

# LITIGATION SNAPSHOT

*How AGC is Protecting Contractors in the Courts*



## WHEN WE GET INVOLVED

AGC's litigation program concentrates primarily on federal cases where the most potential exists to set precedents for the broader construction industry nationwide, or the opportunity exists to block the enforcement of harmful federal regulations.

AGC of America may join a chapter's efforts before a state's highest court when the issues being considered are likely to set broader standards for the construction industry.

### SUPPORT THE FIGHT!

The Construction Advocacy Fund powers AGC's litigation efforts - helping challenge harmful regulations and protect the industry.



## AT-A-GLANCE CASE TRACKER

| CASE                                                                                                                 | STATUS                  |
|----------------------------------------------------------------------------------------------------------------------|-------------------------|
|  <b>PFAS</b>                        | Unfavorable Result      |
|  <b>Reliance on Bid Materials</b>   | Awaiting Oral Arguments |
|  <b>NEPA Expansion</b>              | Awaiting Oral Arguments |
|  <b>State Prevailing Wage Laws</b> | Awaiting Oral Arguments |
|  <b>Bargaining Orders</b>         | Amicus Brief Filed      |
|  <b>Buy America Waivers</b>       | FOIA Request Filed      |



## AGC WINS!



### DAVIS BACON: CHALLENGED PROVISIONS VACATED

District Court ruling favorably resolves nearly three-year AGC legal effort to prevent the expansion of Davis-Bacon requirements beyond the scope authorized by Congress.



### STATE PREVAILING WAGE LAWS: PRELIMINARY INJUNCTION SECURED

Federal Court ruling places the prevailing wage law for off-site custom fabrication on hold while the case proceeds.





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## ENVIRONMENT | PFAS SUPERFUND RULE

*Increased Costs for Construction and Risk of Liability*

**THE ISSUE:** EPA designated two PFAS as [hazardous substances](#). Contractors could face cleanup liability simply for moving contaminated soil or water, even without knowing about it. In addition, contractors are facing increased costs for shipping and disposal of certain construction debris that contains PFAS.

**THE LATEST:** The D.C. Circuit [upheld](#) EPA rule, leaving the designations in effect.

**NEXT STEPS:** AGC advocacy ongoing through efforts in Congress, [meetings](#) with EPA, and [resources](#) for members.

## CONSTRUCTION | RELIANCE ON BID MATERIALS

*Defective Geotechnical Reports Creating Liability for Construction Companies*

**THE ISSUE:** When a contractor suffers damages because of reliance on materials in the bid package, does the *Spearin doctrine* provide a remedy for the contractor?

AGC is arguing that defective geotechnical reports should indemnify contractors for project delays caused by soil movement and slope failures.

**THE LATEST:** Amicus brief [filed](#) on July 24.

**NEXT STEPS:** Oral arguments to be scheduled.

## ENVIRONMENT | NEPA EXPANSION

*Expanding Environmental Review to Permit Applications*

**THE ISSUE:** Are routine permitting steps, specifically the submission or renewal of permits, “final agency actions” that trigger NEPA review?

If so, it could lead to increased uncertainty, longer review times, and new litigation opportunities at multiple points in the permitting process.

**THE LATEST:** Amicus brief [filed](#) on May 29

**NEXT STEPS:** Oral arguments scheduled for October 7

## CONSTITUTIONAL | STATE PREVAILING WAGE LAWS

*Expanding State Prevailing Wage Requirements to Out-of-State Fabricators*

**THE ISSUE:** The state of New York passed a law requiring prevailing wages for custom fabrication work to be used on projects in New York, even if that work is completed outside the state. AGC of America and AGC New York State [filed suit](#), claiming that the law unconstitutionally discriminates against out-of-state companies.

**THE LATEST:** [Preliminary Injunction](#) secured.

**NEXT STEPS:** Briefings underway.

## LABOR | BARGAINING ORDERS

*Lowering The Standard for Imposing a Bargaining Order*

**THE ISSUE:** The 2023 *Cemex* held, in part, that when a union demands recognition, an employer must either recognize it or promptly seek an NLRB election, or the NLRB can order bargaining.

**THE LATEST:** AGC signed on to an amicus brief filed with the NLRB September 10 in *Amazon Services*, the first case challenging this new affirmative obligation and the first chance for the Trump-appointed NLRB to review *Cemex*.

**NEXT STEPS:** Case pending NLRB decision.

## PROCUREMENT | BUY AMERICA WAIVERS

*Understanding Why the Buy America Waiver Process Takes So Long*

**THE ISSUE:** It can take years before a Buy America waiver request is even posted for public comment. AGC is [seeking records](#) that will explain the delay and the Made In America Office’s process for adjudicating requests. The records will be used to shape our advocacy decisions on the issue.

**THE LATEST:** Freedom of Information Act (FOIA) request submitted on May 14.

**NEXT STEPS:** Awaiting records.