



THE READY-MIXER

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Virginia Ready-Mixed Concrete Association Newsletter

May 2012

VRMCA Members Help Convert Paving Projects to Concrete




Two more paving projects, one in the Southwest Virginia Council region and one in the Blue Ridge Council region, have been converted to concrete through the hard work of members.

In Abingdon, a large gas station/convenience store/restaurant facility was recently completed at an I-81 exit. Boxley Materials supplied the concrete – both “regular” and pervious – for a significant Shell gas station that also includes a Dunkin Donuts store, a restaurant and two more outlets. This project involved more than 1,000 cu. yds. of concrete.

In Stuarts Draft, a smaller, but no less significant project because of the active involvement of the owner and the contractor, gas station / convenience store was converted to concrete. This 200 cu. yd. Citgo station was supplied by Wilson Ready Mix and replaced an existing, failing asphalt pavement. Each of these jobs

show that positive results can be achieved by active, involved concrete producers working with good contractors and interested owners.

Months, if not years, of pointing out the long term advantages of concrete paving can frequently lead to important work. 

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-Warning-

It has been reported to the VRMCA office that the state police and possibly local motor carrier officers are examining truck tires to make sure that the safety rating specified on the sidewall is sufficient for the load being carried.



Virginia Ready Mixed Concrete Association
2012 Mixer Truck ROADSHOW
★ ★
Monday, June 11, 2012
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Hampton	July 17, 18, 19	FULL
Roanoke	July 31, August 1, 2	
Richmond	August 7, 8, 9	FULL
Fredericksburg	August 28, 29, 30	
Warrenton	September 18, 19, 20	
Bristol	October 23, 24, 25	
Richmond	November 13, 14, 15	
Harrisonburg	November 27, 28, 29	
Roanoke	December 4, 5, 6	

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Check Status with FMCSA to Avoid IRP Registration Delays

The Virginia Department of Motor Vehicles (DMV) is working toward full implementation of the federal Performance and Registration Information Systems Management (PRISM) program in October 2012. PRISM is a partnership between the Federal Motor Carrier Safety Administration (FMCSA) and the states to promote and enhance motor carrier safety. Although new to Virginia, PRISM has been around for several years and many states have already fully implemented the program.

The program has two major components: commercial vehicle registration and enforcement. Virginia is already participating in the enforcement component and will begin participation in the registration component.

Your company may be impacted if you operate vehicles registered under the International Registration Plan (IRP). Under PRISM, as part of the IRP


registration process, customers will be required to specify the motor carrier responsible for the safe operation of each vehicle in their fleet. If the carrier has not obtained a United States Department of Transportation (USDOT) number from FMCSA, the carrier will be required to do so prior to IRP credentials being issued. Additionally, carriers will be required to update their census information with the FMCSA on an annual basis rather than every other year.

In addition to Virginia implementing PRISM, the FMCSA anticipates making PRISM changes at the federal level that will impact some Virginia companies. Effective September 1, 2012 FMCSA is expected to discontinue issuing USDOT numbers for customers they currently classify as "registrant-only." Registrant-only USDOT numbers are being used differently from what FMCSA intended so they are having an adverse affect

on the agency's ability to track motor carriers' safety violations. As a result, FMCSA made the decision to eliminate the PRISM procedure that requires non-motor carrier registrants to obtain USDOT numbers.

Full details are not yet available, but FMCSA expects to send letters to affected companies and individuals sometime this summer, asking them to take action to change their status or to inactivate their USDOT number if they are leased to a motor carrier.

Visit the FMCSA web site at <http://www.fmcsa.dot.gov/safety-security/prism/prism.aspx> to learn more about the requirements.

DMV has solicited input on ways to inform impacted customers about the upcoming changes and to make the PRISM transition as smooth as possible. If you have suggestions, email them to DMV at mcsonline@dmv.virginia.gov. 

