Article 15, and §15.1.1, now a claim specifically includes a change in the Contract Time. But, this provision does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents. In dealing with Notices of Claims under §15.1.3.1 and §15.1.3.2, where the condition giving rise to the Claim is first discovered *prior to expiration* of the period for correction of the Work under §12.2.2 (typically one year following Substantial Completion), *Claims are initiated by notice to the other party and to the IDM* and copied to the Architect, if the Architect is not serving as the IDM. Where the condition giving rise to the Claim is first discovered *after expiration* of the period for correction of the Work under §12.2.2, *claims are initiated by notice only to the other party*. No notice to the IDM is required because the construction period is ended.

Another theme under the new A201 is the further transitioning towards electronic protocols that are now required. Article 1 now mandates agreed upon protocols for digital data use and transmission. Under §1.7, the use of the AIA E203-2013 BIM and Digital Data Exhibit and the G202-2013 Project BIM Protocol Form to establish the protocols are now mandated. Likewise, for projects using Building Information Modeling, or BIM, parties must develop protocols for use and reliance on BIM. These *protocols must be set out in the AIA E203 and G202 Exhibits* (per §1.8). Any use of or reliance on BIM without agreed protocols governing usage shall be at the *sole risk of the user* and without liability to the other party and the BIM authors or contributors.

Under the 2017 A201 there has been an expansion of insurance coverage with the creation of a separate Insurance and Bonds exhibit (A101 Exhibit A) which is to be added to all Owner-Contractor Agreements. Many of the *terms covering types and amounts of coverage* are now found in this Exhibit. The remaining insurance terms in Article 11 are streamlined, moved and renumbered. The Contractor must purchase and maintain insurance of the types and limits of liability as described in the Agreement (to which the A101 Insurance and Bonds Exhibit will be attached). What has been kept from the prior version of the A201 is the requirement that the Owner, Architect and Architect's consultants are to be named as additional insureds under the Contractor's CGL policy.

With respect to Owner required insurance, the new A201

does not spell out the types of coverages required or the amounts. In §11.2.1, it states that the Owner must purchase and maintain insurance of the types and limits of liability as described in the Agreement (with the A101 Insurance and Bonds Exhibit). In §11.2.2, If the Owner fails to obtain the required property insurance, it must inform the Contractor in writing prior to the commencement of the Work. The Contractor may delay commencement of the Work and may obtain insurance that will protect its interests and those of its Subcontractors. When the failure to provide coverage has been cured or resolved, the Contract Price and Time are to be equitably adjusted. If the Owner fails to procure coverage, it waives all rights against the Contractor to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. If the Owner does not provide notice to the Contractor and it is damaged by the failure of the Owner to purchase the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable to the lack of insurance. The effect of these provisions is that the impact of not getting required insurance is identified more clearly than in the 2007 A201 in §11.3.1.2.

Bonding is also covered under Article 11. Specific bond terms are no longer set out in the General Conditions. Like with the 2007 A201, additional terms on bonding are recommended.

Another change in the new A201 concerns termination by the Owner for convenience. Now, under §14.4.3, the Owner must pay the Contractor for Work *properly* executed, costs incurred by reason of the termination for convenience, including costs for termination of Subcontracts, and the *termination fee*, if any, set forth in the Agreement. Deleted from the 2007 AIA General Conditions is the payment of reasonable overhead and profit on Work not executed.

Finally, the dispute resolution deadlines have been clarified. These are governed by Article 15. Section 15.2.1 clarifies that Claims first discovered *prior to expiration* of the period for correction of the Work under §12.2.2 are referred to the IDM for resolution. The IDM is to make an initial decision within 30 days. An initial decision remains a condition precedent to mediation of any Claim. If no decision is made within 30 days, the Claimant may demand mediation and binding dispute resolution without a decision having been rendered. Under §15.2.6.1 any demand for mediation must be made within 30 days

from receipt of the initial decision. If a demand is made and the party receiving it does not file for mediation within 30 days after *receipt* of the demand, then *both parties waive their rights to mediate* or pursue binding dispute resolution with regard to the decision.

The former 2007 A201 allowed a party to force a Claim into mediation but if the mediation failed, there was no process to force the Claimant to proceed to dispute resolution. The new changes to §15.3.3 creates a process to force a party to initiate binding dispute resolution on a claim which did not get resolved through mediation. Now, if the mediation process did not resolve the dispute, either party may demand that the other party file for binding dispute resolution within 30 days of the conclusion of mediation, or 60 days after mediation was demanded. As with mediation, if a demand is made and the party receiving it does not file for binding dispute resolution within 60 days after *receipt* of the demand, *then both parties waive their rights to binding dispute resolution* with regard to the decision.

