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State DOTs given autonomy to choose sewer materials

A new [rule](#) by the Federal Highway Administration (FHWA) encourages a more competitive business environment for federal-aid highway projects by ensuring that state departments of transportation (DOTs) have the freedom to bid on various material types for culvert and storm sewer construction.

The rule comes in response to a provision in [MAP-21](#), the nation's surface transportation law. FHWA previously required state DOTs to get approval from the agency in order to use a specific material or product in construction.

Although there is now more autonomy, the rule change does not allow states to favor one specific product over others made from the same material without approval by the FHWA administrator. The material types must still meet all other federal requirements, such as Buy America, design standards, and restrictions against patented and proprietary products.

The new rule is effective Feb. 27. Stay tuned to *Actionline* for more developments.

View the [all-new](#) 2013 ACPPA Congressional Directory

ACPPA is always encouraging its members to actively engage in the legislative process. Developing a relationship with your lawmakers and serving as a representative of the concrete pressure pipe industry is crucial.

The ACPPA congressional directory is the best resource to identify your members of Congress and find contact information to connect with their key staff members.

[Click here to view the new congressional directory.](#)

Congress averts fiscal cliff; exposes new challenges for the new year

On Jan. 3, President Obama signed the American Taxpayer Relief Act ([H.R. 8](#)), bipartisan legislation that forestalled the fiscal cliff, but failed to address the tax and spending items that have put the nation in such a precarious fiscal situation.

The law prevented massive tax hikes for most Americans and includes several items important for the construction industry, including extending the 50 percent depreciation bonus for 2013 and providing a permanent fix to the Alternative Minimum Tax. At the same time, the measure raised taxes on high-earners and temporarily delayed the across-the-board spending cuts required by sequestration. Perhaps most disappointing was the failure to address the underlying causes of how we got in the current mess.

Rather than using this historic opportunity to address comprehensive tax reform or reduce federal spending, lawmakers simply punted, leaving the 113th Congress to clean up the mess. What's more, the battles at the end of 2012 exposed deep political fissures that will present significant challenges for obtaining an ultimate resolution.

New year, new challenges, old problems

Having merely delayed long-term action on the issues of sequestration, tax reform, and the national debt, the fiscal cliff battle revealed important fault lines.

Staying in Touch: ACPA-Action.org

ACPPA has made many upgrades to its grassroots advocacy and congressional outreach tools at www.ACPA-Action.org.

The revised site features a modern design, improved action alerts, and easier access to information about ACPA's legislative priorities. If you haven't done so yet, visit today!

www.ACPA-Action.org

The clash over the fiscal cliff uncovered a deep rift within the House GOP. Speaker John Boehner (R-Ohio) abandoned negotiations with President Obama after his Republican colleagues soundly rejected his proposed fix. This shifted action to the Senate, where Minority Leader Mitch McConnell (R-Ky.) took the lead for the GOP and worked with Vice President Joe Biden to reach a solution to avert the cliff.

In the opening days of the 113th Congress, several GOP lawmakers voted against Boehner to serve a second term as speaker. Since that time, many Republicans have come out adamantly against any future revenue increases. All this demonstrates that in the looming battle for comprehensive

tax reform, the House Republican conference is likely to be a wild card as the party establishment battles tea party-backed conservatives for the majority of the GOP vote.

President Obama, emboldened by his recent election and fiscal cliff victory (raising taxes on the wealthy), has stated that he will not negotiate with the GOP over increasing the nation's borrowing ceiling. Sensing that a battle over the debt limit is a political loser, House Republicans passed a plan ([H.R. 325](#)) to allow the federal government to continue to pay its debt through May 19. This buys time for lawmakers to move forward on a longer-term solution to sequestration and comprehensive tax reform.

As *Actionline* went to press, the Senate was expected to approve H.R. 325 and send it to the White House for the president's signature.

What's next?

With the battle lines drawn, Washington is again in the middle of high-stakes political drama.

While the 113th Congress has barely finished organizing, many are already expressing pessimism over lawmakers' ability to right the nation's fiscal house. Despite the widespread budget and tax uncertainty, much of the motivation to reach a deal has seemingly vanished. This has led House Ways & Means Committee Ranking Member Sander Levin (D-Mich.) to predict that broad-based tax reform is unlikely to occur in 2013.

While we do not share Rep. Levin's pessimism, it is essential that the concrete pressure pipe industry keep pressure on lawmakers. In a town that seemingly thrives on the urgency of a hard deadline, it is critical that elected officials hear about the necessity of urgent action and the consequences of failure. ACPPA will spend 2013 in an all-out push to reform the tax code and develop sustainable solutions to our national debt. But, we're going to need your help.

