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NEWSLOG

ASFE Professional Firms Practicing in the Geosciences

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Members Benefit from the ASFE UPS Discount

A number of members are saving money every day by using United Parcel Service (UPS) and taking advantage of the ASFE member discount. A flyer was enclosed with this issue of *NewsLog* explaining the program. As an ASFE member, you are entitled to discounts on *Next Day Air Letters*, *Next Day Air* packages, and *Worldwide Express* shipments sent from the U.S. *Note:* When calling UPS to enroll, or when writing in or enrolling via the UPS website, **reference the ASFE group ID**: CP500001701. UPS for some reason has difficulty in referring to us as ASFE, as opposed to Professional Firms Practicing in the Geosciences.

Negligent Soil Testing Is Disposal under CERCLA, U.S. Court Rules

The U.S. Court of Appeals for the Third Circuit has ruled that even minor contaminant dispersal caused by soil sampling at a landfill could be considered "disposal," as defined by CERCLA, were such sampling to have been conducted negligently. The case—*United States v. CDMG Realty Co., et al.* (95-5505)—involved a ten-acre parcel that once was part of Morris County, NJ's notorious Sharkey Landfill. Closed in 1972, the landfill made it to EPA's National Priorities List (NPL) in 1982.

Dowel Associates bought the property in 1981. Prior to finalizing the purchase, it had a subsurface exploration performed, to confirm the site was suited for construction. The firm it retained drilled nine

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Peck Endowment Nears $60,000

Have you said thank-you to Ralph Peck? So far, 90 individuals, firms, and other organizations have, by making a donation to fund the Ralph B. Peck Award endowment. If you have not yet made a contribution, please do so, to show Ralph how many practitioners really do care, and really do know how to demonstrate appreciation. *Note:* The first Ralph B. Peck Award will be presented in June of *this year*, so you have precious little time left to make your contribution to the endowment. *This is a one-time gift.* All those who have contributed will be listed in a special booklet being prepared to commemorate the occasion. *To make a donation now*, just call ASFE and we'll complete a pledge form for you, so your name will be listed. Speak with John Bachner (301/565-2733 or e-mail john@asfe.org).

Also note: In our original letter (which you should have received) we said that Ralph was the only geotechnical engineer to have received the National Medal of Science. That statement was

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FOPP Starts September 13

Fundamentals of Professional Practice Class 09 will begin September 13, 1999. The delay was occasioned by a rash of comments expressing fear and loathing about the proposed May start. "What's the matter with these guys," one principal grumbled upon learning the news. "They're not as tough as they used to be." We're not so sure. It seems that they may be working harder than ever before, and have this quaint belief that spending a few hours a week with kith and kin is a good idea.

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Peck Endowment continued from page 1

incorrect. The late Harry Seed, another great friend to ASFE and the practice of geotechnical engineering, also received that honor.

Those who have contributed to date are listed below. Those who have made contributions since the last list was published are indicated in bold-faced type:

Endowers
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Parsons Brinckerhoff
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A. G. Wassenaar, Inc.

UPCOMING MEETINGS

Mark your calendar!
Call ASFE (301/565-2733) for more information.

October 14-17, 1999
ASFE Fall Meeting
Sheraton El Conquistador
Tucson, AZ

April 13-16, 2000
ASFE Spring (Annual) Meeting
Le Meridien Hotel
New Orleans, LA

October 12-15, 2000
ASFE Fall Meeting
Hilton San Diego Resort
San Diego, CA

PECK ENDOWMENT NEARS $60,000

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FOPO Continued from page 1

A somewhat-cynical principal observed that "it doesn't make any difference how much time you give them to do the coursework, it all still gets done the night before the deadline. At least that's the way I did it."

First-come, first-served are the watchwords right now. We have no more than 20 slots open. This is a great opportunity to train those who have recently received or who soon will receive project or other management responsibilities within your firm. The program itself is modelled like a small project; just the type that causes so many liability problems. But the guidance conveyed covers far more than professional liability. It's a genuine learning experience, and we'll be happy to put you in touch with those who have been through it, including ASFE President Robert "Rory" S. Johnston, P.E. *(Dames & Moore)*, President-Elect Kevin B. Hoppe, P.E. *(NTH Consultants, Ltd.)*, and Secretary/Treasurer W. Jerrold "Jerry" Samford, P.G. *(Virginia Geotechnical Services, PC)*.

Find more details at ASFE's website (www.asfe.org), or contact the office (301/565-2733 or joanna@asfe.org).

New Board Takes Office

Pete Kaldveer *(Harza Engineering Company)* completed his term at the Annual Meeting in Atlanta, to thunderous applause. His last official act was to announce the new Board, elected by the unanimous vote of the membership. Join us in extending our thanks to Pete Kaldveer for his many years of involvement with ASFE, culminating this past year in a highly successful turn at the helm. Join us, too, in extending our best wishes to the new Board, led by another long-time ASFE stalwart, Robert S. "Rory" Johnston. The new Board comprises:

President Robert S. Johnston, P.E. *(Dames & Moore)*,
President-Elect Kevin B. Hoppe, P.E. *(NTH Consultants, Ltd.)*,
Secretary/Treasurer W. Jerrold Samford, P.G. *(Virginia Geotechnical Services, PC)*,
Director Melvin R. Nichols, P.E. *(DOWL Engineers)*,
Director Gary W. Raba, Eng. D., P.E. *(Raba-Kistner Consultants, Inc.)*,
Director James M. Roberts, Ph.D., P.E *(Civil & Environmental Consultants, Inc.)*, and
Director Robert W. Thompson, P.E. *(CTL/Thompson, Inc.)*.

ASFE PROFESSIONAL FIRMS PRACTICING IN THE GEOSCIENCES

An international trade association established in 1969, ASFE develops programs, services and materials to help geo-professional, environmental, and civil engineering firms profit through professionalism.

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Field Representation Seminar Proving Very Popular

"Excellent job in conveying important information in an entertaining fashion."

"The course was entertaining and informative. A lot of information was presented in eight hours."

"John Bachner made the course exciting and energetic; great use of case studies to put forth the point."

"John was great. He kept the day moving and added humor to keep it interesting."

"Very enthusiastic and entertaining; great presentation of material—interesting, thought-provoking."

"Would like to see courses like this made mandatory for all engineers."

That's just a tiny sampling of the praise attendees have given to ASFE's newest Backyard Seminar, "Field Representation." The day-long educational program has been given four times, with an average ranking of 4.7 (on a 1-to-5 scale). It provides overview information about professional liability issues and how the courts work, supplemented by case histories (with emphasis on those that involve field-related events). Specific do's and don'ts for field personnel also are discussed and debated; a strong session on writing skills is provided, too.

The seminar leader is John Bachner. Some of his observations may be of value: "I'm coming to the conclusion that field personnel are possibly the most important members of a firm, at least from a risk management point of view, and they do not get the training they need. I refer to these folks as 'field professionals,' because—by law—everything they say and everything they do is considered to have been done or said by the project professional of record. They have to understand professional liability issues, because they must abide by professional precepts. But they have to do so in a rough-and-tumble atmosphere, where threats, bribes, and safety problems are far more common than some may believe. In most cases, they have not received training on how to react to specific safety situations, or even how to categorize them by type or degree. The experience and wisdom of some of the senior personnel is not being used in brown-bag sessions or otherwise. Field professionals are a firm's eyes and ears on a project site; they are the last line of defense; they often are among a firm's most visible—and vulnerable—representatives."

Because this seminar is proving to be more popular than expected, you may want to plan one now for later in the year, or early 2000. ASFE was unable to honor all the Backyard Seminar requests it received for the first three months of this year. Already, November 1999 is starting to fill up.

BACKYARD SEMINAR SCHEDULE

1999 SEMINAR SCHEDULE

ASFE Backyard Seminars Led by John Bachner

Contract Basics for Project Managers focuses on the basics of professional service agreements and emphasizes 10 significant problem areas. Each participant receives ASFE's comprehensive *Contract Reference Guide, Third Edition.*

Write Right relates the basics of good writing for project managers, marketing personnel, "editorial assistants," et al.

