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- Mark your calendars now to join the Transportation Construction Coalition (TCC) Fly-in to Washington, D.C. on May 18-20, 2009
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ON THE COVER: Mike Williams (center) of ODOT District 4 accepts the 2008 Perpetual Pavement Award of the Asphalt Pavement Alliance (APA). Others in the photo, L-R, representing the APA members are Dr. Randy West, NCAT; Mike Acott, NAPA; Peter Grass, Asphalt Institute, and Mike O’Leary, APA Co-chairman.

Flexible Pavements of Ohio is an association for the development, improvement and advancement of quality asphalt pavement construction.

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Winter 2009

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Leaving an Inheritance to Our Children’s Children

Every six years, our federal government establishes a direction for the nation’s transportation system. We know this as the transportation reauthorization. I’m sure you’ve all been reading about it. Though every transportation reauthorization is hugely important and carries large ramifications, the upcoming legislation has taken on even greater significance. With the existing transportation bill set to expire on September 30, there are many substantial questions yet unresolved. One of the biggest questions being asked is, “what should a transportation system intended to propel our nation’s prosperity forward look like?” Another one is, “where’s the money going to come from; gas tax, sales tax, VMT tax?” Yet another is, “what is the social role of transportation?” Much energy has been invested to answer these questions and develop a vision for our nation’s transportation system.

Ohio has gone through a similar exercise, seeking to discern what our transportation system should look like, how it should function, what economic and social responsibility it should carry in the 21st Century. The plan crafted by Ohio’s 21st Century Task Force has shaped up to be one that relies on multiple modes of transportation. That means trains, planes, rivers, roads... and more. One thing we can all affirm—prosperity and transportation are inextricably linked. And for that reason, TRANSPORTATION MATTERS!

With all this talk about what our transportation system should be about, I’m reminded of a proverb that goes like this…

“A good man leaves an inheritance to his children’s children.”

Some might say the proverb refers to a spiritual inheritance while others would say it’s about wealth. Either or, the proverb does expose a truth we would be good to heed. The inheritance we leave in the form of a transportation system should be one that is fiscally prudent first; then, as fiscal prudence makes way to prosperity, diversification of our transportation system is made feasible. Prudence extends beyond managing dollars to include how we utilize mineral resources and energy in our transportation system—all for the purpose of leaving an inheritance to our children’s children.

I’m an asphalt guy not a “policy wonk,” so all I know is that whatever comes down from those with much greater insight on these matters than I, eventually translates to moving people and goods. When I think about the asphalt industry and consider our performance at moving people and goods, I think we stack up pretty well in meeting the challenge of leaving an inheritance to our children’s children.

The asphalt industry has many substantial achievements to which we can point that demonstrate how asphalt pavements leave an inheritance to our children’s children. The one that comes most immediately to mind is the superior performance of deep strength asphalt. Only deep strength asphalt pavements have consistently demonstrated the ability to last a lifetime, thereby saving valuable raw materials and energy. Years ago, former ODOT Engineer Willis Gibboney documented this fact through his landmark research comparing asphalt pavement to concrete pavements. That exceptional work, Pavement Performance on a Portion of Ohio’s Interstate System, demonstrated that deep-strength asphalt pavements were not only more superior in ride quality, which everyone already knew, but were more economical to construct and maintain over their lifetime. Twelve years later, Gibboney updated his research. He expanded the number of pavements evaluated to include concrete-
base pavement and validated once again the economy of asphalt pavements in his new study, Flexible and Rigid Pavement Costs on the Ohio Interstate Highway System. Pavements are smoother and longer lasting when they are first constructed using asphalt—so demonstrated the research.

We Found It!

The exceptional performance of deep-strength asphalt has stimulated much research into mature asphalt pavements. These pavements seemingly have inexhaustible life. Researchers have wondered what the secret is to these asphalt pavements that have far outlived their predicted lives. How is it that these deep-strength asphalt pavements designed according to conventional AASHTO design standards have such unconventional performance? They carry far more traffic than for which they were designed!

Capturing the secret of this success would manifest immeasurable savings in mineral resources, energy, and dollars... for our children's children.

Indeed, the asphalt industry has found that answer. Research has uncovered the secret to the exceptional performance of the mature deep-strength asphalt pavements on our streets and roadways. It all comes down to a simple yet profound concept called “endurance limit.” Every person who ever bent a paper clip until it broke understands this concept. As long as we retain sufficient thickness and flexibility in our asphalt pavements to endure fatigue they will last a lifetime. Having this knowledge, pavement designers can design pavements with inexhaustible structural life—on purpose! And we are doing so. We call these pavements Perpetual Pavements.

