

The

READY-MIXER

Virginia Ready-Mixed Concrete Association

600 Peter Jefferson Parkway, Suite 300

Charlottesville, VA 22911

Phone: 434-977-3716 Fax: 434-979-2439

E-mail: easter@easterassociates.com www.vrmca.com



newsletter

June 2008

Spring Convention More than 180 join the VRMCA in Williamsburg



More than 180 attendees joined the VRMCA at the Annual Spring Convention held at the Williamsburg Lodge May 18-20, 2008. In addition to the usual business of electing the 2008-2009 board of directors, members also heard speakers on safety, projects using pervious concrete, fuel costs, and a commentary on the 2008 presidential elections by the University of Richmond's Dan Palazzolo. On the final day of the convention, Executive Director Doug Easter presented Past President Diggs Bishop of Cardinal Concrete with a commemorative truck in honor of his tenure as President (photo at left). The VRMCA would like to thank Bishop for his service to the Association, and we look forward to working with our new President, Morgan Nelson of S.B. Cox Ready-Mix.

The VRMCA would also like to thank this year's Convention Chair, Allison Carrigan, and Golf Chairman, Jason Landes, for their invaluable help with putting on this year's event. We look forward to seeing everyone at the Fall Convention in Virginia Beach, Sept. 7-9!

More photos on page 3

VRMCA Air Cannon Demonstrates The Built-in Safety Of Concrete Homes In Virginia Beach

By J. Keith Beazley, Director of Industry Services

Debris driven by high winds presents the greatest hazard to homeowners and their homes during tornadoes and hurricanes. The VRMCA Air Cannon successfully demonstrated how the strength and mass of concrete walls resist the impact of wind-driven debris at a special invitation-only event with the Tidewater Builders Association at the Virginia Beach Homearama 2008 site in June. The special demonstration was to show the ICF home, which will be featured in the fall event in October, without the exterior ICF block covered to show the special features associated with the concrete wall system.

The Homearama will open in October in the Ashville Park Subdivision in Sandbridge. The two-week show, hosted by the TBA since 1982, is a home show of single family homes with latest in designs and building materials, decorating and landscaping, and the latest in technologies for home entertainment home automation. Judged as one of the best by the National Association of Home builders, the event is attended by more than 100,000 residents of Hampton Roads and from across Virginia.

The builder of the Homearama ICF home Chuck Miller, Miller Custom Homes, Reid Pocock, Dominion Building Group and the Hampton Roads Concrete Advisory Council hosted the event in June. The builder, Chuck Miller, is a "green builder" with building practices that create a healthier and more resource-efficient model of construction. Research and experience increasingly demonstrate that when buildings are designed and operated with their life cycle impacts in mind, they can provide great environmental, economic, and social benefits.

The special demonstration by the VRMCA compressed air cannon compared the impact resistance of residential concrete wall construction to conventionally framed walls. The walls constructed were of typical wall types in the Hampton Roads area. The frame walls failed to stop the penetration of airborne hazards. The sample walls exterior sections

Continued on page 7





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Hank Keiper
hkeiper@sefagroup.com
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Summer Convention continued

Photos, counter-clockwise from top left: Ron Bell, winner of this year's Rodeo, with his ready-mix truck trophy; VRMCA's Hessam Nabavi, George Boykin and speaker Tony Ollman of Virchow, Krause & Co.; Shelley Sheetz accepts a safety award; the fife and drum corps escorted members to dinner following the reception on May 18; a town crier welcomed members to the first evening's events; two photos directly above: members and spouses gather at the Monday evening reception on the lawn of the Williamsburg Lodge.





Central Virginia Concrete Advisory Council Annual Golf Tournament

Thursday, September 18, 2008
Hunting Hawk Golf Course, Glen Allen
11:45 a.m. Check/Range Balls
1:00 p.m. Shotgun Start

This event is one of the most popular golf tournaments and features a special dinner with door prizes and prizes for first, second, third place, closest to the pin, and longest drive.

