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THE SILICA STANDARD
REVIEW OF ITS REVISION
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HEAD PROTECTION TRENDS

OSHA VISITS
GUIDE TO UNDERSTANDING
OSHA PROCEDURES

SAFETY

IS GOOD BUSINESS

AT ABC OF WISCONSIN,
SAFETY CULTURE INCLUDES
MENTAL HEALTH
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Merit Shop Contractor Wisconsin is published six times annually by Associated Builders and Contractors of Wisconsin, Inc. (ISSN# 10642978)
5330 Wall St., Madison, WI 53718. Periodicals Postage Paid, Madison, WI and other additional mailing offices. (UPS 340-650). Subscription price is \$50 per year.

President and Publisher: Kelly Tourdot
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FROM OUR PRESIDENT




At ABC of Wisconsin, Safety Culture Includes Mental Health

AS I VISIT WITH ABC MEMBERS AROUND THE STATE, I'm noticing an increasing interest in supporting the mental health of our construction workforce. The vast majority of construction companies and contractors in Wisconsin are family-owned businesses, each focused on growing their talent from within. This is why they care so much about healthy culture. They know the future of their businesses depend on it.

There are more than 1,000 companies in our network who are contributing to the health, safety and vitality of their workers and their communities. Recently our construction inclusion committee hosted a luncheon where we celebrated these efforts, and took time to consider how psychological safety plays an important role in a welcoming workplace. Jennifer DeLaura from LAK Group led a good discussion and gave us time to consider the importance of a workplace that is safe for all employees to bring their goals, skills and experience.

The increased attention on mental health is both important and notable in the construction world. Teams are now training on communication skills and styles, and on recognizing symptoms

of a mental health crisis, so that help comes before it's too late. Managers are being shown effective communication strategies to help work get done with both excellence and consideration for the team on the job. They understand that a healthy culture creates a happy workforce and allows everyone to perform at their best.

As you read through the articles covering a wide range of physical safety guidelines, you can be sure that the mental health of our members is also supported. We commit ourselves to do everything we can to support the work of our construction companies and contractors and their dreams for generations to come. The results of these efforts will make us all proud. 

— Kelly Tourdot, President



THEY UNDERSTAND
THAT A HEALTHY
CULTURE
CREATES
A HAPPY
WORKFORCE AND
ALLOWS EVERYONE
TO PERFORM
AT THEIR BEST.

The law of holes, or the first law of holes, is an adage which states: “If you find yourself in a hole, stop digging.” For those whose profession involves digging holes, the important part of the law of holes is - don't find yourself in a hole. If you are not aware of the requirements for a safe hole, stop digging, do not enter it, and do not let anyone else enter it.

Most employees in the underground construction industry are aware of the OSHA 5-foot rule. Many employees understand the general nature of this rule to mean that the law of holes starts at 5 feet deep – you should stop digging at 5 feet, until you have installed a trench shield, benching, sloping or other shoring of the excavation. However, that is not correct.

The specific regulation (29 CFR 1910.652(a)(1)) says that an employee in an excavation must be protected by an adequate protection system (usually trench shield, sloping or benching), unless the excavation is less than 5 feet in depth and examination of the ground, by a competent person, provides no indication of a potential cave-in. So, the OSHA rule actually does not start at 5 feet. It is an exception to the law of holes, that allows working in a “safe” hole up to 5 feet in depth.

Over the past 30 years of my work with excavators in OSHA cases, I have become very aware of the challenges excavators face in trying to enforce this rule. Below are some of the common explanations given by excavation employees for not complying.

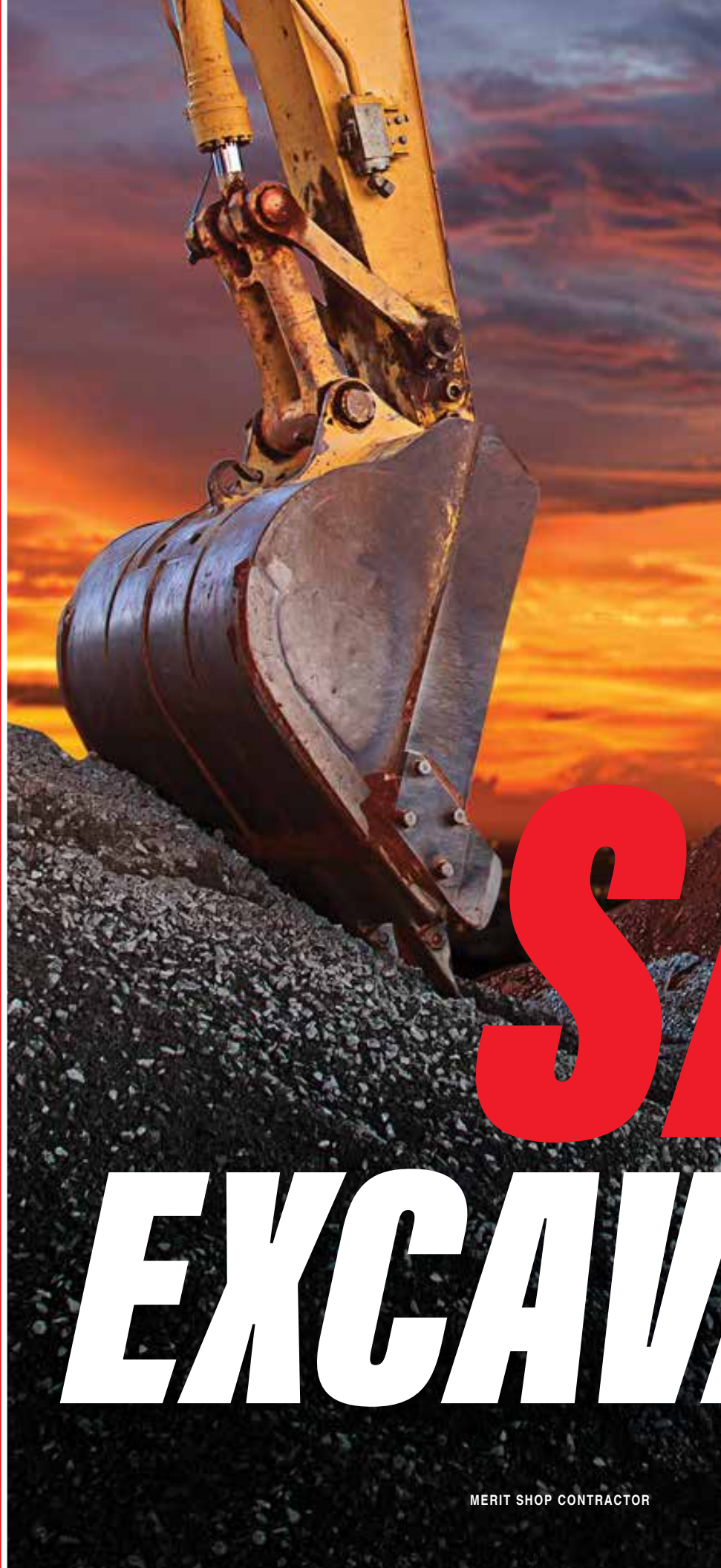
“The Excavation Looked Safe.”

