

Virginia Ready-Mixed Concrete Association Newsletter

September 2009

VRMCA Fall Convention a "Successful Beach Trip"

by Bob Nablo Director Of Industry Services

The 2009 VRMCAFall Convention at the Virginia Beach Hilton began with an unusual-and very enjoyable-reception, and continued to educate and entertain members and guests throughout the event. Virginia Beach is an excellent locale for meetings and the VRMCA staff, headed by Event Coordinator Amy Shaw, always arranges a program of interesting presentations wrapped around pleasant receptions and recreational events.

This year the welcoming reception was called "An Evening of International Flavors", and arriving members and spouses were invited to sample various tastes from around the world. On Monday morning VRMCAPresident Morgan Nelson welcomed everyone and turned over the hosting duties to Program Chair Sarah Michaels. Michaels turned to Peter Easter, VRMCA "Director Emeritus", to kick things off with a review of the legislative issues facing the industry.

Dave Zwicke, Senior Regional Economist for PCA, followed Mr. Easter with a lengthy and detailed discussion of the state of the economy and the construction market, specifically concentrating on the economic outlook for the Commonwealth. Members understood that conditions are slowly improving, but that difficult times will continue through 2009-2010. Zwicke commented that Virginia has been slow to release Federal stimulus funds, and that construction work should increase as those funds are committed. Next up was John Kruchko of Kruchko and Fries, who always gives an entertaining, hard-hitting assessment of the Employee Free Choice Act and its effects on member companies. Kruchko urged employers to talk with their em-



ployees now, and not wait until a final bill is signed by the White House.

One of the more informative sessions was a panel presentation on the ways member companies motivate and educate their employees about labor relations. Diggs Bishop, Scot Naparstek and Steve Jones described each of their companies efforts to keep employees informed and educated about company labor policies. Each speaker emphasized the need to be proactive in answering questions and addressing problems – and not waiting until a situation was out of hand to react.

During afternoon free time, members were afforded a very pleasant opportunity to play golf at the Princess Anne Country Club, courtesy of Boo Twohy and her husband Kevin Michaels. The course was in excellent shape and the Country Club staff was very hospitable. Quite a few low scores were recorded, with the team of Jack Drumheller, Charlie Windle, Paul Brooks and Bob Sells taking home the first place prize with a score of 56. It sounded as if Golf Chairman Tyler Johnson may be "asked" to handle this job for the foreseeable future!

Morgan Nelson hosted the President's Reception in the evening. This is always a very nice poolside event, and the view from the Hilton's top floor can be spectacular.

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Chesapeake Bay Commission Reviews Pervious Concrete in Williamsburg Fall Board Meeting

by J. Keith Beazley Director Of Industry Services

During the Chesapeake Bay Commission's Fall Board meeting Chesapeake Bay Director Suzan Bulbulkaya provided time on the agenda for the introduction of Pervious Concrete as a solution to storm water runoff in the Bay. The Commission, under the Chairmanship of Delegate John Cosgrove, Chesapeake, is focusing on reducing nutrients in the Bay's rivers as well as the Bay itself and establishing tributary strategies and management plans to reduce storm water runoff in the watershed. Chemicals, oils, and sediments from storm water runoff of parking lots and streets are a great concern.

The Chesapeake Bay Commission is a legislative commission created in 1980 to advise, regulate, manage, and establish regulations for the Chesapeake Bay. The Commission represents Virginia, Maryland, and Pennsylvania with elected Senators and Delegates serving on the Commission. They assist the legislatures in evaluating Bay Concerns, resource planning, the promotion of legislation, enhancing functions and powers of existing agencies, and recommend improvements in the management of Bay resources. Members and staff have been instrumental in supporting federal environmental initiatives such as the Chesapeake Bay Restoration Act, the Clean Water Act, the Revised Farm Bill. and the Federal Clean Water Act.

