



## ‘Pervious Concrete’ Solution for Chesapeake Bay Total Maximum Daily Load (TMDL)

By Hessam Nabavi,  
Director of Industry Services

The Clean Water Act (CWA) sets an overarching environmental goal that all waters of the United States be “fishable” and “swimmable.” More specifically, it requires states and the District of Columbia to establish appropriate uses for their waters and adopt water quality standards that are protective of those uses. The CWA also requires that every two years jurisdictions develop a list of waterways that are impaired by pollutants and do not meet water quality standards. For those waterways identified on the impaired list, a Total Maximum Daily Load (TMDL) must be developed. A TMDL is a “pollution diet” that identifies the maximum amount of a pollutant the waterway can receive and still meet water quality standards.

Most of the Chesapeake Bay and its tidal waters are listed as impaired. The main factor impacting water quality in the Bay is pollution, comprised of nitrogen, phosphorus and sediment. In other words, the Bay and its tidal tributaries are overweight with nutrients. The excess nutrients fuel harmful algal blooms that rob the water of oxygen and create “dead zones” where fish cannot survive, while sediment blocks sunlight from reaching underwater bay grasses.

The “loadings” are allocated to sources contributing to the problem. A TMDL is comprised of waste load allocations for “point sources” like sewage treatment plants, urban storm water systems and large animal feeding operations, as well as load allocations for “non-point sources” such as polluted rainfall runoff from agricultural lands and impervious surfaces, and a margin of safety. The main sources



The bay suffers from pollution due to factors such as urban runoff.

of nitrogen, phosphorus and sediment are agriculture, urban and suburban runoff, wastewater, and airborne contaminants. Agriculture is the largest source of nutrient and sediment pollution in the water.

Despite some reductions in pollution during the past 25 years of restoration, the progress has been insufficient for meeting the water quality goals.

More than 40,000 TMDLs have been completed across the United States, but the Chesapeake Bay TMDL is the largest and the most complex plan for significant reductions in nitrogen, phosphorus and sediment pollution throughout a 64,000-square-mile watershed which include large sections of Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia and the District of Columbia.

*continued on page 3*

### in the mix ...

New Year, New Focus for TWCAC....	4
Economic Development Directors Meet with Blue Ridge Members.....	4
PCA: All 50 States Expected to Experience Housing Recovery in 2013 .....	5
Stiffer Pavements Can Reduce Fuel Costs .....	5
Saddle Up for the 2013 Mixer Truck Rodeo.....	6
Annual VRMCA Safety Contest .....	6
VRMCA 2013 Spring Convention .....	8
Federal Contractors Can Expect Significant Impacts from Sequestration.....	10
Calendar of Upcoming Events .....	11

Visit us online  
[www.VRMCA.com](http://www.VRMCA.com)

## 2013 VRMCA Officers & Directors

### PRESIDENT

**Bob Chandler**  
Chandler Concrete of Virginia Inc.

### VICE PRESIDENT

**Jay McNeely**  
Eagle Corporation

### SECRETARY/TREASURER

**Stephen Render**  
Vulcan Materials

### EXECUTIVE DIRECTOR

**Douglas Easter**  
Easter Associates, Inc.

### PAST PRESIDENT

**Larry Bullock**  
Boxley Materials Company

### DIRECTORS

**Mark Bundy**  
Branscome

**Billy Chenault**  
Luck Stone Corp.

**Mel Howard**  
DuBrook Concrete

**Robert O'Brian**  
Lynchburg Ready-Mix

**Robert Sells**  
Titan Virginia

**Jim Simons**  
Capital Concrete Inc.

**Jeff Slagle**  
Rowe Materials, LLC

**Tony Wilt**  
Superior Concrete

Virginia Ready-Mixed Concrete Association  
250 West Main Street, Suite 100 • Charlottesville, VA 22902  
Phone: (434) 977-3716 • Fax: (434) 979-2439  
easter@easterassociates.com • www.vrmca.com



## Concrete Field Testing Technician Certification Program

**Register Now! ... Space is limited to the first 35 registrants!**

**ONLINE  
REGISTRATION  
AVAILABLE AT**  
[www.vrmca.com](http://www.vrmca.com)

Upcoming ACI classes:

Virginia Beach	<del>April 16, 17, 18</del> <b>FULL</b>
Roanoke	<del>April 30, May 1, 2</del> <b>FULL</b>
Richmond	<del>May 14, 15, 16</del> <b>FULL</b>
Harrisonburg	<b>May 22, 23, 24</b>
Fredericksburg	<b>June 4, 5, 6</b>
Roanoke	<b>June 18, 19, 20</b>
Virginia Beach	<b>June 25, 26, 27</b>
Warrenton	<b>July 8, 9, 10</b>
Richmond	<b>July 16, 17, 18</b>

Questions? Contact Christina Sandridge at (434) 326-9815  
or email [christina.sandridge@easterassociates.com](mailto:christina.sandridge@easterassociates.com).

