



TRI Reporting - Lead in Cement and Other Triggers

By Doug Ruhlin

I've written a lot on here about TRI Reporting lately. For those of you that don't know what TRI Reporting is, it's a Federal requirement that requires facilities annually report the manufacture, processing, or otherwise use of toxic chemicals in excess of reporting thresholds. It's also called EPCRA Section 313 Reporting, Toxic Release Reporting, or Form R Reporting, for the USEPA form identification.

I sincerely hope the message on TRI Reporting is getting through.

But I still run into folks in the concrete industry who don't understand if they need to be doing TRI Reporting or what it entails. And, given the rising visibility of TRI Reporting enforcement (which I expect to significantly increase in 2013), it is absolutely critical that concrete producers understand TRI Reporting and their potential responsibilities for conducting TRI Form R Reporting. Remember, TRI Reporting isn't new; it's been around for many years.

So here's the important points of TRI Reporting as it relates to concrete producers:

The Three Triggers of TRI Reporting

- Having an Applicable SIC Code - Concrete production does
- Total of Over 20,000 Total Working Man-Hours at the Plant - Equivalent to about 8-12 full-time employees, including concrete mixer truck drivers, over the course of a year
- Manufactured, Processed or Used Any Listed TRI Chemical During the Calendar Year in Amounts in Excess of Applicable Reporting Thresholds

If you are a typical concrete producer who was in operation for most of the year,



you likely meet the first 2 tests, so the real test of the need to conduct TRI reporting is whether or not you exceed the reporting thresholds for listed TRI chemicals at your plant.

What Chemicals are Present at Your Facility

What sort of chemicals might be present at a concrete plant to trigger the need for TRI reporting? The primary ones are nitrates and lead, with potentially mercury also being a potential trigger. Depending upon the nitrate content in the admixture, it might only take a few thousand gallons processed for concrete production over the course of the year to trigger TRI reporting. For nitrates, the total processed over the course of the year has to exceed 25,000 pounds.

Lead in Cement or Supplemental Cementitious Materials

This includes Portland Cement, Slag, Fly Ash, etc. This is the likely trigger for most concrete plants to conduct TRI Reporting. You probably won't find the lead content on your cement MSDS, but it is

now taken for granted that the industry is aware that there is lead in cement, at some level. Not sure how much lead is in your cement? You can (and should) ask your supplier. If you can't get the information, you can use industry standard information, or you can test your own cement or SCMs through a local lab. Although lead is usually present in very small concentration in cement or SCMs (parts-per-million level), the very large amount of cement and SCMs used at a concrete facility usually triggers the need for TRI reporting. The threshold for lead reporting, since it is known as a "PBT" toxic chemical (persistent, bioaccumulative toxic) is only 100 pounds!

Mercury in Cement / Supplemental Cementitious Material

Mercury in cement or SCMs is usu-

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in the mix ...

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Roanoke	April 30, May 1, 2
Richmond	May 14, 15, 16
Harrisonburg	May 22, 23, 24
Fredericksburg	June 4, 5, 6
Roanoke	June 18, 19, 20
Virginia Beach	June 25, 26, 27
Warrenton	July 8, 9, 10
Richmond	July 16, 17, 18
Bristol	July 30, 31, August 1

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

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TRI Reporting *continued from page 1*

ally present in even lower amounts than lead, and follows the same volumetric concept as for lead in TRI Reporting. It may be present in your cement or SCM. How do you find out? Not sure how much lead is in your cement? You can (and should) ask your supplier. If you can't get the information, you can use industry standard information, or you can test your own cement or SCMs through a local lab. The threshold for mercury reporting (also a PBT chemical) is only 10 pounds.

Other Chemicals Can Trigger TRI Reporting

There may be other TRI Reporting necessary if toxic chemicals are reported to be at your concrete plant, but usually nitrates and lead are the key triggers. Take my advice - review all your chemicals used at your concrete plant against the USEPA list of TRI chemicals and their applicable reporting thresholds, and report as necessary.

TRI Reporting Stands for Toxic RELEASE Inventory

It's important to also note that TRI Reporting also requires an estimate of the release to the environment of these toxic chemicals, if any releases are present. Typically, nitrate releases are not present since it goes into the concrete. However, there may be atmospheric releases of cement or SCMs and its lead or mercury component. This must be estimated, and reported.

