



THE READY-MIXER



Virginia Ready-Mixed Concrete Association Newsletter

May 2013

VRMCA 2013 Spring Convention

The VRMCA Spring Convention took place May 19th through the 21st at the historic Greenbrier Hotel in White Sulphur Springs, WV with over 130 members, spouses, guests, and speakers in attendance.

The meeting kicked off with a Welcome Reception on Sunday evening, giving members a chance to meet with VDOT Commissioner Gregory Whirley and Keynote Speaker and former New Hampshire Governor John Sununu. Joining Governor Sununu and Commissioner Whirley to give presentations at the meeting were industry analyst and NRMCA consultant Pierre Villere, VDOT Chief Engineer Garrett Moore, and MIT Professor Franz-Josef Ulm.


At the VRMCA Business Meeting on Monday, former VRMCA President Larry Bullock presented the membership with the slate nominees to join the



Board of Directors. Genevieve Walker Switzer from T&W Block, Inc., Morgan Nelson from S.B. Cox Ready-Mix, and Allen Ramer from GreenRock Materials were unanimously approved to fill open and vacant board positions.

Monday afternoon, attendees had the chance to either play in the VRMCA

Golf Tournament, shoot sporting clays in the VRMCA Shooting Tournament, or participate in the private wine tasting and craps lesson. Tony Wilt and Tom Sweeny tied for first place and Adam Riggs took second place. Claiming first place in the golf tournament were Paul Bryan, Froehling & Robertson; Ted Chandler, Chandler Concrete; Brad Meyers, Swope & Associates; Russ Ellett, Virginia Truck Center. Congratulations to all our winners!

Tournament winners were announced at the Banquet Dinner Monday evening along with winners of the VRMCA Safety Awards. At the end of the evening, President Bob Chandler presented Irvin Henry of Vulcan Materials with a Certificate of Achievement. Mr. Henry won the 2013 VRMCA Mixer Truck Rodeo event held in April at The Meadow Event Park. 

VRMCA Safety Award Winners Announced

The winners of the 2013 VRMCA Safety Awards were announced on Monday, May 20th at the Spring Convention at the Greenbrier Resort. Winners are determined using a metric which includes items from the OSHA 300A Log, number of DOT reportable accidents, hours worked at each facility and an industry-specific Injury Frequency Rate (IFR) determined annually. Results for 2013 were based on reporting from 2012. There were 85 entries this year from 12 member companies. To achieve Gold status, a plant had to have had 0 lost-time injuries, an overall IFR of 2.9 or less and no DOT recordable. There were 62 Gold-level winners. To achieve Silver status, a plant had to have no lost time injuries and an overall IFR of less than 5.8; there were 3 Silver-level winners. Lastly, in order to achieve Bronze status, a plant had to have an overall IFR of less than 5.8; there were 4 Bronze-level winners. Congratulations to all of the winners:

Allied Concrete- 3 Gold, 1 Silver

Boxley- 3 Gold

Capital Concrete- 2 Gold, 1 Bronze

Chandler Concrete- 10 Gold

Essroc Concrete- 5 Gold

Essex Concrete- 4 Gold

GreenRock Materials- 3 Gold


Lynchburg Ready Mix- 1 Gold, 1 Bronze

Ready Mix Concrete Company- 3 Gold

S.B. Cox Ready Mix- 6 Gold

Titan America- 7 Gold, 1 Silver

Vulcan Construction Materials-

15 Gold, 1 Silver, 2 Bronze 

in the mix ...

IN PHOTOS: VRMCA 2013 Spring Meeting..... 3

NVCAC Sponsors First Level Pervious Concrete Certification and Hands-On Workshop 4

SWCAC Council Members Attend Networking Event 6

6th Annual Building Green with Concrete Workshop 8

Falcon Pharmacy's Facade in Abingdon Finished with Lakeside Concrete 9

Is Public Criticism of Discrimination or Harassment Always Protected Conduct? 10

Calendar of Upcoming Events 11

Visit us online
www.VRMCA.com

2013 VRMCA Officers & Directors

PRESIDENT

Bob Chandler
Chandler Concrete of Virginia Inc.