## 2013 VRMCA Advisory Council Regions

**Jay McNeely**  
VRMCA Advisory Council Chairman  
Eagle Corporation  
Charlottesville, VA  
Phone: (434) 971-2686  
[pjm@eagle-corp.com](mailto:pjm@eagle-corp.com)

### BLUE RIDGE

**Buddy Murtaugh Jr.**  
Chairman  
Rockingham Redi-Mix  
Harrisonburg, VA  
Phone: (540) 433-9128  
[buddy.murtaugh@conmatgroup.com](mailto:buddy.murtaugh@conmatgroup.com)

### SCOTT BOSHA

**Scott Boshart**  
Secretary/Treasurer  
Superior Concrete  
Harrisonburg, VA  
Phone: (540) 433-2482  
[sboshart@superiorconcreteinc.com](mailto:sboshart@superiorconcreteinc.com)

### HAMPTON ROADS

**Barb Nelson**  
Chairman  
Titan Virginia Ready-Mix  
Norfolk, VA  
Phone: (757) 533-7130  
[bnelson@titanamerica.com](mailto:bnelson@titanamerica.com)

### LEE FLEMMING

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

### NORTHERN VIRGINIA

**Dave Snider**  
Chairman  
Vulcan Materials Company  
Springfield, VA  
Phone: (703) 354-7100  
[sniderd@vmcmail.com](mailto:sniderd@vmcmail.com)

### ZACK SWANSON

**Zack Swanson**  
Secretary/Treasurer  
Grace  
Elkridge, MD  
Phone: (410) 794-6973  
[zack.swanson@grace.com](mailto:zack.swanson@grace.com)

### RICHMOND/CENTRAL VIRGINIA

**Steve Kerr**  
Chairman  
GreenRock Concrete  
Quinton, VA  
Phone: (804) 966-8601  
[skerr@greenrock.net](mailto:skerr@greenrock.net)

### ANDREW OWENS

**Andrew Owens**  
Secretary/Treasurer  
Advantage Environmental Consultants  
Chester, VA  
Phone: (804) 454-0072  
[aowens@aec-env.com](mailto:aowens@aec-env.com)

### SOUTHWEST

**Sam Woolwine**  
Chairman  
Boxley  
Roanoke, VA  
Phone: (540) 777-7623  
[swoolwine@boxley.com](mailto:swoolwine@boxley.com)

### GEORGE KUHN

**George Kuhn**  
Secretary/Treasurer  
Chandler Concrete  
Christiansburg, VA  
Phone: (540) 382-1734  
[george.kuhn@chandlerconcrete.com](mailto:george.kuhn@chandlerconcrete.com)

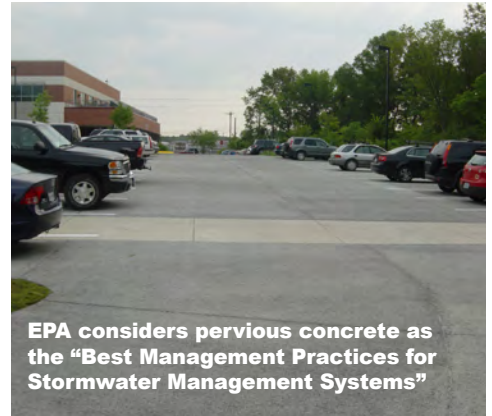
## Chesapeake Bay *continued from page 1*



**Algae blooms blocking sunlight needed by underwater plants that provide habitat for aquatic life.**



**Urban runoff after the storm.**



**EPA considers pervious concrete as the "Best Management Practices for Stormwater Management Systems"**

In December 2010, the U.S. EPA established the Chesapeake Bay Total Maximum Daily Load (TMDL). This is a comprehensive "pollution diet" which establishes rigorous accountability measures to restore clean water in the Chesapeake Bay and the region's streams, creeks and rivers. This TMDL is designed to ensure that all pollution control measures needed to fully restore the bay and its tidal rivers are in place by 2025 with at least 60 percent of the actions completed by 2017.

