

# H-H-U HAPPENINGS



**AGC** SOUTH DAKOTA  
HIGHWAY-HEAVY-UTILITIES CHAPTER  
THE CONSTRUCTION ASSOCIATION

## FALL 2023

*Mission Statement: "The AGC of South Dakota and its members promote skill, responsibility and integrity through construction and services which enhance the quality of life for all who live, work or travel in South Dakota."*

GET READY FOR THE 2024 ...

# State Convention!

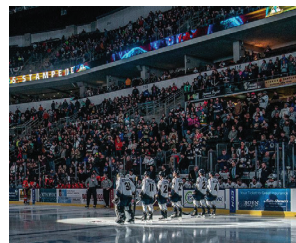
January 10 – 12, 2024 / Convention Center - Sheraton Hotel in Sioux Falls, SD

The Annual State Convention is just around the corner, and the planning committee has been working diligently to bring you another great event! The line-up of speakers this year is outstanding, and they each offer a little bit of something for everyone. Leadership development is the major focus at this year's event, as we kick things off with Jake Thompson's message of "Compete Every Day!" Maria Guy will follow on day two with a key-note session on helping you "Become a Leader Worth Following". Concurrent breakout sessions on "substance abuse" will take place each day as well as targeted HR and safety topics offerings a variety of educational opportunities for all attendees.

Be sure to also check out the fun social events planned for this year! The Young Constructors Pub Crawl in downtown Sioux Falls is slated for night one of convention. Night two may or may not include a hat trick, but is sure to entertain at the Stampede Hockey Game.

Sponsors and Exhibitors will be accepted until December 11th. Registration will OPEN SOON and a block of rooms is available for \$132.00/night at the Sheraton Hotel. Call 888-627-8088 and ask for the AGC or SDLICA block. The deadline to reserve a rooms is December 13, 2023, so make your reservations today! We hope to see you January 10-12 at the Annual AGC/SDLICA State Convention!

## ON THE INSIDE



2024 Advertising Opportunities, Emerging Leadership Academy, Ice Fishing Registration, Building a Safety Champion Course!

# LEADERSHIP 2023

## CHAPTER OFFICERS



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2771 Plant Street  
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57702

[www.sdagc.org](http://www.sdagc.org)



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**Rob R. Knight**

## FROM THE PRESIDENT:

Fellow AGC Members,

As I sit here in late October the ground is white in many places around the state! I am guessing we all have a little work to do in order to wrap up this season. The good news is the forecast looks to go back to normal shortly. As we all work hard to finish up our projects, please take the time to do it in a safe manner.



Last week both AGC Chapters had their board meetings and our Joint Fall Membership Meetings in Rapid City and Sioux Falls. The Merger Task force recommendations were rolled out to the Boards and communicated to the members that attended the Membership Meetings. I am so proud of the work the Merger Task Force did to navigate through this stage in an effort to possibly create a brand-new AGC of South Dakota. We owe a huge thank you to Steve Wagner for helping us coordinate this process. As stated at the Membership Meetings, the new "Organizational Board" made up of 3 HHU members and 3 Building Chapter members, will develop and send out a ballot to the membership to vote. This ballot will say something to the effect of a "yes" or "no" vote to creating a new AGC of South Dakota and dissolving our existing HHU Chapter and Building Chapter. Personally, I think this is an easy decision, but all members have the right to vote. Please reach out if you have any questions. I think we have a very unique, exciting and special opportunity in front of all of us to see a great new collaborative organization!

Speaking of great work, be sure and get your nominations submitted for the HHU Annual Awards by December 8th. I know there are some great projects going on around the state. These annual awards provide a great opportunity to highlight and reward your employee's special talents.

Be sure to start making plans to attend this years 2024 State Convention in Sioux Falls January 10-12. The planning committee is busy putting together another informative and fun event again this year!



In closing, I would like to thank you all for making the 2023 construction season and our association successful once again this year! As we enter the winter season, please stay focused on safety during your work day. Hope to see you all in January, if not sooner.

Sincerely,

- Rob. R. Knight

# AGC MEMBER BENEFITS



## LEGAL COUNSEL

The AGC of South Dakota, HHU Chapter has an attorney, Jason Smiley, on retainer to assist members and staff with construction-related legal questions. Member companies may contact Jason directly at 605-342-1078 or by email: [jsmiley@gpnalaw.com](mailto:jsmiley@gpnalaw.com)

## DENTAL PROGRAM

The AGC of South Dakota has a dental insurance program available to in-state member companies. For more information or to discuss eligibility requirements, please contact the Delta Dental office at 605-224-7345 or by email: [sales@deltadental.com](mailto:sales@deltadental.com).



