

**Virginia Ready-Mixed Concrete Association Newsletter** 

**July 2013** 

## **Air National Guard Trains in Concrete Construction at Virginia Military Institute**

### By Robert Nablo, Director of Industry Services

The 203rd "Red Horse" Virginia Air National Guard Squadron recently joined with the Virginia Military Institute to perform construction training on VMI-owned property in Rockbridge County, placing concrete for a covered pavilion in Phase 1 of improved facilities at McKethan Park. This rural property, just two miles off of Interstate 81, is home to the VMI Observatory, the VMI Trap and Skeet Range, camping and softball sites and the pavilions, which are available for use by the public. The park is named for the McKethan family and Alfred A. McKethan, a prominent banker, citrus grower and political appointee from Florida, who was in the VMI Class of 1930.

The 203rd "Red Horse" Squadron is based at Camp Pendleton-Virginia Beach. The original Heavy Repair Squadrons were organized in 1966 during the Vietnam War when the US Air Force was asked to create its own combat construction team. Units are self-sufficient, 404



man mobile squadrons capable of rapid response and independent operations in remote, high-threat environments worldwide. They provide heavy repair

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## **Concrete Field Testing Technician Certification Program**

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



### **Upcoming ACI classes:**

Harrisonburg August 13, 14, 15 FULL Roanoke August 27, 28, 29 FULL Richmond September 10, 11, 12

Fredericksburg September 24, 25, 26

Bristol October 1, 2, 3

October 15, 16, 17 FULL Virginia Beach

Warrenton October 22, 23, 24 Richmond November 12, 13, 14

Harrisonburg December 3, 4, 5 Roanoke December 10, 11, 12

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

### 2013 VRMCA Advisory **Council Regions**

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### VMI continued from page 1

capability and construction support when requirements exceed normal base civil engineer capabilities and where US Army engineer support is not readily available. Red Horse can rapidly deliver small, specialized teams and equipment packages by airdrop or air insertion to conduct expedient airfield repairs, including mobile concrete operations. They are the US Air Force's equivalent of the US Navy's Seabees. In charge of the VMI project detachment for the Virginia Air National Guard was Senior Master Sergeant Jimmy Kidd, who had to instruct the detachment several times to cover the

freshly-placed concrete as early summer rains moved across the Commonwealth, creating extremelt muddy conditions.

As recently as 2011 the 203rd Squadron was deployed in Afghanistan, and as members complete their active duty they regularly perform Deployment For Training missions, such as the four-week project at VMI. This project focused on constructing a new entrance road to the training area and new pavilion slabs at McKethan Park, including foundations for a latrine (bathroom) and fireplace, which will subsequently be covered with an open-sided roof. All of this is intended to complement an existing pavilion and will be used by cadets, alumni and the public. Says Chief Master Sergeant Anthony Sanchez – known to Southwest Virginia Council members



as Tone' Sanchez, HCC Manager for Lynchburg District VDOT in civilian life – "This DTF project will showcase" only a small portion of what our Red Horse unit is capable of accomplishing. The results of our efforts will be a win/win situation. The customer (VMI) receives a quality product, while we have the opportunity for our members to have hands-on training." The 203rd will return in the summer of 2014 to construct additional facilities, including another pavilion. Deputy Director of Construction at VMI, COL Keith Jarvis, says "This is an important project for VMI as we continue to develop the

McKethan Park site to provide additional training tools for our Corps of Cadets and to also provide additional amenities for the VMI community. The partnership between VMI and the Virginia National Guard, and specifically the 203rd Red Horse Squadron, has been invaluable in planning and executing these projects."

Although Mother Nature made working conditions difficult, the team was able to complete the task within the allotted time frame, placing 106 cu. yds. of concrete over 102 tons of #57 aggregate and 1,800 tons of #21B aggregate. VRMCA member Conrock supplied most of the ready-mixed concrete and F&R performed the field testing of soils, steel and concrete.

### More Bad News for the National Labor Relations Board

On June 14, 2013, the United States Court of Appeals for the Fourth Circuit struck down the National Labor Board's "notice posting rule." The Board's rule would have required employers to post notices to their employees, in conspicuous places, informing them of their collective bargaining rights under the National Labor Relations Act (NLRA). The Fourth Circuit, which is the appellate court for federal courts in Maryland, Virginia, West Virginia and North and South Carolina, held that the Board had no authority under the NLRA to impose such a requirement on employers.

