The 7th edition of the National Commercial & Industrial Insulation Standards manual is now available for purchase. There have been extensive changes to the 7th edition. Below are some of the changes that you will find in the new edition:

- 11 New Plates.
- Vapor Dams added to new plates.
- New formatting of all existing and new plates.
- New formatting of text.
- Completely new Numbering System for the Plates to allow for new plates to be added in the future in a systematic fashion.
- Updated Materials Property Section Including Tables (Tables conform to ASTM Standards).
- Consistency in Establishing Temperature Ranges (For consistency with ASTM, NIA, MIDG temperature ranges).
- Updated and Revised Glossary of Terms.
- Temperature listings are now reversed back to original method [Imperial with Metric in ( )].
- Revised Specification Writing Section.
- Reinsertion of Key Items – Clearances, Scope of Work, etc.

The seventh edition continues the tradition of national acceptance with its updated standards and additional plates. The revised manual contains 66 submittal plates, charts, graphs, material properties tables, and illustrations. The Manual is a “must have” resource for contractors, engineers, architects, and specifiers. Recognized as a valuable, educational reference, the Manual has become a familiar component within the National Insulation Association’s training programs, and it is also part of the nationwide curriculum for all fourth year apprentices enrolled in the International Heat and Frost Apprenticeship Program. The National Institute of Building Sciences (NIBS) incorporates information from the Manual in their online mechanical insulation design guide (MIDG).

The hard copy manual is available for purchase from MICA’s website at www.micainsulation.org. The manual sells for $125.00 per copy plus shipping and handling. There is a discount for MICA members of $25.00. The cost to MICA members is only $100.00 plus shipping and handling.

Quantity discounts are available for when purchasing in quantities of 17 manuals. Contact the MICA office for details.

The committee has worked diligently to develop an electronic version of the manual with interactive plates. Committee Chair, Ray Stuckenschmidt demonstrated the functionality of the interactive plates during our 2011 Fall Business Meeting. We are currently working through some formatting and ordering issues, but the E-version of the manual should be available for purchase in February.
Greetings to all. I hope the New Year is starting off well for you and your businesses.

The beginning of a new year is always a good time to reflect on the past. My first real job in the insulation business was in the estimating department. I still have fond memories of driving over to the customer’s office to review a set of blue prints, which were actually blue and the smell of ammonia that would just about knock you off your stool! I could quietly sit in the estimating office; do the take off while color coding the different systems on the drawings. Back then the drawings came with full sets of plan and elevation views. The pipes actually continued correctly from area to area and were in the right spot on the elevation views. Perhaps even better than that, we got adequate time to bid the job. When the estimate was completed, you had a pretty good understanding of the project and felt you had the ability to accurately apply the labor.

Fast forward to today. With the advent of computers and CAD programs, we can upload drawings from FTP sites, use our high resolution LED flat screens with a digitizer to do take offs, print them on our high speed wide scan printers, email questions and send our proposals anywhere in the world in seconds. The technology to create extremely accurate drawings is a reality. The ability to be accurate in our bids should be happening all the time. We have one customer who uses 3D modeling to make sure their pipe fits where they want it to go, and they even add insulation thicknesses for adequate clearance. Unfortunately it is only one customer. Why is that?

Occasionally we receive Isometrics. Iso’s are great for the accuracy of a take off, but do nothing to help understand the job. I assume these Iso’s are developed from extremely accurate drawings, yet many times we don’t get the drawings or the drawings seem to be incomplete, even vague which begins a “guessing game” at the intent of the drawing creator. A set of building boundaries and P&ID’s can be incomplete and the company is asked to hand draw in the pipe systems. This takes additional time and is only a guess, so then the next level is the customer’s take off of what they believe needs insulation. My personal favorite is the request to quote on a project where the scope just states, bid the insulation on 26,000 Lf of pipe and 15,000 sq. ft. of equipment.

