



COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

C. RAY DAVENPORT
COMMISSIONER

MAIN STREET CENTRE
600 EAST MAIN STREET, SUITE 207
RICHMOND, VIRGINIA 23219
PHONE (804) 371-2327
FAX (804) 371-6524
TDD (804) 786-2376

August 6, 2014

Mary Ann Garrahan
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 2013 Federal Annual Monitoring and Evaluation Report

Dear Ms. Garrahan:

Thank you for your letter of July 21, 2014, forwarding Virginia's FFY 2013 Federal Annual Monitoring and Evaluation Report (FAME).

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, the VOSH program has been able to achieve many great things that benefit Virginia's employees and employers:

- Injury and illness rates that are consistently well below the national average in both private and public sector employment, including a 16% reduction in Virginia's total recordable injury and illness rate between 2007 and 2012¹;
- A 44% reduction in fatal accidents covered by VOSH jurisdiction from calendar years 2005 to 2013:
 - 2013: 36
 - 2012: 36
 - 2011: 30
 - 2010: 24
 - 2009: 33
 - 2008: 39
 - 2007: 44
 - 2006: 55
 - 2005: 64

¹ "Death on the Job: The Toll of Neglect", 23rd edition, April 2014, AFL-CIO.

- Virginia unique regulations in tree trimming, confined space hazards in the construction and telecommunications industries; overhead high voltage line safety; fall protection in steel erection; reverse signal operation in construction and general industry; and compliance with manufacturer's instructions for vehicles, machinery, tools and equipment in general industry, construction, agriculture and public sector maritime;
- An abatement verification regulation that 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.
- A national top twelve ranking in the rate of state occupational safety and health inspections per number of employers²;
- Development of public service announcement (PSA) videos in the areas of tree trimming operations, overhead high voltage line safety, trenching safety, the dangers of heat stress and fall protection;
- 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;
- A thriving Virginia Voluntary Protection Program (VPP) which now has 41 active members, and four more anticipated during calendar year 2014 (a 10% increase);
- An improving Safety and Health Achievement and Recognition Program (SHARP) with 18 active members, with the potential for substantial expansion with the recently established SHARP Coordinator position;
- An annual safety and health conference which is now entering its 19th successful year of outreach to employees, employers, unions, associations and government agencies.

With regard to the two findings concerning VOSH Discrimination Investigations, a brief response is provided below. A more detailed response will be provided in the VOSH Corrective Action Plan:

Recommendation:

VOSH should revise the VDIM [VOSH Discrimination Investigation Manual] to require closing letters are sent to complainant when a complainant's case has been screened out.

Response:

The VDIM will be revised as follows:

When a complaint is thus "screened out", the investigator must document the screening interview and send a letter to the complainant concerning the interview and documenting the reason for the "screen out". In those cases where contact information is not provided by the complainant, the investigator will document the screening and explain the reason for the "screen out".

² "Death on the Job: The Toll of Neglect", 23rd edition, April 2014, AFL-CIO.

Recommendation:

VOSH should ensure that closing conferences are consistently held and appropriately documented in accordance with the VOSH Discrimination Investigation Manual (VDIM).

Response:

The VOSH Program agrees that investigation procedures did not include the conducting of closing conferences, contrary to the requirements in the VDIM. The VOSH Discrimination program has been undergoing a reorganization during the past year and is in the process of being renamed the Office of Whistleblower Protection. The reorganization will involve the revision of regulations, policies and procedures, and a review of workflow processes. The VOSH Program has made an initial decision to forego closing conferences with complainants for the following reasons:

- The Office of Whistleblower Protection now reports to the Director of Legal Support, and the Investigator has free access to an assigned Senior Staff Attorney and the Director, who is an attorney.
- The VOSH Whistleblower Investigation process is an open one, with all non-confidential documents shared between the parties. Each party is offered the right to rebut evidence prior to preparation of the report of investigation.
- Each file receives a legal review and the final determination letter to the complainant is prepared and signed by the Director. The Complainant has three options once a closure letter is issued:
 - Discuss any remaining concerns with the Investigator
 - File an appeal to the Assistant Commissioner
 - Pursue a private right of action in the Virginia Circuit Courts

As federal OSHA does not offer employees a private right of action, and VOSH provides its Investigator with unparalleled access to legal resources inside the Department, the VOSH Program believes that the above process change will continue to be at least as effective as that of federal OSHA. Accordingly, the VDIM will be revised to remove the requirement for the Investigator to conduct closing conferences.

Thank you again for this opportunity to provide our initial response to the Virginia's 2013 FFY 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

c: Assistant Commissioner Bill Burge