



NRMCA Pervious Concrete Technician Certification Course

(Sponsored by NVCAC)

In May, the Northern Virginia Concrete Advisory Council sponsored an NRMCA Pervious Concrete Technician Certification Course for contractors. This is the first level of certification for pervious concrete which teaches the students the basic procedures of placing pervious concrete.

Contractors, design engineers, inspectors and county personnel were among the attendants.

William Rafferty with Swope & Associates, Inc. instructed the course and covered the review session in the morning. Throughout the course, a series of questions were answered by Will and Hessam. During lunch, students had the opportunity to visit the two existing pervious concrete pads from previous demonstrations at the yard of Luck Stone Quarry in Leesburg, and run simple demonstrations by pouring water on the pervious concrete surface.

Since the Department of Environmental Quality (DEQ) officially became the lead agency for developing and implementing statewide nonpoint source pollution control programs to protect Virginia's

water quality and quantity, local jurisdictions have become more eager to enhance their SWM regulations. Counties have been examining various paving solutions to control the run offs and to meet these new water quality goals. Therefore, porous paving materials (especially pervious concrete) are regularly being evaluated.

Here are a few examples of pervious concrete projects that have been placed recently in NOVA as a result of VRMCA's promotional activities and the changes in SWM Regulations:

Stringfellow Park and Ride (Centerville), Reston District Police Station (Reston), P-290 Cruiser Destroyer Training Facility (Dahlgren Navy Base), to name a few.

As always, many thanks to the following members whose dedication and effort is responsible for the success of this course.

- William Rafferty with Swope & Associates, Inc. for making himself available for the fifth year to teach the course.
- Lewis Lee with Luck Stone

- Marc Granahan with Lehigh Cement, and NVCAC Secretary/Treasurer

For detailed information about various levels of Pervious Concrete Certification, visit <http://www.nrmca.org/certifications/pervious/index.asp>.

Hessam Nabavi, Director of Industry Services



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Corporation for going above and beyond to find a location for the event.

- Lewis Murphy, Plant Manager at Luck Stone Leesburg Quarry for providing the training room and assisting in other logistics.



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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



2016 VRMCA Advisory Council Regions

Jay McNeely
VRMCA Advisory Council Chairman

Eagle Corporation
Charlottesville, VA
Phone: (434) 971-2686
pjm@eagle-corp.com

BLUE RIDGE

Rob Watkins
Chairman
Allied Concrete
P.O. Box 1647
Charlottesville, VA 22902
434-296-7181
rwatkins@allied-concrete.com

Scott Boshart

Secretary/Treasurer
Superior Concrete
Harrisonburg, VA
Phone: (540) 433-2482
sboshart@superiorconcreteinc.com

HAMPTON ROADS

Sarah Beasley
Chairman
Capital Concrete
400 Stapleton Street
Norfolk, VA 23504
757-627-0630 phone

757-627-3927 fax
sarah@capitalconcreteinc.com

Lee Flemming

Secretary/Treasurer
Essroc
Chesapeake, VA
Phone: (757) 647-9409
edward.flemming@essroc.com

NORTHERN VIRGINIA

Duane Laughlin
Chairman
Essroc Ready Mix
150 Lee Avenue
Winchester, VA 22604
540-323-3301 phone
540-723-4178 fax
duane.laughlin@essroc.com

Marc Granahan

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

RICHMOND/CENTRAL VA

Fred Lusby
Chairman
Powhatan Ready Mix
3501 Warbro Road
Midlothian, VA 23112
804-744-1472
flusby@powmix.com

Brad Meyers

Secretary/Treasurer
Swope and Associates
Richmond, VA
Phone: (804) 4690-5016
bmeyers@swopeinc.com

SOUTHWEST

Bret Queen
Chairman
Chandler Concrete
Roanoke, VA
Phone: (540) 345-3846
bret.queen@chandlerconcrete.com

George Kuhn

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

SAVE THE DATE

VRMCA Fall Convention

October 2-4, 2016

Hilton Virginia Beach Oceanfront



On the Horizon *Calendar of Upcoming Events*

July 12, 2016
Hampton Roads Business Meeting
11:30 AM
Chesapeake, VA

July 14, 2016
Northern VA Business Meeting
11:30 AM
Wyndham Garden
Manassas, VA

July 15, 2016
VRMCA Mixer & Plant Maintenance Seminar
Omni Richmond Downtown

July 20, 2016
VRMCA Technical Committee Meeting
The Place at Innsbrook
Glen Allen, VA

