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## Law Requires Drug Testing by May 2007

Beginning in May 2007, a new state law will require construction contractors and subcontractors to have a written substance abuse testing program in place, as well as a plan to handle the employees who fail the drug and alcohol testing. The requirement is effective for all public works projects costing \$41,000 or more for a single trade project or \$200,000 or more where multiple trades are working on the project.

The bill was signed by Governor Doyle in March, and becomes effective next year. A contractor will be required to have a program in place to be awarded contracts by the state, a Wisconsin county, or municipality.

Under the law, an employee may not use, possess, attempt to possess, deliver or be under the influence of alcohol or an illegal drug while performing work on a public works project.

A contractor's policy must include the following provisions:

Prohibit the use of alcohol and illegal drugs while performing on public

*(Continued on page 2)*

## IBEW Focus Is On Changes Needed

The IBEW recently held their convention in Cleveland, OH, with over 2000 union delegates in attendance. Attendees unanimously re-elected International President Ed Hill and International Secretary-Treasurer Jon Walters to five-year terms each.

The Opening Act featured Bruce Hornsby singing his aptly named hit, "Gonna Be Some Changes Made", and set the tone for the convention where industry changes were discussed at length. In his opening speech, IBEW International President Ed Hill expressed the need for members and leaders to continually evaluate how they are doing, and make changes as necessary to remain competitive. NECA's President, Milner Irwin, also spoke at the convention, echoing the same concerns about changes in the industry, and expressing optimism that the two parties would successfully work to implement the needed changes to enhance both the IBEW and NECA.

A full convention report is available online at [www.ibew.org/Convention2006](http://www.ibew.org/Convention2006), and also the online magazine site, [www.ibewhourpower.com](http://www.ibewhourpower.com) has some behind the scenes features.

The IBEW holds its national convention every five years.

## Drug Testing Required (continued)

The Employment Cost Index (ECI) indicated that total compensation costs paid by construction employers rose 3.5% during the 12-month period ending June 2006, compared to 3.2% for the 12-month period ending June 2005.

Excluding benefits, the ECI for wages and salaries rose 3.8% during the 12 month period ending in June, compared to 2.5% for the 12-month period ending June 2005.

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works projects.

Provide for pre-employment, random, reasonable suspicion and post-accident drug and alcohol testing. If an employee has been participating in a random testing program during the preceding 90 days they are not required to be tested before commencing work. Employees who refuse to submit to testing will not be allowed to work on the project.

A procedure to notify the employee that the drug and alcohol use policy was violated.

Once an employee has been barred from the project, either by refusal or by testing positive, they must provide written documentation of a negative test for the presence of drugs and alcohol, and must have complied with the employer program's requirements in order to return to work.

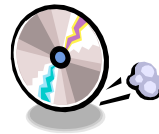
Finally, contractors must implement the programs without passing along the cost of the program to their customers.



## New PPE Selector Software

NFPA-70E defines the characteristics of protective clothing and provides a table to help identify the proper PPE to use on specific tasks, however, 70E is very complex and the tables are not always easy to understand and use.

NECA has just released "Personal Protective Equipment (PPE) Selector" to make it easier to determine which clothing and equipment should be used for even complicated tasks. The PPE Selector is available in both CD and book format and is interactive.



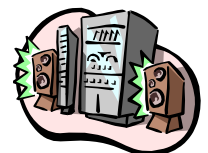
To order your copy, call (608) 221-4650.

Jen at the Chapter Office

## Home Automation Systems Gaining

The increase of broadband networking, and consumer usage of digital products is leading to a dramatic increase in home automation systems for the mainstream housing market.

According to the National Association of Home Builders (NAHB), 83% of all new homes include structured wiring, 65% of new homes feature distributed audio as a standard or optional feature, and 58% of new homes offer a home theater upgrade package. Nearly half of all new homes sold featured automated lighting, home automation and/or energy management systems.



As home networks become the norm, software-focused solutions that control home automation devices will become more popular.

The **Chapter Board of Directors** will hold its quarterly meeting on Tuesday, **October 17** at the NECA Office.

The **WEEBF** Board of Trustees will meet the following Tuesday, **October 24**, at the WEEBF Office for its quarterly meeting.

The quarterly **Pension** Trust meetings are all scheduled to be held in **November**.

We thank the members who generously serve on each of these trusts or boards. It is a huge time commitment and a responsibility that each of them takes seriously.



## From the Desk of Attorney Kay

In the May, 2004, January, 2005 and January, 2006 editions of this publication I discussed the *Cease Electric* case where the Wisconsin Supreme Court decided that Wisconsin's economic loss rule would not apply to construction services. The economic loss rule precludes a disappointed owner from suing the manufacturer of a product for negligence when the product fails. The rule limits the disappointed purchaser of a product to a breach of contract action and prohibits the owner from suing an action in tort for negligence. Breach of contract damages are generally defined as the value of the loss of the bargain and does not include damages otherwise recoverable in tort that naturally flow from the negligent conduct.

