



First Four Sustainable Concrete Plants Certified in United States, Middle East



The Suffolk Ready Mixed Concrete is one of three certified Virginia plants.

NRMCA has certified the first four concrete plants in its new Sustainable Concrete Plant Certification Program. NRMCA member Titan America has certified three plants:


- Clear Brook Ready Mix Concrete Plant, Clear Brook, VA, at the Silver level
- Suffolk Ready Mix Concrete Plant, Suffolk, VA, at the Bronze level
- Bryan Park Ready Mix Concrete Plant, Richmond, VA, at the Bronze level

In addition, Unibeton, located in the Middle East, has certified its Mussafah Ready Mixed Concrete Plant, Abu Dhabi, United Arab Emirates, at the Silver level.

To certify, plant personnel use a document titled Sustainable Concrete Plant Guidelines that rates a plant's level of sustainability within different credit categories, with the objective of reducing carbon footprint, energy consumption,

water use and waste; increasing recycled content; and improving human health and social conditions. Plants can achieve between 0 and 100 points depending on how many sustainability credits are achieved and their level of performance within each credit. After a third party audit, plants can obtain an NRMCA Sustainable Concrete Plant Certification level of:

- Bronze: 30-49 points
- Silver: 50-69 points
- Gold: 70-89 points
- Platinum: 90-100 points

The Certification is valid for two years, after which a plant must recertify. Plant personnel use the Guidelines, developed through the support of the RMC Research & Education Foundation to implement new sustainable practices or improve on existing practices with the objective of recertifying at a higher level to demonstrate continuous improvement in the manufacturing process. 



VRMCA Fall Convention

September 11-13, 2011
Hilton Virginia Beach Oceanfront
Virginia Beach, Virginia

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The following dates remain for 2011:

Warrenton	October 4, 5, 6
Bristol	October 25, 26, 27
Richmond	November 15, 16, 17
Harrisonburg	November 29, 30, December 1
Roanoke	December 6, 7, 8

Questions? Contact Christina Sandridge at 434/977-3716 or email christina.sandridge@easterassociates.com.

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The Search to Unravel Concrete's DNA

To most people, it is utterly mundane: the stuff of humble sidewalks, bridge supports, and building foundations. But intrigued by the sheer complexity of concrete, Massachusetts Institute of Technology researchers have been leveraging the tools of statistical physics, materials science, chemistry, and civil engineering to find ways to make the most widely used man-made material on earth more environmentally friendly.

This week, about 600 people from industry, academia, and government will flock to Cambridge for a symposium that tackles the big questions about this seemingly ordinary material, with sessions on the science of concrete, insights from the architecture and design community, and updates on efforts to measure and decrease its carbon footprint.

"Concrete is the backbone material for infrastructure ... for housing, for shelter, for bridges," said Franz-Josef Ulm, a professor of civil and environmental engineering and member of the self-proclaimed "liquid stone gang," a multidisciplinary group of MIT scientists and engineers with a shared interest in concrete. "There's no material in the foreseeable future that can replace concrete."

Each member became interested through a different path. A leading cement chemist, Hamlin Jennings, began studying concrete on a bet; senior research scientist Roland Pellenq was drawn in by fundamental questions about its porousness. Ulm notes interest in concrete runs in the family - his mother is a structural engineer who has consulted on projects such as reinforced concrete buildings and bridges.

Concrete has been used in some form or another since at least the days of ancient Rome and is ubiquitous at construction sites - a far cry from the pristine confines of the laboratory. This basic building block of infrastructure may seem simple, or at the very least, a solved scientific problem. But in fact concrete is mysterious - at least at the molecular level.



Deepak Jagannathan uses toys to mix concrete for some serious research in associate professor Krystyn Van Vliet's lab at MIT.

The MIT group saw in the lack of detailed scientific understanding of concrete an opportunity: If scientists could, using computer models and imaging technology, understand the basic molecular structure, they could develop ways to manipulate concrete to make it stronger or harder, or decrease its environmental impact.

