



Concrete Pavements Featured at Virginia School Board's Annual Conference

By J. Keith Beazley,
Director of Industry Services

The Annual Conference of the Virginia Schools Boards Association was held in Williamsburg on November 16-18 in the Williamsburg Lodge. The VSBA Annual Convention of School Board Members and Superintendents was attended by approximately 800 officials from cities, towns, and counties throughout the Commonwealth. The Virginia School Boards Association is a voluntary, nonpartisan organization of Virginia school boards and promotes excellence in public education through advocacy, training, and services.

The Association has a large section of affiliate members with architectural, engineering, planning and design, construction management, and interior design firms participating with information on school construction and design. New and innovative products are featured each year to showcase products and to educate members on systems and products that will benefit schools in their building programs or renovations. These groups of Affiliate members are of great interest to the Superintendents and School Board members and the membership seek advice and information for the making of decisions on school construction in their localities.

The Virginia Ready Mixed Concrete Association participated in the annual convention as exhibitors and featured the use and benefits of Pervious and Conventional Concrete parking lots at school facilities. Pervious Concrete is increasing its acceptance in parking lots for storm water



management. The decision makers for Virginia's school systems realize that building retention storage ponds on school property are a safety concern and an inefficient use of land. School systems are also increasing their awareness for LEED credits associated with Pervious and Conventional concrete paving. Pervious projects have been constructed at schools in Charlottesville, Richmond, and Williamsburg. Other pervious projects are under review or design around the state.

An additional benefit of Pervious Concrete is a reduction in the Heat Island Effect with concrete versus asphalt, resulting in a cooler school site, parking lots, and paved playground areas. Pervious concrete can also help with the irrigation of plants, lessen mud and dirt in buildings, and reduce required lighting requirements. Concrete in School Bus Lanes are safer (no rutting), cleaner, freer of ice, and eliminate pot holes typically associated with other pavements.

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Richmond	February 21, 22, 23	
Harrisonburg	March 6, 7, 8	
Fredericksburg	March 20, 21, 22	
Roanoke	April 3, 4, 5	
Hampton	April 17, 18, 19	
Warrenton	May 1, 2, 3	
Richmond	May 22, 23, 24	

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Concrete *continued from page 1*

The Virginia Ready Mixed Concrete Association was well received at the VSBA Fall Convention. There was a strong interest and appreciation for the values of concrete in the construction of local school projects. Virginia's School Board members and Superintendents are seeking new ideas and better ways to educate their students and build quality schools for their communities. VRMCADirector of Industry Services Keith Beazley and Roanoke Cements' Ed Wiles and Kisia Kimmons represented VRMCA in the booth. The VRMCA wishes to thank Roanoke Cement for their time and sponsorship of this event. Opportunities for concrete paving were increased as the VSBA membership took the opportunity to learn more about innovative and conventional concrete products and applications. 🚚



Concrete 101 Course Offered at ABC Virginia Headquarters

On Wednesday, November 15th, NVCAC Residential Committee and VRMCA had sponsored a "Concrete 101" seminar for the Northern Virginia home builders, residential superintendents, residential contractors and estimators at the ABC Virginia Headquarters in Dulles. This was an initiative to bring basic education regarding the critical steps that are involved in ordering, delivering, placing and finishing concrete to this audience. This seminar was presented by William Rafferty with Swope and Associates. Over 30 people participated in the seminar. To view the details of this

presentation please go to <http://www.vrmca.com/downloads/files/Concrete101-2011.pdf>.

NVCAC would like to thank William Rafferty for his presentation and his great sense of humor. We would also like to thank Bill McNamara, Residential Committee Chair with Essroc Cement, David Snider with Vulcan Materials, Mike Renzi with Vulcan Materials, Kevin Terry with Vulcan Materials, David Acott with Titan Virginia, Melanie Fullilove with Titan Virginia and Lewis Lee with Luck Stone for their promotional efforts for this event. 🚚

Roanoke Cement & VRMCA Share Booth at Green Living Expo in Roanoke

By Bob Nablo,
Director of Industry Services

The Association for Energy Conservation Professionals recently hosted the 12th annual Green Living and Energy Expo in the Roanoke Civic Center, with Roanoke Cement Co. and VRMCA sharing a booth in the exposition. Roanoke Cement was also a Bronze Sponsor of the event.

