

The

READY-MIXER



Virginia Ready-Mixed Concrete Association

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newsletter

September 2008

A Perfect Storm

By Hessam Nabavi,
Director of Industry Services

According to VDOT's asphalt and fuel adjustment index, in September 2007 the cost of a short ton of liquid asphalt was \$330.50. Exactly a year later in September of 2008, the cost of a short ton of liquid asphalt is \$765.50. Interestingly enough, liquid asphalt in January of this year was being sold for \$357 per short ton. The price of liquid asphalt has doubled in nine months.

Phil Kresge, Senior Resource Director with NRMCA called this "A PERFECT STORM." He suggested that this is a window of opportunity for 18 to 24 months that we need to take advantage of. This is an opportunity that the concrete industry has never experienced before. Concrete has always offered a better paving solution than asphalt for reasons such as durability, safety, long term economics, versatility and most importantly, being environmentally friendly. Concrete is the closest thing available to permanent pavement. As we mentioned concrete has always been most economical long term, and today with the rising price of

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Fall Convention Photos



Left to Right: The Hon. Danny Marshall, Bob Chandler, Frank Caldwell and George Kuhn.

The VRMCA Fall Convention (September 7-9, 2008) was a success, despite the possible threat of Hurricane Hannah to the Virginia Beach area. Luckily for VRMCA, the high seas and winds left the area late Saturday afternoon, providing for a beautiful day on Sunday and for the remainder of the convention.

More than 130 members, spouses and guests attended this year's convention. Speaker presentations are available online at www.vrmca.com.

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Moseley Architects' Headquarters Features Concrete

Facility Seeks LEED Gold Certification

By J. Keith Beazley
Director of Industry Services

Moseley Architects is renovating a 1930's industrial structure at 3200 Norfolk Street in the city's Scott Addition area. The new corporate headquarters will provide state-of-the-art space for more than 120 architects, engineers and interior designers. It will also embody the firm's strong commitment to environmentally responsible "green" design. The firm will move into the Headquarters the first of October.

When the renovation is complete, the facility will be submitted for certification under the U. S. Green Building Council's Green Building Rating System. Known as LEED, the system is a widely recognized set of standards and principles used to guide and validate design of what is coming to be known as high performance buildings. The buildings incorporate practices that contribute to a more sustainable environment. They substantially reduce adverse impact on the environment compared to conventional buildings, and use significantly less energy.

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VRMCA President Morgan Nelson holds a sample of the pervious.



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Convention Photos

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Dick and Anne Reese, Genevieve Walker Switzer, Jordan Wiegand and Todd Helton soak up the sunset from the top of the Hilton.



VRMCA President Morgan Nelson, Meetings Director Amy Shaw, and Executive Director Doug Easter take in the view from the Sky Bar.



Tyler Johnson, Terry Crispell and the gang fraternizing at Catch 31.



Teck Chua of Concrete Engineering and George Tomaras of Roanoke Cement.



The Hon. Danny Marshall and The Hon. Bob Purkey speak on transportation.



Frank Caldwell, Randy Hartman and Alan Beasley.



More than 130 attended this Fall's Convention!

PERVIOUS FOR PROFESSIONALS

A Special Training Seminar In Richmond And Hampton Roads

By J. Keith Beazley, Director of Industry Services

Pervious concrete has been used in construction for more than 100 years. Its first recorded use was in parts of Europe where it was used in construction of buildings. Today, in the United States, it is used primarily as a pavement material for parking areas. A major portion of the interest in pervious concrete is being driven by the benefits it provides in storm water management and sustainable development. The Federal Water Pollution Control Act (Clean Water Act) requires States, Counties, and Municipalities to adapt procedures that address storm water runoff. Pervious concrete pavement is an application that facilitates this requirement.

The VRMCA, Central Virginia and Hampton Roads Concrete Advisory Councils are sponsoring a course for professionals and decision makers to become more aware of pervious concrete and the opportunities that exist in using this product. The course is designed for the construction design and engineering professional and will provide information and knowledge to not only to specify but also to oversee the construction of pervious products to insure that the proper procedures are followed in installation. The special seminar is open to architects, engineers, city and county engineers and planning officials, and Virginia Storm management officials.

The course will provide information on the Fundamentals of Pervious Concrete, Critical Factors for Success, Characteristics of Materials and Concrete Mixtures, Testing Procedures, General Design Principles, Pervious Concrete Construction, and Maintenance and Troubleshooting. The course will also include basic information on the costs associated with the placement of Pervious Concrete.

