



September 25, 2020

Ms. Princy Doss
Director of Policy, Planning and Public Information
Virginia Department of Labor and Industry
600 East Main Street, Suite 207
Richmond, VA 23219
princy.doss@doli.virginia.gov

RE: Proposed Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220

Dear Ms. Doss:

On behalf of the Virginia Transportation Construction Alliance (VTCA), we are pleased to submit comments related to the proposed permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

VTCA represents over 300 companies and tens of thousands of employees who plan, design, build, and maintain Virginia's transportation network. Despite the pandemic, our members continue to construct and repair roads, conduct aggregate mining operations, and operate heavy equipment to ensure the Commonwealth's infrastructure continues to meet the growing needs of our citizens.

Given the potential for danger in these jobs, safety is at the forefront of everything we do. Our member companies are proud of their track records in employee safety, and in particular, have worked diligently during the COVID-19 pandemic to ensure that transportation construction continues in as safe a manner as possible.

We have learned a significant amount about working with the omnipresent threat of COVID-19, and have the following suggestions to offer based on our experiences.

First and foremost, if a permanent standard is enacted, it should only relate to the current public health crisis related to COVID-19. All companies have enacted new protocols in the last six months. This has required many employees without any medical training to become de facto health officers to determine if employees may be infected. With cooler weather coming, cold and flu cases will likely increase. Since teleworking is not an option in most transportation

construction jobs, companies utilize the best information they have – most of which is required to be reported by the employee – to determine an employee’s fitness to work. Expanding this permanent standard any further would create additional, unnecessary challenges for industries such as ours.

The emergency temporary standard (ETS) language regarding Centers for Disease Control (CDC) guidelines is vague and confusing. Guidance from the CDC is constantly changing, and employers are in the untenable position of determining whether that guidance provides equivalent or greater protection than the ETS. If this standard becomes permanent, it will become even more challenging. To bring greater clarity to the situation, those adhering to CDC guidance should be deemed in compliance, without having to determine how it comports with a potentially permanent Virginia standard. As an example, we have learned that airborne transmission is far more likely than transmission from surfaces. The CDC guidelines have the ability to adjust to the latest science, whereas a permanent standard does not.

The (ETS) lumps indoor and outdoor construction together in the medium exposure risk category. These two types of construction are very different when it comes to potential exposure. Indoor construction is more likely to occur in confined spaces that share heating and air conditioning units. In fact, during the development of the ETS, most of the examples that were shared where COVID-19 had been contracted occurred in indoor settings. Social Distancing is the better control method. Road construction projects take place over many miles of road, allowing opportunities for social distancing. Only in circumstances when transportation workers find themselves in confined spaces, such as trenching, should the risk level rise to medium. Transportation construction firms constantly provide confined space training for employees. Additionally, employees that operate heavy equipment normally do so by themselves, much like a delivery driver. Delivery drivers are defined as low exposure risk by the ETS. We believe outdoor construction should be included in the low risk exposure category.

Face covering requirements need more definition and flexibility based on the circumstances in which they are being used. While many employees are required to wear face coverings, it is important to understand the impact on other safety equipment and the employee’s well-being. Face coverings can lead to safety glasses fogging up, creating a greater hazard for someone operating around heavy equipment. In extreme heat conditions, which are often exacerbated by placing hot asphalt, face coverings can increase the potential for heat-related illness. They can also muffle speech, making communication on a noisy job site challenging. How to wear a face covering needs to be defined. Given the risk associated with certain transportation construction activities, additional flexibility should be given to employers to make practical adjustments that provide the best protection for their employees.

We support requiring firms to have a written plan and conduct training for all employees regarding COVID related hazards and risks. What is missing from VOSH are standard templates that will promote consistency and clarity. Currently, the responsibility to draft and execute COVID related protocols to comply with the ETS falls on the employer and employee representative. If the Board had determined they need to issue permanent standards, the Board should also provide how those standards should be conducted.

The Board should clarify which industries are exempt from the standard. Several industries have been and continue to be exempt from the Department of Labor's jurisdiction on this matter. Several industries oversight is with other government entities and this should be stated. The standards need to clarify which industries are exempt from the standard.

Safety is at the core of what contractors do every day, all day. We take the work and the risk and figure out how to accomplish the task safely. Given that our member companies, which have been essential businesses since the onset of the pandemic, have gained valuable experience safely working with the threat of COVID-19 and within the parameters of the ETS. We strongly believe that these changes need to be made if a permanent standard is to be created.

Sincerely,

A handwritten signature in black ink, appearing to read "Gordon Dixon". The signature is fluid and cursive, with the first name being more prominent.

Gordon Dixon
Executive Vice President

Cc: Clark Mercer, Chief of Staff, Governor Ralph Northam
Megan Healy, Chief Workforce Development Advisor, Governor Ralph Northam
Jay Withrow, Director, Legal Support, DOLI