The Fourth Circuit is the second court of appeals to declare the notice posting requirement invalid. On May 7, 2013, the District of Columbia Court of Appeals concluded that the Board's notice posting rule and the rule's enforcement mechanisms violated Section 8(c) of the NLRA and impermissibly infringed on the freedom of speech rights of employers.

The Fourth Circuit's decision is just the latest in a series of legal setbacks for the Board. In January of this year, the D.C. Court of Appeals ruled that recess appointments made by President Obama to the NLRB on January 4, 2012, after Congress began a new session, were unconstitutional. More recently, the Third Circuit Court of Appeals struck down another intra-session recess appointment of President Obama to the Board. On May 16, 2013, the Third Circuit ruled that the "recess" appointment of former Board member Craig Becker was invalid. Similar challenges are pending in other courts.

Attorneys at Kruchko & Fries, PLC will continue to monitor the numerous legal challenges to the NLRB's authority presently being litigated in the federal courts.

Kruchko & Fries, PLC is an employment law practice limited to the representation of management in all phases of labor, employment and benefits law and can be reached at (703) 734-0554.

## 6th Annual Building Green with Concrete Workshop

### By Hessam Nabavi, Director of Industry Services

On June 26th, over 110 engineers, architects, VDOT, state and county officials, developers, builders, producers and suppliers were in attendance at the office of Wetland Studies and Solutions Inc. (WSSI) in Gainesville. This year's Building Green with Concrete offered an in-depth examination of environmental attributes of concrete in our Built Environment. Discussions also included some of the breakthroughs in concrete science and engineering by MIT Concrete Sustainability HUB. The following sessions were held:

### "Methods, Impacts & Opportunities in Concrete Building Life Cycle"

Lionel Lemay, P.E., S.E., LEED A.P., NRMCA Senior VP, Sustainable Development and Brian Killingsworth, P.E., NRMCA Senior Director, Pavement Structures

Life Cycle Assessment (LCA) is increasingly being

used to evaluate structures and building product for environmental performance. This provides an overview of how LCA can be used to assess the environmental performance of concrete structures, including buildings and pavements. A review of new and existing research comparing the environmental life cycle performance of concrete and competing building materials was also presented, including results of LCA research being conducted at the Massachusetts Institute of Technology and other key institutions. The presentation covered how the concrete industry is beginning to use LCA to evaluate and improve the concrete production process.

### "Effect of Paving Materials on Building Energy Use and Fuel Consumption"

Lionel Lemay, P.E., S.E., LEED A.P., NRMCA Senior VP, Sustainable Development and Brian Killingsworth, P.E., NRM-CA Senior Director, Pavement Structures



Research at Lawrence Berkeley National Laboratories indicates that the use of light colored pavement along with light colored roofing and cladding can help reduce urban heat islands (UHI). Light colored pavement can help reduce lighting requirements, which means lower electric bills for building owners. Research at Massachusetts Institute of Technology confirms that fuel consumption is lower on rigid pavements. The presentation provided an overview of how concrete pavement can save energy for building owners and reduce fuel consumption for motorists; ultimately helping save money, reduce dependence on foreign oil and help mitigate climate change.

### "Concrete 101, Concrete vs. Asphalt"

Andrew Pinneke, P.E., LEED A.P., Lafarge USA, Construction and Building Specialist

The presentation discussed how concrete paving (conventional and per-

vious) and asphalt are being constructed. It presented a comparative study regarding concrete pavement (conventional and pervious) vs. asphalt pavement for the use in parking applications.

The presentation also compared the performance of the three paving systems.

Also discussed were the results of an environmental impact study done using LCA as the basis of comparison for a concrete parking lot vs. pervious concrete parking lot vs. asphalt parking lot applications. The study incorporated the savings for storm water infrastructure when using a pervious concrete system as opposed to the alternative methods.

Finally, the presentation introduced resources and tools that have been developed to assist construction teams in using concrete products in a sustainable manner. Many of these tools address LEED specifically.

### "Revitalizing Existing Asphalt Pavement with Concrete Overlays (White Topping)"

Lori Tiefenthaler, Lehigh Hanson, Inc., VP, Sustainable and Marketing Communications

During this presentation, partici-

pants learned the basics of concrete overlays, the simplicity of using this technique as a preservation tool for their projects weather it is a parking lot or a roadway. It also introduced the available resources for design and construction, case studies of recent projects, and projects with decades of performance.