VICE PRESIDENT

Jay McNeely
Eagle Corporation

SECRETARY/TREASURER

Stephen Render
Vulcan Materials

EXECUTIVE DIRECTOR

Douglas Easter
Easter Associates, Inc.

PAST PRESIDENT

Larry Bullock
Boxley Materials Company

DIRECTORS

Mark Bundy
Branscome

Billy Chenault
Luck Stone Corp.

Morgan Nelson
S.B. Cox Ready-Mix

Robert O'Brian
Lynchburg Ready-Mix

Allen Ramer
GreenRock Materials

Robert Sells
Titan Virginia

Jim Simons
Capital Concrete Inc.

Jeff Slagle
Rowe Materials, LLC

Genevieve Walker Switzer
T&W Block Inc.

Tony Wilt
Superior Concrete

Virginia Ready-Mixed Concrete Association

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



Concrete Field Testing Technician Certification Program

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

**ONLINE
REGISTRATION
AVAILABLE AT**
www.vrmca.com

Upcoming ACI classes:

Warrenton	July 8, 9, 10 FULL
Richmond	July 16, 17, 18 FULL
Bristol	July 30, 31, August 1 FULL
Harrisonburg	August 13, 14, 15
Roanoke	August 27, 28, 29
Richmond	September 10, 11, 12
Fredericksburg	September 24, 25, 26
Bristol	October 1, 2, 3
Virginia Beach	October 15, 16, 17

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

2013 VRMCA Advisory Council Regions

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

BLUE RIDGE

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

SCOTT BOSHA

Secretary/Treasurer
Superior Concrete
Harrisonburg, VA
Phone: (540) 433-2482
sboshart@superiorconcreteinc.com

HAMPTON ROADS

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

LEE FLEMMING

Secretary/Treasurer
Essroc
Chesapeake, VA
Phone: (757) 647-9409
edward.flemming@essroc.com

NORTHERN VIRGINIA

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

ZACK SWANSON

Secretary/Treasurer
Grace
Elkridge, MD
Phone: (410) 794-6973
zack.swanson@grace.com

RICHMOND/CENTRAL VIRGINIA

Steve Kerr
Chairman
GreenRock Materials
Quinton, VA
Phone: (804) 966-8601
skerr@greenrock.net

ANDREW OWENS

Secretary/Treasurer
Advantage Environmental Consultants
Chester, VA
Phone: (804) 454-0072
aowens@aec-env.com

SOUTHWEST

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

GEORGE KUHN

Secretary/Treasurer
Chandler Concrete
Christiansburg, VA
Phone: (540) 382-1734
george.kuhn@chandlerconcrete.com

IN PHOTOS: 2013 VRMCA SPRING MEETING



A beautiful night to meet with old friends.



Bob Chandler with VRMCA Rodeo winner Irvin Henry.



Wendy Walker, Peter Easter, Governor John Sununu and Genevieve Switzer.



Wine tasting event at Prime 44.



A gorgeous day for golf.



Governor Sununu and Bob Chandler on the golf course.



The winning golf team.



Enjoying the outdoor reception at the Golf Club.

NVCAC Sponsors First Level Pervious Concrete Certification Course and Hands-On Workshop

By Hessam Nabavi,
Director of Industry Services

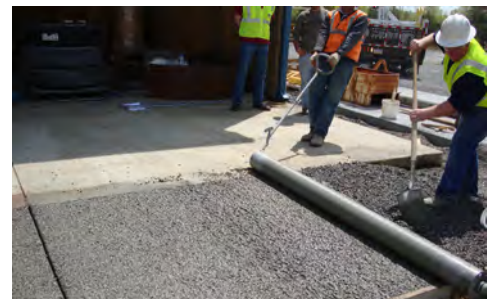
The Northern Virginia Concrete Advisory Council recently sponsored a NRMCA Pervious Concrete Contractor Certification Course (Pervious Concrete Technician) and Hands-On Training.