The OSHA rule allows entering an excavation less than 5 feet deep only if: (1) examination of the ground; (2) by a competent person; (3) provides no indication of a potential cave-in. No employee entering an excavation can simply say it is safe by observing it with their eyes. The soil needs to be examined by a “competent person.” According to OSHA standards, soil examination requires the use of at least one visual and one manual test.

Visual analysis requires qualitative information regarding the excavation site in general, the soil adjacent to the excavation, the soil forming the sides of the open excavation, and the soil taken as samples from excavated material. Manual testing includes a thumb test, a roll test, or use of a handheld devices (pocket penetrometer or shear vane). This all should be documented.

At 5 feet and deeper protective systems are a must. There is no “safe” excavation without a protective system at 5 feet and deeper. Observations and soil tests only help determine the slope or other attributes of the required protective system at 5 feet and deeper.

Any employee who says, “I thought it was safe,” but has not performed the visual and manual ob-



A yellow excavator is shown in profile, positioned on a dark, rocky surface. The excavator's arm is raised, and its tracks are visible. The background features a dramatic sunset or sunrise sky with orange and yellow clouds, and a large pile of reddish-brown earth or gravel to the right.

By Charles Palmer
Michael Best & Friedrich LLP

SAFE OPERATIONS ARE NO ACCIDENT

servations required for a competent person to deem it is safe, is putting themselves and the company in jeopardy.

Employees should always be reminded that no excavation, no matter how deep or shallow, can be entered without an evaluation by a competent person. Like a gun, always treat an excavation site like it is loaded, because a cubic yard of soil weighs as much as a car. Thinking it is safe, is not the same as verification.

“I Was Only Going To Be In There For A Brief Moment.”

Any excavator that has been in business for the more than a couple of years owns trench shields, knows how to slope and bench, and does not send employees to a job without proper equipment and training. For the most part, employees comply with the OSHA rule. The exceptions usually occur at the margins when something unplanned happens. Unfortunately, in underground construction, something unplanned happens frequently.

Companies who are not deliberately vigilant, and who do not demand excellent hygiene when it comes to excavation safety, with routine training, inspection auditing, and enforcement, will find that employees begin to get sloppy, even in deep trenches. The rule provides no exception based upon the length of time the employee will be down there. They may have forgotten a shovel or dropped something in the excavation. Or they may just feel they need to step outside of a shield or go into an unshielded excavation to make a quick adjustment. They think that if they're very quick, no one will see them, and nothing will happen. When something bad does not happen, they become comfortable doing these things. That behavior is contagious.

The brief violation scenario is the most frustrating for employers, because it is impossible to oversee workers 100% of the time. If more



IF YOU ARE NOT AWARE OF THE REQUIREMENTS FOR A SAFE HOLE, STOP DIGGING, DO NOT ENTER IT, AND DO NOT LET ANYONE ELSE ENTER IT.

senior employees are the guilty parties, it can undermine all the training investment made by the employer.

The best way I have found to address this, is to put that right out in the open during safety meetings. Talk about all those exceptions and how they could be handled. Conduct an anonymous survey asking employees to identify cases where they have cheated on the rule. Have all of the crews discuss how those could be handled differently, what could have gone wrong, and what could the company do to avoid those situations? You will hear them say that an employee should get disciplined or fired if they don't follow the rules. Then perform unannounced inspections. It will be valuable to make an example of an employee once in a while with some level of discipline and put it in writing. Share the fact that there was discipline with all the other employees. Employers don't like to discipline, but the consequence of not doing so, is far worse for the employees. All of this documentation forms the elements for

an “employee misconduct defense” if an employer is later issued a citation for a violation.

“The Excavation Was Not Over 5 Feet Deep When I Entered, But We Dug Deeper.”

This situation often occurs when a laborer is trying to find a sewer or water lateral, which is generally near that depth. Less often a gas line, telecommunication line or electrical line may be closer to 5 feet deep.

Often some topsoil will be removed by a power shovel (excavator) to a shallow depth above the utility line. A laborer will then pothole to find the utility, so that the crew can decide where to install a box or slope for the work that needs to be done.

While the laborer is potholing, the operator may also be digging nearby with an excavator, to ready the area for installation of a protective system. The digging may go deeper than 5 feet. The crew may have every intention of putting in a protective system, once they locate the utility. But they have not done any soil examination, because they intend to use a trench shield. However, in that

situation they may have violated the OSHA rule, before they reached a depth of 5 feet, unless they can establish that the soil was safe based on a visual and manual inspection. They also passed the 5-foot mark, and did not stop.

In a big project, that activity can be repeated multiple times. Eventually, someone may see your employees in an excavation without a trench shield or sloping. That can lead to a report to OSHA. Worse yet, there may be a cave-in. That is when your company reputation and financial stability are at risk. I have seen cave-in fatalities destroy a company, and even lead to prosecution of an owner.

The preliminary excavation creates a significant challenge for excavators. The challenge is getting the trench shield or slope in place, before finding the precise location of underground utilities. No single answer is going to address all situations. Metal pipes are much easier to address, because they can be located more easily without digging. Non-metallic

pipes are much more difficult, unless tracer wires have been installed with them. While tracer wires have been required to be installed with non-metallic pipes for more than 10 years, that does not help locate old pipes that are currently being replaced.

It is important to approach this situation methodically. If a laborer is hand digging a hole to locate an existing utility, the operator should be required to stop digging next to that laborer to reduce the risk of weakening or undermining soil where the laborer is hand digging.

