



COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

C. Ray Davenport
COMMISSIONER

July 10, 2020

Main Street Centre
600 East Main Street, Suite 207
Richmond, Virginia 23219
PHONE (804) 371-2327
FAX (804) 371-6524

Michael Rivera
Regional Administrator, Region III
U. S. Department of Labor – OSHA
The Curtis Center, Suite 740
170 South Independence Mall West
Philadelphia, PA 19106-3309

SUBJECT: Virginia FFY 2019 Comprehensive Federal Annual Monitoring and Evaluation (FAME) Report

Dear Mr. Rivera:

Thank you for your letter of June 26, 2020, forwarding Virginia’s FFY 2019 Comprehensive Federal Annual Monitoring and Evaluation Report (FAME). I am pleased to see that there were no findings or observations as a result of the onsite evaluation.

ACCOMPLISHMENTS

The Virginia Occupational Safety and Health (VOSH) program prides itself on maintaining equally strong enforcement and cooperative program elements; and with the help of your dedicated staff, VOSH has accomplished many important achievements that benefit Virginia’s employees and employers:

- Virginia's injury and illness rates are consistently below the national average in both private and public sector employment.

Total Recordable Cases (TRC)	National	Virginia	Difference
2018 Overall	3.1	2.8	-9.7%
2018 Private Industry	2.8	2.5	-10.7%
2018 Construction	3	2.3	-23.3%
2018 Manufacturing	3.4	3.4	0.0%
2018 State and Local Government	4.8	4.2	-12.5%

- Virginia unique regulations provide safety and health protections to employees and employers in:
 - tree trimming operations;
 - overhead high voltage line safety;
 - fall protection in steel erection;
 - reverse signal operation in construction and general industry;
 - confined space hazards in the telecommunications industry;
 - telecommunications, general approach distances
 - construction sanitation;
 - field sanitation;
 - and compliance with manufacturer’s instructions for vehicles, machinery, tools and equipment in general industry, construction, agriculture and public sector maritime.

<https://www.doli.virginia.gov/virginia-unique-standards/>

- The impact of the SARS-CoV-2 virus that causes COVID-19 has been devastating to the U.S. and Virginia economies and has dramatically impacted Virginia workers and businesses. In response, Governor Ralph Northam in Executive Order 63 directed the Commissioner of Labor and Industry and the VOSH Program to develop an emergency temporary standard under Va. Code §40.1-22(6a) or an emergency regulation under Va. Code §2.2-4011 to be presented to the Virginia Safety and Health Codes Board for consideration.

On June 24, 2020, the Board approved a motion that the SARS-CoV-2 and COVID-19 related hazard and job task employee exposures constitute a grave danger to employees in Virginia that necessitate the adoption of an emergency temporary standard pursuant to Va. Code §40.1-22(6a). The Board then voted to approve a motion to adopt an Emergency Temporary Standard under Va. Code §40.1-22(6a), Infectious Disease Prevention: SARS-CoV-2 Virus that causes COVID-19, the content of which would be considered at a later time. The Board has held meetings on June 24, 2020, June 29, 2020, and July 7, 2020 to consider the language of a final emergency temporary standard to date. The next meeting of the Board is scheduled for July 15, 2020.

<https://www.doli.virginia.gov/safety-and-health-codes-board-electronic-emergency-meeting/>

- The 2020 Virginia General Assembly approved 100% state funding for twelve (12) unfunded VOSH benchmark positions to take effect July 1, 2020 – a dramatic recognition of the importance of maintaining a sustainable enforcement program to compliment the

major enhancements in staffing that have occurred in VOSH Cooperative Programs over the last several years. However, due to expected substantial statewide negative budgetary impacts from COVID-19, the filling of these positions has been frozen for the immediate future.

- VOSH’s abatement verification regulation requires not only abatement certification (i.e., the employer’s signed statement that abatement has occurred), but also requires employers to provide photographs, receipts, purchase orders, etc., as verification that a hazard was abated.

- Public service announcement (PSA) videos have been developed on a number of safety and health topics, including the areas of tree trimming operations, overhead high voltage line safety, trenching safety, the dangers of heat stress and fall protection:
<https://www.youtube.com/user/DOLIVirginia/videos>

- VOSH Apprenticeship Program for Compliance Officers
VOSH has implemented an exemplary and one of a kind Apprenticeship Program for VOSH Compliance Safety and Health Officers (CSHO), Industrial Hygienists and Safety and Health Consultants. The Apprenticeship Program has approval through the U. S. Department of Veteran’s Affairs and the Virginia Department of Veteran’s Services as an authorizing agency for benefits under the Montgomery and Webb GI Bills;

- State and Local Government Penalties
Senate Bill 607 was passed by the 2016 Virginia General Assembly and signed into law by Governor Terry McAuliffe to direct the Virginia Safety and Health Codes Board to adopt regulations for the issuance of proposed penalties to the Commonwealth, its agencies, political subdivisions, or any public body. The law became effective July 1, 2016.

