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The **VOICE** of Construction

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**AGC and Regional Chamber of Commerce Lead Efforts to Allow California Tax Deductions on PPP Loan Business Expenses**

*Brad Barnum, Executive Vice President*

If the Federal Government will allow it, why won't California? That is what AGC San Diego, other construction trade associations, and the Regional Chamber of Commerce are asking when it comes to the inability for California businesses and non-profits to deduct expenses associated with Paycheck Protection Program (PPP) loan funds.

Following the original disbursement of PPP loans, the Internal Revenue Service (IRS) announced that the loans were not to be treated as taxable income, even if forgiven. However, the IRS took the position that any expenses paid with loan funds would not be deductible expenses. A California law passed in October aligned the state tax guidance with the IRS.

Fortunately, the December COVID relief package passed by Congress overturned the IRS position barring deductions for PPP loan-forgiven business expenses. However, this fix did not extend to the state, and now California businesses are on the hook for this surprise tax.

This is where a coalition of business interests come in, including AGC. The group has reached out to various legislators to carry a bill that will fix this federal/state discrepancy, and we have found an author for [Assembly Bill 281](#), Democrat Assemblymember Autumn Burke. We appreciate her leadership and support as the bill moves through the legislative process, and we hope other legislators understand the importance to the business community.

## DON'T MISS NEW CALIFORNIA H.R. LAWS FOR 2021

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## Dynamex "ABC" Independent Contractor Test Applies Retroactively - Make Sure Your Workers are Appropriately Classified

Chad Wishchuk and Marlene Nowlin - Finch, Thornton & Baird, LLC

On January 14, 2021, the California Supreme Court announced that its April 2018 decision in *Dynamex Operations West, Inc. v. Superior Court* ("Dynamex") applies retroactively. In *Dynamex*, the Supreme Court decided that the "ABC" test is the standard to be applied in determining whether workers should be classified as employees or independent contractors for purposes of the obligations imposed by California's wage orders. Under the "ABC" test, any worker who performs work is presumed to be an employee who falls within the protections of a wage order unless the hiring entity establishes each of the three factors of the ABC test:

- (A) The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work, and in fact;
- (B) The worker performs work that is outside the usual course of the hiring entity's business;
- (C) The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

On January 1, 2020, AB 5 went into effect, codifying the *Dynamex* decision and its ABC test. Now, at the request of the Ninth Circuit, the California Supreme Court has clarified that *Dynamex* and the "ABC" test apply retroactively to nonfinal cases that predate the *Dynamex* decision. (See *Vazquez v. Jan-Pro Franchising International, Inc.*, 2021 Cal. LEXIS 1 ("Vasquez")). The Supreme Court explained that it sees no reason to deviate from the well-established general principle that judicial decisions "interpreting legislative measures" are retroactive. The Court attempted to soften the impact of its *Vasquez* decision by pointing out that, in practice, retroactive application of *Dynamex* will affect a limited number of cases. Nonetheless, retroactive application of *Dynamex* will increase the number of employers and cases that are subject to the burdensome "ABC" test.

Construction contractors and employers should audit all of their worker relationships and independent contractor agreements, and make sure they are classifying everyone they work with appropriately under AB 5 and the *Dynamex* "ABC test" and are otherwise best protected under the current law. Please contact [Chad Wishchuk](#) or [Marlene Nowlin](#) of Finch, Thornton, and Baird, LLP for additional strategies to avoid potential worker claims resulting from the *Vasquez* decision.

## Treated Wood Waste Now Hazardous, but a Variance is Expected

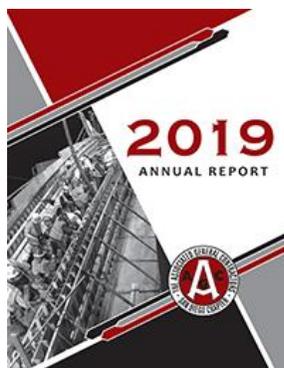
Mike McManus, Director of Engineering Construction & Industry Relations

Most of us believe that there are three branches of government in our form of democracy: the executive, the legislative and the judicial branches. However, it is increasingly apparent in many capitols including ours in Sacramento that there is a fourth branch called the regulators who, in an

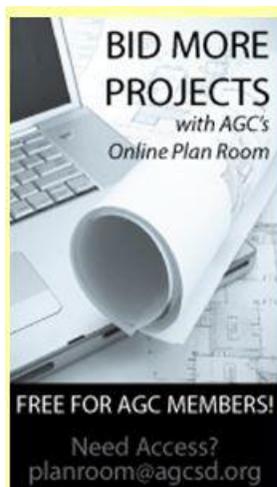


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increasing way, impact, for better or for ill, the way we live. One common example is the California Air Resources Board. Recently, another regulator is on the radar screen, the Department of Toxic Substance Control (DTSC) regarding the regulations surrounding the handling of treated wood waste.