In order to hand dig down to a 5-foot deep utility, advance planning is important. Avoid walls of soil that are too vertical and/or too deep. The more soil pressing down on soil below, the greater the likelihood of a cave-in. Consider digging 3 feet deep using power equipment, leaving an appropriate slope in those walls (based on the competent person assessment), then pothole a sufficient distance between the walls of the trench to avoid undermining the walls that were dug. Avoid digging deeper holes next to that area, that may create questions about how deep the location of employee exposure occurred. This 3-foot trench, with a pothole in the middle, allows the person hand digging to reach the 5-foot depth, without creating a wall of soil deeper than 3 feet. This allows the competent person to approve the excavation before the utilities have been exposed.

There are other ways to design a solution to this challenge, but it takes advanced planning of the job. It is important not to simply rely upon the foreman to develop and enforce the plan. Equipment operators hold a lot of power in their hands. Company excavation training should emphasize that equipment operators have responsibility to dig safe excavations, before a laborer is allowed to go in that hole. The equipment operator has a bird's eye view of what is happening in the excavation. The operator should be given responsibility to dig a safe excavation and should be instructed not to allow anyone to enter that excavation, until it is safe to do so.

Make sure that the operators know the rules and the soil type, and the method chosen for excavation protection. This requires the competent person (often the foreman) to discuss with the operator how the bottom man is going to be protected. For example, if the intent is to slope or bench the excavation, the operator needs to know ahead of time not to start digging the excavation too wide, thereby losing the opportunity to create compliant benching or sloping.

(29 CFR 1910.652(a)(1))

An employee in an excavation must be protected by an adequate protection system (usually trench shield, sloping or benching), unless the excavation is less than 5 feet in depth and examination of the ground, by a competent person, provides no indication of a potential cave-in.

"I Had a Trench Shield Installed, So I am Good, Right?"

Maybe. While it is often referred to as a trench box, it is not actually a box. A shield only covers 2 sides of the area around an employee. There are 6 sides to a box, so there are 4 more dimensions to consider.

First, since the ends are open, there can be a wall of soil at either end of the excavation that needs to be sloped or protected in some way, such as inserting a road plate behind the ends of the trench shield so that it is properly secured. Second, an employee can easily walk out of either end of the shield, either to exit the excavation or complete a task that is beyond the reach of the shield. Third, there are also risks on the top. The shield should extend above the excavation, so material will not fall or roll into the shield on top of employees. Fourth, at the bottom of the shield, the excavation must not extend more than 2 feet below the shield wall. In one Wisconsin case, wet material broke free underneath the shield and acted like quicksand, engulfing the employee and leading to his death.

Teach employees to "think outside the box." Is the shield fully covering both walls of soil where the employee needs to work, and what hazards need to be addressed on the ends, on top, and on the bottom?

"I Could Not Put in the Shield or Slope at That Spot, Because Another Utility Was in the Way"


This situation poses the problem for contractors who must install a trench box or provide sloping for workers that will be installing or replacing a utility below another utility that

crosses at some angle other than parallel to the line the contractor is replacing or installing. Sometimes the excavation can be planned, so that the box can be pulled right up to the crossing line(s), work can be performed inside the box, and then the box can be lifted and moved to the other side of the existing utility for additional work. But sometimes there are multiple crossing utilities, utilities that cross at an odd angle, or other circumstances where the trench shield or sloping will not work to protect the employees, who must work beneath the existing lines.

All utility owners have an obligation to move or protect their utilities when work must be done around those utilities. Excavators are responsible for damage to known utilities, but once the utility owner is notified of the contractor's planned work, it is the duty of the utility to help solve the problem by moving or supporting their utilities. Contractors should insist on cooperation from the other utility owner, rather than expecting employees to solve the issue on their own.

For example, if a trench shield cannot be used, employees should not simply try to slope around the existing utility, in order to widen the trench, if doing so means the utility is no longer supported by a soil bed. The contractor would be responsible for damage or injury that follows from undermining that utility line.

The utility owner should be notified and is responsible for coming out and supporting its utility. The owner can be held responsible for delays or other costs associated with their failure to comply. Contractors should consult with their customers for assistance if other utility owners refuse to locate, move or support their property in order to allow the contractor to perform work around that utility.

It is important to remind crews that when a situation like this arises, it is not their job to solve the problem alone, but to contact the company and/or customer, so that a solution can be found. Crews should also be reminded that they should not feel pressure to move quickly to finish a job, or to try to avoid a conflict with the customer or other utility, if it means violating the first rule of holes – when you dig yourself in a hole, stop digging. Remind employees that wrong choices made in these situations may be more costly than the entire value of the project, so a small delay is always better than a rushed decision. Always obey the first law of holes – when you are not sure your hole meets the requirements of the OSHA standard, stop digging. 

By Mary M. Bauer
CIH, CSP

Many concerns were raised with OSHA's Revision of the Respirable Crystalline Silica standard in 2016. Many thought that it was "unworkable and infeasible." As a look back, the rule drove demand for major advances in dust control technology. There is a myth that "OSHA puts companies out of business." A term in the technology world is "disruptive innovation." It refers to innovation that creates a new market, changes an existing market and eventually displaces old ways of doing things.

This is exactly what happened with the silica rule. The rule requires the use of engineering controls and work practices to reduce exposures below the permissible exposure limit (PEL) and provides direction on which types of controls are effective and preferred. This information provides manufacturers with targets that their tools must reach in order to be used. In short, the rule incentivizes manufacturers

to use safety to a competitive advantage. We no longer have to implore contractors to "buy safe" because toolmakers are beginning to promote and "sell safe" equipment that is less costly, more productive and OSHA-compliant right out of the box.

The goal of the rule was to improve the health of construction workers by reducing exposure to harmful silica dust that's known to cause lung cancer, silicosis, chronic obstructive pulmonary disease and kidney disease. Now we are seeing the beginnings of other benefits as well, with new tools featuring built-in controls that can also increase productivity and create a better way of doing business.

In response to the rule, manufacturers are now offering an entire suite of cutting, sawing, grinding, coring, drilling and demolition tools with easy-to-use integrated dust removal systems. Many of the tools also fit right into Table 1, which is OSHA's preferred method of compliance. For tasks that fall outside Table 1, manufacturers are developing tools with other



THE **SILICA** **STANDARD**

REVIEW OF ITS REVISION AND WORKER EXPOSURE



technology (like hammer drills with hollow bits) and supporting them with objective data that makes compliance much easier for contractors.

