

## Attention Members!

The date of the BIM Membership Meeting has been changed from October 31st to December 6th. See page 8 for details.

# SFNE NEWS October 2007



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## Greetings SFNE Members,

I am delighted and honored to have been elected to serve as the president of SFNE. I look forward to the opportunity to serve the membership and in continuing the great work of our former president Hollie Noveletsky of Novel Iron.



*Mark Carter*  
**SFNE President**  
*American Steel Fabricators*

Over the past few years we have made SFNE stronger and more viable. Today we have a greater visibility in the industry, we are more organized, our membership is growing and more people are getting involved and active.

Clearly we have more work to do. We must continue to find new and innovative ways to meet the needs of the membership. First and foremost we must increase the membership. After a recent strategic planning session, the SFNE Board made its number one priority for the coming year the growth of the membership base. If SFNE is to truly become a unified force capable of effecting legislative change and able to promote the structural steel and miscellaneous steel industry, then the majority of the industry must become active participants in the association.

To effect this growth SFNE will be reaching out to its current membership, which will be asked to spread the word about the benefits of the association. Our message will be proactive and emphasize that an investment in SFNE is invaluable.

In addition to our focus on membership growth, the SFNE Board has streamlined our mission to the following:

*The Steel Fabricators of New England (SFNE) is an association of structural steel and miscellaneous metal fabricators and allied companies that serve the building and bridge construction markets in New England.*

*The mission of SFNE is to promote the use of fabricated structural steel and miscellaneous metals in buildings, bridges and similar structures through education, legislative advocacy, and networking activities.*

We believe that our new mission statement more accurately reflects our philosophy and will help us in the future as we create and design membership programs and events. I look forward to a great year.

**Sincerely,**  
**Mark Carter**  
**SFNE President**

## New Board of Directors Elected

At the SFNE Annual Meeting, held on September 10th, a new Board of Directors was elected and the new officers announced. During his remarks new president Mark Carter of American Steel Fabricators acknowledged the work and contribution made by his predecessor **Hollie Noveletsky** of Novel Iron Works. He said, “Under Hollie’s leadership, SFNE was reorganized and transformed into a more user friendly and more inclusive association. We owe her our gratitude and thanks.”

Mark also thanked the board members and officers whose terms have ended. He acknowledged **John Yohe** of Megquier & Jones, Inc., who has stepped down as treasurer. He thanked **Gus McBrady**, from James A. McBrady, Inc., who has retired as SFNE secretary and as a Board member. He also acknowledged **Mark Gosselin**, from A. Gosselin Steel, who has also retired from Board service.

### SFNE Board of Directors

Officers	President	Mark Carter, American Steel Fabricators
	Vice President	Mark Haight, Infra-Metals Corporation *
	Secretary	Tim Gendron, Tim’s Fabricators Inc. *
	Treasurer	Eric Greene, American Welding Co., Inc. *
	Immediate Past President	Hollie Noveletsky, Novel Iron Works, Inc. *
Directors	Terry Block, Isaacson Structural Steel, Inc.	
	John De Vries, Central Steel Supply *	
	Lawrence Morgan, Cives Steel Company *	
	Ron Morin, Metals USA **	
	Craig Van Sant, Atlantic Machinery Sales	
	John Yohe, Megquier & Jones, Inc. *	

*\* Reelected for two year-board term -- \*\* Newly elected for two-year board term*

## SFNE Presents Certificates of Appreciation

During the SFNE Annual Meeting **Mel Nash** was recognized for his contribution to the association. Mel drafted the Standard Proposal for Structural Steel and for Miscellaneous Steel. Both documents represent a major milestone for SNFE and have already proven to be helpful to members of the steel industry in New England. His legal work on behalf of SFNE will serve and protect the membership long into the future.

SFNE also recognized **Bill Pascoli**, the Senior Regional Engineer from the American Institute of Steel Construction (AISC). During the years of the SFNE transition, the association has relied upon the services and assistance of Bill Pascoli to help plan events and meetings. His experience and willingness to pitch in is appreciated.



*SFNE president Mark Carter (right) presents Certificate of Appreciation Award to Mel Nash (left).*



*SFNE president Mark Carter (left) presents Certificate of Appreciation Award to Bill Pascoli (right).*

## Second Annual Golf Classic and Networking Event

SFNE's held its 2nd Annual Golf Classic and Networking Event at Wedgewood Pines in Stow, Massachusetts on September 10th. The event was a great success, thanks in large part to the great volunteers, to the sponsors and to all those who made donations to the event.



Special thanks are due **Rick Belair** of Novel Iron, who served as the Golf Tournament's Chairman for the second year. For their volunteer efforts before and during the Tournament special thanks are also due **Ann Haber** and **Chris Libby**, also of Novel Iron.