## EMPLOYEE RETIREMENT PLAN

Fringe Benefits Design Inc. a BPAS company is the provider for the AGC of South Dakota sponsored 401(k) Profit Sharing Plan. They provide all contractors and associate members the education, investments, documents and other administrative needs to implement a qualified retirement plan. Contact Fringe Benefits Design, Inc. for more information at 605-221-2920.



## AGC MEMBERS SAVE MORE THAN \$10M ANNUALLY! ARE YOU PARTICIPATING?

AGC's Membership Discount Programs provide members access to high-quality services, cutting-edge technology and top-of-the-line products. From discounts on vehicles to office supplies to cloud-based construction management solutions, AGC has partnered with some of the best to give you the most for your money and improve your daily business operations. Visit the website: [www.agc.org/member-benefits/member-discount-programs](http://www.agc.org/member-benefits/member-discount-programs).



## DISCOUNT SPOTLIGHT!

### Youturn Health

Toughness is valued in the construction industry, but stigma, shame, and fear prevent employees from getting the support they need for behavioral health and substance use issues. AGC and Youturn Health are here to help!

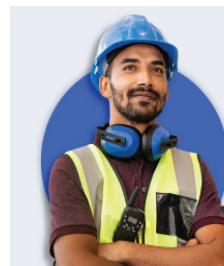
The statistics speak for themselves—stress, depression, and substance use have taken a toll on the construction industry, with suicide rates soaring to 53.2 per 100,000 U.S. workers. This alarming figure is 4x higher than the national average and 5x greater than all other construction fatalities combined.

AGC and Youturn Health are dedicated to providing support for behavioral health and substance use issues, and AGC is thrilled to announce a new program that provides member firms with special discounts on Youturn Health's innovative, construction-industry focused education and support services for your employees and their families.

#### Youturn Health Provides:

- Peer Support - Trained peer coaches use their own experiences overcoming substance use and behavioral health struggles to help people take meaningful steps in their own journey.
- Online Learning and Videos - Access to over 450 educational videos and stories that help people understand stress, anxiety, depression, substance use, and more.
- Family Support - Family and loved ones also get access to the program and their own dedicated peer coach.

Visit: [www.agc.org/youturn](http://www.agc.org/youturn)



#### Effective support for:

- Mental Health
- Suicide Prevention
- Substance Misuse

LEARN MORE » Youturn HEALTH





## "IN THE NEWS"

*This section of the bulletin highlights the AGC, its' members and/or staff who have been quoted, interviewed, published, etc. by the media recently. If you are aware of AGC of SD "In the News" items, please forward them to the AGC Office.*

September/October Edition of AGC of America's Constructors Magazine: **AGC's Executive Vice President, Toby Crow** and **Deputy Executive Vice President, Lindsay Willits** quoted in article titled "Art Contest Promotes Work Zone Safety".



September 26, 2023 Newscenter 1 TV: **AGC's Construction Camps** featured in article titled "RCAS students get their hands dirty with Construction Camp".



### **In Memory of Norma Swingen**

We regret to inform you of the passing of Norma Swingen of Swingen Construction. Norma passed away at the age of 91 on Tuesday, September 5th in Lake Bemidji, ND.

### **In Memory of Brian Schipper**

We regret to inform you of the passing of AGC's Office Manager, Brian Schipper. Brian passed away on Monday, September 18, 2023, from injuries sustained in an automobile accident, at the age of 41.

## FOLLOW AGC of SD ON SOCIAL MEDIA

"X": @AGCOFSD

[WWW.FACEBOOK.COM/SDAGC](http://WWW.FACEBOOK.COM/SDAGC)



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**November 15, 2023** - SDDOT EBS Letting

