



**VOSH Program Directive: 11-201(e-version)**

**Issued: April 20, 1990**

**Subject: Permanent Variance From §1910.178(n)(7)(iii); Virginia Precast Corporation**

**A. Purpose.**

This directive transmits the above-referenced permanent variance order to field personnel.

**B. Scope.**

This directive applies to all VOSH personnel and specifically to Occupational Safety Enforcement and Voluntary Compliance personnel.

**C. Action.**

The Assistant Commissioner, Directors and Supervisors shall assure that Virginia Precast Corporation complies with the terms of its permanent variance order (i.e., review company compliance with the order on an annual basis).

**D. Expiration Date.**

Not Applicable.

**A. Summary.**

See attached permanent variance order dated January 30, 1989.

**B. Background.**

See attached order.

Carol Amato  
Commissioner

**Attachment: Permanent Variance From §1910.178(n)(7)(iii); Virginia Precast Corporation**

**Distribution:** Commissioner of Labor and Industry  
Assistant Commissioner for Training and Public Services  
Director of Federal Liaison and Technical Support  
Directors and Supervisors  
Safety and Health Staff  
OSHA Regional Administrator, Region III

COMMONWEALTH OF VIRGINIA

Department of Labor and Industry  
205 North Fourth Street  
*1938-1988 50 Years of Excellence in Apprenticeship*

*Carol Amato*  
Commissioner

*P.O. Box 12064*  
*Richmond, Virginia 23241*

January 30, 1989

Mr. George Paxton  
Virginia Precast Corporation  
P.O. Drawer 1020  
Ashland, Virginia 23005

SUBJECT: Request for Permanent Variance Section 1910.178 (n)(7)(iii)

Dear Mr. Paxton:

The thirty day public comment period on your application for a permanent variance lapsed on November 2, 1988, and no comments were received by the Department. In accordance with the VOSH Administrative Regulations Manual (ARM) Section 6, my staff and I have completed our review of your application. The Department has concluded that Virginia Precast Corporation (VPC) has shown by a preponderance of the evidence that its proposed methods to ensure forklift safety (with certain conditions added by the Department) provides employment and a place of employment as safe and as healthful as would be provided by complying with Section 1910.178(a)(7)(iii).

A copy of the order granting the Permanent Variance is enclosed. Please note that VPC must comply with the terms of the Order (i.e. including the conditions added by the Department) during the operation of its forklift trucks.

Sincerely,

*Carol Amato*  
Commissioner

# COMMONWEALTH OF VIRGINIA

Department of Labor and Industry  
205 North Fourth Street  
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*Carol Amato*  
*Commissioner*

*P.O. Box 12064*  
*Richmond, Virginia 23241*

## **ORDER**

AGENCY: Virginia Department of Labor and Industry

ACTION: Grant of Permanent Variance

SUMMARY: This Order announces the granting of an application by Virginia Precast Corporation, for a Permanent Variance from Section 1910.178 (n)(7)(iii) of the Virginia Occupational Safety and Health (VOSH) Standards for General Industry.

DATE: The effective date of the granting of the Permanent Variance is January 30, 1989.

## **BACKGROUND**

Virginia Precast Corporation applied for a Permanent Variance from Section 1910.178(n)(7)(iii) of the VOSH Standards for General Industry, by letter dated August 16, 1988. The Company had been cited by the Department's Occupational Safety Enforcement Division for an other-than-serious violation of the same standard on July 28, 1988, as the result of an inspection on June 28, 1988.

In accordance with the procedures in the VOSH Administrative Regulations Manual (ARM), a notice of the request and 30 day comment period was published in the Richmond Times dispatch on October 2, 1988. The comment period closed on November 2, 1988 with no comments having been received.

## **SUMMARY OF PERMANENT VARIANCE REQUEST**

The Company summarizes the historical background of the request and their operation as follows:

“During an inspection dated 6/28 -7/8/88 we were cited for Hyster Forklifts traveling without a load with forks raised approximately 6 feet high. The method of operation makes it most difficult to comply with the above captioned regulation for the following reasons.

1. Attached to the forks are lifting systems with chains, approximately 6 feet long that are used to lift and transport concrete products to be loaded on flat bed trailers for shipment.
2. The chains on the forks have hooks and pins that are used to lift products. Should they be lowered the hook and pins will drag on the hard surface of the yard causing damage to these hooks and pins and also impair the safe operation of the forklift.
3. After the product is loaded on the flat bed trailer the fork lift moves approximately 150 feet to

secure the next product to be loaded.

