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THE MINNESOTA UTILITY
CONTRACTORS ASSOCIATION

MUCA MEMBERS: MAKING A DIFFERENCE

INSIDE THIS ISSUE

2018 ANNUAL MEETING RECAP

DAY AT THE CAPITOL

LEGISLATIVE SESSION REPORT

CONTRACT DISCLAIMERS AND SOIL REPORTS

ALPHA LEADERSHIP WORKSHOP

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FROM THE PRESIDENT

Talk about a difficult start to our construction season! Inclement weather, a late winter storm, more rain and a major utility out of compliance with MS216D across the state all had negative effects for our industry. These conditions also increase the potential for safety issues. Let's all keep safety top-of-mind for our workforce. Fortunately, none of this affects MUCA's ability to continue working on your behalf.



A new governor and the only divided legislature in the nation have posed some challenges in lobbying to protect our industry from harmful legislation and getting favorable legislation passed. We've had some successes and some disappointments. You'll find the Legislative Report for this session in this magazine.

Locally, several MUCA Members have had varying appeals to the Minnesota Plumbing Board for common sense in updating materials lists and updating the plumbing code, while ensuring the common practice of CIPP is not banned.

Workforce development continues to be a struggle for many industries. MUCA is engaged in additional outreach, and specifically raising awareness in younger students (7th-12th grades), through our new "Trade Show & Tell" event in September. The standard question in high school halls is, "where are you going to college?" Let's try to shift thinking to, "Where are you going to work?", as we all know there are well-paying jobs available to those young people who are willing to put in a hard day's work. Younger minds need to know college debt, and a degree for which there are very few positions, does not guarantee success or a wealthy future.

We continue to work hard to increase the value for your investment. The new Alpha Leadership training adds value by increasing the motivation, communication and productivity levels of your field leaders. The certification programs in pipe laying and erosion control help save real dollars in a well-trained and efficient workforce. The award programs for safety and scholarships offer recognition for your company and your employee's children. Finally, MUCA's premier events help connect you with your peers and customers to deepen relationships.

I am honored and humbled to be your President. MUCA offers several opportunities to increase your ROI through sponsoring an event, serving on a committee, writing an article, or advertising in this magazine or our directory. MUCA remains the only organization focused on the underground utility construction industry. Remember, it's "You" (the members) that make MUCA great! Feel free to contact me if I can be of further assistance.

Sincerely,

Matt Smith
Elcor Construction
Rochester, MN

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MUCA BELIEVES...

Our Mission

To promote the underground utility industry by providing safety training, continuing education, scholarships and legislative relations.

Our Vision

To be the best Association Value for our members.

Our Guiding Principles

Safety, An Educated Workforce, A Unified Voice.

Our Values

Honest Communications, Transparent Leadership, Authentic Engagement.

CONNECT AND ENGAGE

June 20, 2019

39th Annual Jeff Hanson Memorial Last Ditch Open

July 17, 2019

MUCA Cornhole Tournament – Sponsored by ADS

August 11, 2019

MUCA Family Picnic Day at the St. Paul Saints

September 27, 2019

Trades Show & Tell – Getting Kids Into Construction

September 28, 2019

Day of the Dozer Benefit for Children's Hospital

October 4, 2019

8th Annual Clay Shoot Classic Tournament

November 7, 2019

MUCA Annual Meeting, Vendor Fair & Silent Auction



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Search "Minnesota Utility Contractors" and simply click to join.

Topics include legislative issues, construction industry news, calls to action, MUCA event updates, and member recognition. Share an article, pose a question, and increase your online network by joining MUCA's LinkedIn Group.

Stay informed, join the discussion, and add your perspective!

CONGRATULATIONS TO THE 2019 SCHOLARSHIP WINNERS



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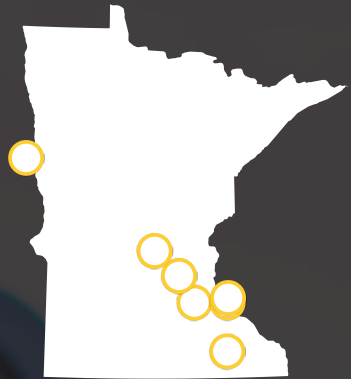
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2018 MUCA SAFETY AWARD WINNERS

The MUCA Awards and Scholarship Committee has reviewed the applications and selected the winners for the annual MUCA Safety Award. This award is based on total work hours, cases, and days away per the OSHA 300 log and summary. Thanks to everyone who applied! We have 3 different categories and 3 winners for 2018. These members will be recognized at either their office or at the golf outing in June.

Congratulations to all the winners and thanks for making safety a priority!

Under 50,000 hours of work

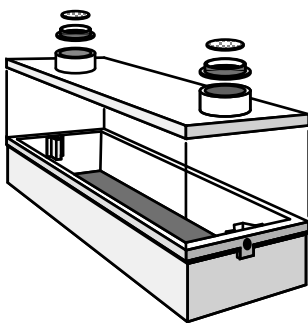
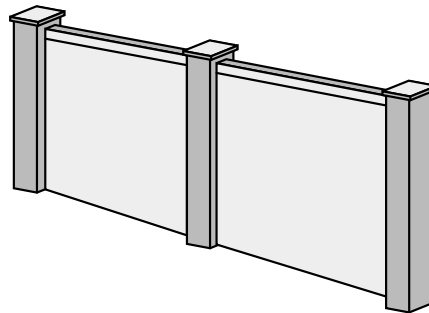
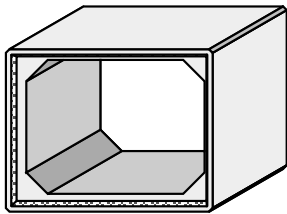
- No winners

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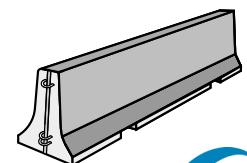
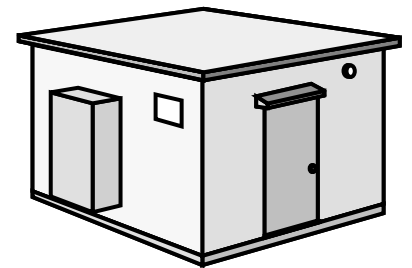
- Beemer Companies

Over 100,000 hours of work:

- Rachel Contracting Inc.
- Rice Lake Construction Group



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- Verti-Crete Block Retaining Walls
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- Waste Water Tanks
- Safety Barriers
- Modular Buildings
- Tornado Shelters



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TRAIN YOUR PEOPLE TO SPEAK UP AND YOUR INJURY RISKS WILL GO DOWN

by Tom Esch, President of Esch Consulting, LLC

I saw something so I said something. It happened in Omaha, just a few weeks ago. An operator of a demo saw was hunched under the back end of a pickup truck on a two-lane road, holding his Stihl saw with one hand, with the diamond blade plunged in the asphalt at full depth. He had no PPE on, the saw was shaking badly, and he looked like a slight breeze could blow him over.

I stood just close enough to be safe, but to get the attention of the guy working next to him. He yelled at the saw man to stop. He shut the saw off and stood up facing me. I was dressed in a sport coat and collared shirt. He looked at me in a way that indicated he would listen to me, so I spoke.

“Excuse me, I have led a lot of safety training on handling that saw safely and was watching you just now. Did you know every year 12-15 operators in America are killed every year by the improper use of that saw? You may want to pull the truck forward so you can use both hands on that tool.” He looked at me like he couldn’t believe I stopped to talk to him. I was just happy he didn’t take a swing at me. When I returned, I saw that he had not moved the truck. But he had stopped cutting.