The Virginia Safety and Health Codes Board adopted a final regulation on November 30, 2017, amending the VOSH Administrative Regulations Manual (ARM), 16VAC25-60-260.E, and providing for VOSH authority to issue penalties to state and local government employers.

The regulation took effect on November 1, 2018 and applies to VOSH inspections opened on or after December 1, 2018. The regulation allows issuance of penalties to state and local government employers for willful, repeat and failure-to-abate violations, as well as serious violations that cause a fatal accident or are classified as “high gravity”. Information on the final regulation can be found on the Virginia Regulatory Town Hall at: <http://townhall.virginia.gov/L/ViewChapter.cfm?chapterid=2347>

- Annual Virginia Safety and Health Conference

The Virginia Annual Safety and Health Conference is now entering its 25th successful year of outreach to employees, employers, unions, associations, and government agencies. The 24th Annual Conference held in Virginia Beach, Virginia, hosted over 400 attendees, 33 vendors, and participants from many outside organizations gave their time and resources to attend and to contribute.

- Virginia Voluntary Protection Programs

The Virginia Voluntary Protection Program has been codified and requires the Virginia Safety and Health Codes Board to enact regulations for the operation of VPP in Virginia, Va. Code §40.1-49.13.

Governor Terry McAuliffe proposed the legislation that codified the Virginia Voluntary Protection Program (SB 881 and HB 1768). Governor McAuliffe held a bill signing ceremony on June 4, 2015. The Virginia Safety and Health Codes Board adopted a final regulation implementing the statute with an effective date of January 25, 2018.¹

- The 2017 Virginia General Assembly and Governor Terry R. McAuliffe approved 100% general fund monies to fund the three Consultation and Training and three Voluntary Protection Program staff positions.

- New Virginia STAR Sites

Virginia VPP welcomed two new Virginia STAR site at Sartomer Chatham Plant Arkema Group in Chatham, Virginia and the Luminant Hopewell Power Plant in Hopewell Virginia.

- Virginia BEST

The VOSH program has signed a strategic partnership with the Associated General Contractors of Virginia (AGCVA) to establish a recognition program entitled “Virginia BEST” (Building Excellence in Safety, Health and Training) based on OSHA Challenge concepts².

Virginia BEST is designed to improve best practices, compliance efforts and accident prevention on construction worksites through recognizing the outstanding efforts of exemplary employers. The program works with highly successful employers who have demonstrated continual improvement in the arena of occupational safety and health and who are willing to share resources, best practices and advise the construction industry at

¹ <http://townhall.virginia.gov/L/ViewAction.cfm?actionid=4406>

² <https://www.doli.virginia.gov/voluntary-protection-program/virginia-best-outreach-docs/virginia-best-program/>

large. A formal signing ceremony of the strategic partnership occurred on October 13, 2016.

Virginia BEST currently has seven Level One participants.



- Virginia VPP Strategic Partnership with Virginia Department of Corrections
The Department of Labor and Industry and the Virginia Department of Corrections (VADOC) signed a strategic partnership on August 16, 2018, incorporating Challenge concepts to work with the VADOC to bring additional correctional facilities/operations into VPP (two facilities have already achieved STAR status, Augusta and Lunenburg Correctional Facilities – the only two correctional facilities in VPP nationwide).



Commissioner of Labor and Industry C. Ray Davenport and Harold W. Clarke, Director of Corrections

VADOC Challenge is designed to encourage and recognize correctional facilities that voluntarily implement highly effective safety and health management systems to benefit Corrections' workers and reduce or eliminate injuries, illnesses and fatalities at VADOC sites in Virginia.



Three stages of participation in VADOC Challenge are provided:

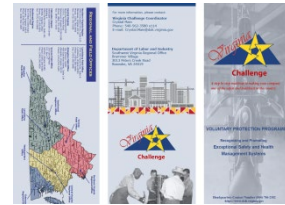
Stage I	Assess, Learn and Develop
Stage II	Implement, Track, and Control
Stage III	Reassess, Monitor, and Improve

At Stage III, the VADOC site's safety and health management system has been fully implemented and the site is ready to submit an application for Virginia STAR certification.