The pollution control will be implemented at the county level by new regulations and stringent requirements for the stormwater management systems.

It has become very apparent in the past few years that one of the major areas that the counties in NOVA are focusing on is the urban runoff.

Each county in NOVA has been developing its own action plan to contribute to this pollution diet.

One example is Fairfax County's stormwater management regulations which establish criteria in the county Public Facilities Manual (PFM) for new developments. In order to reduce stormwater runoff, the county revised the PFM by creating stricter 'adequate outfall' requirements. Adequate outfall refers to the volume of stormwater leaving a site during a storm. By lowering the maximum volumes of stormwater runoff that is acceptable, the county required developers to either reduce impervious surface area or enhance on-site retention. The Board of Supervisors had also amended the Public Facilities Manual

(PFM) to allow for the use of Low Impact Development techniques (LIDs) such as rain gardens, tree box filters, green roofs, infiltration trenches and pervious pavement in new construction. These LIDs dramatically reduce the volume of stormwater entering our streams and the Bay, and play an important role reducing the volume of nitrogen, phosphorus, and sediments that are preventing the Bay from recovering.

Another action plan example is in Arlington County. Here is an excerpt from the revised Arlington County compliance policy to respond to Chesapeake Bay TMDL:

"More stringent State stormwater management regulations took effect in October 2011, with local implementation required by July 1, 2014. These new regulations are driven by the stormwater pollution reduction requirements of the Chesapeake Bay 'Total Maximum Daily Load' (TMDL). In addition, the TMDL may result in even more stringent requirements than the new State standards. The Bay TMDL will also require Arlington County to implement a more stringent local stormwater management program through its Municipal Separate Storm Sewer System permits issued by the Virginia Department of Conservation and Recreation. This will require tighter controls for development as well as extensive 'retrofitting' requirements for existing development. There will also be increased emphasis on stormwater management approaches that control stormwater volume in addition to removing pollutants.



**Pervious concrete application.**

As a result of these requirements and the need for substantially increased stormwater controls for both new / redevelopment and existing development, Arlington County is revising its policies for determining compliance with the on-site stormwater quality management requirements for the Chesapeake Bay Preservation Ordinance".

What does all this mean for our industry? I think we have the solution for stormwater management which can dramatically help to reduce the volume of pollution that is entering the bay. EPA considers pervious concrete as the "Best Management Practices for Stormwater Management Systems".

In NOVA we are very proactive in promoting pervious concrete. Pervious concrete has been installed in a variety of commercial, residential, public schools, military facilities and county projects in the past few years. We are expecting a good number of pervious concrete projects to be installed in 2013. Several of these projects have already been sent for DAP and are in the permitting process, with more yet to come. 🚧





## New Year, New Focus


The Tidewater chapter of the Concrete Advisory Council has started the New Year out with a bang. Barb Nelson, Chairperson of the council, announced at the beginning of the year that she would like to try to have a guest speaker at each meeting. The common goal of our members is to either increase opportunities, or improve current practices.

John Hellyer with Luck Stone stepped up to the plate for the January meeting and spoke about the role quality aggregates play in concrete.

In 2012, the industry as a whole, suffered the consequences of low cylinder breaks. The integrity of the cylinder lies heavily in the initial handling of the cylinders. For our February meeting we invited Alan Tuck, of F & R to speak about ACI compliance.

The guest speaker for March will discuss the use of Cellular Concrete.

Bill Denison is chairing the technical committee again this year. He has another pervious class scheduled in April. The last class had 100% passing. Kudos to Bill.

The Tidewater chapter of the Concrete Advisory Council will hold its annual golf tournament on Tuesday, April 23rd. 

## Have News for the VRMCA Newsletter?

Email your news and announcements along with photos to Marci Malinowski at [marci.malinowski@easterassociates.com](mailto:marci.malinowski@easterassociates.com).