Unfortunately, though the capability to be accurate is available through current technology, it seems as if the technology is being used less. I realize this is a generalization, as I said; once in a while we do get a set of drawings that reminds me of the technology available. I think a large part of the problem has to do with time; there is a lack of time allowed for bidding projects today. The pace of the construction industry seems to be increasing even if the amount of work is not. It has become completely ordinary for our customers to give us a multimillion dollar project and provide less than a week to bid it. What is more amazing is that we do it! These changes greatly impact the way we currently estimate work. We have to get more bids out, with less understanding of exactly what the job really entails. The use of computers and a project management system are beneficial; however, in an effort to increase our productivity with greater accuracy, we are always searching for improvements. Therefore, we are in the process of upgrading our estimating system. In order to understand what is being asked of our estimators, I attended training on a different estimating system. One thing this training made quite apparent; you almost have to be a computer programmer before you can be an estimator!

Unfortunately, with the increased amount of bids requested, the reduced time and poor drawings requiring the emphasis on computers, I can’t help but wonder how much we are giving up in project knowledge for ease and speed. I’m afraid that now more than ever is the old statement true. “The contractor with the biggest mistake gets the job!”

Your Board of Directors is meeting on January 28, 2012, to review MICA’s operations and to plan the technical programs for our annual spring convention, June 17 — 20, 2012, in Broomfield, Colorado. Please contact me or any Board member if you have a topic that you feel should be covered during our convention. We have several committees that will be meeting in conjunction with our winter Board meeting as well. So come join us in Key West, Florida, at the winter meetings!

Sincerely,

Jeff DeGraaf,
MICA President
The following article was prepared by our legal counsel, Gary W. Auman with Dunleavy Mahan & Furry. Gary wrote the article on the recent decision of the 11th Circuit Court of Appeals regarding affirming the decision of the OSHRC in Compass Environmental. This decision will have a significant impact on all employers in the construction industry.

On December 19, 2011, the Eleventh Circuit Court of Appeals issued a decision in the case of Compass Environmental, Inc. v. Occupational Safety and Health Review Commission; Department of Labor, Case No. 10-9541 (Compass). In this decision, the Eleventh Circuit significantly changed the test to be used by OSHA when determining whether an employer adequately trained employees concerning hazards to which they had potential exposure. The Eleventh Circuit Court of Appeals hears appeals from lower federal courts in the states of Alabama, Georgia, and Florida. It is reported to be the busiest Court of Appeals in the federal court system.

The training in the case reported focused on hazard recognition training, which is required under 29 CFR 1926.21(b) (2). Since 1994, OSHA has applied a four-part test set forth in Secretary v. Atlantic Battery Co., 16 BNA OSHC 2131, 2138 (1994). Under the four-part test, to establish a violation of an occupational safety or health standard, the Secretary of Labor had to prove: (1) the applicability of the cited standard; (2) the employer’s non compliance with the standard’s terms; (3) the fact that an employee had access to the violative conditions and (4) that the employer’s actual or constructive knowledge of the violation. Actual or constructive knowledge has been defined as whether the employer knew or “with the exercise of reasonable diligence could have known” of the violative conditions.

In the Compass case, the Eleventh Circuit Court of Appeals affirmed a decision by the OSHRC and eliminated the four-part test. The Court affirmed the adoption of a “prudent employer” test. In other words, the Review Commission concluded that in the facts of the case before it, a reasonably prudent employer would have anticipated the employee’s exposure to the hazard and provided him with training addressing the hazard. In its discussion in the body of its decision, the Eleventh Circuit stated that the generic test set out in Secretary v. Atlantic Battery Co., supra., while appropriate for many types of OSHA violations, is ill-fitted in determining whether the training standard requirements found in 29 C.F.R. 1926.21(b)(2) had been violated. The court stated (Continued on page 10)
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that “an employer’s obligation to train is accordingly ‘dependent upon the specific conditions [at the work site], whether those conditions create a hazard, and whether the employer or its industry has recognized the hazards.’” You should recognize that the standards set out by the Eleventh Circuit in its decision mirrors very closely the general duty clause found in Section 5(a)(1) of the Occupational Safety and Health Act. The general duty clause requires that an employer provide a place of employment free of recognized hazards which are causing or likely to cause death or serious physical harm. The recognized hazard in the general duty clause is defined as a hazard recognized by the employer or its industry.