Study Shows Impact of Pavement on Fuel Consumption


A new MIT study shows that using stiffer pavements on the nation's roads could reduce vehicle 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 at today's oil prices. This would result in an accompanying annual decrease in CO2 emissions of 46.5 million metric tons.

The study is the first to use mathematical modeling rather than roadway experiments to look at the effect of pavement deflection on vehicle fuel consumption across the entire U.S. road network.

The deflection under the tires is similar to that of beach sand underfoot: With each step, the foot tamps down the sand from heel to toe, requiring the pedestrian to expend more energy than when walking on a hard surface. Stiffer pavements would decrease deflection and reduce that a car's "footprint."

"This work is literally where the rubber meets the road," says Professor Franz-Josef Ulm, the George Macomber Professor in MIT's Department of Civil and Environmental Engineering. "We've got to find ways to improve the environmental footprint of our roadway infrastructure."

The researchers also say the misconception that to go green means spending more money is not necessarily true. And, even if there is an initial cost outlay for better pavements, it quickly pays for itself not just in fuel efficiency and decreased CO2 emissions, but also in reduced maintenance costs.

Read the news release at <http://web.mit.edu/press/2012/pavement-savings-tires.html>. 



"We've got to find ways to improve the environmental footprint of our roadway infrastructure."

DMV “Troops to Trucks” Program Puts Vets to Work



Governor Bob McDonnell recently announced that the Virginia Department of Motor Vehicles (DMV) is joining forces with the military and transportation-related businesses to put former servicemen and women and National Guard and Reserves members to work in the transportation industry. Through the new Troops to Trucks program, DMV is making it easier for personnel trained by the military to operate heavy vehicles to obtain civilian commercial driver's licenses (CDL). As a first step, DMV this week certified two military installations as third party testers to train more personnel to operate commercial motor vehicles. Working in partnership with trucking and bus companies, DMV is providing potential transportation-related employment opportunities for military members after service.

Speaking about the program, Governor McDonnell said, “The Commonwealth is an ideal place to launch Troops to Trucks. Virginia has approximately 823,000 veterans, 63,000 active-duty military and 20 major military installations. The goal of the Troops to Trucks program, a first in the nation, is to help provide employment opportunities to our military as truck or bus drivers, or in other transportation-related jobs after their service; and to members of the National Guard and Reservists even during their service.”

The Troops to Trucks program is a comprehensive collaborative effort by government and the private sector to assist those individuals who have served and sacrificed for our great nation. We have a duty to ensure they have training and employment opportunities in the future.

Effective July 1, 2012, DMV will utilize a new federal regulation to waive the road skills test requirement for military CDL holders two years immediately preceding their application with safe driving experience. These applicants will still need to take the DMV written exam. The road test waiver will streamline the CDL process for military personnel and eliminate the often burdensome requirement that an applicant provide a commercial motor vehicle for the skills test.


For military members without experience operating heavy vehicles but interested in obtaining a Virginia CDL, DMV is partnering with military installations to provide the necessary training. This week, DMV certified Marine Base Corps Quantico and Fort Lee as third party testers for CDL training. The installations will provide classroom instruction. When students are ready to be tested, the DMV 2 Go mobile office will visit the base to conduct knowledge tests and issue Virginia CDL learner's permits. Applicants then receive the skills instruction from the

military during the 30 days students are required to hold a CDL learner's permit prior to taking the road test. Once the student has successfully completed the skills training and testing, DMV issues the Virginia CDL.

In addition, Virginia DMV is the only DMV in the nation with all Driver's License Quality Assurance Specialists, or CDL specialists, trained and certified to administer a federal skills performance evaluation (SPE) to offer drivers with a missing or impaired limb, who are otherwise qualified, an opportunity to obtain an SPE certificate which enables them to operate a commercial motor vehicle in interstate commerce.

