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January 5, 2021

Ms. Princy Doss  
Director of Policy, Planning & Public Information  
Virginia Department of Labor & Industry  
600 East Main Street, Suite 207  
Richmond, VA 23219  
[princy.doss@doli.virginia.gov](mailto: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 and Members of the Virginia Safety & Health Codes Board:

Thank you for the opportunity to comment on the revised proposed Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220. The Buckingham Branch Railroad is a small, privately-owned, family-owned freight railroad that operates 280 miles of track in Virginia. We are also a member of the Virginia Railroad Association which previously submitted comments on our behalf in the first round of public comment on the proposed Permanent Standard. The Buckingham Branch would like to offer these additional comments in response to the recent revised proposed Permanent Standard.

The Buckingham Branch, like most businesses and business associations that have commented, is opposed to the adoption of a Permanent Standard because the Standard is overly burdensome and unnecessary. It is overly burdensome because small essential business such as ours are already operating in a very challenging and uncertain business environment due to the impacts of Covid-19. The additional work and expense created by the regulations in this Standard are crippling. We believe the Permanent Standard is unnecessary because we already have reasonable and effective guidance from the CDC and Virginia Department of Health as well as the Federal Railroad Administration and OSHA. Additionally, like all businesses, we are naturally incentivized to want to eliminate the spread of Covid-19 among our employees primarily because we care about their welfare and the welfare of their families, but also to ensure we have the people we need to operate our business and serve our communities, and to reduce the costs associated with having our people out sick.

Many other commenters from the first round of public comments have already noted the above concerns but they were dismissed. I urge you to please reconsider.

However, if the Board decides to move forward with a Permanent Standard, the Buckingham Branch believes it must include two provisions:

1) A sunset clause that ties expiration of the Permanent Standard with the expiration of the Commonwealth's State of Emergency. We are aware that many other commenters suggested this and the Board responded by noting that it has the authority to amend or repeal the proposed Permanent Standard as workplace hazards from Covid-19 evolve, thus an expiration date is not necessary. Our concern is that, according to many medical experts, Covid-19 will never go away fully and instead continue to circulate as the other coronaviruses do (fortunately with less severe effects). Additionally, the new vaccines will only provide partial protection and not everyone will get the vaccines. This leaves a rationale for the Permanent Standard to be left in place indefinitely on the basis that Covid-19 is still present and a danger, when in fact there may no longer be a significant danger. Thus, we believe it would be best to specify an expiration of the Permanent Standard that is tied to an event (e.g., expiration of the State of Emergency) or a specific date.

2) The Virginia Railroad Association's proposed revision to the Permanent Standard outlined in their letter dated September 25, 2020. The proposed revision would account for the special circumstances that railroads in the Commonwealth face. I will not reproduce the entire argument here but below is the proposed revision to subsection (G.1) of 16VAC25-220-10. The VRA revision suggests adding the text in underline.

G.1. To the extent an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or nonmandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions should be considered in compliance with this standard. An employer's actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard. Anything to the contrary in this section notwithstanding, to the extent that an employer engaged in interstate commerce complies with a recommendation contained in CDC guidance or other federal standards or guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV2 and COVID-19 related hazards or job tasks addressed by this standard, the employer's actions shall be considered in compliance with this standard.

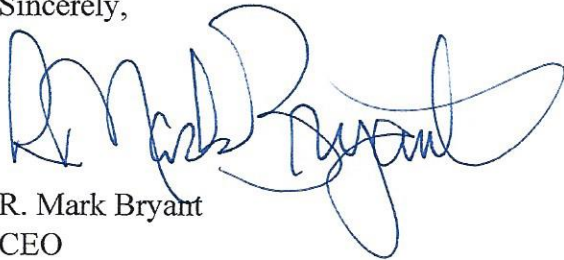
The Board previously responded by declining to make the proposed revision to section G.1. but we at the Buckingham Branch encourage you to reconsider.



Virginia's economy has been devastated by Covid-19. Small businesses, the working class, and the poor have been disproportionately affected. While everyone would agree it is necessary to take reasonable precautions with Covid-19, we in the small business community believe that it is vital to remove burdensome and unnecessary regulations on Virginia's businesses so that we can allow our economy regain strength so that all Virginians may benefit and flourish.

Thank you for considering our comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Mark Bryant". The signature is fluid and cursive, with the first name "R. Mark" and last name "Bryant" clearly distinguishable.

R. Mark Bryant  
CEO

CC: Governor Ralph Northam  
Brian Ball, Virginia Secretary of Commerce & Trade  
Shannon Valentine, Virginia Secretary of Transportation  
Mark J. Peake, Senator, Virginia Senate  
C. Matt Fariss, Delegate, Virginia House of Delegates