THE READY-MIXER

NRMCA VISION think harder. concrete.

Virginia Ready-Mixed Concrete Association Newsletter July 2015

VMI Facilities Improvements Nearing Completion

After two years of demolition, site work and new construction, the several projects included in the $122 million facilities upgrades at VMI are now past the halfway point. The complete reconstruction of Cormack Field House (the former home of VMI cavalry horses in the 1940s and 1950s, the 1960s and 1970s-era basketball building, and more recently the indoor track facility) is complete except for some decorative features. What will be re-named Cormack Hall is the new home of a state-of-the-art NCAA wrestling facility, some athletic offices and a new, much larger, weight and exercise room to be primarily used by cadets in Physical Education classes and for the physical training that accompanies academic instruction for every VMI student. The renovation of the old gymnasium, Cocke Hall, is underway. Changes are limited to cosmetic and modernization upgrades because the building is a historic landmark and changes to the exterior appearance and structure are not permitted. Nonetheless, worn and outdated interior portions will be revitalized and newer, more modern restroom facilities will be added.

The largest and most obvious change to the college's footprint, the Cadet Training Facility, is coming out of the ground and about to begin above-grade construction. This more-than- 200,000 square foot building adjoining VMI's basketball building (which was at one point the tallest tilt-up structure in the mid-Atlantic) is seeing the 272 space underground parking facility near completion, and work has begun on the 4 foot high mechanical chase that will be under the main floor. Even before the underground work could be started accommodations had to be made for a two-story high embankment behind the new building and a small stream – "Town Branch" – that runs almost half the length of Lexington and exits into the Maury

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in the mix ...

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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
easter@easterassociates.com • www.vrmca.com

2015 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 Boshart
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

Marc Granahan
Secretary/Treasurer
Lehigh Cement
Stone Ridge, VA
Phone: (703) 618-0735
mgranahan@lehighcement.com

RICHMOND/CENTRAL VIRGINIA
Todd Miller
Chairman
Vulcan Materials
Chester, VA
Phone: (804) 751-2666
millerto@vmcmail.com

Brad Meyers
Secretary/Treasurer
Swope and Associates
Richmond, VA
Phone: (804) 4690-5016
bradmeyers55@gmail.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

VMI Facilities Improvements Nearing Completion Continued

River north of the city. The parking garage bridges the stream and will be unseen by most visitors. The embankment is contained by a more-than-20-feet-high concrete retaining wall. Two bridges – one for maintenance vehicles and one pedestrian walkway – will cross over US Route 11 and connect this building with VMI's main campus. More than 100,000 sq. ft. of concrete pavement has already been placed, with more to come. In addition to offices and spectator seating, the building will feature an NCAA-regulation size indoor track with banking adjustable through hydraulic jacks, a small diving pool, and a 34-foot tall climbing wall. Most of the building will be open to the general public. This building is expected to be completed in the summer or fall of 2016.

Bob Nablo, Director of Industry Services

3D Printer Using Concrete, Prints Large-Scale Structures Directly from Architectural CAD Drawings

You've probably heard about 3D printing's amazing potential to overhaul manufacturing. 3D printing, or additive manufacturing, is a process of making three dimensional solid objects from a digital file. The creation of a 3D printed object is achieved using additive processes. In an additive process an object is created by laying down successive layers of material until the entire object is created. Each of these layers can be seen as a thinly sliced horizontal cross-section of the eventual object. It all starts with making a virtual design of the object you want to create. This virtual design is made in a CAD (Computer Aided Design) file using a 3D modeling program (for the creation of a totally new object) or with the use of a 3D scanner (to copy an existing object). A 3D scanner makes a 3D digital copy of an object.

The same principles could upend building construction as well.

Since the early 20th century, automation has grown in almost all production domains except building construction. Automation in building construction has been slow due to: available automated fabrication technologies for large scale objects; conventional design approach that does not lent itself for automation; much smaller ratio of production quantity; limitation in the materials that could be used by an automated system; rather expensive cost of automated equipment and logistic issues. On the other hand, the major problems that the construction industry is facing today are only becoming greater. These problems are as follows: labor efficiency is alarmingly low, accident rate at construction site is high, work quality is low, control of the construction site is insufficient and rather difficult and quality skilled workforce is vanishing.

