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CRISIS SPURS INSPIRING PARTNERING BETWEEN AGENCIES & INDUSTRY

by Robert E. Latham, CAE, APC Executive Vice President

To state the obvious, the COVID-19 virus introduced unprecedented challenges to our nation. Governor Wolf’s orders beginning March 12, 2020, initiated virus mitigation actions by the Commonwealth, the PA Department of Transportation (PennDOT) and the PA Turnpike Commission to slow the virus’s spread in an effort to protect citizens, employees, and business partners alike.

In conjunction with the governor’s order, PennDOT and the PA Turnpike Commission placed construction projects on hold to minimize exposure for agency, private-sector employees, and residents of the communities where they live and work.

In the days immediately following the construction suspension, then Acting PennDOT Secretary Yassmin Gramian established a team including representatives from PennDOT, the PA Turnpike Commission, the PA Division Office of FHWA, the Associated Pennsylvania Constructors (APC), and the Pennsylvania chapter of the American Council of Engineering Companies of PA (ACEC/PA) to work collectively to develop COVID-19 guidance to safely restart heavy highway construction. For example, APC president Chuck Niederriter helped format the COVID safety policy by introducing Golden Triangle’s plan as an initial template. The team expanded upon this starting point.

Keeping virus mitigation safety in the forefront of actions, seven teams of up to 10 persons went to work to develop plans to restart projects, develop virus mitigation safety standards, overcome barriers, initiate risk-based inspection, safely open facilities, manage contracts to reduce delays and disputes, and restart the lettings program. Teams worked almost non-stop for a week. All of the teams were led by PennDOT officials either from Districts or Central Office. Their dedication, attention to everyone’s needs, and tenacity was amazing.

APC Treasurer Scott Grannas summed up our appreciation to our agency partners in an email to his team members:

“I want to compliment our team on how hard everyone worked. It gave me renewed appreciation for Dept and PTC people. I am a big work ethic guy. I grew up as a laborer on a paving crew, and so I appreciate effort and hard work. To be on calls from 7 pm to 9 pm, then back at it at 7 am the next morning, I was impressed. I enjoyed serving with you all. We all should be proud of what was accomplished in a short period of time. Thanks.”

The plan was for the PennDOT and the PA Turnpike Commission to use a three-phase approach to restart projects. The phased approach allowed for control in resuming construction. More specifically, guidelines for fabrication, materials, testing, and labor compliance were provided. Recommendations for use by the Department/PA Turnpike and Contractor staff to minimize contract cost adjustments and claims avoidance were also provided. Guidelines were provided for maintaining facilities for each entity to follow.

Personally, I think it’s fair to say that no other industry or profession developed as comprehensive a COVID-19 plan to allow workers to stay on the job and do so in a safe manner. It’s also important to note that the plan recognized, in some cases, private-sector and public-sector employees needed flexibility to choose to return to work or not.

I started with APC in 1979, and my first experience with PennDOT included observing the leadership of Secretary Dr. Thomas Larson, Deputy Secretaries Dave Sims, Jim Scheiner, and Howard Yerusalim. Among my early mentors were Bureau Directors Ben Rocuskie, Phil Amos, and Jim Moulthrop. I’m sure they would all agree that this project with its spirit of innovation and cooperation was one of the collective industry’s finest hours.
It’s as official as the first day of spring. The 60-day pre-enforcement period for the Automated Work Zone Speed Enforcement (AWZSE) program has ended and speeding through highway work can cost violators.

The AWZSE program uses vehicle-mounted systems to detect motorists exceeding posted work zone speed limits by at least 11 mph using electronic speed timing devices. These systems are only operational in active work zones where workers are present.

As of March 4, owners of offending vehicles will receive a warning letter for a first offense, a violation notice and $75 fine for a second offense, and a violation notice and $150 fine for third and subsequent offenses. No points will be assessed to driver’s licenses.

"Through the Automated Work Zone Speed Enforcement program, we are urging motorists to slow down and pay attention while driving, especially through work zones where roadway conditions can change on a daily basis," said acting PennDOT Secretary Yassmin Gramian. "In 2018, 23 motorists were killed in Pennsylvania work zones. Ultimately, this program is not about issuing violations, it’s about saving lives."

Associated Pennsylvania Constructors (APC), Pennsylvania Highway Information Association (PHIA) and the construction industry worked long and hard to advance this initiative. We know it works, because Maryland’s program has reduced work zone speed violations to less than 1% of drivers. The rate was 7% when the program began several years ago.

