



VRMCA 2014 Spring Convention

The VRMCA Spring Convention took place May 18-20 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, which gave attendees a time to socialize and meet some of our Convention speakers.

We began the Monday morning sessions with Rick Cyman, VP of Store Development with Sheetz Inc. who gave an informative background on the history of the company. Sheetz estimates that they purchase about 50,000 cubic yards of concrete per year for their parking lots. Industry analyst and NRMCA consultant Pierre Villere followed with a State of Our Industry presentation. We heard reports from the VRMCA Safety & Human Resources committee, Education



Bob Chandler, Morgan Nelson, Bob Swope and Doug Easter enjoy the Sunday Welcome Reception at the Greenbrier Hotel.

and Technical Committees. VRMCA Past President Larry Bullock presented the membership with the slate of nominees

to join the Board of Directors during

continued on page 3

VRMCA Safety Award Winners Announced

The winners of the 2014 VRMCA Safety Awards were announced on Monday, May 19th 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 2014 were based on reporting from 2013. There were 83 entries this year representing 11 different member companies! To achieve Gold status, a plant had to have had 0 lost-time injuries, an overall IFT of 2.9 or less and no DOT recordable. There were 51 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 4 silver-level winners. Lastly, in order to achieve Bronze status, a plant had to have an overall IFR of less than 5.8; there was 1 Bronze-level winner. Congratulations to all of the winners:

- Allied Concrete – 5 Gold
- Boxley – 1 Gold
- Branscome – 2 Gold, 1 Silver
- Chandler Concrete – 9 Gold
- Chaney Enterprises – 1 Gold
- Essroc Ready Mix – 6 Gold
- Lynchburg Ready Mix – 3 Gold

- Powhatan Ready Mix – 1 Gold
- Ready Mixed Concrete Company – 2 Gold
- Superior Concrete – 1 Gold, 1 Silver
- Titan America – 5 Gold, 1 Silver
- Vulcan Construction Materials – 15 Gold, 1 Silver, 1 Bronze



in the mix ...

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Roanoke	September 23, 24, 25
Bristol	October 7, 8, 9
Richmond	October 28, 29, 30
Harrisonburg	November 18, 19, 20
Warrenton	December 2, 3, 4

Questions? Contact George Boykin at (434) 906-2186
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Spring Convention *continued from page 1*

the Business meeting on Monday. Our 2014-2016 VRMCA Officers are Jay McNeely, President, Stephen Render, Vice President and Robert O'Brian, Secretary / Treasurer.

Monday afternoon, attendees had the chance to either play in the VRMCA Golf Tournament, shoot sporting clays in the Shooting Tournament or participate in the private wine tasting and casino lesson. The winning golf team members were Tom Collins, Titan America; Todd Shenk, H.N. Funkhouser; Jon Riley, Luckstone; and Rob Watkins, Allied Concrete. Adam Riggs, Sterling Transport, took first place in the Shooting Tournament followed by Joe DeFrank, Concrete Plants and Keith Wilt, Superior Concrete in second and third. Congratulations to all our winners!

Tournament winners were announced at the banquet dinner Monday evening along with winner of the VRMCA Safety Awards (*see page 1 for the full list*). In attendance during the Convention was our 2014 Truck Rodeo

winner Steven Odehnal and his wife. Steve has been driving for Capital Concrete for 3 ½ years and is 2nd year participant of the Rodeo. President Bob Chandler presented him with a Certificate of Achievement during the banquet. Vice President Jay McNeely honored outgoing President Bob Chan-

dlar and presented him with a carved, wooden mixer truck in commemoration of his time and dedication as VRMCA President for the last two years.

Mark your calendars for our Fall Convention taking place September 7-9, 2014 at the Hilton Virginia Beach Oceanfront Hotel! 🚚



THANK YOU

VRMCA gratefully acknowledges the support of our 2014 Spring Meeting Sponsors



THANK YOU

VRMCA gratefully acknowledges the support of our 2014 Meeting & Convention Sponsors



IN PHOTOS: 2014 VRMCA SPRING CONVENTION



Jay McNeely presents outgoing President Bob Chandler with a customized VRMCA wooden mixer truck.



Dave Caldwell, Ed Craighill and Ken Randolph enjoy the start of the conference.



All smiles at Sunday's Welcome Reception.



The winning golf team celebrates their victory.



Members of the Chandler family gather before Monday's group dinner.



A moment on the practice green before the VRMCA Golf Tournament begins.



Team members having a little fun before tee time.



Attendees enjoyed a special "East Coast vs. West Coast" themed wine-tasting event.