Contractors, design engineers, inspectors and county personnel were among the attendants.

William Rafferty with Swope & Associates, Inc. instructed the course and covered the review session in the morning. Lars Hill, P.E. with Rummel, Klepper & Kahl Engineers oversaw the written exam in the afternoon. Soon after the exam, hands-on training was performed by Pervious Concrete Craftsman, Matt Cockerham with North Star Foundations and his crew. Students were encouraged to participate in the hands-on demonstration to experience the process. Throughout the demonstration, many questions were answered by NVCAC representatives and Matt.

This event is part of our effort to increase the number of qualified pervious concrete installers. The demand for pervious concrete certified Technicians, Installers and ultimately Craftsmen is on the rise since most counties have been revising their stormwater management regulations due to the "Bay Total Maximum Daily Load" (TMDL) which was established in 2010 by U.S. EPA. This is a comprehensive "pollution diet" which establishes rigorous accountability measures to restore clean water in the Chesapeake Bay and the region's streams, creeks and rivers. This TMDL is designed to ensure that all pollution control measures needed to fully restore the bay and its tidal rivers are in place by 2025, with at least 60 percent of the actions completed by 2017. This has resulted in the counties looking for paving solutions to control the run off among other measures.

Pervious paving materials, especially pervious concrete are being researched and tested frequently by various coun-



ties as part of these revised regulations.


It is also a common knowledge that the state of Virginia is requiring the counties to consider sustainable design on all newly designed public projects. County projects should aim for minimum LEED Silver Certification. This requirement offers a great opportunity for the use of pervious concrete in the new and rehab projects for additional LEED points.

Here are a few examples of pervious concrete projects in NOVA in the past few months due to these changes: John Champs High School, Brambelton Public Safety Center, Fort Belvoir Shopping Center, Belmont Ridge Elementary School, Leesburg Toyota, etc.

As always events as such will not be possible without the dedication and assistance of our members. Many thanks to the following patrons as part of NVCAC Promotional Team who are responsible

for the success of this training.

- Lewis Lee with Luck Stone Corporation for providing the location
- Merle Goolsby with Luck Stone Corporation for providing the location
- William Rafferty with Swope & Associates, Inc. for teaching the course
- Lars Hill, P.E., with RK&K Engineers for conducting the exam
- Joel Woerl with Titan Virginia for providing the pervious concrete
- Matt Cockerham with North Star Foundations for teaching the placement process

For detailed information about various levels of Pervious Concrete Certification, visit <http://www.nrmca.org/certifications/pervious/index.asp>. 



VIRGINIA READY-MIXED
CONCRETE ASSOCIATION

WE GRATEFULLY ACKNOWLEDGE OUR 2013 MEETING & CONVENTION SPONSORS



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



Essroc Ready Mix
Italcementi Group



ROANOKECEMENT™
A TITAN AMERICA BUSINESS



Swope & Associates, Inc



Virginia Truck Center

WE GRATEFULLY ACKNOWLEDGE OUR 2013 SPRING CONVENTION SPONSORS



BOXLEY

GRACE
Construction Products



LEHIGH
HEIDELBERGCEMENT Group



PCA
Southeast
REGION

ROCKYDALE
QUARRIES CORPORATION

SWCAC Council Members Attend Networking Event

By Bob Nablo, Director of Industry Services


For the fourth year members of the Southwest Virginia Council attended the annual AIA Blue Ridge Construction Networking Event at the Vinton War Memorial.

This event, co-hosted by the local AIA chapter and the Roanoke-area US Green Building Council Chapter, typically consists of several morning seminars under the banner of the Sustainable Design Educational Conference and a reception for all construction-related professionals in the evening.