The presentation emphasized how important it is for the government agencies or private owners compare the pavement life available from a concrete overlay verses their typical preservation technique. In conclusion, Lori talked about how using concrete overlay can add another 20 years or more to the life of an existing pavement in a very cost effective way.

## "The Architectural Potential of Tilt Wall Design-Sustainability and the Voluminous Wall-Concrete Skins and Meaning"

Jeffrey Brown, AIA, Principal at Power Brown Architecture

The presentation balanced exploration of the general design opportunities that are possible utilizing tilt wall construction technology (including building type emphasis / creating markets around this method) with an in-depth exposition on how this technology accommodates, at very low cost, the integration of sustainable considerations with no dilution in aesthetic freedom.

The event was wrapped up by a tour of the WSSI LEED Certified facility with over 14,000 s.f. of pervious concrete parking lot.

We truly appreciate our speakers for taking the time from their busy schedule to participate in the workshop and for bringing their expertise to our audience.

### Attendee Feedback

"One of the best events I have attended in the most recent years. It was well organized and very informative. Location was just perfect. Information was very valuable and it covered a nice range of applications for concrete. I









found information about pervious concrete and concrete overlay very valuable. I truly felt like I was getting current and useful information that I can apply to our work."

Brian Cipriano, Landscape Architect, LEED AP, Loudoun County

"Great topics, effective speakers, comfortable setting, good food. Very impressive. I learned a lot. Thank you for organizing such an event. I am sold on the value that concrete offers to sustainable design. Speakers delivered the message very clearly. My favorite topic was tilt-up."

Jeffrey Fasceski, P.E., Prince Williams County Public Schools

"The topics were timely, great networking opportunities. MIT research is impressive. Great choice of speakers. I learned a lot. Thanks."

S. Michael Ghorbanian, AIA, LEED AP

An event like this cannot be a success without the contribution of many companies and individuals.

Special thanks to Mr. Michael Rolband, president of WSSI and his staff, especially Susanna Headly, for allowing

NVCAC to use their beautiful facilities.

We would like to thank our sponsoring companies for their financial contribution which made the success of this workshop possible; Essroc, Grace, Holcim, Lafarge North America, Lehigh Hanson, Luck Stone, Roanoke Cement, Separation Technologies, LLC, Stalite, Vulcan Materials, and Z.Con, Inc.

NVCAC truly appreciates their support for this promotional effort.

Special thanks to Phil Kresge, Senior National Resource Director for National Ready Mixed Concrete Association for moderating the Q & A.

Finally, very special thanks to the following members for their assistance during the event. Bill McNamara (Essroc), Dave Snider (Vulcan Materials), James Murray (Chaney Enterprises), Kevin Terry (Vulcan Materials), Lewis Lee (Luck Stone), Marc Granahan (Lehigh Cement), Rachel Leonard (Du-Brook Concrete), Tony Jones (Dubrook Concrete), and Tony Thompson (Vulcan Materials).

To view the complete presentations at this event, click on the link below: http://www.vrmca.com/regions/default.aspx?region=4.

## **Association to Hold Series of PAC Benefits**

The VRMCA Board of Directors and Legislative Committee encourages all members to support the association's Political Action Committee and have developed three Fall events to make it fun and easy to participate.

The first is a sporting clays event to be held Thursday, September 19 at the Shady Grove Hunting Preserve in Remington (between Culpeper and Warrenton). The cost for the event is \$150 for an individual shooter or \$400 for a foursome and will include 100 targets, a luncheon and prizes. We are seeking event sponsors for the following:

- Event Sponsor \$1,500
- Luncheon Sponsor \$1,000
- Shooting Station Sponsors \$150 each

The second is a golf tournament to be held Wednesday, October 9 at the Spring Creek Golf Club-one of the top 100 courses in the United States (at Zion Crossroads). The cost for the event is \$125 for an individual golfer or \$400 for a foursome and will include golf, a luncheon and prizes. We are seeking event sponsors for the following:

- Event Sponsor \$1,500
- Luncheon Sponsor \$1,000
- Hole Sponsors \$150 each



The last is a sporting clays event to be held Tuesday, October 22 at Old Forge Sporting Clays in Providence (near Williamsburg). The cost for the event is \$125 for an individual shooter or \$400 for a foursome and will include golf, a luncheon and prizes. We are seeking event sponsors for the following:

- Event Sponsor \$1,500
- Luncheon Sponsor \$1,000
- Shooting Station Sponsors \$150 each

We encourage companies to send their employees to participate and hope they will consider sponsorship. We especially hope that companies that have restrictions on direct political contributions will give serious consideration to purchase event and/or luncheon sponsorships. Your support is greatly appreciated!