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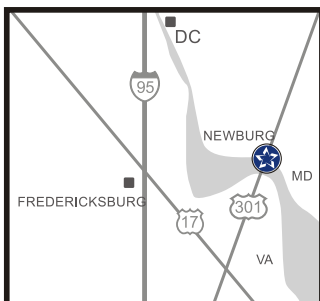
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Safety Rodeo in Doswell



The VRMCA 2014 Rodeo volunteers.

By Ann-Germaine Danz, Director of Industry Services

The VRMCA hosted its Annual Mixer Truck Rodeo in early May at Meadow Event Park in Doswell, Virginia. This competitive event focuses on mixer truck driver safety through a written examination and a skills course. This year the Rodeo coincided with North American Occupational Health and Safety Week as designated by the American Society of Safety Engineers. The mission of the NAOHS week is an effort to better educate the public about the positive benefits a safe workplace provides not only for workers, but for their families, friends, businesses, their local communities and the global community. This is a great take-away message to remind ourselves of why we take extra precautions in training, daily operations, and wearing personal protective equipment to return home safely at the end of the day.

Spring is an appropriate time to remind all members of the concrete industry of the importance of safety in the workplace as the pace of construction begins to ramp up. John Detmer, the

newly appointed chair of the VRMCA Safety Committee and Safety Manager for Titan America, acted as emcee for the day. He called on drivers to take their turn on the course and made announcements to keep the volunteers aware of the pace of events. The Association wishes to extend a thank you to all of those who volunteered on the Rodeo course, in the classroom, and as event sponsors. Board members were on-site to show their support, along with representatives from producers and suppliers across the state.

Member companies send one or two of their best drivers to compete against one another to prove who is the most-skilled. This year's group consisted of nineteen drivers from member companies. Often these drivers have emerged from a Rodeo at the company level, then advance to the state level. The driver earning the highest combined score in the written examination, the pre-trip inspection, and the driving obstacle course wins First Prize, consisting of a cash award and a trip to the Spring Convention. First the mixer drivers sat for a one-hour, multiple-choice written exam covering aspects of safe truck operation

and delivery procedures. Participants were given a walk-through of the obstacle course to familiarize all drivers with the stations and scoring method. Two Virginia State Troopers were on hand to monitor the pre-trip inspection of the mixer truck. Obstacles included both front and rear bumper stops, a tight right turn around a cone, and lining the right tires up between two lines of tennis balls. One of the most entertaining stations to watch was the forward and reverse through a serpentine path of construction cones. The entire loop is timed with the watch stopping when the driver toots the truck's horn. Steven Odehnal of Capital Concrete emerged victorious with the highest combined score. He is Capital Concrete's first-ever winner of the Rodeo. Steve accepted his award at the VRMCA Spring Convention at the Greenbriar Resort to a standing ovation. Congratulations to the winners and to all who continue to operate safely. 🚚

(2014) *The American Society of Safety Engineers*. "NAOSH Week 2014." URL: <http://www.asse.org/newsroom/naosh/>

VRMCA Speaks to National Frame Building Association

By Bob Nablo,
Director of Industry Services

Recently the National Frame Building Association – the only national trade association representing the post-frame industry – requested a brief presentation on ready-mixed concrete for a small meeting of mid-Atlantic builders and other professionals. Bob Nablo, representing VRMCA and the Blue Ridge Council, spoke to about 25 NFBA members in Winchester. This presentation focused on how, and for what purpose, various mix designs are created, how concrete should be ordered and placed, and what new ready-mix products have been introduced in recent years.

This day of seminars and job site visits was arranged by Fuog Interbuild, Inc. of Purcellville, VA and Jamie Hochmuth, President of the Mid-Atlantic Chapter of NFBA. Members attending the presentation seemed to be very interested in the subject and asked many questions relating to fibers vs. welded wire, pervious



concrete, roller compacted concrete and proper finishing techniques. They were also interested in the concrete industry's efforts to address EPA attempts to classify fly ash as a hazardous material. Nablo encouraged the attendees to always ask their ready-mix supplier for help with unusual concrete situations, and to make sure they are ordering the correct mix for each placement.

After the presentation a luncheon

was held at Hunter's Head Restaurant in Upperville, and then the group moved to St. Brides Farm, a privately owned farm specializing in the breeding, training and showing of world class performance horses, to tour the NFBA Building of the Year, a spectacular post-and beam stable for ten very expensive horses.