Be sure to visit the newly updated www.ACPPA-Action.org to send a message to your lawmakers encouraging leadership on tax and spending issues.

ACPPA talks cement with PCA's David Hubbard



Actionline recently sat down with concrete industry ally [Portland Cement Association's](http://www.PortlandCementAssociation.org) (PCA) Vice President of Government Affairs David Hubbard to capture his insights on legislative and regulatory issues.

Actionline: David, can you give us a few brief thoughts about how the cement industry fared in 2012?

Hubbard: Like most construction material suppliers, 2012 was a challenging year for the cement industry. Although cement consumption grew by roughly 6.5 million metric tons (or nearly 9 percent) during 2012, this robust pace must be put into context of the 54 million metric ton decline that transpired between 2005 and 2010. While capacity rates increased during 2012, they remain severely depressed at about 68 percent. Eight plants remain temporarily shut down and will likely continue that way until demand conditions improve. On the bright side, PCA has

upwardly revised its projections for 2013 cement consumption from its fall forecast to 8 percent growth.

Legislatively, 2012 was a successful year. Although the Cement Sector Regulatory Relief Act ([H.R. 2681](http://www.congress.gov/bills/112/2681)) was not passed in the Senate (the House passed the bill in Oct. 2011), the legislation raised the profile of this burdensome regulation on our industry and other sectors. PCA ultimately reached an agreement with EPA in 2012 that would delay implementation of the new air regulations by two years. Enactment of a 27-month surface transportation bill (MAP-21) was another significant legislative accomplishment. The legislation provided some certainty for state Departments of Transportation to move beyond simple maintenance activities to larger projects that are more favorable for cement consumption. We were particularly pleased that the legislation narrowed the scope of programs to focus on the National Highway System and included PCA-advocated provisions regarding performance standards, the use of lifecycle cost analysis, and the accelerated deployment of concrete pavement research results.

Actionline: What are PCA's legislative priorities for 2013?

Hubbard: PCA's 2013 legislative priorities largely focus on federal infrastructure investment, including reauthorization of the Water Resources Development Act and legislation that increases investment in drinking and wastewater infrastructure. PCA will continue its effort to incentivize the use of stronger

construction standards in disaster prone areas. With the expiration of the surface transportation bill just around the corner, we will be laying the ground work for the next bill, including working with Congress and stakeholders to find funding solutions. With regard to environmental legislation, PCA is strongly supporting a legislative solution to classify fly ash as a non-hazardous waste. And with the President's emphasis on climate change during his inaugural address, PCA is ready to focus on that important issue as well.

Actionline: You mentioned the EPA's persistent threat to regulate fly ash as a hazardous material, which would disrupt the industry considerably. What do you see happening to fly ash on the legislative and regulatory fronts in the coming year?

Hubbard: PCA shares ACPPA's concerns regarding the management of fly ash and the chilling effect the rulemaking process has had on its use in concrete. We believe there is more than a 50/50 chance that Congress will resolve this issue through legislation declaring fly ash a non-hazardous waste. Nevertheless, EPA is not likely to finalize a rule making it a hazardous waste.

Actionline: How have North American Concrete Alliance (NACA) and ACPPA worked together in the past and what do you see as the value of the relationship?

Hubbard: NACA is a coalition of 15 concrete-related associations formed in 2004 to address industry-wide concerns in the areas of research, education, and government affairs. Through weekly conference calls over the past several years, NACA has primarily focused on enacting federal infrastructure legislation, most notably the surface transportation bill, resilient construction legislation, fly ash regulation, and water infrastructure investment. The conference calls provide an opportunity for each association to discuss their respective advocacy efforts, and share intelligence from Capitol Hill and within agencies. NACA also provides a forum for the wide breadth of the industry to get behind an issue. This strengthens our voice on Capitol Hill. Additionally, NACA members periodically host fundraisers for members of Congress.

Actionline: What can ACPPA and its members do to help NACA achieve its legislative goals?

Hubbard: ACCPA's Daniel Fisher is a key participant on the NACA conference calls. We will look forward to ACCPA's continued participation and perspectives, especially as Congress considers fly ash and water infrastructure legislation in the coming months.

Court rules Obama NLRB appointments unconstitutional

On Jan. 25, the U.S. Court of Appeals for the District of Columbia circuit [ruled](#) that President Obama's recess appointments to the National Labor Relations Board (NLRB) violated the U.S. Constitution.