Joe Bartley, Lehigh Cement, arranged for the Virginia Director to meet with Keith Beazley, VRMCA Director of Industry Services, to develop a program for the Williamsburg meeting. Information was presented for review at the agenda planning sessions and the proposal was made for a tour and practical demonstration at Prime Retail, the largest pervious parking lot in the United States. This project is a model for storm water management and innovative methods of controls using a system of Pervious and Conventional concrete. Delegate John Cosgrove (VA), Chairman, was very proud to be able to showcase a project in his state with the James River



Chesapeake Bay Commission attends concrete demonstration at Prime Retail, the largest pervious parking lot in the U.S.

and Bay protected in this manner.

The Prime Retail project had been developed with the efforts of Beazley and Phil Kresge, NRMCA National Resource Director. A team was formed for this special occasion and to develop a Plan of Action for the Board Meeting. Suzan Bulbulkaya, Kresge, and Beazley developed a series of events and informational presentations for the afternoon sessions. Each member received a information packet with materials on sustainability, pervious concrete, pervious maintenance, and storm water management systems. Each attendee was also given a special box labeled, "The Solution to Storm Water Runoff Is In This Box," which contained a sample of Pervious Concrete and a bottle of water, along with a card labeled, "Finally! Storm Water Runoff Control Is In Your Hands!" Instructions to conduct a practical demonstration with the Pervious Concrete were enclosed.

The highlight of the session for the *(continued on page 9)*

SPECIAL ANNOUNCEMENT

On Tuesday, September 22, 2009, during our VRMCA Convention, Virginia Delegate John Cosgrove and Pennsylvania Representative Michael Sturfa both testified on the Chesapeake Bay Panel in a House Hearing in Washington, D.C. Virginia 11th District Congressman Gerry Connelly actually brought a brick of pervious paving to illustrate its importance.

If you want to watch his testimony go to http://transportation. house.gov/hearings/hearingDeatail.aspx?NewsID=990 and scroll forward to about minute 50.

Congressman Gerry Connelly has introduced a storm water bill for the Chesapeake Bay watershed that may be of interest. HR 34265. http://www.govtrack.us/congress/bill.xpd?bill=h111-3265. ❖

Concrete's Role

in Sustainability

Focusing on concrete as a building material and will include a broad based discussion of sustainability, particularly as it compares concrete to other building materials used in both new construction and changes to existing structures.

Architectual CEU Credits and PE Learning Credits will be provided.

October 27, 2009 at Hotel Roanoke

\$40 per person Social Hour begins at 5:30 p.m. Dinner begins at 6:30 p.m.

Guest Speaker begins at 7:00 p.m.

Phil Kresge, National Resource Director, NRMCA

To register, complete and return to

VRMCA, c/o George Kuhn, 700 Block Lane, Christiansburg, VA 24073, or email george.kuhn@chandlerconcrete.com

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Where Safety Comes First

Fairfax County Public Schools Choose "CHPS" Standards

by Hessam Nabavi Director Of Industry Services

Fairfax County Public Schools (FCPS), the 12th largest school district in the United States, will not be using US Green Building LEED Certification Process to achieve sustainable school design in their new schools. Instead, all new construction is being designed with "Collaborative for High Performance Schools Standards (CHPS)."

CHPS is leading a national movement to improve student performance and the entire educational experience by building the best possible schools. More and more states and school districts are recognizing CHPS standards.

CHPS was created as the result of a meeting in November 1999, when the California Energy Commission called together Pacific Gas and Electric Company, Sempra Energy, and Southern California Edison to discuss how to improve the energy performance of California's schools. CHPS addresses not only energy efficiency, but additional considerations that foster healthy and environmentally responsible school buildings. The CHPS criteria, published in 2002, established the nation's first building rating program specifically intended to assist schools in designing sound, environmentally responsible learning spaces. CHPS is a national, non-profit organization with two high performance building rating and recognition programs: CHPS Designed and CHPS Verified. Schools can self-certify their building through the free CHPS Designed program, or seek third-party verification of their high performance school through the CHPS Verified program.