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NVCAC 2014 Retreat-Seminar & Golf

By Hessam Nabavi,
Director of Industry Services

Engineer, Kundan Patel, P.E., HDR- "Great experience. Excellent presentations. Presenters were well prepared and knowledgeable about pervious concrete. It seems that the NVCAC Retreat is getting better every year. I really appreciate that you are putting this event together and inviting me to participate. I hope you continue this event, year after year".

Architect, Jeff Wilburn, R.A., Hefner Architects- "The seminar was very informative. Learned a lot about pervious concrete and its sustainable values. This is a great solution for water quality. Golf was just perfect. Thank you very much for sponsoring such a wonderful event".

Engineer, Chris Heiser, P.E., ADTEK Engineers- "Thank you for the invite to the retreat, topic was timely. I learned a lot about the regulation changes and pervious concrete. Presenters were outstanding. Golf was great and with the weather like that, it was a perfect package. I really enjoyed myself".

These were just a few comments about the NVCAC 2014 Retreat.

The annual NVCAC Retreat has become a tradition. It has created a trend of success year after year among the Northern Virginia D & C professionals. Every year, our guests look forward to receiving the invitation and to participating in the retreat. Participating in the event offers them the opportunity to learn about concrete and to network with other design professionals and our members. This year's event was in partnership with WACEL and took place at the beautiful Bull Run Golf Club in Haymarket on May 13th. Mr. Richard Street, Sr. Environmental Engineer with Spotsylvania County, and Mr. Phil Kresge, Sr. Director, National Resources with National Ready Mixed Concrete Association, were the presenters. They spoke about "Stormwater Management Update with New Legislative Bills & Brainstorming to Meet New Water Quality Goals Using



Phil Kresge speaks to attendees at the NVCAC 2014 Retreat.



Dawn Klassen with Loudoun Co. Government looks on as Lewis Murphy with Luck Stone putts.

Pervious Concrete".

Click on the link <http://www.vrmca.com/regions/default.aspx?region=4> to view the presentations.

Here are some more comments from our guests about their experiences at this year's retreat:

County Engineer, Gerard Sossang, P.E., Geotechnical Engineer, Loudoun County Government- "I want to thank you for the opportunity to attend this year's retreat. I enjoyed the seminar on the use of pervious concrete for stormwater management and water quality. Your event always offers a great opportunity to network with other professionals. Again, thank you for this exceptional training experience".

Engineer, Jeremiah Kamerer, P.E., Gordon and Associates- "I always enjoy the NVCAC Retreat. The topic always seems to be relevant and I always learn something new about concrete. I enjoyed the seminar and golf thoroughly. Thank you for your service to the design community".

As always we would like to thank those who helped make this event successful:

Our speakers Mr. Richard Street and Mr. Phil Kresge for their outstanding presentations. Marc Granahan with Lehigh Cement, Bob Scheller with WDP and Chris Worley with WACEL for their assistance in organizing the event. Dave Snider, NVCAC Council Chairman with Vulcan Materials, and Lewis Lee, NVCAC Executive Council Member with Luck, for their help at the registration table.

Finally a very special thank you to the following companies for sponsoring the event. The success of the retreat would have not been possible without their financial contributions. Lehigh Cement, Vulcan Materials, Luck Stone, Grace, Titan Virginia, The Sefa Group, Essroc Cement, DuBrook Concrete, Swope & Associates, WACEL and VRMCA. 🚚

Argos Hosts Pervious Concrete Demonstration

By Ann-Germaine Danz,
Director of Industry Services

Richmond area producer-member Argos/Ready Mix Concrete Company sponsored a one-day informational seminar on pervious concrete pavement. About fifteen participants including concrete finishers, civil engineers, and other industry representatives attended the event. Course material introduced attendees to best practices when working with pervious concrete as well as its benefits as a stormwater management technology. A few of the finishers had experience with installing pervious concrete sidewalks, but had yet to work with the product on a larger scale job such as a parking lot. This seminar provided additional resources and information on the products available to those with an interest in pervious concrete pavement.

A demonstration placement measuring approximately 10 feet by 50 feet occurred in the afternoon session at the Argos location on Racrete Road in Richmond (Bryan Park). The site was prepped in a cut-away portion flush with the existing concrete pavement in the yard. The NRMCA stresses the importance of having as many crew members as possible on hand to help with placement. It is recommended by the NRMCA to have one Pervious Concrete Craftsman or three Certified Concrete Installers per crew. An individual earning the Certified Installer credential has worked on at least three projects totaling 10,000 square feet to being eligible for this certification. Craftsman are those individuals reaching the highest level by having documented additional field-time based experience, a Pervious Evaluation by a local-sponsoring group, and at least three examples of troubleshooting and resolving problems with pervious pavement.