In 2009, the MIT gang became a bit more official, forming the basis of the Concrete Sustainability Hub, funded by a \$10 million, five-year grant from the cement and concrete industry, with a focus on leveraging sophisticated scientific tools to make its manufacture and use more sustainable.


The research was sparked by one particular problem with concrete: Producing it is energy intensive and accounts for 5 to 10 percent of annual emissions of carbon dioxide, a heat-trapping greenhouse gas. Making the manufacturing process more efficient or making concrete more durable so less of it is needed could have far-reaching environmental repercussions.

The research hub is also trying to devise modeling tools that could help engineers and architects make more informed decisions about how to minimize the environmental impact of any use of the material. The team is working on developing a computer program that would make it easy to track the carbon footprint of a building or paving project over its lifetime.

To do that, they are calculating the amount of carbon dioxide emitted in the manufacturing process and when the material is in use - in a building, for example, that includes heating

and cooling. Balancing the benefits and drawbacks is essential, so that engineers and architects can make informed decisions about what building options have the lowest overall environmental costs.

Scientists have made huge strides in deciphering the "DNA of concrete" and are building computer models that could help them create formulations that have different properties, such as increased stiffness or strength. The idea is that just as biologists have been empowered by understanding the structure and code of DNA, a truly molecular understanding of concrete can enable scientists to optimize the material to meet the needs of a job or make the manufacturing process more efficient.

"How can we change the [properties of concrete] by changing the composition and structure down at the atomic scale," said Krystyn Van Vliet, associate professor of materials science and engineering at MIT. "Could you make a cement sidewalk that never cracks?" 

Article by Carolyn Y. Johnson from the Boston Globe.

NRMCA Announces Winners of Environmental Excellence Awards

Silver Spring, MD – August 24, 2011 – The National Ready Mixed Concrete Association has announced the winners of the 2011 NRMCA Environmental Excellence Awards. Winning submissions in four categories based on plants' production volume came from across the United States; each was reviewed by a panel of judges who based their collective decision on a written narrative that covered 11 evaluation criteria and photographs.

The competition is co-sponsored by Concrete Products magazine and offers producers national recognition for outstanding contributions in protecting the environment and maintaining sound environmental management practices in their operations. The program salutes companies that have not only met, but surpassed governmental compliance requirements and demonstrated a commitment to environmental excellence through plant and staff investment. Eligible plants were NRMCA producer members located in the U.S., its territories or Canada.

"These plants have demonstrated that they are the 'best of the best' when it comes to being good stewards of the environment," said Gary Mullings,

Category A Less than 25,000 cubic yards of concrete produced		
1st Place	Transit Mix Concrete and Materials Company	Seven Points, TX
2nd Place	Concrete Supply Co.	Gastonia, NC
Honorable Mention	Essroc	Strasburg, VA
Honorable Mention	Concrete Supply Co.	Winston Salem, NC
Category B Greater than 25,001 but less than 50,000 cubic yards of concrete produced		
1st Place	Dolese Bros. Co.	Piedmont, OK
2nd Place	Transit Mix Concrete and Materials Company	Mabank, TX
Honorable Mention	Essroc	Stephenson, VA
Category C Greater than 50,001 but less than 100,000 cubic yards of concrete produced		
1st Place	Dolese Bros. Co.	Moore, OK
2nd Place	Nebco, Inc.	Lincoln, NE
Honorable Mention	Cemstone	Dayton, MN
Category D Greater than 100,001 but less than 200,000 cubic yards of concrete produced		
1st Place	Lafarge Canada Inc.	Vancouver, Canada

NRMCA senior vice president of operations and compliance.

All plants receiving awards will be honored during the awards luncheon at NRMCA's ConcreteWorks in San

Diego this September. Winning facilities will also be featured in an article in an upcoming edition of Concrete Products magazine and are listed on the NRMCA website. 

Portland Cement Association Launches Online Learning Courses

A leader in concrete and cement education for nearly a century, the Portland Cement Association (PCA) is expanding its educational offerings with the debut of its online learning center.