We congratulate our most recent recipient of the prestigious Perpetual Pavement Award, the Ohio Department of Transportation, District 4, who receives this honor for the construction of U.S. Route 30 in Stark County. Congratulations are also in order for the contractor, Shelly Company’s Twinsburg Division, formerly Northern Ohio Paving Company, who with great ability constructed this now 37 year old pavement.

It Begins Here!

If we were to take a poll and ask a question—“Just what is the asphalt industry known for?”—we’d probably get responses like “smooth pavement,” “the largest recycling industry,” “it has good value,” “it’s quiet,” and so on. No objection here! All of these certainly are excellent observations. However, I suggest a different answer. I suggest that the asphalt industry is known for INNOVATION.

If there’s going to be innovation in the highway industry you can bet it will likely start with asphalt. Innovations like Perpetual Pavements that ensure judicious use of raw materials, Porous Asphalt that helps ensure pristine water streams and brimming aquifers, and Warm Mix Asphalt—the new kid on the block—that already is showing great promise in providing cleaner air and the potential for greater pavement longevity by keeping asphalt binders more ductile, are the most recent.

If you’ve been paying attention—reading between the lines, as it were—you will notice that what I’ve been speaking of are attributes of asphalt that demonstrate that its worth is far more than the number at the bottom of the bid tabulation sheet. The value of asphalt is seen in preserved raw materials, energy conservation, expedient travel, cleaner air and water, and more. Build with asphalt first! And why? Because a good man leaves an inheritance to his children's children.
Leading the Pack

Top Ten Survival Tips for Lean Times

The recent credit crisis has accelerated the deepening economic concerns that face the construction industry, particularly in hard-hit areas of the country, including the Upper Midwest, where the economy has been weak for some time. Residential construction has been on the ropes for a while, and commercial construction has been anything but strong in most areas of the country. Therefore, contractors, subcontractors and suppliers faced with these lean economic times need to make smart business decisions that will allow them to survive and ultimately prosper during better times. This is my personal list of the “Top Ten” survival tips for lean times.

1. Give Notice:
   During difficult economic times, you cannot presume that your customer will necessarily be able to pay the bill in a timely fashion. Therefore, it is more important than ever that suppliers give preliminary notices as required by their state lien law. Similarly, it is important that subcontractors and contractors give notice of change order work before the work is performed. When work slows down and credit becomes tighter, it is important that your company implement notice practices designed to maximize your chances of being paid in a timely fashion.
2. Review Contracts:
Risk-shifting provisions in contracts can cause losses even when you perform your work in a satisfactory and timely fashion. For example, pay-if-paid provisions in subcontracts may shift the credit risk of non-payment of the owner from the contractor to the subcontractors. In difficult economic times it is more important than ever that you review and understand your contracts and make necessary changes.

3. Train:
Challenging economic times are the wrong time to ignore training. When work slows down, you should invest in your future by taking advantage of training opportunities for your workforce of the future. Consider learning a new and developing field (i.e. green building) so you might maximize opportunities to secure additional work in new markets.

4. Market:
Difficult times require a greater amount of marketing simply to hold your share of the work. When work is not easily found, there is great value in creating the type of relationships and marketing approaches that maximize your opportunity to retain market share. Remember that most of your business opportunities come from existing clients or those that are referred by them; so good, responsive service to those valued customers is crucial. The good news is that difficult times often weed out the bad competition.

5. Cut Costs:
Use this opportunity to increase efficiency with technology or other means to reduce labor costs. While this often leads to difficult personal decisions, the company can emerge from such cost-cutting more profitable than ever when additional work arrives.

6. Double Check Bids:
Despite the care that goes into preparing important bids, many public bids are rejected because contractors do not take the time to ensure that their bid is responsive to the bid solicitation in all material respects. It is also important that subcontractors adequately condition their bids and double check inclusions and exclusions to ensure that their scope of work and price are accurate. The worst time to live with the consequences of a mistaken bid is when work is tight.

7. Lien:
Our founding fathers created mechanic’s lien rights in this country for a reason—to ensure that contractors, subcontractors and suppliers would be paid for their labor and material improving the value of property. While lien rights are not a substitute for good credit decisions, lien rights must always be protected on any project where a contractor, subcontractor or supplier cannot afford to go unpaid.

8. Mediate:
Litigation is always expensive and can erode the bottom line. Settlements on the courthouse steps do little to avoid legal costs. Parties are encouraged to try to mediate a dispute at their earliest opportunity in the hope that the matter might be compromised and significant legal fees saved for both sides in the dispute. In the event the mediation fails to bear fruit, the parties at least know that they tried their best to avoid those costs and can go forward in the litigation knowing that they had no other viable options.

9. Join:
Difficult economic times are the wrong time to cut costs by ceasing membership in valuable trade associations. The education and advocacy provided by these groups can often help your organization through difficult times and become much stronger in the long run.