# Economic Development Directors Meet with Blue Ridge Members



## By Bob Nablo, Director of Industry Services


Officials from three different Economic Development Agencies met with members of the Blue Ridge Council in February to talk about 2012 economic results and 2013 expectations for Augusta County and the cities of Staunton and Waynesboro. Amanda Glover, Assistant Economic Development Officer for Staunton, Dennis Burnett, Economic Development Officer for Augusta County and Greg Hitchin, Economic Development Officer for Waynesboro attended the Blue Ridge Council business meeting and spoke at length about the recent successes and the anticipated gains for the region this year.

Ms. Glover noted that, historically, about 80% of economic growth in a region comes from existing companies, rather than new company startups. She also quoted studies that say manufacturing companies currently have more cash on their balance sheets than at any other time in history, and that these same companies report that they anticipate opening new operations and/or hiring new employees in the 2013-2015 period.

Mr. Burnett spent considerable time discussing a recent Stakeholder Rank-

ing Study of the Shenandoah Valley. This study ranks communities based on location, available properties, infrastructure, transportation and workforce skills. Again, the Shenandoah Valley ranked very high, with no scores below "Average" and most categories named "Competitive" or "Very Competitive". He suggested that the only failing of the region was the relative inaccessibility of rail hubs.

Greg Hitchin suggested that these rankings may seem somewhat surprising, but everyone should keep in mind that employers place strong emphasis on such factors as the accessibility of major transportation routes, the quality of nearby major universities and strong vocational/technical schools, availability of quality healthcare systems and local airports capable of handling corporate aircraft. Everyone agreed that while the first few weeks of 2013 had been quiet – especially with regard to new housing starts – the Valley was poised to move toward the economic stability last seen in 2008.

This was an especially strong business meeting, with 18 members and guests enjoying good food, camaraderie and an excellent presentation. We hope you can join us in the future. 

## PCA: All 50 States Expected to Experience Housing Recovery in 2013

Since 2005, tepid economic growth and high foreclosure rates have depressed home prices, bloating inventories and preventing start activity. In 2013, economists are revising nearly a decade of pessimism and forecasting growth throughout the residential construction industry.

A new report from the Portland Cement Association (PCA) projects total housing starts to reach 954,000 units in 2013, reflecting further improvement on 2012's nearly 30 percent growth.

"The possibility of one million starts in 2013 should not be dismissed," PCA Chief Economist Ed Sullivan said. "Although the first half 2013 will be mired in a fiscal cliff hangover, we are decidedly optimistic about second half economic growth, job creation and consumer sentiment – all of which translate into a stronger home sales and starts activity."

Even stronger growth in homebuilding is predicted to materialize in 2014 with starts surpassing 1.1 million.

In another optimistic turn from pre-



vious residential forecasts, PCA expects the recovery to be broad-based and is projecting all 50 states will see increases in single family housing this year. Already underway in the interior U.S., the emergence of accelerating construction growth has begun to appear in some of the hardest hit states during the housing bubble burst. These regions are now

likely to lead growth in coming years as the long depressed markets begin to return to housing construction rates consistent with their demographics.

"As the recovery unfolds, regions that once lagged recovery now begin to emerge as growth leaders. The Southwest and Southeast, for example, still have the weakest housing fundamentals on a relative basis to the Interior U.S, but on a construction activity basis, given the extremely depressed bases from which these regions are recovering from, they will likely be the housing growth leaders in coming years," Sullivan said.

PCA expects multifamily construction to continue to grow at a strong pace as favorable fundamentals fuel the sector. Multifamily starts recorded a 55 percent gain in 2011 and 36 percent growth in 2012. PCA expects an additional growth of 15 percent in 2013 to 277,000 units. Damaged credit due to foreclosure activity and tight mortgage lending standards have combined to create robust apartment demand. 🚗

### Stiffer Pavements Can Reduce Fuel Costs

MIT researchers have found that a pavement property called deflection could save more than \$15 billion in annual fuel costs.

Pavement deflection is when your car makes a slight indentation in the road from which you are constantly driving out of and burning more fuel. The effect is similar to walking on sand. With each step, your feet sink and create a dip.

MIT researchers found that using stiffer pavements decreases deflection and reduces fuel consumption by as much as 3 percent -- a savings that could add up to 273 million barrels of crude oil per year, or \$15.6 billion.

Concrete pavements, inherently stiffer than asphalt, can reduce a car's "footprint" and gas costs.

By reducing the environmental footprint of our pavement systems, MIT researchers hope to achieve a more sustainable national infrastructure.