In Compass it appears that the company was constructing an underground slurry wall at a surface mine in Colorado. As part of the project, the company was using a mobile excavator with a 75 foot boom to dig a trench for this slurry wall. The excavator had a two-person crew which consisted of the excavator operator and a trench hand. The responsibility of the trench hand was to check the trench depth, grease the excavator, and watch for problems with the excavator that the operator could not see. In fulfilling his responsibilities of greasing the excavator, the trench hand held a grease line which was a rubber and metal hose with a metal nozzle for dispensing grease which was connected to the excavator. He greased the excavator after it completed each cut and as the excavator moved the trench hand moved along with it holding on to this grease line.

The facts further are reported to be that during the first week of the project, Compass prepared a job safety analysis and instructed employees on the hazards identified within the JSA. The JSA specific to the excavator operator and trench hand identified various hazards, one of which was a hazard posed by energized power lines that crossed over one end of the construction site. According to the JSA, the excavator operator and trench hand were to be instructed to maintain a 20 foot clearance between the excavator and the overhead lines. While the excavator operator began on the project on its first day, the trench hand did not begin working on the project until the week after the JSA was completed and training had been provided to all employees on the job site. The trench hand was given individual training, but the training did not include instructions concerning the overhead power lines.

It appears that Compass had identified the potential hazard with the overhead power line and had communicated to its customer that when it approached the power line in the middle of March, the line would have to be de-energized and removed so Compass could move its equipment into the area. It appears that the excavator was still 200 feet away from the power line on March 18, 2006, the day of the accident. One other salient fact that is important in this case is that at the end of each work day the operator moved the excavator about 20 or 30 feet away from the trench onto more stable ground and then waited for a portable 300 gallon fuel tank to be brought to the excavator so it could be refueled. There was no policy requiring this refueling

(Continued on page 18)
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2012 Winter Board and Committee Meetings — January 26 & 29, 2012, DoubleTree Grand Key Resort, Key West, Florida.


Fall 2012 Annual Fall Business Meeting — October 17 & 18, 2012, Embassy Suites Downtown, Omaha, NE.

56th Annual Spring Convention — June, 2013, Location to be Determined.

MICA MEMBER ADDRESS/INFO. UPDATES

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procedure. On March 18, for some reason, the excavator operator decided not to follow his prior procedure and wait for the fuel tank to be delivered to the excavator, but instead moved the excavator to where the fuel tank was located under the overhead power lines. As the trench hand walked beside the excavator with the excavator’s grease line in his hand, the boom was extended so the trench hand could reach it with the grease gun. As the excavator came near the fuel tank, the boom came close enough to the power line for the current to pass from the line to the excavator and then through the grease line to the trench hand resulting in his death.

Following OSHA’s investigation, Compass was cited for two serious violations of the Code of Federal Regulations. One item alleged a violation of 29 CFR 1926.21(b) (2). More and more construction industry employers are being cited under this standard. This standard states “the employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury.”

The Court concluded that because of the JSA completed by Compass, and the fact that the employees were trained under the JSA concerning the excavator, which included training regarding the overhead power lines, that Compass recognized a hazard to its employees. Compass argued that it had no reason to anticipate that the trench hand or the excavator would ever have any exposure to the overhead power lines. Based on the practices adopted by the excavator operator, the excavator was never moved close to the power lines. It always remained next to the trench to be refueled in that the fuel tank was brought to the excavator. Even on the 18th it operated approximately 200 feet from the overhead power lines. Therefore, under the four-part test established in the Atlantic Battery Co. case, the standard for which Compass was cited was not applicable to the facts of the case, nor did Compass have actual or constructive knowledge of a hazard.

Under the fourth definition provided for the word “prudent/prudence” in Merriman’s Webster Collegiate Dictionary Tenth Ed., the author indicates that “prudent/prudence” is a caution or circumspection as to danger or risk.