The Hunting Hawk Golf Course was voted the most popular course in Richmond for facilities and service. The Central VA golf tournament was the first council tournament in the state and continues the tradition of fine play each year.

The cost is \$90 per player and \$80 to be a hole sponsor. Space is limited so please e-mail Chairman Glenn Webb with your lineup for your team as soon as possible! Fees may be paid at a later date in September. Early reservations will ensure a place for your foursome.

Contact Glenn Webb, Golf Chairman, with your team name and reservations, gwebb@coxreadymix.com or call (804) 364-0500.

2008 VRMCA ADVISORY COUNCIL REGIONALS

Larry Bullock
VRMCA Advisory Council Chairman
Boxley Materials Co.
Roanoke, VA
Phone: 540-777-7600
lbullock@boxley.com

BLUE RIDGE

Buddy Murtaugh Jr.
Chairman
Rockingham Redi-Mix
Harrisonburg, VA
Phone: 540-433-9128
buddy.murtaugh@conmatgroup.com

Allison Carrigan
Secretary/Treasurer
Lafarge North America
Baltimore, MD
Phone: 804-201-1015
allison.carrigan@lafarge-na.com

HAMPTON ROADS

Shelley Sheetz
Chair
TCS Materials, Inc.
Williamsburg, VA
Phone: 757-591-9340
ssheetz@flarock.com

Lee Flemming
Secretary/Treasurer
Lafarge North America
Chesapeake, VA
Phone: 757-647-9409
lee.flemming@lafarge-na.com

NORTHERN VIRGINIA

Don Cooper
Chairman
Crider & Shockey Inc.
Winchester, VA
Phone: 540-665-3267
doncooper@crider-shockey.com

Sean Murnane
Secretary/Treasurer
Grace
Spotsylvania, VA
Phone: 540-273-7607
sean.murnane@grace.com

RICHMOND/CENTRAL VIRGINIA

Charlie Wodehouse
Chairman
TCS Materials Inc.
Richmond, VA
Phone: 804-233-1888 ext. 304
cwodehouse@flarock.com

George Tomaras
Secretary/Treasurer
Roanoke Cement
Palmyra, VA
Phone: 540-915-0390
gtomaras@roanoke-cement.com

SOUTHWEST

Marilyn Prillaman
Chair
Boxley Materials Company
Martinsville, VA
Phone: 276-632-4141
mprillaman@boxley.com

George Kuhn
Secretary/Treasurer
Marshall Concrete Products
Christiansburg, VA
Phone: 540-382-1734
gkuhn@marshallconcrete.com

VRMCA Technical Bulletin #5 Available

The VRMCA Technical Committee is developing a series of Technical Bulletins in order to address various issues of interest to the ready-mixed concrete industry.

Technical Bulletins 1-5 are now available and posted on the website. Please visit the VRMCA website at www.vrmca.com to download electronic versions. You may also contact the Association Headquarters at 434.977.3716 for printed copies.

Please make every effort to distribute these to contractors, engineers, and testing labs in your area.

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Southwest Council/Virginia ACI Co-Sponsor Roanoke Dinner and Seminar

Building on the interest generated by the recent Prime Outlets Mall demonstration, the Southwest Council and the Virginia Chapter of ACI jointly sponsored a dinner/seminar for area architects, engineers and developers. In 2007 these same two groups hosted a dinner/seminar on pervious concrete pavement design, and the '08 event was a natural follow-up, using the very successful Prime Outlets Mall demo as an example of how the design considerations led to actual construction.

Many of the attendees from last year returned to hear this year's presentation. Each seminar attracted just under 100 registrants, and this year the audience was treated to an introductory presentation by Blake King, Quality Control Manager for Titan Virginia, who spoke about the ready-mix considerations necessary to complete a project like Prime Outlets. Following King was Don Wade, Program Manager for Magruder Construction Co., speaking on the actual construction of the extensive parking areas and the new use of the former retention pond. The audience was particularly interested in how the pond was turned into additional paving, while still being used as part of the stormwater drainage system. For developers, Wade made sure to point out that the conversion of the pond to parking spaces allowed the Prime Outlets owner to increase the size of the retail space available.