While attendance was down a bit this year, the event remains an excellent opportunity to meet architects, engineers, builders, contractors and construction suppliers in an informal setting.

Some Southwest Virginia Council members normally sponsor exhibition booths during the event, and there is always live music, free refreshments and interesting conversation.

This year members from Boxley Materials, Chandler Concrete, ECS, F&R and VRMCA attended the reception. Associations mentioned as sponsors included AIA, ACI, ASCE, CSI, USGBC and VRMCA.

Plans are already being made, and seminars are being scheduled, for the 2014 event. 



A NIGHT AT THE BALL PARK



PRESENTED BY THE HAMPTON ROADS
CONCRETE ADVISORY COUNCIL

Wednesday, June 19, 2013
Norfolk Tides vs. Indianapolis Indians

Please join us on the Straub Party Deck for a picnic and a great baseball game!

Arrive as early as 6 p.m.—game time is 7:05 p.m. The party deck is just beyond the right fielders reach and provides a covered roof—*new this year at Harbor Park!* There will be beer and wine available for purchase on the deck.

Tickets for the picnic & game are \$30.00

To order tickets, please contact Marie Derby **by June 10th.**
Send money to HRCAC c/o Lee Flemming.

Tickets can be picked up at the game, at the council meeting or by calling Marie at the number below.

Contact Marie with any questions at (757) 880-5631 or marie.derby@essroc.com.



PROVIDING HIGH QUALITY
REFINED POZZOLAN
TO THE MID-ATLANTIC REGION

MARKETING

MANUFACTURING

TRANSPORTATION

ENGINEERING

www.sefagroup.com



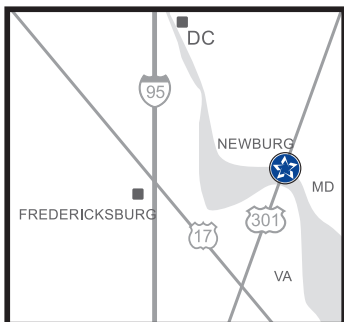
THE FUTURE OF FLY ASH IS HERE.

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

Hank Keiper, P.E. 804.380.8078

Tom Wahl, P.E. 540.525.9331

MORGANTOWN STAR®
Newburg, MD



6th Annual Building Green with Concrete Workshop

NVCAC is sponsoring the **6th Annual Building Green with Concrete Workshop** in the office of WSSI on June 26th. This Year's Workshop will examine the Environmental Attributes of Concrete in our Built Environment. Discussion will also include some of the breakthroughs in concrete science and engineering by MIT Concrete Sustainability HUB.

Who Should Attend

Architects; Civil Engineers; Environmental Engineers; State, County, City & VDOT Officials; County Environmental Managers; County Stormwater Designers and Managers; Planners; Developers; Contractors; VRMCAMembers, and those who have interest in more profound changes in the way we build.

NVCAC Promotional Council encourages VRMCA members to reach out to your contacts from the above list and invite them to this worthy workshop.

Sessions Details

Methods, Impacts and Opportunities in the Concrete Building Life Cycle: 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 will be presented, including results of LCA research being conducted at the Massachusetts Institute of Technology and other key institutions. The presentation will also cover how the concrete industry is beginning to use LCA to evaluate and improve the concrete production process.

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

Paving 101-Concrete vs. Asphalt: Presentation discusses how concrete paving (conventional and pervious) and asphalt are being constructed. It will present a comparative study regarding concrete pavement (conventional and pervious) vs. asphalt pavement for the use in park-

ing applications. It will also compare the performance of the three paving systems.

Further more it will discuss 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 for using a pervious concrete system as opposed to the alternative methods.

Finally it will introduce 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.