The course will provide Learning Units and Educational Credits for the Professional Architects and Engineers. The National Ready Mixed Concrete Association examination will be administered after the course work and attendees will have an option to receive a National Pervious Contractor Certification after passing a basic knowledge exam. This special certification will set the professional apart with design and construction knowledge of this special concrete product. The Professional is encouraged to participate in this short multiple choice examination for the certification. Special educational materials, literature and software will be provided for usage in the individual workplace for reference.

The course will be presented in Richmond on October 15th and in Hampton Roads on October 16th in a one day session. The cost of the course will be only for the Certification from the National Ready Mixed Concrete Association. A luncheon will be provided by the Concrete Advisory Councils for the event.

The successful completion of the course and the certification will provide the Professional Designer and Engineer with the latest information on this simple but unique product. Sustainability and LEED certification on projects is very much in demand in this environmentally sensitive period in construction. A special brochure and mailing will be directed to the professionals in each region. For more information contact; J. Keith Beazley at 804-347-7003.

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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**Simple Request from Middle School
Teacher in Richmond Becomes a
Pervious Concrete Project**



Left to right: Madeline Cadaret; Stonewall Jackson Middle School Principal Dr. Anita Wallace; Jacob Keiper; student Blake Rush; Hank Keiper, The SEFA Group.

By J. Keith Beazley, Director of Industry Services

Lynn Shope, a Life Sciences Teacher at Stonewall Jackson Middle School, posted a simple request for a concrete patio in the school's newsletter. What she received was a Pervious Concrete teaching tool for her students and the entire Hanover Public School System.

Central Virginia Concrete Advisory Council member Hank Keiper of the SEFA Group, whose children attend Stonewall Jackson, contacted Mrs. Shope to help with the requested patio project. Mrs. Shope and other science teachers often take their classes into the courtyard area to discuss not only the wide selection of plant life, but also the impact of human society on nature. Unfortunately, there was no paved area, so the students often had to sit or stand in the damp grass during lessons. Of particular interest to Mrs. Shope is the Chesapeake watershed and Pervious Concrete was the obvious choice for a teaching patio. The completed patio would be 8 foot by 14 foot and consist of 5 inches of stone underneath the 5 inches of pervious concrete, both donated by VRMCA member Essex Concrete.

A meeting in the summer was arranged by the teacher with Paul Cash, Director of Building Services for the Hanover County Public Schools, for the approval of the installation of the patio. Keith Beazley, VRMCA, and Hank Keiper explained the nature and benefits of Pervious Concrete for this school project and other applications within the Hanover School System. Mr. Cash was very impressed with the system and thanked Mrs. Shope bringing the project to the school and the opportunity to see Pervious Concrete in a real application.

During the summer break, volunteers from the school and from VRMCA excavated the subsoil, hauled the rock, installed the edge forms, and hauled in the concrete, all by wheel barrow down the halls of the school to the interior courtyard. Mark Townsend, Essex Con-

Perfect Storm

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oil and asphalt, concrete offers a much preferred initial cost as well. To help NVCAC members become better versed in this phenomenon and give them some ammunition, we invited Phil Kresge with NRMCA and George Kuhn with Chandler Concrete to speak at the NOVA monthly council meeting. Phil started his presentation/ training on "Introduction to NRMCA Concrete Paving Analyst Software (CPA.)"

According to NRMCA, "NRMCA's Concrete Paving Analyst (CPA) is a powerful parking area, concrete promotion, design, and costing software tool that quickly and accurately quantifies the differences between concrete and asphalt pavements. Using ACI and Asphalt Institute recommendations, CPA compares total ownership costs, providing specifiers the information they need to make sound pavement decisions".

Industry experts believe that parking lots are the industry's largest promotional opportunity. They suggest that the potential market share increase for 2010 can be as much as 15.1%, from 9.1% in 2005.

Phil took the audience through the step by step process of using the software. He also touched on available tools such as NRMCA Webinars, Pitch Book, Parking Lot Design Assistance Program and many more. He concluded his presentation by offering some tips on the selling process and how to close the deal.