Various attempts have been made to construct the whole structures, but these methods of manufacturing automation have not lent themselves to construction of large structures. A promising new automation approach has been introduced and used in the past 2 decades that is called "Layered Fabrication Technology", also known as Rapid Prototyping (RP) or Solid Free Form Fabrication (SFF). One of these layered fabrication technology methods is called

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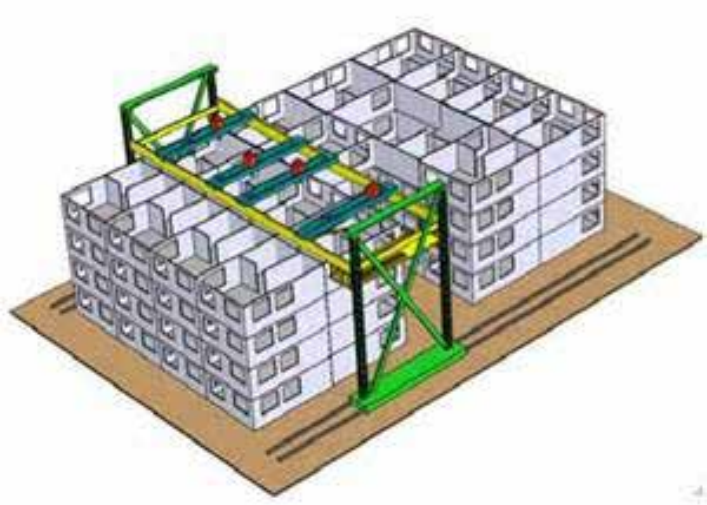
3D Printer Using Concrete Continued

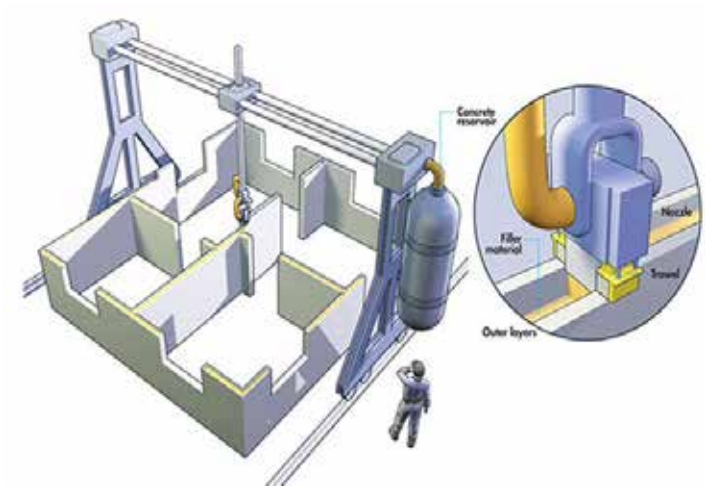
Contour Crafting (CC). This method appears to be very promising for constructing a large structure.

Contour Crafting, similar to 3D printing, is an additive fabrication technology which makes 3D objects and in this case a building structure. Contour Crafting is a computerized construction method that 3D Prints large-scale structures directly from architectural CAD drawings. Walls are built up by forming their outer surfaces via extrusion of a paste-like material, such as concrete, and the use of a robotic trowel to provide a smooth contoured surface. This is a very flexible technique, capable of constructing aesthetically pleasing shapes such as curvilinear and rectilinear shapes. The process involves feeding data to a machine that sprays and smooths out walls and structural components using nozzles, arms and other tools. The arms and nozzles are making multiple passes to reinforce the materials. Buildings are essentially assembled in layers automatically along a grid. One section of the machine moves vertically, while