Professional Risk Management for Project Managers (a.k.a. Loss Prevention 101) is a comprehensive introduction to risk management for project managers.

Field Representation: The Technician's Role on Site is designed for field personnel and their supervisors. It explains a variety of do's and don'ts and the "why" of each. Provides guidance on effective reporting and writing.

If you want to attend a seminar that has already been scheduled, contact the person listed below to determine if space is available. For more information on the content of a seminar and instructions on how to sponsor one, check MSP 1 for *Contract Basics*, MSP 2 for *Write Right*, MSP 3 for *Professional Risk Management*, and MSP 4 for *Field Representation.*

DATE	LOCATION	CONTACT/SPONSOR	SEMINAR NAME
May 14 (Friday)	Orlando, FL	**Gail Fields**, GMEC 850/224-7121	Professional Risk Management 1/2-day seminar
June 11 (Friday)	Orlando, FL	**Priscilla Trescott**, Florida Engineering Society 850/224-7121	Professional Risk Management
November 13 (Saturday)	Redmond, WA	**Dana Carlisle**, GeoEngineers, Inc. 425/861-6000	TBD
January 15 (Saturday)	San Antonio, TX	**Gary Raba**, Raba-Kistner Consultants, Inc. 512/339-1745	Field Representation

For inquiries or to schedule a Backyard Seminar, contact Ann Reed (301/565-2733, ext. 222; ann@asfe.org).

(Duluth, GA): AT&E and its subsidiary, Ground Engineering, have combined under a new name: QORE, Inc. (pronounced "kore"), doing business as [illegible]. According to QORE President *Dave Albin*, "We wanted a name to convey that we offer a full range of services through all of our offices. The 'Q' in QORE stands for 'questions,' because we answer our clients' questions. 'ORE' represents the Earth." QORE has 500 employees in 24 offices throughout the Southeast.

[illegible] *(Bloomfield, CT)*: *Richard J. Desrosiers* has joined the firm as a Senior Associate, Remediation Services.

[illegible] *(Winchester, MA)*: *Greg Gardner, LEP* and *Robert Schuch, P.E.* have been named senior engineer/project manager and senior engineer, respectively, at the firm's Colchester, CT office.

[illegible] *(Redmond, WA)*: The firm purchased ASFE Member Firm [illegible] on March 31, 1999. GeoEngineers' existing Spokane office will combine with Gifford Consultants as "GeoEngineers-Gifford." GeoEngineers President *Jim Miller* said this was the first acquisition in the firm's 19-year history. Gifford Consultants' 12 employees will be retained. Gifford Consultants President *Allen Gifford* is now a GeoEngineers principal.

[illegible] Engineering Associates, Inc. *(Milwaukee, WI)*: *Dennis J. Murphy, P.E.* has been named Regional Manager for the Washington/Baltimore office located in Columbia, MD.

[illegible] *(San Diego, CA)*: The firm has moved its San Diego office to 5015 Shoreham Place, San Diego, CA 92122. Until May 30, its phone is 619/320-2000; fax 619/320-2001. Effective June 1, 1999, change the area code to 858.

[illegible] *(Farmington Hills, MI)*: Kudos! The firm won the Eminent Conceptor Award of the Engineering Surveying Excellence Awards Competition sponsored by the American Consulting Engineers Council of Michigan and Michigan Society of Professional Engineers. NTH was recognized for innovative geotechnical and environmental engineering services provided to the Detroit Water & Sewerage Department. The project involved replacing a distressed tunnel under the busiest freeway in Michigan while maintaining uninterrupted sewer operation and freeway traffic flow during working hours. A new tunnel was constructed parallel to the distressed tunnel and at-grade bridges built on the freeway, permitting an open-out connection between the new and existing sewers. NTH also received an Honorable Conceptor Award for services it provided to the Detroit Economic Growth Corporation for redevelopment of a 16-acre brownfield site in Detroit's Empowerment Zone.

Raba-Kistner Consultants Inc. *(San Antonio, TX)*: *Peter E. Falletta, E.I.T.* has joined the firm's Forensics Engineering Team, specializing in property condition assessments.

Rutherford & Chekene Consulting Engineers *(San Francisco, CA)*: *Gyimah Kasali, Ph.D., G.E.* has been promoted to Senior Associate. He has been with the firm since 1981, performing engineering and managerial services for a number of major geotechnical assignments.

Shannon & Wilson, Inc. *(Seattle, WA)*: *Scott Gaulke, Chris Robinson, P.E.*, and *Kathy Robinson, P.E.* have been named Associates of the firm. *Steve Gerken, P.E.* and *Dan Semanskee, C.P.A.* have joined S&W's Seattle staff as Associates.

Terracon *(Lenexa, KS)*: The firm has acquired HBC Engineering, Inc., with three offices in Texas (Houston, Austin, Dallas) and one in Atlanta, GA. HBC will retain its name as a wholly owned subsidiary of Terracon. Terracon will integrate its existing Dallas, Fort Worth, and Houston operations into HBC.

L. Edward Wilson and Associates, Inc. *(Arrington, TN)*: The firm has relocated to 6520 Cox Road, Arrington, TN 37014-9104; tel: 615/368-7612; fax: 615/368-7941;e-mail: wdux@aol.com.

ASFE Will Crack Down on Illegal Use of Its Copyrighted Materials

ASFE Member Firms pay for the development of materials through their dues and volunteered efforts. Most materials are available for sale to nonmember firms, and all are copyrighted. ASFE members own ASFE, so they have a license to duplicate ASFE materials. All others are legally forbidden from duplicating the materials, or using their wording. The most commonly "bootlegged" ASFE document is the geotechnical engineering report warning sheet, *Important Information about Your Geotechnical Engineering Report.* Illegal use can be documented easily, because reports containing the warning are filed with various government agencies.

ASFE does not want to pursue firms legally, but it is now prepared to do so, if necessary. Our first outreach will be to encourage firms to become members of ASFE, and we'll let bygones be bygones. However, if a firm decides not to join, we will engage attorneys to take the necessary course of action.

Nonmember firms producing as few as 100 geotechnical engineering reports per year, each including an illegally copied ASFE document, could be liable for repayment damages in the neighborhood of $25,000, considering the number of copies made, and the $25 cost of each. Fines and punitive damages might be involved, too. However, ASFE does not want to take legal action against even one firm or individual. Litigation is not what we're about. In fact, one of our principal missions is to help firms avoid litigation, which was an impetus to developing the warning sheet in the first place. We will inform violators of the problem and give them a chance to avoid legal action, by becoming part of the solution. If the quality of ASFE's work is so good we can tempt professionals to steal from us, surely ASFE is good enough for professionals to support.

ASFE Joins in Amicus Brief

The ASFE Board has voted to support an *amicus curiae* (friend of the court) brief involving a case that began in 1977, when Kleinfelder, Inc. was retained to conduct a subsurface exploration for a multi-building apartment project in Nevada. Its report indicated the presence of expansive soils, and recommended appropriate techniques for counteracting the problem.

The project was never built. Instead, the site was sold to a new owner who also intended to build a rental project, but one comprising fewer buildings and a different layout. The new owner "inherited" Kleinfelder's report. The report included a limitation saying the firm should be contacted if the project's parameters changed.

The engineering firms retained by the new owners evidently relied fully on Kleinfelder's exploration, but apparently did not implement the firm's recommendations. As a consequence, soon after the project was complete, in 1979 or 1980 (depending on your definition of "complete"), serious settlement problems began to occur. While the owners were in the process of converting the project to condominium ownership, in 1982, it was foreclosed upon, then sold. The new owner completed the condominium conversion, but the expansive soils problem soon became evident to the new homeowners. They talked about litigation, took some halting steps toward it, then backed off.