George Kuhn talked about his personal experience using the CPA Software on two different projects. He talked about some of the obstacles and challenges that he had to overcome, and he mentioned that the biggest obstacle to overcome is the paradigm of how specifiers are thinking about paving. In most cases, paving to the specifiers automatically means asphalt and it is our job to reeducate them about concrete as the best alternative.

In conclusion, he made the following recommendations:

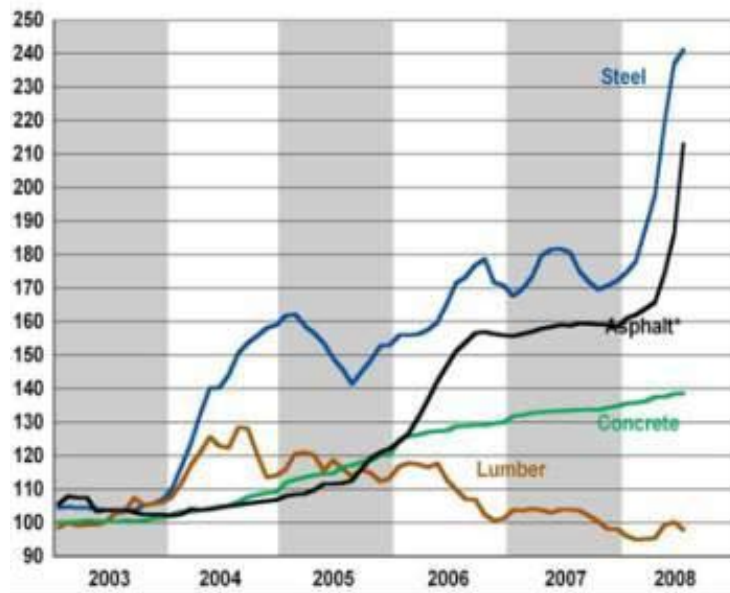
- Get to know your customer
- Partner with an installer
- Experiment with paving software
- Keep up with asphalt pricing
- Find a lighting design friend
- Start Early
- Be persistent
- Keep your eyes open

And finally, George said to remember that we are selling a Paving Package, not concrete".

On behalf of VRMCA and NVCAC, we would like to thank Phil and George for taking the time to teach our members in NOVA.

To learn more about the tools available through NRMCA and Scheduled Webinars please check www.nrmca.org.

**Producer Price Indices
Competitive Building Materials**



Above: An example of price competitiveness for various building materials. Left: George Kuhn of Chandler Concrete. Below: Speaker Phil Kresge of NRMCA.



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SPEAKER
PRESENTATIONS,
PLEASE VISIT
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PRESENTATIONS.**

LAWSUITS BY DISCHARGED SEXUAL HARASSERS

By: John G. Kruchko and Kathleen A. Talty

In a twist on employee litigation, employers are now finding themselves being sued by employees who were terminated for violation of the employer's sexual harassment policy. The legal basis for these lawsuits includes a range of potential actions, such as breach of contract, defamation, negligent investigation and even employment discrimination.

In those cases where the discharged employee alleges a claim of negligent investigation, the premise of the contention is the assertion that the employer's investigation was flawed to some degree, resulting in an erroneous finding of misconduct on the part of the terminated employee. While the case law on claims of negligent investigation is not well developed, it appears that such claims are potentially viable. However, those courts which have heard such claims generally find an employer's incorrect conclusion that an employee engaged in sexual harassment does not automatically result in a conclusion that the employer's investigation was inadequate or negligent.

A more commonly asserted cause of action by employees who are discharged for engaging in sexual harassment is a defamation claim. In this type of case, the terminated employees argue that they were defamed by the employer's false accusation of misconduct. Most jurisdictions, however, recognize a qualified privilege that attaches to statements made in the course of employment if the statements are 1) made in good faith; 2) on a subject that the party communicating the information has an interest; and 3) to individuals having a corresponding interest. To defeat this privilege, the former employee must show more than that the statements were false. Rather, the terminated employee must show that the statements regarding the misconduct were made with malice—knowledge or reckless disregard as to the truth or falsity of the statements. This is a high standard that must be met by the plaintiff.

A demonstration by the employer that it acted in good faith in making the communication and that the information concerning the investigation was only shared with those individuals with a legitimate need to know the information will go far to undercut a plaintiff's contention that the employer acted with malice.