**November 22, 2023** - Safety Committee Mtg - Sioux Falls

**Nov. 23-24, 2023** - Thanksgiving Holiday - AGC Office Closed

**November 28, 2023** - CONPAC Annual Meeting - Virtual

**December 6, 2023** - SDDOT EBS Letting

**December 7, 2023** - Joint AGC / SDDOT Meeting - Virtual

**December 12, 2023** - Associate Division Board Meeting - Virtual

**December 13, 2023** - SDDOT EBS Letting

**December 25, 2023** - Christmas Holiday - AGC Office Closed

**January 1, 2024** - New Year's Day Holiday - AGC Office Closed

**January 9, 2024** - 1st Day of Legislative Session - Pierre

**Jan. 10-11, 2024** - 2024 State Convention - Rapid City

**January 17, 2024** - SDDOT EBS Letting

**January 23, 2024** - 1st Legislative Briefing - Virtual

**Jan. 24-25, 2024** - AGC Ice Fishing Tournament - Pickerel Lake

**Jan. 30-31, 2024** - Concrete Conference - Deadwood

**February 7, 2024** - SDDOT EBS Letting

**February 6, 2024** - AGC Legislative Lunch - Pierre

**February 14, 2024** - SDDOT EBS Letting

**Feb. 28-29, 2024** - SD Trans. Construction Summit - Oacoma

**March 5, 2024** - Last Legislative Briefing - Virtual

**March 6, 2024** - SDDOT EBS Letting

**March 7, 2024** - Pizza, Pop & Power Tools - Sioux Falls

**March 7, 2024** - Last Day of Legislative Session - Pierre

**March 25, 2024** - Veto Day - Pierre

**March 26, 2024** - AGC Board & Member Mtgs. - Rapid City

**March 28, 2024** - AGC Member Meeting - Sioux Falls

## **SAVE THE DATES**

**May 1-2, 2024** - AGC/Corps of Eng. Annual Mtg. - Omaha, NE

**June 20-21, 2024** - AGC Fishing Tournament - Pierre Area

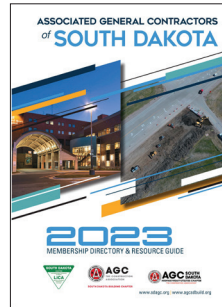
**July 16, 2024** - Summer Social - Sioux Falls

**July 17, 2024** - AGC Golf Tourney (Willow Run GC) - Sioux Falls

**August 9, 2024** - Summer Social - Rapid City

**August 10, 2024** - AGC Golf Tourney (Red Rock GC) - Rapid City

## **2024 Membership Renewal & Directory Update**



Your 2024 AGC membership renewal invoice and membership information has been mailed! Please complete the membership form and submit payment prior to January 1, 2024.

In addition to renewing, please log into your account and update your company information **PRIOR**

**to December 31st!** The information you update is what will be published in the 2024 Membership Directory!

You can access your account and update your profile by visiting: <https://www.sdagc.org/login.asp>, or click on "log-in" in the upper right hand corner of our website [www.sdagc.org](http://www.sdagc.org). It's very important to us that your information is printed correctly, so please log-in and update your company information by December 31st.

## **2024 Director Openings**

While all of you are busy wrapping-up the 2023 construction season, the AGC is busy preparing for 2024. This means it's time to fill our 2024 Board of Director openings. The AGC Board and Associate Division Board is currently accepting Board of Director nominations. If you are interested in becoming a Director please contact the AGC Office or any current board member. Please remember, AGC's success largely depends on the active volunteer leadership of its members. As 2024 nears, please make a commitment to remain or become more active in the AGC!

## **Legislative Lunch - Save the Date!**

"AGC Day" at the Legislature is slated for Tuesday, February 6, 2024. AGC will host legislators and members at a lunch in the Capitol Rotunda from 11:00am -

1:00pm. This unique opportunity allows members to see first-hand how our Legislature operates in Pierre and meet with key state officials. Please save the date now, you do not want miss the opportunity to get face-to-face with your Senators & Representatives! More information will be available soon!





# MEMBERSHIP NEWS CONT.

## Award Forms Available for HHU Annual Awards Program!

Submissions are being accepted for the 2023 AGC, HHU Chapter Awards program! Awards include: Build South Dakota, Golden Hard Hat, Good Citizen, Mark Knight Leadership Award and the Industry Collaboration & Leadership Award! Awards will be presented during the 2024 State Convention on January 10th in Sioux Falls, SD. Deadline to submit is December 8th. All award nomination forms can be found on our website at: [www.sdagc.org/yearlyawards](http://www.sdagc.org/yearlyawards).

## 2024 Advertising Opportunities

The new year is just around the corner, so get ahead of the curve and reach your target audience by advertising in a HHU Chapter publication! Opportunities include the

AGC website [www.sdagc.org](http://www.sdagc.org), the quarterly bulletin and new ads now in Monday's Weekly News E-Newsletter! Ads are sold at a discounted rate for members and can be placed on a one-time only basis or in every publication for a year. Please see the enclosed form for all of the details and email [lindsay@sdagc.org](mailto:lindsay@sdagc.org) with any questions!



## AGC Cares In Action!

AGC Cares is ready to finish off the year by helping others and is looking for some projects to get involved in! If you know of a project or a person needing some "AGC Cares" please email [lindsay@sdagc.org](mailto:lindsay@sdagc.org) or call the office at 605-274-8689! There is no project to BIG or small and all submissions will be considered!