The reason I stopped to engage this young man is that I am passionate about helping construction workers, especially those who do underground utility work, handle that tool safely. I’ve been passionate about this ever since that phone call came many years ago. A young man who worked at a company I used to sell diamond blades to died tragically, when his saw pinched on a pipe he was cutting and kicked back violently.

Since that time, I’ve led demo saw safety programs for over 7,500 operators, mostly in the Midwest, Texas and Florida. I have learned a lot about how demo saw injuries happen and how safety and communication are interrelated. I’d like to share some of those lessons with you, in hopes that you might use this information to prevent a death or serious injury at your company.

First, let’s make sure we all know what tool we are talking about. It is a 12”, 14” or 16” gas-powered saw, and the two most popular brands in the USA are Stihl and Husqvarna. There are electric versions and other manufacturers, but these are the two most commonly seen in underground work. This tool, called a demo saw, chop saw, maniac saw, German saw or Cutquik saw is portable, handy and the risks associated with it are frequently underestimated.

Here are some things I’ve learned from the many safety programs I have led:

1. Construction workers, especially in the underground industry, continue to use the demo saw in unsafe ways. And because of that, injuries continue to happen.
2. Many companies, especially those who cut pipe, do not give much time and attention to demo saw safety. Far more attention is given to trenching safety. This is despite the fact that according to the Bureau of Labor Statistics, the average number of trenching deaths in the USA is about 25 people a year. Deaths from demo saw accidents are, according to a colleague who is very knowledgeable, likely half as high as that number.
3. One of the most dangerous situations that can lead to a kickback is when an operator cuts a pipe that is not supported. This happens both underground and above ground. Just because a pipe is on the ground does not mean it won’t pinch the blade. Just ask the young man who was airlifted to a local hospital with a cut from his Adam’s apple to his nose not long ago, while cutting PVC pipe above ground.
4. The second most dangerous thing I see is operators who are cutting a pipe with their face directly in line with the cutting attachment. Always keep your head and neck off to the side of the blade, not directly behind it.
5. But perhaps the most dangerous thing of all is when someone gives the saw to the lowest ranking guy and tells them to go cut the pipe. The person may not have had any training on how to safely use the demo saw. Are they likely to ask for training? Probably not. Especially if they don’t speak good English. If that rare worker does have the courage to ask for help, they just might get some help. But just as often they could hear something like, “Figure it out yourself” or “I don’t have time for that, buddy.”
6. There is a link between the number of injuries and the way people treat each other. I’ve trained in shops with 220 workers, where you could hear a pin drop. Complete respect. I’ve also trained at companies where there were 50 people in the room, and several were rudely cussing at the person who was introducing me. And then talking while I was talking. I had to summon my best imitation of Sister Christina more than once, to get their attention. Guess which places tend to have more injuries and near misses? Yes, in my experience, the ones where people openly show disrespect at company meetings report more injuries.
7. The risk of serious injury and death is lowered when workers are trained to respectfully interrupt each other

in the interest of safety. This is not a common practice in construction, yet every owner and safety person would like it to happen. And everyone would be safer if interruptions happened more often. What is more common is to ignore other workers, including the person cutting an unsupported 8" ductile iron pipe with the blade guard pulled back past the guard-stop, above their shoulders. What you may hear are things like this: "If it ain't broke, don't fix it" and "Let sleeping dogs lie." Yet, what is needed is training for workers to know how to safely and respectfully interrupt a person not following basic safety protocol while operating the demo saw.

- When cutting steel or ductile pipe, use abrasive blades – not metal diamond blades. I agree with some of the safety leaders in the country who recommend carbon fiber (also called abrasive blades) for cutting metal pipe. Many of the serious injuries and deaths I know of were with metal diamond blades, cutting steel or ductile iron pipe.

So, I encourage you to always take the risk to speak up in the interest of safety. Better yet, make sure that all your workers get the training they need to see risky situations and to speak up with respect and confidence when they do.

People can be taught how to speak up. It is easier than calling a spouse to give them bad news.



Tom Esch is based in St. Paul, Minnesota.

Tom has trained over 7,500 construction professionals in safety and in communication skills. Tom has recently been the most active

safety trainer in the USA for the underground industry, on demo saws for cutting pipe.

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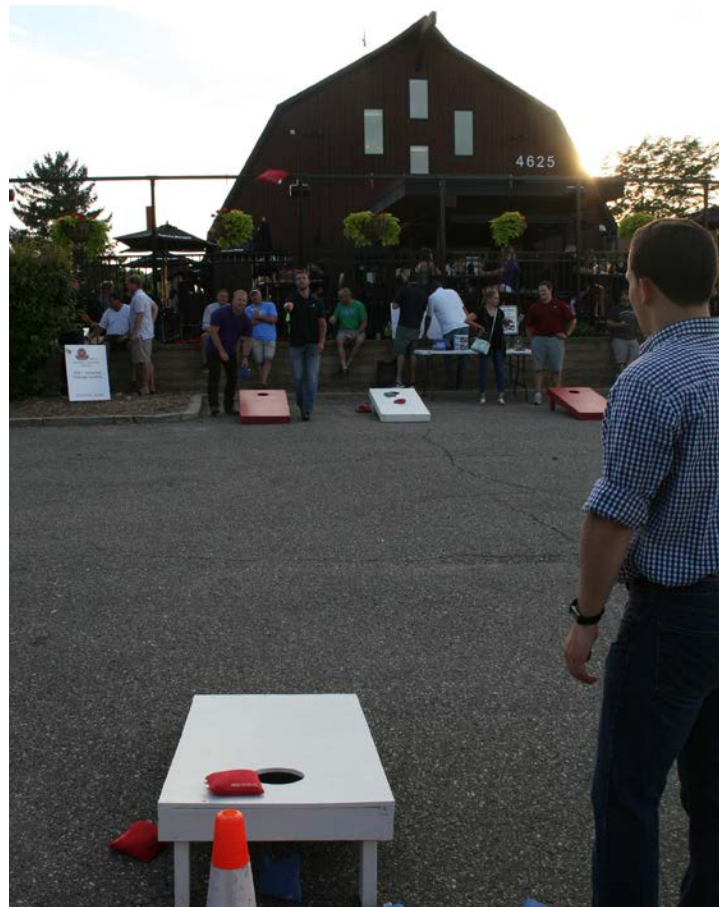
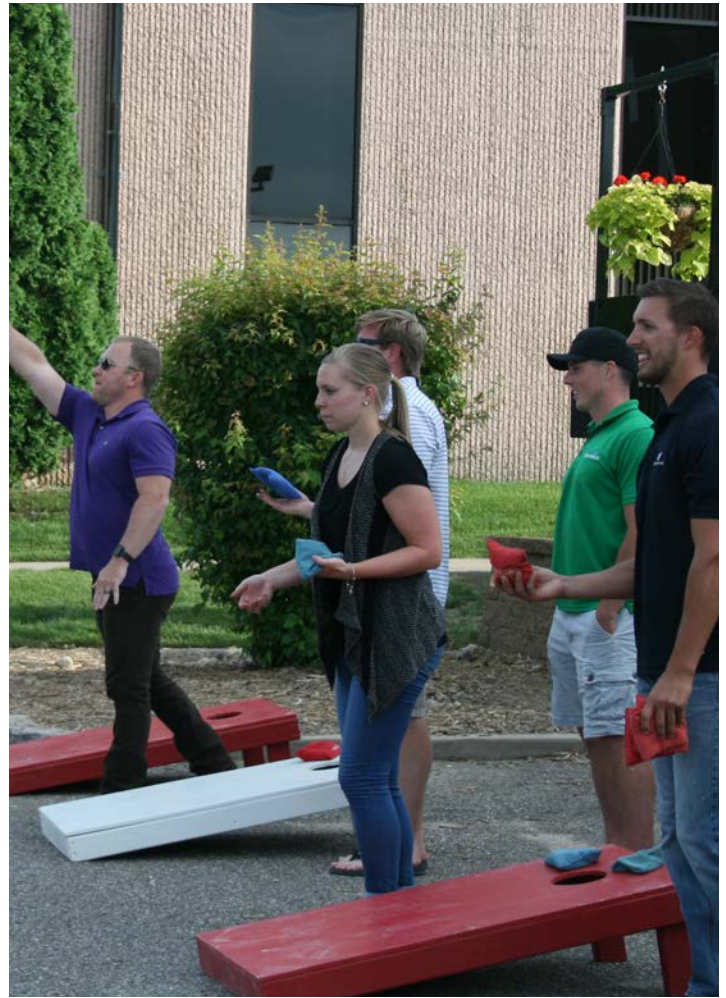