It would seem to me that even a definition of “prudence” requires the fact that the party whose prudence is being judged must be aware of a risk. This is confirmed in the definition of prudent/prudence in Merriman Webster’s Collegiate Dictionary, Tenth Ed. The Eleventh Circuit seems to be stretching the definition beyond whether the employer is necessarily aware of a hazard to establish a test which includes whether the employer or its industry has recognized the hazard. This broader definition is not found in Webster’s.

Typically, with OSHA, Appellate Court decisions, apply only to those employers working within the jurisdiction of the Appellate Court rendering the decision. In this case, the applicability of the decision could be limited to Florida, Georgia, and Alabama. However, this “rule of thumb” does not restrict OSHA’s application of the decision. All employers in the construction industry need to be aware and prepare themselves for
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a broad application of this decision in all states under federal OSHA jurisdiction. Those who wish to minimize the likelihood of being cited for failing to properly train their employees on each job site as required by 29 C.F.R. 1926.21(b)(2), need to consider the following steps.

1. Have an effective safety program.
2. Establish a procedure and stick to it to perform a job safety analysis on all aspects of every job you perform.
3. Be sure that you train all employees on the job site who are identified under your JSA as having any potential exposure to the hazard identified by the JSA.
4. Be sure that all training received by employees is both effective and appropriate for the hazards to which they may have exposure.
5. As I have stated on many occasions, and as is required under 29 C.F.R. 1926.21(b)(2), have regular and frequent safety inspections performed on the entire job site as well as all materials and equipment on the job site by qualified competent persons.
6. Document these inspections.
7. Finally, have an effective and uniformly enforced safety disciplinary program to ensure that safety training is implemented at all times during the job.

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OSHA DIRECTIVE CONTINUES TARGETED INSPECTION PROGRAM FOR PROTECTING FEDERAL WORKERS

OSHA recently updated its Federal Agency Targeting Inspection Program (FEDTARG) directive for fiscal year 2012. FEDTARG directs programmed inspections of federal agency establishments that experienced high numbers of lost time injuries during FY 2011.

The directive outlines the procedures for carrying out programmed inspections at some of the most hazardous federal workplaces. OSHA will inspect all establishments reporting 100 or more lost time cases (LTCs) during FY 2011; 50 percent of those establishments reporting 50 to 99 LTCs; and 10 percent of those reporting 20 to 49 LTCs.

Changes to this directive include provisions for reviewing alternate and supplementary standards for federal agencies, which are the equivalent of private sector variances from OSHA standards. Other changes include clarifications of how OSHA Area Directors determine the appropriate number and location of on-site inspections for establishments with multiple services or operations.

FEDTARG12 continues OSHA’s nationwide inspection targeting program for federal worksites. This program began in 2008 in response to a Government Accountability Office audit report that recommended the agency develop a targeted inspection program for federal worksites. Executive Order 12196, Occupational Safety and Health Programs for Federal Employees, Paragraph 1-401(i) requires Federal OSHA to “conduct unannounced inspections of agency workplaces when the Secretary determines necessary if an agency does not have occupational safety and health committees; or in response to reports of unsafe or unhealthful working conditions.”

OSHA’s Office of Federal Agency Programs (FAP) provides leadership and guidance to the heads of federal agencies to assist them with their occupational safety and health responsibilities.

NIA PAST PRESIDENT HAROLD FARNSWORTH PASSES AWAY

Harold Richard Farnsworth, owner of E.J. Bartells and Past President of the National Insulation Association, passed away on December 18, 2011, after a 10-year battle with cancer. He was 59 years old. Harold was born on January 30, 1952, in the agricultural and mining community of Caliente, Nevada. The Farnsworth family moved to Las Vegas when Harold was 9, and in his new environment Harold developed the foundation of his leadership ability as he made friends and excelled in athletics. Attending Western High School in Las Vegas, Harold lettered in track and football and received a football scholarship to Dixie State College in St. George, Utah. After 2 years, Harold was recruited by Brigham Young University. Harold married his sweetheart Roma in the Salt Lake City Temple in December 1972.