## AGC Potential Member Recruitment

The AGC is always looking for new members to join our association and we need your help! If you know of a company that would benefit from joining the AGC, please get in contact with them and ask them to join! The Board of Directors recently approved giving potential members a free registration to attend our 2024 State Convention. Please send any potential member information to the AGC staff today!



## New Members!

### Gold Buckle Construction, LLC

23326 475 Ave.  
Egan, SD 57024  
Mikey Loiseau, Owner  
[goldbuckleconstruction21@gmail.com](mailto:goldbuckleconstruction21@gmail.com)  
(605) 864-1252

### Perrett Construction, Ltd.

120 South Macomb Street  
Valentine, NE 69201  
Gregg Perrett  
[gregg@perrettltd.com](mailto:gregg@perrettltd.com)  
(402) 376-3797

### CNC Foundations

8259 Bunkum Road  
Caseyville, IL 62232  
Bryan Hofius  
[bryanh@cncfoundations.com](mailto:bryanh@cncfoundations.com)  
651-318-9244

### Crossroads Trailer Sales & Service

3610 N St. Paul Ave  
Sioux Falls, SD  
Derek Falor, Operations/  
Parts  
[derekfalor@crossroadstrailer.com](mailto:derekfalor@crossroadstrailer.com)  
605-359-5797

### The Lodge at Deadwood

100 Pine Crest Dr.  
Deadwood, SD 57732  
Anthony Galbraith  
General Manager  
877-393-5634

### XL Specialized Trailers

1086 South 3rd Street  
Manchester, IA 52057  
Shane Michelson, Sales  
[smichelson@xlspecializedtrailer.com](mailto:smichelson@xlspecializedtrailer.com)  
(605) 431-2252





# 6th Annual John Shoemaker ICE FISHING TOURNAMENT

“Nothin But a Good Time Raising  
Money for Education”

January 24-25, 2024 @ Pickerel Lake Lodge - Grenville, SD

Registration and sponsorship information is available as an insert &  
on the AGC website:

[www.sdagc.org](http://www.sdagc.org)



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### **AGC/SDDOT \*Virtual\* Meeting December 7th from 10:00am CT - NOON CT**

The AGC/SDDOT  
Fall Meeting will  
be held virtually on

Thursday, December 7th from 10:00am - Noon CT. Registration is required to attend and once completed you'll receive the Zoom/Teams link to participate. Please make plans to attend this informative and relationship building meeting from the comfort of your home or office - get registered today at [www.sdagc.org](http://www.sdagc.org).

### **2024-27 STIP Quantities / Region Data**

SDDOT has recently provided AGC with the breakdown of the 2024-2027 STIP by region and work type. The data (as of October 18, 2023) for Asphalt, PCC, Grading and Shoulder Widening, Structure Replacement and Structure Maintenance can be found on our website at: [www.sdagc.org/2024-27-stip-quantities](http://www.sdagc.org/2024-27-stip-quantities).

When reviewing the STIP Dashboard (spreadsheet), refer to each tab for the different categories. A few notes:

- Quantities are based on the anticipated "Construction Year"
  - Includes FY2023 projects with 2024+ construction
  - For projects with multiple construction years:
    - the quantities for Asphalt (tons), Grade/Shld Wdn (Cu Yd) and PCC (Sq Yd) are divided equally for each of the construction years
    - the # of Projects, \$ Millions and Miles will be included in the programmed fiscal year only
- AC, PCC and Earthwork quantities are not included for all projects. HOWEVER, OVERALL THE DATA PROVIDES A GOOD REPRESENTATION of work programmed for the next 4 years. We will continue to add/update quantities as projects move forward in design.

- # of Projects – Includes the # of projects for that category, whether it is the main improvement type or a subsidiary improvement type.
- \$ Millions – Is the "Total" project cost, not just the estimated cost for that category.

Questions can be directed to Mark Leiferman at [Mark.Leiferman@state.sd.us](mailto:Mark.Leiferman@state.sd.us).

### **AGC/SDDOT Transportation Summit**

The AGC & SDDOT will once again be hosting the Annual Transportation Summit February 28 & 29, 2024 at Arrowwood Resort & Conference Center in Oacoma, SD. More details will be available soon at [www.sdagc.org](http://www.sdagc.org), but in the meantime, please save the date!



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# AGC SCRAPBOOK

## Fall Membership Meeting SUCCESS!

AGC Hosted our Fall Membership Meetings on October 25th at The Park in Rapid City and on October 26th at Escape 605 in Sioux Falls. Thank you members for attending!