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- No entry fee, however, pre-registration is required (so we know how many are playing!)

Email stephaniem@muca.org to reserve your spot!

Thanks to Tom Rooney at ADS for sponsoring this event!



ALPHA LEADERSHIP WORKSHOP

For the third year in a row, MUCA hosted expert construction trainer Mark Breslin. This year he presented his Alpha Leadership training based on his book, *Alpha Dog: Leading, Managing & Motivating in the Construction Industry*. This was a follow-on course to Breslin's previous presentations on the *Five Minute Foreman*.

The room was packed for the four-hour session in February. The training teaches specifically about leadership in construction and the reward that comes from personal and professional growth. Mark's presentation style is engaging and he uses real-world situations coupled with small group discussions to keep attendees engaged.

Survey results were extremely positive, with at least three companies expressing an interest in bringing Mark in-house. When asked to describe the program in one word, comments included "Inspiring", "Awesome", "Encouraging", "Helpful", "Honest", "Heartfelt", "Motivating" and "Valuable".

MUCA is pleased to bring you high quality and valuable training that helps build your construction leaders for tomorrow. To learn more about Mark's training, order his books, or subscribe to his

Professional Construction Leadership (PCL) training videos, visit www.breslin.biz. If you missed your opportunity this year, be sure to **mark your calendars!** MUCA has booked Mark Breslin to present Alpha Leadership on Thursday, January 23, 2020. See you there!



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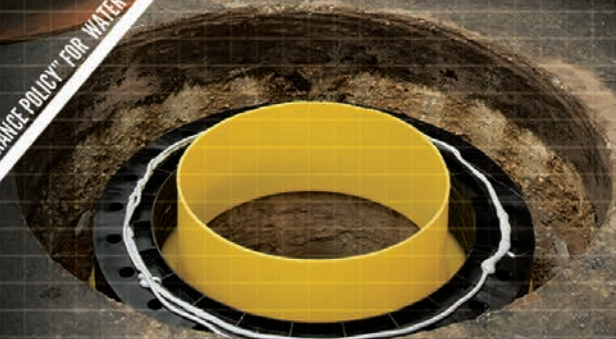
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A LOOK AT LAST YEAR

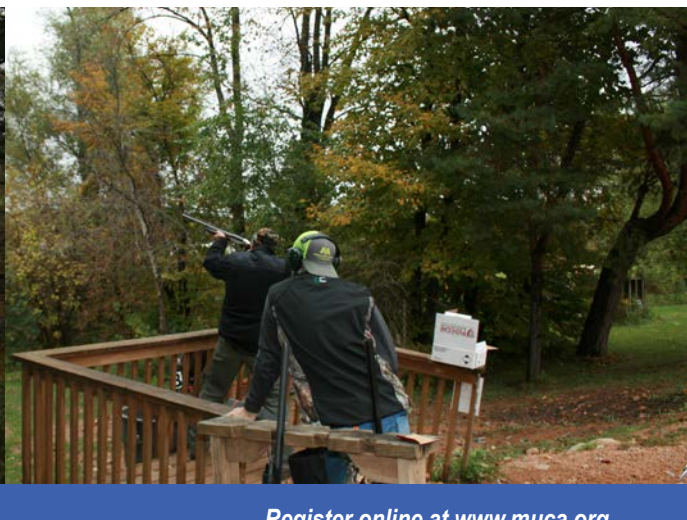
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A LOOK AT LAST YEAR

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Cancellation Policy: Registration fee less a \$25 administrative charge may be refunded up

to one week prior to the Shoot Out Classic. Cancellations after September 27, 2019 will not be refunded. Please do not email forms with credit card information. To protect your data and to comply with PCI standards, the MUCA office will not accept emailed credit card information.

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MUCA'S 2018 ANNUAL MEETING

MUCA's Annual Meeting took place at Mystic Lake Casino Hotel for the third year in a row, with over 175 in attendance. This year, we hosted our meeting in the beautiful, brand new Mystic Event Center. The November gathering allows us to celebrate the end of the construction season, revisit the Association's achievements for the year, and recognize our outstanding members and volunteers. It's also tradition to ratify the election of our Board of Directors.



We always start with a reception and vendor fair hosted by MUCA's Associate Members. The vendors and sponsors do a great job of sharing their wisdom about trends in the industry and what's on the horizon. They are true solution providers and we honor their support by promoting their companies on the back cover of this magazine, and via the scrolling banner on our website through June.



(L to R: Chris Glassing, Ben Canning, Jordan Fischer, Joe Swan, David Olson, Matt Smith, Mark Jay, Mark Hines, Craig Habighorst, Lee Beemer, Tom Revnew, Mark Garrison, Luke Minger, Stephanie Menning. Not pictured: Mark Magney, Jim Robertson)

While we enjoy our time together, we also get official association business completed. We ratify our Board elections, give thanks to those whose term is up, and welcome new Board members. This year, we had four Board members who elected to serve a 2nd term! Perhaps they enjoy volunteering, or the camaraderie that comes with partnering for the greater good of the industry. MUCA thanks Joe Swan with Michel's Corp, Mark Magney with Magney Construction, Mark Garrison

with EJ and Tom Revnew with Seaton Peters Revnew for your continued service and support of MUCA.



We welcomed one new Board member, Ben Canning with Cobb Strecker Dunphy & Zimmerman, this year. We also had the traditional change in leadership with the passing of the gavel and a greeting by the incoming President. MUCA would like to take this time to thank Lee Beemer with Beemer Companies for his leadership this past year, and welcome Matt Smith, Elcor Construction, to the helm as Board President. MUCA is always stronger and able to accomplish its goals with good leadership! Thanks to all!



A very important part of the Annual Meeting is to recognize those volunteers who have been exceptional in their leadership, advocacy and contributions to MUCA. Our winner of the Golden Backhoe Award this year is David Olson with CliftonLarsonAllen. David exemplifies an engaged and active volunteer who works to improve MUCA's value for its membership. Presenting the award is Matt Brenteson with Brenteson Companies, last year's Golden Backhoe Award winner.

Contech Engineered Solutions received the Associate of the Year award. This award is submitted by MUCA's contractors and recognizes those associates with outstanding professionalism, knowledge of products, service, helpfulness and integrity. Aaron Young with Contech received the award on behalf of his company. Congratulations to our 2018 Award Winners!



Special thanks also goes out to all our Committee volunteers during the Annual Meeting. This year, all MUCA volunteers received a nice hoodie with the Day of the Dozers logo to proudly promote our largest event benefiting Children's Hospitals & Clinics and celebrate our good work as a community of practice.