"Those who complain about this program contend it’s simply a government money-grab, but the experience in Maryland shows the opposite," said PHIA Managing Director Jason Wagner. "Fine revenue has actually decreased in Maryland because the driving public has learned that breaking the speed laws in work zones will take money out of their pockets."

Wagner noted that speed and distracted driving – or both – are the leading causes of work zone crashes.

PA Turnpike CEO Mark Compton explained that the goal is to build awareness and change unsafe driving behaviors. “The program serves as a roadway reminder that safety is literally in each driver’s hands when they are behind the wheel.”

In 2018 there were 1,804 work zone crashes in Pennsylvania, resulting in 23 fatalities, and 43% of work zone crashes resulted in fatalities and/or injuries. Excessive speed was listed as a factor in 47% of work zone crashes that year.

“Highway workers deserve to go home to their families after their shifts, just like everyone else,” Wagner said. “This law will save lives and prevent serious injuries not only for construction workers but for motorists as well.”

For more information on the AWZSE program, including a list of projects where the units are deployed, visit WorkZoneCameras.PennDOT.gov.
Since 1970, PennDOT has lost 89 workers in the line of duty. The PA Turnpike has lost 45 workers since 1945.

One of the AWZSE Vehicles is on display at the 2019 Fall Seminar.

PHIA Director Jason Wagner speaks at a press conference in spring 2019 held during Work Zone Awareness Week.
In March, APC launched *The Industry Advocate*, which provides the latest legislative and political news affecting our industry as well as informs members on how to get involved in advocacy efforts.

A crucial part of APC’s mission statement is to: “Advocate adequate funding for Pennsylvania’s highway and transportation needs.” In order to accomplish this mission, the industry must take a “strength-in-numbers” approach in order to collectively and effectively ensure that the interests of the highway construction industry are heard within the halls of the State Capitol. But, before a unified approach can be taken, we must have the information, tools, and resources to accomplish our mission. *The Industry Advocate* will provide that.

We – collectively – must be the voice for the highway construction industry. We need your help in this mission and we hope that this new publication will be useful to you and your company.

Visit the “Advocacy” page on paconstructors.org to join the mailing list for *The Industry Advocate*. 

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APC’s Bridge Committee last met on Feb. 4, 2020 in the APC Board Room. The meeting was run by PennDOT Bridge Design & Technology Division Chief Tom Macioce and assisted by APC Bridge Committee Chair Mic Girondo. Additional PennDOT staff and industry members were also in attendance. Below is a brief summary on the agenda items discussed during the meeting.

**Temporary Anchor Update - S.O.L. 483-119-02**
The committee is working with PACA to develop Certification Courses across the Commonwealth for inspection staff and installers. If you have a need for this certification, please contact PACA for more information. Once courses are completed, PennDOT plans to issue a Strike-off-Letter (SOL) for use of adhesive anchors on projects pending the proper certifications are achieved by installers. The SOL is expected in spring 2020.

**BD 620M Wind Loading on Girders**
Revised changes were made and are addressed with the new notification released.

**408 Re-Write Changes**
The revisions for the PUB408 were sent to FHWA for approval and will be published for 2020 release. Additional revisions that are currently being addressed will be published in the first update of the new 2020 PUB408.

**TQI**
Specifications were to be released this fall for both protective & aesthetic and coatings. Also, it was discussed that PennDOT should have constructability reviews and open meetings with contractors and consultants to get better input during the design phase. These meetings should include field-level employees for better input regarding how things are constructed.

**Strut & Tie Design Methodology**
This design is optional, not mandatory, to design elements. Check with PennDOT if the situation of use is appropriate.

**BC-772**
The revised BC should be released in spring 2020. The plans are to hold a webinar for explanation of details and calculation methods utilized.

**Steel Diaphragms**
The decision was made to create a team from industry and PennDOT to discuss options for the industry to be able to decide what is best on a situational basis on each project.

The next meeting date is to be determined.
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APC’s Risk Allocation Committee last met Jan. 29, 2020 at the PennDOT Materials Lab. The meeting was run by PennDOT Acting Chief of Construction & Materials Division Joe Robinson and assisted by Section Chief Brent Trivelpiece. Also in attendance for the meeting were various District ADEs and other PennDOT staff. Below is a brief summary on the agenda items discussed during the meeting.

THE FOLLOWING TASKS HAVE BEEN COMPLETED:

✓ PUB408 Rewrite
  • Effective April 10, 2020 (See ECMS Files Cabinet for updates)
  • The committee is currently working to get the redlined documents available for the industry to access.