Once arbitration has been demanded as the method of dispute resolution, the hearing locale is now established. Under §15.4.1, the arbitration must be conducted in the place where the Project is located, unless another location is mutually agreed upon by the parties. Likewise, the prior

rule which allowed either party in its sole discretion to consolidate another arbitration or join other parties has been deleted. On issues of consolidation or joinder of claims in arbitration, their resolution now will be subject to the rules of the AAA or other applicable arbitration rules.

While this a quick overview of the new A201 General Conditions, there are other changes that have been made. A careful review of the 2017 A201 versus the A207 A201 will show what other changes have been made. The changes set out above are the major ones in this latest edition of this widely used industry document. As before, and definitely with some of these new changes, a careful consideration and review of the General Conditions is required to determine what modifications, deletions or additions may be appropriate for a particular project. Hopefully, this article will serve as an initial guide this endeavor.



*Mike Drewry is a partner with the construction law firm of Drewry Simmons Vornehm, LLP, with offices in Carmel, Indianapolis and Crown Point, Indiana, and focuses his practice on construction law and litigation.*

# The New AIA Contract Documents What Contractors Need to Know



**October 26th, 2017  
(12:00 p.m. - 2:00 p.m.)**



Drewry Simmons and Vornehm will host a seminar at the CAF to discuss the new AIA 2017 contract documents, including the changes to the widely used A101 (Owner/Contractor), B101 (Owner/Architect), A201 (General Conditions) and A401 (Subcontract) agreements. This luncheon was specifically developed to help contractors and sub-contractors understand the new documents and the implications that they will have on construction projects.

<http://www.cafnwin.org/training.php>

# Leadership = Productivity!



**James S. Bain**  
**Falcon Performance Institute**



Over the course of many summers, we get the opportunity to coach supervisors in the field. The learning process works in both directions. Hopefully, the supervisor learns something from us and very often we learn something from them. I was reminded in our coaching engagements this summer how critical leadership is in driving productivity. It starts with the attitude of the supervisor. How that supervisor plans the work, directs the team, and delivers the proper motivations at the proper times are all part of the puzzle.

For one of our recent engagements, we decided to use Extreme Ownership, by Jocko Willink and Leif Babin as a guide for our sessions. These two Navy SEALs, who participated in the Ramadi offensive in the war in Iraq, start each chapter with a real life military example of leadership in the field of battle where the possible outcomes can be much more grave than a lost day of production. They follow each story with an explanation of the leadership principle that it represents. The last section of each chapter relates that principle to business. In our case, we spent time on the job relating each principle to the execution of construction projects. Candidly, using this book as a guide for leadership in construction has been as effective as any we have ever used. I'll be sharing a few of the more critical principles in the paragraphs

that follow.

## **Extreme Ownership:**

“On any team, in any organization, all responsibility for success and failure rests with the leader. The leader must own everything in his or her world. There is no one else to blame. The leader must acknowledge mistakes and admit failures, take ownership of them, and develop a plan to win.”

In short, the leader of a construction project must take command – command of the job, command of the circumstances, and command of the crews. This isn't about being a hard-ass (most of the time). It's about leading and taking responsibility.

In our case this summer, it started with the superintendent's attitude. On day one, I simply asked him, “do you want to be a professional or are you happy being a hack? Do you want to be the best, or are you OK with being the middle of the pack, or worse?” This was all it took. The super's natural competitive nature took over and his attitude changed immediately. He went from just getting the job done to wanting it to be the best; the most productive, the safest, and the most profitable. His



crew noticed the change instantly and their performance improved dramatically in just one day. It's about leadership!

## **No Bad Teams, Only Bad Leaders:**

“Leaders should never be satisfied. They must always strive to improve, and they must build that mind-set into the team. They must face the facts through a realistic, brutally honest assessment of themselves and their team’s performance.”

In this corollary to Extreme Ownership, we have to remember that no one gets up in the morning, gets ready to go to work, looks in the mirror and says “how can I screw up today?” All of our people want to do well. If performance is poor, more often than not, it is a result of something the leader has not provided. It may be information. It may be the proper crews. It may be the appropriate tools or equipment. But it is almost always something the leader has not provided. In my experience in this business, there are no bad teams, only bad leaders.