**Marsh McLennan  
Agency**

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# AGC SCRAPBOOK

## 2023 Young Constructor's Pheasant Hunt SUCCESS

AGC Hosted our 18th Annual Young Constructor Pheasant Hunt November 2 & 3 in Draper & Pierre, SD! Both hunts were full with over 40 attendees each day, and over 55 members attended the social/dinner at Drifter's in Fort Pierre. Thank you members for attending and being a part of this great event.





# WORKFORCE DEVELOPMENT NEWS

## Construction Career Camps - Making a Difference! Season SUCCESS

Nearly 700 high school students attended one of the five construction camps hosted by AGC this fall. More than 50 industry partners sponsored the camps through monetary and in-kind donations, as well as providing more than one hundred volunteers to interact with the students. Overall students rated the camps a 4.44 out of 5 stars and overwhelmingly chose the HEO stations as their favorite activity in all locations. The best part of all is that 57 percent of survey respondents indicated they are MORE likely to choose a career in the construction industry! A HUGE thank you to all who made these events possible for **YOUR FUTURE WORKFORCE** ... see event photos on the next page!

## Careers in Construction Month



AGC of SD along with Governor Kristi Noem via an Executive Proclamation, is proud to proclaim October 2023 as "Careers in Construction Month" across South Dakota! As an essential industry, the key aspect of our on-going workforce development goal is to show students career opportunities available in construction. With the ever-growing need for skilled professionals in the construction industry, there has never been a better time for education and industry to work together to help students build successful construction career pathways that are stable and rewarding.

## Construction Career Academies Wrap Up for '23 – Application Opens in January for '24



Our innovative 10-week summer academy welcomed 12 students, 8 in Sioux Falls and 4 in Rapid City this year. The Construction Career Academy blends classroom instruction with important on-

the-job training and skill-building for students in their Junior or Senior year of high school. Students in Sioux Falls had the opportunity to also gain college credit through extended classroom instruction at Southeast Tech. Rapid City students directly enrolled into AGC's

Carpentry Apprenticeship. Both methods of learning have proven valuable to students as they begin to make career decisions. Thank you to the following members for hosting an academy student this year!

- ASCO
- Complete Concrete
- Fiegen Construction
- Hoogendorn Construction
- Jans Corporation
- Puetz Design + Build
- SECO Construction
- Sunkota

Thank you

Recruiting efforts for our Summer 2024 Construction Career Academy will begin in January 2024 for Sioux Falls and Rapid City. Please contact the AGC office if you are interested in the program and want to know more about getting involved. This is a great way for your company to start developing a high school talent pipeline! Thank you members for your support of this incredible program!

## HHU Scholarships – Applications Open January 1st

Last year the HHU Chapter awarded more than \$60,000 to students pursuing a degree in construction. After a successful summer of fundraising – we expect to be able to award at least this amount for the next year! Applications for the 2024/2025 school year will open on January 1, 2024. Encourage any student you know or those you come across to apply for these funds! The application can be found at [buildsouthdakota.com](http://buildsouthdakota.com).

## Build Dakota Scholarship Program – STM Scholar Updates

Jack Neisius, one of HHU's Stretch the Millions scholars, will be looking for internships this summer. He is anticipating beginning his search in January. Zach Neu will be graduating next spring and will start focusing on his plans soon too! As a part of the Build Dakota Scholarship, students commit to working for their sponsor for three years after graduation. HHU sponsored students have the opportunity to work for any of our members! Interested in securing future educated employees? Think about sponsoring students for the South Dakota Build Dakota at one of South Dakota technical colleges. Visit [www.bulddakotascholarships.com](http://www.bulddakotascholarships.com) for more information. If you are interested in chatting with Zach or Jack this spring, call the AGC office today.



# Construction Career Camps SUCCESS!

## Sioux Falls



## Rapid City



## Pierre



## Watertown





# SAFETY & TRAINING NEWS

## **Safety & Training Calendar Now Available!**

The Safety staff has been busy preparing the safety & training calendar for the upcoming 2024 Training Season. We are happy to announce that the calendar is now available at [www.sdagc.org](http://www.sdagc.org)! For questions or to set up trainings please email Mike Kane at [mike@sdagc.org](mailto:mike@sdagc.org) or Jim Heaphy at [jim@sdagc.org](mailto:jim@sdagc.org).