✓ Use of Like Items

✓ Under Supervision of a P.E./ Licensed Professional

✓ Crew size on scaling

✓ Certifications for temporary materials

✓ Presentation of modified items of work as standard item numbers

THE FOLLOWING TASKS ARE IN PROGRESS OR ACTIVE

Regulated Fill
The Department has assigned John Fleming as the liaison with DEP & PennDOT. The industry continues to voice its concerns with the conflicting issues of Pub281, which was released in the fall of 2019. Our next steps will be forming a task force committee comprised of APC and Department members to work through the details and come up with a solution that will satisfy both as well as DEP.

ECMS - Force Account / Diesel Index
The Department has finalized the update to correct the issues in ECMS Force Account with equipment. All work taking place in 2020 should be utilizing ECMS for all Force Accounts. The industry proposed the idea of increasing the percent on allied pricing to assist in negotiations of work. The Department is still working on the enhancements needed for the Diesel.
Fuel Adjustments. Look for this to be released to the industry later in 2020 once the next ECMS updates take place.

Confined Space Disclosure
PennDOT is examining how other states are addressing this issue and setting up a meeting early in 2020 with industry and OSHA to work through the details of what may need to be provided. Initial conversations have taken place between PennDOT and OSHA concerning confined space and we intend to hold a meeting with all parties at a date and time to be announced in the near future.

Digital Delivery
APC and the PennDOT held an initial meeting last summer for the Department to better understand the needs of the industry related to Digital Delivery. The Department has a consultant working on 3D models and should have something preliminary to share with the industry by spring or early summer of 2020. The Department is looking for industry partners to sit in on a task group for comments moving forward as they develop the models. APC will be looking for members to participate in this group. If interested, please contact Aaron Hoover at APC.

Future meetings have been postponed at this time and will likely be moved to a virtual setting due to the COVID-19 pandemic. Please check the APC webpage for up-to-date information on meetings.
The TCI-PAC is the "focused and aligned" political voice of the transportation construction and materials industries. We thank these firms who have pledged their support.

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PENNSTRESS
Swank Construction Company LLC

**GOLD/ $10,000**
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Grannas Bros. Stone & Asphalt Co. Inc.
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Loftus Construction Inc.
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Showing once again that it is at the forefront of infrastructure, the Pennsylvania Department of Transportation (PennDOT) has set a vision that by 2025 all construction projects will have the ability to be bid using 3D technology. HDR, taking the lead, along with Gannett Fleming, will work together on the move away from the traditional construction plan format to create and implement the Digital Delivery initiative.

PennDOT is currently in the planning phase of its five-year initiative, which includes seeking input from all stakeholders, as well as reviewing current processes and technology. The next step is creating a detailed plan that will guide the development and deployment of the initiative.

Digital Delivery uses 3D models and other digital information instead of traditional plan sheets to communicate the design intent. These digital files then become the single source of truth that is contractually binding, and they allow users to construct and inspect the project.

How will this be achieved? The tools to create traditional plan sets will be updated to use modern civil design software that creates a digital model for construction. For example, the design elements in the digital model will be represented in 2D and 3D, and can include links to file attachments, such as traditional details or call outs, calculations,
photos, videos, specifications, and special provisions. The 3D model will represent the design intent, and project teams will be able to view profiles and cross-sections directly from anywhere in the model, rather than using sheets to view them at specified intervals.

PennDOT’s Digital Delivery initiative will enhance design quality, reduce risk and project costs, increase construction efficiencies on the contractor and owner side, and improve records in the as-built environment. For example, the initiative includes a plan to transfer relevant digital data throughout the project lifecycle, from design, to construction, to asset management, allowing it to be used in survey and construction equipment, field applications, and to augment asset inventory.

Another benefit is the ability to reduce project cost increases caused by design errors and change orders. According to a 2018 study conducted by FHWA*, plan quantity changes, unforeseen conditions, and plan errors and omissions account for approximately 64% of change orders. Digital delivery offers the opportunities for PennDOT to reduce the costs associated with these change orders by visualizing the existing terrain conditions and proposed design, allowing for clash detection, and quality reviews earlier in the process. It will not catch all design errors or eliminate change orders, but it can help reduce them significantly.

The team is currently deep in the plan-development phase and is planning a webinar and four regional virtual workshops that will involve all stakeholders and culminate in one overall strategic planning workshop. The results will generate the strategic roadmap that will guide PennDOT on its five-year journey.

