NEC101 – Early warnings, an introduction

5th March 2025

Agenda

Early warnings - what common mistakes people make, general advice and best practice…mainly talking about the NEC4 Engineering and Construction Contract (ECC)

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Speakers

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What is an early warning? (The principle)

- It is not a defined term.
- You are ‘obligated’ to notify an early warning if you become aware of an event that could….have one of the effects stated in clause 15.1 or that in X10.3, X12.3 or X29.3 (if incorporated).
- Note these are all ‘threat’ type events.

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What is an early warning? (The principle)

- You ‘may’ notify an early warning for anything else, perhaps opportunities or the reverse of the threats. See also last sentence 15.1.
- It is simply a warning, good or bad, or something that could happen – think of it as a (good) part of risk management – part of the concept in NEC of ‘no surprises’.

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Mistakes, advice, best practice….

- If the matter has already happened, it is too late to notify an early warning – how can one prevent it now?
- Unless this matter could go on to cause other problems, i.e. delay Completion – the supplier going insolvent last week, there is no point in giving an early warning. Problems associated with finding a new supplier to prevent delays would warrant an early warning.
- Do not link early warnings with compensation events, they are separate processes (with a connection we will talk about next).

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How is it notified? (The principle)

- If you (*Project Manager* or *Contractor*) become **aware** of a matter that **could** happen (from the list of those you are ‘obligated’ to notify) then notify it.
- Follow:
  - 13.1 in a form that can be read, copied and recorded
  - 13.2 send to the correct address
  - 13.7 separate from any other communication

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Mistakes, advice, best practice….

- A notified early warning does not double up as a notified compensation event.
- Remember to combine 10.1 with 15.1 and 10.2.
- Do not give early warnings verbally – there is no audit trail, and anyway, can you remember every word you said?
- No reply is needed when an early warning is notified.

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Any sanctions for not giving an early warning?

- *Contractor* failure:
  - Yes, should the event become a compensation event, the compensation event would be assessed as if an early warning had been given (61.5/63.7).
  - Also, a Disallowed Cost may occur (11.2(26) Option C-E, 11.2(27) Option F).
- *Project Manager* failure:
  - *Client* likely suffers in terms of additional time/money.

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What happens next?

- *Project Manager* adds each early warning to the Early Warning Register (15.1).
- An early warning meeting may be called at any time by the *Project Manager* or *Contractor*, worst case is the interval stated in the Contract Data.
- Hold an early warning meeting – follow 15.3 – make and consider proposals….seek solutions….10.1/10.2 at play here again.
- Possibly re-visit previous actions.
- *Project Manager* revises the Early Warning Register and issues to the *Contractor.*

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Mistakes, advice, best practice….

- If in doubt, notify an early warning.
- The Early Warning Register has at least 2 columns, you may add more if you wish to.
- As for meeting attendees, think about who will be affected by the matter (15.3).
- Any format you think is helpful can be used to hold the meeting.
- You are recording agreed actions to be taken, it is not the action itself.
- Keep others informed.

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In Summary

- Early warnings are good.
- It is a simple form of risk management.
- But *Project Manager* and *Contractor* (and anyone else at an early warning meeting) are obligated to make and consider proposals…and seek solutions.
- Keep a good audit trail.
- Can re-visit previous actions if revised actions are needed.

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Any questions....

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