Eight correctional facilities have begun the evaluation and application process.

- Virginia Challenge Established as a Path to Virginia STAR

The Virginia Challenge was established on June 15, 2018 to create a structured path to Virginia STAR.



The Virginia Challenge Program provides a “roadmap to Virginia STAR,” and a three stage process, based on OSHA Challenge concepts, which plots a path for employers to follow to Virginia STAR certification. Virginia Challenge uses the assistance of a voluntary network of safety and health professionals (OSHA Special Government Employees (SGE) and Virginia Private Industry Volunteers (PIV)) committed to providing guidance and advice to participants in developing and implementing a safety and health management system based on VOSH’s VPP model.

Since its inception in June, 2018, 12 sites at 4 private sector companies and 1 state university site have achieved Level I status and 1 private sector company has achieved Level 2 status, one university and one local government have initiated the Virginia Challenge application process along with 8 private sector companies.

- Virginia VPP Best Practices Days

The Virginia Voluntary Protection Program works with Virginia STAR sites and prospective applicants to host (VPP) Best Practice Days and VPP Workshop training days which are provided free of charge to VPP members, prospective applicants, state and local government employers and selected industries. VPP Best Practices days were hosted by:

- Goodyear Tire and Rubber Company, Danville Plant (September, 2019)

- Dominion Power (August, 2019).

VOSH videotapes the presentations/PowerPoints and is working on a technology solution that will make the training materials available to a much wider audience through enhancements to the www.doli.virginia.gov website.

FUNDING CONCERNS

I would also like to take this opportunity to express our serious concerns about the level of funding that the federal government is providing to State Plans. Funding for State Plans continues to lag well behind that provided by Congress for OSHA.

Virginia faces significant budget difficulties due to a combination of long term underfunding of State Plans and the Congressional Sequestration Act:

- The Virginia 23g Enforcement grant for FFY 2018 reflects a continued 3.2% federal sequestration reduction (\$258,400 – 50%/50%).
- The 2019 grant reflected 12 unfunded benchmark positions (8 safety and 4 health compliance officers). This represents fully 20% of Virginia benchmark positions (38 safety and 21 health compliance officers) and approximately 674 safety and 190 health inspections that are not conducted each year in Virginia. Although Virginia was able to secure 100% state funding for those 12 unfunded positions, use of the money is frozen for the immediate future due to the dramatic economic impact of the COVID-19 pandemic. Nonetheless, a state plan such as Virginia that is underfunded compared to other state plans still had a substantial need for additional federal funding to bring it up to the level of most other state plans in the country.

At the national level, State Plans “overmatch” federal grant funds by over 120%. In FFY 2019, federal funding of 23g grants totaled \$102.3 million and state plans matched with 229.1 million – an overmatch of \$126.9 million. Reference: “OSHSPA Numbers at a Glance” which is taken from the *2019 OSHSPA Grassroots Worker Protection*³ publication.

OSHSPA’s *2018 Special Report on the Impact and Funding of State Occupational Safety and Health Programs*⁴ in 2018 demonstrates the disparity with which OSHA and State Plans are treated from a funding standpoint by Congress:

³https://oshspa.org/resources/Documents/Publications/Grassroots/2019_Grassroots.pdf

⁴https://www.oshspa.org/wp-content/uploads/2013/09/OSHSPA_Special_Report_18.pdf.pdf

- From 2005 to 2017, funding for OSHA increased more than 19% while funding for State Plans increased less than 10%.
- The “real dollars” available to States have significantly decreased when considering inflation. In 2005, State Plans were funded at \$91 million. To fund States at the same level in 2017, a budget of \$122 million would be needed (the 2017 State Plan appropriation is \$100.7 million).
- When federal OSHA receives COLA [cost of living adjustments] increases, State Plans do not.
- As a percentage of the total OSHA budget, the State Plan appropriation decreased from 19.6% in 2005 to 18.2% in 2017, near an all-time low.

In closing, although we have many challenges in Virginia, it is our sincere belief that we do an effective and highly efficient job in trying to assure that all Virginia workers have the chance to return home at the end of their shift in the same condition that they started their work day.

Thank you again for this opportunity to provide our response to the Virginia’s 2019 FFY Comprehensive FAME report. We look forward to an ongoing cooperative and mutually supportive relationship with Region III. Please accept our sincere thanks for the valuable services you have provided to the Commonwealth of Virginia’s employees and employers.

Sincerely,



C. Ray Davenport
Commissioner

cc: Assistant Commissioner Bill Burge
VOSH Directors