TRI Reporting Due Dates

TRI Reporting is due July 1st of every year.

At Resource Management Associates, we strongly advise that all concrete producers, regardless of whether you produce ready mixed concrete, precast concrete products, concrete pipes, decorative concrete, etc., evaluate whether or not they are required to conduct TRI reporting and to come into compliance. This can be tricky however, and can lead to a significant compliance liability, so proceed cautiously. You may wish to consider using the USEPA Audit Policy, which we've used before regarding TRI Reporting compliance deficiencies. Just note that use of the USEPA Audit Policy comes with some strict requirements on its use.

Want an easy way to evaluate whether or not you should be doing TRI Reporting at your concrete plant? Request a free TRI estimator for concrete plants from us by visiting our website at www.RMAgreen.com/tri-reporting. It will help you determine - confidentially - if you should be doing TRI Reporting. And, if you need further help, contact us.

Bottom line is this. If you are unsure about TRI Reporting, find out today from an expert. If you need to be doing TRI Reporting, get in compliance and report. Don't let the USEPA be the one who determines that you should have been reporting in the past - you probably won't like the outcome, or the incredibly high fines that could be received!

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Bob Chandler presents Robert O'Brian with a plaque.

O'Brian Completes Term

Having completed a very successful two year term as Chairman of the Southwest Virginia Concrete Advisory Council, Robert O'Brian of Lynchburg Ready Mix turned the leadership of the Council over to Sam Woolwine of Boxley at the end of the November business meeting. During his tenure O'Brian oversaw the beginning of a significant new promotion of concrete paving for local streets and roads, an emphasis on working with VDOT officials, several major seminars for architects, engineers and concrete contractors, continued participation in the annual Construction Professional's Networking Event and the rebirth of an annual Golf Outing to raise funds for operating expenses.

"One of the best aspects of being Chairman is having the opportunity to meet with other council members on a regular basis, and working with them on situations of mutual interest," said O'Brian. "I really appreciate the efforts of the committee chairs, and we could not have had successful promotions without the hard work of Sam Woolwine on the various dinner seminars and Paul Bryan with the golf outing." O'Brian also noted that as Chairman he met with other construction professionals and VDOT officials whom he probably would not have met in the course of his duties for Lynchburg Ready Mix.

VRMCA President Bob Chandler presented O'Brian with a plaque and thanked him for his service. While stepping down to be a "regular" member of the Southwest Virginia Council, O'Brian will continue in his position on the Board of Directors of VRMCA. 🚚

On the Horizon

Calendar of Upcoming Events

FEBRUARY 12, 2013

HRCAC Business Meeting

11:30 AM - 1:00 PM
Surf Rider Restaurant
Virginia Beach, VA

FEBRUARY 14, 2013

NVCAC Business Meeting

7:30 AM - 9:00 AM
Manassas, VA

FEBRUARY 19, 2013

CVCAC Business Meeting

11:30 AM - 1:00 PM
Meadowbrook Country Club
Richmond, VA

FEBRUARY 20, 2013

BRCAC Business Meeting

12:00 PM - 1:30 PM
Rowe's Family Restaurant
Staunton, VA

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

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

'Back to Basics' Seminar Hosted by Southwest Council



By Bob Nablo,
Director of Industry Services

This year the annual dinner-seminar hosted by the Southwest Virginia Council featured a panel discussion on the basics of ordering, testing and preventing problems for fresh concrete. The audience of thirty-five contractors and engineers enjoyed an excellent buffet dinner at The Hotel Roanoke before listening to presentations by Bob Neal of Lehigh Cement Co., Andy Faulconer of Grace, Brian Wyatt of ECS, Ltd., and Jessyca Woodruff of F&R.

After a brief welcome and introduction by Council Chairman Sam Woolwine of Boxley, Bob Neal gave a shortened version of his "prevention of cracking and scaling" presentation, focusing on the placement issues that generally cause these problems and the ways contractors can lessen or eliminate the problems with correct mix designs and placement. He also touched on new building code requirements and their effects on contractors. Andy Faulconer followed by addressing communication issues between the designer or contractor and the concrete producer. Faulconer stressed the need to tell the batch plant operator specifics about the job—where the concrete will be placed, the type of traffic it will be exposed to, whether it is a residential or commercial job, will the concrete be

pumped, and so forth. Andy also talked at some length about admixtures and how some newer products can help concrete placement in difficult situations.