Recently, litigation went forward. When it did, Kleinfelder was retained by the plaintiff's attorney to serve as an expert witness. After a few months, the relationship reportedly fizzled. Kleinfelder was dismissed as the expert, but was added as a defendant, for its allegedly negligent 1977 report.

The plaintiff's new expert reportedly has indicated that nothing was wrong with Kleinfelder's recommendations and, chances are, none of the problems would have occurred had the recommendations been followed, even though they were for a different project, and even though Kleinfelder's permission was needed to reuse the report.

The basis of Kleinfelder's defense is that the plaintiff's action is time-barred in any event. The state's four-year statute of limitations, which begins to run after a defect is noted, expired sometime in 1986 or so, at the latest, given that: 1) the problems were not latent, and 2) had any of the owners hired a geotechnical engineer (as each was advised) to find out what was wrong, the cause could have been determined. And if one were to apply the ten-year statute of repose, than a cause for action would have expired in 1989. Kleinfelder's position was upheld at trial, but the plaintiffs appealed.

Kleinfelder believes that, if we do not draw a line, trial courts will be squeamish about upholding realistic time bars, for fear of being reversed on appeal. ASFE agrees and, thus, has added its name to the *amicus* appellate brief.

ASFE Joins in Second Amicus Brief

ASFE has signed on to support a second *amicus curiae* brief, in an effort to fight junk science and an attempt to have a jury determine the standard of care for itself, based on written guidance materials. (As an aside, this case shows how absolutely prescient ASFE was in taking on the ASTM standards issue.) The case involved two engineering firms that were involved in the remediation of a former manufactured gas plant ("MGP"). The plaintiffs comprised four families who sued on behalf of their children. They alleged that chemicals emitted during the remediation process caused a cluster of a rare childhood cancer, neuroblastoma. After a four-month trial, the jury found that neither engineering firm was liable, but the utility was, and ordered it to pay $3.2 million. Both the utility and the plaintiffs appealed.

The case has its genesis in 1938, when the Taylorville (IL) MGP was decommissioned. Coal tar was discovered on the site in 1985, and the Illinois Environmental Protection Agency oversaw the investigation and remediation of the site. The utility that owned it obtained remediation engineering from Hanson Engineering, Inc. and Parsons Engineering Science, Inc. The Immediate Removal Action was substantially completed in March 1987.

None of the children lived adjacent to the site; one lived as far as three miles away. One of the children was 13 years old when he contracted neuroblastoma in 1991, more than four years after remediation was substantially complete. The other three were born in 1988, 1989, and 1990, respectively. At trial, the plaintiffs' experts agreed that the cause of neuroblastoma is unknown to medical science and that, prior to this lawsuit, coal tar and its chemicals had never been asserted to be a cause of neuroblastoma. Nonetheless, they argued, site chemicals caused the neuroblastoma, because either the children or their parents were exposed to them through the air, while (in the case of the three youngest) the children were *in utero*.

The expert used by the plaintiffs, to show the engineers did not meet the standard of care, reportedly had little credibility with the jury. Accordingly, plaintiffs' counsel attempted to convince the jury that an EPA guidance document was authoritative, so the jury could conclude that not following the guidance to the letter was the equivalent of not abiding by the standard of care.

Plaintiffs' counsel urged the trial court — and will also urge the appellate court — to permit the jury to determine the standard of care without the guidance of an expert by virtue of its own interpretation of written guidance materials. *If the plaintiffs' position is upheld, juries would conceivably be free to base their decisions on standard of care solely on written materials!*

The issue of causation also is important. If the plaintiffs' position is upheld — i.e., if "junk science" is allowed to prevail — engineering firms might simply rule out taking on remediation projects, given that (as plaintiffs' experts concluded) some emissions would have been inevitable even in the case of a *perfect* remediation effort. Plaintiffs' experts also concluded that exposures supposedly leading to the neuroblastoma could have occurred at almost any time over a 60-year period, and they gave no testimony whatsoever about the specific levels or duration of the exposure.

New Insurance Policy Poses Grave Risks If Misused

A new type of environmental insurance policy poses grave risks to borrowers and lenders if it is misused. The insurance at issue protects lenders, such as banks, in the event that a borrower defaults on a loan against property that is found to have serious environmental problems. In a news release issued nationwide, then-ASFE President Peter Kaldveer, P.E. (*Harza Engineering Company*) warned that "the cost of environmental remediation can far exceed the value of a property. The remediation liability can cause some borrowers to declare bankruptcy or liquidate, thus putting the property into the hands of the lender that held the property as collateral against a loan. As we understand it, the new insurance policy is designed to protect the lender from environmental liabilities in either of two ways. First, the insurer could simply pay off the balance of the loan, so the contaminated property would remain in the hands of the borrower. Second, were the cost of loan pay-off to exceed the cost of remediation, the lender could take possession of the property and remediate it at the insurer's expense. In either case, however, the insurer would have the right to sue the borrower to recover the amount the insurer paid the lender."

In and of itself,

THE NEW POLICY SEEMS TO PROVIDE IMPORTANT PROTECTION TO LENDERS.

In and of itself, the new policy seems to provide important protection to lenders. But that protection could evaporate if lenders use the new insurance to replace, rather than supplement, other risk management practices. ASFE explained that, for many years, lenders have protected themselves by requiring borrowers to exercise "due diligence." Borrowers did so by retaining a professional to perform an environmental site assessment (ESA) before they finalized purchase of the property. By exercising due diligence, borrowers could also be classified as "innocent purchasers" under federal environmental law. In that way, were a property later discovered to be contaminated, owners could escape clean-up liability, thus confining their losses to the cost of the property.

ASFE advised that some borrowers may not become aware of due diligence requirements unless their lenders tell them about it. "If they don't get this advice," Pete said, "some borrowers will purchase a property they should have avoided, and will not be able to take advantage of innocent purchaser protections. They could be forced to keep the property and pay to have it remediated." In that case, the borrower would probably sue the lender for violating an alleged fiduciary responsibility to disclose information about due diligence and innocent purchaser rules. Our guess is that a number of courts would probably side with the borrower and that some federal and state agencies would probably sue the lender, too, specifically in those cases where the borrower could not afford to pay for the clean-up, and public funds would otherwise have to be used. Pete suggested that lenders could protect themselves, their customers, and the public by "taking the simple expedient of providing a written disclosure to borrowers, informing them that they could lose important 'innocent purchaser' protections if they fail to exercise due diligence."

But that protection

COULD EVAPORATE IF LENDERS USE THE NEW INSURANCE TO REPLACE, RATHER THAN SUPPLEMENT, OTHER RISK MANAGEMENT PRACTICES.

ASFE also noted that lenders need to recognize that the new insurance may not cover risks associated with lead-based paint and asbestos, other issues considered when full-scale ESAs are performed on improved properties.

ASFE has updated *Environmental Site Assessments: A Message to Clients* and put the new copy on our website (www.asfe.org). The Geoenvironmental Committee is working on the new hardcopy version. *Note:* Just as *NewsLog* was going to press, we were advised that at least one new policy has been developed to protect both lenders and borrowers, in order to make an ESA unnecessary.

YOU'VE JUST GOT TO BE KIDDING

Setting and following policies are all-important essentials to any well-run organization, because policies free people from having to exercise judgment or even to think. One thus may assume that it was a policy statement of one kind or another that led a contractor for the Pennsylvania DOT to "just pave it" when it came to a section of Route 895 near Bowmanstown. "What should we do with this dead deer?" one worker presumably must have asked another upon seeing a lifeless buck on the shoulder. "Just pave it," was the presumed response. And so they did, head, neck, shoulders, and all. But evidently someone wasn't reading the policy manual closely enough. According to Walter Bortree, a PA DOT engineer, "It is against state policy to pave over a deer." (Just in case, however, we hear that a standard-setting organization has recently created a subcommittee on dead deer paving. If it sells well enough, standard practices for paving squirrels, skunks, rabbits, and fox may follow.)