## **Upcoming Safety Training Opportunities:**

### **Confined Space - Competent Person**

Dec. 5th: Watertown

### **Fall Protection – Competent Person**

Dec. 6th: Watertown

### **First Aid/CPR**

Dec. 8th: Sioux Falls

### **MSHA Annual Refresher**

December 18th: Sioux Falls

January 9th: Sioux Falls

### **Mobile Elevating Work Platforms (MEWP)**

November 8th

### **OSHA 10 Hour – Construction**

Dec. 20th-21st: Brookings

Jan. 25th, 26th: Woonsocket

### **OSHA Training Institute (OTI) Classes**

November 13th-16th: Sioux Falls

OSHA #500 Trainer Course in Occupational Safety & Health Standards for Construction

November 28th- December 1st: Sioux Falls

OSHA #511 Trainer Course in Occupational Safety & Health Standards for General Industry

January 16th-19th: Sioux Falls

OSHA #502 Update for Construction Outreach Trainers

### **Scaffolding – Competent**

Dec. 6th: Watertown

### **Traffic Control Supervisor Training**

Jan. 30th, 31st: Sioux Falls

### **Trench & Excavation - Competent Person**

Dec. 5th: Watertown

### **Qualified Rigger/Signalperson**

Dec. 11th-13th: Sioux Falls

Dec. 19th-21st: Rapid City

## **AGC of SD Safety Committee Meeting**

**November 22 - Noon @ AGC Training Center**

The Safety Committee brings together the top construction safety professionals in South Dakota to inform, recommend and develop AGC safety services. The Safety Committee is serviced by safety education, consultation and recognition subcommittees. All AGC members are welcome to participate in the Safety Committee or its subcommittees. Email [Mike@sdagc.org](mailto:Mike@sdagc.org) for more info!

## **Commercial Driver License (CDL) Entry Level Driver Training (ELDT)**

Is your company in need of additional employees with a CDL? Well, the AGC can assist your company with the required Entry Level Driver Training (ELDT) that has been required since February 7, 2022. Here are the classes that are scheduled throughout the state:

### **November:**

- November 16th Commercial Learners Permit (CLP) Exam Prep: (In Person) Rapid City @ DOT 8:00am – 12:00pm
- November 16th Train the Trainer (TTT): Rapid City @ DOT 12:30pm – 5:00pm

### **December:**

- December 11th -13th CDL Class A & B Theory Training: Sioux Falls @ DOT 8am - 4:30pm
- December 14th Commercial Learners Permit (CLP) Exam Prep (In Person): Sioux Falls @ DOT 8:00am – 12:00pm
- December 14th Train the Trainer (TTT): Sioux Falls @ DOT 12:30pm – 5:00pm

### **January:**

- January 3rd ZOOM CLP Exam Prep: 9:00am – 1:00pm
- January 10th-11th Vehicle Inspection Training: Sioux Falls / Convention Center 8am - 5pm
- January 12th Hazardous Materials (H) Endorsement Training: Sioux Falls / 8am - 5pm

### **February:**

- February 5th-7th CDL Class A & B Theory Training: Aberdeen @ DOT 8am - 4:30pm
- February 8th Commercial Learners Permit (CLP) Exam Prep (In Person): Aberdeen @ DOT 8:00am – 12:00pm
- February 8th Train the Trainer (TTT): Aberdeen @ DOT 12:30pm – 5:00pm
- February 9th Hazardous Materials (H) Endorsement Training: Aberdeen 8am - 5pm
- February 14th ZOOM CLP Exam Prep: 9:00am – 1pm



## **Emerging Leader Academy - January 12th in Sioux Falls!**

Being a good leader requires more than an understanding of the work. It requires an understanding of yourself and those you lead. During this academy, Maria Guy will lead new and upcoming leaders through activities and arm you with tools to successfully lead yourself and your teams. This four-hour course is taking place on January 12, 2024. Space is limited to 50 attendees. See the enclosed insert for more details and register via this link: <https://buff.ly/45DEYfj>.

## **State Convention Safety Committee & MSHA Alliance Meetings Announced!**

The AGC Safety Committee & MSHA Alliance will be meeting during the 2024 State Convention at the Sioux Falls Convention Center. The Safety Committee meeting will be held on Wednesday, January 10th from 11:00am - 12:00pm CT. The MSHA Alliance will also be meeting from 10:00am – 11:00am CT on Wednesday, January 10th. Details will be sent out in an outlook calendar invite soon - but please save the dates today!

## **South Dakota AGC Safety Awards**



We know you have outstanding people in your organizations that should be recognized for their contributions to the safety of your organizations. Now is the time to show them how much they mean to our organizations and the safety community.

We have the Safe Driver Award, Outstanding Company Safety Award, and of course the Paul Lepthien Award given to the most outstanding Safety personnel. We're taking Submissions for the following Safety Awards to be presented at 2024 State Convention:

- Company Growth Award
- Paul Lepthien Award
- Safe Driver Award

Submissions are due December 8, 2023. The forms are available on our website at [www.sdagc.org](http://www.sdagc.org).