Regulation with enforcement drives improvements in the workplace. However, the employees need to be 'onboard' to use the controls appropriately to be effective and improved work conditions. During a Partnership Walkaround, a mason said that he can go all day without cleaning his safety glasses from dust. The need for cleanup/housekeeping has been reduced. Block cutting areas have been isolated from general work areas with plastic or

specific room. The area is heated in the winter to allow for wet cutting with good containment of water. It is much more comfortable to work in during winter months.

When trades are trying to attract workers, a clean work environment will help keep workers in traditionally dusty industries. Many of these controls are required when working in health-care settings for infection control or in factory clean room areas.

The most frequently Silica citation for FY24 in Wisconsin was 1926.1153(c)(1): The implementation of Table 1. Silica's 'Table 1' is a unique in OSHA standard writing. OSHA's

Table 1 is a list of 18 common construction tasks that generate high levels of silica dust, along with the engineering controls, work practices, and respiratory protection needed to protect workers.

Table 1 is 'law'. In order to modify the 'law', it literally takes an act of Congress. Therefore, the 18 tasks will likely remain 18 tasks for a while.

Relying on Table 1 requires full compliance with the requirements. It isn't a free pass to say, we have water or ventilation. The manufacturer's requirements and equipment designs are crucial.



WE NO LONGER HAVE TO IMPLORE CONTRACTORS TO "BUY SAFE" BECAUSE TOOLMAKERS ARE BEGINNING TO PROMOTE AND "SELL SAFE" EQUIPMENT.

For water or wetting procedures: (In General)
Full and proper implementation of water controls on handheld power saws must meet all of the following:

- An adequate supply of water for dust suppression is used
- The spray nozzle is working properly to apply water at the point of dust generation
- The spray nozzle is not clogged or damaged
- All hoses and connections are intact Table 1 does not specify a minimum flow rate for water delivery systems; however, water must be applied at the flow rate specified by the manufacturer.

Full and proper implementation of dust collection systems must meet all of the following: (In General)

- The shroud or cowl is intact and installed in accordance with the manufacturer's instructions
- The hose connecting the tool to the vacuum is intact and without kinks or tight bends
- The filters on the vacuum are cleaned or changed in accordance with the manufacturer's instructions to prevent clogging
- The dust collection bags are emptied to avoid overfilling

When Table 1 doesn't apply, the expectation is that an exposure control assessment was performed to determine exposure. The second most cited violation in FY24 in WI is exposure determination.

WisCon – Wisconsin Safety & Health Consultation Services – is a free service that offers worker safety and health assistance. The air monitoring requirements can be expensive to meet



This guidance document provides an overview of OSHA's Respirable Crystalline Silica Standard for Construction. It is advisory in nature and informational in content.

www.cdc.gov/niosh/hhe/reports/pdfs/2023-0028-3396.pdf
www.osha.gov/news/newsreleases/national/09252023
jamanetwork.com/journals/jamainternalmedicine/article-abstract/2807615

Table 1

Equipment Task	Engineering and Work Practice Control Methods	Required Respiratory Protection and Minimum APF	
		≤ 4 hr/shift	> 4 hr/shift
Stationary masonry saws	Use saw equipped with integrated water delivery system that continuously feeds water to the blade. Operate and maintain tool in accordance with manufacturer's instructions to minimize dust, emissions.	None	None
Handheld power saws (any blade diameter)	Use saw equipped with integrated water delivery system that continuously feeds water to the blade. Operate and maintain tool in accordance with manufacturers' instructions to minimize dust. - When used outdoors - When used indoors or in an enclosed area	None APF 10	APF 10 APF 10

if a company were to pay a third party. This is a service that WisCon can perform, free of charge, for a company, upon request.

Written Exposure Control Plan is the third most cited violation in FY 24 in WI. This website can be used to develop a site specific Written Exposure Control Plan: www.silica-safe.org/ The Create-A-Plan section of this website is a tool designed to help contractors and others responsible for jobsite safety develop a written exposure control plan to protect workers engaged in work that produces respirable silica dust. This planning tool offers users the option of registering so that they can confidentially save the plans they create in a format that can be retrieved, edited, renamed and reused at a


later date. Only the registered user has access to their saved plans.

Silica exposures are on the rise in the manufacturing and installation of 'engineered stone'. This is primarily a manufacturing process, but construction workers have need to cut or grind counter tops to fit the piece for installation. Engineered stone gained notoriety recently with a JAMA Network published a study on its Internal Medicine page on Silicosis Among Immigrant Engineered Stone (Quartz) Countertop Fabrication Workers in California, July 24, 2023, which described 52 male patients who were diagnosed with silicosis caused by occupational exposure to respirable silica dust from engineered stone. Twenty of the patients had advanced disease (progressive massive fibrosis), 11 were referred for lung transplants, and 10 died. These young workers are literally 'walking dead'.

Workers in the stone countertop industry saw, grind, polish, and drill slabs of natural (mostly granite) and manufactured stone as

part of manufacturing, finishing, and installing countertops. The highest silica levels are associated with manufactured countertops, where crystalline silica is mixed with resins, adhesives, and pigments. Depending on the type of stone in question, these countertops may contain over 90% silica. Engineered stone, for example, contains at least 93% silica. Silica content is usually lower in natural stone products. For example, granite can contain up to 45 – 50% silica. Calcium-based stones, on the other hand, which include limestone and certain varieties of marble (e.g., calcite, dolomite, and onyx), contain little or no silica. Hazard Alert was issued in 2015 for this concern.

Wisconsin OSHA offices have done inspections at the manufacturing facilities and found significant overexposures. This indicates that work done in the field, under less controlled conditions would likely yield high exposure levels.

Employers and employees look forward to seeing what other technological advances will be developed as a direct result of OSHA's silica rule. Advancements that protect workers and make compliance easier for contractors and owners benefit everyone involved and can help drive continued partnerships between labor and management. 

"It was killing me and I had no idea. It's just a slow death."

–Tommy Todd

bricklayer from Oklahoma, has lung cancer related to silica dust exposure



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HEAD PROTECTION TRENDS

By Anna Retzer – Milwaukee Tool

It is critical that construction workers be equipped with state of the art head protection. Designed to provide better and more comprehensive impact protection, Type 2 safety helmets have become increasingly popular as technologies have evolved to ensure improved worker safety and productivity on the jobsite.

Recognizing their benefits, the Occupational Safety and Health Administration has recently recommended Type 2 safety helmets as the preferred form of protection for construction workers. A growing number of construction companies have followed suit and are now requiring their workers to make the switch.