Cannabis & Construction: Medical Marijuana in the Pennsylvania Workplace

by Denise E. Elliott, McNees, Wallace & Nurick LLC

Four years later, while there remains a lot of uncertainty, we also have much more guidance. So, here’s what we know now:

1. Medical marijuana patients are likely protected by state disability discrimination laws.

The serious health conditions for which patients may use medical marijuana have one thing in common: they are disabilities. Accordingly, it logically would follow that those using medical marijuana to treat a disability would be protected from disability discrimination. However, the Americans with Disabilities Act (ADA) does not protect medical marijuana users, because they are not qualified individuals with a disability. Individuals currently engaging in the use of illegal drugs are not qualified individuals. Notably, because the ADA is a federal law and because marijuana is illegal under federal law, an individual using medical marijuana is not protected by the ADA. In 2017, however, the Massachusetts Supreme Court held that an individual legally using medical marijuana in accordance with state law would be protected from disability discrimination under the state law equivalent to the ADA. See Barbuto v. Advantage Sales and Marketing (Supreme Ct. Mass, July 2017).

In the Barbuto case, the plaintiff told her prospective employer that she would fail a pre-employment drug test because she used medical marijuana and asked for accommodation — that the employer waive its policy of barring anyone from employment who tests positive for marijuana. The court found that such accommodation was facially reasonable and where the employer did not engage in the interactive process to evaluate the reasonableness of the requested accommodation, it violated Massachusetts state disability discrimination laws. Courts in other states, including Delaware and New Jersey, have followed the Barbuto reasoning, making it clear that failure to engage in interactive processes with employees who disclose use of medical marijuana exposes the employer to a claim for disability discrimination under state law.

Though no court in Pennsylvania has weighed in on this question, it is reasonable to predict that a Pennsylvania court will follow the trend. Accordingly, employers in Pennsylvania are cautioned to treat medical marijuana users as individuals with disabilities and to engage in the familiar interactive process with these individuals to determine whether their use of medical marijuana can be accommodated.

2. Act 16 contains an employment anti-discrimination provision for which an employee may assert a cause of action in state court.

Act 16 contains an anti-discrimination provision that states: "no employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location, or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana." [Section 2103(b)(1)]. Since the passage of Act 16, employers have wondered how this provision would be enforced. In November, a judge in Lackawanna County stopped the wondering. In Palmer v. Commonwealth Health Systems, Docket No. 19-CV-1315 (Lackawanna Cty. C.C.P. 2019), Judge Terrance Nealon ruled that the plaintiff could proceed with her lawsuit alleging discrimination by her employer in violation of Section 2103. In doing so, Judge Nealon rejected arguments by defendant that Act 16 did not create a private right of action, and that Section 2103 should be enforced through fines issued by the Department of Health. Judge Nealon’s decision echoed those of courts in Rhode Island, Delaware, and Connecticut.
and effectively created a new protected classification under Pennsylvania Law – “certification to use medical marijuana.”

Considering this decision, certified users in Pennsylvania who believe they were the victim of discrimination can file a claim in the Court of Common Pleas. There is no requirement that the plaintiff exhaust administrative remedies or take other steps to adjudicate the claim before filing into court. Further, although the court has not yet weighed in on this question, it appears that the plaintiff will be able to seek the usual damages available for discrimination claims – backpay, front-pay, and certain compensatory damages. Employers should take care to ensure that their drug testing policies do not single out those who are certified users of medical marijuana. Treating medical marijuana like a prescription medication and treating certified users similarly to those taking prescription opiates, for example, is recommended.

3. Use of medical marijuana is probably not a “legitimate medical reason” for testing positive for marijuana on a drug test; thus, the test will be deemed positive.

Before a drug test is verified as positive, a medical review officer (MRO) must first ask the individual whether he/she has a legitimate medical reason for testing positive. For example, use of prescription Adderall is a legitimate medical reason for testing positive for amphetamines. Does this same rationale apply to medical marijuana users?

It does not. In 2017 the U.S. Department of Transportation, in its “Medical Marijuana Notice,” stated in no uncertain terms that, “the Department of Transportation’s Drug and Alcohol Testing Regulation – 49 CFR Part 40, at 40.151(e) – does not authorize “medical marijuana” under a state law to be a valid medical explanation for a transportation employee’s positive drug test result.” Notably, because most MROs follow DOT’s regulations and guidelines for drug testing, regardless of whether the testing subject is or is not a transportation employee, the DOT’s memo has broad implications. Accordingly, even where an individual is legally using medical marijuana under state law, the MRO is likely to verify that an individual’s drug test as positive for marijuana. It will then be up to the employer to verify valid certification and, in accordance with sections 1 and 2 above, to discuss reasonable accommodations with the employee and ensure there is no discrimination.

4. Employers do not have to accommodate use at work, can prohibit employees from performing safety-sensitive jobs while under the influence of medical marijuana, and can discipline employees for working while under the influence of medical marijuana.

