THE READY-MIXER

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Virginia Ready-Mixed Concrete Association Newsletter November 2012

'Green Schools' Presented to the Virginia School Boards Association

By J. Keith Beazley,
Director of Industry Services

Virginia's Schools are beginning to recognize the importance of the conservation of energy and environmental awareness in new and existing construction of facilities around the Commonwealth. School systems are requiring architectural firms design buildings with LEED registered and certified projects. The schools buildings designed with insulated concrete forms, new heating and cooling systems, designs with using natural light and shade, storm water management systems, the leading by example of the protection of the environmental, are being mandated by the local school boards.

The VRMCA is providing a path for this new "green" awareness with contacts and direct information to school board members and school superintendents through the annual convention of the Virginia School Boards Association. The VRMCA has for the second year developed a display and booth at the convention in Williamsburg. The booth display provided pictures of pervious parking lots in local schools, ICF and tilt-up wall construction for buildings, and a special demonstration of the heat-island effect of concrete vs. asphalt. A new tilt-up concrete school is planned and underway in Hampton Roads. Each year interest has grown and awareness of the benefits of concrete for local schools.

Roanoke Cement Company has sponsored the event for the second year to benefit the Association. Don Ingerson, V.P., Roanoke Cement and Aggregates, is a great believer in the potential for sustainability and concrete construction in schools. Kisia Kimmons, Roanoke Technical Services, John Lockett, Roanoke Sales Representative, and Keith Beazley, VRMCA, represented the Association in the informational booth for the convention.

in the mix ...

Visit us online
www.VRMCA.com

Virginia Ready-Mixed Concrete Association
250 West Main Street, Suite 100 • Charlottesville, VA 22902
434/977-3716 • 434/979-2439 (f) • easter@easterassociates.com • www.vrmca.com

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Virginia Ready-Mixed Concrete Association
250 West Main Street, Suite 100 • Charlottesville, VA 22902
Phone: 434/977-3716 • Fax: 434/979-2439
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Concrete Field Testing Technician Certification Program

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

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Upcoming ACI classes:

Warrenton January 7, 8, 9
Virginia Beach April 16, 17, 18
Roanoke April 30, May 1, 2
Richmond May 14, 15, 16
Harrisonburg May 22, 23, 24
Fredericksburg June 4, 5, 6
Roanoke June 18, 19, 20
Virginia Beach June 25, 26, 27
Warrenton July 8, 9, 10
Richmond July 16, 17, 18

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

2012 VRMCA Advisory Council Regions

Larry Bullock
VRMCA Advisory Council Chairman
Boxley Materials Company
Roanoke, VA
Phone: 540/777-7600
lbullock@boxley.com

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

Scott Boshart
Secretary/Treasurer
Superior Concrete
Harrisonburg, VA
Phone: 540/820-5563
sboshart@superiorconcreteinc.com

HAMPTON ROADS
Joe Bradshaw
Chairman
Commercial Ready Mixed Products
Suffolk, VA
Phone: 757/925-3368
joecrmp1@hotmail.com

Lee Flemming
Secretary/Treasurer
Lafarge North America
Chesapeake, VA
Phone: 757/647-9409
lee.flemming@lafarge-na.com

NORTHERN VIRGINIA
Jeff Slagle
Chairman
Rowe Materials
Fredericksburg, VA
Phone: 540/809-1999
jslagle@rowematerials.com

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

RICHMOND/CENTRAL VIRGINIA
Steve Kerr
Sales Representative
GreenRock Concrete
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
Robert O'Brian Jr.
Chairman
Lynchburg Ready Mix Concrete
Lynchburg, VA
Phone: 434/846-6563
rmobrian@gmail.com