The case, *Noel Canning v. National Labor Relations Board*, challenged the validity of three Obama appointees made in early 2012. The court held that at the time, the Senate was not in recess and that the individuals did not fulfill a vacancy that happened during a recess of the upper chamber.

The NLRB argued that the president had the authority to determine when the Senate was in recess for the purpose of making appointments. "As a matter of cold, unadorned logic, it makes no sense to adopt the

Board's proposition," the court declared. Rather, it found that under the Constitution, the president's power to make recess appointments only applies to the recess between sessions of Congress.

Secondly, the court held that a president only has the power to make recess appointments to fill vacancies that happen during a Senate recess. "[T]he filling up of a vacancy that happens during a recess must be done during the same recess in which the vacancy arose," the court ruled.

While the ruling is a significant victory for employers burdened by the Obama administration's activist labor board, it has political ramifications that reach far beyond the NLRB.

As Washington has become increasingly polarized, the Senate has refused to recess in order to prevent the president from making recess appointments. Citing the need to ensure efficient government, however, President Obama has made several recess appointments to other positions. The validity of these will likely be called into question and any decisions made by those individuals will be challenged.

The D.C. Circuit's decision is sure to be appealed, especially as other courts have recently permitted recess appointments in similar cases. Given the importance of the outcome, most judicial commentators anticipate the U.S. Supreme Court will take up the case in the future.

Meet the new T&I committee leadership

Incoming House Transportation & Infrastructure (T&I) Committee Chairman Bill Shuster (R-Pa.) and Ranking Member Nick Rahall (D-W.V.) unveiled the panel's vice chairman and subcommittee chairs for the 113th Congress.

Rep. John Duncan (R-Tenn.), former chairman of the highways & transit subcommittee, will serve as the vice-chair. In this position, Duncan will lead a series of special panels that will be tasked with making recommendations to the full committee.

Rep. Tom Petri (R-Wis.), a long-time champion for infrastructure investment, will take over the reins of the Subcommittee on Highways & Transit. This important subcommittee will play a leading role in crafting the next highway bill, due for reauthorization in 2014. Rep. Peter DeFazio (D-Ore.) will remain the subcommittee's leading Democrat.

On the Subcommittee on Water Resources & Environment, two-term Rep. Bob Gibbs (R-Ohio) will again serve as the subcommittee's chair. He will continue to work closely with a long-time water infrastructure advocate, Rep. Timothy Bishop (D-N.Y.).

The rest of the T&I Committee's subcommittee leadership includes:

- **Aviation:** Chair: Rep. Frank LoBiondo (R-N.J.); Ranking Member: Rep. Rick Larsen (D-Wash.)
- **Coast Guard & Maritime Transportation:** Chair: Rep. Duncan Hunter (R-Cal.); Ranking Member: Rep. John Garamendi (D-Cal.)

- **Economic Development, Public Buildings & Emergency Management:** Chair: Rep. Lou Barletta (R-Pa.); Ranking Member: Del. Eleanor Holmes Norton (D-D.C.)
- **Railroads, Pipelines & Hazardous Materials:** Chair: Rep. Jeff Denham (R-Cal.); Ranking Member; Ranking Member: Corrine Brown (D-Fla.)

ACPPA congratulates the subcommittee chairs and ranking members and looks forward to working with them to rebuild and enhance America's infrastructure.

A full listing of all representatives serving on the committee, broken down by subcommittee, is available [here](#).

Five things you need to know about WRDA

The reauthorization of the Water Resources Development Act (WRDA) is likely to be among the first infrastructure issues tackled by the 113th Congress. In the House, Transportation & Infrastructure Committee Chairman Bill Shuster (R-Pa.) indicated WRDA is an immediate priority while Senate Environment & Public Works Committee Chairman Barbara Boxer (D-Calif.) made it clear that she will move the measure forward early in the term. The broad bicameral and bipartisan support speaks well for its chances early in the session.

While WRDA legislation has yet to be formally unveiled, ACPPA has put together a list of the five things you need to know about this important bill.

