

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(ALEXANDRIA DIVISION)

BUILDING AND CONSTRUCTION TRADES)
DEPARTMENT, AFL-CIO, et al.,)
)
Plaintiffs,)
)
v.)
)
WILLIAM T. COLEMAN, JR., et al.,)
)
Defendants.)
_____)

CIVIL NO. 76-155A

FILED

OCT 13 1976

CLERK, U. S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

CONSENT JUDGMENT

The Plaintiffs having filed their complaint demanding various forms of injunctive relief as appears more fully by the said complaint and prayer for relief therein, and the Plaintiffs and Defendants John E. Harwood, State Highway and Transportation Commissioner and Chairman of the State Highway and Transportation Commission for the Commonwealth of Virginia, and the members of the State Highway and Transportation Commission of the Commonwealth of Virginia (hereafter "the State Defendants") having agreed upon entry of a Consent Judgment in this action and a dismissal of the complaint on the basis of the Stipulation which has been filed with the Court, and due deliberation being had thereon; and it further appearing that no notice of hearing upon entry of said Final Judgment need be given; now, on motion of counsel for the Plaintiffs, it is

ORDERED, ADJUDGED AND DECREED that the complaint herein be dismissed without prejudice as to the State Defendants, and

that neither this Final Judgment nor the Stipulation filed with this Court, nor anything contained herein or therein, shall constitute an admission on the part of the State Defendants that the subject matter of the suit extends to the terms of the Stipulation.

The entry of this judgment shall not preclude any party from bringing an action to enforce the terms of the Stipulation in an appropriate court.

FKB.1
United States District Judge
10/13/76.

ENDORSED:

[Signature]
Counsel for Plaintiffs

ENDORSED:

[Signature]
Counsel for State Defendants

October 13, 1976

A True Copy, Teste:
W. Farley Bowers, Jr., Clerk
By *[Signature]*
Deputy Clerk

UNITED STATES DISTRICT COURT
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)	
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_____)	

STIPULATION

This matter is before the Court on agreement of the Plaintiffs and the Federal Defendants to this litigation that the matters at issue between them may be resolved by entry of a consent judgment without benefit of a hearing.

WHEREAS the Federal Highway Administration desires to provide national leadership in strengthening procedures to assure that proper attention is given to maintaining construction zones through which the public can safely travel, and to support the provision of safe working conditions in construction zones; and

WHEREAS the plaintiffs have demonstrated their interest in insuring that the movement of traffic through construction zones is controlled in a manner that is conducive to the safety of motorists and workers; and

WHEREAS it is agreed by the parties that for purposes of this agreement the following terms shall bear the stated definitions:

FHWA is the Federal Highway Administration, United States Department of Transportation.

Construction zone is the geographical area, together with adjacent areas within the highway right-of-way, in which a Federal-aid highway construction project is undertaken from the time that physical construction commences until the date of final inspection.

MUTCD is the Manual on Uniform Traffic Control Devices, 1971 edition, as revised.

It is hereby consented and stipulated by the Plaintiffs and the Federal Defendants:

FIRST. Pursuant to and in furtherance of the provisions of the five (5) page Program Emphasis Area established by FHWA Order 1000.1A, CHG. 1, May 14, 1976 (attached hereto as Exhibit A and the terms of which are incorporated by reference herein), for traffic safety through construction zones, the FHWA agrees promptly to initiate a review of its regulations, directives and procedures related to carrying traffic safely through construction zones with special attention being given to experiences noted on I-495 in Virginia and, furthermore, to make whatever changes are appropriate to establish proper traffic control standards for Federal-aid highway construction projects.

SECOND. Modifications of regulations relating to standards for traffic safety through construction zones resulting from the foregoing reviews shall be published in proposed or, when expeditious handling warrants, interim form in the Federal Register for notice and comment. Nothing in this stipulation shall be deemed to modify the requirements of the Federal Advisory Committee Act.

