



DuPont Safety & Construction

June 19, 2020

Jay Withrow, Director
Division of Legal Support, ORA, OPPPI and OWP
Virginia Department of Labor and Industry
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RE: VA Department of Labor and Industry, Safety and Health Codes Board; Emergency Temporary Standard/Emergency Regulation, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19

To Whom It May Concern:

Thank you for the opportunity to comment on the Virginia Department of Labor and Industry's recommended 16 VAC 25-220, Emergency Temporary Standard/Emergency Regulation, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID 19 (collectively, the "Regulations"). These comments are provided on behalf of DuPont.

DuPont has maintained a manufacturing presence in Virginia for over 90 years. Our three manufacturing locations employ over 2000 employees and contractors. In addition, our Tyvek® protective apparel and our Dupont Teijin Films Melinex® film have played a critical role in protecting the front line essential workers in battling this pandemic.

Safety and Health is a core value at DuPont. Keeping the workplace safe, which has always been a cornerstone of our operation, has taken on new meaning during the past six months. The need to take extra precautions to protect the safety and health of our employees in the workplace as we continue to operate essential businesses is a value we share. While we appreciate and support critical measures which must be enacted to guard the health and safety of our employees, their families, co-workers and the communities in which they live, we believe the Regulations as drafted create concerns for many employers.

We respectfully submit the comments below addressing our specific concerns of the proposed Regulations:

- **Suspected cases of COVID-19 – Location of community spread**

- **Section 30 “May be infected with SARS COV-2”** – This requires us to suspect the following people of infection: (1) Being a resident of a locality, city, town, or county with moderate or substantial SARS-CoV-2 ongoing community transmission, or (2) having traveled through a locality, city, town, or county, state, or country with moderate or substantial SARS-CoV-2 ongoing community transmission within the last 14 days and had contact with a person inside six feet while doing so.
- **Section 40.5** – The employer shall not allow any suspected case to report to work or be allowed to remain at work. This will require us to presume anyone living in such an area or visiting such an area is a “suspected” case and prohibit that person from visiting the site.
- **Recommended change:** Eliminate subsection (3) of this definition, which creates a presumption for everyone residing in a certain area; and revise subsection (4) to eliminate “moderate” community spread.

- **Suspected cases of COVID-19 – Symptoms**

- **Section 30, “Symptomatic” definition** – This definition includes a broad array of symptoms – “fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea.

This includes just about every illness. It’s overly broad given that the employer must act if a worker is exhibiting these symptoms.

- **Section 40.A.4** – The employer must treat any such person exhibiting these symptoms as being “suspected COVID-19” case.
- **Section 40.5** – The employer shall not allow any suspected case to report to work or be allowed to remain at work.
- **Section 40.B.1.a** –A suspected case cannot return until 3 days since last symptom and 10 days since first symptom. So, someone that exhibits muscle aches after a long day must “sit” for almost 14 days? Or someone with a running nose? This is overly broad.

- **Recommended change:** Narrow the symptoms that trigger a “suspected case” to the CDC list to avoid abuse. Also include a provision that would allow the employee to return to work sooner than the 10 to 14 days post symptoms if the COVID 19 test is negative.
- **PPE and no credit for the use of face coverings**
 - **Section 30, “PPE” definition** includes surgical masks but not face coverings.
 - **Section 40.F** – The proposal states that, if 6 ft separation is not doable, everyone needs PPE (surgical masks or more) consistent with *industry standards*. First, there are no industry standards on this. So essentially, it will be up to OSHA’s discretion whether someone should have worn a surgical mask or respirator instead of allowing the person to wear a face covering. Second, the supply of PPE continues to ebb and flow, and this regulation will be in place for 6 months. That could be a problem if the supply contracts again. Finally, a number of people that now wear face coverings will have to be outfitted with PPE further straining the current limited supply.
 - **Section 40.E** – Again, the proposal states that PPE is required when multiple people occupy a vehicle in accordance with *industry standards*. There are no industry standards on this.
 - **Recommended change:** Allow the use of face coverings and surgical masks for work within 6 feet or in a vehicle.
- **Retaliation / Antidiscrimination**
 - **Section 90.C.** Right now, the proposal states that no person that raises a concern can be disciplined or terminated. If we are not retaliating against the person **for raising a concern**, we should be free to operate under our existing progressive discipline program. Also ... “print, online, social or any other media.” This is broader than the existing OSHA regulations themselves. If a person is lying on social media and NEVER raised the concern to VOSH or management, they should not be insulated from action.
 - **Recommended revision:** No person can be discharged **BECAUSE** they raised a health and safety concern to a regulatory agency or management.