Brian Wyatt spoke about the importance of performing job site tests to meet ASTM and ACI standards. He talked about water/cement ratios and slump control, the importance of meeting obligations to the project owner and he stressed that the field technician does not reject trucks or approve the addition of water or other materials onsite, but reports results to the hiring agency. He also pointed out that new regulations require the contractor to provide a suitable place for the testing agency to locate a curing box. Jessyca Woodruff followed with an explanation of the common tests a field technician will employ, emphasizing the care of freshly made cylinders, the importance of initial curing and the care that must be taken when moving cylinders. These presentations were followed by several questions about admixtures, testing and crack control.

While the economy continues to hold down the numbers of attendees, this winter event remains popular. The Hotel Roanoke always offers an excellent choice of buffet dinners, and knowledgeable, experienced presenters always attract an interested audience. 🚚



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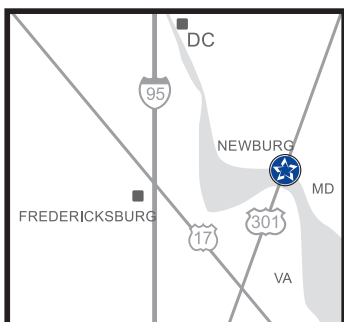
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Building Green with Concrete Seminar Returns to Gainesville in June



THE 6TH ANNUAL BUILDING GREEN WITH CONCRETE WORKSHOP



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

The 6th Annual Building Green with Concrete Workshop will return to Wetland Studies and Solutions Inc. in Gainesville on Wednesday, June 26, 2013. NVCAC is sponsoring the event. The seminar titled "Sustainable Solution for the Built Environment" will examine all the Environmental Attributes of Concrete in our Built Environment. The workshop will cover methods, impacts and opportunities that concrete offers to the building and pavement life cycle.

This event will also provide a perfect atmosphere for networking opportunities between the design and construction community and concrete industry leaders, as well as regional and national concrete and cement industry trade associates.

The Building Green with Concrete Workshop has been well attended, averaging over 120 attendees per event in the past five years. Those who should plan to attend this year's event are architects, civil engineers, environmental engineers, state, county, city & VDOT officials, county environmental managers, county stormwater designers and managers, planners, developers, contractors, VRMCA members and those who have interest in more profound changes in the way we build.

Past participants have wonderful things to say about this event.

Brandon Motuk, P.E., Senior Sales Representative with BASF, had this to say, "The Building Green with Concrete Workshop exceeded my expectations. The technical presentations were detailed, informative, and captivating. Further, it was very encouraging to see such a great turnout for an event such as this. With the cost of virgin building materials skyrocketing, now more than ever, 'building green' and using recycled materials in new construction is critical. It was an honor to help sponsor this event."

Delegate Tom Rust, P.E., AICP, Vice President, Pennoni Associates Inc., Consulting Engineers, commented that "the session was informative and educational. It provides designers and policy makers the information and tools necessary to make infrastructure decisions based on multiple factors such as cost, performance, constructability and life cycle."

Doug Brookbank, AIA, LEED AP, Senior Associate Architect with MulvannyG2 Architecture, stated that he "thought the event was very well organized and informative. It covered a nice range of applications for concrete and inspired me to re-look at the way we design some of our projects currently. Overall though, one of the best all-day

seminars I have been to. I didn't just feel like I was there getting my learning units, but I felt like I was getting current and useful information that I can apply to our work."

"After attending your workshop I am sold on the value that concrete offers to sustainable design. Speakers were great and they delivered the message very clearly. I learned a lot about ICF and its role in Net-Zero Energy School in Kentucky from Mr. Stanfield. Thank you." Tim Huggler, P.E. with Loudoun County Public Schools

Preston Anderson, FMP, GACR, Facilities Management Services, Prince William County Public Schools, said "I truly enjoyed the workshop and was drawn to the attention of all the criteria required in placing pervious concrete. Thank you for such a nice venue and a day full of education."

