

## Update On Information Central

**John A. Newark**

*Director of Information and Technology*

### IT IS ALIVE!!!

As I noted in the May issue of Interface, Information Central is underway. The Information Central database is growing. Yes, there is a gap or two (or three, or...); but, there is more database and less gap than there was in May. And when YOU submit that material you meant to submit in June, these gaps will be further diminished. The Board of Directors, during their teleconference of June 9th, authorized the purchase of a computer to serve as the work horse of the project. I am pleased to note that a 50MHz 486DX2 machine has been ordered from Gateway 2000. I believe that this machine has the power, speed, features and flexibility to serve for a long time to come.

The Board of Directors has also requested that Paula and I (A.K.A.: Headquarters Staff) develop a schedule of user fees for services related to Information Central. The primary objective of these user fees is to insure that Information Central pulls its own weight and does not detract from the provision of other essential member services. We will develop a proposal for the Board of Directors to consider at their meeting in Orlando this August. Our goal is to submit a schedule that (we hope) will encourage you to use the service, be fairly priced and address different types of requests (i.e., phone in request or dial up use of database, electronic file transfer or duplication and mailing, etc.).

As it stands right now however, the process for getting information out is quite simple and cheap (i.e., FREE). If you have a specific topic that you wish to have researched, just call HQ and ask to speak to me (John Newark). I will search the database and notify you as to the materials available. Typically, I will provide a reference citation that you can obtain locally or from the publisher; in some cases, we will have the material here at HQ (specifically, articles from Interface).

### THANK YOU!!!

Gold stars and many thanks to the following members who have taken the time and effort to contribute documents to headquarters for inclusion in the Information Central database:

- ★ John F. Fumbanks
- ★ Joe Hale, FRCI
- ★ Richard Horowitz, AIA, CRC
- ★ Dr. Richard Norris, PE, CRC
- ★ Dave Siple, CRC

Let's include your name in this list for the September issue of Interface.

Any and all information that you choose to donate to Information Central will be cheerfully accepted. The author's undying gratitude will be yours if you take the time to fill out a document submittal cover sheet (another copy is included in this issue of Interface—feel free to make as many copies as you like) for each of the items you are contributing. And by the way, we aren't limited to documents. If you have a private version of Information Central on your own computer and would be willing to share it, give me a call to work out the details of the information transfer.

By following these simple steps, I have no doubt that we can make Information Central the best and most respected resource in the industry.

1. Make a copy of that ROOF SLEUTH article you wrote.
2. Staple a completed document submittal form to it.
3. Mail it in.

We've gotten off to a great start. Let's keep the momentum rolling. Make your contribution **TODAY!**

## Criminal Prosecution

**Bruce Wittenbaum**

*Achievement Industries Inc, Cincinnati, Ohio*

As roofing consultants, we are always trying to do the proper and/or professional thing in the best interests of our clients, who usually are owners/managers of property. For a recent project, I was looking at past, completed work of a large contractor on some roofs to qualify him and to see his workmanship; I was accompanied by the roofing contractor's estimator-sales engineer. After coming down from the last roof on that cold day, we stopped for coffee. During our discussion, I was asked how I convinced the property owners on my projects to spend the extra money to handle the asbestos-containing materials in conformance with the laws, especially since I go even beyond minimum requirements. This large contractor does much of his work without consultants or other professionals involved, so he often deals directly with the owner. He indicated that owners usually hesitate when he proposes to test for asbestos; he senses they probably are thinking he is just upping the charges and work content. He didn't indicate the frequency of owner refusal, but it was obviously high.

I responded that I always am successful at convincing owners to conform to environmental law; otherwise, I walk away from that work (which I seldom have to). The reason I am successful is that I am being paid by the owner to protect his interests; he understands this, and the facts are undeniable, when properly presented.