Cement and Its Impact on Concrete Performance is designed for engineers and other construction professionals involved in concrete construction. The six-part series on concrete and cement technology explains cement's role in sustainability, cement types and applications, and how cement affects the performance of the final product, concrete.

Each hour-long module focuses on professional development while addressing relevant topics and issues for today's construction professional.

Topics covered include:

- **Cement's Role in Sustainability**—Learn about the important role cement and concrete play in sustainable construction

- **Cement Manufacturing**—Develop an understanding of how changes in material selection in manufacturing affect the properties of concrete
- **Types and Applications of Cement**—Discover how new cement specifications can improve concrete performance and sustainability
- **Cement Characteristics**—Understand the process of hydration
- **Impact of Cement on Concrete Properties**—Learn the impact of cement on the hardened properties of concrete
- **Abnormal Reactions and Compatibility of Materials with Cement**—Identify and address abnormal chemical reactions, avoiding problems in concrete.

Courses are self-paced and can be taken on your own schedule without the travel and time commitments of conventional classes. One CEU/PDH is available with each module. For more information or to order, go to www.cement.org/elearning. 

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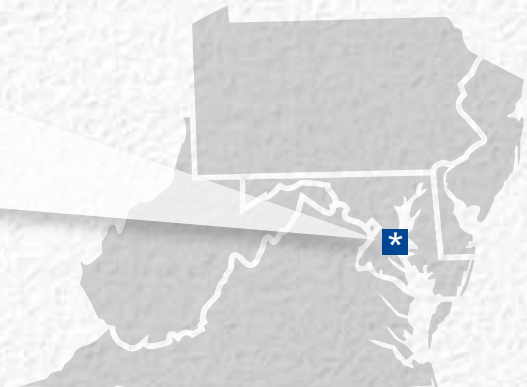
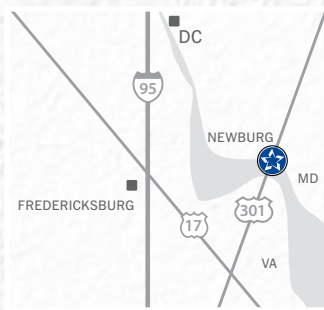
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On the Horizon

Calendar of Upcoming Events

SEPTEMBER 8, 2011

NVCAC Business Meeting

7:30 AM - 10:00 AM

Manassas, VA



SEPTEMBER 11-13, 2011

VRMCA Fall Convention

Hilton Virginia Beach Oceanfront
Virginia Beach, VA

SEPTEMBER 20, 2011

CVCAC Business Meeting

11:30 AM - 1:00 PM

Meadowbrook Country Club
Richmond, VA

SEPTEMBER 21, 2011

SWCAC Business Meeting

8:00 AM - 9:30 AM

Roanoker Restaurant
2522 Colonial Avenue, SW
Roanoke, VA

PLEASE NOTE:

The Hampton Roads
Concrete Advisory Council
Meeting scheduled for
September 13th has been
cancelled due to
VRMCA Fall Convention.

Please visit the online calendar
for an up-to-date list of events.

www.VRMCA.com/calendar

Building Roads to Last a Lifetime



**By Hessam Nabavi,
Director of Industry Services**

“Why are we building roads that are not up to standards and will end up costing us more in the long run by needing more frequent repairs? So why do the authorities not maintain certain standards when they build our roads. Life-cycle budgeting would be the answer to this problem when it comes to infrastructure projects. Basically it requires that any new road investment proposal include not only the cost to build the project but also the costs of maintenance and repairs over its life cycle” according to a member at the USGBC National Capital Region’s meeting in NOVA.

Needless to say the State of Virginia spends approximately \$400 million on the maintenance and repairs of the secondary roads which almost all are paved in asphalt. This could have been avoided if developers, designers & VDOT staff would have included the Life-Cycle Cost in the equation when they were proposing these roads.

What is the life-cycle cost? By definition “Life-Cycle Cost (LCC)” is the total cost of ownership. It is an economic model over the project life span. It is a method to correctly consider long term business decisions which have advantages for profitability.