So, you’re an employer and you’re now thinking to yourself: “OK, I have to engage in the interactive process with employees who are using medical marijuana and I can’t discriminate against an employee who is certified to use medical marijuana, but do I have any rights to prohibit the use of medical marijuana in my workplace?” “YES!”

Section 2103(b)(2) provides that “nothing in this act shall require an employer to make any accommodation of the use of medical marijuana on the property or premises of any place of employment.” Accordingly, an employer can prohibit employees from using medical
marijuana while on the employer’s property, on job sites, and in employer-provided vehicles. Said another way, allowing an employee to use medical marijuana while at work is simply not a reasonable accommodation.

Act 16 also allows employers to prohibit employees from performing certain safety-sensitive jobs while under the influence of medical marijuana and to discipline employees for being under the influence of medical marijuana in the workplace. Regarding safety-sensitive positions, Section 510 of Act 16 provides that employees may not operate or be in physical control of chemicals requiring a permit or high-voltage electricity or other public utility while under the influence of medical marijuana. Employees may not perform any duties at heights or in confined spaces while under the influence of medical marijuana. Additionally, employers may prohibit employees from performing any task that the employer deems life-threatening and performing any duty which could result in a public health or safety risk while under the influence of medical marijuana. Regarding these two catch-all provisions, employers are cautioned to be proactive in determining which jobs or duties may be life threatening or could result in a public health or safety risk. Being proactive in this analysis and identifying safety-sensitive jobs ahead of any issues should help to avoid the appearance of and claims for discriminatory treatment.

5. A positive drug test, by itself, is likely not enough to demonstrate that an employee is under the influence of medical marijuana.

Unfortunately for employers, the bad news is that there is no easy way to determine whether an employee was under the influence of medical marijuana. Marijuana metabolites can stay in the body for several days/weeks after the actual use of marijuana. Accordingly, a positive drug test does not necessarily mean that the individual was under the influence of marijuana at the time of the test. Further, regular use of medical marijuana, for example by someone who is using medicinally, likely will cause a positive drug test every time the individual is tested. Accordingly, several courts have now held that a positive drug test will not, by itself, be enough to demonstrate that an employee was under the influence of medical marijuana.

Courts in Delaware, New Jersey, and Arizona have all held that absent other evidence that the employee was under the influence at the time of the test, a positive drug test will not be enough to demonstrate that an employee was actually under the influence of medical marijuana. In the New Jersey case (Wild v. Carriage Funeral Holdings (Supreme Ct. NJ, 2019)), the employee, whom the employer knew was using medical marijuana to treat the side-effects of chemotherapy, was tested after a work-related motor vehicle accident, despite the fact that the employee was not at fault for the accident – the other driver ran a stop sign – and the emergency room doctor opined that the employee was not under the influence of marijuana upon admission to the hospital. Accordingly, when the employer disciplined the employee because the test was positive for marijuana, the employee sued. Siding with the employee, the court found that there was no evidence that the employee was under the influence at the time of the accident and that the employee could proceed with a claim for disability discrimination under NJ state law.

Additionally, a Federal Court in Arizona recently held that even where the levels of marijuana present on a drug are exceedingly high, an employer may not rely solely on the test to demonstrate that the employee was under the influence of medical marijuana. Whitmire v. Wal-Mart Stores Inc. (Dist. Arizona, 2019). In Whitmire, the court noted that proving impairment based on a positive drug test is a scientific matter and is not a determination that can be made by an HR Director.

Employers are cautioned that unless they have reasonable suspicion to believe an employee was under the influence at work, they should not discipline based solely on a positive test. Employers should ensure that their drug testing policies allow testing based on reasonable suspicion, and management should undergo reasonable suspicion training. Such training will teach managers to recognize the signs of drug use and resulting impairment, and will provide education on best practices for observing, documenting, and obtaining second opinions regarding reasonable suspicion. Ensuring that management enforces a reasonable suspicion policy fairly will help employers avoid, or at the very least, defend claims of discrimination.

CBD products are not a “get out of jail free card”

Products containing CBD (from beer to skin cream to oils that can be diffused and vaped) seem to be all the rage. These products started turning up everywhere (your local Sheetz convenience store for example) following passage of the Farm Bill! The Agricultural Improvement Act of 2018 (otherwise known as the U.S. Farm Bill), removed hemp from the definition of marijuana under the Controlled Substances Act. Accordingly, hemp is no longer a controlled substance and, because CBD (which stands for cannabidiol) can be derived from hemp, CBD is arguably legal. The problem, however, is that employees who only use these CBD products (or allege to be only using CBD products) are still testing positive for “marijuana,” and then attempting to cite their CBD use as their “get out of jail free card.” So, what does any employer need to know about CBD?