Some of the factors I present to an owner are:

- We all live on this planet and benefit from a clean environment.
- The cost of conformance to laws has always represented a small percentage of the project. In looking back just at asbestos abatement, I have never experienced that asbestos removal cost would be more than 10% of project's cost. I often leave asbestos-containing materials in place (when possible) to minimize costs, but even with complete tear-off work, the costs are nominal.
- No one wants to put others at health risks by our actions or inactions.
- Failure to conform to the law is a great risk. Owners and managers of property often don't realize that they are at risk of being held criminally for non-conformance to the law. Ignorance, incompetence, misinformation from others, etc. do not change the fact that the breaking of environmental laws is a CRIMINAL Offense. Fines and penalties are one thing which the violater may expect his company to shoulder, but he will be the one to go to jail.
- The costs to correct mistakes are enormous compared to the manageable costs to do things correctly in conformance with law from the start.

All this can be summarized thusly:

Conformance with the law is just part of the project, so get on with the work.

The most convincing part of this explanation to this estimator was the potential danger of his going to jail for his clients. I explained that contractors also can go to jail, but owners usually bear the prime responsibility. I come to these positions by reading the enforcement actions, laws, newspapers, and magazines articles dealing with this subject. I later sent the estimator a recent article "YOU CAN GO TO JAIL FOR ENVIRONMENTAL CRIMES," which appeared in Engineer's Digest, of February 1992, by Richard F. Chatfield-Taylor of Morrison & Hecker Attorneys, Kansas City, MO. A few weeks later, the estimator said that he used that article to back up his recommendations to some owners with the positive response from them for which he had hoped.

### NOTE:

All articles in Engineer's Digest are covered by copyright; their standard charge for a back issue is \$5/each copy. Larry Beck, Editor, said they often send out back issues at no charge, when they have supplies, and the requests are few. Contact Engineer's Digest at (913) 341-1300, Kansas City, MO; ask for Vonda Higbee.

Richard F. Chatfield-Taylor can be reached at (816) 691-2600.

# OSHA

Milton F. Lunch<sup>1</sup>

## OSHA Narrows Its Coverage of A/E Firms

Reprint from March 1992 *Building Design & Construction*, "Legal Trends" Section

Several significant developments have occurred since the earlier reports in this column (April and May 1991) about the U.S. Occupational Safety and Health Administration's attempt to expand its jurisdiction over design firms regardless of their role--or lack of a role--in determining construction procedures.

The agency has not abandoned its previously stated view that the work of design professionals is "construction work" within the meaning of the OSHA law. But the most recent Department of Labor brief to the OSHA Review Commission, which is considering the case that involves this issue, states that it is a "narrow" one.

The case raises serious concerns for the design firms, even if the Review Commission accepts this narrowing of the issue and thereby does not need either to uphold or overrule its 1977 decision that design firms, acting as such, are not subject to OSHA construction regulations if they do not perform actual construction work or exercise substantial supervision over actual construction.

The agency now argues that the design firm cited in the case under review is subject to OSHA requirements because it gave bad advice to the contractor regarding a concrete pour which caused the collapse of one floor of a building under construction, resulting in injury to five construction workers.

According to the Labor Department, the contractor's superintendent called the design firm, which had no representative at the site, to discuss the planned procedure. It consisted of pouring one layer of concrete, applying a later of plastic foam, and then immediately making a second concrete pour. OSHA said this double pour was the cause of the collapse.

According to OSHA, when the contractor's superintendent called the design firm to ask whether this procedure would be acceptable, he was told by the project engineer that he didn't see any problem with it. The design firm disputes that its engineer ever told the contractor that the planned procedure was "safe," but OSHA argues that it is immaterial whether that word was used.

OSHA argues that the design firm's advice to the contractor put workers at risk. While both the design firm and the design professional societies that supported its case noted that design engineers customarily do not assume responsibility for decisions about concrete pours, OSHA said that this "only underlines the fact that (the design firm) exceeded its contractual role."

If the Review Commission accepts this argument, the issue involved is narrowed to whether and to what extent a design firm gives advice to a contractor--or even comments on a construction procedure suggested by a contractor. Design professionals will then need to be particularly careful about what they say or do during a project's construction phase. Even though the standard contract documents specify that the contractor is solely responsible for construction means, procedures, techniques and sequences, it has not been unusual for designers to respond to contractors' questions related to construction procedures.