The Expo is one of the first, and oldest, events of its type in the country and is the region's premier "green" event. Organized mostly by volunteers, the Expo brings communities together to learn not only how important, but also how easy "green living" can be. In its 12-year history the event has grown to more than 95 exhibitors and 2,500 visitors. This year the Expo emphasized Wind Energy, but presentations, workshops, demonstrations and hands-on activities highlighting many forms of energy conservation were available for children and adults. On Fri-



day mornings the exhibit hall is always filled with elementary and middle school students as the local schools bring children by the busload to view the exhibits.

Robert Marek and Bob Nablo manned the booth, speaking with many visitors about the benefits of pervi-

ous concrete and the management of stormwater runoff. Also on display was the Roanoke Cement Co. "heat island effect" demonstration, which shows the differences in heat absorption and reflectivity between concrete and asphalt paving. 🚚

Slow Job Growth Tied to Slow Construction Recovery; Forecast Puts Robust Cement Consumption Off Until 2014



Job creation is key to improving many economic indicators, and its reduction translates into a longer wait for the construction and cement recovery. Even with an economic recovery, construction levels will remain at new floor levels and lead to relatively flat cement consumption until 2014, according to the most recent economic forecast from the Portland Cement Association (PCA).

PCA revised its cement consumption forecast to increases of 1.1 percent in 2011, 0.5 percent in 2012 and 7.4 percent in 2013—roughly half of the previous forecast. According to the report, large structural issues exist in each construction sector that will slow recovery.

"The Great Recession was construction focused. Residential, nonresidential and state discretionary construction levels collapsed," Edward Sullivan, PCA chief economist said. "Despite economic growth, the residential sector, for example, will continue to be plagued by a large volume of foreclosures, tight lending standards and weak new home prices. I don't see a rebound in most of that market until 2014."

Recovery for the construction industry is tied to general economic growth and job creation. Job creation will reduce, and eventually eliminate, the adverse impacts of foreclosures, tight lending standards, commercial occupancy and leasing rates as well as the severity of state fiscal conditions. However, because the impediments to a construction recovery are so large, even if an acceleration in economic growth and job creation occurs on a sustained basis, the benefits will not materialize quickly.

According to Sullivan, nonresidential construction will also remain low until 2013, and lack of assured federal funding will drag down the public sector until 2014. 🚚

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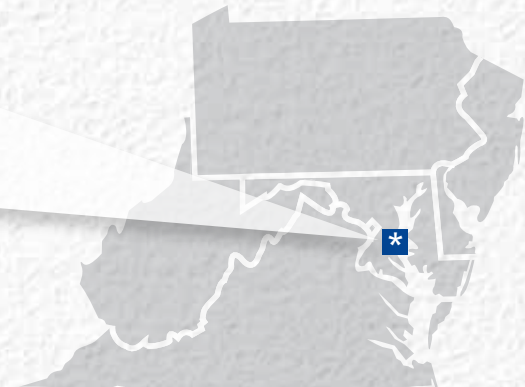
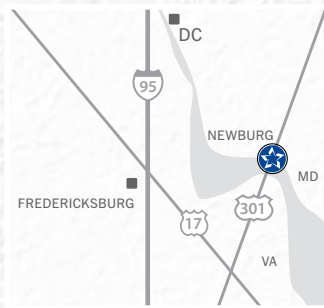
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Enforcement of Covenants Not to Compete

By John G. Kruchko and
Paul M. Lusky

If you are a business owner, you have undoubtedly worked hard over the years to build your business into a viable concern. You may have provided training to selected employees to assist you in the operation of your business. In so doing, you may have provided them with knowledge of certain business practices and/or techniques which have made your particular line of business successful. You may have also given them access to your customer list and the contacts you have developed over the years, contacts which otherwise would be private information, unknown to your competitors. What remedy do you have if such employees decide to leave the company and work for a competing business or start their own business in direct competition with you?

In response to this concern, many employers ask key employees to sign non-compete agreements to protect the company against competition. Covenants that restrict competition are not favored by the courts, however, because of the public policy against restraints of trade and the hardship that can result to former employees who seek only to earn a living. In some states (e.g., California), non-compete agreements in an employment setting are unenforceable and void as against public policy. Even in states that do allow non-compete agreements, an employer who seeks to restrain competition by former employees must demonstrate a clear right to enforcement of a covenant against competition as a condition for seeking injunctive relief. In that respect, judges will often look for reasons not to enforce covenants restricting competition.