CBD is a chemical compound found in the cannabis family of plants. Notably, cannabis has two main species – the hemp plant and the marijuana plant. CBD is not believed to have psychoactive properties. In other words, cannabidiol will not get you high. The other primary chemical compound found in cannabis plants is THC (tetrahydrocannabinol). THC does have psychoactive properties and is known as the compound that causes the “high.” THC is the compound that is evaluated for drug testing.
purposes. One of the main differences between hemp and marijuana is the concentration of CBD vs. THC that each contains. Hemp, by definition (as noted in the Farm Bill), contains 0.3% or less of THC. Marijuana, can have THC concentrations of up to 20%. CBD can be and is derived from both plant species, but for purposes of technical legality, only hemp-derived CBD is legal under the Farm Bill. To obtain marijuana-derived CBD, in states where marijuana is not legal, an individual would require certification to use medicinal marijuana.

With that mini-science lesson out of the way, what does all of this mean for employers?

Certain CBD products – oils for example – are marketed and sold as dietary supplements that can combat a variety of ailments, for example anxiety and insomnia. The FDA does not regulate the safety and purity of dietary supplements. Accordingly, there is no governmental organization confirming that the CBD product contains (or rather only contains) the ingredients contained on the label. Relative to employer drug testing concerns, there is no governmental organization checking that CBD supplements are actually derived from hemp and do not contain more than 0.3% THC. Thus, there is a risk that the CBD supplement is not what it says it is and an employee who is “only using CBD,” may nonetheless test positive for marijuana on a drug test. Indeed, several lawsuits have been filed against CBD manufacturers arguing that products marketed as containing only CBD and being THC-free, have resulted in employees failing employer required drug tests.

Accordingly, employees using, or claiming to use, “only CBD” has created a haze of uncertainty for employers and how such claims, which typically follow a positive drug screen, should be handled.

For purposes of employees regulated by the U.S. Department of Transportation (i.e. school bus drivers and truck drivers), the answer is clear. Last month, the DOT issued a “CBD Notice” stating plainly:

The Department of Transportation’s Drug and Alcohol Testing Regulation, Part 40, does not authorize the use of Schedule I drugs, including marijuana, for any reason. Furthermore, CBD use is not a legitimate medical explanation for a laboratory-confirmed marijuana-positive result. Therefore, Medical Review Officers will verify a drug test confirmed at the appropriate cutoffs as positive, even if an employee claims they only used a CBD product.

In issuing this Notice, the DOT referenced cautionary statements issued by the FDA:

The FDA has cautioned the public that: “Consumers should beware purchasing and using any [CBD] products.” The FDA has stated: “It is currently illegal to market CBD by adding it to a food or labeling it as a dietary supplement.” Also, the FDA has issued several warning letters to companies because their products contained more CBD than indicated on the product label.

So, for DOT-regulated drug testing, the answer is clear: CBD is not a get out of jail free card. Regardless of the alleged reason for the positive test, a positive test for marijuana will be a positive test for marijuana. Employees in DOT-regulated positions should act accordingly.

But what about non-DOT regulated employees? The answer is not as clear, but there are a few commonsense principles that employers can use to address and hopefully diffuse this issue. First, as noted, employees who are certified under state law to use medical marijuana have certain protections (protection against discrimination, for example). As a result, drug testing may contain exceptions that apply to employees who are certified to use medical marijuana. Because an employee who is using an over the counter CBD supplement likely is not certified to use medical marijuana, that employee would not be protected by the state medical marijuana act. Accordingly, employers may want to include a notation in their drug testing policies that the term “medical marijuana” refers only to marijuana that is obtained in accordance with a state medical marijuana program. Second, employers should remember that employees don’t know what they don’t know. If an employee does not realize that using CBD oil obtained online could jeopardize his employment, he is going to be quite upset when he tests positive for marijuana and is fired. Accordingly, employees should be advised there is a risk to using CBD products, drug testing facilities will not consider alleged CBD use as a legitimate medical reason for a positive drug test, and, if an employee tests positive and does not have a medical marijuana card, the company may treat the positive test as a violation of the drug testing policy. Finally, employees who question an employer for implementing the above-referenced practices could be directed to the FDA-issued guidance on CBD products.