## **Cover and Move:**

“Each member of the team is critical to success, though the main effort and supporting efforts must be clearly identified...These individuals and teams must find a way to work together, communicate with each other, and mutually support one another.”

**“The leader must acknowledge mistakes and admit failures, take ownership of them, and develop a plan to win”**

Cover and move requires little explanation in the military context. It is simply the process by which one team covers while the other moves, creating a leap frog effect. On the battlefield of Ramadi, it saved countless lives and ensured success. Simple stated, each team/crew helps each other to achieve the desired end result. In construction, we have too much finger pointing. “He/

she/they didn’t do this or that.” The office blames the field. The field blames the office. The firm blames the architect or engineer. If we are going to be productive, profitable, and successful, we need to learn to cover and move. Everybody is responsible for the results, from the CEO to the receptionist and from the Superintendent to the laborers apprentice. Cover and move.

## **Simple:**

“Combat, like anything in life [construction], has inherent layers of complexities. Simplifying as much as possible is crucial to success. When plans and orders are too complicated, people may not understand them. And when things go wrong, and they inevitably do go wrong, complexity compounds issues that can spiral out of control into total disasters.”

The construction projects on which we work can be incredibly complex. Particularly at the crew level, it is critical that the plans for today, this week, and at most, next week are broken down into their most simple, understandable, and digestible parts. The superintendent is responsible for this process. The best time to communicate the plan for the day is in the morning huddle/beginning of shift meeting. No matter how complex the overall project might be, today’s tasks can be broken down into elements that include; our production goal for today, potential safety issues, quality concerns, and the tools, materials, and equipment necessary to accomplish the goals. If any of these basic elements are forgotten or ignored, success is highly unlikely.

## **Prioritize and Execute:**

“Even the most competent of leaders can be overwhelmed if they try to tackle multiple problems or a number of tasks simultaneously. The team will likely fail at each of those tasks. Instead, leaders must identify the highest priority task and execute. ‘Relax, look around, and make a call.’”

While excavating for a storm sewer installation, our crew contacted an unmarked fiber optic line. No one was sure it was damaged, but work stopped. The supervisor called the appropriate utility, and the crew waited. The utility showed up and determined that while the damage was minor, it would take a couple of hours to repair it so the crew could continue. Almost an hour later, the supervisor made the decision to shift the crew to another area on the

project. He and his crew were so focused on the fiber optic line, they lost sight of the overall mission. When I suggested that he could have made the decision to move the crew within five minutes of the hit, he looked at me and said. “well yeah, I guess I should have. But I was so concerned about the utility hit, I really didn’t think of doing it.” Once again, I reminded him the importance of taking command, of the project, the situation, and the crew. The consequences are just lost time as opposed to lost lives, but the principle remains. Relax, look around, and make a call.

There are many more chapters and many more principles that are amazingly applicable to our business, including Believe, Plan, Decisiveness and Uncertainty, and Discipline Equals Freedom. As you might suspect, I highly recommend both the book and its use as a guide in the coaching environment. If you are like most management folks I know, you may have time to buy and

read the book, but will never find the time to use it as a coaching tool. If you buy the book, read it, and would like to discuss how you can use it to dramatically improve the leadership and productivity of your crews, give me a call. I’d love to help.



*James S. Bain, MBA, is an author, speaker, consultant, and coach. He is the founder of the Falcon Performance Institute, a consulting and corporate training firm focused on productive performance. He has been a featured speaker at numerous regional and national conventions.*

*To hire Jim or find out more about the Falcon Performance Institute, please visit [www.fpitem.com](http://www.fpitem.com) and/or [www.jimbainspeaks.com](http://www.jimbainspeaks.com) or call 352-854-4015.*

# Seven Tips for Effective Delegation

**Mark Breslin**  
**Breslin Strategies, Inc.**

**D**elegation is the key to advancement. If you can’t find effective ways to move things off your plate and onto others’, you cannot advance. If you can’t delegate in a manner that leverages the talent of those around you, then you can’t advance. If you hoard tasks and responsibilities because you like them, have always done them, or are afraid to let go, then you cannot advance either. So here are seven strategies to delegate well:

1. Be clear in identifying the desired outcome, including the deadline.
2. Be clear with your original directions. Do not assume they can or will fill in the blanks.
3. If necessary, make them write down key details. Sometimes people are too embarrassed to take the notes they will need an hour, day, or a week later.
4. Ask them if they have any questions before they engage in the task. This saves both you and them

time.