Although the standards for enforcement of covenants not to compete vary from state to state, some general principles can be stated: First, a restrictive covenant in an employment contract must be supported by adequate consideration. This is normally not an issue if the contract is entered into at the start



of employment, but if the employee is asked to sign a non-compete agreement during the term of employment, courts in some states (e.g., Pennsylvania, North Carolina, South Carolina) have held that continued employment is not sufficient consideration, standing alone, to support a non-compete agreement. Thus, the employee must be provided with additional consideration, usually in the form of a monetary bonus or raise, to make the covenant enforceable.

Second, an employee's agreement not to compete with his employer upon leaving employment will be upheld if the restraint is confined within limits which are no wider as to area and duration than are reasonably necessary for the protection of the business of the employer. In states where covenants restricting competition are permitted, covenants with durations of two years or less are usually upheld by the courts. With respect to the allowable geographic scope of a non-compete clause, courts normally will only enforce a restrictive covenant that is limited to the company's "market area" or the geographic area where the company actually conducts its business.

Third, in some states (e.g., Virginia, Maryland), courts limit the use of non-compete agreements (as contrasted with non-solicitation restrictions) to certain classes of employees (usually executives and salespersons). In Maryland, an employer who wishes to enforce a non-compete agreement must show that the former employee provided "unique services" to the employer or that an injunction is needed to prevent the misuse of trade secrets. An employee does not provide unique services where the employer's business is not dependent, in some significant way, on the personality, skill and knowledge of the employee.

Finally, a covenant not to compete must be drafted narrowly so that the activity prohibited by the covenant is of the same type or function as that which was actually engaged in by the former employee. This principle is illustrated by a recent decision of the Virginia Supreme Court, *Home Paramount Pest Control Cos. v. Shaffer* (No. 101837, Nov. 4, 2011), where the court held that language in a restrictive covenant was overbroad and not enforceable against a former employee even though the geographic

scope and duration of the contested clause were arguably quite reasonable. The court said the employer's failure to confine the scope of the "function" element in its covenant not to compete to activities in which the business actually engaged proved fatal to its enforcement action.

The clause at issue attempted to prevent the employee from "engag[ing] indirectly or concern[ing] himself ... in any manner whatsoever" in pest control "as an owner, agent, servant, representative, or employee, and/or as a member of a partnership and/or as an officer, director or stockholder of any corporation, or in any manner whatsoever." The court found the covenant to be a "sweeping prohibition" that unduly burdened the employee's attempt to earn a living because it went beyond protecting Home Paramount Pest Control's business interest. The court said: "On its face, it prohibits [the employee] from working for ... any other business in the pest control industry in any capacity. It bars him from engaging even indirectly ... in the pest control business, even as a passive stockholder of a publicly traded

international conglomerate with a pest control subsidiary." The court concluded, therefore, that the trial court had correctly refused to enforce the covenant against the company's former employee.

Despite the substantial obstacles that may be faced by an employer attempting to stop a former employee from engaging in competition with the company, a reasonable non-compete agreement can be useful in discouraging employees from opening up a competing business if they believe they may incur immediate legal consequences for such conduct. At the very least, a clearly defined non-solicitation covenant prohibiting direct solicitation of customers with whom the employee had dealings while employed with the company will normally be enforced by the courts. Finally, the employment agreement should have a clause by which the employee is prohibited from using trade secrets after the employment. The combined force of the covenant and the statutory prohibition against the use of trade secrets should be enough to protect the employer against unfair competition by a former employee. 🚚

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On the Horizon Calendar of Upcoming Events

DECEMBER 5, 2011

BRCAC

Streets and Local Roads Meeting
12:00 NOON - 1:00 PM
Harrisonburg, VA

DECEMBER 6-8, 2011

ACI Concrete Field Testing Seminar and Examination*
Chandler Concrete
614 Norfolk Avenue SW
Roanoke, VA

*PRE-REGISTRATION REQUIRED

DECEMBER 9, 2011

NVCAC Christmas Gathering
11:15 AM
American Tap Room
1811 Library Street
Reston, VA

DECEMBER 13, 2011

HRCAC Business Meeting
3:00 PM
Surf Rider Restaurant
Virginia Beach, VA

DECEMBER 12, 2011

SWCAC

Streets and Local Roads Meeting
12:00 NOON - 1:00 PM
Roanoke, VA

DECEMBER 21, 2011

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

DECEMBER 25, 2011



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