THIRD. The FHWA shall issue an advance notice of proposed rulemaking in the form attached, inviting public comment on the following proposals for Federal-aid highway construction projects involving construction zones which are open to traffic on any Federal-aid system:

1. The inclusion in the plans, specifications and estimates (PS&E) for each proposed project of a reasonably specific traffic control plan for moving traffic through or around the construction zone in a manner that is conducive to the safety of motorists and workers.

2. The designation, prior to the commencement of work, by the highway agency administering the project of a full time or part time project staff person who will be principally or primarily responsible and will have meaningful authority for assuring that the traffic control plan and other safety aspects of the project are effectively administered.

Comments and suggestions are to be specifically invited on a) the advantages and disadvantages of the proposals, b) the varying degrees to which the proposals might apply depending upon such factors as project size and complexity and the type of facility involved, and c) additional or alternative methods for improving construction zone safety.

FOURTH. The FHWA shall continue to sponsor training programs designed to educate field forces in proper traffic control techniques.

FIFTH. The FHWA shall continue to sponsor appropriate research on the safety and efficacy of timber barricades of the general type defined in the Complaint and used in the I-495 Construction Zone. In the event that such research demonstrates that timber barricades should not be used in any particular manner, configuration or location, the FHWA shall process standards reflecting the results of that research.

The FHWA reaffirms its commitment to the principles that: (1) channelization devices should be of such designs as will not inflict any severe damage on a vehicle that inadvertently strikes them; and (2) temporary barriers used in construction zones should conform to certain performance standards. As part of its review of regulations, directives and procedures, described above in paragraph FIRST, FHWA agrees to take appropriate steps to adopt, or recommend adoption of a mandatory proscription on channelization devices of such designs as will inflict severe damage on a vehicle that inadvertently strikes them. The FHWA shall promptly identify or develop, and as soon thereafter as is practicable shall propose, comprehensive performance standards for temporary barriers in construction zones. The FHWA shall conduct research

intended to develop a temporary barrier capable of satisfactory performance at impacts of up to 60 mph and 25 degrees.

Louis Sherman, Esquire
For the Building and
Construction Trades
Department, AFL-CIO

Robert T. Tiemann
Federal Highway Administrator
Federal Highway Administration
United States Department of
Transportation

Lynne D. Smith
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STIPULATION

This matter is before the Court on agreement of the Plaintiffs and the State Defendants to this litigation that the matters at issue between them may be resolved by entry of a consent judgment without benefit of a hearing.

WHEREAS, the State Defendants desire to provide continuing leadership in strengthening procedures to assure that proper attention is given to maintaining construction zones in Virginia through which the public can safely travel, and to support the provision of safe working conditions in construction zones; and

WHEREAS, the Plaintiffs have demonstrated their interest in insuring that the movement of traffic through construction zones is controlled in a manner that is conducive to the safety of motorists and workers; and

WHEREAS, it is agreed by the parties that for the purposes of this agreement the following terms shall bear the stated definitions:

1. VDHT is the Virginia Department of Highways and Transportation.

2. FHWA is the Federal Highway Administration, U.S. Department of Transportation.

3. Construction Zone is the geographical area, together with adjacent areas within the highway right-of-way, in which a Federal-aid highway construction, reconstruction, maintenance or improvement project is undertaken from the time that work commences until the date of final inspection. Any reference herein to a highway, project, or construction zone shall apply only to Federal-aid highways, projects, and construction zones thereon.

4. MUTCD is the Manual on Uniform Traffic Control Devices, 1971 edition, as revised.

It is hereby consented and stipulated by the Plaintiffs and State Defendants:

FIRST

FHWA Notice N 5160.24, dated August 30, 1976, directed to all FHWA field offices, states in part:

"c. Preliminary information suggests that from a safety perspective devices other than the 'timber barricade' type can be utilized to control traffic as effectively and in a more suitable manner in certain situations."