MIT’s findings tell us what our roads will cost us over a 50 year time frame. The simulations at the Concrete Sustainability Hub@MIT predict that in a 50 year time span, the price of concrete

decreases by 20% while the price of asphalt increases by 95%. For the full report please visit <http://web.mit.edu/cshub>.

HB1965 Life-Cycle Cost (LCC) is a Bill that has passed by both houses unanimously and was signed into law by Governor McDonnell ensuring the success of future road projects in Virginia. This Bill was introduced by the award winning Delegate Thomas Davis Rust, PE, AICP.

Delegate Rust was one of our guests at the NVCAC’s recent Building Green with Concrete Workshop, and shortly after the event I had an opportunity to meet with him at his office in Chantilly. He talked about the value of this bill. He said that H.B. 1965 adds life-cycle costs in to all the estimates for capital improvement projects including roads and transportation programs. He mentioned that this will help to calculate the overall cost of building and maintaining the roads. Designers will be able to use this information to choose better materials and techniques to lower the total LCC of the project.

A good example for choosing the right material to lowering the LCC is in Meadow Branch Subdivision in Winchester, Virginia. Many of the secondary roads in this subdivision are designed in concrete. It was built in early to mid-ninety’s and looks brand new.

Hardly any maintenance and repairs have been done in the past fifteen to twenty years according to the neighborhood association. 

Norge Shopping Center Project Features Pervious Concrete for the Stormwater Management Tool



**By J. Keith Beazley,
Director of Industry Services**

A new Norge Shopping Center featuring Food Lion, as the anchor store, is nearing completion in James City County. The site will feature Pervious Concrete parking as a major stormwater management tool for the project. The Norge project is environmentally sensitive with the requirements of the Chesapeake Bay Act protecting the areas of the James and York River Watersheds flowing into the Bay. Stormwater management is not an option in construction.

The General Contractor for the project is Ashland Construction Company, Raleigh, North Carolina. Founded in 1974, Ashland Construction is a leading General Contractor providing comprehensive construction related services with a specialization in retail projects. Henderson Construction, Williamsburg, was chosen as the Site Management Contractor and developed the site for Ashland Construction. The Site Concrete Contractor was Jay White, East River Construction.

The Pervious Parking Lot used over 250 yards of Pervious and is designed to eliminate stormwater runoff. The storage base of aggregate has cisterns and drop inlets in the event of a major cloud-burst from a storm. The Pervious Concrete is protected with Header Curbs and is designed with special Control Jointing. Good planning, design, and construction



have produced a very pleasing parking lot to the eye and a parking lot that is functioning with a very high level of performance. The concrete supplier for the project was Vulcan Materials, Williamsburg.

The team of contractors for this project and their expertise speak well for the confidence that Pervious Concrete is having on the Peninsula for a stormwater management tool. The requirements for stormwater management will only increase in the future and Pervious Concrete is becoming the solution for compliance and as a product if designed and placed properly will completely eliminate stormwater runoff and associated problems in a cost effective manner. 🚧



SWCAC Meets with Salem City, VDOT Salem District



With the ongoing Streets and Local Roads promotion high on everyone's list of priorities, the SW VA SLR Committee recently met with Salem City engineers to discuss local roads, intersections and turning lanes, and the SW VA Council arranged to have guest speaker David Lee, Salem VDOT Materials Engineer, attend the regular Council meeting.

Robert Marek and Bob Nablo met with Chuck VanAllman, Will Simpson and Clark Ide of the Salem City Engineering office to present the SLR promotion and discuss possible projects

within the city. VanAllman, City Engineer, was very familiar with concrete paving because there are a few old city streets of concrete – although most have been repaved with asphalt over the years. Several potential projects were discussed at length, especially the major intersection at Electric Road and Apperson Drive. VanAllman's concerns were the usual ones – traffic disruption and future utility repairs, and conversation centered on ways to alleviate those problems. Overall, the City is receptive to concrete proposals, and we will pursue the three most significant projects.