Conclusion

If you’re an employer who has not yet considered the impact of medical marijuana in your workplace, there is no time like the present. Your drug testing policy should be reviewed and updated. You should review your job descriptions to determine which positions/duties, if any, qualify as safety-sensitive under the provisions of Section 501. Management should undergo reasonable suspicion training and you should ensure that your drug testing policy allows for testing based on reasonable suspicion. Finally, do not go it alone. The law regarding medical marijuana use by employees is complicated, complex, and ever changing. You should not hesitate to reach out to your employment counsel for guidance.
**Skelly & Loy Announces Acquisition by Terracon Consultants**

Skelly & Loy Inc. has announced it has been acquired by Terracon Consultants Inc. (Terracon), a consulting engineering firm headquartered in Olathe, Kan. The new acquisition is supported by Terracon’s existing offices in the Philadelphia and Washington, D.C. metro areas, Charleston, W.Va., as well as others in the region.

“We are proud of the strong relationships Skelly & Loy has built over our 50-plus-year history, and that our commitment to outstanding expertise and client service has created this opportunity,” said John Gunnett, PG, president of Skelly & Loy. “This merger allows us to join forces with Terracon’s national network so that we can bring even greater resources to our employees and clients.”

To make this acquisition seamless, Terracon maintained the existing corporate structure of Skelly & Loy. All of Skelly & Loy’s current services will continue to be provided with the same team members. As a practical matter, nothing has changed. The company name will remain Skelly & Loy Inc., as a wholly-owned subsidiary of Terracon.

With this merger, Sandi Loy Bell, the chairman of the board, has retired from the company; Gunnett, will remain as president and will be retiring upon successful completion of the integration. Skelly & Loy’s leadership team will remain intact, led by Sandra K. Basehore, Gerald W. Longenecker, P.E., Paul J. DeAngelo, and Barbara J. Gundy, PhD.

**Urban Engineers Promotes Purdy to State College Office Manager**

Urban Engineers announced that Diane Purdy, PE, has been promoted to associate vice president and office manager of the firm’s State College location. She has served as a senior project manager and bridge engineer at Urban and has more than 30 years of experience.

“Diane is an accomplished professional with excellent technical and interpersonal skills,” said Mark Kinnee, PE, senior vice president and COO for horizontal services at Urban. “It was a logical step to promote her to this new position as she continues to be a leader throughout central Pennsylvania. It is a promotion well earned.”

In her new role, Purdy will be responsible for the viability and success of the firm’s State College office. She will provide leadership to and work directly with general managers in all areas of project management, business development, training, mentoring, and other tasks necessary for the growth of the firm in the region.

Purdy is proud to be a representative of Urban’s Central Pennsylvania operation. A professional engineer registered in Pennsylvania, New Jersey, and Virginia, she earned her bachelor’s degree in structural design and construction engineering from Pennsylvania State University. A Harrisburg-area native, she is happy to call State College home today. Her professional experience includes managing and designing transportation projects, bridges, transit facilities, and building structures. Purdy has expertise in advancing projects from preliminary to final design and preparing contract documents. Additionally, her previous responsibilities have included client development, strategic teaming, and staff development.
Wagman Receives United Way Community Builder Award

Wagman was recognized with a Community Builder Award at the 2019 United Way of York County Campaign Celebration in February. The event celebrated the impact the 2019 United Way campaign made on the community.

Wagman received a Community Builder award in the Construction, Distribution, Logistics and Utilities sector.

“As longtime supporters of the United Way, we instill the importance of community as a core value at Wagman, and we support everyone at Wagman who uses their time, talents, and money to make a difference in our community,” said Lisa Wagman Glezer, senior vice president. She adds, “We were excited to see the increased generosity during the United Way campaign this year and we are honored to be recognized with the Community Builder Award.”

ACEC/PA Honors Skelly & Loy at 2020 Diamond Awards Gala

Environmental Projects Award
The American Council of Engineering Companies of Pennsylvania (ACEC/PA) recently named Skelly & Loy, A Terracon Company, as the 2020 Environmental Projects winner for the completion of the Building for Bats: South Valley Parkway Bat Monitoring and Habitat Mitigation project.

The South Valley Parkway is located within Hanover and Newport townships and Nanticoke City in Luzerne County. Now constructed, the parkway improves the region’s roadway network and provides a safe and efficient route to the Luzerne County Community College campus and other destinations, including the Greater Nanticoke Area School District campus.

This new highway also provides opportunities for new development and redevelopment on properties that are vacant or underutilized, giving the local economy a needed boost. Skelly & Loy’s environmental studies, including preparation of the project’s Environmental Assessment and design of compensatory mitigation plans, were an integral step in bringing the South Valley Parkway to fruition.