Hail to the Champions

Each ASFE meeting has champions; the men and women who take on the important voluntary responsibility to arrange a portion of the meeting, and make it happen. ASFE's Spring 1999 (Annual) Meeting was one of the best-attended in recent memory, and it garnered nothing but praise from participants, thanks to the following champions: **Walker Birdsong, P.E.** (*S&ME, Inc.*, Spartanburg, SC); **Paul Kohler, P.E.** (*S.W. Cole Engineering, Inc.*, Gray, ME); **Daniel LaGatta, Ph.D., P.E.** (*GEI Consultants, Inc.*, Winchester, MA); **Joni Powell** (*Powell-Harpstead, Inc.*, Cinnaminson, NJ); **Donald Richardson** (*Haley & Aldrich, Inc.*, Dover, NJ) and **Mark Weiland, Esq.** (*Professional Service Industries, Inc.*, Lombard, IL). If you have not attended an ASFE meeting recently, you have missed opportunities to learn, establish and reinforce important business and professional contacts, and to have a good time among peers. Don't be too busy to put something less valuable ahead of enjoying an important, memorable experience.

NEW MEMBERS

We're particularly pleased to report that six firms have joined ASFE since the last issue of *NewsLog*. We welcome two new Faculty Members, too, plus a new Consultant Member. The new ***Member Firms*** are:

Active Environmental Services, Inc., 8780 Purdue Road, Suite 5, Indianapolis, IN 46268; tel: 317/871-8560; fax: 317/871-8561; e-mail: active@iquest.net. The firm specializes in environmental consulting and soil and groundwater sampling. *Kim Forster, P.G.* is the principal.

NGC, Inc., d/b/a **Northern Geotechnical Consultants,** P.O. Box 1036, 6341 Little Portage Lake Road, Land O'Lakes, WI 54540, tel: 715/547-6208; fax: 715/547-6379. The firm's services include geotechnical and environmental exploration, geotechnical engineering, Phase I and Phase II ESAs, construction engineering and testing, and consultation for existing structures. The firm's principals comprise ASFE Past President *R. Wayne Weinfurter, P.E., P.G., Kevine Wiedman, EIT,* and *Wayne Marquardt, CT.*

Piedmont Geotechnical Consultants, Inc., P.O. Box 1997, Roswell, GA 30077; tel: 770/752- 9205; fax: 770/752-0890. The firm provides a broad array of geotechnical engineering and construction materials testing services. Principals are *W. Michael Ballard, P.G.* and *Louis A Dini, P.E.*

Preston Testing & Engineering, Inc., P.O. Box 7194, Macon, GA 31209-7194; tel: 912/474-2941; fax: 912/471-0202. Services performed by the firm include geotechnical engineering, geotechnical and environmental drilling, construction materials testing, and environmental assessments. *J. Ray Preston, P.E.* heads the firm.

STS Acquisition Co. d/b/a **STS Consultants, Ltd.,** 750 Corporate Woods Parkway, Vernon Hills, IL 60061-3153; tel: 847/279-2500; fax: 847/279-2510; website: stsltd.com. A founding Member Firm of ASFE, STS provides comprehensive services in the areas of engineering, construction materials testing, laboratory testing, and drilling, among others. The firm's officers include *CEO Thomas W. Wolf, P.E., COO Andrew E. Haubert, P.E.,* and *CTO James A. Senger, P.G.* STS has 14 offices, including its Vernon Hills HQ. Others are located in Illinois (Chicago), Michigan (Detroit, Kalamazoo, Lansing, and Marquette), Minnesota (Mapel Grove), Ohio (Powell), and Wisconsin (Green Bay, Madison, Milwaukee, Oshkosh, Rhinelander, and Schofield).

Universal Engineering Sciences, Inc.,3532 Maggie Boulevard, Orlando, FL 32811; tel: 407/423-0504; fax: 407/423-3106. Universal's services include geotechnical engineering, construction materials testing, environmental assessments, contamination assessments, asbestos and lead evaluations, air quality, and site condition surveys. The firm's principals are Seymour Israel and Mark Israel, P.E. Universal has nine offices in Florida, including its corporate office in Orlando. Other locations are Debary, Gainesville, Jacksonville, Punta Gorda, Riviera Beach, Rockledge, South Daytona, and Tampa.

Our two newest ***Faculty Members*** are: Boris Jeremic, Assistant Professor of Engineering, Clarkson University, Campus Box 5710, CEE Dept., Potsdam, NY 13699-5710; tel: 315/268-4435: fax: 315/268-7985, and Shamsher Prakash, University of Missouri-Rolla, 308 Civil Engineering Dept., University of Missouri-Rolla, MO 65601; tel: 573/341-4489; fax: 573/341-4729.

Our newest ***Consultant Member*** is Anthony Buonicore, P.E., DEE, CEO of Environmental Data Resources, Inc. Mr. Buonicore headed his own consulting firm, which he sold, and is a past president of the Air & Waste Management Association. A Diplomate of the American Academy of Environmental Engineers, he holds several patents and has been extensively published. Contact him at Environmental Data Resources, Inc., 3530 Post Road, Southport, CT 06490; tel: 800/352-0050; fax: 800/231-6802; website: www.edrnet.com.

Dam Safety Funding Sought

The U.S. Bureau of Reclamation is requesting $71.3 million for dam safety in its FY2000 budget, including $60.9 million for "risk management" at 362 dams that pose hazards, especially Yakima Project (WA) and Casitas Dam (CA). Some Senators have been critical of BuRec's slow spending of the $168 million allocated for the California Bay-Delta ecosystem restoration, *Engineering News-Record* reported. Only $6 million of the sum, appropriated over the last two years, has been spent. BuRec says $73 million more has been allocated.

Negligent Soil...continued from page 1

borings, from 12 to 18 feet each, encountering waste materials and ground water in the process. The boreholes evidently were not grouted: When operations ended, several collapsed.

In November 1983, NJ's Department of Environmental Protection and Energy began to investigate the site and told Dowel to discontinue its development plans. In 1984, USEPA told Dowel that the company was potentially liable for clean-up costs. In 1987, Dowel sold the property to HMAT Associates, informing it that the site was once part of the Sharkey Landfill, and was being investigated by NJDEPE and USEPA.

Both USEPA and the state sued potentially liable parties, including HMAT, in 1989. Dowel was not named, possibly because no one disposed of any waste at the property while Dowel owned it. Nonetheless, HMAT sued Dowel in U.S. District Court, seeking contribution for clean-up costs. HMAT alleged that Dowel permitted *passive disposal* at the site by failing to prevent contaminant migration caused by natural events, such as wind, rain, and groundwater movement. HMAT also alleged that the pre-purchase subsurface exploration Dowel had conducted comprised *active disposal,* because it caused contaminants to shift, mix, and spread.

The district court dismissed HMAT's suit, noting that the concept of passive disposal was not supported by the law, and that the disturbance caused by the subsurface exploration could not have been significant enough to have triggered a CERCLA liability.

HMAT appealed the district court's ruling. The appellate judges agreed with the district court about passive disposal, but they *disagreed* on the subsurface exploration issue. They said that disposal "includes not only the initial introduction of contaminants onto a property, but also the spreading of contaminants due to subsequent [human] activity." The court went on to say that the law makes no exception for minor disturbances, but it also noted that CERCLA allows and in some cases actually encourages subsurface exploration. Given this seeming contradiction, the court said that active disposal would have occurred only if the subsurface exploration had been conducted negligently, and it remanded the case to trial to consider that issue. *Note:* The appellate judges said it made no difference that the subsurface exploration was conducted to evaluate site constructability, as opposed to extent of contamination.