In the *Cease Electric* case the Supreme Court held that Cease Electric could be sued for negligence by the owner because the economic loss rule did not apply to construction services. Therefore, Cease Electric was liable for all of the owner's damages that naturally flowed from Cease Electric's negligence. That was bad news for contractors because it subjected them both to contract damages and tort damages for defective construction.

However, when dealing with a growing and changing legal doctrine, the courts often modify their decisions within a relatively short period of time. That is what has happened recently on the subject of the application of the economic loss doctrine to construction services.

In *1325 North Van Buren, LLC v. T-3 Group Ltd.*, decided by the Wisconsin Supreme Court on July 11, 2006, the Court held that a project owner for a building renovation who had brought an action against a general contractor to recover for breach of construction contract and negligence in carrying out professional services, could not sue in tort for the negligence of the contractor because the building renovation contract was a mixed contract predominantly for a product rather than for services and thus the economic loss doctrine applied to bar negligence claims against the contractor. Obviously, since the *Cease Electric* case held that the electrical contractor could be sued in tort for negligently providing electrical construction services while the *1325 North Van Buren* case held that a general contractor cannot be sued for negligently providing general construction services in a building renovation project, the application of the economic loss rule to the rendition of construction services remains somewhat in doubt.

In *1325 North Van Buren*, the construction contract entered into between the contractor and the owner called for the renovation of a warehouse into condominiums. The construction contract contained 102 pages allocating the risk of loss between the parties and provided for express warranties, insurance and bonding requirements, a broad form indemnification agreement, authority of the owner's architect to reject nonconforming construction work, the right to withhold compensation in the event of a termination of the contract and other risk allocation provisions. The Supreme Court observed that this extensive written construction contract between two sophisticated parties containing all the bargained-for risk allocation should call for the ap-

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### October 2006

#### **October 4**

Madison Membership  
Janesville-Beloit Membership

#### **October 5**

La Crosse Membership

#### **October 12**

Indianhead Membership

#### **October 16**

Kenosha-Racine Membership

#### **October 18**

Northeastern Membership

#### **October 19**

Wisconsin Valley Membership

### Upcoming Meetings

#### **October 7 - 10, 2006**

NECA Convention  
Boston, MA

#### **January 26 - 27, 2007**

Winter Meeting  
Madison, WI

#### **March 18 - 21, 2007**

Spring Conference  
Tucson, AZ

#### **July 26 - 28, 2007**

Summer Meeting  
Sheboygan, WI

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Got three bucks? That and a nickel will buy you a coffee drink at Starbucks.



Starbucks Corp. announced recently that it planned to raise prices of its lattes, cappuccinos, drip coffee and other drinks by 5 cents, or an average of 1.9 percent.

The increase, which went into effect Oct. 3 at all company-operated stores in the U.S. and Canada, will mark the first time the company has boosted drink prices in two years.

In short, it will cost you more to wake up!



Have you got a code question for Tom? Let us know and we'll ask him to answer it in a future newsletter.

## Know Your NECA Services

NECA Value-Added Services is a collection of member benefits that leverage the purchasing power of NECA members - and provide savings on services that NECA contractors use everyday. The first of the new benefits were rolled out in June 2001 in the Fleet and Fuel category. Since the initial roll out, new categories and services have been added on a regular basis. NECA now offers Value-added Services in the following categories:



- [Business Development & Marketing Tools](#)
- [Business Information & Productivity](#)
- [Career and Protective Apparel and Uniforms](#)
- [Construction Equipment](#)
- [Fleet Leasing and Vehicle Acquisition](#)
- [Fleet Maintenance & Fuel](#)
- [Human Resources](#)
- [Merchant Services](#)
- [Office Products](#)
- [Shipping](#)
- [Telecommunications/Wireless](#)
- [Travel Services](#)



These special member benefits are designed to save you and your company money. And more services and categories are being added all the time. Watch for announcements of new offerings in NECA News, and be sure to check the NECA website for more information.

## Tom's Code Corner

**Question:** Is an insulating bushing required on a PVC terminal adapter when used with conductors sized at 4 AWG or larger?

**Answer:** No. 300.4(F) and Comm 16.18

300.4(F) requires that larger conductors be protected from abrasion.

One option is a substantial fitting providing a smoothly rounded insulating surface.

Listed terminal adapters are tested to meet this requirement without a bushing.

The bushing is optional and not required.