Studies, Research and Consulting Award
Skelly & Loy, A Terracon Company, was also recognized as the 2020 Studies, Research and Consulting Projects winner for the completion of the Modernizing a Process: I-83 North York Widening Environmental Assessment Project.
The Federal Highway Administration released a technical advisory in 1987 emphasizing that the goal of the NEPA process is to make better decisions, not more documentation. More than 30 years later, the I-83 North York Widening Environmental Assessment (EA) was published in August 2019. The EA is compact and crisp, supported by digital technical files. Visually appealing infographics, maps, photos, and text boxes are sprinkled throughout the document, allowing the EA to easily convey complex content to a public audience. The I-83 North York Widening EA will set the standard for the future, both in PennDOT District 8-0 and statewide.

**HDR Selected to Bring PennDOT 3D-Only Plans Vision to Reality**

The Pennsylvania Department of Transportation (PennDOT) has selected HDR to assist it in developing and implementing its 3D Digital Delivery initiative. The game-changing effort will redefine how infrastructure projects are designed and delivered in the state.

Through 3D Digital Delivery, PennDOT expects that by 2025 all of its construction projects will have the ability to be bid using 3D technology such as building information modeling (BIM), rather than in a traditional construction plan format. This transformational change is an important part of meeting the department’s larger goals of reduced project costs, improved design, and construction efficiency and reduced project risks.

HDR has been at the forefront of the BIM for infrastructure evolution in the U.S., completing pilot projects in multiple states and working with industry groups such as the American Association of State Highway and

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Transportation Officials to craft national standards. To assistPennDOT, HDR assembled top experts from offices around the nation, with experience in developing policies and standards and applying these design tools to real-world projects.

The 3D Digital Delivery initiative is expected to cover every aspect of PennDOT’s transition to fully-electronic construction plans. This includes development of new processes for all phases of projects, from project delivery and design through post-construction efforts such as asset management. The HDR-led team will also be available to work with the department on revisions to existing policies and standards, developing contract language that reflects the change to electronic plans, education, and training, and industry engagement.

“Adopting a complete digital delivery approach positions PennDOT as a national leader in infrastructure planning and delivery, and we’re excited to partner with the department to put it into action,” said Dan Giles, P.E., HDR’s project manager. “Our experienced and knowledgeable team is ready to help PennDOT successfully implement this innovative initiative.”

Modjeski & Masters Promotes Engineers Across Firm

Modjeski and Masters, a nationwide leader in the design, inspection, and rehabilitation of all bridge types, including long-span and movable structures, recently announced the promotion of five employees to project manager and senior project manager roles.

Promotions to senior project managers include Jason Doughty, PE, Tom Rogers, PE, CWI, and Joe Strenkoski, PE.

Jason Doughty joined Modjeski in 1997 as a structural engineer performing superstructure and substructure designs, reviewing engineering work for code compliance and overseeing plan and specification development. Based in the firm’s Raleigh office, he has served as design engineer of record for numerous notable fixed bridge and movable bridge rehabilitation projects, including the Macombs Dam Bridge and George Washington Bridge.

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Tom Rogers joined Modjeski in 2002 and works in the firm’s Charleston, W.Va. office. An expert in welding, he is a voting member on AWS D1.5 Bridge Welding Code and D1.1 Fabrication. He has reviewed welding procedure specifications for projects including the I-74 Mississippi River Arch Bridge and has experience in structural analysis, design, rating, and rehabilitation for a variety of bridge types.

Joe Strenkoski began working at Modjeski in 2015 and has been leading the electrical engineering section since 2017. He has more than 32 years of electrical engineering experience in the bridge, transportation, infrastructure, and building system consulting industries. In his new role, Strenkoski will grow Modjeski’s electrical engineering services and staff.

Geoff Forest, PE and Jon Gerhart, PE were promoted to project manager. Geoff Forest joined Modjeski in 2002 and has been a senior mechanical engineer with the firm since 2016. He works out of the Mechanicsburg office as a member of the moveable bridges business unit where he has worked with transportation departments and railroads.

Jon Gerhart joined Modjeski in 2010 and since then has been involved in a variety of highway lighting on interstates, state routes, and fixed bridges; moveable bridge project inspections, design and rehabilitation.

“The expertise of Geoff, Jon, Jason, Tom and Joe has been pivotal to our firm’s success. Under their leadership we have expanded our services into numerous areas, including alternate delivery, welding, and electrical engineering for building facilities,” said Mike Britt, PE, president and CEO at Modjeski and Masters. “We congratulate each of these outstanding engineers in their pursuit of excellence and look forward to their continued success.”
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