Also relating to the SLR promotion, Council Education Committee Chairman Sam Woolwine invited David Lee to speak at the August breakfast meeting. Lee is well-known and liked by all members and led an open, wide-ranging discussion of VDOT plans and policies. He echoed a theme heard from other VDOT officials by saying that the Department welcomed competitive proposals and bids because it would lower costs and benefit all citizens. Lee talked at length about the design requirements for local roads, and also discussed how a proposal from a private developer might move through the system. Council members recognized that the main focus of their efforts should likely be on private developers, consulting engineers and municipal engineers. 🚛

Blue Ridge Council Hears from Staunton VDOT District

This month the Blue Ridge Advisory Council arranged to have a presentation from Todd Stevens, Director of Construction for the Staunton VDOT District. The Council had expressed interest in hearing about the current VDOT Six-Year Improvement Plan, the process by which proposed projects move through the VDOT system, and projects currently being funded. Todd Stevens was kind enough to agree to give a brief presentation and proved to be an interesting speaker with a great deal familiarity about local projects.

Stevens was very open to the alternate proposal concept, and talked at length about the design and funding of urban and secondary roads. He pointed out that any proposal for concrete paving needed to be discussed in the preliminary design phase in order to have site work done correctly, and that it was always a good idea to discuss any related utility work early in the process. He also discussed the process of funding projects and how money flows from federal, state and private sources over a period of time. Stevens strongly recommended that the Council study the Six-Year Improvement Plan and focus on projects that are



projected to move to construction in the 2013-2015 time period because that means they are currently in the initial design and funding stages. As we have heard from many sources, Stevens also said he welcomes properly designed proposals from the concrete industry because competitive bidding can only improve the transportation system and make new streets and roads more affordable for Virginia. 🚛

White House Announces First Ever Oil Savings Standards for Heavy Duty Trucks, Buses

In August, President Obama met with industry officials to discuss the first-of-its-kind fuel efficiency and greenhouse gas pollution standards for work trucks, buses, and other heavy duty vehicles and to thank them for their leadership in finalizing a successful national program for these vehicles. This meeting marks the administration's announcement of the standards, which will save American businesses that operate and own these commercial vehicles approximately \$50 billion in fuel costs over the life of the program. The U.S. Department of Transportation (DOT) and the U.S. Environmental Protection Agency (EPA) developed the standards in close coordination with the companies that met with the president today as well as other stakeholders, following requests from companies to develop this program. The cost savings for American businesses are on top of the \$1.7 trillion that American families will save at the pump from the historic fuel-efficiency standards announced by the Obama Administration for cars and light duty trucks, including the model year 2017-2025 agreement announced by the president last month.

"While we were working to improve the efficiency of cars and light-duty trucks, something interesting happened," said President Obama. "We started getting letters asking that we do the same for medium and heavy-duty trucks. They were from the people who build, buy, and drive these trucks. And today, I'm proud to have the support of these companies as we announce the first-ever national policy to increase fuel efficiency and decrease greenhouse gas pollution from medium-and heavy-duty trucks."

"Thanks to the Obama Administration, for the first time in our history we have a common goal for increasing the fuel efficiency of the trucks that deliver our products, the vehicles we use at work, and the buses our children ride to school," said DOT Secretary LaHood. "These new standards will reduce fuel costs for businesses, encourage innovation in the manufacturing sector, and promote energy independence for America."

"This administration is committed to protecting the air we breathe and cutting carbon pollution – and programs like these ensure that we can serve those priorities while also reducing our dependence on imported oil and saving money for drivers," said EPA Administrator Lisa P. Jackson. "More efficient trucks on our highways and less pollution from the buses in our neighborhoods will allow us to breathe cleaner air and use less oil, providing a wide range of benefits to our health, our environment and our economy."

Under the comprehensive new national program, trucks and buses built in 2014 through 2018 will reduce oil consumption by a projected 530 million barrels and greenhouse gas (GHG) pollution by approximately 270 million metric tons. Like the administration's historic car standards, this program – which relies heavily on off-the-shelf technologies – was developed in coordination with truck and engine manufacturers, fleet owners, the State of California, environmental groups and other stakeholders.