"One of the best and most informative events I have attended in the most recent years. Thank you," said Ken Ellis, P.E., Director of Engineering, William Gordon and Associates.

Sponsorship opportunities will be available for contractors, distributors and suppliers on a first come basis. Limited space is available.

Look for the complete announcements shortly. 🚚

McDonnell Willing to Scrap I-95 Tolls if Assembly Passes Road Plan

Tolls are on the table as Gov. Bob McDonnell and House Republican leaders prepare for a showdown with the Senate over raising taxes for transportation for the first time in more than 25 years.

The McDonnell administration said Wednesday that it is willing to back off of its plan to impose tolls on Interstate 95 if the General Assembly adopts his transportation funding package.

If that happens, the legislation approved by the House Finance Committee on Wednesday commits only to a study of whether the additional funding "will mitigate or eliminate the need to implement tolling on Interstate 95." In the meantime, no tolling would be allowed on I-95 south of Fredericksburg.

The decision was welcome, if not entirely satisfactory, to Del. Christopher K. Peace, R-Hanover. He has helped lead opposition to tolls proposed on I-95 in Sussex County and potentially north of Richmond.

"It is getting better," Peace said. "There has to be a hook in the bill so that at the end of the process we can get a more clear and definite statement on stopping the tolls on I-95."

The governor's bill, introduced by House Speaker William J. Howell, R-Stafford, and Del. Timothy D. Hugo, R-Fairfax, passed the House Finance Committee on a 14-8 vote with the understanding that it's likely to change once the legislation goes to conference committee with the Senate.

The Senate Finance Committee will give its answer today, when it hears recommendations of a subcommittee that has met privately in small groups since last week to devise a transportation plan from 15 competing proposals, including McDonnell's.

Senate leaders have focused primarily on proposals that build on the state's gasoline tax, either at the pump or wholesale level, while the House bill is based on McDonnell's unique proposal to eliminate the tax entirely and replace it with an increase in the sales tax.

Secretary of Transportation Sean T. Connaughton said the governor's proposal is "game changing" because it would make Virginia the first state in the country to abandon the gas tax in the face of increasing vehicle fuel economy that limits the amount of revenue it can raise.

But Del. Vivian E. Watts, D-Fairfax, who was Secretary of Transportation in 1986 when Virginia last increased taxes for roads and mass transit, called the governor's proposal "worse than doing nothing."

Watts said the plan would raise money for maintenance of existing roads statewide but produce little revenue for road construction in the urban areas that need help most. If that happens, she said, the opportunity to raise revenue won't come again soon.

"Addressing the urban crescent's needs is not only fair play but essential to our economy," she said.

Instead, Watts offered a substitute proposal that included most of McDonnell's ideas, while raising the wholesale tax on gasoline and giving Northern Virginia the ability to raise its local sales tax for regional transportation projects.

She also dropped the governor's plan to divert more money from the general fund to pay for transportation, an idea that is widely opposed by Democrats in both chambers.

Her proposal would raise an estimated \$1.4 billion a year, she said, compared with the \$840 million a year the governor's plan would raise by its fifth year.

All told, Connaughton said the governor's bill would raise \$3.2 billion for transportation over five years, but Watts and other critics noted the plan relies heavily on taxing Internet sales through legislation Congress has yet to approve.

The legislature's Conservative Caucus also opposes the governor's proposal because they say it would raise taxes too much, rather than too little.

"Unfortunately, the bill that was approved by the House Finance Com-

mittee today would result in higher taxes for working Virginians," said Del. Benjamin L. Cline, R-Rockbridge, caucus chairman, who voted against the bill.

The House committee did not vote on Watts' proposal because Chairman Harry R. Purkey, R-Virginia Beach, ruled that the governor's plan would be the only one considered by the panel.

Purkey also ruled out a substitute proposed by Dels. David B. Albo, R-Fairfax, and Richard L. Anderson, R-Prince William, that would keep the gas tax while indexing it for inflation, raise the sales tax but eliminate its application to food purchases, and increase the sales tax in Northern Virginia and Hampton Roads for regional projects.

Anderson, who ultimately voted for the McDonnell bill, said, "We know the real work will be done in conference" with the Senate.

