

Wisconsin Chapter NECA
2200 Kilgust Rd.
Madison WI 53713

Chapter Officers:

Governor : Ronald Jahnke
Nickles Electric, Inc., Madison
President: Gerald Schulz
Michels Power, Appleton
Vice Pres: Arlan Hanson
A.A. Hanson Electric, Osceola
Treasurer: Joel Westphal
QWEST Electric, Green Bay
Executive Vice President:
Loyal D. O'Leary

Chapter Board of Directors:

Darrell Braun, Madison
Bernie Cleppe, Racine
Mark Hady, Janesville-Beloit
Arlan Hanson, Indianhead
Greg Dewitz, Kenosha
Tim Padesky, La Crosse
Gerald Schulz, Fox Valley
Bob Van Ert, Wisconsin Valley
Joel Westphal, Northeastern



Inside this issue:

Wisconsin to Adopt IBC 2006	2
Local LMCC Saves the Day	2
Attorney Bob Kay's Letter	3
September 2007 Calendar	3
Tom's Code Corner	4
New Federal Minimum Wage Takes Effect	4
Manpower Statistics	5



Blue Harbor Hosts NECA

The 2007 Summer Meeting was held at Blue Harbor Resort, amid the scenic vistas of Lake Michigan in Sheboygan. The members enjoyed the opportunity to network with fellow contractors while gaining valuable CEU credits toward maintaining certification.



The first speaker of the meeting was nationally-recognized speaker and author, Richard Flint. Richard's humorous and insightful topic "Bringing Value as a Leader" was entertaining and enlightening at the same time. Joe Hertel was our featured speaker on Saturday for a code update class. A special article from Joe addressing the question of heated sidewalks is included with this newsletter in our "Tom's Code Corner".

The attendance drawings were won by **Arlan Hanson, A.A. Hanson Electric** and **Steve Harnitz, Van Ert Electric**.

Friday afternoon was our annual golf outing complete with our "hole-in-one" contest. Sadly, no one claimed the top prize of **\$20,000**, and worse yet, the prize money likely won't double for next

(Continued on page 6)

Leave Your Heart in San Francisco

The 2007 NECA Convention and Trade Show will be held October 5 – 8 in San Francisco, California, one of America's favorite cities. Keynote speakers this year include Uruguayan soccer player, Nando Parrado, and former NFL quarterback Steve Young, now an analyst on ESPN's Sunday NFL Countdown. New this year will be a Labor Relations "Town Hall" meeting which will feature a Q & A session with NECA's Chief Executive Officer, John Grau; Director of Labor Relations, Geary Higgins; and IBEW International President, Ed Hill. The closing celebration will feature a special performance by former Saturday Night Live comedian Dana Carvey, who is best known for his "church lady" and George Bush characters.



The early registration deadline has passed, however, there is still time to register before the final deadline of September 7, 2007. Don't miss out, the hotel rooms are filling quickly.

The Department of Agriculture, Trade and Consumer Protection received 740 complaints about home improvement jobs last year. Unscrupulous remodeling or repair contractors have been in the news lately, with reports of unlicensed “contractors” who are hired for projects but then take the money and run. Though these stories are not new, they seem to be happening with greater frequency, and the consumer is left picking up the pieces.

In a good news twist to one of these stories, **Local #158 LMCC Fund and Eland Electric** have stepped up to the plate to help out. In this case, the consumer, an elderly woman, hired someone to do some work, that project quickly led to other defects in the house, and additional work needed. The contractor left her high and dry, but the IBEW and NECA have stepped in to finish the electrical portion of the job, and other trades will complete the rest of the work for her. The local media will cover the story in depth as the work progresses.

Terry Misfeldt, Simply Success, handles much of the marketing done in Local #158’s area and he is thrilled that this opportunity has come along.

“It’s the best kind of publicity you can possibly get, and a feel good story goes a long way.”

New Building Code to be Adopted

Wisconsin is expected to adopt the 2006 version of the *International Building Code (IBC 2006)* sometime around October. The way in which anchors are designed and installed using these code provisions may change significantly compared to previous code versions. In particular, the design of *post-installed anchors* may change significantly with the adoption of IBC 2006.