For more information please contact Sherry Whiting by email at sherry.whiting@easterassociates.com or call 434/326-9842.







# VRMCA Fall Convention

# October 15-16, 2013 OMNI CHARLOTTESVILLE

VRMCA would like you to consider sponsorship of the **2013 Fall Convention**. Your support will help to make the event a success.

### Fall sponsorship will include:

- Recognition on signage at the event
- Sponsorship recognition in meeting-related emails
- Newsletter recognition
- Recognition on the VRMCA website

### **SIGN UP TODAY TO RESERVE YOUR SPACE**

☐ Yes! I will be a \$400 VRMCA Fall Convention Sponsor!			
Company Name (as it should appear in all meeting-related materials)			
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Please make checks payable to "VRMCA" and send completed form with payment to VRMCA, 250 West Main Street, Suite 100,			

Charlottesville, VA 22902. You can also pay online at http://www.vrmca.com/store/categories.asp. Please provide vector artwork of

your company logo in .eps format. Email to Sherry Whiting at sherry.whiting@easterassociates.com.



## **Southwest Virginia Advisory Council**

# GOLF OUTING

Friday, September 20, 2013

## Ashley Plantation Golf Course Daleville, VA

## Foursome \$350 • Individual \$90 - Captain's Choice Format -

Cost includes golf, cart, refreshments, mulligans, red tees, practice balls and pre-golf luncheon. Raffle tickets will be available for an additional cost.

Golf Hole Sponsorships are available for \$75.

**Deluxe Sponsorship** is \$400 and includes one foursome and one hole sponsorship.

Registration will begin at 11 a.m. and lunch will be served at 12 noon. Golf will follow at 1 p.m. with a brief awards program ending the outing.

Checks may be sent to SW VA Concrete Council, c/o Paul Bryan, Froehling & Robertson, 1734 Seibel Drive, Roanoke, VA 24012 or paid online at VRMCA.com.

Please contact your local ready-mix producer for more information.





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## Good News for Employers: Harassment Just Got Harder to Prove

### By John G. Kruchko and Kevin B. McCoy

Last month, the Supreme Court issued its decision in a highly-anticipated employment case, Vance V. Ball State University. The Court held that a "supervisor," for purposes of Title VII harassment suits, is an employee who has the power to impose a "tangible employment action" on a co-worker, such as termination or reassignment. Since employers can be held liable for harassment by supervisors, the distinction is an important one. Previously, lower courts disagreed on the definition of "supervisor" in Title VII discrimination cases, leaving the door wide open to employers' vicarious liability, but last month's decision narrows that gap considerably.

In general, when an employee is harassed by a co-worker, the employer is only liable if they were negligent in response to the offending behavior – if it knew or should have known of the conduct but failed to take appropriate corrective action. Unreasonably ignoring such conduct and allowing it to continue makes the employer, in the eyes of the law, directly liable for its employees' discriminatory actions.

Different rules apply, however, when the accused individual is a "supervisor." Courts have previously held that employers face strict liability for workplace harassment by a supervisor only if it results in a "tangible employment action" like termination, failure to promote, major reassignment or a significant change in benefits. Absent such tangible action, the employer can still be held liable unless it can establish that it took reasonable care to rectify and prevent any harassing conduct, and that the aggrieved employee refused any remedial measures made available by the employer.

Clearly, since the actions of certain employees can leave employers directly vulnerable to harassment suits, the distinction between co-worker and supervisor is an extremely important one. Yet courts have long been divided on the precise definition of "supervisor" in this



context. Some jurisdictions have asserted that a supervisor is an employee with the authority to affect a tangible employment action on the harassed employee, while others – including the EEOC – defined it more broadly as someone who has the power to exercise significant direction over another's work. Without a precise definition under the law, determining the status of an accused employee often became the dominant issue in litigation, even before addressing the harassment facts themselves.