10. Keep Perspective:
The construction industry has weathered downturns before, and will again. While nobody enjoys lean times, a sense of humor and a sense of perspective will serve you well in allowing your company to weather any choppy seas. Hopefully, by implementing some of these simple strategies, your company can continue to succeed despite a challenging market, and be even stronger in the long run.

Donald W. Gregory, Esq., specializes in construction law, litigation and mediation services with Kegler, Brown, Hill & Ritter Co., LPA, in Columbus, Ohio. He can be contacted at (614) 462-5400, or dgregory@keglerbrown.com.
Once again, the Ohio Transportation Engineering Conference (OTEC)—held October 28 and 29, 2008—was an outstanding success with record numbers of attendees and exhibitors and an extensive technical program.

The Flexible Pavements of Ohio (FPO) participation in OTEC was equally successful. The FPO technical session drew an overflow crowd. Presentations by Brian S. Driscoll, P.E., chief highway design engineer, Cuyahoga County Engineer Office on Cuyahoga County Constructs a Perpetual Pavement; David Powers, P.E., ODOT asphalt concrete materials engineer on ODOT Experiments with Foamed Warm Mix Asphalt, and Paul Wilkerson, P.E., construction supervisor/civil engineer, Metro Parks, Serving Summit County on Porous Asphalt Pavement Debuts at Sand Run Metro Park were the big draw that resulted in the standing-room-only crowd. If you couldn’t get into the session, their presentations can be found on the FPO Web site, www.flexiblepavements.org.

FPO’s booth exhibit also drew a big crowd. The operating model of porous asphalt pavement drew attention from many who stopped to ask questions and pick up one of FPO’s porous asphalt pavement sample kits. The porous asphalt sample kit, shown with this article, contains a graphic illustration of the porous pavement recharge bed concept, a sample of porous asphalt surface course material and design literature including the FPO Technical Bulletin, and specifications for porous asphalt pavement surface and base courses.

Originally developed in the early 1970’s under USEPA contract, porous asphalt pavements have demonstrated the ability to mitigate storm water discharges both in quantity discharged and quality. Porous asphalt mixtures are comprised to ensure that storm water quickly percolates through the pavement into the stone reservoir below. The picture of the asphalt sample demonstrates the permeability of a porous asphalt surface course.

Porous asphalt mixtures recommended by Flexible Pavements of Ohio are based on Ohio Department of Transportation specifications. A two-course asphalt layer consisting of three-inch thick porous asphalt base and a one-inch thick porous asphalt surface is recommended. Asphalt mixtures utilize polymer-modified binder to ensure long-lasting performance.

Extensive information on porous asphalt pavements for storm water management are available on the FPO Sustainable Pavement Web site at www.flexiblepavements.org/sustainable_pav.cfm or contact FPO to receive a kit and/or any other information that you might need.
Ohio gives subcontractors and suppliers on public work the right to lien the public funds or collect against the contractor’s payment bond—but only if those lien and bond rights are properly perfected. Unlike private work, public real estate (i.e. city hall) is not allowed to be liened or foreclosed.

Any supplier or subcontractor wanting to perfect lien or bond rights must provide a simple form called a Notice of Furnishing (NOF) to the prime contractor within 21 days of first work if:
1. The potential lien claimant does not have a contract directly with the prime contractor; and
2. The amount of the contract or purchase order collectively exceeds $30,000.

Contractors who receive a NOF must be careful to secure lien waivers from anyone serving a NOF.

If a NOF is required and has been timely provided, the potential lien claimant must file its lien within 120 days of his last work and its bond claim within 60 days of acceptance of the project by the public authority. If a lien is filed after the project funds are fully paid out, the lien has no value.

Once a lien has been asserted, the public owner (i.e. city, ODOT) is to set aside the lien amount in escrow until the lien claimant and the contractor come to a resolution or the court orders a disbursement.

However, contractors are cautioned that they must dispute the lien within 20 days or the public owner may pay the money directly to the lien claimant. Contractors can also bond off the lien by posting an additional bond or cash deposit in one-and-a-half times the lien amount.

Subcontractors and suppliers are cautioned that they must file suit within one year of project acceptance or the bond claim will be considered untimely and that a suit must be filed on the lien within:
1. 60 days of receipt of a Notice to Commence Suit; and
2. Six years of the filing of the lien in any event.

Mechanic’s liens and payment bond claims give subcontractors and suppliers (who protect their rights) special leverage, but contractors also have tools to ensure that they do not pay twice for work performed once. Effective use of those tools often makes the difference between a successful or unsuccessful project.