another section moves horizontally. It is a gantry system carrying the nozzle that moves on 2 parallel lanes installed at the construction site. A single hose or a group of hoses can be constructed to run for implementing various sections of the building. Some of the interesting aspects of this system are as follows: Design flexibility which allows designing shape features such as domes, vaults or exotic architectural geometries that are difficult to realize using the traditional manual construction practices; various materials for outside surfaces and between surfaces may be used; utility conduits may be built into the walls of a building structure exactly as dictated by the cad data. The system also allows for paint- ready surfaces, automated painting, automated reinforcement, automated tiling of floors and walls, automated plumbing and automated electrical and communication line wiring. In conclusion, here are some of the benefits of this system: reduction in construction costs, speedy construction process, consistent quality, eliminating construction waste as the computer precisely adds materials where it is needed, reducing construction energy usage and CO2 emission, offering unlimited architectural possibilities, safer work zone by reducing construction injuries and fatalities, providing emergency shelters during wars and natural disasters, providing housing to low income population of the world and possibly space colony construction.

Hessam Nabavi, Director of Industry Services



Important Announcement
Mark Your Calendar

Northern Virginia Concrete Advisory Council

Presents

The 2015 NVCAC Retreat, Seminar & Golf

Wednesday, September 23, 2015

Bull Run Country Club
Haymarket, VA

Stay tuned for additional details and invitation in the upcoming months

Golf Outing

SOUTHWEST VIRGINIA ADVISORY COUNCIL

www.vrmca.com

Thursday, September 17th

Ashley Plantation Golf Course
-- Daleville, VA --

Foursome $350 • Individual $90
- Captain's Choice Format -

Cost includes golf, cart, refreshments, mulligans, red tees, practice balls and pre-golf luncheon.
Raffle tickets will be available for an additional cost.

- **Golf Hole Sponsorships** are available for $75.
- **Deluxe Sponsorship** is $400 and includes one foursome and one hole sponsorship.

Registration will begin at 11:00 a.m. and lunch will be served at 12:00 p.m. Golf will follow at 1:00 p.m. with a brief awards program ending the outing.

Checks may be sent to SW VA Concrete Council, c/o Paul Bryan, Froehling & Robertson, 1734 Seibel Drive, Roanoke, VA 24012 or you may register and pay online at http://vrmca.com/store/products.asp?cat=22.

For more information, contact Paul Bryan (540) 537-8055 or pbryan@fandr.com

SOUTHWEST VIRGINIA ADVISORY COUNCIL

SAVE THE DATE

VRMCA Fall Convention

October 4-6, 2015

Hilton Virginia Beach Oceanfront

Thank You

VRMCA gratefully acknowledges the support of our Fall 2015 Meeting and Convention Sponsors

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DOL Interpretation Says "Most Workers are Employees" Under the FLSA's Broad Definitions

By John G. Kruchko and Jacquelyn L. Thompson*

On July 15, 2015, the Wage and Hour Division of the U.S. Department of Labor ("DOL") issued an interpretation in furtherance of its Misclassification Initiative, which concludes that "most workers are employees under the FLSA's broad definitions." See Administrator's Interpretation 2015-1: The Application of the Fair Labor Standards Act's "Suffer or Permit" Standard in the Identification of Employees Who Are Misclassified as Independent Contractors.

A. The Economic Realities Test

Courts have held that determination of the employment relation cannot be based on isolated factors or upon a single characteristic but instead depends upon the circumstances of the whole activity. The goal of the analysis is to determine the underlying economic reality of the situation and whether the individual is economically dependent on the supposed employer. In general, an employee, as distinguished from an independent contractor who is engaged in a business of his own, is one who "follows the usual path of an employee" and is dependent on the business that he serves.

The DOL's Interpretation does not change the "economic realities" test courts currently apply in determining whether a worker is an independent contractor. It does, however, emphasize that each factor of the economic realities test must be applied consistently with the broad definition of "employ" found in the Fair Labor Standards Act ("FLSA"); that is, whether the worker is economically dependent on the employer and is, therefore, "suffered or permitted to work" by the employer.

Depending on the court, the economic realities test generally includes the following factors:

1. the extent to which the work performed is an integral part of the employer's business;

2. the worker's opportunity for profit or loss depending on his or her managerial skill;

3. the extent of the relative investments of the employer and the worker;

4. whether the work performed requires special skills and initiative;

5. the permanency of the relationship

6. the degree of control exercised or retained by the employer.