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

Revitalizing Existing Asphalt Pavement with Concrete Overlays (Whitening): During this presentation participants will learn the basics of concrete overlays, the simplicity of using this technique as a preservation tool for their projects whether it is a parking lot or a roadway. It will introduce the available resources for design and construction, case studies of recent projects and projects with decades of performance. Presentation will discuss 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. Finally presentation will show using concrete overlay can add another 20 years or more to the life of an existing pavement in a very cost effective way.

Speaker: LORI TIEFENTHALER, Lehigh Hanson, Inc., VP, Sustainable 7 Marketing Communications

The Architectural Potential of Tilt Wall Design-sustainability and the voluminous wall-concrete skins and meaning: This presentation will balance 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 at with no dilution in aesthetic freedom.

Speaker: Jeffrey Brown, AIA, Principal at Power Brown Architecture

Effect of Paving Materials on Building Energy Use and Fuel Consumption: Research at Lawrence Berkeley National Laboratories indicates that the use of light colored pavements along with light colored roofing and cladding can help reduce urban heat islands (UHI). Light colored pavements 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. This presentation will provide an overview of how concrete pavements 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.

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

To review the speaker bios please go to: <http://www.vrmca.com/regions/default.aspx?region=4>. Workshop provides a perfect atmosphere for networking opportunities between design / construction community and concrete industry leaders, as well as regional and national concrete and cement industry trade associates.

Sponsorship opportunity is also available for contractors, distributors, suppliers and producers on a first come basis. Limited space is available. 🚧

Falcon Pharmacy's Facade in Abingdon Finished with Lakeside Concrete



The historic town of Abingdon, VA boasts the catch phrase, "Entertain Your Senses." Kevin Wood, a longtime resident, is finally appreciating what that means now that he has become a local business owner with an active, attractive storefront. Kevin, a pharmacist (educated at Virginia Tech and Medical College of Virginia), and his wife, April, are proud owners of the new Falcon Pharmacy, which held its grand opening on February 2.

Competing with the major pharmacy chains in the area including CVS, Walgreen's and Rite-Aid, Falcon is the only pharmacy located at Exit 17 in Abingdon that has drive-thru service. Choosing the right material for the entryway, drive-thru and parking lot for their new business was vital because they believe in first impressions. "Of course, everyone prefers concrete over asphalt: it's a no brainer," says Wood. "Concrete looks great, lasts longer, and requires far less maintenance than its counterparts."

A young, enterprising and determined couple, the Woods wanted to see the job finished in concrete because the material is brighter, safer and more attractive. In a historic town like Abingdon, showcasing tree-lined streets, charming nineteenth century homes, and brick sidewalks, matching the aesthetics of a new business to the town is paramount. "We really thought we couldn't afford concrete," says Wood. "Thanks to the great people at Lakeside, our project is proof that concrete is just as affordable as the alternative."

"A brick and mortar structure, complemented by a concrete lot, is so much more appealing to the eye and speaks to the stability of the business," says Debbie VanDyke, President of Lakeside Ready Mix, the concrete producer for the job. "We hoped the owner wanted to go that way."

VanDyke has solid experience in assisting with concrete design needs. She and her husband, Leon, and their son, Rusty, opened Lakeside Ready Mix in 1999 with one plant and three concrete trucks. They recently opened a second location in Marion, VA. Now that local consumers have become more aware of the benefits of concrete—the long life cycle, green attributes and its attractiveness—concrete has become a visibly more popular choice. The VanDykes worked hard to convert contractors and, as a result, have improved the "curb-side" appeal of the town.

Convincing the Woods to choose concrete was only half the battle. Initially, RESM Enterprises, the building contractor from Chilhowie, was leaning toward asphalt. Through due persistence and salesmanship, Lakeside enticed RESM to choose concrete. "We had to make RESM understand that the project could be done in concrete and it wouldn't 'break the bank,'" says VanDyke. "They believed it would be too expensive, but with the rising cost of petroleum, concrete is much more competitively priced."