Two people who were instrumental behind the scenes in the success of the Tournament were **Marc Gosselin** of A. Gosselin Steel and **Mark Cox**, of Rose Steel Inc. From the shirts to the golf bags these two guys went that extra mile for SFNE and their efforts are appreciated.

Thanks is also due **Atlantic Machinery Sales**, which donated the golf shirts for the event.

**To view the powerpoint slide show designed by Ann Haber go to [www.ssfne.org](http://www.ssfne.org) then click on Calendar of Events.**

### Special Thanks to the Sponsors

#### Masters Champion

Airgas-East, Inc.  
Atlantic Machinery Sales  
Infra-Metals Corporation  
Isaacson Structural Steel, Inc.  
Novel Iron Works, Inc.  
Tim's Fabricators Inc.

#### Open Champion

American Welding Co., Inc.  
Atlas Tube  
CMC Joist & Dock  
Dean Steel  
Duncan Galvanizing  
Fraser Molloy & Associates  
HTA/Kimball Chase  
Metals USA  
Primary Steel, Inc.  
Surfaceworx (International Paint)  
Triad Metals International  
Universal Steel Erectors, Inc.

#### Players Champion

American Steel Fabricators  
Hillsborough County Iron Works  
Mass Crane & Hoist Service, Inc.  
New England Steel Detailers Association  
Peddinghaus Corporation

#### Tee/Green

Ameriprise Financial  
Canam Steel Corporation  
Tekla Corporation  
The Berlin Steel Construction Company

#### Donations

Airgas-East, Inc.  
Atlantic Machinery Sales  
Bennington Iron Works, Inc.  
Isaacson Structural Steel, Inc.  
Mass Crane & Hoist Service, Inc.  
Novel Iron Works, Inc.  
Peddinghaus Corporation  
Steeltech Building Products  
Surfaceworx (International Paint)  
Tim's Fabricators Inc.  
Universal Steel Erectors, Inc.

## Golf Tournament Continued

### Winners

#### First Place



*Mike Julian, Alan Burton, Jim LaPlant, and Mark Ellis, all from Surfaceworx (International Paint).*

#### Second Place



*Russell Shiebler and Mark Kelly New England Steel Detailers Association, Michael Lowe, Controlled Automation, and Don Grigg, Tekla Corporation.*

#### Third Place



*Scott Demoncada, Ellsworth Wolf, Mike Bittenbenda, and Matt McMahon, all from Atlas Tube.*

#### Closest to the Pin



*Alan Burton, Surfaceworx (International Paint)*

#### Longest Drive



*Ray Cilley, American Steel Fabricators*

## Welcome New Members & Calendar

### Welcome New Members

#### Airgas-East, Inc.

27 Northwestern Drive  
Salem, NH 03079  
Phone: (603) 890-4600  
Fax: (866) 336-9167  
www.airgas.com  
GarySmith, Sales Manager  
gary.smith@airgas.com

#### Cohen Steel Supply Inc.

10 Basin Street, PO Box 1744,  
Concord, NH 03301  
Phone: (603) 225-2047  
Fax: (603) 227-0789  
www.cohensteel.com  
Peter Webster, President  
pwebster@cohensteel.com

#### Core Detailing, LLC

75 Gilcrest Road, Suite 200  
Londonderry, NH 03053-3564  
Phone: (603) 425-5129  
Fax: (603) 432-3371  
Christopher Aubrey, President  
Chris@Coredetailing.com

#### Fraser Molloy & Associates

32 Spice Street, PO Box 202  
Lincoln, MA 01773  
Phone: (617) 241-0495  
Fax: (617) 241-8322  
www.frasermolloy.com  
Michael Gilberto, President  
mike.gilberto@frasermolloy.com

### Calendar of Events

#### December 6, 2007

Membership Meeting  
Building Information  
Modeling (BIM)  
Highlander Conference Center  
Manchester, NH



#### February 1- 3, 2008 \*

SFNE Ski Trip  
Waterville Valley, NH



\* Details coming soon.

## Legislative News

### Massachusetts

#### Prompt Pay Legislation Moves Forward



The Associated Subcontractors of Massachusetts (ASM) recently announced that after months of behind the scenes work, they were pleased to announce that they had completed the revisions to the “Fair Payment in Private Construction” legislation. This is legislation supported by SFNE. ASM reports that the new bill is more readable, but all of the major provisions remain intact.

The Legislature has not yet held a public hearing on the bill – but ASM expect that will happen in the next couple of months. When it does SFNE will be looking to the membership for anecdotal evidence for the need for this legislation. We will also be asking for volunteers to testify on behalf of the bill. Thanks already to **John De Vries** of Central Steel Supply for his efforts. An ASM Summary is follows.