## MANPOWER STATISTICS

For the Month of -- **August 2006**

Local Union #	14	127	158	159	388	430	577	890	TOTAL
	=====	=====	=====	=====	=====	=====	=====	=====	=====
Local Contractors: NECA	9	5	3	18	5	5	4	6	55
Non-NECA	35	14	16	20	16	15	11	19	146
<b>Total Local Contractors:</b>	<b>44</b>	<b>19</b>	<b>19</b>	<b>38</b>	<b>21</b>	<b>20</b>	<b>15</b>	<b>25</b>	<b>201</b>
Traveling Contractors: NECA	8	6	6	6	8	4	5	6	49
Non-NECA	3	8	3	3	1	5	2	2	27
<b>Total Traveling Contractors:</b>	<b>11</b>	<b>14</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>7</b>	<b>8</b>	<b>76</b>
<b>TOTAL # OF CONTRACTORS - LOCAL AND TRAVELERS:</b>	<b>55</b>	<b>33</b>	<b>28</b>	<b>47</b>	<b>30</b>	<b>29</b>	<b>22</b>	<b>33</b>	<b>277</b>
Contractors More Than Two Months Delinquent in N.E.B.F.	2	1	1	0	2	2	0	0	8
Total Number of Contributing Contractors in Area:	57	34	29	47	32	31	22	33	285
Employees: NECA	316	52	117	570	285	56	226	201	1823
Non-NECA	231	189	203	97	48	78	65	72	983
<b>TOTAL EMPLOYED:</b>	<b>547</b>	<b>241</b>	<b>320</b>	<b>667</b>	<b>333</b>	<b>134</b>	<b>291</b>	<b>273</b>	<b>2806</b>

<u>Union #</u>	<u>NECA Division Name</u>
127	Kenosha Division
158	Northeastern Division
159	Madison Division
388	Wisconsin Valley Division
430	Racine Division
577	Fox Valley Division
890	Janesville-Beloit Division
14	Indianhead/La Crosse Division

NOTE: These figures only reflect employees of contractors not more than 2 months delinquent in their N.E.B.F. payments.

The 2007 edition of the **National Electrical Safety Code (NESC)** has just been released. It covers electrical power and communications supply lines and equipment, along with similar installations such as high-voltage power distribution system in industrial complexes.

The NESC is used throughout the U.S. and is updated every five years to reflect changes in the electrical and communications industries.

NECA participates in the development of the NESC, the NEC, NFPA 70E, and many other codes and standards.

The NESC is available at <http://standards.ieee.org/nesc>.

## From the Desk of Attorney Kay

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plication of contract law rather than tort law. However, the Court observed that if a contract is purely a service contract, the economic loss doctrine does not apply and tort actions may be brought against the contractor, citing the *Cease Electric* case. The Supreme Court then observed that if a contract is a mixed contract for products and services, whether the economic loss doctrine applies depends upon whether the contract is predominantly for a product or for services. The defendant, T-3 Group, argued that the contract was mixed in nature and was predominantly for the providing of a product and therefore subject to the economic loss doctrine. The owner argued that the contract was purely a service contract and was controlled by the holding in *Cease Electric*.



The Wisconsin Supreme Court held that the contract was a mixed contract rather than a pure service contract such as in *Cease Electric*. In distinguishing the *Cease Electric* case, the Supreme Court held that the electricians were hired to wire a ventilation system supplied by the customer and the contract was a simple oral contract growing out of a longstanding informal business relationship. Furthermore, the Court noted that the electricians were paid by the hour, and all they had to do was to follow a one-page wiring schematic. The Supreme Court held that under those circumstances it had little difficulty in concluding that the contract was purely for services.

The Court held that it would apply a predominant purpose test to determine whether under the totality of the circumstances the predominant purpose of the construction contract was to provide a product rather than a service. The Court observed that the parties had used an AIA standard form agreement where the contractor is also acting as construction manager and where the general contractor enters into direct subcontracts with subcontractors. The Court noted that AIA comments suggested that when the owner enters into such a contract, the contractor becomes contractually bound to provide labor and materials for the project.

Further, the Supreme Court noticed that the general conditions of the contract called for total construction of the work including that provided by subcontractors, encompassing all labor and materials, equipment and services. The Court held that was different from the *Cease Electric* case where only services were rendered. Accordingly, the Supreme Court held that under such circumstances of a mixed contract that included obligations to provide a constructed building through the rendition of all the services necessary to provide it, the contract was a mixed contract and that the economic loss rule would apply prohibiting the disappointed owner of defective construction services from suing the contractor in tort for all the damages naturally flowing from the defective construction, and limited the disappointed owner to the damages that the parties had agreed to in the construction contract.



Most construction projects call for the providing of labor and materials with the objective of constructing a real estate improvement that could be regarded as a product. Since the Wisconsin Supreme Court in its decision in *1325 North Van Buren* held that the renovated building was a product and that the owner could not therefore sue the contractor responsible for defective work for negligence but only for breach of contract, and recover only the damages permitted under the contract, it follows that work performed under construction contracts will be regarded as the providing of a product as well as a service and therefore subject owners to the economic loss rule which prohibits the disappointed owner from suing a contractor in negligence for consequential damages arising out of defective construction work. That is good news for contractors and strongly suggests that they pay great attention to what remedies they agree to in the construction contract they enter into with owners and with upstream contractors.

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**Coming next month...**

**Our full report on the NECA Convention and Show, October 7-11 in historic Boston.**