Perhaps appropriately, the Roanoke area experienced a major thunderstorm – complete with a small tornado – during the presentation. Several attendees, who could hear the storm outside, remarked that it would have been interesting if the Holiday Inn site had pervious concrete paving in its own parking lot and participants could have seen the paving in action!

Thanks to members of the Southwest Virginia Council for bringing in this large number of attendees, and a particular thanks to Roy Heaps of Titan America for arranging the excellent speakers.

Does your company have news to share?

Send your announcements or press releases to:

amanda.snyder@easterassociates.com.

Submissions will be included in the newsletter based on space and relevance.

VRMCA



Visit

www.vrmca.com

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opportunities!

Performance Evaluations: Smoking Gun or Management Tool?

By John G. Kruchko and Jay R. Fries

Many employers have instituted evaluation systems which provide formal, written job performance evaluations on an annual basis. These evaluations are sometimes used to determine salary increases as well as continued employment. More importantly, the evaluation process provides a valuable employee communication opportunity for the employer. The evaluating supervisor can inform the employee how the employee is performing overall and point out areas where improvement is necessary, as well as areas in which the employee excels. Likewise, the employer can solicit observations from the employee regarding the workplace, or job changes or promotions the employee would like to pursue.

Supervisors should be aware, however, that the written performance evaluation is an important legal document. If an employee is discharged for poor performance and later sues the employer for breach of contract, wrongful discharge, or employment discrimination, the written evaluation and the evaluation procedure in general will be key issues in the litigation.

Employers should review their performance evaluation system to ensure that it appears to be a fair and valid appraisal of performance to an outsider. The individuals performing the appraisal should be trained to give an honest and objective review. Many supervisors are uncomfortable reviewing employees and tend to give all employees an "average" or even a "good" rating. This is particularly true in evaluation programs in which the performance evaluation is used to determine the employee's wage increase for the year. Such a rating provides no basis to support a later decision to discharge for poor performance.

Other supervisors simply copy the results of the previous year's evaluation. This happens most frequently when the supervisor is required to perform multiple evaluations in the same short time frame. Although this approach may ease the work burden on the supervisor, such an evaluation fails to accurately communicate the current performance of the employee, and will fail to document any relevant performance incidents that occurred in the last year. Again, this type of evaluation not only does not assist in the defense of an employment lawsuit, it actually can be used by the former employee to show that no major performance problems occurred during the year in question.

Yet another common mistake in performance evaluations is to evaluate the employee on his or her recent performance, while ignoring issues which occurred earlier in the evaluation period. Supervisors may naturally wish to encourage employees whose performance has shown recent

improvement, and may choose not to document earlier issues on the evaluation. However, if such issues reappear and are the subject of discipline or discharge, the last written evaluation will call into question the validity of those concerns since these issues are not discussed on the evaluation form.



The individual performing the appraisal must have sufficient, first-hand observations of the employee's work to legitimately evaluate it. This can be an issue when a change in supervisor has occurred, and the new supervisor has limited experience with the employee. The new supervisor may be able to seek input from the previous supervisor, or the evaluation may be postponed until such time as the new supervisor feels comfortable evaluating the employee.

Furthermore, the employee should be evaluated only on characteristics that are job-related. Supervisors should be cautioned to avoid "extraneous" remarks in the evaluation that may be used as evidence of bias or malice toward the employee.

Many employers provide the employee with the opportunity to review and discuss the completed appraisal. The supervisor involved must be trained not to back down or fudge a bad review -- the employee must be put on notice as to the consequences of continued poor conduct. On the other hand, during a good performance review, the supervisor must avoid oral statements which might be construed as a promise or implied contract of continued employment. Statements such as "if you continue to do a good job, you will always have a position here" have been held to be legally enforceable contracts.