*ASM “Fair Payment in Private Construction” Bill  
July 2007 Redraft*

The July redraft of the legislation is quite different from the original version – mostly in form, but also in substance, in several key respects.

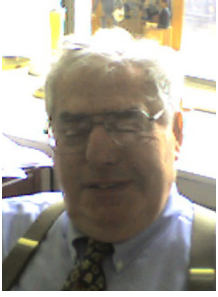
Based on discussions with the AGC last fall we have removed some of the provisions that sparked the greatest concern – most notably, the mandatory 30-day billing and payment schedule, and the provisions relating to retainage. The new version leaves the specific timing of requisitions, approvals and payments to the discretion of the parties, in order to respect “private right of contract”.

In addition, we have re-arranged the legislation for more logical “flow” and changed much of the wording to improve clarity and consistency.

These changes aside, however, the substance of the legislation remains largely the same. The new draft continues to include these key provisions, with modifications as noted:

- 1) The requirements of the statute apply equally to all parties up and down the chain – owners, contractors, sub-contractors, and sub-subcontractors (including material suppliers).
- 2) All contracts must include a specific requisition and payment schedule. There is no longer a mandatory 30-day billing cycle, but in the absence of a specific schedule in the contract, the default billing and payment schedule will be 30 days.
- 3) All contracts must include a specific time for approval of requisitions, but the time is no longer set by statute. All parties must give timely notice of amounts not approved. Approved requisitions must be passed up the chain timely, and failure to do so cannot be used as a reason to withhold payment.
- 4) Payment for changes in the work is due in the normal requisition & payment cycle, provided the changes were authorized in writing (a new requirement). Payment cannot be contingent on having formal written change orders adjusting the contract price.
- 5) All parties may withhold payment for legitimate reasons: i.e., for retainage reserved by the owner or for good faith claims or disputed amounts.
- 6) The contract must state a specific time for payments to be made. In the absence of a specific time in the contract, the Owner must pay within 30 days of receiving a requisition, and each lower tier party must pay within 7 days of receiving payment.
- 7) Contingent payment provisions (aka “pay-if-paid”) are not allowed.

## Who Pays When The Cost Of Steel Goes Up?



*This is the first in a series of articles that will be written by SFNE members who have agreed to share their expertise for the betterment of the steel industry.*

**By Mel Nash**  
**Law Office of E. Melvin Nash**

As many Steel Fabricators learned the hard way, in most cases, when the price of the structural steel goes up during an existing contract due to an increase from the manufacturer or the warehouse, the Fabricator usually absorbs that increase. In general, this becomes the harsh reality because as the subcontractor responsible for fabricating and erecting the structural steel, the Fabricator is in the best position to deal with this increase. The Owner's position is that "it has hired a general contractor whose job is the construction of the project. The General Contractor, recognizing its role, in turn looks to the Fabricator whose specialty is purchasing the steel for fabrication and erection at the jobsite. Under basic concepts of contract law, unless otherwise provided in the Fabricator's subcontract with the General Contractor, the risk of this increased cost is shifted from the Owner to the General Contractor and ultimately flows down to the Fabricator. Despite Fabricators' hopes for a different outcome, this was the result which occurred over the past several years in our industry when the price of steel went up in double digit percentages.

Looking back over the past 55 years, the steel industry has a history of being quite cyclical. These cycles in our industry have been affected by the varying temperature of the business climate in general, changing

interest rates, the requirements of the military, the increased instability of the global economy, and many other factors which affect the supply and demand of basic steel.

Given that these cycles will continue in the future, this article will focus on what actions the Fabricator might take to deflect these increased costs which have come to affect our bottom line – the profit or loss on a particular project.

### **Prompt Acceptance Of Fabricator's Proposal**

Your Proposal should include language to the affect that "This Proposal shall remain open for a period of 30 days from the date of this Proposal". Such language will accomplish two things. First, it will provide an opportunity for the Fabricator to withdraw its Proposal should it not be accepted within the stated time. Should the cost of steel increase after the stated time, the Fabricator is under no obligation to commit to the quoted price. Under these circumstances, the Fabricator can provide notice and submit a new price based on the increase or can simply walk away from the project. A secondary benefit for including such language is that it limits the time within which the general contractor can engage in "bid shopping".

### **Delays in Project Progress**

Assuming your bid is accepted within the time frame acceptable under your proposal, the next big hurdle is getting the steel ordered in a timely fashion. The typical causes for delay in the ordering of materials by the Fabricator are revisions in structural steel drawings or delays in approving submittals by the General Contractor or Owner.