The mission of CHPS is to facilitate and inspire change in the design, construction and operation of high performance schools: Environments that are not only Energy and Resource Efficient, but are also Healthy, Comfortable, Well Lit, Easy to Maintain and Operate, Offer Environmentally Responsive Sites, Safe and Secure, Community Resources, Stimulating Architecture, Adaptable to Changing Needs and Containing the Amenities for a Quality Education. The result will be a finished school that is



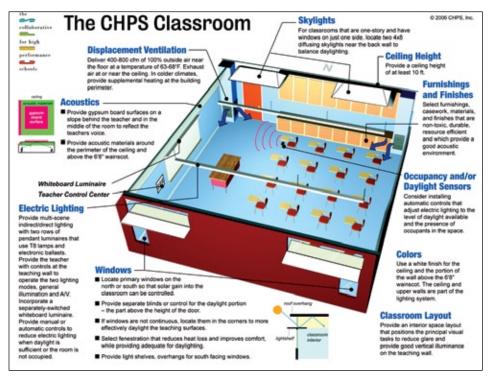
an enduring asset to its community, one that enhances teaching and learning, reduces operating costs, and protects the environment.

- There are 46 completed CHPS schools across America.
- There are approximately 300 schools underway in the U.S. seeking CHPS recognition.
- 35 school districts, with over 1.5 million total students enrolled, have committed to building new schools or modernizing to the CHPS high performance building standard, or using CHPS resources.
 - · Eleven states have state or re-

gion-specific high performance school building criteria, including California, Colorado, New York, the New England States, Texas and Washington.

• Over 225 organizations such as utility companies, professional design and construction firms, product manufacturers, non-profit organizations, schools and school districts, and professional societies are members of CHPS.

As FCPS has chosen to participate with CHPS like other school districts, a strong possibility exists that many school districts in Virginia to follow FCPS and adopt CHPS Standards to reach their sustainable goals. •



CONVENTIC



I really appreciate the recognition and honoring of Tim Wells by Morgan Nelson and the VRMCA. I know it meant a lot to Tim's family and those of us at Crider and Shockey as well. The VRMCA conference is one of very few opportunities we get to cordially mingle with other Ready Mix producers, suppliers, and friends of the industry on neutral ground as friends who are experiencing similar challenges, and opportunities. I also appreciate the hard work that was evidenced by all of the working committees in every region of VA to promote concrete as a sustainable building material.

-Todd Shenk, Crider and Shockey











I was pleased by the attendance not only in terms of numbers but also by the spectrum. It seems we had more aggregate producers at this meeting than in the past, and that is a group that we would like to see become more involved. I thought the program was meaningful and put together very well.

-Diggs Bishop, Vulcan Materials Company

VRMCA Fall Convention

(continued from page 1)

The following morning Bob Garbini of NRMCA got things started with an overview of the national ready-mix situation and an update on Congressional activities that concern our industry. Phil Shucet and Wade Watson continued the theme with two presentations centering on the future of road construction in Virginia. These presentations also noted the potential effects that stimulus funding could have on road and bridge construction in Virginia. Hank Keiper followed with remarks about Virginia ACI and its activities.

The VRMCA Regional Council presentations concluded the Convention, with Kevin Terry, Frank Caldwell, Bill Denison and Wayne Bracey giving Council updates, and the VRMCA regional directors commenting on activities and future plans. NECSA Executive Director Pat Reardon presented a check to builder John Reddecliff, owner of Definitive Homes, in recognition of being the first homebuilder in the country to receive funds under the PCA Builder Incentive Program.

Thanks to all members for making this another memorable Fall Convention! Try to be with us again May 16-18, 2010 at The Homestead Resort in Hot Springs! ❖





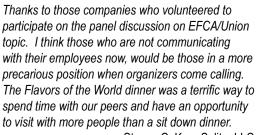






I had a great time at the convention this past weekend. Virginia Beach is such a great venue for this event and the Hilton hospitality is second to none. I think we had a good group of speakers; I found their talks very interesting and informative. The highlight for me however, was having the opportunity to hear about all the exciting things going on with the other councils throughout the state.

-Kevin Terry, Virginia Concrete Co.



-Steven C. Kerr, Solite, LLC















I enjoy being in the crowd, catching up with folks I haven't seen for a little while. Some of them are my competitors but at the dinner table or in the golf cart, we can always talk about life away from business. The programs at the Convention are always educational. . . . I left the Convention feeling good about having learnt something new and also had some fun.