In addition to opening the door to dropping tolls, the McDonnell administration amended its bill to provide for a tax refund to drivers who would continue to pay the state tax on diesel fuel for their cars. The proposal would maintain the diesel tax to collect revenue from interstate truckers.

The amended bill also would remove natural gas-powered vehicles from a proposed \$100 annual fee on alternative fuel vehicles, including hybrids, even though owners of conventional vehicles wouldn't pay the state gas tax.

Connaughton said the fee on the other types of alternative vehicles, such as those powered by electricity, still would be justified, because drivers of those vehicles aren't paying as much federal gas tax as people with conventional gas-powered vehicles.

Del. Kathy J. Byron, R-Campbell, questioned whether the administration would use the same reasoning to apply the fee to motorcycles. "They don't use as much gas either," Byron said.

Article courtesy of Michael Martz from the Richmond Times-Dispatch.

Virginia Concrete Conference

"COUNT ON CONCRETE TO DELIVER QUALITY ON TIME AND UNDER BUDGET"

The Westin Richmond, Richmond, VA

March 7-8, 2013

Join us for the **2013 Annual Virginia Concrete Conference** for the Virginia Transportation Industry. The Conference provides an annual forum for the exchange of information and technology transfer with focus on concrete pavements and structures, as well as concrete materials. Emphasis will be placed on technical advancements/improvements and the viability of concrete for transportation applications. Industry and government experts will join us to share their knowledge and experiences in their field of expertise.

The Conference is being hosted by the American Concrete Pavement Association, Mid-Atlantic Chapter, the Virginia Chapter of ACI, the Virginia Ready-Mixed Concrete Advisory Council, the Precast Concrete Association of Virginia, the Virginia Department of Transportation and the Federal Highway Administration.

Don't miss this opportunity to network with the industry's leading professionals as you learn about the latest developments in concrete, pavements and bridges - topics include: Concrete Overlays on Route 58; Post-Tensioned Grout Update (Design, Specifications, Material & Construction); I-95 Bridge Replacements; Intelligent Compaction for Concrete; and MAP-21 Performance Requirements. Please join us and learn how to

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Call for Exhibitors

Again this year, vendor exhibit tables will be set up during the Conference displaying products and services from the cement and concrete industry. **All breaks and the reception will be held in the exhibit areas.** Exhibitors will be recognized throughout the Conference. To show industry support and to help offset the event cost, we are encouraging you to join these companies who have already signed up:

ACPA, Mid-Atlantic Chapter	Kaufman Products, Inc.	Siva Corrosion Services, Inc.
Carolina Stalite Company	Precast Concrete Assn. of VA	Slurry Pavers, Inc.
Central Atlantic Bridge Associates	Quikrete	The Fort Miller Co., Inc.
CTS Cement/Rapid Set	Sigma Development Group	Vector Corrosion Technologies
HTNE Hydrodemolition Services LLC	Silica Fume Association	Wel-Co Diamond Tool Corp.
Hunt Valley Contractors, Inc.		



Exhibits will be limited to tabletop displays and booth displays that fit into an 8'x8' space. Space includes a 6' skirted table, two chairs and wastebaskets around the room. Booth fees are \$450 for members and \$600 for non-members and will include one complimentary registration. If you need electrical service, please check the appropriate box on the Registration Form. Set up time is from 9:00 a.m. to 11:00 a.m., Thursday, March 7, displays may be taken down after 11:00 a.m. on Friday, March 8. **Time is of the essence and space is limited!** Please complete the Registration Form and submit to the **ACPA, Mid-Atlantic Chapter no later than February 13,**

Door Prize Sponsorship

The sponsoring organizations hope that you will consider contributing to the door prizes. The prize drawings at the close of the Conferences in the past have been very well received and provided a fitting conclusion to the Conference.

All prize sponsors will be widely recognized during the Conference. Please complete the Registration Form and at the minimum we hope you will support the Conference by attending.

Please send an electronic version of your company's logo to: Sherry Braafhart at sherryb@pavement.com no later than February 13, 2013.

Registrations

Conference Registrations:

Please complete the **Registration Form** and fax to the **ACPA, Mid-Atlantic Chapter** at (877) 204-2626 or (804) 320-5163. Feel free to photocopy the form if more than one individual will be attending from your company.