The Importance of Safety in Construction

There is no higher priority than worker safety in construction. Additionally, the safety, health, and wellbeing of workers are essential to ensuring a project is executed efficiently, on-time, and within budget.

The High Risk of Traumatic Brain Injuries in Construction

The need for innovative head protection is as great as ever in the construction industry.

One of the greatest hazards the construction workforce faces is the extraordinarily high risk of both fatal and nonfatal occupational traumatic brain injuries (TBIs).

Research shows that of all industries in the United States, construction regularly experiences the most TBIs, accounting for one in four of all such incidents. In 2022, there were 423 fatalities on jobsites caused by a slip, trip, or fall, according to the Bureau of Labor Statistics.

Most Traumatic Brain Injuries are the Result of a Fall

Construction workers have traditionally worn Type 1 head protection, as it provides top-of-the-head protection against objects or debris that fall from above. However, they are less effective at protecting the sides of the head against damage caused by a slip, trip, or fall.

Yet research has shown that falls are responsible for nearly 70% of all TBIs in the workplace. Research has also revealed that between the two options, Type 2 head protection is the most effective at reducing the occurrence and severity of work-related TBIs.

The Improved Protection of Type 2 Safety Helmets

Compared to Type 1, Type 2 head protection is explicitly designed to provide a higher level of protection against TBIs compliance with national safety standards such as the American National Standards Institute (ANSI). This Type 2 standard rating indicates greater protection to the top and side of the user's head.

Some Safety Helmets Protect Against Oblique Impacts

In addition to damage to the top and sides of the head, TBIs from slips, trips, and falls can be caused by what's called an "oblique impact." A combination of both linear and rotational forces, oblique impacts require more advanced forms of protection than a hard hat or even a baseline safety helmet can provide.

However, some safety helmets incorporate new technologies designed to specifically protect against oblique impacts. One example is the BOLT™ Safety Helmet with IMPACT ARMOR™ Liner by Milwaukee Tool, which features RHEON™ technology, a padded interior layer of energy-absorbing polymers. The BOLT™ Safety Helmet with IMPACT ARMOR™ Liner provides the best oblique impact protection†, even in comparison to competitive advanced safety helmets.

- Based on impacts at a 45 degree angle at a speed of 6.5 m/s averaged across 16 testing locations around the full helmet circumference.



Type 2, Class E
Safety Helmet

TYPE 2 HEAD PROTECTION IS THE MOST EFFECTIVE AT REDUCING THE OCCURRENCE AND SEVERITY OF WORK-RELATED TRAUMATIC BRAIN INJURIES.

Safety Helmets Have Chin Straps


Another protective advantage of safety helmets is how well secured they are to the user's head. Many safety helmets incorporate chin straps and suspension systems that ensure the helmet will remain securely in place in the event of a slip, trip, or fall. Akin to climbing helmets in this way, the secure design of safety helmets also allows for work at high heights, making them particularly compatible with the needs of electrical and other utility workers.

Safety Helmets Can Be Accessorized

Some safety helmets are designed to allow users to mount various safety accessories depending on their needs, including face-shields, visors, hearing protection, head lamps, and marker clips. Though some models allow for some personalization, most traditional hard hats are more limited in their personalization options.

Bottom Line

Construction is a dynamic industry where workers are routinely exposed to hazards that put them at increased risk of injury and death. To mitigate these hazards, workers and construction companies must embrace new technologies that provide enhanced protection on the jobsite.

The type 2 ANSI rating in combination with additional features like chin straps, advanced material liners, and other safety accessories make safety helmets the best option for construction workers seeking improved protections against slips, trips, and falls on the jobsite. 



OSHA VISITS

CONSTRUCTION CONTRACTORS' GUIDE TO UNDERSTANDING OSHA'S PROCEDURES

By Don Moen
HR & Safety Director
ABC of WI Safety Committee

Avoiding workplace hazards in construction takes a lot of effort and due diligence on the contractor's behalf, but it is critical to ensure safety and health of your employees. Compliance needs to be maintained as OSHA regulation citations can be very costly. So, what do you do if OSHA comes knocking at your door to assess your jobsite or facility. Below is a guide to help you combat and understand OSHA's procedures for site and/or facility visits.

OSHA INSPECTION SEQUENCE OF EVENTS

■ Why is OSHA inspecting your company?

Ask the purpose of the inspection, especially whether it is in response to a complaint. If so, ask who made the complaint. If the person requested to remain anonymous, ask if it was made by a present or past employee, by an individual, a customer, supplier, another contractor, or by a person not directly involved, such as a union official with no trades people on the job. Request a copy of the complaint. Employees cannot be discrimi-

nated against for filing complaints. Seventy-six percent of the inspections are due to complaints of which only sixteen percent are valid.

■ Compliance Officer Identification

The OSHA compliance officer must present his or her credentials. Ask to see them immediately, along with ID's of anyone accompanying him or her. Credentials include a color photo of the compliance officer and I.D. number. Non-OSHA personnel have no legal right to be along. Beware of imposters, especially sales people.

■ Who is Your Company Representative?

The compliance officer will ask to see the person in charge. If no employer representative can appear within a reasonable time, the inspections may still be conducted. If another contractor in the jobsite is being inspected, or your site is open to public view, you could be cited for a violation even though you had no representative present. Be sure all of your people who might find themselves "in charge" know what to do. You may also ask to alert top management or other corporations involved that an inspection is in progress.

■ Does OSHA Need a Warrant?

Although you have the right to insist upon a warrant for an inspection, this is generally not advisable, since the compliance officer will probably get one quickly and return, alert for violations. If he/she can see an exposed violation, he/she generally does not even need a warrant. The only time you might want to request a warrant would be when extenuating circumstances dictate this.

■ Present a Good Attitude

Be polite, cooperative, and respectful and try to show an awareness of the seriousness of safety hazards. Control your emotions. Take notes. Do not delay the inspection. OSHA is directed to act "in a reasonable manner" and to avoid undue and unnecessary disruptions at work.

■ At the Opening Conference

The compliance officer will review your safety program, especially for:

- Written Safety Program and Safety Rules.
- Hazard Communication Program and training records.
- Records of safety training, safety meetings and tool box talks.
- Who is in charge of safety?
- How are accident investigations conducted?
- Are the OSHA poster and emergency phone numbers posted?
- Are required OSHA records on the site or accessible and up to date?
- Do you have safety posters or other means of promoting safety?
- Who has valid certification in CPR/First Aid?
- Is personal protective equipment required or available?
- Does management appear very interested in safety?