Post-installed anchors such as expansion or adhesive anchors *must be pre-qualified through testing*. Pre-qualification is deemed necessary because of the wide variance in performance characteristics associated with the many different types of post-installed anchors available on the market.

IBC 2006 requires that post-installed anchors be qualified using what are known as *ICC Evaluation Service Acceptance Criteria*. Acceptance Criteria are used to evaluate the suitability of post-installed anchors for use with the provisions of the building code. There are two Acceptance Criteria that are used to pre-qualify post-installed anchors for use with IBC 2006:

- *AC 193: Acceptance Criteria for Mechanical Anchors in Concrete Elements.*
- *AC 308: Acceptance Criteria for Post-Installed Adhesive Anchors in Concrete Elements.*

Currently, adoption of IBC 2006 has been submitted to the Wisconsin State Legislature for approval. It is expected that the legislature will vote sometime this summer to approve the use of this building code. Implementation of the code for project design is currently expected to begin sometime around October.

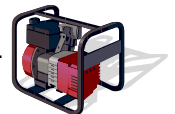
The above article was written for NECA by Richard Morgan, Hilti North America. Hilti North America is one of our Affiliate Members, and members may also contact Scott Hogland, the Accredited Representative for Hilti North America.

Richard T. Morgan, P.E.
Field Engineering Specialist
Hilti North America
5400 S. 122nd East Avenue | Tulsa, OK 74146
P 800-879-8000

Scott Hogland
Account Manager, Mechanical Engineering
Hilti North America
(Madison Office)
800-879-8000
scott.hogland@hilti.com

Generator Sales Projected to Increase

The manufacturers of standby generators for homes and small businesses expect the market for their products to double over the next five years from the \$500 million in sales the market generated last year. Sales have seen double-digit growth each year since 2001. Electrical contractors can stand to capitalize on this trend not only by positioning themselves as vendors of generators but also by offering services like installation and preventative maintenance.



The projected increase in sales is driven by several factors, including the threat of hurricane damage along coastal areas, wind and ice storms, rolling blackouts, and aging power systems.

From the Desk of Attorney Kay



New Law on Subcontractors' Rights Against Prime Contractors

Subcontractors often are the first to detect that something is going wrong in the performance of work by a prime contractor. Recently, the Wisconsin Supreme Court reviewed a case where what was going wrong was that employees of the general contractor and the owner were misappropriating construction funds. The architect's signature was forged on some draw requests that the title company, as paying agent for the bank, had approved.

In *Hoida, Inc. v. M & I Midstate Bank*, 2006 WI 69, 717 N.W.2d 17, decided in June, 2006, Hoida prefabricated wooden wall sections and roof trusses for the prime contractor, Packard. Hoida's pay requests were not paid and it wrote to the owner complaining and explaining that it had lien rights. However, Hoida continued to produce and ship the wall sections and roof trusses, even though it wasn't being paid. Ultimately, Hoida's unpaid invoices totaled \$291,582.81.

Both the owner's lending bank and its paying agent, the title company, visited the site after receiving Hoida's written notice of intent to file a construction lien. They discovered that the buildings were only partially constructed and, although fully enclosed, not secured and locked. After further investigation, it was discovered that both the owner and the prime contractor had misappropriated between \$650,000 and \$750,000 of construction funds. Hoida sued the bank and the title company on the theory that the loan document between the bank and the title company required the obtaining of lien waivers which the title company had not obtained, and that Hoida was a third-party beneficiary of that agreement. The Wisconsin Supreme Court rejected that argument out of hand by holding that the agreement between the bank and the title company was not for Hoida's benefit in any respect.

Hoida also sued the bank and the title company for negligent failure to obtain the lien waivers. The Wisconsin Supreme Court made an exhausting review of the law of negligence in Wisconsin and concluded that Hoida had not asserted an actionable claim for negligence against the bank and the title company and therefore Hoida was not entitled to a jury trial on the negligence issue. In reaching that conclusion, the Wisconsin Supreme Court re-examined Wisconsin's court history on negligence decisions, and after a tortuous explanation of that history concluded that neither the bank nor the title company could have foreseen that the owner and the prime contractor would act together to forge the architect's signature on payment applications and convert the loan proceeds to their own use.