4. The area of operation is in a wide open yard where there is no chance of striking another employee with the chains or forks.
5. The wide area of operation allows the fork lift operator excellent visibility to other employees and obstructions.”

VPC is requesting a Permanent Variance to allow forklifts traveling without a load in their concrete products yard to move inside the yard with the forks raised approximately six feet high. The total height of the lifting system is approximately fifteen feet. The VOSH inspection referenced earlier determined that there are no electrical hazards present from overhead powerlines and that the forklifts have a sufficiently rated weight lifting capacity to handle the concrete products being transported in the yard. The inspection also determined that the work area in which the forklifts are used is a wide open yard providing good visibility to forklift drivers during regular work operations.

In addition, the forks on each forklift truck are raised to a sufficient height such that they would not create a hazard to the driver of another forklift truck in the event of a collision between trucks.

However, the investigation also revealed that the six foot long chains suspended from the loading mechanism on the forklift did swing freely after the forklift had loaded a product on a flatbed trailer and moved the approximately 150 feet to pick-up the next product to be loaded. The swinging motion of the heavy chains may create a crushing hazard to employees in the yard area.

Finally, if recommended safe speeds were exceeded when driving with the forklifts raised to the six foot height (and no load attached), a potential exists for the truck to turnover.

### **REGULATORY REQUIREMENTS**

Section 6.J. of the VOSH ARM provides that the Commissioner shall make a decision on a variance application promptly after the close of the period for public comments. “This decision will be based upon the information contained in the application, the report of any variance inspection made concerning the application, any other pertinent staff reports, federal OSHA submitted by employees, employee representatives, other employers, or the public.” The Commissioner will grant a variance request only if it is found that the employer has met by a preponderance of the evidence, the requirements of ... Section 6.2.A.4.”

Section 6.2.A.4. requires the employer to include in a variance application “a description of the conditions, practices, means, methods, operations, or processes used and evidence that these would provide employment and a place of employment as safe and healthful as would be provided by the standard from which a variance is sought.”

Section 1910.178(n)(7)(iii) states:

- “(7) Grades shall be ascended or descended slowly...
- (iii) On all grades the load and load engaging means shall be tilted back if applicable, and raised only as far as necessary to clear the road surface.”

**SUMMARY OF COMMISSIONER'S FINDINGS REGARDING APPLICATION FOR PERMANENT VARIANCE**

From the information provided in the company's application and based on the on-site inspection referenced above, the Commissioner finds the following:

1. The Commissioner agrees with items 1-5 of the company's summary of their operation and notes specifically that compliance with the standard (making no changes to the lifting system presently used) would cause the chains, pins and hooks to be dragged "on the hard surface of the yard causing damage to these hooks and pins and also impair the safe operation of the forklift." (See item 2. above).
2. The main safety hazard presented by the present lifting system is a crushing hazard when the chains are swinging freely in between lifting jobs. In addition, if recommended safe speeds are exceeded, a turn over hazard exists when the forklift trucks are moved the approximately 150 feet to pick up the next product to be loaded.
3. Even though the work area is wide open and provides good visibility to forklift drivers, the crushing hazard still exists due to the unpredictability maneuvering in a busy workyard (unpredictability of how far chains will swing at varying speeds, over bumps, turning corners, etc.). Therefore, some additional protective measures will have to be taken by the company to protect employees under the variance.

**DECISION**

Based on the findings noted above Virginia Precast Corporation is granted a Permanent Variance effective on the date of this Order, pursuant to section 40.1-6(a) of the Code of Virginia and Section 6.J. of the VOSH ARM. The conditions of the Permanent Variance are as follows:

1. All VPC personnel shall wear head protection that meets the requirements of Section 1910.135 while present in the workyard area where the forklifts that are the subject of the variance are operating.
2. The terms of this variance apply only to the worksite and conditions referenced in the Company's application for variance.
3. Forklifts shall not be operated at speeds in excess of 5 miles per hour while traveling in between lifting jobs to minimize the swinging radius of the chains, and reduce the risk of the forklift truck turning over.
4. In between lifting jobs the chains shall be secured to the body of the forklift to minimize the swinging radius of the chains.

A copy of this notice must be posted in accordance with Section 4.1. of the VOSH ARM.

Carol Amato  
Commissioner

January 30, 1989  
Date