Be cooperative and assist the compliance officer in filling out forms on your operation. Evidence of your good faith efforts to promote safety can reduce fines up to 30 percent and a good safety record can reduce fines by 10 percent.



BE POLITE, COOPERATIVE AND RESPECTFUL AND TRY TO SHOW AN AWARENESS OF THE SERIOUSNESS OF SAFETY HAZARDS.

■ The Walk Around Inspection

The employer representative can and should accompany the compliance officer on the "walk around." The compliance officer may deny the right of anyone who interferes with a fair inspection to accompany him/her or permit additional personnel to go along (such as company safety officer). The compliance officer may take photographs and use other investigator equipment needed.

When an employee representative exists, that person should also accompany the compliance officer. When there is no authorized employee representative, the compliance officer must consult with a reasonable number of employees on the job regarding safety and health conditions. He or she can speak with employees whether or not there is an employee representative but is less likely to interrupt work if one is present.

The compliance officer does not necessarily have to see an unsafe practice to cite for a violation if there is enough evidence that a violation has taken place.

■ Company Representative's Duties During Inspection

Take notes of what areas and equipment were examined, what employees and others were interviewed and what comments were made by the compliance officer.

Take pictures, if possible (during or immediately after the inspection), especially if conditions photographed by the compliance officer, but may show a different angle or perspective more beneficial to the employer.

Act as the company spokesperson and point out company safety practices and corrections which have been made. Do not point out conditions you thought were dangerous.

Have corrected immediately, right before the compliance officer's eyes, if possible, any violations he or she has pointed out. Or point out where employees are not affected or special conditions or conflicts when other regulations exist.

The compliance officer may ask that substances be removed, an operation be stopped or personnel be removed. He/she cannot shut down your job without a court order. However, if he/she points out a serious hazard, it is best to correct it or get your employees away from the hazard.

■ The Closing Conference

The compliance officer will meet with the employer representative and should indicate what standards may have been violated and will advise that citations may be issued and penalties imposed. He/she may also fix a reasonable time for abatement of violations.

The employer representative should ask questions he may have, make sure violations are clarified and try to determine whether the compliance officer feels they are serious or non-serious. Do not argue or say anything which might hurt your case but point out information which may help you.

■ OSHA Follow Up

The OSHA Supervisor should write up a report based on notes taken, including what violations the compliance officer pointed out, then contact the company. A follow-up inspection may take place within seven days after the abatement date, if a willful, serious or repeated violation has been found. OSHA will generally check to determine that such hazards have been corrected.

WHEN THE COMPLIANCE OFFICER ARRIVES

If your jobsite is inspected by OSHA, there are certain procedures the compliance officer must follow.

1. Upon arriving at the jobsite, the compliance officer will introduce him/herself and show his/her credentials including both photograph and serial number and ask for an authorized representative of the company he or she is inspecting.

2. Next, the compliance officer will: (A) establish the purpose of the visit - is it a general inspection or a response to a complaint?, (B) establish that the company being inspected is involved in interstate commerce; and (C) establish the number of employees on the project and the number of contractors.

3. Focused Inspections are OSHA's attempt to address the leading cause of injuries and illnesses and to become more effective in eliminating the hazards causing serious injury or death. Compliance officers have been

instructed to review written programs and policies, interview employees, and determine the safety attitude and awareness of the company being inspected. If the company's efforts are sincere and if there are no violations in the focused topics, then the inspection will be concluded, and citations will not be written for minor concerns.

4. Before starting an inspection on the jobsite, the compliance officer should: (A) request that a representative of each subcontractor be contacted, so each sub can be represented at the opening conference; (B) establish the time for the opening conference; (C) allow adequate time for subcontractors to be contacted; and (D) not delay the inspection for lack of representatives or subcontractors.

5. Prior to the opening conference, the compliance officer may ask to see employer records, such as the OSHA Form 300A, 300 and accident reports (OSHA 301 or Workers compensation records). In February, March and April only, you must have the previous year's 300A summaries posted at the jobsite and employee bulletin boards.

6. At the opening conference, the compliance officer will establish the scope of the inspections. He/she does not have to be specific about the areas of work or types of problems he/she may be looking for; he/she may only give a general indication of his/her purpose.

7. Before starting the inspections, the compliance officer may request that an employee representative be present for the inspection. Without employee representation, the compliance officer may speak with employees at

If OSHA arrives on your jobsite follow the above steps and do not hesitate to call one of your ABC of WI team members for assistance.



random. On-site employees, whether union or non-union, have the right to have a representative on the "walk around."

8. During the inspection, the compliance officer may take notes of all areas and pictures of problem areas. The compliance officer may mention areas which he/she sees as a problem. He/she may ask employees about specific conditions on the jobsite. During the inspection, you should also take notes and pictures (from a different angle). It is important to defend your practices with good reasons whenever possible, but don't be abusive or argumentative. Permit the discussion to take place without interference.

9. After the inspection, the compliance officer will have a closing conference, during which he/she will (A) review his/her notes from the inspection, and indicate areas for which a citation may be issued (he/she may not indicate every area); (B) establish the control or responsibility for various areas; (C) establish an abatement period for violations; and (D) provide contractors' representative with written information on rights under the OSHA Act, op-

tions for contest/appeal of citations and related information.

10. Under the Act, a citation must be issued with "reasonable promptness" after the inspection. However, delays in the investigation of a problem, the circumstances surrounding an accident, etc., can slow the process. The outside limit is six months after the original inspection. Citations describe OSHA requirements allegedly violated, list any proposed penalties, and give a deadline for correcting the alleged hazards. Violations are categorized as willful, serious, other-than-serious, de minimis, failure to abate, and repeated. In settling a penalty, OSHA has a policy of reducing penalties for small employers and those acting in good faith. For serious violations, OSHA may also reduce the proposed penalty based on the gravity of the alleged violation. No good faith adjustment will be made for alleged willful violations.

11. Appeals, When OSHA issues a citation to an employer, it also offers the employer an opportunity for an informal conference with the OSHA Area Director to discuss citations, penalties, abatement dates, or any other information pertinent to the inspection. The agency and the employer may work out a settlement agreement to resolve the matter and to eliminate the hazard.

OSHA's Inspection Priorities

OSHA inspections are usually unannounced and can take place anytime during normal working hours. Inspections can be the result of:

Imminent Danger - Dangerous conditions or reasonable certainty to cause death or serious physical harm exists. The compliance officer will ask the employer to abate the hazard and remove endangered employees from exposure.