What is treated wood? Treated wood is wood that has gone through a treatment process with chemical preservatives to protect it against pests and microorganisms that rot wood. Typically, treated wood is used in exterior applications where ground or water contact is likely such as guardrail, road signs, utility poles, pilings, railroad ties, and fences to name a few. Many contractors must dispose of this material when they remove and reconstruct facilities when working on projects.

In the past, treated wood waste (TWW) was handled as non-hazardous material and contractors could dispose of this material in most landfills around California. This was due to a state law that authorized the DTSC to promulgate regulations for handling and disposing of this material which allowed for such disposal. However, the state law that authorized the regulations stated that the regulations developed under that law would sunset in December 2020.

Beginning the first of this month, TWW is now a fully regulated hazardous waste and must be disposed of, as such, at only Class I landfills. There are two of those in California, both near Bakersfield. So, the financial impact on contractors could be major because instead of a relatively few miles haul to the local landfill, a contractor generating the waste would have to haul it potentially hundreds of miles, in addition to paying higher dump fees.

The good news is that DTSC realizes that this situation has the potential of leading to illegal or unregulated disposal which is certainly more harmful to the environment than the past practices. As such, they intend to offer TWW variances to generators of TWW. The variances are intended to be temporary in nature. This will allow time for the Legislature, DTSC and impacted stakeholders to develop a longer-term strategy for handling TWW and potential use of non-hazardous means to protect wood subjected to water, insects and microorganisms.

Public agencies, such as Caltrans have stated that they will be applying for variances so that TWW generated on their projects may be disposed of in local landfills. DTSC is developing systems currently to process the expected large number of variance requests that they are anticipating. Presently, DTSC is intending to invite interested parties to apply for variances beginning in mid-February and to begin issuing variances on March 1, 2020.

It appears that it may be up to four months, best case scenario, that contractors will have to deal with this present situation. DTSC has some best management practices listed on their website for the January to April timeframe. If you have the schedule flexibility on your project to delay generating TWW until April would be the best option. Otherwise, the material will have to be temporarily stored subject complying with applicable storage requirements for hazardous material.

We expect to hear more from the fourth branch of government in the next few years. AGC San Diego will continue to monitor this situation.

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**MEMBERSHIP LISTINGS**

[Online Form](#)

Please notify AGC if your company has relocated, or if there are updates to your company's listing (i.e. contacts, phone/fax, job titles, CSI codes, & certified business listings).

Email [Marcy Knopman](#)

**AGC's Liaison Committee Meetings Now Underway**

*Brad Barnum, Executive Vice President*

We wanted to remind you about a critical tool for public works contractors, the AGC's Industry Relations Committees. These "liaison" committees allow for an open and continuing dialogue between contractors/subcontractors/material suppliers, and public agencies. This results in successful construction projects, which utilize public tax dollars in the most efficient and effective manner possible.

AGC routinely meets with the City and County of San Diego, Port District, Airport Authority, Caltrans/SANDAG, San Diego Water Authority, and NAVFAC. Although the Public Building Liaison Committee doesn't pertain to one specific agency, it does focus on public building projects. The committee often meets with representatives of local school districts to review construction bond programs.

Although the City of San Diego Liaison Committee already met last week, we wanted to share the upcoming dates and times of the other committee meetings (all will be held virtually):

January 27, 11:00 AM - **Airport Authority**

February 24, 8:00 AM - Joint Meeting: **Public Building Liaison Committee, General Engineering and General Building Contractors' Councils**

March 5, 7:30 AM - **Caltrans/SANDAG**

March 16, 1:00 PM - **Water Authority**

March 23, 1:00 PM - **County of San Diego**

The NAVFAC Committee meets twice a year, and the first meeting will be scheduled in April or May.

If you would like to serve on any of the committees, please [click here](#). It will take you directly to the sign-up page on AGC's website. If you have any questions, or need additional information, please contact [Robin Scott](#) at 858-283-8230.



**DIRECTIONS**

**AGC East County Facility**

10140 Riverford Road  
Lakeside, CA 92040  
(858) 558-7444  
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**General Announcement regarding USACE CQM for Contractors**

The wait is finally over for an update to the (USACE) Construction Quality Management (CQM) for Contractors Course. The U.S. Army Corps of Engineers (USACE) has officially began rolling out the new (CQM) for Contractors program dated November 30, 2020 to their districts as of January 2021.

The AGC San Diego was just notified Thursday, January 21 by our Instructor and local USACE District that we can offer the new program starting **February 24 & 25, 2021**. The Study Guide, Presentation Format, and Tests have all been revised and the 2004 version is now obsolete. The Directive and Policies will allow the AGC San Diego to continue with the virtual format

**AGC Government Affairs  
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6212 Ferris Square  
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2nd floor

we were approved to provide back in April 2020. The AGC San Diego Chapter has been offering the (CQM) for Contractors Course since 2004, and we look forward to our continued relationship with NAVFAC/ USACE to bring this course to our members and outside registrants.