The word "supervisor" is not even mentioned in the text of Title VII, but years of judicial interpretation have created exceptions to the usual rules of employer liability. The reasoning behind holding employers liable for acts of a supervisor is rooted deep in the laws of agency, that realm of justice governing the relationship between authorized representatives and the companies or individuals they represent. Supervisors and managers who have been bestowed by their employer with authority to make significant employment decisions are expected to do so as representatives of the company's interests. So when they exceed those interests and abuse their position to harass a subordinate – even without causing a tangible employment action – they are aided in accomplishing the harassment by the existence of the agency relationship. The harms created by discrimination and a hostile work environment then become official acts of the company itself, exposing it to liability.

The recent Supreme Court decision

drew upon previous Supreme Court cases that laid the framework for discriminatory harassment claims, none of which had directly addressed the issue at hand because by the time those cases reached the high court, the harasser's status as a supervisor was uncontested. The Court therefore took this opportunity to clear up what it saw as too much ambiguity in an oft-litigated field.

The plaintiff in this case, Ms. Vance, accused a co-worker of creating a hostile work environment via racial animosity. The co-worker, a white woman, did not have the power to hire or fire Ms. Vance, an African-American woman, nor was she able to cause any other kind of tangible employment action. Yet the plaintiff asserted that the co-worker held a leadership role in the workplace, occasionally handed out assignments, and was therefore a supervisor who was using her position to create a hostile work environment. Defendant Ball State argued that regardless of the co-worker's behavior, it should not be held vicariously liable because she did not have the necessary authority to be considered the plaintiff's supervisor for purposes of Title VII. If the defendant prevailed on that issue, its liability would only be judged by the negligence standard, i.e. how they responded to the situation once they were made aware of it.

Numerous definitions of "supervisor" have cropped up in lower court decisions and government agency opinions: authority to assign more than a certain number of tasks, authority that is exercised more than occasionally, various standards of "sufficient" authority, influence on corporate decision-makers, etc. But the Court chose to decline those measures of an employee's status, citing the inevitable battles over defining the definitions themselves, and opting for what it believes to be a clear and concise standard that is unlikely to elicit different interpretations from different courts. Whether or not an employee has the power to inflict "tangible employment actions" is, according to the decision, easily determinable even at the summary judgment

stage and thus might help lighten the load on court dockets.

The dissent penned by Justice Ginsburg and joined by the three remaining Justices, worries that such a narrow definition will leave victims of harassment with little recourse if their tormentors lack specific powers of authority. Employees who oversee others can still inflict significant psychological harm short of demotion or termination, and unless the employer can be proven negligent, the victim will have no choice but to withstand the abuse or quit the job. The employer is negligent with regard to harassment only if it knew or should have known of the conduct but failed to take appropriate corrective action. Yet it is rather common for employers to be unaware of discriminatory behavior and harassment. The minority opinion believes a narrower view of supervisors will simply encourage employers to take back authority to make employment decisions from its "supervisors" and thus avoid liability by technicality.

Rather than removing or reassigning the authority to make tangible employment decisions, the Court appears to hope that employers will be motivated to keep a better watch on their employees at all levels, especially those who represent the company interests and are empowered to act on its behalf, to ensure a safe and tolerant work environment for all.

For now, the Supreme Court has handed a clear victory to employers. The pool of potential "supervisors" has diminished and the degree of difficulty for plaintiffs establishing vicarious liability under title VII has risen. Should you be confronted by harassment allegations, please consult experienced employment counsel to assist in wading through how the Supreme Courts' decision might impact your compliance efforts.

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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

### **JULY 30-AUGUST 1, 2013**

ACI Concrete Field Testing Seminar and Examination\* VDOT Bristol District Office 870 Bonham Road Bristol, VA

\*PRE-REGISTRATION REQUIRED

### **AUGUST 8, 2013**

NVCAC Business Meeting 11:00 AM - 2:00 PM Manassas, VA

### **AUGUST 13, 2013**

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

### **AUGUST 13-15, 2013**

ACI Concrete Field Testing Seminar and Examination\* Harrisonburg VDOT Residency 3536 North Valley Pike Harrisonburg, VA \*PRE-REGISTRATION REQUIRED

### **AUGUST 14, 2013**

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

### **AUGUST 20, 2013**

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

### **AUGUST 21, 2013**

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

Please visit the online calendar for an up-to-date list of events. www.VRMCA.com/calendar



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