Severe Injuries and Illnesses or Fatal


Accidents - Employers must report:

- All work-related fatalities within 8 hours.
- All work-related inpatient hospitalizations, amputations, or losses of an eye within 24 hours.

Complaints - These typically come as a result of employee complaints of alleged violations of standards or unsafe working conditions.

Targeted Inspections - inspections aimed at specific high-hazard industries or individual workplaces that have experienced high rates of injuries and illnesses also receive priority.

Follow-up Inspections - These are to determine if previously cited violations have been corrected. Failure to correct violations are taken very seriously by OSHA and usually result in additional penalties.

Referrals - of hazards from other federal, state or local agencies, individuals, organizations or the media receive consideration for inspection. 

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HOT TOPICS ***+ COLD FACTS*** ***OF WORKER EXPOSURE***

By Russ Tabaka
Gilbank Construction
Safety Committee Member

Heading into the fall many contractors have begun to transition from heat illness prevention to cold weather exposure prevention. While both seasons seem completely opposite, prevention planning has many similarities. Since January of 2020 there have been over 300 case studies by OSHA on injuries caused by heat and cold stress, so the results are clear on the level of risk these conditions can bring.

Heat stress is the result of any activity that raises the body's core temperature over 100.4 degrees Fahrenheit. Common occurrences are seen during the warmer months. Common activities where heat stress is prevalent are in activities like paving, roofing, steel erection, site utility installation and other outdoor related activities. But heat stress is not always related to the outside temperature. Other inside risk environments include insulating in an attic, working in crawlspaces or demolition of an existing building after the electrical has been made safe.

Conversely cold weather exposure is any activity that presents a challenge in the bodies

natural ability to maintain a healthy internal temperature. It is common to assume that this is only in regards to colder months with the possibility of freezing, but environments that are just above freezing yet cold and damp run the same risks for workers. Examples of crews that commonly are exposed to cold risks include trenching/excavating crews in the early and later parts of the construction season or laborers responsible for jobsite snow removal.

History of Heat Stress

OSHA began to recognize the industries challenge with heat back in 2011. At that time severe cases were climbing and so a study from 2011 to 2019 revealed several hundred per cases year with deaths starting to follow the trend (see: <https://www.osha.gov/laws-regs/standardinterpretations/2021-09-01>). In response to the results, OSHA began to develop guidance to all industries to assist businesses in protecting their workforce. Industrial hygienists utilized tools such as NOAA National Weather Service to track trends in conditions across over 200 case studies to

fully understand the atmospheric conditions related to the injuries/deaths. Conditions were studied for both indoor and outdoor work. Physical activities were also monitored to build a full understanding of the challenges that workers may face. The results of these studies allowed regulators to release a program for guidance on protection and citation to better protect the workforce culminating in its implementation in October 2021.

History of Cold Exposure

There is no specific reference or guidance to cold exposure, however there is a general duty clause on each employer's obligation to protect workers from hazards including winter weather (see: <https://www.osha.gov/laws-regs/oshact/section5-duties>). Under this clause employers do have to train and manage safe working environments. While cases are fewer than heat exposure, eight injuries have been reported since 2004 (see: https://www.osha.gov/ords/imis/AccidentSearch.search?acc_keyword=%22Frostbite%22&keyword_list=on). Often these are very preventable in-



HEAT STRESS IS THE RESULT OF ANY ACTIVITY THAT RAISES THE BODY'S CORE TEMPERATURE OVER 100.4 DEGREES FAHRENHEIT.

stances with minimal implementation required to protect workers from cold exposure.

Preventative Similarities

Despite the varying conditions, there are many safeguards to both cold and heat that are similar. Here some good places to start with your prevention plans.

Job Trailers

While job trailers have many uses from an organizational standpoint they are also quite handy in terms of preventing climate related injuries. This is another time where a superintendent can review extreme climate risks based on data from organizations such as the National Weather Service (see: <https://www.wpc.ncep.noaa.gov/html/heatindex.shtml>). Stand up huddles at the start of each day can be held in a cooled summertime trailer or warmed winter trailer. Offsetting contractors' morning breaks or lunches can allow crews an opportunity to get out of these conditions as well.

Hydration

Access to water is critical to both summer and winter health. This is one area that gets overlooked when it comes to winter activities. In the absence of sweating, crews may not keep up with the hydration as well as they do in the summer. Encouraging crews to stay ahead of hydration through tool box talks in the winter is one way to prevent problems in the cooler months.

Proper PPE Enforcement

In the fall and spring our industry faces the most swings in temperature and conditions. We are all familiar with 40 degree mornings and 80 degree afternoons. These are the times of year when our jobsites show the highest probably

for damp clothing that can become a hazard for conditions like trench foot. Educate your crews about these risks and allow workers time to change into dry socks or a fresh shirt if needed. Require properly maintained gloves that are dry and not soaked from the activities the day before. It may seem obvious in the summertime that workers would not wear hoodies to a job; but also consider the underdressed in the winter when below freezing temperatures are prevalent. If you see someone in short sleeves for an outdoor task educate them on the risk of skin exposure in those conditions regardless if the risk is sunburn or frostbite.

Unique Prevention by Condition

With the similarities covered let's talk about some differences in risks and those responses we can implement.

Cooling Products

Cooling technology has taken many steps forward in recent years the primary focus is on cooling the extremities. Cooled bandanas can be worn underneath hard hats. Cooling towels can be draped across the back of the neck. Professional sports teams use cooling sleeves for a reason and our teams can also benefit. Other useful products are cooling safety vests and hi-vis camelbacks.

Hand Warmers

In the colder months hand and foot warmers can be used. My gloves and boots come with pockets to be able to allow these products to be breathable to air which activates the pouches for periods of 5-8 hours. Hand and foot warmers have become a regular part of a company's first aid kit in a lead person's company vehicle.

Ventilation in Summer


Portable drum fans can help for a couple of reasons. First, this can produce a "breeze" effect in a work space where a cross breeze is not available. Secondly, this can assist in proper air changes to a task that has less than ideal airflow.

Windbreaks in Winter

Construction plastic or tarps can be used to create windbreaks. Fastening these to construction security fencing will allow workers to stay out of the direct path of below freezing gusts and delay cooling of exposed skin. Temporary walls can be constructed to create a more substantial barrier if high winds become an issue.