The standards are expected to yield an estimated \$50 billion in net benefits over the life of model year 2014 to 2018 vehicles.

The joint DOT/EPA program will include a range of targets which are specific to the diverse vehicle types and purposes. Vehicles are divided into three major categories: combination tractors (semi-trucks), heavy-duty pickup trucks and vans, and vocational vehicles (like transit buses and refuse trucks). Within each of those categories, even more specific targets are laid out based on the design and purpose of the vehicle. This flexible structure allows serious but achievable fuel efficiency improvement goals charted for each year and for each vehicle category and type.

The standards are expected to yield an estimated \$50 billion in net benefits over the life of model year 2014 to 2018 vehicles, and to result in significant long-term savings for vehicle owners and operators. A semi-truck operator could pay for the technology upgrades in under a year and realize net savings of \$73,000 through reduced fuel costs over the truck's useful life. These cost saving standards will also reduce emissions of harmful air pollutants like particulate matter, which can lead to asthma, heart attacks and premature death.

By the 2018 model year, the program is expected to achieve significant savings relative to current levels, across vehicle types. Certain combination tractors – commonly known as big-rigs or semi-trucks – will be required to achieve up to approximately 20 percent reduction in fuel consumption and greenhouse gas emissions by model year 2018, saving up to 4 gallons of fuel for every 100 miles traveled.

For heavy-duty pickup trucks and vans, separate standards are required for gasoline-powered and diesel trucks. These vehicles will be required to achieve up to approximately 15 percent reduction in fuel consumption and greenhouse gas emissions by model year 2018. Under the finalized standards a typical gasoline or diesel powered heavy-duty pickup truck or van could save one gallon of fuel for every 100 miles traveled. Vocational vehicles – including delivery trucks, buses, and garbage trucks – will be required to reduce fuel consumption and greenhouse gas emissions by approximately 10 percent by model year 2018. These trucks could save an average of one gallon of fuel for every 100 miles traveled.

Beyond the direct benefits to businesses that own and operate these vehicles, the program will also benefit consumers and businesses by reducing costs for transporting goods, and spur growth in the clean energy sector by fostering innovative technologies and providing regulatory certainty for manufacturers. 

National Labor Relations Board to Issue Guidelines on Facebook-Related Conduct

By John G. Kruchko and Paul Lusky

For some time now, the National Labor Relations Board (“NLRB” or the “Board”) has been grappling with the issue of whether off-duty employee comments regarding their employer on social media sites such as Facebook, MySpace or Twitter should be protected from discipline or discharge. The National Labor Relations Act (the “Act”) prohibits employers from interfering with rights guaranteed to employees by Section 7 of the Act. In part, Section 7 protects an employee’s right to engage in concerted activities for the purpose of “mutual aid or protection.” The NLRB has used the “mutual aid or protection” clause to protect employee communications on social media sites in a number of cases even where the employee postings have been severely critical of the employer.

For example, in October, 2010, the Board issued a complaint against a Connecticut ambulance service company who discharged an employee for posting negative comments about her supervisor on her Facebook page. The employee’s communication was critical of her employer for “allowing a 17 to become a supervisor.” The ambulance service company used the number “17” to refer to psychiatric patients. Although the employee posted the comments on her personal computer during non-working hours, the Board issued a complaint anyway concluding that off-duty discussions among employees on Facebook are no different than discussions that occur in the workplace and should be protected as concerted activity. Although the case was settled in February of this year, the employer was required to agree not to improperly restrict employees from discussing their wages, hours and working conditions on electronic media sites.

According to a study released on August 5, 2011 by the U.S. Chamber of Commerce, the Board has reviewed 129 cases since 2009 involving social media and the workplace, most of which were filed this year. A recent Deloitte study found that 53 percent of employees don’t think their social media presence should be subject to their boss’ oversight.



Obviously, this is an issue that is not going away anytime soon. As a consequence, the NLRB may soon be releasing formal guidelines as to how it will deal with certain social media scenarios. The Board is already urging its regional offices to send all Facebook-related cases to its Washington headquarters.