Comment: With so many dollars at stake, and with standard of care and negligence being such "iffy" issues, you need to: 1) inform owners of the potential impact of subsurface explorations at landfills; 2) be extremely cautious when boring, installing test pits or equipment, etc.; 3) document what is done, possibly by videotaping. Not taking such steps feasibly could result in a $1 million liability being created by a $1,000 test on a $100,000 property. *ASFE thanks John Weaver (Weaver Boos Consultants) for alerting us to this case and providing the materials we used to develop this article.*

Bitter Bottler Battles Better

What's in a word? Shakespeare isn't the only one to have asked that question. So, too, have participants in ASFE's *Write Right* Backyard Seminar, as well as our much-heralded *Fundamentals of Professional Practice* course. The case discussed below is exactly the type that points out how destructive nits can be; i.e., a nit by any other name would be as foul. Just ask the firm involved in this one: Weston & Sampson Engineers, Inc. As reported in *Engineering News-Record,* the firm designed an aerated lagoon wastewater treatment system for Coca-Cola Bottling Co of Cape Cod's new plant in Sandwich, MA. The state gave the plant a groundwater discharge permit in February 1984 and, one month later, the facility began operations. Within six months, the system began to exceed the permit's limits, and nine months after that, in June 1985, the state sued the bottler.

Between 1985 and 1989, Weston & Sampson developed and applied a number of remedies. None worked. The bottler shut the treatment facility down altogether, and settled the state's lawsuit for $200,000. Nine months later, in August 1991, the bottler sued the engineer for negligence and breach of express warranty.

The bottler won at trial, receiving a jury award of $293,000. The jury's decision was reversed on appeal, however, because the higher court found the negligence claim time-barred by a six-year statute of limitations. *But the breach of express warranty claim was not time-barred,* the appellate justices said, because the statute of limitations that applies to breach of warranty is longer than the one that applies to professional negligence. As such, the appellate court ordered a new trial to determine if the warranty was made and, if so, if it was breached. Few, if any, professional liability insurers will cover the cost of defense in such cases. They would defend only if the breach of warranty allegation were not severable from the negligence claim. In this case, it was severable, pointing out that an unpicked nit (assuming one exists in this case) can significantly expand liability, on the one hand, while significantly shrinking protection, on the other. *Coca-Cola Bottling Co. of Cape Cod v. Weston & Sampson Engineers, Inc.,* 695 N.E.2d 688 (Mass. App. 1998)

Supreme Court Strikes Another Blow for Credible Experts, but...

The U.S. Supreme Court has ruled that the same criteria used to accredit scientific experts applies to engineers and others. The decision is particularly important with respect to product liability cases, where juries often give full credibility to "junk science" in order to vote their hearts (and biases).

In *Kumho Tire Co., Kumho U.S.A., Inc. and Hercules Tire & Rubber Co. v. Patrick Carmichael, et al.,* a tire blew out on a minivan, leading to an accident that killed one person and injured several others. In 1996, a federal trial judge excluded the testimony of the plaintiffs'

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What Employers Want

For many *NewsLog* readers, results of a National Association of Colleges and Employers (NACE) survey will go into the "so what else is new" file. The survey found that good grades and technical skills are far from the only criteria employers of graduating engineers, accountants, and others consider, and they're far from being the most important. What's the number-one skill? According to *NACE's Job Outlook 99,* it's the *ability to communicate*, with others comprising:

2. work experience,
3. initiative and motivation (eagerness to learn),
4. teamwork abilities,
5. leadership skills,
6. grade point average,
7. technical skills,
8. interpersonal skills,
9. analytical skills, and
10. ethics.

Suggestion: When you identify what you're looking for in a new hire, do you rank the relative importance of the factors? Do you consider the extent to which a given factor will be called upon if the person gets the job? Seeks to advance in your firm?

Driving Records

Worried about employees' use of company vehicles? A new "black box" allows you to set limits for vehicle speed, engine speed, throttle position, and engine load. Called *AutoWatch*, the device records the date, time, duration, and severity of each limit violation. It also reports the number of times the vehicle is turned off and on, and duration of run time. ***Details***: *Ease Simulation, Inc. (New Milford, PA)*

Attacking Turnover

According to a recent article in *Fortune* magazine, personality conflicts with supervisors may be the number-one reason for people leaving their jobs, especially in those fields where new jobs are somewhat easy to obtain. Exit interviews don't necessarily reveal personality conflicts as a reason for separation, however, and Robert J. Sahl, Ph.D., writing in the *WMS Newsletter*, says there's a reason for that. He claims people don't want to cause trouble on their way out the door, in case the new position doesn't work out and they'll need references later on. As a result, their reasons for separation focus on better pay, more responsibility, and so forth, rather than "my boss thinks hard work is its own reward," or "all the problems she causes become my fault."

One way of getting to your turnover problem, Dr. Sahl says, is to conduct frequent attitude surveys of personnel, permitting them to respond anonymously to someone outside the firm. By asking a question such as "Please rate your satisfaction with your supervisor," and correlating answers on a departmental or functional basis, you should be able to determine the extent to which turnover rates correlate with employees' satisfaction with their department heads. The same tack could be taken with "How well do you think the company is managed?" or "Rank your satisfaction/dissatisfaction with respect to the following ten items." Do departmental or geographic differences exist? Do differences exist with respect to certain disciplines, job categories, gender, etc.?

Personality

CONFLICTS WITH SUPERVISORS MAY BE THE NUMBER-ONE REASON FOR PEOPLE LEAVING THEIR JOBS.

The questionnaires you use should be different each time, but should nonetheless seek the same kind of information. According to studies performed by participants in ASFE's Fundamentals of Professional Practice course, replacing a project manager in the middle of a major project can cost a firm from $35,000 to $75,000. Reducing turnover is not a challenge to be put off.

ASTM Update

ASTM Committee D 18 has formed a task group to evaluate, review, and respond to the Advocates for Professional Judgment in Geoprofessional Practice (APJGP) with respect to APJGP's proposed "Caveat Inclusion Guidelines." Published previously in *Newslog* (call ASFE for a copy), the guidelines were proposed for ASTM's use in deciding when a caveat should or should not be included in a standard guide or practice. D 18 has been using its own set of caveats for the past several months. As reported in *Geotechnical News*, they read as follows:

The subcommittees [of D 18] are to incorporate the practice caveat into those practices that they believe require professional judgment for implementation. To determine whether the practice requires professional judgment, consider the following:

If the practice produces a report, it most likely requires professional judgment. If the practice does not produce a report, it most likely does not require judgment.

If the title contains such wording as cleaning, or specimen preparation, it most likely does not require professional judgement.

If the title contains words such as characterization, or evaluation, it most likely does require professional judgment.

If you are in doubt, it is better to err by including the practice caveat rather than excluding the caveat.

Committee E 50 still has not endorsed the caveats, even though D 18 has adopted them in full, and even though they have been recommended for use by ASTM's board of directors. Supposedly, E 50 was considering a response of some type, suggesting alternative wording, but—to date—we've heard nothing. **However**, because the caveats have been adopted by the ASTM board as suggested language to use when a standard will involve professional judgment, it seems to us that E 50 members have the right to object to a proposed standard when it does not include a caveat, and it should.

Getting a Piece of the Action

You'd love to provide service for a certain account, but you know that they've been dealing with So & So Associates for many years, and they're fairly loyal. Why bother to take the client's representative out to lunch? You have any number of reasons, assuming, of course, that you can provide at least as good a service as So & So, and that you've provided similar services to others in the prospective client's field. Consider the following response to *we've been using So & So for five years and we're really pleased with them.*

"I know that. And I wouldn't be taking my time to meet with you unless I believed we could do as well, if not better for you. I'm not here to say, 'Drop the good firm you have a strong relationship with and use us.' But I would like you to at least give us a chance. We have a number of loyal, long-term clients who routinely give some work to So & So and others, just to make sure we're on our toes; that we're not taking the relationship for granted."

Sure, the response is too long. Good salespeople spend more time listening (often to answers to strategic questions they've posed) than talking. However, you should be able to use some of the points made. You're not asking to take it all; just to be given a chance, to help ensure the prospect that giving it all to So & So is still the wisest course of action.