Experts at the Massachusetts Institute of Technology Concrete Sustainability Hub will be available for briefings on this topic at Meet the HUB @ MIT, 9 a.m.-3 p.m., February 27, 2013 at MIT Media Lab, Building E14, 75 Amherst St., Cambridge, Mass.

The Concrete Sustainability Hub is a research center established at MIT in collaboration with the Portland Cement Association and the Ready Mixed Concrete Research and Education Foundation. 🚗





## Saddle Up! 2013 VRMCA Mixer Truck Roadeo Planned for April 22

The 2013 VRMCA Mixer-Truck Roadeo will take place Monday, April 22, 2013 at Shipper's Choice Truck Training School in Chester Virginia. Companies are strongly encouraged to register their drivers for a fun day of competition and camaraderie as we shine a spotlight on safety in the Ready-Mixed Industry.

Competing drivers will be scored on the results of a written exam, pre-trip inspection, and, of course, driving challenge. State Troopers will be on hand to give a safety update and help judge the pre-trip inspection. New for 2013, there will be a special tie-breaker mixer-truck basketball dunk challenge!

Registration is still only \$150.00 per driver and the winner will take home \$500.00 in cash, a special grand prize courtesy of H.N. Funkhouser & Co./Chevron, an all-expense paid trip to the 2013 VRMCA Spring Convention at The Greenbrier and bragging rights for the whole year! The runner-up will take home a \$350.00 cash prize. Registration details will be emailed soon and posted on the VRMCA website.

Sponsorships help make this event a success for drivers and attendees. There




Virginia Ready-Mixed Concrete Association  
**2013 Mixer Truck**  
**★ ROADEO ★**  
**Monday, April 22, 2013**  
 Shippers Choice  
 1151 W. Hundred Road • Chester, Virginia  
[www.vrmca.com](http://www.vrmca.com)

are two sponsorship levels for 2013; for \$1,000 the VRMCA 2013 Meeting Sponsorship Package covers sponsorship of the Mixer-Truck Roadeo, the Spring Convention and the Fall Meeting—companies will receive recognition in all event-related emails, in all 2013 newsletters, online recognition and signage at all events. Companies can also choose to be a single-event sponsor for \$400.00 per event and receive the same recognition benefits for the sponsored meeting. Other donations to help benefit

our drivers for the Truck Roadeo are also encouraged... please contact Sherry Whiting at 434-326-9842 to discuss.

Special thanks to the Truck Roadeo Lubricant Sponsor H.N. Funkhouser & Co./Chevron, Vulcan Materials, S.B. Cox, and Denton Concrete for donating equipment, materials and supplies used during the event.


VRMCA also gratefully acknowledges our Meeting Sponsors Lafarge North America and H.N. Funkhouser & Co./Chevron. 



### Contest Celebrates Safety Successes

It's time for the Annual VRMCA Safety Contest. The contest is an excellent way to demonstrate and recognize your commitment to safe plant operations. This recognition may boost employee morale, reduce company losses and is a positive reflection of your company and of the industry's safety effort.

Winning plants, regardless of size, will be recognized on a Gold, Silver or Bronze level based on Lost Time Injuries and Injury Frequency Rate (IFR). The most recent IFR for the Ready Mixed Industry by the Bureau of Labor Statistics (BLS) is generated from the OSHA 300 form that each company is required to maintain throughout the calendar year. Awards are based on safety performance for the 2012 calendar year. Winners will be recognized at the 2013 Spring Convention at The Greenbrier in May.

There is no fee to participate— simply return the required forms before the April 12, 2013 deadline. Contest details and forms have been emailed to the membership and will be posted on the [www.vrmca.com](http://www.vrmca.com) website. For questions about the contest, please call or email Sherry Whiting at 434/326-9842 or [sherry.whiting@easterassociates.com](mailto:sherry.whiting@easterassociates.com). 

# VRMCA 2013

## Convention & Event Sponsorship



New for 2013 we are offering a Meeting Sponsorship Package. For \$1,000 your company can sponsor all three VRMCA membership events including the VRMCA Mixer-Truck Roadeo, the Spring Convention and the Fall Convention.

This level of sponsorship will include:

- Signage at all three events
- Sponsorship recognition in all meeting-related emails
- Newsletter recognition
- Recognition on the VRMCA website

Single event sponsorship levels are also available and will include the same benefits as a package sponsorship for just the individual event. Meeting sponsorships help make our events successful, please consider becoming a sponsor and supporting the Virginia Ready-Mixed Concrete Association.