Some Key Points

1. New Study Guide
2. Course is now around 12 hours in length
3. This course is for certification. To receive certification, students must receive a minimum of 70% on the post-test.
4. New Certificate Template reflecting 2020 version and Certification is issued for 5-year period.
5. Certification records will be maintained in accordance with the Engineering and Construction Bulletin related to this course. Student certificate numbers are generated by the Course Roster Spreadsheet provided by USACE and are entered on the Certificates of Completion.
6. Class will be held Virtually.

We do want to bring to your attention that we have been informed that USACE districts and Government bases are turning away certain certificates participants received from classes they had taken online that are being issued out there by unapproved Instructors, Associations, and Outside Agencies. Those participants are having to now spend more time and money retaking an approved course.

**Upcoming Classes offering the new CQM-C Program**

The February 10 & 11 class is being postponed to February 24 & 25 as we prepare to roll-out the new program.

FEBRUARY 24-25, 2021 - [REGISTER ONLINE](#)

MARCH 10-11, 2021 - [REGISTER ONLINE](#)

For more information Contact Becca Schaffer - Education and Safety  
Marketing Manager

[bschaffer@agcsd.org](mailto:bschaffer@agcsd.org) | Direct Line:1-619-592-4533

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**Tomorrow...AGC San Diego VIRTUAL Installation of  
Officers**

**& Member Awards - Still Time to Register Today**

Tuesday - January 26, 2021

1:30 PM - 2:30 PM

To be held by virtual presentation

Join us as we install **Mr. Mike Williamson** of *Pacific Coast Iron* as the incoming 2021 AGC President of the San Diego Board of Directors. Mike will be the 6th AGC Contractor Member to hold the highest leadership position for our chapter. We look forward to hearing about his vision for 2021!

This event is an opportunity for the industry to also hear from the **outgoing President, Mr. Bill Haithcock**, of *Casper Company*, and his comments on the accomplishments of the industry during this most unprecedented year.

Each member of the AGC is a major "stakeholder" in the Association. It is important that you attend and understand the messages these individuals have concerning the direction of our chapter.

**REGISTER**

This event is proudly sponsored by:

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### **JANUARY CLASSES**

Jan. 28 - **Construction Law: NEW California H.R. Laws for 2021 - Webinar**

Jan. 29 - **Blueprint Reading for Construction - Lakeside office**

### **FEBRUARY CLASSES**

Feb. 1-4 - **OSHA 30 Hour Construction Outreach**

Feb. 1-3 - **Fall Protection 24 Hour CPT**

Feb. 2 - **Stormwater Sampling Refresher Webinar (Via Zoom)**

Feb. 8 - **Confined Space CPT**

Feb. 9 - **Trenching & Excavating CPT**

Feb. 10 - **Project Engineer 24-hour Certificate Program (Class FULL)**

Feb. 16 - **LEAN Education Program Units 1 - 7 (Virtual Format)**

Feb. 24-26 - **CQM (Via Zoom)**

Feb. 23 - **Kick off of the 2021 AGC San Diego Project Management Certificate Program**

Feb. 24 - **CPR First Aid- Lakeside Office**

Feb. 25- **Writing and Implementing a Business Plan**

For more information on classes, contact: [Becca Schaffer](#) 619-592-4533



### **JANUARY MEETINGS**

Jan. 27 - **Airport Liaison** - 11:00 a.m. - *Virtual*

### **FEBRUARY MEETINGS**

Feb. 3 - **Safety Meeting** - 7:00 a.m. via Go-to-Meeting

Feb. 10 - **Education Committee** - 11:30 a.m. via Go-to-Meeting

Feb. 12 - **Technology Committee** - 12:00 p.m. via Zoom

Feb. 18 - **Affiliate Council** - 11:30 a.m.

Feb. 24 - (Joint Meeting) - **Public Bldg./General Bldg./EGCC** - 8:00 a.m.

Feb. 25 - **Specialty Council** - 11:30 a.m.

### **[JOIN A COMMITTEE](#)**

### **About Monday Morning Quarterback**

AGC San Diego Chapter's Monday Morning Quarterback is a "hot off the press" and to the point Monday morning briefing on the important issues facing San Diego's construction industry. It is prepared by AGC Chief Executive Officer, Eddie Sprecco, and Executive Vice President, Brad Barnum.

Please contact [Eddie Sprecco](#) or [Brad Barnum](#) with your comments, or with information that should be conveyed to the industry through this service. Well over 3,000 individuals employed by AGC member firms are part of this system.

### **[ARCHIVE](#)**

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