Fore

Bill Stover, head of Business Golf Strategies, gave most of the following business golf etiquette tips to *Selling Power* magazine:

DO

- Be on time.
- Offer your personal round-trip transportation.
- Know the rules. Abide by golf etiquette.
- Dress conservatively (for golf).
- The day before, if not earlier, make arrangements to pick up course expenses.
- Drive the golf cart.
- Offer to keep score.
- Follow your client's shots.
- Offer encouragement; provide compliments; try an "I know exactly how you feel" if the client apologizes (or not) after a fit of post-blown-shot pique.

DO NOT

- Use a telephone or pager during the round.
- Drink beer or other alcohol during the round.
- Brag or engage in patently false modesty.
- Lose your temper (swear, throw clubs, etc.).
- Offer advice.
- Play "customer golf" to let the client win. Use the handicap system to even the play (*so you can lose less obviously*).
- Discuss business before the fifth or after the 15th hole.

Getting the Other Side Covered

No matter what you're negotiating (or trying to sell), you'll get far better results by expending time and effort to learn about the other side's interests. Writing about this topic in a recent issue of *Bottom Line Business*, negotiation guru Roger Fisher told about an experience he had when he and his wife were selling their house to move into an apartment. A buyer came along and offered an amount significantly below Fisher's asking price. *However*, the buyer had done his homework. The deal was without contingencies; i.e., Fisher would not have to wait for the buyer to sell an existing home. More important, the buyer offered to let the Fishers stay in their home until their new apartment was ready, and he offered to give them an advance payment so they could have cash for the extras they wanted. The buyer also agreed to a closing date that would help the Fishers reduce their capital gains taxes.

Fisher's response? Sold! The deal was so attractive; the buyer made it so easy to say yes, the seller was willing to take less.

How much do you learn about your prospective client's general and project-specific business needs? How easy do you make it for your clients to say yes?

Another Firm Hit by Software Police

Johnson, Mirmiran & Thompson (Sparks, MD) has agreed to contribute $135,000 "to support the work of the Business Software Alliance and its campaign to raise awareness of the need to assure proper use of licensed software." Contribute? Well, not really. A disgruntled former employee (assumedly) called the BSA hotline and, as a consequence, BSA and JMT agreed to a joint audit. A number of illegally duplicated programs reportedly were found; all were discarded. The "donation" was part of the agreement. BSA has now taken action against some 200 design and contracting firms. *Avoid the problem.* Obtain a copy of *ASFE Practice Alert No. 1* on software piracy. To order one, just check MSP 5.

Terra Says New Insureds Can Keep Agents

Terra Insurance Company, ASFE's commended professional liability insurer, will now deal through selected agents specified by new insureds. According to Terra President David L.J. Coduto, "Discussions with a number of prospective insureds make it clear that they like Terra's unique structure and innovative programs. But they also like and are extremely loyal to the agents who have worked with them over the years, and who in many cases provide other insurance in addition to professional liability coverage."

Mr. Coduto said that civil/geoprofessional engineering firms will be able to apply directly to Terra, and will be able to specify whether or not they want a commission assigned to an agent. "All Terra insureds will receive the same benefits," Mr. Coduto said, "whether they use an agent or deal direct." Mr. Coduto noted that the commission paid to an agent would be based upon the Terra insured's gross premium, not its net premium. In fact, the net premiums paid by about one of every three Terra insureds has been zero or close to it annually for the past decade.

Terra coverage is available only to members of ASFE. ***Details***: *800/872-0077 (in CA, 415/927- 2901)*

ASFE Means...

As part of the new ASFE strategic plan, the leadership group assembled at the Winter Leadership Conference decided that the tagline "Professional Firms Practicing in the Geosciences" is too limiting. Many of our Member Firms now offer a variety of services that go beyond "geo." Nonetheless, and especially in some of the larger firms, ASFE materials, programs, and services are used almost exclusively by the geotechnical or geoscience divisions, even though they are generally applicable. *Case in point:* Our *Contract Reference Guide, Third Edition*, has been purchased by two major A/E/E insurers, and published by them with their own covers, for use by engineers of various disciplines, architects, surveyors, and others. Much the same applies to our Backyard Seminars, FOPP, other publications, audio tapes, etc.

ASFE wants to expand its influence, for several key reasons. First, the more colleagues and clients who understand the issues, and see things as we see them, the less risk we face in the practice environment. Second, we have an inherent loyalty to ASFE's founders — geotechnical engineers — who, for years, have been treated as low persons on the proverbial totem pole. By being able to influence others on practice issues, using methods pioneered by "geotechs," we can underscore that, in this game, the aces aren't low; they're high! Now, and probably for the foreseeable future, ASFE will be dominated by geotechnical engineers. We understand that. We want more people to understand how truly worthy of respect they are.

Because no one is yet ready to drop "ASFE," in part because any other name we select may also be too limited (or limiting), we will revert to ASFE. (In fact, our legal name is ASFE, Inc.) In describing who or what ASFE is, we will state something on the order of, "ASFE is an association of firms that provide geoprofessional, environmental, and civil engineering services. ASFE develops programs, materials, and services to help its Member Firms profit through professionalism."

Your comments, suggestions, and insights are invited.

[illegible]

ASFE Member Firm HQ office representatives have been issued five enclosures with this mailing. Everyone else should find four, but we'll be pleased to provide the fifth.

[illegible] provides a listing of all our Member Firms (at the time of production), as well as Professional Colleagues, Individual Life Members, Faculty Members, Practitioner Members (geoprofessionals employed by organizations not eligible for Firm Membership), and Consultants. Also listed are Board members and committee members, among others. This information is updated monthly on our website (www.asfe.org).

[illegible] provides details on where we intend to go this year, with an overview written by President Robert Johnston. The *Plan* also identifies ASFE objectives on a committee-by-committee basis. Sent to HQ offices only, the *Plan* is abstracted on our website. If you want a copy, check [illegible].

[illegible] provides a summary of some of the amazing progress we've made in the past six months, with emphasis on the many new tools we've developed to help you better manage your risk, enhance client relations, improve human resources, and otherwise gear up to profit through professionalism.

Our newest [illegible] on taboo words is enclosed for all. It is the first of a series on language, being developed by the Practice Education Committee. For additional copies, call, write, or e-mail your request to ASFE.

A [illegible] flyer, providing details on a valuable ASFE benefit, is enclosed for all.

ENCLOSURES WITH THIS ISSUE

FROM THE BENCH...continued

Supreme Court...from page 9

expert, Dennis Carlson, a mechanical engineer who spent ten years with Michelin. He was prepared to testify that the tire failed because it was defective, even though the tire was worn bald and had twice been repaired (inadequately) for punctures, and he did not examine the tire until the morning of his deposition. The trial judge based his decision on the belief that Mr. Carlson's "test methods" were not reliable.

The plaintiffs appealed the verdict to the U.S. Appeals Court. The appellate justices reversed, stating that the "reliability" issue stemmed from the Supreme Court's 1993 decision (*Daubert v. Merrill Dow Pharmaceuticals, Inc.*), which applied only to scientists, not to engineers. In the more recent decision, which unanimously overturned the appellate court's view, the U.S. Supreme Court (via Justice Stephen Breyer) said that it would be "difficult, if not impossible" for district judges to distinguish "between 'scientific' knowledge and 'technical' or 'other specialized' knowledge....Conceptual efforts to distinguish the two are unlikely to produce clear legal lines capable of application in particular cases."

This ruling, like the ones preceding it, seems to be aimed at ending the worst expert witness abuses. In the 1993 case, the Court excluded the testimony of an epidemiologist who was the only one in her profession to conclude that a certain morning sickness medicine caused a certain birth defect.