**Golf Hole Sponsorships to benefit the Scholarship Fund or the PAC will be available separately and are NOT included in the package amount.**

### SIGN UP TODAY TO RESERVE YOUR SPACE

**Yes! I will be a \$1,000 VRMCA Meeting Sponsor.**

**I would like to sponsor the events of my choice for \$400 per event.**

VRMCA Mixer-Truck Roadeo Sponsor: April 22, 2013

VRMCA Spring Convention Sponsor: May 19-21, 2013

VRMCA Fall Convention Sponsor: October 15-16, 2013

Company Name (as it should appear in all meeting-related materials)

Contact Name

Address

City

State

Zip

Contact E-mail

Phone Number

Fax Number

Please make checks payable to "VRMCA" and send complete form with payment to VRMCA, 250 West Main Street, Suite 100, Charlottesville, VA 22902, Attn: Sherry Whiting. You can also pay online at <http://www.vrmca.com/store/categories.asp>.

# Spring Convention Returns to The Greenbrier Hotel

The VRMCA Spring Convention is coming up soon at The Greenbrier Hotel in White Sulphur Springs, West Virginia May 19th through the 21st. Spring Convention topics and speakers will include:

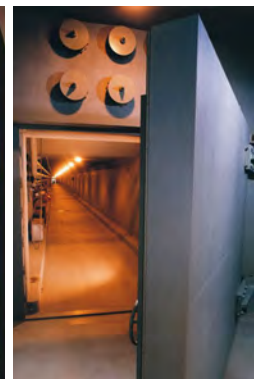
- **The State of Our Industry: A Look Back at the Past, and What Lies Ahead**— Pierre Villere will present his views on the construction materials recession of the past five years, as well as his thoughts on the current recovery and the outlook for the next few years. He will also share highlights of the NRMCA Industry Data Survey for 2012.
- **VDOT Update**—VDOT Commissioner Greg Whirley has been invited to speak.
- **MIT Life-Cycle Assessment and Sustainability**— Dr. Franz-Josef Ulm, George Macomber Professor in the Department of Civil and Environmental Engineering at the Massachusetts Institute of Technology, will discuss work being done at the MIT Concrete Sustainability Hub, LCA analysis and it's effects on the concrete industry.
- **Keynote**— Former New Hampshire Governor John Sununu will deliver the keynote address on Tuesday.

Meeting registration materials will be available soon. The hotel is now accepting reservations in the group block; single-occupancy rooms are \$375.00 and



**2013**  
 Virginia Ready-Mixed Concrete Association  
**SPRING CONVENTION**  
**May 19-21, 2013**  
 The Greenbrier  
 White Sulphur Springs, West Virginia

[www.vrmca.com](http://www.vrmca.com)



double rooms are \$517.20 per night plus applicable taxes and resort fees. The room rate includes accommodations, breakfast and dinner at designated restaurants on the Modified American Meal Plan. The VRMCA room block will be available until April 3, 2013 or until the group block is sold-out, whichever comes first. Please mention

the Virginia Ready Mixed Concrete Association when you call to book your rooms— 1-800-624-6070, press 2 when prompted.

For more details, please contact Sherry Whiting at 434-326-9842 or [sherry.whiting@easterassociates.com](mailto:sherry.whiting@easterassociates.com). Please check the VRMCA website for more details. 🚚

**2013 MEETING SPONSORS**

**VRMCA Gratefully Acknowledges  
 the Support of Our 2013 Meeting Sponsors**



**H.N. Funkhouser & Co.**  
*Quality Petroleum Products Since 1932*







PROVIDING HIGH QUALITY  
REFINED POZZOLAN  
TO THE MID-ATLANTIC REGION

MARKETING

MANUFACTURING

TRANSPORTATION

ENGINEERING

[www.sefagroup.com](http://www.sefagroup.com)



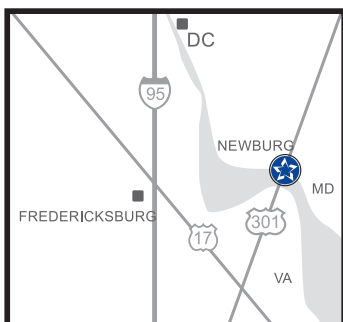
## THE FUTURE OF FLY ASH IS HERE.