-Teck L. Chua, Concrete Engineering/Vulcan





Central Virginia Concrete Advisory Council & Virginia ACI Chapter

present

THE FALL 2009 EDUCATIONAL SERIES PROGRAM "Green Building and Concrete's Role in Sustainability"

This special presentation for the Fall 2009 Educational Series will include Concrete's Role in Sustainability, The Environmental Benefits of Concrete, Building Green with Concrete. Special Green Building Applications will be discussed: Parking Lots, Wall Systems, Green Roofs, Architectural Concrete, and Pervious Concrete.

(Please Note: Architectural CEU and PE Learning Credits will be provided.)

Date: Wednesday, October 28, 2009

Place: Meadowbrook Country Club, 3700 Cogbill Road,

Richmond, VA 23234

Time: 11:00 a.m. - 1:00 p.m. Cost: \$35.00 per Person Guest Speaker: Phil Kresge,

National Resource Director,

National Ready Mixed Concrete Association

A Special Luncheon will be provided.

To register complete and send to: ALLISON CARRIGAN, VRMCA, P. O. BOX 6502, RICHMOND, VA 23230 or FAX 434-295-0417, or email allison.carrigan@lafarge-na.com.		
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NRMCA Announces Offers Concrete Technology Webinars

The National Ready Mixed Concrete Association has introduced an extensive series of concrete technology Webinars that will be offered in a 6-month period beginning October 1.

Taught by subject matter experts, Webinar topics include concrete durability, sustainability, cracking, troubleshooting, quality control/assurance, concrete codes and specifications, pervious concrete and non-destructive testing. Each Webinar is offered twice through March 31, 2010. The Webinars are oriented toward concrete producers, specifying architects/engineers, contractors and testing lab professionals.

More information on each Webinar, including dates, times, fees, topic descriptions, author biographies and registration information, can be found on NRMCA's Web site or by contacting NRMCA's Jessica Moore at jmoore@nrmca.org. •

WEBINAR TITLE

Steps to Reduce Unwanted Cracking in Concrete

Making Durable Concrete

Sulfate Resistant Concrete

Quality Control of Concrete

Thermal Measurements of Hydrating Mixtures for Concrete Producer QC

The Maturity Method: Estimate In-Place Strength at Early Ages

How to Measure In-Place Strength of Concrete (Non Destructive Testing)

Using ConcreteWorks to Improve Concrete Performance and Durability

Understanding Air Entrained Concrete

Challenges and Opportunities with Cold Weather Concreting

Concrete Producer Responsibilities in Industry Codes and Standards

Requirements and Standards for Concrete Strength

Using Petrography to Troubleshoot Concrete Construction

Preventing Damage Due to Alkali-Silica Reaction in Concrete

Producing Durable Concrete Structures for Chloride Environments

Troubleshooting Concrete Construction

Specification Revisions for All Around Benefits

Optimizing Fly Ash Concrete

SPEAKER

Jason Weiss, Purdue

Doug Hooton, U. Toronto

Doug Hooton, U. Toronto

Ken Day, Australia

Tim Cost, Holcim

Nick Carino, formerly NIST

Nick Carino, formerly NIST

Kevin Folliard, UT, Austin

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Dave Rothstein, DRP Consulting

Mike Thomas, U. New Brunswick

Mike Thomas, U. New Brunswick

Peter Taylor, Ntl. Concrete Tech.

Karthik Obla, NRMCA

Karthik Obla, NRMCA

Chesapeake Commission

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Chesapeake Commission was the demonstration and tour at Prime Outlets. This tour was arranged by Beazley with the Prime Retail Management and the practical demonstration proved the theories that had been discussed. A bus transported the members to the Retention Basin area at the Prime Outlets. Kresge conducted a session on the benefits of Pervious Concrete as it applies to storm water runoff. Steve Romeo, Landmark Design Group, discussed his engineering and design plan for Prime Outlets. A simulation of a major storm was conducted. Titan America had a mixer truck with 500 gallons of water which was discharged on the Pervious Concrete in less than four minutes in a five foot radius. This discharge of water was the real eye-opener for the Commission and the realization of the great benefit of Pervious Concrete to the Chesapeake Bay watershed.