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

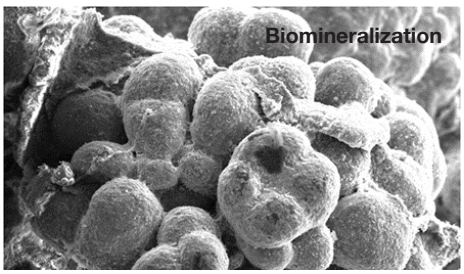
The Regenerative Concrete Known as Self-Heating Concrete

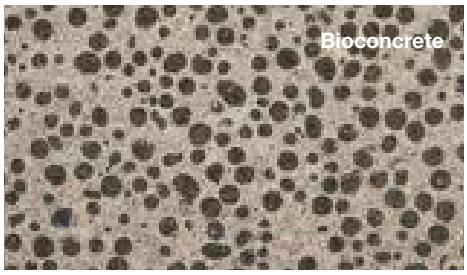
By Hessam Nabavi,
Director of Industry Services

Everyone Fasten Your Seat Belt: Concrete's Service Life is about to get extended even more.

We should not be surprised if in a couple of years, avoiding stepping on the cracks during casual sidewalk strolls will become a whole lot easier.

Concrete is the world's most widely used building material, but as we all know it is prone to cracks. "Micro-cracks" are an expected part of the hardening process and do not directly cause strength loss, but over time, water and the aggressive chemicals within it gets into these cracks and corrodes the concrete. For durability reasons and to increase the service life of concrete, it is important to get these micro-cracks healed and the ultimate solution would be self-healing concrete. Researchers in Delft Technical University in the Netherlands have invented a new form of concrete that eliminates cracks by patching them up as they occur. The self-healing concrete project is part of a Delft TU self-healing materials research program.





How does this work?

Placing calcite-precipitating bacteria in the concrete mixture, it is possible to create concrete that has self-healing capacities. This self-healing material contains granules of bacterial spores and calcium lactate- a component of milk, the nutrient the bacteria needs to survive. The spores lie dormant until they are activated by rainwater that has made its way through the cracks. Rainwater will set the mix in motion, the bacteria begins to feed on the nutrients to produce calcite. This is a primary component of limestone which starts filling in the concrete's gap.

The experiment in the lab has been successful to show healing of cracks with a width of 0.5 mm. Scientists soon will be testing this concrete in the outdoors and if all goes well, the regenerative concrete could be on the market within two to three years.

VRMCA Plans Legislative Visits

Please plan to join us to visit with your State Legislators at the Capitol in Richmond. We will gather together on the morning of Tuesday, January 15th at 8 a.m. at the Omni Richmond Hotel. We will enjoy a light breakfast and review talking points before proceeding to Capitol Hill at 9 a.m. to visit with the legislators.

If you need a room, a group rate is being offered at the Omni. To receive the $179 group rate, call 800-THE-OMNI or 800-843-6664 no later than January 4th *(members are responsible for making their own reservations)*.

Men should plan to dress in coat/tie and women in business attire.

If you have questions, contact Raphael Snably at 434/977-3716 or raphael.snably@easterassociates.com.

On the Horizon
Calendar of Upcoming Events

DECEMBER 12, 2012
HRCAC Annual Christmas Party
3:00 PM - 5:00 PM
Surf Rider Restaurant
Hampton, VA

DECEMBER 13, 2012
NVCAC Business Meeting
7:30 AM - 9:00 AM
Manassas, VA

DECEMBER 17, 2012
SWCAC SLR Subcommittee Meeting
12:00 PM - 1:00 PM
Roanoke, VA

DECEMBER 19, 2012
SWCAC Business Meeting
8:00 AM - 9:30 AM
Roanoker Restaurant
Roanoke, VA

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

PCA Cement Forecast Greatly Dependent on Congressional Fiscal Cliff Action

SKOKIE, Ill.— Although cement consumption and overall U.S. construction activity increased significantly more than expected in 2012, these gains would be immediately erased in 2013 if the fiscal cliff is not resolved in a timely manner.