The final component of Troops to Trucks is providing career opportunities to those men and women close to transitioning out of the service. DMV Commissioner Richard D. Holcomb explained, “Military personnel with new CDLs earned through Troops to Trucks will complete questionnaires indicating their interests for transportation related employment.”

If your company has a need for drivers and would like to participate in the program, contact Peter Easter at the VRMCA office 434/977-3716.

For more information on the program, please visit www.dmvnow.com/TroopsToTrucks. 

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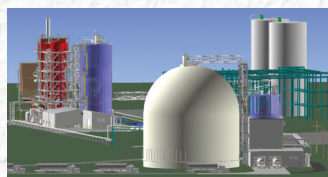
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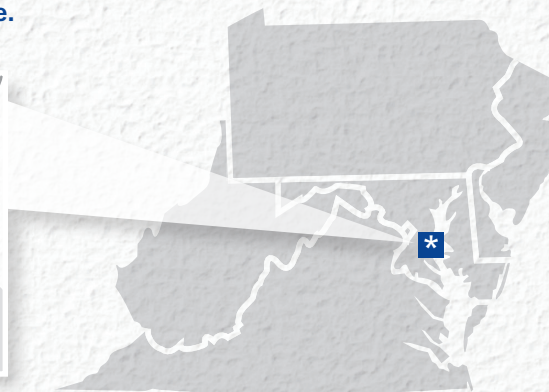
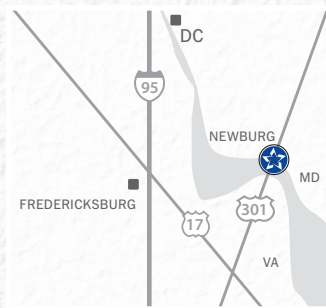
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Design and Rehabilitation Strategies for Sustainable Concrete Pavements

By Hessam Nabavi,
Director of Industry Services

There is not a day that goes by that we do not hear these phrases: *green initiative*, *energy efficiency*, *environmentally sound*, *sustainability*, etc. These are nice catch phrases and they sound really good, but are they being applied in designing our roads? Are we designing our roads to last a lifetime?

What is Sustainability?

Sustainability is the ability to meet the needs of the present without compromising the ability of the future generations to meet their own needs.

To understand what sustainability means in relation to pavement design for roads, we invited Thomas Yu with the Federal Highway Administration to speak at the NOVA May business meeting.

Tom is a Senior Pavement Design Engineer in the Office of Infrastructure at the FHWA headquarters in Washington, DC. He joined the FHWA in December 2007, after working 6 years for the US Army Corps of Engineers, and 17 years as a consultant. A graduate of University of Illinois, Tom has been active in numerous areas of pavement research, including pavement performance, design, and rehabilitation. Tom was a key member of the research team that developed the Mechanistic-Empirical Pavement Design Guide (MEPDG). In his current position, his main area of responsibility is pavement design and analysis.

Tom believes for sustainability, preservation is better than reconstruction and prevention is the best strategy for preservation. An effective pavement system offers advantages in all aspects of sustainability: social, economical and environmental (triple bottom line).

The economic factor refers to the cost to the DOT and ultimately to the tax payers and the social factor refers to factors related to the quality of life, such as user delay, noise and safety.



Federal Highway Administration Senior Pavement Design Engineer, Tom Yu, explains sustainability to attendees of NOVA's May business meeting.




The environmental factor will be long life, low maintenance and potentially extended service life years beyond the original expectations. If it is designed and constructed properly, concrete pavement can provide 50 years or longer service life with minimal maintenance. Unfortunately the current practices in concrete pavement design, maintenance and rehabilitation are not conducive to realizing the full performance potential of concrete pavement.

Economic sustainability is the biggest problem facing DOTs. By design, pavements are allowed to deteriorate in current practice. It seems like the pavements are designed to fail. If we believe that pavements should be designed to last as long as the material, then we will

design the pavements for much longer than 20 or 30 years. The oldest concrete road in the United States is East Court Street in Bellefontaine Ohio built in 1891 and is still in service (see the picture).