This opportunity for the presentation to the Chesapeake Bay Commission and to explain the role of Pervious Concrete in the protection of the watershed will have great benefit to the Commonwealth and the Bay. Pervious Concrete is being recognized as a very valuable tool for Storm Water Runoff.

Twenty-one members from the three states define the Chesapeake Bay Commission's identity and its work. Fifteen members are legislators, five each from Virginia, Maryland, and Pennsylvania. Completing the ranks are cabinet secretaries for each state who are directly



responsible for managing their states natural resources, as well as three citizen representatives who bring with them a unique perspective and expertise. ��



LABOR AND EMPLOYMENT LAW UPDATE: A Mixed Bag for Employers

By John G. Kruchko and Kevin B. McCoy*

With the economy still in the doldrums and Congress and the Obama Administration locked in a high-stakes battle to overhaul the healthcare system, several important but overshadowed changes in the Labor and Employment world have happened, are about to happen, or may happen in the near future. That is both good and bad news for employers. Most of the changes that are afoot are likely little more than warning shots from Congress and the Administration over the bow of America's employers - "become more employee oriented, or else." However, at least one change presents some (albeit, rare) good news for employers.

A. The DHS No-Match Rule Goes by the Wayside...for Now

In August 2007, the Department of Homeland Security ("DHS") proposed a rule that revised the definition of an employer's "constructive knowledge" of an employee's illegal immigration status. The proposed rule eliminated the circum-

stance in which an employer would receive a "no match" letter from the Social Security Administration and, instead, substituted circumstances in which an employer's "constructive knowledge" of a violation would be presumed. Those circumstances included, among other things, the employer's failure to ensure that applicants properly complete an I-9 form. (But note, it is still ultimately the employer's responsibility to ensure they do not employ undocumented aliens.) Not surprisingly, employers everywhere "cried foul," and a U.S. District Court in California entered a preliminary injunction staying the effective date of the proposed rule.

Now, although DHS attempted to revise the proposed "no match" rule, the Obama Administration has decided to pull the plug on the proposal and focus on other immigration-related issues, such as the new E-Verify program and increased worksite enforcement. While the decision to abandon the proposed "no-match" rule is good news for employers, the battle over illegal workers is far from over.

The Obama administration and DHS have made it abundantly clear that they

intend to strengthen enforcement efforts against employers who are employing unauthorized workers. Any such enforcement effort inevitably begins with a review of the employers' I-9 forms. Accordingly, employers are strongly advised to evaluate your completed I-9 forms to ensure proper compliance – preferably before the DHS comes knocking at your office door.

B. Personal, Individual Liability of Managers Rears its Head

One "safe harbor" (so to speak) in Labor and Employment law for individual managers and corporate decision makers has been the comforting realization that employment-related decisions at work may expose the company to liability, but generally cannot expose the individual to liability. Managers, supervisors, corporate executives, etc. are all agents of the company acting in their capacity as such and are, as the theory goes, not personally liable for the decisions they make at work. In other words, a manager's discriminatory decision

(continued on next page)

* John G. Kruchko is a Partner with the Management Labor & Employment Law Firm of Kruchko & Fries in McLean, Virginia; Kevin McCoy is a Senior Associate with the Firm. For more information, please contact Mr. Kruchko at (703) 734-0554 or jkruchko@kruchkoandfries.com, or Ms. Talty at (410) 321-7310 or ktalty@kruchkoandfries.com. This article is published for general information purposes, and does not constitute legal advice.

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to fire an employee may implicate the company's savings account, but it does not implicate his personal account..... that is, until recently.

In late July 2009, the U.S. Court of Appeals for the Ninth Circuit (Boucher v. Shaw) held that the CEO, CFO, and a manager responsible for labor and employment matters could be held personally responsible under the Fair Labor Standards Act ("FLSA") for unpaid wages to several former employees. At issue was the definition and meaning of the term "employer" within the text of the FLSA. "Employer" is defined to include "any person acting directly or indirectly in the interest of an employer in relation to an employee." 29 U.S.C. § 203(d). In evaluating whether the company officials met this definition, the court explored the "economic reality" of the officials' relationship to the employees and cautioned that when an individual or a group of individuals exerts "economic control" over the relationship or exercises control with regards to the "structure of the employment relationship," that individual or group is an employer for purposes of the FLSA.