And under the "Action" part of that notice, provides:

"b. Serious consideration must be given to the use of alternative devices in accordance with Part VI of the MUTCD and sound engineering practice. If a positive barrier is needed, devices such as concrete (safety shape) barriers or metal-beam guard rail are to be used. If channelization or delineation is the primary need, effective alternatives include Type II barricades, cones, drums and vertical panels."

Consistent with the above notice, VHDT agrees, in cooperation with FHWA, to continue its analysis of barrier systems and

traffic control devices and practices for use in construction zones. The purpose and object of this analysis is, and shall continue to be, to define the appropriate use in construction zones of portable precast concrete barriers; metal-beam guard rails; delineation devices, such as vertical panels, cones, drums, and Type II barricades as defined in the MUTCD; and timber barricades.

SECOND

In selecting barrier systems and traffic control devices and practices for use in construction zones, VDHT agrees that the following policies apply:

a. under conditions where controlled retention of errant vehicles is necessary and proper, the barrier system should be of a design which contains and redirects vehicles while minimizing the damage to a vehicle which inadvertently strikes it, and

b. under conditions where vehicle retention is not necessary, appropriate delineation and channelization devices, not designed to retain vehicles and designed to minimize damage to vehicles which inadvertently strike them, should be used, and

c. compliance with Section 6C-1 of the MUTCD that channelizing devices should not inflict any severe damage to a vehicle that inadvertently strikes them.

VDHT further agrees to insure that all devices employed on future projects for the purpose of safely routing traffic through construction zones are in compliance with applicable regulations of FHWA.

THIRD

For projects in which traffic moves through or around a construction zone, VDHT shall continue to designate an official or officials from the appropriate District or Residency office to act as a safety officer. On future projects, such official, who may have other duties as well, shall have as his or her principal responsibility:

a. the duty to assure that appropriate traffic safety aspects of the project, including any traffic control plan, are properly adhered to; and

b. the duty to examine as promptly as possible the scenes of serious motor vehicle accidents which bear on safe traffic practices in the construction zone and such other accidents which would reasonably indicate to the safety official a need to investigate or correct traffic safety conditions in the construction zone; and to assure that road conditions in the locale of such accidents are in compliance with applicable safety standards and, if not, to effectuate compliance.

VDHT shall insure that an adequate number of safety officials are assigned to perform such duties consistent with the size and traffic volume density and speed of each project which may result in more than one project being assigned to one official but, in any event, each future project will be assigned to at least one official.

The aforesaid official shall be vested with the authority to take such steps as are necessary to perform his or her duties.

FOURTH

VDHT agrees to develop further, for use on each future project on which the size of the project, the volume, density or speed of traffic so warrant, a reasonably specific traffic control plan for moving traffic through or around the construction zone in a manner conducive to the safety of motorists and workers. While it is recognized that traffic control plans necessarily must differ to conform to the circumstances of each project, basic safety considerations must be evaluated for all projects. In developing such traffic control plans, VDHT shall include appropriate provisions which regulate the following: signing; application and removal of pavement markings; construction scheduling and hours of work; flagging; use of pilot cars; methods and devices for delineation and channelization; placement and design of barriers and barricades; storage of equipment and materials; removal of construction debris; geometrics of detours; access for emergency vehicles; clear roadside recovery areas; provisions for disabled vehicles; roadway lighting; movement of construction equipment; length of project under construction at any one time; speed limits; minimizing construction times consonant with safety; surveillance and inspection; transition tapers; and modification of items above under conditions of darkness or inclement weather.

The foregoing enumeration of safety aspects shall not be considered exhaustive. New considerations to improve traffic control plans for construction zones should be accommodated as required.

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FIFTH

VDHT affirms its policy of insuring that the traffic control devices and practices employed on projects are in compliance with regulations of FHWA. Consistent therewith VDHT will not use or allow to be used in construction zones on future projects, any traffic control devices or practices, whether experimental or not, which do not meet the requirements of the MUTCD or are not approved for use thereon by FHWA. Experimental traffic control devices or practices not approved by the MUTCD are to be used only if they are specified in PS&E and the PS&E state a scientific basis, or a reasoned basis if adequate scientific data is not available, for believing that the device or practice is effective for the purpose intended and conducive to safety. Experimental traffic control devices or practices not approved by the MUTCD may be used if a need for any such devices or practices arises after commencement of a project, only if there exists the same basis for believing that the device or practice is effective for the purpose intended and conducive to safety, such basis to be set forth in writing to the appropriate officials.