## **Building a Safety Champion Course**

We are partnering with Construction Safety Specialist, Inc. (part of Master Builders of Iowa) to bring a leadership development program to South Dakota. The curriculum for "Building a Safety Champion" will guide an individual through subject matter that

will enhance and change a participant's approach to individual and company-wide safety practices. While the focus is to improve safety practices, the course is designed to provide current and emerging leaders with development in the four basic skills required to become a transformational leader. The course consists of three different sessions taking place January 18-19, February 15-16 and March 7-8. The course flyer is included as an insert, register ASAP, space is limited!

## **AGC Virtual Training Opportunities!**

### **AGC EDGE** Virtual Education

*Discover AGC Edge - A New Virtual Learning Experience*

Looking for new training opportunities in 2023-2024? With AGC's live, instructor-led courses, it's never been easier to build your skill set and access the training you need. Whether you're looking to build your knowledge in BIM, Lean, Project Management or Supervisor Training, these virtual programs provide the same learning experience and expert instruction as in-person programs. The class descriptions and registration links can be found at: <https://www.agc.org/>



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# LEGISLATIVE NEWS



## **Election Year is Near. Join CONPAC Today.**

In 2023, South Dakotans will elect all legislative seats. The Contractors Political Action Committee, or CONPAC, is planning now to elect business-friendly candidates to office. Once candidate petitions are filed in March 2023, CONPAC will compile a candidate list complete with voting records if applicable. That list will be shared with CONPAC members who will add their intel. Based on what we gather, campaign contributions will be set and CONPAC members will begin delivering campaign contributions in June 2023.

CONPAC is also watching the petition process regarding initiated measures and will discuss any that impact business in South Dakota. You need to be a part of CONPAC to ensure the construction industry continues to thrive. CONPAC meets on November 28, 2023, at 2:00 p.m. CT. If you are not a member, contact [info@sdagc.org](mailto:info@sdagc.org).

## **2024 Legislative Session**

The countdown to the start of the 99th Legislative

Session on January 9, 2024, has started. AGC is involved in many discussions about session already. We will be on the ground at the Capitol for the Governor's Budget Address in December so we can meet new legislators and network with all legislators about upcoming bills of interest to the construction industry.

As usual, AGC will have a presence at the Capitol during the entire run of the session. All bills introduced will be read and those of interest to the construction industry will be shared with the legislative committee, which will determine AGC's stance on each bill. We will share a weekly bill log and activity synopsis and host a weekly ZOOM call to share information with members. Join us for the first ZOOM call on Tuesday, January 16, 2024, at 2:00 p.m. CT.

AGC Day at the Legislature is slated for Tuesday, February 6. AGC will host legislators and members at a lunch in the Capitol Rotunda.



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# AGC LEGAL MINUTE

## JASON SMILEY, AGC LEGAL COUNSEL



### **Legal Principals Applicable to Construction Disputes**

The South Dakota Supreme Court recently decided the case of Smith v. WIPI Grp., USA, Inc., 2023 S.D. 48.

The Smith case represents a typical construction dispute between a fencing contractor and an owner,

who also acted as the general contractor. Smith, the fencing contractor, filed a mechanic's lien for unpaid work. WIPI, the owner, counterclaimed for breach of contract and other claims, all of which related to alleged poor workmanship and failure to follow the project plans. The case was tried without a jury. The trial court found that Smith had a valid mechanic's lien and an enforceable agreement; however, the court also determined that Smith did not follow the project plans and some of the work did not meet industry standards.

Further, the trial court found that despite the problems with Smith's workmanship, WIPI's counterclaims lacked merit, because it did not give Smith notice and an opportunity to repair. WIPI was found to have interfered with efforts by Smith and its subcontractor to remedy some of the problems. WIPI's interference amounted to a failure to mitigate its damages. Nevertheless, the trial court determined that WIPI was entitled to an offset of the full amount of Smith's claim because of Smith's poor workmanship. This was done under principals of equity, despite a lack of evidence of the cost of repairing the alleged defects. In other words, the trial court simply denied Smith's lien amount due to the problems with the workmanship. The trial court also denied an award of attorney's fees.