A forecast from the Portland Cement Association (PCA) expects a 7.5 percent jump in cement consumption in 2012, up 50 basis points from its summer forecast. However, the instability of the political landscape makes projecting 2013 consumption more challenging.

The "fiscal cliff" came about from dual economic objectives reflecting the need to inject fiscal stimulus into an inert economy and the need to deal with burgeoning federal debt. Packaged together as the Budget Control Act of 2011, tax increases of $400 billion coupled with $200 billion in federal spending cuts are scheduled to go into effect January 1, 2013.

If Congress resolves the fiscal cliff during its lame duck session in 2012, PCA expects the economy to continue to grow and cement consumption in 2013 to increase 6 percent. Adversely, even if Congress addresses the policies by the first quarter of 2013, this delay will cause significant economic harm and cause a 2.7 drop in cement consumption.

"Because we believe the odds for either outcome are even, we have adopted a forecasting approach that minimizes up and downside risk," Ed Sullivan, PCA chief economist said. "Our baseline scenario blends the two possible outcomes and projects a 1.8 percent increase in cement consumption in 2013."

Sullivan also reported that the longer Congress delays in addressing the fiscal cliff, the greater the adverse affect on economic growth and construction activity in particular. "If no action is taken by mid-2013, the country could be headed into a severe recession."

According to the PCA report, cement consumption through September 2012 had increased 10 percent compared to last year, with 16 consecutive months of growth. Sullivan attributes this growth to the return of consumer confidence, a strong housing market, and most importantly, growth in employment.

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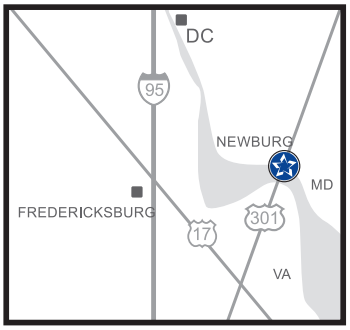

Allowing Off-the-Clock Work Can Result in Wage and Hour Violations

By John G. Kruchko and Paul M. Lusky, Esq.

The federal Fair Labor Standards Act ("FLSA") and similar state wage and hour laws require employers to compensate employees for all time worked, including time commonly known as "off-the-clock" work. An employer who knows or has reason to know that an employee is working off-the-clock and does not compensate the employee for such work is violating the law. An hourly employee who willingly puts in extra time before or after regular work hours without ever asking for compensation is still entitled to be paid for such work. Employees cannot legally waive their right to compensation. It is the employer's responsibility to put an end to off-the-clock work if it wants to avoid liability under wage and hour laws.

Some off-the-clock work is clearly compensable. For example, if an employer allows employees to finish assigned tasks, prepare reports, finish waiting on customers or treat patients after their regular shift has ended, employees performing such work must get paid. If the extra time results in an employee working more than 40 hours in a week, that employee is also entitled to overtime pay.

Similarly, if an employer knows that an employee is working at home in the evenings or on weekends in order to meet job requirements, the time worked at home must be compensated. An employer who expects an employee to review work-related emails or listen to work-related voicemail messages while away from the workplace may be incurring liability for unpaid wages. Obviously, an employee who is asked to run work-related errands (such as picking up supplies or equipment) before or after regular work hours must also be compensated for such time. It does not matter that the errand is convenient for the employee because it happens to be on the employee's usual route to or from work.

Not all off-the-clock work is as easily characterized as compensable time, however. For years, the Department of Labor and the courts have struggled with the issue of whether employees should be compensated for time spent putting on or taking off (i.e., donning and doffing) clothing, uniforms and protective gear before and after a regular work shift. The standard that is usually applied to such cases is whether the pre-shift and/or post-shift activity of donning and doffing clothing and/or equipment is an "integral and indispensable part of the principal activities" of the worker.