Will this decision help the average ASFE Member Firm engaged in the typical lawsuit? Probably not to an appreciable degree, unfortunately, because so many of the hired guns who testify have appropriate credentials. We do have an important defense, however, that being *Recommended Practices for Design Professionals Engaged as Experts in the Resolution of Construction Industry Disputes*, the set of recommendations conceived by ASFE, developed by it through the auspices of the Interprofessional Council on Environmental Design, endorsed by more than 30 prominent national, international, and regional organizations, and being used frequently—and effectively—in litigation nationwide. (**Check [illegible] for a copy.**)

Phase I ESAs Could Use Some Improvement

The report on our latest Phase I ESA standard of care survey is now in its final preparatory stages, slowed by the need to develop a new analysis program (which should expedite future surveys). In the meantime, however, ASFE's Geoenvironmental Committee has formed some opinions about practices they observed when reviewing reports and accompanying materials (proposals and/or agreements). The following was provided on the Committee's behalf by Vice Chair Stephanie Bialobok (*Lourie Consultants*).

Short vs. Long Proposals: Short proposals outnumbered long ones, but they commonly conveyed sketchy details about the service and who would perform it. Project scheduling and contract language was often missing. Both short and long proposals contained "absolutes" (*all, every, never,* etc.); many lack ASFE loss prevention language.

Reports: Many reports were difficult for third-party reviewers to follow, and demonstrated inadequate QA/QC; e.g., site maps without north arrows or location maps, tables of contents with incorrect page numbers, nonexistent site elevations, and figures and photos not referenced in the text. A number of the reports presented the bare minimum information using a short, fill-in-the-blank or checklist-type format that looked cheap, and reinforced the concept that ESAs are commodity items. Site descriptions, including site topography and site elevations, were thin. Descriptions of sites and bounding properties were difficult to visualize. The reviewers also noted poor sentence structure, poor grammar, and spelling errors in many of the reports.

Liability Issues: Many proposals and reports stated that the service was or would be performed in accordance or general accordance with ASTM, but few reports actually did so, creating an uninsurable contract liability. (Documents that supposedly were prepared in accordance with ASTM often lacked key ASTM elements; e.g., resumes of key personnel, compliance with the ASTM interview process, and identifying those who conducted the study.)

The reviewers found alarmingly little use of third-party reliance language and limitations sections, which ASFE has long-promoted as means to reduce liability exposures. The reviewers also noted that a considerable liability exposure may be created by not addressing recognized environmental conditions (RECs) and not making recommendations for future assessments or remediation.

Membership Renewal Materials Are on Their Way

Membership renewal materials are being issued to Member Firms and Individual Members. A few items are noteworthy. First, ASFE is stepping up its level of activity this year. Members will receive a continuing flow of new materials, including some six or more new *ASFE Practice Alerts,* a landmark new *ASFE White Paper* comprising a guideline on how to accurately compare the overhead of a private firm with that of a government entity, a new CD-ROM version of the *Contract Reference Guide,* six new *Fundamentals of Project Management* audiotape training programs (with six more under way), a comprehensive new electronic delivery system (permitting every member of your firm to review valuable information and guidance, on a regular basis), a new Members Only section of the website (permitting members to pull down Adobe-formatted publications), more case histories, etc.

Given this extraordinary level of effort, the Board decided to keep 1999-2000 dues at the same level as 1998-99 dues, when they included a 5% assessment to help ASFE fund its important, and successful, effort to combat prescriptive professional practice standards. This modest increase is the first such increase in *more than a decade.* In essence, firms that paid $500 per year from 1989-1998, last year paid $525, and will pay the same amount this year.

Note, too, that your 1999-2000 membership renewal materials will indicate that 4% of the dues you pay to ASFE will *not* be deductible as ordinary and necessary business expenses. This is the first time this has ever happened, because—in 1997-98—ASFE donated money to the anti-PECG Initiative battle in California, which was considered support of a lobbying activity. Given the importance of that effort, and the victory we helped create, we're certain no one will be upset.

If you have any questions about these issues, contact the ASFE office. Otherwise, we ask that you please pay dues promptly. If you will be unable to do so, *please* speak with John Bachner in the ASFE office (301/565-2733).

Please "round up" your dues (as many of you regularly do) to help us do more.

Do you have needs for programs, services, or materials that you do not now receive from ASFE but would like to? *Please let us know.* Our job is helping you, so we can be *Your Partner in Practice.*

Bachner Done to a Turn

A highlight of the Annual Meeting was an after-dinner roast of ASFE Executive Vice President John Bachner, who was completing his 25th year of service as ASFE's chief staff executive. Led by an overalls-clad Ken Darnell (*Darnell Associates, L.L.C.*), who said he had donned a Kentucky tux for the occasion, Doug Gifford (*Haley & Aldrich, Inc.*), Gery Anderson *(Anderson Consulting Group)*, Ed Wilson (*L. Edward Wilson, P.E.*), and Jerry Neyer (*NTH Consultants, Ltd.*) gave John a series of excoriating verbal paddle whacks, but all in good fun. Summing up with a genuine thanks, ASFE President Peter Kaldveer *(Harza Engineering Company)* presented John with a magnificent imperial (6-liter bottle) of Cos D'Estournel, which John vowed to not share with anyone.

Three Firms Receive Peer Review Certificates

Three ASFE Member Firms were presented with Peer Review certificates at the Annual Meeting in Atlanta, signifying their efforts to improve through Peer Review. The ASFE hat is off to:

Gallet & Associates, Inc.
320 Beacon Parkway, West
Birmingham, AL 35209-3104

Geotechnology, Inc.
2258 Grissom Drive
St. Louis, MO 63146

Paul C. Rizzo & Associates, Inc.
Expo Mart
105 Mall Boulevard
Suite 270E
Monroeville, PA 15146

Right now, 55 ASFE Member Firms have been Peer Reviewed within the past five years; that's an outstanding one out of every five Member Firms.

Those that have been Peer Reviewed now will get more "bang" for their time and money. ASFE is preparing handsome seals they can attach to letterheads, envelopes, proposals, and so on; camera-ready art for use much as seals; a proposal page insert about Peer Review; and a news release announcing a Member Firm's completion of Peer Review.

The real pay-off for Peer Review is not the promotion, however. Instead, it's the information and suggestions received from individuals who can help. Ask a Member Firm that's been through one if they'd do it again. You'll not hear a "no." If you want, speak directly with ASFE Executive Vice President John Bachner about the issue. His firm—Bachner Communications, Inc.—went through a Peer Review several years ago. He'll be glad to relate his experiences.

HAZMAT NEWS

Update on UST's

December 22, 1998 was the deadline for compliance with federal and state underground storage tank (UST) regulations. *The deadline was not extended.* Noncomplying USTs, which are subject to fines of up to $11,000 per day, typically are owned and/or operated by small gasoline sellers, local transit agencies, government motor pools, and automobile dealerships. Options for noncomplying USTs include temporary closure, closure, or upgrade.

According to EPA, more than 1.2 million substandard USTs have been taken out of service since 1988; as of December 1998, about 500,000 of the 892,000 active USTs (56%) comply. Owners and operators that have complied expect EPA and the states to enforce the deadline.

EPA expects states with authorized UST programs to be the primary enforcers. In states without authorized programs (Hawaii, Idaho, New York, and Tennessee (chemical tanks only)), and Indian Lands, EPA will take the lead. EPA has encouraged owners and operators of noncomplying facilities to disclose their violations pursuant to EPA's "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (Dec. 22, 1995, 60FR 66706, Audit Policy); EPA's "Interim Policy on Compliance Incentives for Small Businesses" (June 3, 1996; 61 FR 27984; EPA's Small Business Policy), or similar state policies. Self-disclosure could mitigate penalty amounts by 75% and, in some cases, 100%. ***But*** *self-disclosure to EPA does not provide protection from state enforcement action. Clients considering self-disclosure should speak with an environmental attorney with self-auditing experience.*

Through the end of June 1999, EPA says its will focus its inspection resources on:

- federal facilities,
- owners and operators of multiple UST facilities,
- owners and operators of large facilities with multiple USTs, and
- facilities that are endangering sensitive ecosystems or sources of drinking water by failing to upgrade, replace, or close USTs.