In a recent case that was decided by the Fourth Circuit Court of Appeals, whose jurisdiction encompasses Virginia and Maryland, as well as other states, the federal appellate court considered a claim that was filed by a 62-year old terminated employee who argued that his former employer's investigation of sexual harassment complaints that named him as the harasser was pretextual and that the real reason

that he was terminated was because of his age. In *Cupples v. Amsan, LLC*, Jimmy Cupples was a sales manager when a female employee, Grace Foure, complained about Cupples' treatment toward her. Specifically, Foure claimed that Cupples pinched her rear and said "I just had to do that." When Cupples was initially confronted with the specifics, he admitted touching the woman, but claimed that it was only accidental.

In response to the female employee's complaint, upper management directed Cupples to avoid all further contact with Foure and to not discuss the complaint or investigation with anyone. Despite that clear directive, Cupples approached Foure the next day to apologize. Later the same day, he again approached Foure and asked her whether everything was "O.K." and told her that he hoped that the situation did not go any further because it could ruin his reputation. Foure was quite upset by Cupples' actions and filed a written complaint against him.

During the course of the company's investigation into Foure's sexual harassment complaint, the company interviewed a number of employees. One employee, Tena Davis, told upper management that Cupples had engaged in behavior similar to what Foure had experienced. Other women also described similar incidents involving Cupples which included touching them in ways that they considered inappropriate and making comments that were unwelcome. Cupples didn't deny the touching of the other employees, but claimed that he touched the women in a "kidding manner."

While the company was still investigating the sexual harassment complaint, Cupples approached Davis about the sexual harassment complaint against him and asked her if she would serve as a "character witness" for him. This contact with Davis violated the express and undisputed instructions from upper management that Cupples not discuss the complaint or investigation with anyone because to do so would violate the confidentiality provisions of the company's harassment policy. After upper management was advised of Cupples' actions, he was initially suspended without pay and directed to leave the premises. He was asked to return to the work place in order to be advised of his termination. At the time of his termination, Cupples was told that he was terminated for accumulated complaints of his inappropriate harassment, for his insubordination in failing to follow the directive of contacting the complaining employee, Foure, and for his breach of confidentiality in discussing the complaint and investigation with others.

Cupples then filed a lawsuit challenging the termination



Moseley renovation

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Moseley's architects, interior designers, and engineers are pursuing LEED Gold Certification for their project.

The building will be used as a teaching tool, offering opportunities for clients, employees, and visitors to experience green design principles and techniques first hand. Concrete products are used throughout the building for "Green" features. The building was designed with the first and second floors to be ground and polished concrete in the natural color. The floors reflect light and do not have concerns from gases, dust, and pollutants found in other floor materials and finishes. The front desk in the reception area will be made of concrete with sides and top of polished concrete for the visitors to view entering the building. Pervious concrete was used in the parking areas for the visitor's parking lot.

The Pervious Concrete, the first in Richmond's business section and for Moseley Architects, was installed by Pennington Grimes Concrete and supplied by S. B. Cox Ready Mix. A special demonstration was held at the site for the engineering supervisor and inspector of Moseley with testing methods, finishing and applications, and installation. The firm is foremost in the design of "Green" schools in Virginia and Pervious Concrete is an application that the Central Virginia Concrete Advisory Council is encouraging Moseley to incorporate in their school design.

Moseley Architects is very innovative and friendly to concrete and the usage in their building design. The firm was the first in Virginia to offer an alternate bid for tilt-up school construction with bids for a multi-story high school and elementary school. The VRMCA has also held a series of special seminars on ICF and Tilt-up construction for building design, concrete finishes with patterned and stamped concrete, colored concrete, and floor grinding and polishing. The Association is proud to be a part of this special Headquarters project and the building should receive many major national awards.



Harrassers

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demonstrate that the employer's non-discriminatory reason for his termination was pretextual.

The same result was reached by the appellate court which found that the employer had articulated a non-discriminatory reason for his termination. While Cupples maintained that no other employee had been terminated for a single incident of sexual harassment, the appellate court found that Cupples wasn't terminated for one incident of sexual harassment. To the contrary, the record showed that he had been terminated for multiple complaints of sexual harassment, insubordination and breach of confidentiality.

With regard to Cupples' criticism of the adequacy of the employer's investigation into the harassment complaint, the Fourth Circuit stated that a federal court "does not sit as a kind of super personnel department weighing the prudence of employment decisions made by firms charged with employment discrimination.....[the court's sole concern] is whether the reason for which the plaintiff was discharged was discriminatory."