The Supreme Court reversed and remanded in part. The case was analyzed by the Supreme Court under the doctrine of substantial performance. Substantial performance is not full performance. The law is that where performance is substantial, the contractor is entitled to be paid for its work, less the cost of any defect. This part of the trial court's decision was upheld because it had



determined that Smith was entitled to a lien for the value of its work. The trial court was reversed in part, however, because it denied Smith any recovery under principals of equity. Once Smith established that it was entitled to payment under the contract, the trial court was wrong to deny payment under principals of equity. Under the doctrine of substantial performance, WIPI was obligated to prove the cost of correcting the defects. It failed to do so. As a result, the case was remanded to the trial court with direction to enter a judgment of foreclosure of Smith's lien and to consider whether to award attorney's fees.

This case is a good reminder of many of the basic legal principals applicable to construction disputes. It reaffirms the doctrine of substantial performance, which is an essential protection for contractors accused of defective work. Parties must pay for the value of what they receive. It is fundamentally unfair to deny payment for work where the work was substantially what it was supposed to be. When there are problems with the work, the party causing those problems should pay for them. But the burden of proving damages is on the party claiming the problems exist. In the absence of evidence of damages, no deduction will be allowed. Further, owners should not interfere with efforts to correct problems when they arise. Interference is a basis to deny an owner's claim for offset.

This is a good decision for contractors. The Supreme Court protected fundamental principles of contract law and lien law that are important to contractors.



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# AGC OF AMERICA NEWS

## **New Buy America Guidance Became Effective October 23**

Federally assisted construction contractors must comply with the White House Office of Management and Budget final guidance on Build America, Buy America Act (BABAA) requirements on contracts awarded on or after October 23. The final guidance maintains that original construction materials—nonferrous metals, plastic and polymer-based products, glass, lumber, and dry wall—it put forth must be “produced in the United States.” It also adds three new construction materials to the list: fiber optic cable (including drop cable), optical fiber, and engineered wood.

The final guidance also specifies the specific manufacturing processes that must take place in the United States for each construction materials to be considered compliant. It also notes that “minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material” to a manufactured product, for example. Full details can be found at: [www.agc.org](http://www.agc.org).

## **New Davis-Bacon Rule Took Effect October 23**

On March 11, the Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) released a proposed rule to significantly revise the regulations implementing the Davis-Bacon Act and its prevailing wage. This 40-year awaited update reverts to the pre-1983 methodology for determining whether a wage rate is prevailing, also referred to as the “30 percent rule”. The rule also significantly revises its “site of work” provisions along with its survey data and wage determination collection and processes that would allow WHD to use a broader data set (geographically) than they currently utilize. The rule does provide some relief to highway projects that cover multiple counties and wage determinations and proposes the ability to automatically update non-collectively bargained rates that are 3 or more years old. For more information, contact Claiborne Guy at [claiborne.guy@agc.org](mailto:claiborne.guy@agc.org) or 703-837-5382.



## **EPA and Army Corps Sign Coordination Memos on WOTUS**

In September, the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers released two joint coordination memorandums on jurisdictional determinations 1) under the 2023 waters of the United States (WOTUS) rule (as amended in September) and 2) under the “pre-2015 regulatory regime” that is in effect in the 27 states where the Biden Administration’s rule is on hold. The memos outline similar processes for coordination, wherein EPA plays an active role. Neither memo provides insight on how the agencies will determine jurisdiction nor how they will implement the relatively permanent test.

The memos outline the coordination process required for all draft approved jurisdictional determinations assessing certain wetlands and waters dependent on the applicable rule (pre-2015 regime or the 2023 rule). A flowchart from the Waters Advocacy Coalition that depicts the process is now available. The flowchart is an educational resource only and does not provide legal advice. AGC is a long-standing, active member of the coalition. A summary of the coordination process and the flowchart is available at [www.agc.org](http://www.agc.org).



## **Building a Better Congress**



AGC PAC is the nonpartisan political action committee (PAC) sponsored by AGC of America. It is registered with the U.S. Federal Election Commission (FEC) and allows eligible employees of AGC

member companies to pool personal, voluntary financial contributions. The contributions are used to support candidates running for elective office who, regardless of party affiliation, understand the construction industry and the specific needs, interests and concerns of AGC member companies and their employees. For more information on how to get involved contact David Ashinoff, Director of AGC PAC & Political Advocacy at [ashinoffd@agc.org](mailto:ashinoffd@agc.org) or (202) 547-5013.





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# AGC of America

## SAVE THE DATES!!

**Jan. 10-11, 2024**

AGCA Construction Safety  
& Health Conf  
Newport Beach, CA

**Jan. 29-31, 2024**

AGCA Surety Bonding & Risk  
Mgmt. Conference  
Bonita Springs, FL

**Mar. 20-24, 2024**

AGCA Annual Convention  
San Diego, CA



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