Lower priority will be given to:

- small UST facilities (generally four or fewer tanks) owned and operated by one person not owning or operating other regulated UST facilities, and
- USTs owned or operated by local governments and states (including public service entities such as school districts, fire departments, and police departments).

Other current UST issues include Year 2000 (Y2K) compliance for products and systems that utilize date-sensitive devices controlled by microprocessors. The Petroleum Equipment Institute (PEI) has developed a Y2K compliance database for products and systems made worldwide by PEI manufacturer division members. Refer to **www.pei.org**.

Note: EPA is concerned about methyl tertiary-butyl ether (MTBE) in groundwater at remediated sites where MTBE was not addressed. ASFE's Geoenvironmental Committee is researching the MTBE issue.

(Thanks to Steve Werner (Hatcher-Sayre, Inc.) *and the ASFE Geoenvironmental Committee for furnishing this update.)*

Change

We are pleased to present Part 2 of an article on change orders prepared expressly for NewsLog *readers by Lee R. James. Lee, an Individual Consultant Member, heads up his own firm (Lee James & Associates) and is Vice Chair of the Business and Professional Practice Committee. To obtain Part 1, check* MSP'96.

Keep It Simple

The ability to fax and e-mail creates expectations for timely notification and approval. Always document the need for a change, even if your client is reluctant to react quickly. Most clients appreciate the courtesy of a "heads-up" phone call, warning them to expect a change. (Nobody likes to learn about changes from an invoice.) A unilateral letter to the client is better than no warning or documentation at all. Any type of documentation is better than none.

Types of Changes

Address three types of changes: increases, decreases, and no change. Too often, increases are the only type considered. To establish relationships based on trust, goodwill, and professionalism, inform your client about changes that cause decreases, as well as changes that do not affect the price or schedule.

> **Always document the**
>
> THE NEED FOR CHANGE, EVEN IF YOUR CLIENT IS RELUCTANT TO ACT QUICKLY.

Reasons To Charge More for Changes

Some people believe it's wrong to charge more per unit for services performed as a change. If you're one of them, consider that:

- Changes can necessitate reconsideration of prior conclusions, decisions, risk assessments, methods selection, etc. In fact, changes may create the need to reevaluate everything, requiring senior management involvement.
- Changes can destroy carefully wrought schedules, affecting those involved on the project, as well as their participation on other projects. New coordinative work is often necessary. The costs are real, but often latent.
- Changes can affect other projects, making it harder to meet commitments to other clients.
- Changes can dampen staff morale, especially when staff must do more work within the existing schedule.
- Charging a higher rate for change services discourages changes. The easiest way to encourage changes is to do them for free or at your usual rates.

True: Clients do not want to be "nickel and dimed" for changes, and they shouldn't be. But you cannot accept changes at no charge. Upfront client communication is the key to handling the issue gracefully and charging for changes at a higher rate.

What Managing and Selling Changes Can Do

Successful change order management can achieve a number of important benefits:

Appropriate profit: You get paid for the services you provide, both apparent and latent.

Enhanced service quality: Timely communication can result in perceived quality being as good as actual quality. Some clients say, "If you can't manage changes, how can you possibly manage difficult technical issues?"

Improved company morale: Successfully selling and implementing change orders permits employees to experience success and be compensated well for the "above-and-beyond" work they perform.

Effective documentation: Project changes that are fully documented and available for close-out audits can alleviate

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GRAPE PRESS

In this issue we toast ***Tatachilla*** (McLaren Vale, Australia), whose 1997 80% Grenache/20% Shiraz sells for about $12 per bottle. Tatachilla is one of Australia's oldest producers. It seeks to emulate a classic French Chateauneuf du Pape. But Tatachilla doesn't really taste like one. It's better, thanks to a mysteriously succulent lightness that makes it unique, and oh so delicious. Based on our tasting, we suggest you open two bottles at the same time, and give yourself about one hour to consume the first. Significant changes will occur as you sip.

During the first 30 minutes, the wine evokes a taste of deep plum with hints of raspberry, supported by a dense chocolate. Yummers! Then, in the second half-hour, a certain dryness creeps in, with a peppery, spicy twang as the wine goes down, somewhat akin to an obese zinfandel, thanks to the accents of tobacco that settle in at the back of the tongue.

At the one-hour mark, the wine is really ready to drink, which is why you need the second bottle. At this point, it achieves a robust fullness rounded with hazelnut and sharpened with spice. One taster said, "Don't forget the toffee," which, mixed with the chocolate, turned Tatachilla into a rich, jam-laced Heath Bar.

As we said before, yummers. This is a wine to get as much of as you can. *Note:* Stephanie Bialobok (*Lourie Consultants*) has suggested that members be invited to submit reviews of wines they've tasted, and we think that's a great idea! We try to focus on wines that are generally available in most major metropolitan areas, and that sell for $25 per bottle or—preferably—less. Go to it!

DR. ENGLISH

In our last issue, we noted that answering the questions *who*, *what*, *when*, *where*, *how*, and *why* is essential to effective documentation. We discussed the first three questions. Now, the latter three...

Where: This question is most easily answered by referring to a map, plat, handrawn diagram, or similar device, when appropriate. Otherwise, it can be used to confirm assumptions, or to help prevent wrong ones from being formed. *Example:* "I spoke with John Jones on Thursday, April 22, 1999, at 11:05AM." *Where* were the two of you when you spoke? Without answering that question, the reader could make a wrong assumption. "Thus, you would continue the note,I was in my car; he said he was on site." (Note the difference between "he was on site" and "he said he was on site.") Is detail like that really important? It certainly could be, and it takes only two seconds to add it.

How: Answering this usually involves looking at the verbs you use; e.g., in the example above, you would ask, "spoke *how?"* In that case, however, you would not need to indicate that you used a cell phone. One can assume that, if you spoke in your car to someone not with you, you had to use a cell phone. However, if you had written "I spoke with John Jones on Thursday, April 22, 1999, 11:05AM at the site," answering *how* would certainly help you be more specific, to prevent the assumption that you both were on site. (Remember, words or phrases that feasibly can be taken more than one way are the seeds effective lawyers use to sow reasonable doubts.)

Why: This often can be the most important question of all, and you need to pose it at various levels, in part to challenge yourself. Picking up on the foregoing example, *why* did you call John or *why* did John call you? *Why* were you in your car? *Why* was John at the site? If the answers are blatantly obvious, you don't need to be even more so. But sometimes they are not so obvious, and indicating motivations, or suspected motivations, can be of value. Now go to the next level. *Why* are you preparing documentation? Often people do so because they have a gut feeling that they should, because something may be going wrong. But *why* documentation and not something else? *Why* not talk to someone about your gut feeling? Is it 5:30PM on a Friday? If that's why you're writing, be sure to leave a copy of the documentation on your desk, so you can get back to it first thing on Monday; or put a copy on someone else's desk; or leave a voice mail.

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or eliminate questions that might arise from the client. They can also be used to estimate more effectively in the future.

Encouragement of proactive management: Anticipating changes gives management the opportunity to address—and thereby avoid—potential problems. Managers with experience can provide important insights. Involvement can reduce present and future problems.

Fewer surprises: Surprises can be eliminated or at least reduced in number, by addressing changes immediately when requested by the client, or when you identify and communicate them to the client.

Better communication: Clients want to know *now*, not later. Effective change management gives clients the level of communication they usually prefer.

A better future: Credibility and professionalism will result in goodwill, a stronger partnering relationship, and future work.

Submitting and justifying changes can be difficult tasks, especially when dealing with tough clients. Partly for that reason, selling the justification for changes to ourselves can be an even more difficult task. But performing these tasks can be eminently worthwhile: When changes are handled appropriately, a stronger firm and stronger client relationships can result.

MAY/JUNE NEWSLOG MEMBER SERVICE FORM

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