5. Tell them they can come for help if necessary. But if they encounter a problem in execution, tell them not to bring you a problem only but at least one alternative to solve it. Otherwise, you create a dependent workplace culture where thinking for one's self is not encouraged or required.
6. Delegation frequently leads to mistakes. Analyze the mistake. Avoid blaming. Determine whether a mistake is someone else's fault or your own. That's right. Yours. If you did not help someone understand a task, timeline, technical aspects, or other vital information, how can you expect that person to succeed? If it is the employee's mistake find out how it was made. Does he or she have a skill deficiency? Poor analytical or judgment skills? A lack of confidence? An inability to

obtain the buy-in of others? Spend the time this time so that the problem is unlikely to occur next time.

7. Praise accomplishment. Delegation has a payoff for you and them. You don't have to do the tasks, and employees get ownership of a positive outcome. Let them know if they did well. For many people that is the best motivation for taking on more responsibilities next time.



*Mark Breslin is a strategist and author of several books, including most recently, *The Five Minute Foreman: Mastering the People Side of Construction*. Visit his website at [www.breslin.biz](http://www.breslin.biz) or*

## How The Region Convinced the State to Invest in Rail Expansion



**By Rep. Hal Slager**

**I** often hear complaints about how our region comes up short on state investment – but not this year!

We took a different approach. The people of Indiana deserve a good return on their money and we put together a proposal that convinced them that the 4x return on their money could in fact be achieved. House Enrolled Act 1144 was the framework to back up our promise.

I knew that the appropriation request of \$6 million per year for 30 years would never survive the budget process even though locally we were going to match it. We needed

a plan, in law, that would assure the local match, assure the future revenue to borrow the money, and assure that the promised private development along the entire line could actually happen, as this would generate the sales and income tax revenue to pay the return on the investment.

HEA 1144 did all of that and could be a model for other multi-county projects. The bill makes the RDA the fiscal agent for the project. Even though the rail people will build the rail line, the RDA, which answers to the state budget committee, has fiscal oversight. Additionally, the RDA was granted special authority to capture property



tax and local income tax revenue within designated districts around each train stop. This money will be invested in those districts as an incentive to attract private development. These districts will be created in all four counties along the line. We expect that the construction throughout these districts to top \$2 billion over time. This is in addition to the nearly \$1 billion in rail construction.

As the bill evolved we realized that the agreement by each county to kick in their share was only a verbal one and you cannot borrow money on that. Therefore 1144 established how each county would commit their share by offering multiple options that local officials agreed to prior to the law being passed. By working with the locals and obtaining their buy-in, 1144 ended up passing with 145 out of a total of 150 votes.

We demonstrated that we could work together, outline solid financial and development plans, and assure the proper oversight for the project so the people of Indiana

were convinced. I know that I will use this approach again. This project will create many construction jobs over the next 20 years and many on-going long term jobs as a result. It was a privilege to represent our Region in this effort.



*State Representative Hal Slager has been representing House District 15 since 20012. As state representative, Representative Slager sponsored legislation to match federal funds in order to expand the South Shore line extension to Dyer, help secured \$35 million in funding in the biennium budget for construction of Purdue Northwest Biosciences Building, and authored bill that outlines the funding and development mechanism for South Shore double tracking and the transit development districts associated with each rail stop.*



## **New OSHA Rule for Beryllium Exposures in Construction**

**Dr. James J. Arendas**  
**Environmental Health & Safety**  
**Director**  
**Construction Advancement**  
**Foundation**

The U.S. Department of Labor’s Occupational Safety and Health Administration announced a proposed rule that would modify the agency’s recent beryllium standards for the construction and shipyard sectors. Representatives of the shipyards and construction industries, as well as members of Congress, raised concerns that they had not had a meaningful opportunity to comment on the application of the rule to their industries when the rule was developed in 2015-16. This

proposal provides a new opportunity to comment on the rule for those industries and the public. The new proposal would make changes to the rule only for the shipyard and construction sectors. The general industry standard is unaffected by the proposal.

The proposal for shipyards and construction would maintain the requirements for exposure limits (permissible exposure limit of 0.2 µg/m<sup>3</sup> and short-term exposure



limit of 2.0 µg/m<sup>3</sup>), which will continue to protect workers from a serious beryllium-related lung disease known as chronic beryllium disease. The proposal instead revises the application of ancillary provisions such as housekeeping and personal protective equipment in the January 2017 final standards for the construction and shipyard industries. OSHA has evidence that exposure in these industries is limited to a few operations and has information suggesting that requiring the ancillary provisions broadly may not improve worker protection and be redundant with overlapping protections in other standards. Accordingly, OSHA is seeking comment on, among other things, whether existing standards covering abrasive blasting in construction, abrasive blasting in shipyards, and welding in shipyards provide adequate protection for workers engaged in these operations.