Conclusion

Heat stress and cold exposure is nothing new to contractors. It's a challenge to overcome on every project. Awareness and training are key to keeping these precautions simple. Many of us have these resources already at our disposal on our jobsites. It isn't an issue of compliance but instead a commitment to worker safety.

For more information on prevention of heat stress and cold exposure contact your local OSHA office <https://www.osha.gov/contactus/bystate> for regional guidance. ABC Chapters also offer safety resources to help develop prevention plans <https://www.osha.gov/contactus/bystate>. The heat safety index from the National Weather Service can be found at <https://www.weather.gov/grb/heat>. The wind chill exposure index can be found at <https://www.weather.gov/media/owlie/wind-chill-brochure.pdf>. Identify these hazards early and stay safe out there! 



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STATEMENT OF OWNERSHIP, MANAGEMENT, AND CIRCULATION (ALL PERIODICALS PUBLICATIONS EXCEPT REQUESTER PUBLICATIONS)

1. Publication Title: Merit Shop Contractor
2. Publication Number: 1064-2978
3. Filing Date: 10/02/24
4. Issue Frequency: Bi-monthly
5. Number of Issues Printed Annually: 6
6. Annual Subscription Price: None.
7. Complete Mailing Address of Known Office of Publication (Not printer) (Street, city, county, state and ZIP+4): 5330 Wall St., Madison, WI 53718-7929
8. Complete Mailing Address of Headquarters or General Business Office of Publisher (Not printer): 5330 Wall St., Madison, WI 53718-7929
9. Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor (Dop not leave blank)
Publisher: Kelly Tourdot, 5330 Wall St., Madison, WI 53718-7929
Editor: Kelly Tourdot, 5330 Wall St., Madison, WI 53718-7929
Managing Editor: Laura Kocum, 5330 Wall St., Madison, WI 53718-7929
10. Owner (Do not leave blank. If the publication is owned by a corporation, give the name and address of the corporation immediately followed by the names and addresses of all stockholders owning or holding 1 percent or more of the total amount of stock. If not owned by a corporation, give the names and addresses of the individual owners. If owned by a partnership or other unincorporated firm, give its name and address as well as those of each individual owner. If the publication is published by a nonprofit organization, give its name and address): Associated Builders and Contractors of Wisconsin, Inc., 5330 Wall St., Madison, WI 53718-7929.
11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities: None.
12. Tax Status: Not applicable
13. Publication Title: Merit Shop Contractor
14. Issue Date for Circulation Data Below: Sept. 6, 2024
15. Extent and Nature of Circulation: Membership info, resources and articles on construction.
 - a. Total Number of Copies (Net press run):

- Average No. Copies Each Issue During Preceding 12 Months: 934
- No. Copies of Single Issued Published Nearest to Filing Date: 1,013
- b. Paid Circulation (By Mail and Outside the Mail)
 - (1) Mailed Outside-County Paid Subscriptions Stated on PS Form 3541 (Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)
- Average No. Copies Each Issue During Preceding 12 Months: 934
- No. Copies of Single Issued Published Nearest to Filing Date: 1,013
- (2) Mailed In-County Paid Subscriptions Stated on PS Form 3541 (Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)
- Average No. Copies Each Issue During Preceding 12 Months: 68
- No. Copies of Single Issued Published Nearest to Filing Date: 68
- (3) Paid Distribution Outside the Mails Including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS
- Average No. Copies Each Issue During Preceding 12 Months: 0
- No. Copies of Single Issued Published Nearest to Filing Date: 0
- (4) Paid Distribution by Other Classes of Mail Through the USPS (e.g., First-Class Mail)
- Average No. Copies Each Issue During Preceding 12 Months: 0
- No. Copies of Single Issued Published Nearest to Filing Date: 0
- (5) Free or Nominal Rate Distribution Outside the Mail (Carriers or other means)
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- Average No. Copies Each Issue During Preceding 12 Months: 0
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- (8) Free or Nominal Rate Distribution Outside the Mail (Carriers or other means)
- Average No. Copies Each Issue During Preceding 12 Months: 0
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- f. Total Distribution (Sum of 15c and 15e)
- Average No. Copies Each Issue During Preceding 12 Months: 996
- No. Copies of Single Issued Published Nearest to Filing Date: 1,081
- g. Copies Not Distributed
- Average No. Copies Each Issue During Preceding 12 Months: 25
- No. Copies of Single Issued Published Nearest to Filing Date: 50
- h. Total (Sum of 15f and g)
- Average No. Copies Each Issue During Preceding 12 Months: 996
- No. Copies of Single Issued Published Nearest to Filing Date: 1,081
- i. Percent Paid (15c divided by 15f times 100)
- Average No. Copies Each Issue During Preceding 12 Months: 100%
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16. Electronic Copy Circulation
 - a. Paid Electronic Copies
- Average No. Copies Each Issue During Preceding 12 Months: 0
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- b. Total Paid Print Copies (Line 15c) + Paid Electronic Copies (Line 16a)
- Average No. Copies Each Issue During Preceding 12 Months: 996
- No. Copies of Single Issued Published Nearest to Filing Date: 1,081
- c. Total Print Distribution (Line 15f) + Paid Electronic Copies (Line 16a)
- Average No. Copies Each Issue During Preceding 12 Months: 1,021
- No. Copies of Single Issued Published Nearest to Filing Date: 1,131
- d. Percent Paid (Both Print & Electronic Copies) (16b divided by 16c x 100)
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- I certify that 50% of all my distributed copies (electronic and print) are paid above a nominal price.
17. Publication of Statement of Ownership
If the publication is a general publication, publication of this statement is required. Will be printed in the 11/15/24 issue of this publication.
18. Signature and Title of Editor, Publisher, Business Manager, or Owner: Laura Kocum, 10/12/24
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ELECTRIFY

Power Up Your Potential.

SuperCon'25
February 11-13

Prepare to feel the surge at ABC of Wisconsin's 2025 SuperCon in Wisconsin Dells! This **THREE-DAY** event, running February 11-13, is charged with new sessions on personal development, safety, and leadership, along with full-day energizing marketing and business management pre-event workshops.

DATE	SuperCon'25
Tuesday, Feb 11, 2025	Day-Long Pre-Conference Workshops + Welcome Reception
Wednesday, Feb 12, 2025	Breakout Sessions + Keynote + Casino Night
Thursday, Feb 13, 2025	Keynote + Breakout Sessions

GLACIER CANYON CONFERENCE CENTER, WIS. DELLS
abcwi.org/abc-supercon/