Performance evaluations can serve a valuable purpose in managing and communicating with employees. However, the evaluation system must be carefully monitored to avoid legal pitfalls that could result in liability for the employer. A key part of any evaluation system is training of the evaluator to avoid mistakes that can create problems for the employer in later legal proceedings.

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Air Cannon continued

were vinyl siding, Hardi-plank, brick veneer (**see photo on page 1**), and a sample of ICF block walls. The wall sections were subject to the impact of a wood stud traveling 80 to 150 miles per hour from the air cannon. This is equivalent to the weight and speed of debris generated during a scale F5 Tornado with winds of 261-318 mph. The frame walls lacked the weight and mass to resist the impact of wind driven debris. In each case, the debris traveled completely through the wall assembly with little or no damage to the "missile". The ICF wall section sustained only minor damage to the form face on the block. The VRMCA Air Cannon was calibrated by an official Virginia Police Radar Gun and is very accurate in the measurement of the force of the flying object. The firing demonstration was conducted and supervised by Keith Beazley, VRMCA.

The Mayor of Virginia Beach, Meyera Oberndoff (**See photo at right**), fired the first missile at each type of wall to begin the demonstration. The mayor was very impressed with the performance of the concrete walls and a meeting for more information is planned with the City of Virginia Beach. The event was attended by members of the Tidewater Builders Association, local municipal engineers and building officials, local elected officials, and industry personnel. There was a special tour of the home with detailed descriptions of the special building features, and a guarantee from the builder, Chuck Miller, in writing that the home of 6,000 square feet would not exceed \$119.00 per month in heating and cooling costs.

The series of tornados across Virginia have bought the safety of homes and residents to the forefront this spring and summer. The strength and durability of concrete wall formed with ICF's offer unmatched resistance to the devastation of major storms. The greater measure of built-in safety makes ICF construction the quality choice for homes across the Commonwealth.



View all of the photos online! Check out the news section of www.vrmca.com

Central and SW Virginia Advisory Council Happenings



Clockwise from top left: On June 24, the CVCAC arranged a tour of Roanoke Cement Co. Participants in the photo observe lab work; Bobby O'Brien explains the pervious paving system to an engineer; George Kuhn with a guest at the June 19 Council picnic and baseball game; the new ICF library in New Market, Virginia.

Background Checks, Defamation And Privacy Concerns

By John G. Kruchko and Paul Lusky

Many employers are now using background checks to attempt to screen out potential problem employees before they are hired. The kind of information employers may investigate include the employee's driving record, previous work history, educational background, credit history and criminal conviction records. Although some of this information can be obtained by an employer's own personnel, most employers use third-party consumer reporting agencies to perform credit checks and criminal record investigations.

Checking backgrounds is not always an easy process. There are restrictions placed on employer access to criminal history records, military records, driving records, credit reports, medical data, and educational achievements. For example, criminal background checks are also consumer reports. Thus, the applicant or employee has certain rights under the federal Fair Credit Reporting Act ("FCRA").

Under the FCRA, the employer must notify the applicant or employee in writing that a consumer report may be obtained and get the individual's consent to obtain the report. If the employer denies employment or decides to terminate employment based on a consumer report, it must provide the applicant or employee with certain notices concerning any planned adverse action that is based on the consumer report. Before the adverse action is taken, the employer must give the individual what is called a "pre-adverse action disclosure." This includes notice of the intended action, a copy of the consumer report, and a copy of the individual's rights under the FCRA.

After the adverse action is taken, the employer you must provide the individual notice-orally, in writing, or electronically - that the adverse action was taken. (This is called an adverse action notice) This notice must provide the individual with the name, telephone number and address of the consumer reporting agency making the report, a statement that the reporting agency that made the report did not make the decision to take the adverse action and has no information about why the adverse action was taken, notice of the individual's right to dispute the accuracy or completeness of the report and the right to obtain additional and free copies of the consumer report.