In November, 2005, the United States Supreme Court appeared to settle the issue in favor of compensability, at least with respect to "unique personal protective gear" being donned or doffed on the employer's premises. In *IBP v. Alvarez*, workers at a meat processing plant in Pasco, Washington sued for violations of the FLSA. Their employer required the workers to don protective garments prior to clocking in before each shift and expected them to clock out before removing the protective

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garments for breaks, lunches, and at the end of each shift. In a unanimous decision, the Supreme Court held that the donning and doffing of the personal protective gear was "integral and indispensable" to the employees' work, and, thus, the time spent donning and doffing was compensable time under the FLSA. Likewise, the Court held that the time spent walking to and from the production floor after donning and before doffing the equipment was also compensable.

Subsequent judicial decisions dealing with the "donning and doffing" issue have not always found such activity to be compensable, however. For example, in *Adams v. Alcoa, Inc.*, a federal district court in New York concluded that employees at an aluminum smelting facility operated by Alcoa were not entitled to compensation for time spent putting on and removing flame retardant shirts and pants, steel-toed boots, spats, hard hats and safety glasses. In ruling against compensability, the court relied in part on the fact that Alcoa permitted employees to don and doff the uniforms at home, citing a Department of Labor guidance advising that donning and doffing by necessity must occur on an employer's premises and not at home. See Wage and Hour Advisory Memorandum No. 2006-2 (May 31, 2006) ("It is our longstanding position that if employees have the option and the ability to change into the required gear at home, changing into that gear is not a principal activity, even when it takes place at the plant.")

Similarly, in *Baumonte v. City of Mesa*, a 2010 decision dealing with the donning and doffing of uniforms by police officers in Mesa, Arizona, the Ninth Circuit Court of Appeals held that the city did not violate the FLSA by refusing to compensate its police officers for the time spent donning and doffing uniforms and other equipment where the officers had the option of putting on their uniforms at their homes. The fact that an employee has the option of dressing at home is not always determinative, however. In *Rogers v. City and County of Denver*, a federal court in Colorado held that police officers who were permitted to don and doff their uniforms and equipment at home had to be compensated for such activity under the FLSA.

Wage claims for off-the-clock activities performed at home have also been brought for time spent doing uniform maintenance work, i.e., washing, drying and ironing uniforms in compliance with an employer's dress code provisions. In May, 2011, several current and former employees of the Washington Hospital Center ("WHC") in the District of Columbia filed a lawsuit against MedStar Health, Inc. and WHC claiming they should have received compensation for time spent cleaning their uniforms. Although no decision has been reached on the merits of the employees' claims, a federal court in the District of Columbia has conditionally approved the plaintiffs' "uniform maintenance" theory and allowed them to proceed on behalf of all hourly employees who worked at any MedStar Health hospital since May 26, 2008 and performed off-the-clock work cleaning their uniforms.

It should be noted that a similar theory was dismissed by a federal district court in Pennsylvania in 2011. In *Schwartz v. Victory Security Agency, LP*, guards working for a security firm in Pennsylvania claimed their employer failed to pay them for the time they had to spend cleaning their uniforms and thus violated the FLSA. The court rejected the claim stating, "while Plaintiffs may have been required to wear and therefore maintain their uniforms, such actions were not integral and indispensable to Plaintiffs' principal activity, providing security."

It should be obvious that wage claim theories dealing with off-the-clock work have reached imaginative and creative levels. Consequently, it is imperative that management exercise control over employees and ensure that compensable work is not performed off-the- clock. To avoid costly wage and hour litigation and the negative publicity that these off-the clock cases bring, organizations should implement a well-publicized policy that advises employees that off-the-clock work is prohibited and that violations can result in discipline.

Merely making a rule against off-the-clock work is not enough, however. Employees should receive regular training in the importance of proper timekeeping practices and be frequently reminded that off-the-clock work is not permitted. Finally, if the employer requires uniforms to be worn at work, it should, if possible, give its employees the option of dressing at home rather than at work.

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.

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