July 26, 2016
Southwest Business Meeting
8AM
The Roanoker Restaurant
Roanoke, VA

October 2-4, 2016
VRMCA Fall Convention
Hilton, VA Beach

Richmond Advisory Council Paving Committee Hosts Lunch and Learn

On Thursday, June 16th the Richmond Advisory Council's paving committee hosted a Lunch and Learn for a group of about 25 engineers at the Timmons Groups offices in Richmond. The opportunity came by way of the Society of American Military Engineers(SAME) Central Virginia Post. SAME is a group of engineers who are either active duty military or civilian engineers conducting work on military bases. The Central Virginia post covers Fort Lee and has members from firms such as The Timmons Group, Parsons, Aegis, Dewberry, and Clark Nexsen, among others. The post was specifically looking for a presentation on Roller Compacted Concrete(RCC).

Jim Murray, of Vulcan Materials Company, arranged to bring the speaker, Matt Munsick, up to Richmond from South Carolina. Matt, a professional concrete installer, has been with Andale Construction for over 15 years and specializes in general concrete paving and roller compacted concrete in particular. He spoke for just over an hour on the basics of RCC and then answered questions for another forty-five minutes. Some of the topics covered were mix design, installation, finishing, concrete versus asphalt, and also some case studies from actual jobs.

Among the many engineers present, were the heads of transportation for both Clark Nexsen and The Timmons Group. The presentation granted all the engineers in attendance one CEU; which in turn helped encourage a good turnout. VRMCA and the Richmond Advisory Council would like to thank Matt Munsick for making the drive up to Richmond, the Timmons group for allowing us to use their training room, and Jim Murray for facilitating the presentation.

Jason Connor, Director of Industry Services



LEGAL REVIEW

This legal review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

Evaluating Drug Testing Policies and Safety Incentive Programs in Light of New OSHA Final Rule

By John G. Kruchko and Nancy V. Holt*

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*John G. Kruchko

Executive Summary: The Occupational Safety and Health Administration (OSHA) recently published a final rule (the "Rule") revising its recordkeeping and reporting regulations to advise that employer policies for reporting workplace injuries and illnesses must be reasonable and to specifically prohibit retaliation against employees who report a workplace injury or illness. Under the Rule, procedures that deter or discourage employee reporting are not reasonable. The Rule has created concern among employers regarding the legality of disciplinary programs, mandatory post-incident drug testing, and employee safety incentive plans. Consequently, employers must review their policies and plans in order to ensure compliance and avoid OSHA violations.

The Final Rule

While Section 11(c) of the Occupational Safety and Health Act (the "Act") prohibits retaliation against an employee for reporting a violation of the Act, OSHA cannot take action under that provision unless an employee files a complaint. Under the Rule, OSHA can, on its own initiative, cite an employer for taking an adverse action against an employee for reporting an injury or illness, even if the employee has not filed a complaint.

The Rule makes three changes to §§ 1904.35 and 1904.36 of the OSHA regulations: (1) it requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation; (2) it clarifies the existing implicit requirement that an employer's procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting; and (3) it prohibits employers from retaliating against employees for reporting work-related injuries or illnesses, consistent with the existing prohibition in section 11(c) of the Act.

Impact of the New Rule on Employer Disciplinary

Policies

When OSHA proposed the Rule, some commentators raised concerns that the prohibition on retaliation could have a chilling effect on employers' ability to discipline employees who violate safety rules. In the preamble to the Rule, OSHA noted that it only prohibits employers from taking adverse action against an employee because the employee reported an injury or illness. According to

OSHA, "nothing in the final rule prohibits employers from disciplining employees for violating legitimate safety rules, even if the same employee who violated a safety rule also was injured as a result of that violation and reported that injury or illness (provided that employees who violate the same work rule are treated similarly without regard to whether they also reported a work-related illness or injury)." OSHA emphasized that what the Rule prohibits is retaliatory adverse action taken against an employee simply because he or she reported a work-related injury or illness. Thus, while employers can discipline employees for violating workplace safety rules, they must ensure that injured employees are not disproportionately subjected to discipline when compared to employees who have not been injured.