1. According to the American Society of Civil Engineers, America's antiquated infrastructure for marine ports and inland waterways threatens more than 1 million jobs. Planned expenditures between now and 2020 fall nearly \$16 billion short of the \$30 billion of investments needed to properly support the nation's marine ports and inland waterways. Eliminating that shortfall would protect \$270 billion in U.S. exports, \$697 billion of the nation's GDP, and more than 700,000 jobs in 2020.
2. Originally created in 1974, WRDA authorizes the Army Corps of Engineering to conduct water resource studies and undertake projects for flood control, inland navigation, shoreline protection and environmental repair. An Oct. 4, 2012, National Research Council [report](#), "Corps of Engineer Water Resources Infrastructure: Deterioration, Investment, or Divestment?" asserted that the current WRDA is outdated and that water infrastructure priorities need to be reoriented. Look for the 2013 WRDA bill to include elements to reform the Corps and focus more on repairing existing water infrastructure than on new projects.
3. WRDA was last reauthorized for in 2007 in the wake of Hurricane Katrina, which devastated New Orleans and the central Gulf Coast region. President George W. Bush vetoed the legislation, dubbing it wasteful spending. However, Congress overrode the veto and it ultimately became law.
4. The 2007 WRDA law authorized \$23 billion for the Corps to conduct small projects for flood damage reduction, emergency stream bank protection, navigation, environmental protection,

aquatic ecosystem restoration, shoreline preservation, and other provisions, including funding research programs.

5. When last reauthorized, WRDA contained hundreds of earmarks. As such, lawmakers were able to direct funding to specific projects in their districts. This allowed legislators greater control over resource allocation, rather than ceding all authority to the executive branch to make decisions about project approval. However, with both chambers operating under an earmark ban, it's harder to build a coalition of support because lawmakers don't have specific parochial interests in the legislation. Reconciling this rule will present a significant hurdle for the 113th Congress when developing new WRDA legislation.

IRS proposes rule on employer health coverage mandate

On Jan. 2, the Internal Revenue Service (IRS) proposed a new [regulation](#) clarifying the requirements for companies to provide health insurance to full-time equivalent (FTE) employees under the Affordable Care Act.

Under the "Shared Responsibility for Employers Regarding Health Coverage" (or "employer mandate") section of new healthcare law, companies with 50 or more full-time employees (or an equivalent combination of full- and part-time employees) are required to provide "affordable" health insurance coverage to workers that meet time-in-service qualifications. The proposed rule states that an FTE employee working 130 hours in a calendar month satisfies the 30 hours of work per week requirement.

The proposal would prescribe three different methods to determine whether a non-hourly employee qualifies: counting actual hours of service; using a days-worked equivalency, where eight hours of service counts as a day; and using a weeks-worked equivalency, where 40 hours of service per week counts as a week. Companies can apply the methods to different classifications of non-hourly employees, as long as it is done consistently and does not understate their hours-in-service so as to disqualify them from health coverage.

New hires will be under a twelve-week grace period before their status is reviewed under a "look back" formula, which lays out how to classify variable-hour employees and new hires whose statuses have changed in the first three months of work.

Finally, the proposed rule would require employer plans to offer coverage to a qualifying employee's dependents, defined as children under the age of 26. Companies will not be required to include an employee's spouse in their medical plans.

The IRS provided a [Q&A page](#) in anticipation of frequently asked questions. [Comments](#) to the proposed rule are due March 18. A public hearing is scheduled for April 23.

New reports detail infrastructure woes

On Jan. 15, the [American Society of Civil Engineers](#) (ASCE) released a report looking at the impact that underinvestment in infrastructure will have on our nation's medium and long-term economy.

["The Impact of Current Infrastructure Investment on America's Economic Future"](#) projects that by 2020 the gap between available funding and the amount needed to maintain our national infrastructure will be roughly \$2.7 trillion. This gap will cost \$3.1 trillion in lost gross domestic product, 3.5 million jobs, and shrink household disposable income by \$3,100 yearly. By 2040, infrastructure needs will require a \$10 trillion investment, causing the gap to reach a staggering \$4.7 trillion.

On Jan. 16, [Building Americas Future](#), a bipartisan coalition of elected officials dedicated to enhancing infrastructure investments, led by New York City Mayor Michael Bloomberg (I) and Former Govs. Arnold Schwarzenegger (R-Calif.) and Ed Rendell (D-Pa.), released its own study, ["Falling Apart and Falling Behind."](#)

The report examines problems with American infrastructure and looks to programs in other countries that have enjoyed success. It concludes with several recommendations for reinvigorating the nation's infrastructure including basing investment strategy on economics, passing a long-term transportation bill, developing innovative funding mechanisms, and promoting accountability and innovation.

These reports again highlight that without renewed investment in infrastructure our economic future becomes increasingly uncertain. To urge your lawmakers to make infrastructure investment a top priority, be sure to visit www.ACPPA-Action.org.