This decision is particularly worrisome for employers because the company was in Chapter 7 (dissolution) bankruptcy proceedings at the time. The individual managers argued their potential liability ended when the company was dissolved. The court did not agree, finding that the bankruptcy proceedings had, essentially, no effect on the individuals' potential liability for unpaid wages.

This case should serve as a warning to all employers and their managers and officers regarding pay practices. Courts are becoming more willing to look beyond the traditional employeemployer boundaries and find ways to compensate employees who have credible claims...even if it means holding the individual managers personally responsible.

Plus, the DOL released a report on September 1st stating its view that FLSA violations are commonplace, and that it was hiring 250 new investigators to try and crack down on corporate violators. In light of these developments, employers should, in conjunction with their

employment counsel, conduct a wage and hour audit of their pay policies and practices to ensure compliance with all applicable wage and hour laws.

C. "Direct Observation Requirement" for DOT Drug Tests Becomes Effective

On August 31, 2009, the U.S. Department of Transportation ("DOT") reinstated a rule requiring direct observation of employees providing urine specimens for certain drug tests. Specifically, return-to-duty and follow-up drug tests of employees that fall under the DOT's guidelines will now have to be conducted by "direct observation." Direct observation includes requiring the employee to raise his shirt above the waist and lower his pants (including underwear) to demonstrate to the test collector that the employee is not wearing a device designed to "cheat the system" or employing any other means designed to skew the results of the urine sample. These requirements apply equally to both men and women.

DOT's testing regulations apply to vehicle drivers in certain transportation-related industries. Commercial drivers regulated by the Federal Motor Carrier Safety Administration, transit employees that fall under the auspices of the Federal Transit Administration, pipeline employees, and airline employees are all examples of some of the employees covered by the DOT's new "direct observation" testing rule.

Companies that follow the DOT testing program should make note of the new rule changes and implement them accordingly.

D. Proposed FMLA Changes: Here We Go Again

For those of you who are keeping score at home, Congress is again threatening (for about the third or fourth time this year) to revise the Family and Medical Leave Act ("FMLA"). If the current proposal passes, it will be the second time this year that substantive changes to the FMLA have come to fruition (you may recall the earlier FMLA amendments expanded the FMLA to include "exigency leave" related to a family member's active duty military status and up to 26 weeks of leave to care for

an injured service member).

On July 25th, Representative Woolsey (D. Cal.) introduced The Balancing Act of 2009 – a Bill that incorporates several ideas for expanding the law and, in the process, causing countless headaches for employers. Among the proposed items is a provision converting now unpaid FMLA leave to paid leave. That's right, under this plan employees would get upwards of twelve (12) weeks of paid leave for qualifying circumstances. To help pay for this feature, the Bill establishes a "Family and Medical Leave Insurance Fund" that would be subsidized by small contributions from both the employer and the employee totaling 0.2 percent of an employee's earnings. This amounts to a contribution of about \$100 per year, based on the average household income of just under \$50k per year.

In addition, the Bill seeks to expand the number of employers covered by the FMLA. At present, only those employers who have fifty (50) or more employees are subject to the FMLA's requirements. Under the new Bill, employers with fifteen (15) employees would be covered. Likewise, the Bill seeks to gain coverage for some part-time employees by lowering the eligibility threshold from 1,250 hours worked per year to 1,050 hours per year.

The proposed legislation also seeks to require covered employers to (a) provide at least seven (7) days of paid sick leave per year; and (b) cover leave for a broader category of family members, including same-sex spouses and domestic partners. And the proposal creates new categories of leave for "parental involvement" and "family wellness."

Whether The Balancing Act of 2009 gets enacted into law is still up in the air. With the healthcare debate consuming Congress' attention, this Bill may get put on the back burner. However, employers should take note of where Congress and the Administration are headed, because once the healthcare debate subsides and the economy begins to recover in earnest, they will refocus their legislative attention on this and other matters that are likely to make most employers very nervous. •

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