Returning to MUCA a second time since 2013, our keynote speaker Ross Bernstein spoke to a packed room, sharing the Champion's Code about building relationships with integrity and accountability. Ross uses examples from the hundreds of sports legends he's interviewed over 20 years. He shares what separates them from the rest, and how their success not only illustrates what it takes to become the best of the best, but also explores the fine line between cheating and gamesmanship in sports as it relates to values and integrity in the workplace.

The evaluations were very positive and we will be returning to Mystic Lake for our 2019 Annual Meeting. We will again be in the Mystic Lake Event Center. Mark your calendars for November 7, 2019. Thanks again to our sponsors, vendors, committee members, and board volunteers for making this association a success. We value your involvement and commitment to MUCA and to this industry!

THANKS FOR CELEBRATING 40 YEARS WITH MUCA!



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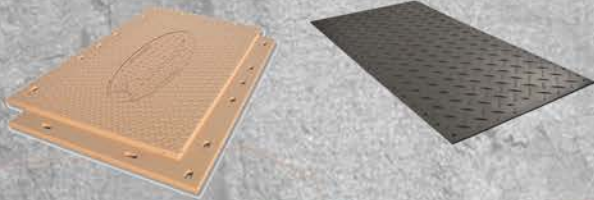
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MUCA'S DAY AT THE CAPITOL

This year once again, MUCA partnered with the Minnesota Chamber of Commerce in hosting our Day at the Capitol. We began with a luncheon that included networking with other business owners across the state, and presentations by House Majority Leader Ryan Winkler (DFL – Golden Valley) and President of the Senate Jeremy Miller (R – Winona).

Joining me this year were Chris Glassing, American Ductile Iron Pipe; Mike Leahy, St. Paul Utilities; and Matt Brenteson, Brenteson Companies. Our talking points shared with legislators included:

- Supporting infrastructure investments in transportation, with no gas tax increase.
- Water infrastructure investments through fully funding the Public Facilities Authority and utilizing the federal matching funds for the Clean Water and Safe Drinking Water State Revolving Funds through the EPA.
- Supporting tax competitiveness through conforming to the federal tax reform and reducing corporate and individual tax rates.
- Supporting the hands-free cell phone law.
- Supporting a CDL Hours of Service Waiver specifically for utility contractors.
- Opposing the proposed government-run workplace mandates.

We split up to meet with many legislators from both houses and both sides of the aisle including Senator Michelle Benson (R – Ham Lake), Representative Kurt Daudt (R – Crown), Senator Jason Isaacson (DFL – Shoreview), Representative Jamie Becker-Finn (DFL – Roseville), and Representative Bob Dettmer (R – Forest Lake).

Pictured below is Matt Brenteson, Brenteson Companies, with Representative Bob Dettmer. Meeting with your legislators is a great opportunity for MUCA Members to be sure our voice is heard on important issues affecting our industry and your business. Thanks to those who joined us on this day. We encourage everyone to continue talking to your representatives throughout the year.





ON THE COVER

MUCA MEMBERS: MAKING A DIFFERENCE!

By Stephanie Menning, Executive Director

Webster’s defines the word “association” in the following manner:

- (Often in names) a group of people organized for a joint purpose
- A connection or cooperative link between people or organizations
- A mental connection between ideas or things

The Minnesota Utility Contractors Association, as a member-driven organization, fits all of these descriptions. This past spring, our “togetherness” in seeking to solve common problems and find common solutions has been hard at work on behalf of the underground construction industry. The following are a few examples of how MUCA Members, being active and engaged in their association, can make a difference.

THE MINNESOTA PLUMBING BOARD

Part of MUCA’s advocacy on behalf of its members is to keep tabs on the Minnesota Plumbing Board and its rulings, decisions and code changes that affect the underground utility construction industry. MUCA has several members who are engaged in the rehabilitation of aging sewer and water infrastructure using the cured-in-place pipe (CIPP) methodology. Last year, the Cast Iron Soil Pipe Institute (CISPI) lobbied the International Association of Plumbing and Mechanical Officials (IAPMO) Technical Committee to change the plumbing code language, specifically as it applies to

existing sewers, banning the use of CIPP for rehabilitation of cast iron pipe.

Their claim for instituting this change was based on ASTM standards and supposedly their own specification manuals. Yet a comprehensive review of all standards by the National Association of Sewer Service Companies shows there is no mention or prohibition of use of CIPP in any of these cited documents.

MUCA Members Todd Stelmacher with Visu-Sewer, Judd Stattine with Quam Construction and Ken Breske with MC Tool & Safety all testified during the March 11 Ad Hoc Code Review and Rulemaking Committee meeting and voiced their opposition to this change.

The Ad Hoc Committee decided that they should request additional information from CISPI to gain a better understanding of their position to not allow their product to be lined with CIPP and present that information to the full Plumbing Board for consideration. They also suggested that MUCA approach IAPMO to propose a change in the national code. Jeff Saucier with Ellingson Companies represented MUCA in working with several others across the nation including representatives from NASSCO and NUCA. They all submitted public comments at the IAPMO Technical Committee in Denver at the end of April.

From NASSCO: *“The Public Comments made to remove the restriction of using CIPP in cast iron pipe within the UPC were rejected. The statement made by the Technical Committee to substantiate the continuation of the restriction in the 2021 UPC*

was that it was necessary to enforce the code and conflicted with cast iron standards and manufacturer's instructions. The vote taken at the meeting earlier this month must be validated by letter ballot which is taken between May 17th and June 7th." MUCA has joined with NASSCO and others in submitting a letter to Technical Committee members requesting their reconsideration and noting there was not technical justification for the rejection. We have also joined an effort to file a Temporary Interim Amendment addressing the original change in text of the 2018 UPC.

Many thanks to MUCA Members Visu-Sewer, MC Tool & Safety, Ellingson Companies, Quam Construction and Lametti & Sons for your willingness to organize for a joint purpose. Stay tuned to MUCA for further developments as we progress.

MINNESOTA LEGISLATURE: DOT HOURS OF SERVICE EXEMPTION FOR UTILITY CONTRACTORS

Sometimes our collaborative efforts require more time to produce results. The DOT Hours of Service Exemption for Utility Contractors is one of those efforts that started during the 2018 legislative session and was finally passed this year!

We had only five weeks left in the 2018 session when Jean Spaulding with Quam Construction contacted MUCA to see if

we could work on getting an exemption for their truck drivers, who make regular trips between the job site and the gravel pit or the spoil site. Road construction drivers already had a waiver; she wanted her company to be in compliance with DOT laws, yet have the flexibility to work longer hours as is required in this industry. There were already bills introduced for exemption from motor carrier hours for agricultural transportation. Through our lobbying efforts, we sought an amendment to those bills and Jean was able to testify in front of the House Transportation Committee bill last session. Unfortunately, the bill died under Governor Dayton's veto pen.

Fast forward to February 2019, House File 1423 and Senate File 1614 were introduced with the simple explanation of "Drivers hauling utility construction materials exempted from hours of service restrictions." Thanks to Jean's efforts along with the original author, Representative Baker, and Senators Lang, Anderson (B.), Rarick, Goggin and Isaacson, the bills have been successfully adopted by the conference committee in the Transportation Omnibus bill this session.

MUCA is proud to represent the underground utility construction industry in dealing with issues specific to your business needs. We are also humbled by our members, who work together to find solutions to common problems, making our industry better for everyone.

WHAT DOES YOUR ACCOUNTANT ADD?