Blanket Post-Incident Drug Testing Policies

In the Rule, OSHA takes the position that blanket post-incident drug testing policies deter employees from reporting workplace injuries. While the Rule does not ban drug testing of employees, it prohibits employers from using drug testing (or the threat of drug testing) as a form of adverse action against employees who report injuries or illnesses. OSHA states that drug testing policies should limit post-incident testing to situations in which employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use. While OSHA does not require employers to specifically suspect drug use before testing, the agency states that there should be a reasonable possibility that drug use by the reporting employee was a contributing factor to the reported injury or illness in order for an employer to require drug testing. Importantly, the Rule clarifies that if an employer conducts drug testing to comply with the requirements of a state or federal law or regulation (such as a workers' compensation law), the employer's motive would not be retaliatory, and the Rule would not prohibit such testing.

Incentive Programs

The Rule reiterates OSHA's position that incentive programs that deny benefits to employees who report injuries and illness discourage such reporting and violate the Act. While OSHA has stated that the Rule is not intended to categorically ban all incentive programs, it has also stated that programs must be structured in such a way as to encourage safety in the workplace without discouraging the reporting of injuries and illnesses.

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In the preamble to the Rule, OSHA notes that it is a violation of the Rule for an employer to take adverse action against an employee for reporting a work-related injury or illness, regardless of whether such action is part of an incentive program. For example, an incentive program that disqualifies an employee from receiving a bonus because the employee reported a work-related injury or illness would violate the Rule because the denial of a bonus would be an adverse action. Additionally, such a program would deter or discourage a reasonable employee from reporting a work-related injury or illness. However, if an incentive program makes a reward contingent upon, for example, whether employees correctly follow legitimate safety rules rather than whether they reported any injuries or illnesses, the program would not violate the Rule.

The Bottom Line

Although OSHA's position on the issues addressed above is not new, it has received heightened publicity since the Rule was published. The Rule should not deter employers from disciplining employees who violate workplace safety

rules, so long as employees who have suffered workplace injuries are not disciplined more frequently than employees who have not been injured. Blanket post-incident drug testing policies that are not connected with a state workers' compensation program or other federal or state legal requirement likely violate the Rule and should be revised. While employers can still implement post-incident drug-testing programs so long as testing only occurs when employee drug use likely contributed to the accident, employers should look at their policies critically to confirm that the language used makes clear that the testing is not used to embarrass or discipline employees. Finally, while employee incentive programs that reward positive safety outcomes could be problematic under the Rule, these programs can still successfully be implemented without violating the Rule by structuring the programs to reward compliance with safety practices instead of outcomes. You should consult your legal advisor to confirm that your policies and procedures do not raise any red flags in light of the Rule.

© 2016 FordHarrison LLP | *John G. Kruchko is a Partner with the Management Labor and Employment Law Firm of FordHarrison, LLP, in Tysons Corner, Virginia; B. Patrice Clair is a Senior Associate in the firm's Washington, D.C. office. Rachel Ullrich, an attorney in the firm's Dallas office, prepared an original version of this article. For more information please contact Mr. Kruchko at (703) 734-0554 or Ms. Clair at (202) 719-2055 or by e-mail at jkruchko@fordharrison.com or pclair@fordharrison.com. This article is published for general information purposes and does not constitute legal advice.



**Golf
outing**

SOUTHWEST VIRGINIA
ADVISORY COUNCIL

www.vrmca.com

Thursday, September 15th

12:00PM

ASHLEY PLANTATION GOLF COURSE, DALEVILLE, VA



SOUTHWEST VIRGINIA ADVISORY COUNCIL

Virginia Ready-Mixed Concrete Association Mixer & Plant Maintenance Seminar

Friday, July 15, 2016 | 8:30 a.m. - 3:30 p.m.

Omni Richmond Downtown | 100 S. 12th Street, Richmond, VA 23219 | (804) 344-7000

Who Should Attend: Fleet & Plant Maintenance Managers / Owners / Maintenance Personnel

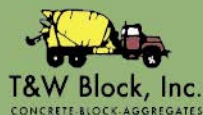
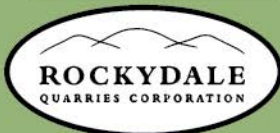
Topics of Discussion: Air Liquid Industrial - Cryocrete, Nitrogen Injection in Ready Mix for Low Temperature Concrete, Pearson Systems - Hot & Cold Water Systems / Maintenance & New Technology, H.N. Funkhouser- Oil and Lubricants / The New Standards For PC-11 Engine Oils, Con-Tech Mixers - Maintenance & New Technology, ACE-CO/Libra - Batching & Automation, McCarthy Tire - Proper Tire and Wheel Maintenance

Cost: \$ 75.00/per person

Please contact Christina Sandridge at (434) 326-9815 or christina.sandridge@easterassociates.com with any questions.

Thank You

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