Generally, whether it is reasonably foreseeable that certain conduct would result in economic damages is an issue left to the jury. However, in this instance, the court concluded that under established judicial policy, permitting the jury to render a verdict allowing recovery would place an unreasonable burden on the title company which acted solely at the direction of the bank. The court said:

"The burden that Hoida asks that we place on McDonald Title

(Continued on page 6)

September 2007

September 5

Madison Membership
Janesville-Beloit Membership

September 6

La Crosse Membership

September 10

Kenosha & Racine Membership

September 12

Fox Valley & Northeast Memb.

September 13

Indianhead Membership

September 19

Madison (Oct.) Golf Outing

September 20

Wisconsin Valley Membership

Upcoming Meetings

October 5 - 8, 2007

NECA Convention
San Francisco, CA

January 25 - 26, 2008

Winter Meeting
Bloomington, MN

April 6 - 9, 2008

Midwestern Region Spring Conf.
Key Largo, FL

Attorney Robert J. Kay can be reached at

Kay & Andersen, S.C.
One Point Place, Suite 201
Madison, Wisconsin 53719

Phone: 608-833-0077

Fax: 608-833-3901

www.kayandandersen.com

New Federal Minimum Wage Rate

Effective July 24, the federal minimum wage will be \$5.85 per hour. The minimum wage increases to \$6.55 per hour effective July 24, 2008; and \$7.25 per hour effective July 24, 2009.

Regardless of whether you have employees working for minimum wage, every employer of workers subject to the Fair Labor Standards Act's minimum wage provisions must post, and keep posted, a notice explaining the Act. It must be posted in a conspicuous place in all of these employers' establishments so as to permit employees to readily read it.

The content of the notice is prescribed by the Wage and Hour Division of the Department of Labor.



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

Here's Some Dam News

So you thought the state's backlog of bridge inspections was bad? Add to that the fact that nearly 1/4 of the 926 state-regulated dams have not been inspected in the past 10 years, and nine "high-hazard" dams have not been inspected for over 20 years. The "high-hazard" Middle Appleton Dam on the Lower Fox River, Outagamie County, has gone the longest with its last inspection done in November 1981.



The state labels the dam as "significant-hazard or high-hazard" depending on the potential damage that could result from a failure of the dam, not the condition of the structure itself. Additionally, most of the dams do not have an emergency action plan in place in the event of failure, even though this is required by law. Only about half of the state's "significant-hazard" dams have such a plan in place.

The DNR said that all "high-hazard" dams that have not been inspected in the past 10 years will get at least a visual inspection by the end of September, and has promised they will all be thoroughly inspected by August 2008.

The American Society of Civil Engineers gave Wisconsin a C-minus grade on its dams and river infrastructure earlier this year, saying the state needs to devote more resources to inspections and maintenance.

Tom's Code Corner

The question of heated sidewalks was raised at the NECA Summer Meeting and I agreed to provide the language for the newsletter. The department does have an Administrative Rule in 63.0102 of the Commercial Building Code that address these requirements. A reprint of the statutory requirement is provided for information.

Joe Hertel

101.124 Heated sidewalks prohibited. In this section, "exterior pedestrian traffic surface" means any sidewalk, ramp, stair, stoop, step, entrance way, plaza or pedestrian bridge not fully enclosed within a building and "heated" means heated by electricity or energy derived from the combustion of fossil fuels, but not including the use of waste thermal energy. "Exterior pedestrian traffic surface" does not include any means of ingress and egress by the physically disabled required under [s. 101.13 \(2\)](#). No person may construct a heated exterior pedestrian traffic surface. The department or any city, village, town or county is prohibited from approving any plan under [s. 101.12](#) which includes such heated surface. The department shall order any existing heated exterior pedestrian traffic surface in operation to be shut off. This section does not apply to any inpatient health care facility, as defined in [s. 50.135 \(1\)](#), or community-based residential facility, as defined in [s. 50.01 \(1g\)](#).