In construction, if the complex regulations don't get you, the fierce competition will.

Are you getting the advice that adds to your bottom line? If not, it's time to reconsider the relationship you have with your accountant. It takes more than number crunching to help you face the challenges of this economy. HG&K has what it takes. Combining unmatched industry experience and insight with a thorough understanding of business and tax issues, we deliver the planning strategies you need in order to thrive.

To see how HG&K's accounting and business advisory services can add to your bottom line, contact Greg Uphoff at 952-979-1146 or guphoff@hgkcpa.com. Visit us at hgkcpa.com.

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Learn about opportunities at www.michelscareers.us

MUCA WORKFORCE DEVELOPMENT RESOURCE GUIDE

The largest challenge for MUCA Members and the industry as a whole is finding, developing and retaining a qualified workforce. Following is a list of efforts MUCA supports; all are engaged in promoting the industry and the great careers available in

construction. Each has various ways for contractors to advocate, educate and participate to attract quality candidates to your company for your great jobs. If you want to increase your workforce, you need to get involved!

PROJECT BUILD

This website offers a plethora of resources for training and education in various trades, scholarships available from industry partners, and an ability for employers to post their jobs and candidates to search available jobs. It also hosts a blog about the industry, workforce shortages and other trade news. Contact: Dennis Medo, (612) 221-9849 or dennis@projectbuildmn.org. www.projectbuildmn.org

THE LEGACY I-3 PROGRAM

The Legacy I-3 Economic and Workforce Development Model is managed by TCI Solutions and leverages local businesses, secondary education, post-secondary education, community organizations and government agencies to provide companies with a low-cost, sustainable method of developing local and diverse talent. Contractors can participate in The Legacy program with a small investment, and by acting as “Industry Ambassadors” will gain access to numerous high-quality candidates ready and able to fill your job vacancies. Contact: Deon Clark, CEO, TCI Solutions, (877) 880-5842 or dclark@tcisolutionsllc.com. www.tcisolutionsllc.com

MN JOB MATCH

Minnesota Chamber of Commerce: MN Job Match uses matching algorithms to connect employers with job-seekers based on skills, interests and job requirements. This technology sorts and stack-ranks matched candidates based on alignment with job characteristics, not keyword counts. The result is a connection between employer need and job-seeker expertise and experience. www.mnchamber.com

CENTER OF THE AMERICAN EXPERIMENT

Great Jobs Minnesota: This resource provides many articles, videos, informational resources and studies about the great careers available without a four-year degree, along with success stories and resources for parents and educators. www.greatjobsmn.com

DEED

This website is both for job seekers and employers. For employers, there is a no-fee account registration that allows you to search the largest online resume database, post your job openings at no cost and utilize job match technology to find top candidates. www.minnesotaworks.net

MIKEROWEWORKS FOUNDATION

The mikeroweWORKS Foundation is a 501(c)(3) public charity that rewards people with a passion to get trained for skilled jobs that actually exist. As CEO of the Foundation, Mike Rowe spends a significant amount of time speaking about the country’s dysfunctional relationship with work, highlighting the widening skills gap, and challenging the persistent belief that a four-year degree is automatically the best path for the most people. www.profoundlydisconnected.com/foundation

There are a few other websites from various trade unions; we encourage contractors to connect with their local union leaders to learn more about their individual efforts.

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- Trench Shoring Plates
- Pipe Lasers
- Pipe Plugs
- Road Plates

CONFINED SPACE PRODUCTS

- Gas Monitors/Detectors
- Confined Space Retrieval Systems
- Blowers & Ventilators

TRENCH SHORING

- Mega Brace
- Beam & Plate Shoring
- Steel Sheeting & Bracing
- Aluminum Hydraulic Shores
- Water Systems

TRENCH SHIELDING

- Aluminum Hydraulic Shoring
- Modular Aluminum Panel Shields
- Steel Trench Shielding
- Steel Manhole Shields
- Arch Spreaders
- Slide Rail Systems

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39TH ANNUAL JEFF HANSON MEMORIAL LAST DITCH OPEN

This annual tourney supports the MUCA Scholarship Fund. Last year we were able to award scholarships to three high school seniors. We are looking forward to gathering with our industry friends and continuing Jeff Hanson's legacy by hosting the largest and most unique tournament in the construction industry in Minnesota. Sponsor tents will again feature fantastic food, and beverage service is available throughout the course. Be sure to come hungry and thirsty! If you'd like to join us, please complete the enclosed registration form, or go to the MUCA website to register online.

MUCA is the only construction association dedicated to the underground industry.



2019 Last Ditch Open Schedule:

- 10:30 AM Golfer Registration & Bloody Mary Bar
- 12:00 PM Shotgun Start
- 5:00 PM Awards & Networking Reception

Registration is \$200 per golfer and includes round of golf, cart and host tents. Tons of door prizes will be drawn as well as the annual raffle. **FREE driving range access prior to the shotgun start.**

Majestic Oaks Golf Club: www.majesticoaksgolfclub.com



Minnesota Utility Contractors Association

June 20, 2019 | Majestic Oaks Golf Club | Ham Lake, MN

2019 Registration Form

REGISTRATION ALSO AVAILABLE ONLINE AT WWW.MUCA.ORG

Name _____

Company _____

Phone _____ Email _____

Address _____

City _____ State _____ Zip _____

PLEASE LIST FOURSOME (NAMES, COMPANIES AND EMAILS)

- 1) _____
- 2) _____
- 3) _____
- 4) _____

DOOR PRIZE AND/OR RAFFLE SPONSORSHIPS

I would like to donate: To the Scholarship Raffle \$ _____ A Door Prize

Description of door prize(s): _____

Door Prize Delivery: I will bring it to the MUCA offices by June 18

I will bring it to the Golf Course on June 20

PAYMENT INFORMATION

Cash Check (make payable to MUCA) Mastercard Visa Discover AmericanExpress

\$200/golfer x _____ = TOTAL \$ _____ After May 16: \$225/golfer x _____ = TOTAL \$ _____

\$800/foursome = TOTAL \$ _____ After May 16: \$900/foursome = TOTAL \$ _____

GRAND TOTAL (Scholarship Raffle, Golf) \$ _____

If paying by credit card, please fill out all information below:

Card Number _____

Cardholder Name _____

Phone _____ Expiration Date _____ Security # _____

Cardholder Signature _____

Billing address is same as above Billing address is:

Address _____

City _____ State _____ Zip _____

Cancellation Policy: Cancellations must be made in writing by June 13, 2019 to qualify for a refund, less a \$20 administrative charge. Notices of cancellation must be faxed to the MUCA office at 651-290-2266. No-shows will not receive a refund. You can make substitutions at any time. *Please do not email forms with credit card information. To protect your data and to comply with PCI standards, the MUCA office will not accept emailed credit card information.*

Complete form and submit with payment to MUCA:

1000 Westgate Dr. Suite 252 | St. Paul, MN 55114

Phone: 651-735-3908 Fax: 651-290-2266

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DAY OF THE DOZERS



2019 DAY OF THE DOZERS • SEPTEMBER 28 • ELK RIVER, MN

What Is it?

Day of the Dozers is a fun family event in Minnesota. The event provides an opportunity to educate families about the construction industry, while at the same time, raising money for Children's Hospitals & Clinics of Minnesota.

How Can You Help?

There are two ways to donate to help make this event a success — simple dollar donations or becoming a Day of the Dozers Diamond Equipment Sponsor.

Who Does it Support?

ALL PROCEEDS BENEFIT CHILDREN'S HOSPITALS AND CLINICS OF MINNESOTA. Last year, we raised over \$61,500 for this worthy cause.