Hotel Reservations:

A block of rooms is being held for overnight accommodations at a special rate of \$83 per night plus tax. When making reservations, call **The Westin Richmond, 6631 W. Broad St., Richmond, VA** at **(888) 627-7786** and ask for the "Concrete Conference" room block or reservations can be made online with instant confirmation at: <https://www.starwoodmeeting.com/StarGroupsWeb/res?id=1206262419&key=3ED9D>

The deadline for hotel reservations is February 13, 2013.

Virginia Concrete Conference

Thursday, March 7, 2013

- | | | | |
|----------------|--|----------------|---|
| 11:00 a.m.— | | 3:15—3:45 p.m. | Break (Exhibits Open) |
| 1:00 p.m. | Registration (Exhibits Open) | | |
| 1:00—1:05 p.m. | Welcome—Bob Long, ACPA | | |
| 1:05—1:30 p.m. | Opening Comments—
Gregory A. Whirley, VDOT, Commissioner
Sean Connaughton, VA Secretary of Transportation
Irene Rico, FHWA, Virginia Division Administrator | 3:45—4:00 p.m. | ACI Concrete Award Presentation—
Hank Keiper, VA ACI/The SEFA Group |
| | <i>Moderator: Bob Long, ACPA</i> | 4:00—4:30 p.m. | Route 58 Concrete Pavement Overlays —
Michael Sprinkel, P.E., VCTIR |
| 1:30—2:30 p.m. | Economic Construction Outlook for 2013-
2014— Sidney Mays, Vulcan Materials | 4:30—5:00 p.m. | I-95 Bridge Replacements— Scott Fisher, P.E.
VDOT Richmond District &
Jorge Suarez, Michael Baker Corp. |
| 2:30—2:45 p.m. | Presentation of ACPA National Pavement
Award— Bob Long, ACPA | 5:00—5:30 p.m. | Trust But Verify— Al Hogan, P.E., American
Concrete Pipe Association |
| 2:45—3:15 p.m. | MAP-21 Performance Requirements—
TBD, FHWA | 5:30—7:30 p.m. | Reception (Exhibits Open) |
| | | | <i>Dinner on your own.</i> |

Count on Concrete

Friday, March 8, 2013
Concurrent Breakout Sessions

7:00 a.m.-8:00 a.m. Registration and Continental Breakfast (Exhibits Open)

PAVEMENT BREAKOUT SESSION

- Moderator: Mohamed Elfino, P.E., Ph.D., VDOT Materials*
- 8:00—8:45 a.m. Construction of Concrete Pavements for
Streets & Local Roads—
Jon Hansen, NRMCA
- 8:45—9:15 a.m. Use of HIPERPAVE & Maturity Testing for
Building Quality Concrete Pavements—
Jagan Gudimettla, P.E., FHWA/Global
Consulting, Inc. & Gary Crawford, P.E., FHWA
- 9:15—10:00 a.m. Quality Assurance for Portland Cement
Concrete Pavements—
Jim Grove, P.E., FHWA/Global Consulting, Inc.
- 10:00—10:30 a.m. Break (Exhibits Open)
- Moderator: Bob Nablo, VRMCAC*
- 10:30—11:15 a.m. Route 58 Concrete Overlay Part 2
Construction—
Thomas R. Tate, P.E., VDOT
Bobby Baker, NXL Construction Services, Inc.
- 11:15—11:30 p.m. Quiet Pavement Task Force Update—
Kevin McGhee, P.E., VTRIC
- 11:30 a.m.—
12:00 p.m. Intelligent Compaction for Concrete
Pavement Construction—
Michael Arasteh, FHWA Resource Center