This leader of this demonstration crew had extensive experience, yet the



rest of the finishers had less experience with pervious concrete. Seminar attendees were able to handle some of the finishing tools, such as the vibratory roller, cross roller and bull float. The technique of stomping the perimeter of the form with a boot was used in areas where the roller would not reach. Argos utilized a mix with internal curing; this allows the pervious concrete to retain moisture and cure more slowly. The technology

was described as acting much like the gel beads that hold moisture in a baby's diaper. Once placement was complete a proprietary surface spray was used eliminating the need for plastic sheeting on the surface. Plastic may flap back as the wind blows, while the chemical product is part of the pavement surface once it is applied. Despite weather conditions on the day of placement consisting of full sun and high ninety-degree temperatures the pervious pavement appears to be curing satisfactory. Attendees were encouraged to come back and visit the site on a rainy day to observe the pervious pavement in action. 🚧

Telecommuting as a Reasonable Accommodation Under the ADA: Is This the New Norm?

By John G. Kruchko
and Kevin B. McCoy

The Americans with Disabilities Act (“ADA”), enacted in 1990, is the federal law that protects certain employment rights of qualified individuals who suffer from disabilities. Chief among those protections is securing a disabled employee’s job, which is accomplished through two main avenues: (1) an outright prohibition on terminating someone because of their disability (except in rare instances); and (2) requiring employers to provide “reasonable accommodation” for disabled employees that will allow them to continue to perform the essential functions of their jobs. While the statutory language of the ADA reads broadly, federal courts throughout the 1990’s and early 2000’s interpreted the language narrowly, finding only lengthy, serious injuries or illnesses (those lasting at least 6 months) that significantly affected a “major life activity” qualified as disabilities. Moreover, the federal courts routinely found that “attendance” at the workplace was an “essential job function” of just about every position. In other words, even if employees suffered from legitimate disabilities, if they were not able to physically show up at work on a regular basis, courts found that they could not perform all of the essential functions of their job and were thus not entitled to protection under the ADA.

Courts’ interpretation of the ADA requirements became so narrow that Congress felt compelled to intervene. Thus, in 2008, Congress passed the ADA Amendments Act (“ADAAA”). The intent and effect of the new law was to make it easier for individuals to establish that they were disabled and clarify (if not expand) employers obligation to provide reasonable accommodations. In response, federal courts have in recent years broadened their interpretation of the ADA and disabilities.

One area in which courts interpretation of the ADA has become far more employee friendly is the definition of what constitutes a reasonable accom-



modation. Congress’ broadening of the ADA with the passage of the ADA Amendments Act, coupled with rapid increases in automation and communication technology have significantly expanded the types of accommodations that may be deemed “reasonable” under the ADA. In short, federal courts are starting to take the view that, when it comes to doing one’s job, there is “more than one way to skin a cat” – and, by the way, you can probably skin that cat from home. This new approach spells trouble for employers, as demonstrated by a recent federal appeals court decision discussing telecommuting as a reasonable accommodation.

Executive Summary

The Sixth Circuit U.S. Court of Appeals recently held that a four day per week telecommuting arrangement could be a reasonable accommodation for a disabled employee, even though the employer determined, in its business judgment, that teleconferencing was an insufficient substitute for in-person work. The court noted that, given the state of modern technology, the class of cases in which an employee can fulfill all requirements of the job while working remotely has greatly increased, and it is no longer the case that jobs suitable for telecommuting are “extraordinary” or

“unusual.” See *EEOC v. Ford Motor Co.*, No. 12-2484 (6th Cir. Apr. 22, 2014).

Background Facts

Jane Harris worked as a resale buyer for Ford Motor Company from 2003 to 2009. Her role required some individual tasks, but the essence of her job required group problem-solving. Ford utilized a telecommuting policy that authorized employees to work up to four days per week from a telecommuting site, and several resale buyers telecommuted one day per week. Throughout her employment, Harris suffered from irritable bowel syndrome (“IBS”). As her condition worsened, she began taking intermittent FMLA leave when she experienced severe symptoms. Harris was eventually permitted to work a flex-time telecommuting schedule on a trial basis. However, the company found this arrangement problematic as Harris was unable to establish regular and consistent work hours. Harris requested she be allowed to telecommute up to four days per week as an accommodation for her IBS. In response Ford offered her two alternative accommodations: moving her cubicle closer to the restroom or finding an alternative position. Harris rejected these offers and filed a charge of discrimination with the EEOC. The EEOC later filed suit on her behalf in federal court, claiming Ford violated the Americans with Disabilities Act (ADA). The trial court granted summary judgment in favor of Ford; however, on appeal the Sixth Circuit reversed the trial court.