Employers should not assume, however, that, simply because they have complied with the notice and disclosure requirements of the FCRA, they are immune from any potential liability for the use of information contained in a consumer report. A 2007 decision by the Maryland Court of Special Appeals demonstrates the importance of making a

careful review of criminal background information that is obtained on an applicant or employee and making sure that such information is kept confidential. In *Montgomery Investigative Services Ltd. v. Horne*, the court affirmed a defamation verdict of \$127,000 against a company that had performed a faulty background check of the plaintiff/employee which resulted in his discharge from employment. The background check had reported that the employee had been convicted of theft and spent six months in prison. This information was incorrect.

Although the investigating company enjoyed a qualified privilege against the employee's defamation claim, the court held that the company had abused the privilege by acting with "reckless disregard for the truth" when its investigator failed to notice that the employee would have been only 12 years old when the criminal conviction for theft allegedly occurred. During trial, the investigator admitted that she never bothered to compare the date of disposition of the conviction with the subject's date of birth. The court concluded that the investigating company had acted with legal malice, thus justifying the defamation verdict.

The court also said that the plaintiff could sue his employer for the public manner in which the firing was carried out. The employer discharged the employee based on the information in the criminal background check. In doing so, however, the employer was alleged to have repeatedly called the plaintiff a thief in front of his co-workers. The court said that although the employer also had a qualified privilege against defamation based on its legitimate business interest in the information in the report, it abused the privilege by conducting the discharge in a manner which the court described as "outrageously abusive."

An employer can protect itself against negligent investigations by consumer reporting agencies by including a "hold harmless" or indemnification clause in its contract with any company it chooses to do criminal background checks. Such a clause will be inadequate, however, to protect an employer who is found liable for giving excessive publicity of information in a criminal background check. In the *Montgomery Investigative Services* case, excessive publicity regarding untrue criminal conviction information resulted in liability for defamation. What most employers don't realize, however, is that excessive publicity of private facts about an employee, even if true, can lead to liability for an invasion of privacy.

Applicants for employment do not normally have privacy concerns relating to reference checks or even criminal background checks by their prospective em-

ployers. Criminal background checks are not only justified but actually mandated by statute for certain employment positions. It is only where the employer overreaches and attempts to make an example of an applicant or employee by publicizing the results of a criminal background check that liability can arise. Such conduct implicates a branch of the invasion of privacy tort described in the Restatement of Torts as "Publicity Given to Private Life."

The Restatement defines this tort as follows: "One who gives publicity to a matter concerning the private life of another is subject to liability . . . for invasion of privacy." The disclosure must be offensive to a reasonable person. To be actionable, many courts have required that the private facts actually be communicated to the public at large. There are several decisions, however, which have allowed the plaintiff to go forward even though the publicity giving rise to the tort was communicated to a more limited universe of people; for example, a group of employees with no reason to have access to the private information.

The Supreme Judicial Court of Massachusetts ruled that disclosure of private facts to employees within the same corporation would be sufficient publication to create an invasion of privacy. The case involved an employee who complained that a manager had circulated a memorandum about him to approximately 15 other people in the company. This memorandum described the plaintiff's behavior in a grievance meeting where plaintiff became distraught and started crying. The memorandum also suggested that the plaintiff had a mental problem that was beyond the company's expertise as far as treatment.

Employers must keep private information about employees confidential. The cases described above demonstrate that an employer acts unreasonably when it gives excessive publicity to medical information or arrest and conviction information about an employee. Liability for defamation or invasion of privacy can be the result. Both torts allow for compensatory and punitive damages. Even within the corporation, only employees with a business "need to know" should be told about the results of a background check. The disclosure of such information should be limited to designated personnel in Human Resources and the operations manager responsible for any discharge decision based on information received in a background check.

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The Smart Road bridge, at 175 feet tall, is Virginia's tallest bridge. Approximately 9,647 cubic yards of high-strength concrete were used to construct the 2,000-foot long bridge.

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