The issue of whether an employee who is posting a comment about his employer on a social media site is engaging in protected concerted activity can be confusing. Even though the employee appears to be acting alone, the NLRB may find the communication to be concerted activity. For example, in a recent Advice Memorandum issued by the Board’s Office of the General Counsel, the test for concerted activity was described as follows:

The question is a factual one and the Board will find concert “[w]hen the record evidence demonstrates group activities, whether ‘specifically authorized’ in a formal agency sense, or otherwise.” Thus, individual activities that are the “logical outgrowth of concerns expressed by the employees collectively” are considered concerted. Concerted activity also includes “circumstances where individual employees seek to initiate or to induce or to prepare for group action” and whether individual employees bring “truly group complaint” to management’s attention.

Thus, in any particular case, the Board can massage the facts to either dismiss a case because it concludes the

Until the Board issues formal guidelines for dealing with these kinds of cases, employers must proceed with caution before disciplining or terminating an employee for comments made on social media sites.

individual was acting alone or issue a complaint because it finds the employee was looking to induce group action. A similar set of facts can produce two different results. Two recent Advice Memoranda issued by the Board illustrate the capricious nature of the concerted activity test.

In one of the cases, a bartender used Facebook to complain about his employer's tip policy and said he hoped the employer's "redneck" customers "choked on glass as they drove home drunk." The bartender's conversation was limited to his step-sister, however, and he did not discuss his posting with other employees nor did any employee respond to it. The Board concluded that the bartender's discharge was lawful because he had not engaged in concerted activity. The Board noted that "the conversation did not grow out of [a] prior conversation with a fellow bartender months earlier about the tipping policy." Instead, the employee was only "responding to an internet question from his step-sister about how his evening at work went." Of course, if the bartender had discussed his posting with other employees, the result may well have been different.


In another case, a Wal-Mart customer service employee who was irritated with her assistant manager posted the following comment on her Facebook page: "Wuck Falmart! I swear if this tyranny doesn't end in this store they are about to get a wakeup call because lots are about to quit!" The employee's Facebook friends were largely composed of co-workers and two Wal-Mart employees responded with supportive remarks. Despite this fact, the Board upheld Wal-Mart's discipline of the customer service employee, concluding that the Facebook discussion was not concerted activity but merely the expression of an individual gripe. The Board said: "[C]omments made 'solely by and on behalf of the employee himself' are not protected. Comments must look toward group action; 'mere griping' is not protected." Again, this decision could easily have gone the other way. The Board could have just as easily concluded that the customer service employee was attempting to solicit support for a group complaint to the store manager about the assistant manager. In a follow-up communication, the employee posted: "I'm talking to the store manager about this ... cuz

if it don't change walmart can kiss my royal white ass!"

Perhaps these recent decisions by the Board represent a retreat from the agency's current proactive stance in protecting even the most opprobrious communications by employees on social media sites so long as the comments concern terms and conditions of employment. If so, perhaps employers will see the Board employ a more restrictive definition of concerted activity in these Facebook cases. Of course, that is not something employers can rely on where the test is so ephemeral. Next month could bring a new round of unfair labor practice charges against employers who discipline or discharge employees for Facebook conduct.

Until the Board issues formal guidelines for dealing with these kinds of cases, employers must proceed with caution before disciplining or terminating an employee for comments made on social media sites. Nevertheless, the recent decisions do appear to provide the following general guidance:

- Complaining about working conditions to non-coworkers will not receive protection under the Act as concerted activity;
- Even some interaction between employees on Facebook will not automatically convert individual gripes into protected concerted activity;
- The more profane or inappropriate the Facebook commentary is, the greater the likelihood it is that the Board will find the conduct to be unprotected, usually by concluding that the offending employee was not engaged in concerted activity; and
- Criticism of an employer's customers will not be protected.

This is an area of the law that is evolving rapidly. Employers contemplating discipline of an employee for social media comments must take all of the facts into consideration and should not focus solely on the employee's comments in a vacuum. The involvement of co-workers, either before, during, or after the Facebook posting, is a factor that must be investigated thoroughly. 

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