

## ADVANCED TECHNOLOGY

# Drone Usage

beneficial on projects—but they're not toys

By Christopher Scott D'Angelo

**D**rones are used more and more in construction projects—whether for inspections, surveys, designs, monitoring, progress reports, site management and safety, as-builts, etc., or in troubleshooting or responding to warranty or other issues, or in addressing claims—and with good reason. Especially as technology and user-friendliness advance, they provide efficiency, improved safety, better usability (think 3D imagery or modeling for example) and records.

But they are not toys; their use requires more than just learning how to operate and control the device. There are a number of regulations and other laws that are involved, as well as other risks and practical considerations, and the user must be familiar with and comply with those regulations and laws and be sure to operate the drone in a way to address those other concerns.

## FAA REQUIREMENTS

FAA? What do you mean—I am not a pilot! Yes, the Federal Aviation Administration (FAA) and yes, the user is a pilot. New regulations were introduced a few years ago by the FAA for the commercial use of unmanned aircraft systems weighing less than 55 pounds (~25 kg). These can be found at 14 C.F.R. Part 107, but users, management, and counsel should be sure to check for updates as this is an ever-evolving area. A full recitation of the rules is beyond the scope and space of this article, but a few initial points to look for are (1) the pilot must have been issued a remote pilot certification from the FAA, and the drone may not be operated by anyone other than the pilot or one under the pilot's immediate and direct supervision where the pilot can immediately take control of the drone; (2) there must be unaided visual line of sight between the pilot and

operator (or in certain circumstances a designated, qualified, visual observer) and the drone; (3) drones may not be operated from moving vehicles (except in limited circumstances); (4) altitude is limited to 400 feet except in specified circumstances (e.g., building is higher than 400 feet); (5) there are significant rules for operating drones near or over people; and (6) most drones are generally limited to flights during daylight hours.

Drones may not interfere with aircraft or operations at an airport, or operate in restricted airspace without specific air traffic control authority. For more information, go to [www.faa.gov/uas](http://www.faa.gov/uas).

Waivers may be obtained from the FAA as to certain rules and restrictions, but advance planning is required as the application process can take considerable time, as can airspace authorization requests. See, for example, [www.faa.gov/uas/commercial\\_operators/part\\_107\\_waivers/](http://www.faa.gov/uas/commercial_operators/part_107_waivers/). Recently, under its UAS Data Exchange umbrella, the FAA launched a beta version of the Low Altitude Authorization and Notification Capability System (LAANC), a system for obtaining expedited authorization for drone flights in certain controlled airspaces. Information about the system can be found at [www.faa.gov/uas/programs\\_partnerships/data\\_exchange/](http://www.faa.gov/uas/programs_partnerships/data_exchange/).

## MORE THAN THE FAA

There are also many state and local laws and regulations pertaining to the use of drones that management, users, and counsel should review and be familiar with before undertaking the use of drones. In addition, there are concerns about trespass and nuisance, safety, accidents, privacy (see below) and even intellectual property rights.

Last, for now, is the issue of privacy, both relating to invasion of privacy (what can be seen from the air) and data privacy in terms of collecting, preserving, and using data collected in the drone activities. These issues can arise in a



number of ways. For example, there are state laws re: invasion of privacy, such as from photographing individuals or property in or on their property, even though the drone is not over their property. Drones have the capability of peering over high fences or into the 9th floor hotel room. Some of these laws can give rise to civil liability, and some to criminal prosecution and penalty. There are also privacy concerns in viewing, or capturing images of, employees or visitors on site. Some of these may arise under law, and some from applicable collective bargaining agreements (for example, relating to video surveillance). Accordingly, management, pilots, and operators should likewise review and update employee policies and manuals to account for these concerns, and be familiar and comply with any restrictions in employee or collective bargaining agreements. Depending on the circumstances and surroundings, consideration should be

given to providing notice to neighbors, employees, subcontractors, and visitors, and where possible obtaining written consent.

**CLOSING THOUGHT**

Of course, there are risks associated with using drones and it is imperative to be sure that your pilots and operators are qualified and that you have the appropriate insurance in place (be very careful about exclusions often found in general commercial policies). Likewise, contracts must be reviewed and updated to address these and all concerns arising from the use of drones, such as controlling the use of drones, maintenance of required records, who bears the responsibility for compliance with laws and regulation, what oversight will be in place, liability and indemnification issues, insurance and the intellectual property and privacy issues mentioned above. Plans and procedures should also be addressed and put in

place for responding to and reporting an accident, including for providing required notices to the FAA. And consideration should be given to appropriate signage and perhaps consent forms for notice to employees and visitors as noted above. ■

**about the author**

Christopher Scott D'Angelo is a partner and chair of both the Business Disputes & Products Liability Practice and International Practice at Montgomery McCracken Walker & Rhoads LLP, based in Philadelphia and New York City. His practice involves business, products liability, construction, class action, and insurance counseling and litigation, including his role as national counsel for several major U.S. clients and his representation of foreign concerns in the United States and U.S. concerns abroad. He is a member of the Construction Law and Litigation Committee of the International Association of Defense Counsel. He can be reached at cdangelo@mmwr.com.



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