In designing pavement we should start with an adequate pavement structure. It simply boils down to additional slab thickness to limit distress. Yes, cost can be an issue when taking proactive measures to improve sustainability: however when the cost is evaluated long term, the sustainable approach and practices are the most economical strategy.

To view Tom's presentation, click on <http://www.vrmca.com/regions/default.aspx?region=4> and look for the Regional Specific Downloads. 

Modest Cement Consumption Growth Expected for 2012, Greater Beyond



Stronger than expected job creation and the beginning of a construction industry recovery means gains in real construction spending will materialize this year—after seven years of consecutive declines. According to the new forecast from the Portland Cement Association (PCA), increases in cement consumption will follow.

PCA revised its fall forecast upward, anticipating a modest 3.7 percent increase in 2012, followed by a 7.6 percent jump in 2013 and a 14.1 percent increase in 2014.

The forecast includes marginal improvements to nonresidential construction, an upward revision to housing starts and an aggressive cement intensity gain, which is the amount of cement used per real dollar of construction activity.

“Cement usage is greatest at the early stages of construction with foundation

work. The retreat of building starts during the recession had a huge impact on consumption and intensity,” Ed Sullivan, PCA chief economist said. “A construction start rebound in 2012, coupled with concrete’s competitive price compared to other building materials, translates to increases.”

With successive years of economic and employment growth, the structural issues facing the construction industry will diminish, Sullivan said. For example, foreclosures’ adverse impact will fade, and return on investment for non-residential investments will improve. Partially because of these improvements, state deficits will eventually be replaced by surpluses.

PCA forecasts all sectors of construction to be positive during 2014-2015, which typically results in large gains in cement consumption. 🚚

VRMCA Safety/ Human Resources Committee Speaks to Blue Ridge Council

The Blue Ridge Council always strives to have a brief in-house presentation at each of its business meetings, and in May Pete Hawes, Safety Director for Allied Concrete in Charlottesville gave such a presentation to the Council members. Hawes gave an update on Committee activities and also spoke briefly about the upcoming VRMCA Truck Roadeo.

As you might expect, when the subject directly involves the day-to-day activities of producer members, there were many questions. Hawes gave insightful answers and talked about member concerns both state-wide and regionally. Members were also encouraged to enter drivers in the Truck Roadeo, and comments were made about the importance of this competition to drivers and the enjoyment they express about performing well in front of their peers. The winner and the second place finisher also receive significant awards.

This type of presentation has become a regular feature of Blue Ridge Council meetings, and we strive to have interesting, informative speakers. 🚚

Southwest Council Attends AIA Networking Event

Members of the Southwest Virginia Council attended the third annual Blue Ridge AIA Construction Networking Event recently, enjoying drinks and refreshments with more than one hundred professionals from every facet of the construction industry. This event is held at the very attractive Vinton War Memorial and is always an interesting and enjoyable gathering.

This year Helene Combs Dreiling of Dreiling Partnership Architects in Roanoke was introduced as the newly elected first vice president of the American Institute of Architects. She will serve as first vice president in 2013 and will be named president in 2014. This is a significant honor for her, and an equally important honor for the Blue Ridge Chapter of AIA. Dreiling has held several leadership positions within AIA, and currently serves as Executive Director of the Richmond-based Virginia Center for Architecture.