The parking lot was constructed using an exterior air-entrained concrete mix design. Anthony Nunley, owner of Nunley

Concrete, incorporated a v-ditch around the lot that artfully addressed some water runoff issues. The lot required 220 yards of concrete. "It's absolutely beautiful," says VanDyke. "The contractor and the Woods are thrilled."

"It's important that we see the big picture," she continues. "How do we not help this enterprising young couple optimize their business footprint and have the store as attractive as it can be? They wanted to enhance the visual appeal with distinctive choices. On a busy main thoroughfare, the total impression is the pay off. There will be other work as a result of this job," says VanDyke.

"Falcon Pharmacy was very pleased to work closely with Lakeside Ready Mix while building our new business," says Wood. "Being born and raised in Abingdon, I understand that our community is made up of great people who are always willing to help one another, whether in time of need, or like us, just getting started."

Falcon Pharmacy is a hometown, locally owned, independent pharmacy serving the residents of Abingdon, Washington County, and the surrounding areas. Lakeside Ready Mix services southwest Virginia, including Abingdon, with concrete products including decorative concrete, concrete finishing tools, concrete blocks and Nudura insulated concrete forms. Lakeside is one of the first concrete producers to offer a retail storefront for customers for their convenience. 🚚

Is Public Criticism of Discrimination or Harassment Always Protected Conduct?

By John G. Kruchko and
Paul M. Lusky

Under Title VII of the Civil Rights Act of 1964, as amended (“Title VII” or the “Act”), an employee is protected against employer retaliation for opposing any practice that the employee reasonably believes to be a violation of the Act. In its compliance manual dealing with retaliation claims, the Equal Employment Opportunity Commission (“EEOC”) has identified numerous examples of “opposition” conduct that are protected by Title VII, including complaining to anyone (management, unions, other employees, or newspapers) about the alleged unlawful practices; refusing to obey an order because the employee thinks it is unlawful under the Act; and opposing unlawful acts by persons other than the employer.

The federal courts have likewise given a broad construction to the term “protected conduct.” For example, the Third Circuit Court of Appeals has stated that protected conduct includes “informal protests of discriminatory employment practices, including making complaints to management, writing critical letters to customers, protesting against discrimination by industry or society in general, and expressing support for co-workers who have filed formal charges.” *Curay-Cramer v. Ursuline Acad. of Wilmington, Del., Inc.* (3d Cir. 2006). In this context, public manifestations of disagreement with discrimination or harassment can be protected under the opposition clause. For example, in *Hoffman v. Rubin* (8th Cir. 1999), an employee’s appearance on the news magazine “60 Minutes” was assumed to be protected conduct where the entire show was about allegations of sexual harassment and discrimination within the Bureau of Alcohol, Tobacco and Firearms.

In March of this year, a female developer evangelist (a developer evangelist is a spokesperson, mediator



and translator between an IT company, its technical staff, and outside developers), employed by a Colorado-based computer technology company, was fired after she tweeted about two men making sexual comments at a computer programming conference in Santa Clara, California. The men were seated behind her at the conference and she overheard them joking about “big dongles” and “forking.” The woman turned around, took a photo of the men and posted it on Twitter with an account of their alleged comments. Although “dongles” and “forking” are common terms used by programmers, the developer evangelist claimed the men were investing the terms with a sexual connotation.

The conference organizers met with the woman and the two men, who immediately apologized. Later that same week, however, one of the men was discharged by his employer. The developer evangelist was also discharged by her

employer who stated on the company’s website that her decision to tweet the comments and the pictures of the men “crossed the line.” The company’s chief executive said, “Publicly shaming the offenders – and bystanders – was not the appropriate way to handle the situation.” The incident set off a firestorm of debate on the internet. There were numerous blogs criticizing the company for the action it took while other equally critical comments were directed at the female developer evangelist for publicly “outing” the men for their alleged sexual harassment.

