

June 9, 2021

Mr. Jay Withrow  
Director, Legal Support, VPP, ORA, OPP, and OWP  
Main Street Centre  
600 East Main Street, Suite 207  
Richmond, VA 23219



Re: Comments regarding Heat Illness Prevention Standard [under development] [16 VAC 25 - 210]

Dear Mr. Withrow:

On behalf of the Virginia Wine Industry, the Virginia Wineries Association and the Virginia Vineyards Association are writing to provide comment on the notice of intended regulatory action regarding a possible heat illness prevention standard. Our associations represent the winery, cidery, and vineyard industries in the Commonwealth. We do not believe it has been demonstrated that a standard is necessary with the use of the industry's best practices and the Department's authority under the "general duty" clause to protect workers from unsafe working environments in which heat illness and stress may be a threat. The industry like so many others, recognize the value in their workforce and the need to provide adequate resources to keep them healthy and productive.

In our opinion, the Department's background document has not made the case that the heat illness standard is necessary. The Department cites only 11 workplace investigations over a 22-year period in Virginia. However, no outcome data is presented on those investigations or whether employer negligence was the cause of those incidents. Additionally, we take issue with the Department making assumptions of undercounting in Bureau of Labor Statistics data regarding agricultural injuries and fatalities as cited in footnote 3 of the agencies background document. The citation provided is from a petition to the Occupational Safety and Health Administration. Small operations, like ours, with fewer employees tend to have less land to cover and more access to shade and water. Decisions by the Board should be made based on the data available, and not unverifiable assumptions of a greater danger than exists.

Virginia wineries and vineyards take heat illness very seriously. Many wineries and vineyards employ family members, neighbors, and friends, and often are worked by the owners themselves. A healthy work force means a productive harvest. Here are some of the best practices currently being applied by our industry:

1. Water and cold drinks are always readily available and near workers in coolers. Wet rags are also kept in coolers to be used by workers around necks and under hats.
2. Regular breaks are mandated for the crew (ranging from hourly to every 2 hours depending on the temperature)
3. Shade is provided for the crew during these breaks or as needed, either in an appointed building, cluster of trees, canopy tent on the UTV, or a tent.

4. Lightweight, light colored t-shirts are often provided to wear.
5. A "preshift" meeting is held with the crew, discussing the predicted weather for the day, reminding them to drink water, wear sunblock, and to take breaks as needed. Conversations are translated into Spanish by the crew leader if needed.
6. One person (usually the crew leader) is made responsible for checking with all crew members to make sure they are staying hydrated, not showing any signs of distress, and to force breaks if needed. Also, the crew leader is responsible for determining the lunch stop and when the crew needs to stop for the day based on temperatures and humidity.

The industry follows the NIOSH guidelines for the prevention of heat illness and provides training for their permanent employees and seasonal workers. As noted by the Department, the Occupational Safety and Health Administration has not adopted a national standard and we would urge the Board not to adopt a Virginia-specific regulation until one is adopted at the federal level.

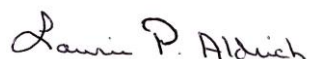
The wine grape industry is seasonal in nature and relies on timing and weather to complete planting, pruning, harvesting, and crushing of their crop. The requirements found in HB 805 of the 2020 General Assembly session were very specific regardless of circumstances or operation and would have created a statutory framework which would have been difficult for our diversified industry to comply.

The Department fails to give adequate reason as to why the "general duty" clause of the federal Occupational Safety and Health Act of 1970 requiring the employer to provide a safe working environment along with the potable water requirement, are not sufficient enforcement mechanisms to properly protect employees. Given the relatively few workplace investigations in Virginia over the number of years provided, we believe the "general duty" clause should be sufficient for VOSH to protect workers from unsafe working environments.

If the Safety and Health Codes Board chooses to move forward with a standard, the specific nature of our industry and other agriculture entities need to be considered therefore, we respectfully request the Virginia Agribusiness Council and the Virginia Farm Bureau be allotted various representatives on the Regulatory Advisory Panel. Additionally, the regulation should allow ample time to comply, provide any required training to their employees, and provide reasonable flexibility for compliance.

Should any wine or vineyard specific questions arise, we will gladly serve as a resource. Thank you for this opportunity to comment.

Sincerely,



Laurie Aldrich  
Executive Director