

November 7, 2023

The Honorable Tom Carper
Chairman, Environment & Public Works Committee
513 Hart Senate Office Building
Washington DC 20510

The Honorable Shelley Moore Capito
Ranking Member, Environment & Public Works
Committee
170 Russell Senate Office Building
Washington DC 20510

Dear Chairman Carper and Ranking Member Capito,

The National Asphalt Pavement Association (NAPA) welcomes today's hearing regarding roadway safety and possible interventions. NAPA is the only national trade association exclusively representing companies involved in the production and application of asphalt pavement mixtures. Together with our state association partners, representing thousands of companies and over 350,000 hard working men and women across the nation, NAPA and the asphalt industry prides itself on safety and achieving the highest possible standards to protect our workers and the motoring public.

Background and Issue

As you know, more than 90 percent of America's roadways are surfaced with asphalt, meaning our product and workers are involved across countless road projects at any time throughout our surface transportation network. Due to the nature of the material, asphalt pavements can be applied quickly and opened to traffic within hours of paving. A majority of existing interstate paving maintenance work is often conducted overnight, typically shutting down one lane, paving, and opening to traffic in the morning. However, this process is logistically intensive and wrought with potential safety issues because the paving process is mobile, covers some distance, and the only typical barrier protection between the work zone and high-speed vehicles are rubber cones and barrels. The picture below illustrates a typical sight from the workers' perspective.



Tragically, there continues to be over a hundred road construction workers killed inside the work zone every year, year-after-year. Unfortunately, even over the last decade or more, those fatalities and serious injuries have

not been reduced, and over the last few years have been increasing¹. We recognize that driver distraction is one causal factor in those incidents. Something more must be done.

While there are minimum work zone safety (WZS) requirements specified by the Department of Transportation (DOT) for road construction work, those minimal safety requirements are unfortunately ineffective, evidenced by the fatality data. Further, since road construction projects, especially the paving portion, are commonly awarded on a 'low-bid' basis, and because a project's bid items are typically 'bundled' with one single line-item to adhere to the minimally required federal and state WZS requirements, companies who want to implement better safety practices, simply would be out-bid. However, our industry has a track record of championing more effective and enhanced means of protecting the men and women working next to fast-moving traffic.

Legislative WZS enhancements have been difficult to implement through state DOTs

Over the last two highway bill reauthorizations, our industry has made strides in advocating for better WZS protection – but more can be done. During the 2015 Fix America's Surface Transportation (FAST) Act reauthorization, additional language was included in 'Subpart K²' to encourage, but not require, positive protection like immovable barriers to separate live traffic from road construction workers. For new road construction or significant roadway expansion, these protective 'Jersey barriers' are frequently used. But such immovable barriers are impracticable in today's currently designed and specified asphalt paving road maintenance and construction projects.

Most recently, during the 2021 Infrastructure Investment and Jobs Act (IIJA) reauthorization, NAPA worked hard to successfully include statutory language allowing state DOT agencies to access their federal payable share for highway construction projects, enhancing roadway work-zone safety using a contractual provision known as a WZS Contingency Fund³). Unfortunately, access to this funding mechanism has been hampered by lack of knowledge and effective implementation at both the state and federal level. Only a scant few state DOTs have fully implemented such programs, allowing contractors to access these monies to better enhance WZS – with dramatic documented success. And more states continue to realize the resources afforded to them by Congress.

The simplest example of such WZS Contingency Fund allocation is to pay for police protection at the beginning of, or within the work zone, as conditions dictate. We know police presence is effective at slowing traffic speed and ensuring the motoring public pays better attention to the conditions around them. There are many other enhanced WZS technologies and practices, like mobile barriers, rumble strips, automated flaggers, and speed cameras, that could easily be included or added to a project with effective implementation and utilization through these state DOT-allowed WZS Contingency Funds.

Lastly, there are additional technologies, from the simple automated photo-enforcement to more sophisticated radar-based technologies, that we know can be effective at slowing traffic and reducing work-zone intrusions and incidents, further protecting road construction workers within their work zones. And there is some movement by state DOTs to perhaps reconfigure certain roadway projects, e.g., instead of night-paving, the DOT might close sections of the roadway – resulting in no live traffic and expedited project completion. There are numerous examples of large projects where state DOTs have changed from originally specified night-time paving

¹ <https://workzonesafety.org/work-zone-data/>

² <https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-630/subpart-K>

³ artba.org/wp-content/uploads/2022/09/Safety-Contingency-QA-final-9-9-2022.pdf

projects to full road section closures, like along the I-69 expansion south of Indianapolis⁴. However, these types of road closures present additional logistical challenges.

Summary: Enhancing WZS through DOT Contingency Funds

While highway construction projects continue to be awarded generally based on the ‘low-bid’, ensuring worker protection during roadway construction must be looked at differently. Access to such WZS Contingency Funds, already allowed by statute, will remove such safety precautions from the low-bid paradigm. We encourage Congress to request that state and federal DOTs expedite implementation of such already-authorized WZS funding mechanisms, allowing road construction contractors to access those additional funds to enhance WZS and further protect their workers. While such funds can be ‘set-aside’ by state DOTs, establishing a requirement that DOTs must allocate a minimum spending percentage associated with use of those funds would be beneficial. Additional amplification and awareness for these programs to state partners is critical to WZS success.

Further, we are encouraged that a few state DOTs are contemplating or implementing automated speed photo-enforcement within work zones and hope to see this practice expand. Automated photo-enforcement in work zones is one easy-to-implement solution.

Lastly, we encourage Congress to look to NAPA and others as a resource to encourage safer work zones. We look forward to working with Congress or DOT to ensure better implementation for contractors to access these WZS Contingency Funds.

Thank you for considering our comments and NAPA offers itself as a resource to the Committee and federal/state DOTs.

Regards,



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National Asphalt Pavement Association

⁴ <https://www.insideindianabusiness.com/articles/indot-expediting-i69-finish-line-construction>>