Although, as yet, it does not appear that this incident has resulted in litigation, there have been suggestions on the internet that the developer evangelist should sue her employer for retaliation. Her employer has stated publicly that the employee believed the comments by the men seated behind her were inappropriate and of an “offensive, sexual nature.” The company also


stated its support for her right to report inappropriate behavior “whenever and wherever it occurs.” Nevertheless, the company defended its discharge decision claiming the woman can no longer be effective in her role as a developer evangelist and that the manner in which she reported the incident “put [the company’s] business in danger.”

The primary issue relating to the legality of the developer evangelist’s discharge is whether her tweet constituted protected opposition to unlawful discrimination. Despite her employer’s admissions in its blog post, there would seem to be a legitimate question as to whether the woman had a reasonable and good faith belief that the comments she overheard were unlawful harassment. She knew the men were joking and the comments were not directed at her. Further, even if she found the jokes distasteful and unwelcome (it does appear that the developer tweeted a joke rife with sexual innuendo at the very same conference), there is no evidence that the men realized their comments were loud enough for her to overhear. The off-color remarks between the two men may have genuinely been a private conversation.

Further, the manner in which the developer evangelist reported her opposition to the men’s comments – by publicly shaming them by posting their pictures on her Twitter account – may remove her conduct from the protection afforded by Title VII. The EEOC has qualified the scope of the protections afforded by the opposition clause by noting in its compliance manual that the manner of opposition must be reasonable. Although the compliance manual expressly provides that “public criticism of discrimination may be a reasonable form of opposition,” it

also suggests that “courts ... [should] balance the right of individuals to oppose employment discrimination and the public’s interest in enforcement of the EEO laws against an employer’s need for a stable and productive work environment.” The compliance manual concedes that employees are not immunized from discipline or discharge if their protests against allegedly discriminatory employment practices interfere with their job performance to the extent that they are rendered ineffective in the job.

In the case of the “tweeting developer evangelist,” her decision to post pictures on her Twitter account of the men she claims engaged in boorish and offensive behavior may have rendered her ineffective at communicating with the developer community. The company’s claim that its business was threatened by her conduct may be overstated but the developer evangelist clearly antagonized many in the IT community with the manner in which she chose to report her claimed opposition to the “dongle” jokes she overheard while in attendance at the industry conference.

Employers must realize that we now live in a world where every employee grievance is likely to be tweeted, blogged or posted on Facebook. An employee cannot be discharged for merely giving publicity to his or her opposition to alleged discrimination in the workplace. Unless the public statement is clearly defamatory, threatening violence or injurious to the company’s product, an employer is well-advised not to take adverse action against the complaining employee. In all likelihood, the employee’s conduct will be protected under Title VII. 

Copyright 2013 Kruchko & Fries

John G. Kruchko is a Partner with the Management Labor & Employment Law Firm of Kruchko & Fries in Tysons Corner, 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 4-6, 2013

ACI Concrete Field Testing Seminar and Examination*

Clarion Inn Fredericksburg
564 Warrenton Road
Fredericksburg, VA

*PRE-REGISTRATION REQUIRED

JUNE 11, 2013

HRCAC Business Meeting

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

JUNE 13, 2013

NVCAC Business Meeting

11:00 AM - 2:00 PM
Manassas, VA

JUNE 18-20, 2013

ACI Concrete Field Testing Seminar and Examination*

Chandler Concrete of Virginia
614 Norfolk Avenue SW
Roanoke, VA

*PRE-REGISTRATION REQUIRED

JUNE 18, 2013

CVCAC Business Meeting

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

JUNE 19, 2013

SWCAC Business Meeting

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

JUNE 26, 2013

Safety/Human Resources Committee Meeting

10:00 AM - 12:00 PM
Association Headquarters
Charlottesville, VA

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



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

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

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

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

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

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

ROANOKECEMENT™

A TITAN AMERICA BUSINESS