MANPOWER STATISTICS

For the Month of -- **June 2007**

Local Union #	14	127	158	159	388	430	577	890	TOTAL
	=====	=====	=====	=====	=====	=====	=====	=====	=====
Local Contractors: NECA	8	4	3	17	5	5	4	6	52
Non-NECA	35	12	16	21	16	15	11	18	144
Total Local Contractors:	43	16	19	38	21	20	15	24	196
Traveling Contractors: NECA	9	6	7	6	8	5	6	6	53
Non-NECA	5	12	4	1	2	5	3	1	33
Total Traveling Contractors:	14	18	11	7	10	10	9	7	86
TOTAL # OF CONTRACTORS - LOCAL AND TRAVELERS:	57	34	30	45	31	30	24	31	282
Contractors More Than Two Months Delinquent in N.E.B.F.	2	1	1	0	1	2	0	1	8
Total Number of Contributing Contractors in Area:	59	35	31	45	32	32	24	32	290
Employees: NECA	282	63	141	581	275	57	199	199	1797
Non-NECA	238	68	219	96	54	72	68	86	901
TOTAL EMPLOYED:	520	131	360	677	329	129	267	285	2698

<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 Wisconsin Chapter NECA has now signed the new Alliance with OSHA, and some of the Divisions have already hosted their local OSHA Compliance Assistance Specialist at membership meetings. As we have been reporting, the Alliance has been formed to provide members with more access to OSHA specialists, training, and general safety information. OSHA will create specific training courses for the members if requested, working many times with its other industry partners. The Chapter will also be forming a Member Safety Committee which will work with OSHA and NECA staff to discuss safety concerns, develop standard safety practices and create a basic safety program for use by members who have no safety program in place at this time. Check back for updates on the OSHA Alliance.

2007 Summer Meeting

(Continued from page 1)

year! Nevertheless, the golfers had a thoroughly enjoyable afternoon despite the heat and the challenging golf course. Our trophy winners included **Tim Richards, Low Gross; Mark Hady, Low Net; Keith Watts, Longest Drive; Bob Kay, Longest Putt; James Schwab, Closest to the Pin.** Congratulations to all.

Our closing banquet and awards ceremony was held Saturday night. Chapter Manager, Loyal O'Leary presented **Rick Jones, Jones Electric** and **Merle Baenen, Baenen Electric**, with Veteran Membership plaques. Both gentlemen were thanked for their many years of membership and service to the Chapter.



The final business of the meeting was to hold our annual raffle drawings. The following members won prizes: **Terry Bock, Michels Power; Mike Helgeson, A.A. Hanson Electric; Mike Newton, Newton Electric; Bernie Cleppe, Roman Electric; Craig Hill, Hill Electric; and Jim Schweke, Engineered Representation.** Congratulations to our winners, and thank you to all who purchased tickets for the raffle. The event raised \$2,610 for ECPAC, the NECA Electrical Construction Political Action Campaign Fund. The results of the donations to elected officials will benefit NECA members on a national basis.

All in all, the 2007 Summer Meeting was another great weekend of meetings, social functions, education and fun for all. The 2008 Winter Meeting will be held January 25 – 26 in Bloomington, MN, near the Mall of America. Mark your calendars now, it is sure to be another great event.



From the Desk of Attorney Kay

(Continued from page 3)

when it is acting as a disbursing agent for a construction loan is to require it to: (1) identify all subcontractors and all materialmen who provide either services or goods for the construction project at any time during the course of construction; (2) for every disbursement, assess the progress of the construction and determine whether enough construction has been completed to warrant the amount of money that is being requested for that draw on the loan proceeds; and (3) before each disbursement, to collect lien waivers from all subcontractors and materialmen who provided goods or services to the construction project. Subcontractors and materialmen change as a construction project progresses.”

The Wisconsin Supreme Court concluded that the bank and the title company, in the exercise of ordinary care under the circumstances with regard to Hoida, did not have to identify Hoida as a subcontractor on the project, verify that progress on the project was sufficient to justify the release of the amount of funds that the prime contract and the owner requested, or secure lien waivers from Hoida.

For subcontractors, this decision is not favorable, for it appears to insulate banks and their paying agents, such as title companies, from exercising ordinary care to foresee that the failure to obtain lien waivers may very well result in nonpayment of subcontractors. The bank's construction mortgage has priority over subcontractors' lien claims. The decision emphasizes the importance of suspending work for nonpayment of past work. Nonpayment is a major breach of a subcontract, and where a prime contractor has failed to pay the subcontractor, the subcontractor should not ignore it.