On Jan. 9, 2017, OSHA issued a final rule that established new protections for workers who are exposed to beryllium in general industry, construction, and shipyards. Beryllium is a lightweight metal used primarily in specialty alloys and beryllium oxide ceramics. It is also present as a trace material in metal slags.

OSHA also announced it will not enforce the Jan. 9, 2017, construction and shipyard standards without further notice while determining whether to amend the Jan. 9, 2017, rule.



*Doctor James J. Arendas has served as the Environmental Safety and Health Director for the Construction Advancement Foundation (CAF) since 1998. In his role at the CAF he oversees safety education for the industry. He is a successful grant writer and has brought millions of dollars of outside funding*

*to advance safety education for contractors. Mr. Arendas developed partnerships with the OSHA Training Institute through the Rocky Mountain Education Center to provide OSHA Outreach Training. He also acts as an occupational safety resource to contributing contractors of the CAF*



## **Changing The Way We Handle Bad Apples**

**BY Kevin Comerford**

**Director of Professional Development  
Construction Advancement Foundation**

**A** “bad apple spoils the whole bunch” is a phrase that we have all heard before. This expression essentially means that just one bad part can negatively impact the whole. Typically a “bad apple” refers to a person who has an adverse influence on others through their words, actions, or appearance. We often hear the term bad apple within the context of a team or group environment. Whether it is an athlete that ruins team chemistry or a law officer that breaks the law to make an arrest, we are all aware of how an outlier person can negatively affect an

entire group or team. Union contractors and trade unions are not immune to the damage caused by bad apples. The challenge for construction leaders, including both labor and management, is acknowledging and addressing the negative impact that poor performing employees can have throughout the construction industry as a whole and curb it. In other words, construction industry leaders need to be willing to step up and deal with the bad apples that may be spoiling the whole bunch.

The unionized construction industry is in the service sector and maintaining high quality customer service is essential to getting business and growing market share. Customers spend lots of money to build a given project and they expect a certain level of professionalism throughout the delivery process. Contractors must ensure that they have only the best people on the project so that they can exceed customer expectations. To deliver the job, contractors rely on the trade unions to supply them a highly skilled and trained workforce to build a quality job, on-time, and under budget. In essence, construction contractors outsource much of their HR duties to the trade unions which act a hiring hall. This system works well as it allows contractors to expand and contract their workforce without carrying all of the overhead of training and retaining employees.

One downfall of this system is that contractors are periodically sent employees that have a negative impact on company culture. These bad apples may violate OSHA standards, display bad attitudes, cut corners, or a whole array of issues that can impact employee performance, team chemistry, or quality of craftsmanship the jobsite. While bad apples are few and far between, they do exist. When a bad apple infiltrates a company, field supervisors must step in and deal with a poor-performing employee before their poor behavior has a ripple effect on other employees on the jobsite. From my experience, more often than not, supervisors would rather not deal with the conflict of disciplining a problem employee. It's often easier to just fire the problem employee than provide corrective action to address the problematic behavior. Problem solved right? Well not exactly, because the problem employee is often recirculated back into the pool of workers and goes to the next contractor looking to expand their workforce. So instead of addressing the problematic behavior, the contractor is basically kicking the can down the road and the employee's issues are never addressed and unresolved problems remain unresolved.

Having worked for a union contractor, I have personally witnessed a bad apple or two in the field. One situation that stands out was a guy who just had a toxic personality. I guy was antagonistic, always talking behind people's backs, side-stepping safety protocols, blaming others, etc. Over the course of a few weeks, his poor attitude seemed to infect the entire team on the jobsite. Some of the symptoms included a decrease in productivity, a decrease in team morale, and an increase of infighting on the jobsite. The Supervisor finally had enough and handed

the toxic employee his lay-off check. I imagine the guy just went down to the hall, signed the out of work list, and was back at work the next week. In other words, he was just recirculated without anyone ever addressing the underlying issue. This is a prime example of a bad apple ruining the whole. There are too many people in our industry who bust their tails each and every day to ensure that union construction has the best people in the construction world, only to have our brand tarnished by a single individual that consistently breaks the rules. Furthermore, the problem employee was likely back to work, bringing his toxic attitude to a different contractor the very next week.

I understand that best performers, no matter the industry, can have a bad day from time-to-time. That's not what I'm talking about here. I'm referring to the habitual offender that gives a bad name to all the hard working construction professionals in our industry.