*Continued on page 7.*

## Who Pays When The Cost Of Steel Goes Up?

These problems can be overcome by including in your Proposal that “any revisions in the Structural Drawings or delay in the approval of Shop Drawings prepared by the Fabricator, which prevents the ordering of the Structural Steel beyond 30 days from the earlier of the date of the Subcontract or the submittal of Shop Drawings by the Fabricator, which results in an increase in the cost of said Structural Steel as determined by the published price as shown in (name of journal such as Iron Age), shall result in an increase in Subcontract Price between the Fabricator and the General Contractor.”

### **No Damages for Delay and Escalation Clauses**

Many subcontracts contain differing versions of what is known as “no damages for delay clauses”. In the event that one of these clauses is included in your subcontract with the General Contractor it should be modified so as to take into account the foregoing language regarding delays in the ordering of the structural steel by the Fabricator. Similarly, subcontracts often contain clauses which disallow escalation of whatever type and/or cause. These “Escalation Clauses” must be similarly modified to account for delays in ordering the Structural Steel, where such delays are not caused by the Fabricator.

### **Notice**

All subcontracts contain “Notice Provisions” which require the Fabricator to provide written notice in the event of occurrences which may become the basis for an increase in price or an extension of time.

Even if the precautions outlined above have been taken, the Fabricator must comply with notice provisions to the extent there is a delay

in the performance of the Fabricator’s work or a resulting increase in price. Simply from a documentation point of view, the Fabricator must provide prompt written notice to the General Contractor of delays which may result in an increase in the cost of the steel.

### **Conclusion**

Because it is often difficult to anticipate upward fluctuations in the cost of steel, the foregoing issues should be addressed as standard boiler plate in the Fabricator’s Proposal. The argument that “it won’t happen” works both ways. If the delay has been caused by the Owner or the General Contractor and is not the fault of the Fabricator, then the inclusion of such language should not be objectionable. Absent fault by the Owner or the General Contractor, the Fabricator will remain responsible for the increased cost of the structural steel.

As the person most knowledgeable in the steel industry, the Fabricator should remain responsible. It is only when the fault lies with others that addressing these issues will protect the Fabricator.

It is a wise policy to have your Proposals and Subcontracts reviewed by a person trained in interpreting contracts before you execute the Subcontract. Certainly, if the problem becomes apparent and you are faced with the ultimate issue of who pays, the Fabricator should seek the advice of its attorney, where each situation will be determined by the specific facts of the case.

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## Legislative News Continued

- 8) All parties have the right to suspend work, with 7 days notice, if payment is not received within 7 days after the due date; and the suspension cannot be considered a breach of contract.
- 9) The contract time must be extended, and contract sum increased, for contracts affected by suspension.
- 10) All parties have the right to terminate work, with 7 days notice and without penalty, after a suspension of more than 30 days.
- 11) There can be no provisions waiving litigation rights, or rights to resolve disputes through other means. Venue for all actions is to be Massachusetts only.
- 12) The prevailing party is entitled to attorney's fees.
- 13) The law applies to all private construction except small residential projects and certain public-private projects.

*The other New England state Legislatures are not in session. Look for updates in future newsletters.*

## Standard Proposal for the Use of Miscellaneous Metals Issued

The SFNE Board of Directors is pleased to announce that it has approved a Standard Proposal for the use of Miscellaneous Metals. This document is similar to the one approved and published last June for Structural Steel. This document was created by Attorneys Mel Nash and Ross Wecker at the request of the SFNE membership.

The purpose of the proposal is to provide SFNE members with a standardized form to use when submitting a proposal to general contractors. The Standard Form is designed to protect the interests of the miscellaneous metal fabricators and would be used in most cases to initiate negotiations.

To view the proposal and an explanatory letter provided by Mel Nash and Ross Wecker go to [www.ssfne.org](http://www.ssfne.org). Or you can contact Cathy Flaherty at 603-766-7363 or by email to [cflaherty@ssfne.org](mailto:cflaherty@ssfne.org).

## SFNE Membership Meeting

### Building Information Modeling (BIM) Our Way

**NEW DATE -- December 6, 2007**

Highlander Conference Center  
Manchester, New Hampshire

3:00 pm - 7:30 pm

Members - \$40, Non Members - \$60

The date for the SFNE BIM membership Meeting has changed because it is in conflict with Halloween and family activities for many of our members and our speakers. The new date is December 6th.

The event will provide you with both networking opportunities and information on the emerging system of Building Information Modeling (BIM).

Following dinner, guest speaker John Tocci, the president of Tocci Building Corporation, will be joined by Jonathan Hamann, the Project Manager for Cives Steel Company New England Division. Their presentations will follow a three-level discussion on how BIM is currently being used at their respective firms, where BIM is headed in the next two years and where BIM will be in four to five years.

If you have never fabricated from the structural engineer's model, you should attend this meeting to learn what BIM can mean to your business and what it takes to incorporate BIM into your business structure.

### Current Sponsors

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