B. DOL's Interpretation

While the Interpretation did not change the factors most courts consider in determining the economic realities of a work relationship, the Interpretation did provide some important takeaways regarding each factor:

- The DOL specifically noted that work performed away from the employer's premises, whether in the worker's home or at the employer's customer, can still be integral to the employer's business.

- If a worker is truly in business for him or herself, and, therefore, an independent contractor, the worker should be at some risk of loss due to the managerial decisions he or she makes. Merely being able to work more hours is not a managerial skill that affects the worker's opportunity for profit or loss.

- In evaluating the relative investments of the employer and worker, courts should consider whether the worker has made investments in his or her business to further its ability to expand, reduce its cost structure, or extend its business plan. Courts should also consider how that investment compares to the employer's investment, not just to the work performed by the worker but to the employer's overall investment in the project.

- Merely having specialized skills does not mean that the worker is an independent contractor. There is a difference between providing skilled labor and demonstrating the skill and initiative of an independent contractor. The Interpretation states, in probably its most telling sentence: "Only carpenters, construction workers, electricians, and other workers who operate as independent businesses, as opposed to being economically dependent on their employer, are independent contractors."

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DOL Interpretation Says "Most Workers are Employees" Under the FLSA's Broad Definitions Continued

- Courts should also consider whether the lack of permanence or indefiniteness in the worker's relationship with the employer is the result of operational characteristics of the business (i.e., whether the work is typically transient or seasonal) or the result of the worker's own independent business initiative.

- Control exerted due to the nature of the business, regulatory requirements, and/or customer satisfaction are indicative of an employee/employer relationship. The issue is how much control the employer exercises, not why the employer is exerting it.

While no single factor is determinative, the DOL emphasized that the "control factor" should not be given undue weight. Ultimately, according to the DOL, the "factors should be considered in totality to determine whether a worker is economically dependent on the employer, and thus an employee." If the worker is in business for him or herself, and not economically dependent on the employer, then he or she is an independent contractor.

C. Takeaway for Employers

Employers, particularly those who regularly use independent contractors, should re-evaluate the status of their workers in light of this Interpretation. Employers must look at their independent contractors and ask whether, considering the economic realities test, these workers are truly in business for themselves or are they economically dependent on the employer's business? Given the DOL's sweeping statement that "most workers are employees under the FLSA's broad definition," the economic reality for many employers may be that their independent contractors will now be considered their employees.

John G. Kruchko is a partner with the Labor & Employment Law Firm of FordHarrison, LLP in Tysons Corner, Virginia; Jacquelyn L. Thompson is an associate in the firm's Washington, D.C. office. Rachel Ziolkowski Ullrich, a counsel in the firm's Dallas office, prepared an original version of this article. For more information, please contact Mr. Kruchko or Ms. Thompson at (703) 734-0554 or by e-mail at jkruchko@fordharrison.com or jthompson@fordharrison.com. This article is published for general information purposes, and does not constitute legal advice.

On the Horizon

Calendar of Upcoming Events

August 11, 2015
Hampton Roads Council Meeting
11:30 AM – 1:00 PM
Cray Buffet and Grill
Chesapeake, VA

August 12, 2015
Blue Ridge Council Meeting
12:00 PM – 1:30 PM
Rowe's Family Restaurant
Staunton, VA

August 13, 2015
NVCAC Executive Council Meeting
11:30 AM – 2:00 PM
Bob O's Restaurant
Chantilly, VA

August 18, 2015
Central VA Council Meeting
11:30 AM – 1:00 PM
American Tap Room
Richmond, VA

August 25, 2015
Southwest VA Council Meeting
8:00 AM – 9:30 AM
The Roanoker Restaurant
Roanoke, VA

September 14-15, 2015
VRMCA Board Retreat
Omni, Charlottesville

October 4-6, 2015
VRMCA Fall Convention
Hilton VA Beach Oceanfront Hotel
Virginia Beach, VA