What Are the Benefits of Contributing?

Your company will be recognized in a number of ways before, during and after the event. As families enter the motor park, a large sign will display your company logo and sponsor level. The event map will list all sponsors by level. All sponsors will be listed in a full-page thank-you ad in the *Underground Press* magazine. Day of the Dozer Diamond Equipment Sponsors, Platinum Trench, and Golden Bucket Sponsors will receive year-round logo promotion on the Day of the Dozers website.

All proceeds benefit Children's Hospitals and Clinics of Minnesota.



WHAT'S YOUR DAMAGE PREVENTION PLAN?



You know that damaging buried electrical or natural gas lines can be costly, dangerous or even deadly. That's why it's important to pre-mark your excavation area and call 811 at least two business days before digging. After lines have been located, check for positive response to ensure all utilities have been identified, perform a pre-excavation site survey and hand dig with care to expose lines before using powered equipment.

So, what's your damage prevention plan? Write it. Know it. Live it.

For more information visit [xcelenergy.com/Safety](https://www.xcelenergy.com/Safety).





Minnesota Utility Contractors Association

ASSOCIATE MEMBER OF THE YEAR

1000 Westgate Drive, Suite 252 | St. Paul, MN 55114

Phone: (651) 735-3908 | Fax: (651) 290-2266 | info@muca.org

NOMINATION FORM

Applications must be received by October 11, 2019

NOMINATION SUBMITTED BY: (THE CONTRACTOR WHO NOMINATES THE ASSOCIATE MEMBER COMPANY)

Name: _____

Title: _____ Company: _____

Email: _____ Phone: _____

ASSOCIATE/SUPPLIER COMPANY: (THE MUCA ASSOCIATE MEMBER COMPANY TO BE CONSIDERED)

Name: _____

Title: _____ Company: _____

Email: _____ Phone: _____

CONTRIBUTIONS TO THE INDUSTRY/ASSOCIATION:

A leader establishes strategic direction and guides an organization toward the vision. What has the nominee done to stand out as a role model and leader within the industry and on behalf of MUCA?

PURPOSE

The Associate Member of the year award offers MUCA Contractors the opportunity to recognize continuous service throughout the year from a supplier. A supplier's professionalism, knowledge of products, service, helpfulness and integrity are valued in this association.

The committee will consider the company's history of participation in MUCA, as well as work, achievements, and involvement.

ELIGIBILITY

The Associate/Supplier of the Year Award winner is chosen by the MUCA Awards and Scholarship Committee based on the information provided in this form. For consideration, the organization nominated must be a current MUCA Associate Member Company.

This award is open to the contributions of all MUCA Associate Members, suppliers, manufacturers, manufacturers' reps, distributors and associate service members such as insurance, law, and software.

MUCA 2019 ASSOCIATE MEMBER COMPANIES

This is a list of MUCA Associate Member Companies to ensure your nominee is an active member.

Advanced Concrete Sawing
Advanced Drainage Systems (ADS)
Akkerman Inc.
All Rental, Inc.
American Agency, Inc.
American Cast Iron Pipe Company
American Pump Company
Bituminous Roadways, Inc.
Blake Drilling Company
Brock White Company
Bryan Rock Products
Chamberlain Oil Co., Inc.
CliftonAllenLarson, LLP
Cobb Strecker Dunphy & Zimmermann
Contech Engineered Solutions
Core and Main
County Materials Corporation
Crest Precast Concrete, Inc.
EJ
Empire Bucket, Inc.
Esch Construction Supply, Inc.
Ess Brothers & Sons, Inc.
Eull's Manufacturing Co., Inc.

Fabyanske, Westra, Hart & Thomson
Ferguson Waterworks
Forterra Pipe & Precast
Gary Carlson Equipment Co.
HG&K, Ltd
Hancock Concrete Products
Hayden-Murphy Equipment Co.
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Lawn & Driveway Service, Inc.
MacQueen Equipment
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Minnesota LECET
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The Builders Group
Titan Machinery
Tri-State Pump and Control, Inc.
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NEW “DIG, PAVE & DRIVE EVENT” AT TOPGOLF

MUCA partnered with the Minnesota Transportation Alliance and the Minnesota Asphalt Paving Association to host a fun networking event at the new Topgolf facility in Brooklyn Park in March. For avid golfers, it's a great place to warm up your swing for the coming golf season, and for those who don't golf, Topgolf offers a stress-free environment to learn how to play.

Gathering these three organizations together created a unique opportunity for our many common members to network with each other just before the start of the construction season. Our vendor sponsors hosted their contractor customers for a fun afternoon of golf, food and beverages.

Thanks to the sponsors below for hosting this great event!





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GOLDEN BACKHOE AWARD
1000 Westgate Drive, Suite 252 | St. Paul, MN 55114
Phone: (651) 735-3908 | Fax: (651) 290-2266 | info@muca.org

NOMINATION FORM

Applications must be received by Thursday, October 11, 2019

NOMINATION SUBMITTED BY: (INDIVIDUAL NOMINATING THE CANDIDATE)

Name: _____
Title: _____ Company: _____
Email: _____ Phone: _____

GOLDEN BACKHOE CANDIDATE: (INDIVIDUAL – CONTRACTOR OR ASSOCIATE – TO BE CONSIDERED)

Name: _____
Title: _____ Company: _____
Email: _____ Phone: _____

PURPOSE

The purpose of the Golden Backhoe Award is to give special recognition to leaders who have set the standard in serving the industry, and the association, through being involved and engaged in activities, promotion and advocacy on behalf of MUCA and its Members. The Golden Backhoe Award is presented annually to a contractor or associate member, man or woman, who actively participates in the association, knows an organization is stronger through being engaged and understands the importance of advocating on behalf of MUCA and the industry we serve.

ELIGIBILITY

The Golden Backhoe Award winner is chosen by the MUCA Awards and Scholarship Committee based on the information provided in this form. For consideration, candidates must be currently employed by a MUCA Member Company — Contractor or Associate.

Statements about the nominee should be no longer than 500 words and should include (but are not limited to) the following information:

PLEASE DESCRIBE THEIR LEADERSHIP:

A leader establishes strategic direction and guides an organization toward the vision. What has the nominee done to stand out as a role model and leader within the industry and on behalf of MUCA?

PLEASE DESCRIBE THEIR ENGAGEMENT/INVOLVEMENT:

An active and engaged person participates in industry events, serves on a committee or the board and gets involved. They dedicate time and talent to help further the industry, achieve association goals or help other members by sharing ideas, creating opportunities and helping to find solutions to problems. How has the nominee been engaged and involved?

PLEASE DESCRIBE THEIR ADVOCACY:

An advocate speaks and acts on behalf of the industry and the association. They recognize the value of opportunities to share our story, increase our presence and advocate on our behalf — not just in the legislature, but promoting our industry and our organization throughout the state. How has the nominee advocated on behalf of the industry and MUCA?