BRIDGE BREAKOUT SESSION

- Moderators: Julius F. Völgyi, Jr., P.E., VDOT Structure & Bridge
& Rodolfo Maruri, P.E., FHWA, Virginia Division*
- 8:00—8:30 a.m. Post-tensioned Grout Update (Design,
Specifications, Material & Construction)—
Michael Sprinkel, P.E., VCTIR & Claude
Napier, P.E., VDOT Structure & Bridge Division
- 8:30—9:00 a.m. Hydrodemolition/Latex Concrete for Deck
Repair and Overlay Placement—
Ron Ferdig, IVS Hydrodemolition Services
- 9:00—9:30 a.m. Use of Carbon Fiber Strands in Precast
Concrete Piles and Bulb Tees—
Celik Ozyildirim, Ph.D., P.E., VCTIR
- 9:30—10:00 a.m. Technologies to Identify, Treat and Prevent
Corrosion—
David Whitmore, Vector Corrosion Tech., Inc.
- 10:00—10:30 a.m. Break (Exhibits Open)
- Moderator: Ed Page, P.E., Concrete Pipe & Precast, LLC*
- 10:30—11:00 a.m. Joint Maintenance & Best Practices in Deck
Joint Replacements—
Jeff Milton, VDOT Structure & Bridge Division
- 11:00—11:30 a.m. Lessons Learned from Major Projects (WWB
Rte. 1 & Telegraph Road Interchanges,
Springfield Interchange & I-495 HOT Lanes)—
Fawaz K. Saraf, P.E., VDOT Northern VA District
- 11:30 a.m.—
12:00 p.m. Midtown Concrete Tunnel Design,
Fabrication & Construction—
Daniel Francis, A Skanska, Kiewit, Weeks JV
John Gajda, CTL Group



12:00 p.m.

Conference Closing: Charles (Andy) Babish, P.E., VDOT Materials
Door Prize Drawings (Must be present to win.)

The Government Secretly Advances Unionization: The U.S. DOL and NLRB Rewrite the Law One Small Step at a Time

By John G. Kruchko and
Kevin B. McCoy

Although the recent presidential election, the turbulent economy, and the narrowly averted fiscal cliff have dominated news reports over the last several months, other newsworthy things have been happening – not the least of which is the federal government’s quiet assault on non-unionized employers. Currently, only about 11% of America’s workers belong to a union, a number which has declined sharply in recent decades. A longtime union supporter, President Obama failed to garner enough votes to pass the Employee Free Choice Act after Republicans threatened a filibuster. However, not to be deterred, the Obama administration began wielding its executive prerogative via federal agencies to advance rules and regulations that Congress would not pass. What has resulted are small incremental steps by the U.S. Department of Labor (“DOL”) and the National Labor Relations Board (“NLRB”) to rewrite the law with regards to unionization to make it easier for unions to prosper and win support among American workers.

The U.S. DOL Quietly Proposes New “Persuader Rules”

In the summer of 2011, the DOL published new proposed regulations regarding an employer’s existing obligation to file reports with the DOL about consultants (including attorneys) or contractors the employer utilizes to persuade employees on the issue of unionization. The employer’s reporting obligation is not new; it has been in force since 1962 and is contained in Section 203 of the Labor-Management Reporting and Disclosure Act (“LMRDA”), which has become known as the “persuader rules.”

Significantly for employers that oppose unionization, Section 203(c) of the LMRDA has always contained an exception to the reporting requirements for “advice” provided to the employer. For the last half century, the



DOL has interpreted this exception to cover advice provided by attorneys to the employer on the issue of unionization. For example, attorneys could draft proposed letters to employees, draft proposed speeches, and review employers’ communications to employees. In a nutshell, as long as the employer had the option to reject the “advice” provided by its legal counsel (which is always the case), then the attorney’s activities are not reportable under the “persuader rules.” Only if the attorney communicated directly with the employees would the activity then become reportable under the LMRDA.

However, in its new proposed regulations, the DOL seeks to severely limit the advice “exception” to only exclude from the reporting requirements advice about (1) what an employer may lawfully say to employees, (2) an employer’s compliance with the law, or (3) general guidance about NLRB practice or precedent. As a result, any actions, conduct, or communications by or on behalf of an employer that might arguably be an attempt to persuade workers with regards to unionization is now required to be reported – including attorney-client

privileged communications and dealings, even if the employer’s attorney never communicated directly with the employees. The new regulations would also require employers to disclose letters, memos, videos, etc. that were prepared for the employer’s use by its attorney or outside consultant.