As part of the policy of VDHT to evaluate new procedures employed in construction zone traffic control, where such experimental devices and practices are justifiably employed on a project, VDHT shall study and evaluate the safety and effectiveness of such devices and practices. Whenever such devices or practices are found to have a significant impact on traffic or worker safety in construction zones, such findings shall be reported in writing to the appropriate officials.

SIXTH

VDHT shall continue to sponsor programs for training and continuing education and shall provide further emphasis on traffic safety techniques in construction zones for its personnel who are responsible for the design, implementation and inspection of traffic control practices and procedures. VDHT shall insure that such training properly emphasizes the elements of traffic control plans, as described in item "FOURTH" above, and review of the traffic control measures outlined in Part VI of the MUTCD. Such training shall further include on-site inspection of traffic safety conditions on existing construction projects.

SEVENTH

Through appropriate supervisory officials from its Residency, District or Central Offices (other than the project safety officers described in "THIRD" above), VDHT shall periodically conduct on-site reviews of construction zones selected for the purpose of ascertaining compliance with applicable traffic safety procedures and to apprise the appropriate officials of the results of such reviews, including positive actions found on projects which enhance safety conditions as well as general problem areas. Significant safety problems and positive features shall be reported in writing to the appropriate office.

EIGHTH

VDHT agrees that it will expand its current review of its policies, regulations, standards and procedures related

to carrying traffic safely through construction zones to include experiences noted on I-495 in Virginia and the subjects of this stipulation, and to make whatever changes are appropriate to establish proper traffic control standards for highway construction projects in Virginia.

As a matter of existing Departmental policy and in accordance with the foregoing review, VDHT will insure that its State MUTCD establishes requirements at least equivalent to those contained in the national MUTCD, and that future changes in the national MUTCD are incorporated in or exceeded by the State MUTCD. All changes will receive appropriate statewide circulation.

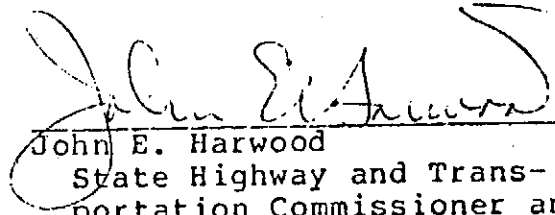
NINTH

VDHT recognizes that it is charged with the responsibility to promote highway safety throughout the Commonwealth of Virginia. Projects currently under construction in Virginia will be reviewed in light of the terms of this Stipulation with the objective of improving any traffic control practices that are unsafe. However, nothing herein contained shall be construed to indicate the willingness or the obligation of VDHT to adopt any policy, procedure or regulation, or adhere to any standard which is contrary to or conflicts with applicable regulations of FHWA, it being the intent hereof to enable a cooperative effort between FHWA and VDHT on the foregoing subjects. Furthermore, nothing herein contained shall be construed to create any financial liability on the part of VDHT to the

Plaintiffs or others in the event of any action or proceeding initiated by them in any State or Federal court which disputes compliance by VDHT with the terms of this Stipulation.

/s/

Louis Sherman, Esquire
For the Building and
Construction Trades
Department, AFL-CIO


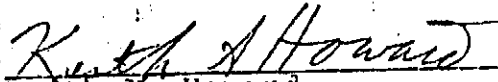


John E. Harwood
State Highway and Trans-
portation Commissioner and
Chairman of the State High-
way and Transportation Com-
mission for the Commonwealth
of Virginia

/s/

Lynne D. Smith

For the State Defendants


Robert Berman
Keith A. Howard

/s/

Gerald A. Donaldson

/s/

Lois W. Paul