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- D155AXi-8

▶ **iMC EXCAVATORS**

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- PC290LCi-11
- PC360LCi-11
- PC390LCi-11
- PC490LCi-11

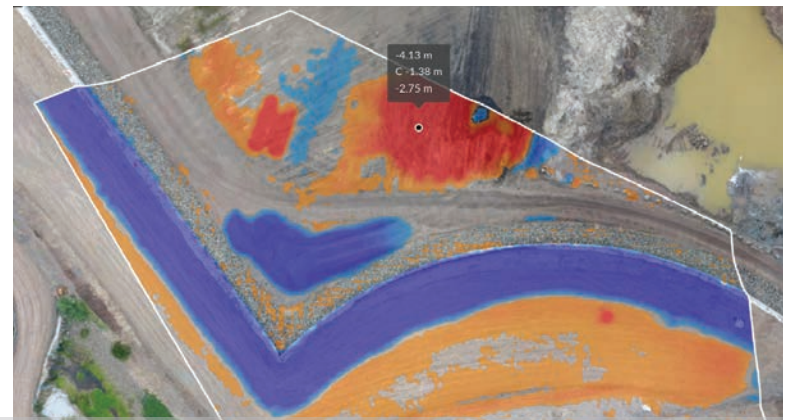
RMS DRONE SERVICES

Smart Construction can make your jobsites more efficient from start to finish. RMS now offers drones and AeroPoints* for purchase as well as a drone survey service that will digitally map your jobsite with high resolution Photogrammetry. It's scalable for jobsites of all size and scope, and competitively priced from a name you've come to trust. Contact your Technology Solutions Expert for more information on custom flight packages.

SMARTCONSTRUCTION



*AeroPoints – World's first Smart Group Control Points, each with GPS.



LOCATIONS

Savage, MN
Virginia, MN

Duluth, MN
Negaunee, MI

Des Moines, IA
Cedar Rapids, IA

Sioux City, IA
East Moline, IL

MUCA LEGISLATIVE END OF SESSION REPORT, 2019

By Troy Olsen, Government Relations Consultant



It required a one-day special session, but the Minnesota Legislature completed the 2019 Legislative Session. Both the House and Senate worked in marathon fashion overnight to finish passing the state's two-year, \$48.3 billion budget. The governor is expected to sign all of the bills.

HERE IS A RUNDOWN OF BILLS MUCA IS FOLLOWING:

Infrastructure Funding:

- While the House proposed and held public hearings on a \$1.5 billion capital investment bill (HF2529 - Murphy), ultimately the legislature did not approve a capital investment bill.
- The omnibus environment and natural resources special session bill (SF7) contains \$500,000 for wastewater treatment related projects in fiscal year 2020 and up to \$5,000,000 of the environment and natural resources trust fund to be invested in loans through the Public Facilities Authority's clean water revolving fund.

Transportation Funding (HF6):

- \$6.7 billion in transportation spending which is an approximate increase of \$100 million and includes \$50 million for the Corridors of Commerce program.
- Creates an exemption from hours of service requirements for intrastate transportation of utility construction materials within a 50-mile radius of a project site. MUCA initiative
- No increase in Minnesota's gas tax. MUCA opposed increasing the gas tax
- Authorizes \$2 billion in trunk highway bonding
- Increasing fees on motor vehicle and driver's license transactions
- \$55 million to replace the troubled Minnesota Licensing and Registration System.
- \$13 million in reimbursement to deputy registrars for damages caused by MNLARS.

Workforce Development/Mandates:

Most onerous business mandates which were included in the original the House jobs bill (HF2208 – Mahoney) were NOT included in the final jobs bill including provisions to:

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- Create a Family and Medical Benefit Insurance Program which would have cost the state over \$32 million and placed additional burdens on Minnesota businesses.
- Mandate Earned Sick and Safe Time benefits and increases penalties on employers.
- Gives the Department of Labor much more authority to enforce wage theft statutes, increases penalties to employers and makes wage theft a felony.
- \$75.2 million to DEED for vocational rehabilitation.
- \$26.8 million to the Department of Labor and Industry for workers compensation.
- \$54.4 million to DEED for employment and training programs.
- New requirements and prohibitions on public construction contracts related to retainage which will significantly benefit contractors.
- \$75.88 million for vocational rehabilitation services.
- \$400,000 to Helmets to Hardhats program.
- Includes Unemployment Insurance Advisory Council recommendations.

HOURS OF SERVICE WE SUPPORT AND INTRODUCED THIS LEGISLATION IN 2018 AND 2019

Both the House and Senate Transportation Bills contain language to create an exemption from hours of service requirements for intrastate transportation of utility construction materials within a 50-mile radius of a project site.

Tax Competitiveness

The Omnibus Tax Bill does not contain the high tax increases passed by the House and centers upon federal tax conformity which include:

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CONTRACT DISCLAIMERS MAY SAY OTHERWISE BUT CONTRACTOR IS RIGHT TO RELY ON SOILS REPORTS

By Thomas R. Olson, Esq., and Rielly J. Lund, Esq.

Previously, we presented a roadmap for differing site conditions claims. The most straightforward example of this is when a contractor encounters subsurface conditions different than indicated in the contract documents. The most common way that an owner indicates 'anticipated subsurface conditions' is through soil borings. In practice, contractors rightfully rely upon the borings to calculate related costs, scheduling and construction methodology.

The problem that so many contractors experience is that when they encounter subsurface conditions different than indicated in the borings, the engineer refuses to provide additional compensation or time for the related impact. The engineer's rationale is that the contract contains disclaimers that bar any such claim. And what does the contractor normally do when it receives this response? Nothing. The contractor is paid nothing and, in fact, often pays liquidated damages for the related delay.

Is this fair? No. And, more importantly, many courts throughout the country have held as a matter of law that contract disclaimers are unenforceable. The net result is that contractors can and should

receive both additional compensation and time extensions when they encounter subsurface conditions different than what the soil borings indicate notwithstanding contract disclaimers.

A. TYPICAL CONTRACT DISCLAIMERS

Engineers have increasingly attempted to shift the risk of differing site conditions solely onto the contractor. The primary means engineers have used to accomplish this is by including disclaimers in the contract which limit or prevent a contractor from relying on the soil borings. The following is a list of disclaimers we have seen routinely utilized in the contract documents to accomplish this:

1. "Subsurface conditions may vary which may not become evident until construction.
2. "Subsurface conditions may vary from those shown on the logs."
3. "Subsurface conditions identified in this report are based on information gained from a limited number of borings and may vary significantly between borings."
4. "Because the soils are primarily alluvial, the material characteristics may vary significantly within a distance of only a few feet."
5. "Additionally, unknown fill areas, that may be encountered while performing excavations, may create exceptions to the recommendations provided herein."
6. The soils report "should be made available to the prospective contractors for information on factual data only and not as a warranty of subsurface bid conditions."

7. “Any conclusions by a construction contractor or bidder relating to the construction means, methods, techniques, sequences, or costs based upon the information provided in this report are not the responsibility of the Engineer or Owner.

B. COURTS’ REFUSAL TO ENFORCE CONTRACT DISCLAIMERS AND THE BASIS FOR SUCH REFUSAL

Many courts throughout the country have refused to enforce such contract provisions. Courts have reached this conclusion in consideration of three important policy considerations.

- 1) Soil borings provide the most reliable information on subsurface conditions.

Boring logs are “considered the most reliable reflection of subsurface conditions.” *United Contractors v. U.S.*, 368 F.2d 585, 597 (Ct. Cl. 1966). That is why “[p]articular protection is given by the courts to the right of bidders to rely upon drill hole data in the contract data.” *Foster Const. C.A. & Williams Bros. Co. v. U.S.*, 435 F.2d 873, 888 (Ct. Cl. 1970).

In determining what will probably be found beneath the surface of the area to be excavated the information available from the borings made in the same general area is to be considered.... In the absence of any persuasive contrary evidence we conclude that a reasonable bidder could infer from the pattern of the test holes that they were reasonably representative of the subsurface conditions throughout the construction site generally.