The applicable reporting forms have also been revised, and they give examples of activities that would become reportable under the new proposed regulations. Such tasks as (1) drafting, revising, or providing a speech for presentation to employees, (2) drafting, revising, or providing written materials for presentation or distribution to employees, (3) training members of management to conduct employee meetings, and (4) developing personnel policies or practices would now all become reportable activity—for both the employer and the consultant or attorney that actually performed the work.

The DOL is planning to take final action on the proposed regulations in April of 2013.

It is hard to overstate the monumental shift in labor management relations

Correctly managing issues surrounding current and potential unionization of your workforce can be critical to avoiding costly NLRB proceedings.

that would result in the DOL's new proposed reporting requirements. The proposed regulations will not only significantly increase the number of reports employers and consultants/attorneys must file under the LMRDA, it would also broaden the scope of conduct that could trigger an employer's or consultant/attorney's violation of that statute. This is particularly worrisome, given that the LMRDA has criminal penalties that can attach for failing to comply with its statutory requirements.

The new regulations, if approved, could significantly impact employers' relationships with their outside attorneys and disrupt employers' efforts to obtain guidance and advice when faced with possible union activity. Obviously, if your company becomes confronted with or is currently dealing with potential unionization of your workforce, seek the guidance of experienced labor counsel before trying to navigate these murky waters on your own.

The NLRB Overturns Longstanding Legal Precedent

In the past several months, a pro-union NLRB has been attacking its own established legal precedent that has existed for many years or decades. These decisions are small, incremental steps toward the Obama administration's ultimate goal of dramatically increasing unionization in this country. Three recent (but regrettably not exhaustive) examples are discussed below.

In the Board's recent *Piedmont Gardens* decision, the union had requested (following an employee termination) that the employer produce all witness statements used in its investigation into the employee's conduct leading to the termination, including the names and job titles of the employees interviewed. The employer refused, citing

the NLRB's long-standing position that such witness statements did not have to be provided to the union. The union filed an unfair labor practice charge with the NLRB, and the Board took the opportunity to essentially nix its earlier position in favor of what it termed a more "flexible approach" in evaluating whether the union's interest in obtaining relevant information outweighs the confidentiality considerations of the employer and its witnesses. This new approach will adversely affect employers' ability to conduct confidential internal investigations and protect witnesses from harassment or intimidation by the union or their fellow employees. While this concern may still be a valid reason to not produce the witness statements and identities, it is no longer a "blanket" protection, but must be argued by the employer to the Board on a case-by-case basis.

In *WKYC-TV, Inc.*, the NLRB overturned its 1978 *Bethlehem Steel* decision by deciding that a collective bargaining agreement's "due checkoff" provision no longer expires with the agreement. A dues checkoff provision is the employer's agreement to automatically deduct union dues from the employees' paychecks and pay the dues directly to the union. For almost 35 years, the Board had held that such provisions expire with the agreement, but not any more. Now employers must continue to withhold dues from their employees' paychecks and pay the money to the union, unless the employer can show it has bargained to impasse or can show the union has unmistakably waived its right to bargain over the continuation of the dues checkoff provision.

Most recently, in *Finley Hospital*, the NLRB found that a provision providing for a 3% annual wage increase in a collective bargaining agreement survived

the term of the agreement and required the employer to continue with the percentage wage increase even after the expiration of the agreement – despite the fact that there was clear language in the agreement (in three different places) limiting the increase solely to the one-year term of the agreement! The NLRB ruled the employer had a statutory not a contractual obligation to continue providing the wage increases.

The recent effort by the NLRB to rewrite its own legal precedent and create a more "union friendly" environment is very worrisome. Not only will current unionized employers feel the heat, but current non-union employers should expect to see more unions approaching their employees, now emboldened by the Board's intentional efforts to reverse decades of legal decisions that had previously helped define the relationship between employer and union. With President Obama's second term having barely begun, employers can look forward to several more years of this type of legal erosion of their rights with respect to unionization.

Conclusion

Correctly managing issues surrounding current and potential unionization of your workforce can be critical to avoiding costly NLRB proceedings. Employers should not assume they know the law in this area (even if they have worked in a unionized environment for years) because what has been a fairly constant body of law for decades now appears to be changing dramatically ... and rapidly. Therefore, it will be imperative to enlist the expertise of experienced labor counsel to help your company navigate what has become a rapidly evolving legal landscape with respect to unionization. 

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