The Southwest Council of VRMCA is always introduced as a sponsor of this event and this year Chandler Concrete also hosted a display. This has proven to be an excellent opportunity to meet with architects, engineers and contractors in a relaxed setting, and everyone involved hopes it will continue to be so in the future. 🚚

Age Discrimination Suits Likely to Increase

By John G. Kruchko and
Paul M. Lusky

Ever since the Supreme Court decided *Gross v. FBL Financial Services* in 2009, the accepted notion among employment lawyers was that employees who alleged age discrimination would have a more difficult time establishing their claims than those employees alleging other forms of discrimination. In *Gross*, the Court held that a plaintiff claiming employment discrimination under the Age Discrimination in Employment Act (ADEA) must prove that age was a “determining factor” for the adverse employment action that gave rise to the plaintiff’s lawsuit. In making its ruling, the Court emphasized that the text of the ADEA did not authorize “mixed motive” claims, i.e., that a plaintiff could also prevail by establishing that age was at least a “contributing factor” in the adverse employment decision and the employer could not show that it would have taken the same action in the absence of age as a motivating factor.

The *Gross* decision brought an almost immediate reaction from Congress. In 2009, lawmakers introduced legislation in the House and Senate, the “Protecting Older Workers Against Discrimination Act” (POWADA), that was aimed at overturning *Gross*. The legislation was the subject of two Congressional hearings in 2010. Despite some apparent interest in this legislation, it failed to advance. On March 13, 2012, a bipartisan group of legislators reintroduced POWADA in the Senate. The proposed legislation again explicitly rejects the Supreme Court’s decision in *Gross v. FBL Financial Services* and specifically states that plaintiffs need not demonstrate that age was the sole cause of an adverse employment practice to establish claims under the ADEA. The legislation has been referred to a Senate committee for a hearing.

Regardless of whether POWADA, or some similar version of the legisla-



tion, is ultimately passed by Congress, the number of age claims filed in state and federal discrimination agencies is likely to continue to increase. Recent surveys indicate that many older employees are choosing to continue working long past the traditional retirement age of 65. With advances in health care allowing people to live longer and growing concerns about saving enough money for retirement, more and more employees are retiring at a later age. An aging employee population results in higher employer expenditures for wages and health benefits as well as work-related accidents with more severe outcomes. Thus, an employer may have legitimate reasons for wanting to reduce the average age of a workforce. Employers should resist the urge, however, to ask older employees about their plans for retirement. Courts have found persistent questions about retirement to be sufficient evidence of age bias.

Problems can arise when an employer is forced to reduce its workforce because of economic conditions. It is tempting to layoff higher paid employees during a reduction in force (“RIF”). Unfortunately, the highest paid employees may also be the

oldest employees in the workforce. Although courts have held that an objectively measurable factor such as salary is a legitimate non-age factor an employer can use when making layoff determinations, employers cannot target older employees for a RIF simply because such employees are beyond retirement age and making a lot of money. It is unlawful for an employer to discriminate against older employees based on a stereotype that they “should be retired by now.”

Sometimes, an employer’s impermissible motive for selecting older workers for a RIF is all too obvious. The Equal Employment Opportunity Commission (“EEOC”) recently announced that it had reached an agreement with Central Freight Lines, Inc. to settle an age discrimination lawsuit for \$400,000. According to the EEOC, the company discriminated against eight former dockworkers because of their ages by selecting them for a RIF. In its federal court lawsuit, the EEOC charged Central Freight Lines with using the RIF as a ruse to fire the dockworkers, some of whom had worked at the company for 20 or more years and were 50 years old and older. There was evidence the workers were called


names like “grandpa,” “old farts” and “old bastards” by a supervisor, the same person who was tasked by the employer with preparing a list of the men to be terminated. According to the EEOC, the company also changed its attendance and disciplinary policy so that the men were suddenly put on corrective action and made eligible for termination under the new policy. The company then replaced the older employees with younger hires.

On the first day of a scheduled eight-day trial, the attorneys for the parties reached an agreement to settle the case by consent decree. In the consent decree, the company agreed to pay \$400,000 to the dockworkers and train management and supervisory personnel at Central Freight’s Dallas and Fort Worth Terminals on equal employment opportunity policies and procedures. The company also committed to enforce a written policy against age discrimination.