In order to maximize an employer's defenses if an employer is sued by an employee who was terminated for violation of a company's harassment policy, it is advisable that the company's investigative procedures, which are used in response to harassment complaints, are thoroughly reviewed and then monitored. Individuals who are involved with the internal investigation should be trained in the procedures and protocols that are used. Complete and thorough documentation of the investigative process should be maintained, including the initial complaint, witness statements, etc. Finally, the ultimate conclusions should be supported by objectively reasonable grounds.

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John G. Kruchko is a Partner with the Management Labor & Employment Law Firm of Kruchko & Fries in McLean, Virginia; Kathleen Talty is an Associate with the Firm. For more information, please contact Mr. Kruchko at (703) 734-0554, or Ms. Talty at (410) 321-7310; jkruchko@kruchkoandfries.com or ktalty@kruchkoandfries.com. This article is published for general information and does not constitute legal advice.

Middle School

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crete, and Hank Keiper finished and rolled the pervious surface. The pervious patio project was highly successful and the courtyard has a new look with the patio and new plantings.

Now, when students attend class in the courtyard, the very pavement beneath their feet is an important teaching tool for sustainability and future development. This simple request from a teacher has developed into something very special for the school, the Hanover School System, and the Advisory Council. Hank Keiper recognized the benefits of Pervious Concrete and because of his insight a very beneficial project has been completed for the benefit of our industry.

Save the date!

VRMCA Spring Convention

May 17-19, 2009

The Homestead Hot Springs, VA

Visit www.vrmca.com to post and view job opportunities!

Builders Trade Show at the Dulles Expo Center *September 4- 5, 2008*

By Hessam Nabavi,
Director of Industry Services



Gaylord National Hotel at the National Harbor hosted a two day Builders Expo on September 4-5, 2008. Gaylord National Resort Hotel and Convention Center, the cornerstone of the exciting new National Harbor project in Prince George's County, Maryland, shines in glass and steel from the banks of the historic Potomac River.

This year NVCAC partnered with MRMCA to participate in this trade show. This two-day event was designed to offer an opportunity to meet with the building industry leaders on a one-on-one basis. The VRMCA display was very informative and inviting. Our pervious display tank, as usual, drew the most attention and raised the most questions. This participation for NVCAC was organized by the residential committee, especially the residential committee chairman, Dave Snider with Virginia Concrete. We appreciate all their effort. We would also like to extend our appreciation to the following members for their assistance during the event. Kevin Terry with Virginia Concrete, Peter Compher with Luck Stone, John Swart with Virginia Concrete, Eric Iffland with Brundage Bone and James Murray with Rowe Materials. We would also like to thank Tom Evans with Maryland Ready-Mixed Concrete Promotional Council for partnering with NVCAC, and for his assistance throughout.



VRMCA members man the booth at the trade show.



Check Presented to Drake

Left to Right: VRMCA Past President Boo Twohy of Capital Concrete and VRMCA Executive Director Doug Easter presented a check to Congresswoman Thelma Drake (Virginia 2nd District).



SW VA Council Introduces NRMCA Program to Civil Engineers

**By Bob Nablo,
Director of Industry Services**

Building on the interest generated by the NRMCA Concrete Paving Analyst program, in mid-August the Southwest Virginia Council hosted area engineers at a breakfast seminar. In an effort to get the software into the hands of the design professionals who might actually use the program as a comparison tool, the Council asked NRMCA's Phil Kresge to explain CPA to local engineers – and to offer them a free copy of the software as soon as it becomes available.

More than 60 attendees listened to the detailed presentation and asked specific questions. VRMCA members already know that the program works best when a designer or estimator has access to real-life paving section designs and costs, and can make comparisons based on realistic structural



Above: Horace Thomas talks with seminar attendees; Below: NRMCA's Phil Kresge presents the software.



numbers. In the past, a pavement designer would commonly accept an asphalt paving bid because it looked similar to the section designs he had seen in the past, but had no real idea what the “apples to apples” concrete design should be. This NRMCA program lets the individual plug in accurate structural numbers and make fair comparisons. Current prices also let the designer see installation costs and life-cycle comparisons.

Kresge emphasized that the program can – and should be – used to see “estimated” designs and costs, but should not be used to generate “an estimate” for bid purposes. VRMCA members will have the newest version of this program available to them, and available to share with designers, in the near future.



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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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