Let one of our Technical Sales Representatives show you how STAR® Refined Pozzolan can improve the quality of your concrete.

Hank Keiper, P.E. 804.380.8078

Tom Wahl, P.E. 540.525.9331

MORGANTOWN STAR®  
Newburg, MD



# Federal Contractors Can Expect Significant Impacts from Sequestration

By John G. Kruchko and  
Kevin B. McCoy

As of the writing of this article, Congress and the White House have failed to resolve the budgetary “slap in the face” known as sequestration, which is set to take effect on March 1, 2013. Sequestration (i.e., across the board agency spending cuts) is the result of the contentious 2011 budget negotiations. Essentially, Congress and the White House created the sequester as a “poison pill” that would require lawmakers to reach a negotiated resolution on how best to cut spending rather than suffer with large across-the-board cuts they created with sequestration. Apparently, lawmakers on both sides of the aisle misjudged how much pain they were all willing to inflict on the country – particularly, the federal contractors that do business with the very agencies that are preparing to take an ax to their 2013 budgets. Aside from the federal employees who may be furloughed, there is little doubt that federal contractors will start to feel the pain almost immediately if sequestration actually occurs. The “pain” will certainly come in the form of financial pain. However, sequestration will present other legal and administrative pitfalls for federal contractors to consider as they try and continue to conduct business with the federal government during the sequester.

## WARN Act Notices

Typically, the Worker Adjustment and Retraining Notification Act (“WARN”) requires employers with over 100 employees undergoing a “mass layoff” or plant closing to give sixty (60) days written notice to those employees who will be affected. Last fall, there was much debate in the federal contracting community about whether to issue WARN notices to employees. So much so, in fact, the U.S. Department of Labor stepped in to issue an advisory letter in July 2012 recognizing that the unpredictable effects of a sequester would



trigger the “unforeseeable business circumstances” exception to WARN’s requirement that notices be issued to the employees.

The fervor over WARN implications later subsided when the original January 2, 2013, sequestration date was pushed back to March 1st. Everyone assumed that Congress and the White House would resolve the budget issues and make sequestration ultimately unnecessary. However, a resolution short of sequestration now looks unlikely. As a result, federal contractors must once again decide whether to issue WARN notices to those employees it anticipates having to layoff or, at least, furlough. Complicating matters further is the fact that many government agencies have not yet notified their contractors how sequestration may affect their contracts, or when it may affect them. Plus, there is seemingly some disagreement in Congress about the efficacy of the DOL’s conclusion about whether WARN notices are required; and it is not clear what weight the federal courts would give the DOL’s assessment in any resulting WARN act litigation.

In a nutshell, if you are a federal contractor and have received notice from one of your federal clients about specific cuts or reductions to existing contracts,

you should reevaluate whether or not to send WARN notices to those employees that will be affected. Make sure in this process you account for any WARN-type statutes that may impose greater or different requirements under applicable state laws where your company does business.

## Implications for Unionized Federal Contractors

Those federal contractors who are unionized or who have contracts where both union and non-union workers are employed will have some precarious trails to navigate through the sequester. For starters, “terms and conditions” of employment are considered to be mandatory subjects of bargaining between an employer and the union. Should a federal agency cut or even eliminate your company’s contract, you will be faced with not only laying off the employees working on that federal contract, but also dealing with how to break the news to the union without ending up before the National Labor Relations Board (“NLRB”) defending an unfair labor practice charge. Unionized employers may be forced to re-open contract negotiations with the union and bargain with them about the effects of the sequester on their unionized employees. Simply



## Navigating the legal landscape in a post-sequester world will not only be new, it will be challenging.

because the federal government is cutting budgets does not relieve employers of their obligations under the National Labor Relations Act, and you can be sure unions will be out in force to try and preserve as many employees and as much of their salary and benefits as possible during any resulting furlough period.

### Benefits Continuation and COBRA

The Consolidated Omnibus Budget Reconciliation Act ("COBRA") provides employees separated from employment with the opportunity to continue for a limited period the health care coverage they enjoyed under their previous employer's plan. Employers who may have to furlough or layoff employees due to the sequester should take the time now to examine the terms of their group health plan(s) and determine whether a layoff or furlough in this situation would constitute a loss of employment sufficient to trigger the employees' right to COBRA continuation coverage.