The Court’s Rationale

In a 2-1 decision, the Sixth Circuit held that Harris had presented evidence that she was a qualified individual with a disability on two alternative bases: (a) she was qualified for the position after the elimination of the requirement that she be physically present at work, or (b) she was qualified for the position with a telecommuting accommodation. The burden then shifted to Ford to prove either (i) the physical-presence requirement was

an essential function of Harris's job or (ii) the telecommuting arrangement would create an undue hardship. The court found that Ford failed to prove either.

With regard to the physical-presence requirement, the court held that physical presence at the workplace could be considered an essential job function for positions that required face-to-face interactions with customers or other objects at the workplace, but noted that "the world has changed since the foundational opinions regarding physical presence in the workplace were issued.


..Therefore, we are not persuaded that positions that require a great deal of teamwork are inherently unsuitable to telecommuting arrangements." The court further held that, while leave on a sporadic or unplanned basis may be an unreasonable accommodation, telecommuting does not raise the same concerns as flex-time scheduling because an employer can still rely on an employee to be working during scheduled hours while working remotely. Accordingly, the court rejected Ford's concern that Harris be available for meetings or to handle urgent matters during the workday finding that her ability to engage in those activities did not depend on her physical presence in the office, but rather on her being consistently available during "core" business hours. In support of its rejection of Ford's business judgment, the court stated:

Courts routinely defer to the business judgment of employers because courts are not equipped with the institutional knowledge to sit as "super personnel department[s]." However ... while we do not allow plaintiffs to redefine the essential functions of their jobs based on their personal beliefs about job

requirements, neither should we allow employers to redefine the essential functions of an employee's position to serve their own interests. Rather, we should carefully consider all of the relevant factors, of which the employer's business judgment is only one.

The court also declined to find the alternative accommodations offered by Ford reasonable.

Takeaway for Employers

This decision is troubling for employers because it shows that a court may reject the employer's business judgment in managing its workforce. Employers, particularly those with existing telecommuting policies, are now cautioned to seriously consider telecommuting as a reasonable accommodation under the ADA where an employee's disability affects his or her ability to be physically present in the workplace, but does not ostensibly affect the employee's ability to work during normal working hours. An important distinction must be made regarding whether the employee is seeking a flex-time or a telecommuting arrangement. Additionally, this decision illustrates that courts may no longer automatically defer to an employer's business judgment that physical presence in the workplace is an essential job function: the employer must be able to demonstrate why physical presence is required and must be able to do so by relying on reasons beyond generalized concepts such as "team work" and "interoffice interaction." Working with your employment counsel to carefully craft job descriptions and narrowly define telecommuting policies will be of the utmost importance going forward. 

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John G. Kruchko is a Partner with the Labor & Employment Law Firm of FordHarrison, LLP in Tysons Corner, Virginia; Kevin B. McCoy is also a Partner with the Firm. An original version of this article was prepared by Louis Britt, a Ford Harrison Partner in the Firm's Memphis office and Katie Parham, a Senior Associate in the Memphis office. For more information, please contact Mr. Kruchko or Mr. McCoy at (703) 734-0554 or by e-mail at jkruchko@fordharrison.com, or kmccoy@fordharrison.com. This article is published for general information purposes, and does not constitute legal advice.

On the Horizon Calendar of Upcoming Events

JUNE 10, 2014

HRCAC Business Meeting

11:30 AM - 1:00 PM
Crazy Buffet and Grill
Chesapeake, VA

JUNE 10-12, 2014

ACI Concrete Field Testing Seminar and Examination*

VDOT Bristol District Office
870 Bonham Road
Bristol, VA

*PRE-REGISTRATION REQUIRED

JUNE 12, 2014

NVCAC Executive Council Meeting

11:30 AM - 2:00 PM
Bull Run Country Club
Haymarket, VA

JUNE 17, 2014

CVCAC Business Meeting

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

JUNE 18, 2014

BRCAC Business Meeting

12:00 PM - 2:00 PM
Rowe's Family Restaurant
Staunton, VA

SWCAC Business Meeting

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

JUNE 24-26, 2014

ACI Concrete Field Testing Seminar and Examination*

Harrisonburg VDOT Residency
3536 North Valley Pike
Harrisonburg, VA

*PRE-REGISTRATION REQUIRED

SEPTEMBER 7-9, 2014

VRMCA Fall Convention

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www.VRMCA.com/calendar



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