Donald W. Gregory, Esq., specializes in construction law, litigation and mediation services with Kegler, Brown, Hill & Ritter Co., LPA, in Columbus, Ohio. He can be contacted at (614) 462-5400, or dgregory@keglerbrown.com.
Ohio Hot Mix Asphalt Producers Earn Commendations for 2008

The National Asphalt Pavement Association’s (NAPA’s) Diamond Achievement Commendation for Excellence in Hot Mix Asphalt Plant/Site Operations is awarded to hot mix asphalt facilities that exemplify the spirit of quality and excellence in all aspects of their operations. They strive to be integral, valuable and respected neighbors within their communities.

The process of earning the commendation is a self-assessment of six separate categories of plant/site operations. Companies are rated in appearance, operations, environmental, safety, permitting and compliance, and community relations.

For 2008, the following 32 Ohio hot mix asphalt production facilities earned the Diamond Achievement Commendation in recognition of their efforts to be good neighbors and good stewards of the environment:

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• Mar-Zane Plant #2, Mantua
• Mar-Zane Plant #21, Mansfield
• Mar-Zane Plant #6, Zanesville

The Shelly Company – An Oldcastle Materials Company
• Allied Corp., Bedford Heights Plant #71
• Allied Corp., Downtown Plant #76, Cleveland
• Shelly Materials Plant #2, Kanawha
• Shelly Materials Plant #61, Circleville
• Shelly Materials Plant #63, Newark
• Shelly Materials Plant #80, Belle Center
• Shelly Materials Plant #90, Columbus
• Shelly Materials Plant #91, Columbus
• Shelly Materials Plant #94, Reynoldsburg

Valley Asphalt Corporation
• Plant #14 Newtown
• Plant #17 Kilby Road
• Plant #19 Mehring Way
• Plant #23 Sharonville
• Plant #25 Troy
• Plant #5 Morrow
• Plant #6 Dryden Road

FPO congratulates the owners and operators of these facilities for their leadership in demonstrating the best management of their facilities.
The 2009 Flexible Pavements of Ohio Annual Meeting returns to The Columbus Hilton located in the Easton Town Center at I-270 and Easton Way on Tuesday, March 31 and Wednesday, April 1.

Program

The program for this year’s meeting deals with market, economic and political changes affecting the asphalt industry. In case you haven’t gotten the message yet, the asphalt market is changing. Yes, there will be the continued need for your everyday conventional hot mix; but, if you intend to prosper in times of high binder prices and a market that is demanding “green” asphalt solutions, then you’ll want to know about warm mix asphalt, porous pavement, and the other topics featured in this year’s Annual Meeting and Equipment Exposition.

Warm Mix Asphalt (WMA) – Blazing New Trails
- WMA Implementation on a National Level
- A Contractor’s Perspective on Foamed WMA
- ODOT’s Intentions for WMA

Porous Asphalt Pavements – Your Emerging Market
- Porous Asphalt… It’s Not Just for Parking Lots Anymore. It’s for Streets, Too!

Environment and Health
- Issues Facing the Hot Mix Asphalt Industry

Politics Politics Politics
2009 is an unprecedented political year. Leadership in the Ohio House has gone blue. What will that mean for your business? As well, federal legislation to re-authorize transportation funding is imperative this year. Learn what’s being done to ensure dollars are available come 9-30-09.

Presentations
- 9/30/09… A Call to Action! Federal Transportation Funding Re-Authorization Begins This Year
- Ohio Democrats Speak Out
- Transportation for a 21st Century

Paving Awards and Industry Awards will be presented at the Awards Luncheon on Tuesday, March 31.

Scholarship and mixture competition awards will be presented at the Prayer Breakfast on April 1.

Join us at the Columbus Hilton in Easton, for a good time. New equipment, new ideas, new and old friends alike are on tap for you!

Registration and additional information is available online at www.flexiblepavements.org.
Transportation-related legislative activity at the federal level is becoming very active and is likely to remain so throughout 2009 and beyond.

The proposed economic stimulus plan has been enacted into law. As expected, the plan contains a strong infrastructure component. This will help to make up some of the chronic shortfall in transportation funding that has been the norm in recent years.

Congress also has appropriated funds for the fiscal year 2009 transportation program, which has been operating under a continuing resolution that expired March 6, 2009. However, the Federal DOT is warning that the Highway Trust Fund (HTF) may go broke as soon as June. So, another “fix,” like last year, will be needed to keep the HTF solvent and permit the full 2009 appropriation to be obligated.

And, of course, in 2009 federal transportation programs must be re-authorized for a new six-year period. The congressionally commissioned study has recommended sweeping changes to the federal transportation programs and the need to find sources of revenue besides the gasoline tax. Getting good legislation that adequately addresses the nation’s transportation needs for the next six years will require lots of work, involvement and ingenuity.

Find more information about the TCC Fly-in and federal legislative issues at www.artba.org.
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