Appeal of Alps Construction Corporation, 73-2 BCA ¶ 10309, ASBCA No. 16966, 1973 WL 1894. Moreover, “[e]xperience teaches that soil conditions within a reasonable area surrounding the bore are likely to possess characteristics substantially like the sample within the bore.” *Mandel, Inc. v. U.S.*, 424 F.2d 1252, 1255 (8th Cir. 1970), citing, *Morrison-Knudsen Co. v. U.S.*, 170 Ct. Cl. 712, 345 F.2d 535, 541 (1965).

Further, it has been recognized that the purpose of the soils information is to assist the contractor in the preparation of an accurate bid:

The information was given Appellant by the Government. It had a purpose – to aid the Appellant in formulating its offer. Appellant had a right to rely on such information. If the Government did not want the information to be used and relied upon then it should not have taken the borings, prepared boring logs and given them to the contractor for use as an aid in preparing its offer.

Appeal of Jack Crawford Construction Corp., 75-2 BCA ¶ 11387, GSBCA Nos. 4090, 4089, 4120, 1975 WL 1414 (1975) (refusing to enforce disclaimers which stated that boring logs were “furnished for information only,” “not part of the contract,” and “accuracy is not guaranteed”).

- 2) Enforcement of site disclaimers would render differing site condition clauses meaningless.

Courts have refused to enforce site data disclaimers because to do so “would render meaningless the language of sections like [the differing site conditions clause] and negate their salutary purpose.” *Asphalt Roads & Materials Co., Inc. v. Virginia Department of Transportation*, 257 Va. 452, 512 S.E.2d 804, 807 (1999). “The Government may not by means of a broad disclaimer leave without remedy an otherwise valid contractor grievance under the Differing Site Conditions clause.” *Appeal of Jack Crawford Construction Corp.*, 75-2 BCA ¶ 11387, GSBCA Nos. 4090, 4089, 4120, 1975 WL 1414 (1975).

- 3) Differing site condition clauses protect owners as well as contractors.

Protecting the right of contractors to rely upon soil borings, and to have protection under the differing site conditions clause, protects both the contractor and the owner financially.

As explained in *PT & L Const. v. Dept. of Transportation*:

The starting point of the policy expressed in the changed conditions clause is the great risk, for bidders on construction projects, of adverse subsurface conditions: “no one can ever know with certainty what will be found during subsurface operations.” *Kaiser Industries Corp. v. United States*, 340 F.2d 322, 329 (Ct. Cl. 1965). Whenever dependable information on the subsurface is unavailable, bidders will make their own borings or, more likely, include in their bids a contingency element to cover the risk. Either alternative inflates the costs to the Government. The Government therefore often makes such borings and provides them for the use of the bidders, as part of a contract containing the standard changed conditions clause. Bidders are thereby given information on which they may rely in making their bids, and are at the same time promised an equitable adjustment under the changed conditions clause, if subsurface conditions turn out to be materially different than those indicated in the logs. The two elements work together; the presence of the changed conditions clause works to reassure the bidder that they may confidently rely on the logs and need not include a contingency element in their bids. Reliance is affirmatively desired by the Government, for if bidders feel they cannot rely, they will revert to the practice of increasing their bids. The purpose of the changed conditions clause is thus to take at least some of the gamble on subsurface conditions out of bidding. Bidders need not weigh the cost and ease of making their own borings against the risk of encountering an adverse subsurface, and they need not consider how large a contingency should be added to the bid to cover the risk. They will have no windfalls and no disasters. The Government benefits from more accurate bidding, without inflation for risks which may not eventuate. It pays for difficult subsurface work only when it is encountered and was not indicated in the logs. All

this is long-standing, deliberately designed procurement policy, expressed in the standard mandatory changed conditions clause and enforced by the courts and the administrative authorities on many occasions.

PT & L Const. v. Dept. of Transportation, 108 N.J. 539, 531 A.2d 1330 (1987), quoting, *Foster Constr. C.A. & Williams Bros. Co. v. U.S.*, 193 Ct. Cl. 587, 435 F.2d 873, 887 (1970).

C. NON-ENFORCEMENT OF SITE CONDITION DISCLAIMER CLAUSES IS ALSO BOTH FAIR AND JUST.

There are also two additional reasons why non-enforcement of site conditions disclaimer clauses is both fair and just. First, there can be little question that both the owner and engineer believe the soil borings accurately reflect the subsurface conditions which will be encountered. For most projects, soil borings are performed at the owner and/or engineer's request to help design the project. Alternatively or in addition, the engineer relies upon soil borings from another project or the original project to design the project. Either way, the engineer is designing the project on the basis that the soil borings will accurately reflect the subsurface conditions throughout the project area. Since it is standard practice for engineers to rely upon the accuracy of soil borings when designing the project, why is it any less appropriate for contractors to rely upon the same accuracy when bidding the project.

Second, if an owner is required to pay for the extra costs incurred when a contractor encounters subsurface conditions different than indicated in the soil borings, the owner is paying no more than it should have. Contractors prepare bids on the basis of the subsurface conditions which the soil borings indicate. Contractors do not include contingencies in their bids for subsurface conditions different than what the borings indicate. We know that to be true for two reasons. One, since public contracts are awarded on the basis of low bid, contractors could not submit the low bid if they included such a contingency. Two, contractors would have no idea how much to include for a contingency. Contractors could not do so without knowledge on what kind of different conditions would be encountered, of what quantity, and where. Since contractors could never know how unanticipated subsurface conditions might affect their work, the reality is contractors could not and do not include a contingency in their bids for differing site conditions. As such, when contractors encounter differing site conditions, unless they are paid for the related extra costs, it comes right out of the contractor's pockets. That is not fair. The owner should pay for these costs. The owner is only paying for what the project should have cost. Put another way, if the contractor knew at bid time that it would encounter the subsurface conditions actually encountered versus the anticipated conditions indicated by the soil borings, the contractor would have bid the project to include the extra costs. As such, the owner pays know more than what it should cost on the basis of the actual subsurface conditions.

D. CONCLUSION

Engineers rely upon soil borings when they design the project to accurately reflect the subsurface conditions. Contractors place the same reliance on the borings when they bid the project. When the subsurface conditions prove to be different than what the borings indicate, the owner should pay for the related extra costs. Had the borings accurately reflected the conditions actually encountered, the extra costs incurred by the contractor would have been part of its original bid. The owner is consequently not paying more than what it should for the project. That is the conclusion which many courts throughout the country have reached notwithstanding the presence of contract disclaimers which would otherwise make the contractor pay

Next time an Engineer denies a differing site condition claim on the basis of contract disclaimers related to soil borings, don't be discouraged. Contact a construction law attorney and find out how the courts in your jurisdiction view the above disclaimers.

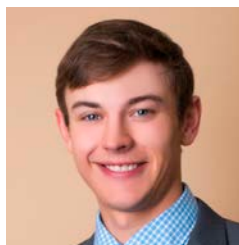
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About the authors:



Thomas Olson is the founding partner of Olson Construction Law. Tom's commitment is to provide guidance on how to resolve issues on the jobsite, not in the courtroom. Tom has worked on highway heavy projects throughout much of the United States for more than thirty years.

A prolific speaker and writer as well as attorney, his expertise is in concrete and asphalt paving, utility, earthwork and bridge construction, schedule analysis, material testing, and the technical and legal obligations of both engineers and contractors.



Rielly Lund is a committed advocate for contractors, with the ability to quickly and accurately analyze a client's issue within the parameters of each specific contract. Rielly works with contractors through all stages of construction, from bidding to acceptance, with the goal of minimizing profits for contractors. With this in mind, Rielly enjoys discussing various contractual requirements with contractors before issues arise, so they are best able to meet any challenges head on.



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