### Citation for Exposure to Hazard

Meanwhile, another and quite different exposure of design firms to OSHA compliance has emerged. In a more recent development, an A/E firm hired to perform inspection services on a building project in Buffalo, NY, was cited for violation of the OSHA construction regulations because one of its employees who was on the site was exposed to a hazard when formwork collapsed during the pouring of a roof slab. No allegation was made that the design firm was directly involved in the means and methods of construction, or that it had given any advice regarding the roof slab to the contractor.

The worrisome part of this citation, if it stands, is the impact it would have on design firms that ordinarily furnish professional services during the construction phase to determine contractor compliance with plans and specifications. A federal court of appeals applied the principle in a 1989 case. The court held that a subcontractor whose employees were exposed to a hazardous condition that the subcontractor had neither

created nor controlled was nevertheless subject to an OSHA citation on the sole ground that its employees were exposed. In that decision, the court suggested various ways to avoid liability exposure, such as taking action to protect exposed employees.

The extent to which such measures would protect design firm representatives on the construction site raises a variety of difficult problems. One protection suggested by the court is to promptly request that the contractor correct the condition. However, that could lead to a conflict with standard contract language that says the design professional will not get involved in construction issues.

<sup>1</sup>*Milton F. Lunch is former general counsel of the National Society of Professional Engineers, and presently is a consultant in architect/engineer legal matters. No statement in this article should be acted upon until your attorney assures you that it applies to your situation.*

A delegation from RCI met with the Asphalt Roofing Manufacturers Association (ARMA) at their Board of Directors meeting May 20, 1992 in Kansas City. "We look to expand our relationship and received feedback from RCI", stated Russell Snyder, General Manager of ARMA.

Attending this initial liaison for RCI were George Kanz, PE, CRC, (see "We get Letters" section) past president of Roof Consultants Institute, Christopher English, CRC, RCI Treasurer, and Robert Boessen, Chairman of RCI's new Recycling and Disposal Alternatives Committee.

Geoff Garabedian of U.S. Intec and Chairman of ARMA's Modified Bitumen Committee presented ARMA's recommended guidelines for modified bitumen roofing. Separate guidelines have been developed for APP and SBS modified products, and each guideline breaks products down into sub-categories of glass fiber and polyester reinforcement. According to Mr. Garabedian, samples of modified bitumen have been obtained from numerous ARMA members and subjected to the standard test methods of ASTM D 5147 - 91. Samples tested represent 80% of the modified bitumen in the market. Modified bitumen testing by ARMA parallels work being done by ASTM and ultimately these guidelines, which are still in draft form, are to be submitted to ASTM for the purposes of developing performance standards.

Mr. English remarked that modified bitumen standards have long been needed in the industry and advised ARMA that RCI's Research Committee is currently assisting NIST in a study of field performances for modified bitumen.

The Chairman of ARMA's built-up roofing committee, Drew Bachman of Koppers Industries, advised RCI of his activities. In the past year ARMA and NRCA have coordinated industry concerns on point loads and deck corrosion with the Steel Deck Institute prior to the publication of a new design manual for roof decks.

Currently ARMA and NRCA are nearing completion of a joint revision of the "Quality Control Guidelines for Application of Built-Up Roofing". Mr. Bachman stated: "This document will be heavily promoted by manufacturers." The Guidelines are intended to be an easy-to-read checklist of roofing practices for roofing crews and inspectors. Common sense and visual observation are emphasized in the document which will be published this summer.

A Draft of the QC Guidelines was provided to the RCI delegation and preliminary review showed a well thought-out and presented manuscript which concisely presents good build-up roofing practice.

Joseph Jones of Owens-Corning is leading an ARMA task force to develop test methods and performance specifications for asphalt shingles. An initial project is underway to investigate field performance of shingles and problems such as cracking.

Also discussed at the meeting were recycling and environmental issues.

Both Mr. Garabedian and Mr. Jones requested input from RCI on those areas Roof Consultants feel should be explored. Comments on modified bitumen and shingles are welcomed and will be directed to ARMA. Mr. Snyder asked that liaison between ARMA and RCI be continued on an annual basis and future meetings are planned.

## OSHA

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## Roof Consultants Meet With ARMA

**Chris English CRC**

*Chris English & Assoc., Western Springs, IL*