After graduating with a degree in Business, Harold began his career with E.J. Bartells on the construction site in 1975 and eventually purchased the company in 1992. His success was
characterized by his strong leadership in the company and as President of the National Insulation Association. He also served as a missionary with his wife in the New York metropolitan area from 2008 to 2010.

Harold is survived by his mother, Donna Farnsworth; wife, Roma Jean; children Brian Farnsworth, Valerie Erickson, Stephanie Baker, Stacey Conley, and Terise Brown; 14 grandchildren; and siblings Ron Farnsworth, Julie McLachlan, Keith Farnsworth, and Dawnette Pigott.

In lieu of flowers the family suggests donations to the Mary Bridge Children's Hospital Tree House: A Family Place (www.multicare.org/foundations/give-gift) or the University of Washington Medical Center, John C. Patterson Endowed Neurology Research Fund (www.washington.edu/giving/make-a-gift).

The funeral service was held December 22 at the Church of Jesus Christ of Latter-day Saints, Auburn Stake Center. Interment was at Mt. View Cemetery in Auburn, Washington.

SFAA TELLS CONGRESS TO LET SMALLER CONSTRUCTION CONTRACTS, PROTECT WORKERS ON PROJECTS

SFAA President Lynn Schubert testified before a panel of the U.S. House Armed Services Committee on the unique challenges that small and midsize contractors face in doing business with the Department of Defense (DOD). Schubert told the panel that many DOD contracts are just too big for small and emerging contractors to perform.

“In the construction business, small really means small,” said Schubert. DOD contracts are increasing in size and dollar value and small and emerging contractors cannot match that increase. DOD needs to award reasonably sized contracts. Schubert also noted that all federal construction projects should be subject to the existing anti-bundling rules applicable to other types of procurement. In its testimony, SFAA recommended that federal agencies should be required to award 5% of their total construction budget in contracts of no more than $5 million.

SFAA’s testimony also cited federal procurement rules and programs that create obstacles for small and emerging contractors. “A small business should not lose its status as a small business just because it participates in a joint venture or a mentor-protégé program with a larger contractor,” Schubert told the panel. In evaluating these relationships and determining whether or not to write a bond, it should be clear that a surety can consider the financial strength and indemnity of the larger contractor and not jeopardize the status of the small contractor. Under current rules, contractors cannot take advantage of set-aside opportunities if they no longer qualify as a small contractor. This also creates a problem for the federal agency letting the construction project as it cannot count the small and emerging contractor’s participation towards its small business participation goals. “Just because a contractor is too small to complete all of the work on a project does not mean it cannot perform a significant part,” said Schubert, and when a small business participates in this manner, such work should be recognized as compliance with the small business participation goals.

Schubert also urged Congress to maintain the Miller Act bond threshold because payment bonds protect workers, subcontractors, and suppliers on federal projects. In one of the annual appropriations bills in 2008, an inflation adjustment was required for all acquisition-related thresholds every five years. “The Miller Act needs to be exempted from the inflation adjustment because the bond thresholds were intended for public protection,” said Schubert. Each increase in the bond threshold means that more subcontractors and suppliers work on bigger projects without the protection of a payment bond. Small and emerging contractors are most likely to be working on DOD projects as subcontractors and their payment protection should not be compromised with inflation adjustments.

TOOL BOX SAFETY TALKS AVAILABLE IN 2012

The Safety and Environmental Committee of MICA is developing a series of “Tool Box Safety Talks” designed specifically for our industry. These short talks are available to the general membership on MICA’s website beginning in 2012. These “talks” are available on the “Members Only” portion of the website. Be sure to renew your membership in 2012 and have access to these talks. This is just one of the many tangible benefits of belonging to MICA.

As part of your 2012 membership dues you have the opportunity to develop and maintain a company profile. This unique company profile is listed on MICA’s website as part of your company’s directory listing. If you have not yet completed your company’s profile, please visit our website at www.micainsulation.org to see what your fellow members have placed on their profiles. Join MICA today and your company can have its profile posted on our website.
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