Employers should also not use mandatory retirement policies to ensure a younger workforce. With rare exceptions, such policies will be found to violate the ADEA. There is no upper limit on age protections under the ADEA. In 2011, Houston-based Metallic Products Corp. was ordered to pay \$60,000 to settle an age discrimination lawsuit that accused the manufacturer of enforcing a mandatory policy requiring employees to retire at age 70. The plaintiff had alleged in his lawsuit that he was advised by company officials that he would be required to retire once he reached 70. He was fired from the company on his 70th birthday. In addition to paying the plaintiff \$60,000, Metallic Products Corp. was also required to sign a consent decree agreeing to rescind its unlawful mandatory retirement policy.

In another recent case, the EEOC announced that Kelley Drye & Warren, a Manhattan law firm with over 300 attorneys, had agreed to pay \$574,000 to an attorney who was forced to give up his equity in the firm because of his age. According to EEOC, the law firm maintained a policy requiring attorneys who wanted to practice after reaching age 70 to forfeit all ownership interest in the firm and be compensated instead through discretionary bonuses. As a result, an attorney who turned 70 in 2000 but continued to practice law full-time at the firm was significantly underpaid. The firm has agreed to abandon the policy.

Although early retirement incentive plans (“ERIPs”) that provide continued health insurance coverage and/or cash bonuses are a legitimate tool for encouraging employees to retire early, it is clear that such plans must be voluntary. The ADEA, as amended by the Older Workers Benefit Protection Act of 1990, provides an affirmative defense for employers who can prove that their ERIPs are voluntary and “consistent with the purposes” of the statute. The test for “voluntariness” is whether a reasonable person would have concluded that he or she had a choice to accept or reject the early retirement offer.

An aging workforce can offer valuable experience and wisdom, but with that added value comes an increased risk of age discrimination litigation. Older employees will not go quietly into the night if they feel they have been forced out of positions because of their age. Careful planning and analysis of the demographics of the workforce before and after a proposed RIF is the best defense against age discrimination claims. 

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John G. Kruchko is a Partner with the Management Labor & Employment Law Firm of Kruchko & Fries in McLean, Virginia; Paul M. Lusky is a Partner with the Firm. For more information, please contact Mr. Kruchko at (703) 734-0554 or JKruchko@KruchkoandFries.com, or Paul Lusky at (410) 321-7310 or PLusky@KruchkoandFries.com. This article is published for general information purposes, and does not constitute legal advice.

On the Horizon Calendar of Upcoming Events

JUNE 5-7, 2012

ACI Concrete Field Testing Seminar and Examination*

Bristol VDOT District Offices
870 Bonham Road
Bristol, VA

*PRE-REGISTRATION REQUIRED

JUNE 11, 2012

SWCAC Subcommittee Meeting

12 NOON - 1 PM
Roanoke, VA

JUNE 12-14, 2012

ACI Concrete Field Testing Seminar and Examination*

Cultural Arts Center-Glen Allen
2880 Mountain Road
Glen Allen, VA

*PRE-REGISTRATION REQUIRED

JUNE 14, 2012

NVCAC Business Meeting

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

JUNE 20, 2012

SWCAC Business Meeting

8 AM - 9:30 AM
Roanoker Restaurant
Roanoke, VA

JUNE 21, 2012

5th Annual Building Green with Concrete Workshop

8:30 AM - 2:30 PM
WSSI
5300 Wellington Branch Drive
Suite 100
Gainesville, VA

JUNE 26-28, 2012

ACI Concrete Field Testing Seminar and Examination*

Harrisonburg VDOT Residency
3536 North Valley Pike
Harrisonburg, VA

*PRE-REGISTRATION REQUIRED

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

www.VRMCA.com/calendar



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The Smart Road bridge, at 175 feet tall, is Virginia's tallest bridge. Approximately 9,647 cubic yards of high-strength concrete were used to construct the 2,000-foot long bridge.

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