So what can be done to address the problem employee? While often it is just easiest to show the employee the door for bad conduct, that doesn't provide any corrective action and the employee just gets recirculated back into the labor pool. Therefore, it's up to both labor and management to come up with a way to deal with employee so the behavior is corrected.

### **Here are several simple methods Supervisors can use when dealing with a bad apple employees:**

- Clearly articulate the behavioral issues with the employee and explain how the behavior is negatively impacting the company. Often the employee does not realize that his or her behavior is having a negative impact on the performance of the team.
- Document all poor behavior and develop an action plan for improvement. If the employee doesn't show progress, be sure to share written documentation with the employee's business agent. If the employee is simply laid off, the business agent often does not realize the employee is a problem and the behavior never gets addressed.
- Take advantage of the union's Employee Assistance Program (EAP). Sometimes there are underlying personal issues with the employee and the EAP can confidently advise employees. This also sends the message that you want the person to change and are willing to help.

The bottom line is that contractors must have the best employees on their jobsite to effectively compete in the market place. Therefore, labor and management need to work closely together to ensure that we have the top echelon of trade workers in the industry. Moreover, we must address all instances of toxic behavior immediately and proactively apply corrective measures to change the negative behavior. Firing or laying-off the problem employee without addressing the underlying problem only passes the problem on to someone else and does more harm than good for the industry. It is a common practice to avoid dealing with a bad apple employee, but

it is a practice that is outdated and must change.



*Kevin has been Director of Professional Development at the Construction Advancement Foundation since 2011. Kevin is responsible for developing educational curriculum and often instructs CAF professional development programs as well. He is in charge of producing CAF's quarterly electronic publication, NWT Union Construction.*



## Featured Project

# NIPSCO Unit 17/18 Dust Collector

**I**n December of 2016, BMWC completed construction on a new dust collector system for Units 17 and 18 at NIPSCO's Schahfer Generating Station in Wheatfield, IN. The new system collects airborne dust particles generated by the coal processing operation before it can escape from the designated pick-up points and pollute the air. Additionally, the new dust collector system had to be installed while the existing system was still online.

The project consisted of 3 new dust collector systems that included the transfer house dust collector, Unit 17 Silo dust collector, and Unit 18 Silo dust collector. BMWC also had to install a new structural platform for

the dust collector system which had to be tied-in with the existing structural steel. They also had to install new duct work and associated pumps and motors, and demolish the existing dust collector system.

One of the key challenges of the project was erecting the new steel on the existing roof of the unit which was approximately 200 feet in the air. The BMWC team determined that using a helicopter would be the safest, most efficient and cost effective method to set and connect the steel. The work was completed using a composite crew of Union Ironworkers, Boilermakers, and Pipefitters. Moreover, multiple subcontractors were

involved in developing the rigging plans and lift schedules.

In total, there were over 100 helicopter lifts with the heaviest lift consisting of nearly 18,500 pounds. Construction crews performed mate-up and bolting operations while the helicopter suspended the loads.

Demolition and removal of the existing dust collector system also posed several unique challenges. The main challenge was that the construction area was 200 feet in the air and safe access to the work was extremely limited. Therefore, BMWC contracted Solid Platforms Inc. to

erect a suspended scaffolding system so work could be performed safely. The work also took place in the summer months between two coal-fired boilers which created potentially hazardous conditions for the construction crews. To mitigate the risk of heat related injuries, BMWC adjusted shift start times, installed cooling units, and conducted heat stress training.

The NIPSCO Unit 17/18 Dust Collector Project was completed with zero recordable injuries, and was the recipient of CAF's Industrial Project of the Year Award.

## Featured Project

# NIPSCO Unit 17/18 Dust Collector Project Participants

### Key People:

- Brad Bechinske, Project Manager
- Ron Beverly, Project Superintendent
- Chad Smit, Boilermaker General Foreman
- Ben Bryan, Piping Superintendent
- Doug Patton, Project Safety Manager
- Mike Wagner, Project Quality Manager

### Major Subcontractors:

- Roofing - Korellis Roofing
- Steel Fabrication - Vidimos, Inc.

- Insulation - Brock Group
- Electrical - Meade Electric Co.
- Scaffolding - Solid Platforms, Inc.
- Inspection - Team Industrial Services
- Helicopter Lift Service - Midwest Helicopter Airways
- Helicopter Lift Service - Erickson Helicopters

### Owner:

- NIPSCO