- **Antibody testing**

- **Section 40.A.3** – The proposal states: All employers must establish a process for employees to report antibody tests? Those tests say nothing about the employee’s current health status or the hazards to which other employees may be subject.

Serologic testing has not been used in business and industry to this date. It is used mainly for identifying high risk groups more from an epidemiological aspect and used mainly for monitoring applications.

The timing of the test is quite variable especially with the immunity peaks. As time goes on this may be used as an indicator for herd immunity etc., and the government should not be requiring us to create a database of employees’ antibody status.

Those tests do not reflect the employee’s current health status or the hazards to which other employees may be subject.

- **Recommended revision – OMIT this section.**
- **Section 40 B.2b.** – Requiring at least 2 consecutive respiratory specimens collected ≥ 24 hrs. apart to return to work. This is not ‘standard’ practice in the business community.

This protocol is primarily reserved for healthcare, EMT workers, etc. This testing is not currently widely available.

- **Recommended revision – OMIT this requirement.**

- **Section 40.I.4 – Cleaning common spaces –**

- The language would require you to make sure common spaces are cleaned at the end of each shift.

This could create issues if we have multiple shift changing at the same time. Can we get to all the bathroom and common spaces before the start of the next shift? It may be practically impossible.

- **Recommended revision:** Allow employers to clean periodically, including at least one time per shift PREFERABLY at the end of each shift.

- **Physical barriers**

- **Section 60.A.1.a. (Note: there are two subsection a.) –**

You will have to install physical barriers whenever feasible. This is silly if the person can wear PPE or face coverings to address the hazard.

- **Recommended revision:** Recommend installation of barriers but do not require them.

- **Hazard assessments**

- **Section 40.A.1 Hazard Assessments –** Every employee just be assessed for their own risk – lower or medium.

- **Section 60.C.1.a Hazard Assessment of every job –** Every job will need to be reassessed to determine if the job presents a COVID-19 related hazard and select PPE. If the definition of PPE is not enlarged to include face coverings, this will significantly increase the number of people utilizing PPE. If surgical masks are enough to cover the hazard AND they are available, this may not be an issue. However, if we deem surgical masks insufficient, then we will have to deem an N95 or similar respirator necessary for a job, and we may have to perform a fit test for employees that were not previously fit tested. Unfortunately, fit testing is a higher hazard activity and even third parties aren't conducting fit testing right now.

- **Section 60.C.2 Certification –** A hazard assessment needs to be conducted for every work space on site will have to be assessed and certified.

This is onerous for a site the size and complexity of our Spruance.

By what date do we have to complete this? Do we have to stop work until all assessments are completed?

If this must be completed by a date certain, it could cause business interruption.

- **Recommended revision:** Allow hazards assessments to be conducted based on common tasks and work environments but not based on individual employees. E.g., anyone that is required to conduct work within 6 feet of another in an indoor environment, or employees performing ERT work.

- **Preparedness and Response Plan**

- **Section 70.A.2** You will have to draft and issue a plan.
- **Section 70.C.7** Employers will need to train employees on a preparedness and response plan.
- **Section 79.C.2.b** This section literally tells employers to consider employees' individual health concerns and discuss employees' personal health concerns when drafting this plan. That is onerous and potentially illegal.
- **Recommended revision:** Omit the section and replace with language that instructs employers to encourage employees to report personal health concerns and then accommodate, as required by law, those health concerns.

- **Training**

- **Section 80.C. – Documented training for every employee in “medium risk” job.**

The documentation needs to include with a physical or electronic signature for each employee and a signature for the person conducting the training.

When does the training need to be completed?

- **Recommended revision:** Allow computer-based training. Allow flexibility for completion dates.

- **Joint Employer**

- **Section 10, Subsection E** – References to “employee” includes temporary employees and joint employees.

We are not always privy to information where the person is not our employee.

There are different legal tests for joint employer and no definition included in the proposed Regulations.

- **Recommended revision:** Pick the DOL test.

Your time and consideration of the above stated proposals are appreciated.

Sincerely,

A handwritten signature in black ink that reads "David Johnson". The signature is written in a cursive style with a large, sweeping "D" and "J".

David Johnson
Plant Manager