### Furloughing Salaried, Exempt Employees


A layoff or furlough is a fairly straight-forward proposition for hourly paid, non-exempt employees. If they do not work, they do not get paid. That is not always the case for salaried, exempt employees.

If your organization has to furlough salaried, exempt employees, you first need to consider whether the furlough period will be in whole week increments or something less. For exempt employees who are furlough an entire week, the employer need not pay any portion of the salary and the employees' exempt status remains intact. However, the employees must not perform any

work whatsoever during that week (i.e., not listening to voice mails or reading e-mails); otherwise, the employer must pay the exempt employees their entire salary for the week.

If you have salaried, exempt employees who will be furloughed for only a day or two per week, make sure the furlough occurs in whole day increments, not partial days. Moreover, employers must remember that a furlough does not change the requirement that their salaried, exempt employees must still earn a minimum of \$455 per week in salary. So any salary reductions related to the furlough cannot take them below this threshold. Also, consider carefully at the outset the furlough schedule and any anticipated salary reductions. Some courts have viewed frequent changes to salary as an indication that the employee is not actually paid "on a salary basis" as contemplated by the Fair Labor Standards Act ("FLSA") and is, therefore, really a non-exempt employee who is entitled to overtime pay. Thus, plan accordingly and make only infrequent changes to the salaries of your exempt employees.

### Conclusion

The foregoing examples are only a few of the pitfalls that await unsuspecting government contractors should the sequester take affect. Navigating the legal landscape in a post-sequester world will not only be new, it will be challenging. Federal contractors are advised to consult in advance with their labor and employment counsel and prepare a comprehensive strategy on how to successfully navigate their operations throughout the sequester. 

Copyright 2013 Kruchko & Fries

John G. Kruchko is a Partner with the Management Labor & Employment Law Firm of Kruchko & Fries, PLC in Tysons Corner, Virginia; Kevin B. McCoy is also a Partner with the Firm. For more information, please contact Mr. Kruchko or Mr. McCoy at (703) 734-0554 or JKruchko@KruchkoandFries.com, or KMcCoy@KruchkoandFries.com. This article is published for general information purposes, and does not constitute legal advice.

## On the Horizon Calendar of Upcoming Events

### MARCH 12, 2013

**HRCAC Business Meeting**  
11:30 AM - 1:00 PM  
Surf Rider Restaurant  
Virginia Beach, VA

### MARCH 14, 2013

**NVCAC Business Meeting**  
7:30 AM - 9:00 AM  
Manassas, VA

### MARCH 19, 2013

**CVCAC Business Meeting**  
11:30 AM - 1:00 PM  
Meadowbrook Country Club  
Richmond, VA

### MARCH 20, 2013

**SWCAC Business Meeting**  
8:00 AM - 9:30 AM  
Roanoker Restaurant  
Roanoke, VA

### MARCH 7, 2013

**Virginia Tech  
Construction Career Fair**  
10:00 AM - 4:00 PM  
Blacksburg, VA

### MARCH 7-8, 2013

**Virginia Concrete Conference**  
The Westin Richmond  
Richmond, VA

### MARCH 24, 2013

**NVCAC Pervious Concrete  
Certification**  
7:00 AM - 4:30 PM  
Luck Stone  
Chantilly, VA

### APRIL 30 - MAY 2, 2013

**ACI Concrete Field Testing  
Seminar and Examination\***  
Chandler Concrete of Virginia  
614 Norfolk Avenue, SW  
Roanoke, VA

\*PRE-REGISTRATION REQUIRED

Please visit the online calendar  
for an up-to-date list of events.  
[www.VRMCA.com/calendar](http://www.VRMCA.com/calendar)





WHEN SO MUCH IS RIDING ON  
YOUR CHOICE OF CEMENT,  
MAKE THE **RIGHT** CHOICE

THE **RIGHT** PRODUCT & SERVICE  
IN THE **RIGHT** PLACE  
AT THE **RIGHT** TIME

*Roanoke Cement has supplied ready-mix producers and the construction industry with consistent, dependable, high quality cement for over 50 years.*

*A superior product, backed by excellent customer service, the latest technology, and reliable distribution shows our commitment to serve our customers.*

*When so much depends on your cement, choose Roanoke Cement. Call 800-782-7622 or 540-992-1501 today.*

*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.*

**ROANOKECEMENT™**

A TITAN AMERICA BUSINESS