

**VOLUNTARY PROTECTION PROGRAMS REVIEW**

A REPORT SUBMITTED TO:

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ASSISTANT SECRETARY FOR OSHA

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# **OSHA'S VOLUNTARY PROTECTION PROGRAMS (VPP) REVIEW**

## **Findings and Recommendations**

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<b>Table of Contents .....</b>	<b>i</b>
Acknowledgements.....	ii
Executive Summary .....	1
I. Project Overview .....	7
A. Objective	
B. Scope	
C. Approach	
D. Government Accountability Office (GAO) Report	
II. Background.....	8
A. Status	
B. National Office Structure	
C. Regional Office Structure	
III. Internal Controls .....	10
A. Role of DCSP	
B. Program Oversight	
C. Program Audit	
IV. Enhancements to the VPP.....	13
A. Tracking	
B. Changes to the Program	
C. SGE Program	
D. Process Improvements	
V. Consistency in the Administration of the VPP .....	21
A. Process Issues	
B. Training and Skills Building	
VI. Policies On Termination, Withdrawal, and Enforcement Activities at VPP Sites ...	26
A. Termination and Withdrawals	
B. Enforcement Policies	
C. Programmed Inspections and National Emphasis Programs	
D. Additional Considerations	
VII. Performance Measures.....	30
VIII. Implementation .....	31
Appendix A: Programs, Role of DCSP, Charts .....	32
Appendix B: Follow-up to GAO Report.....	38
Appendix C: References .....	42
Appendix D: Stakeholders .....	44

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## **Executive Summary**

The team found OSHA personnel to be dedicated to the Voluntary Protection Programs (VPP) and committed to the belief that VPP is effective in improving safety and health conditions at all participants' workplaces. The team focused their activities on internal controls, enhancements, program consistencies, enforcement activities at VPP sites, and performance measures. One of the most significant improvements the Agency needs to make is to update the VPP manual to provide one source document for administering the VPP and also to ensure nationwide consistency. The following is a list of recommendations concerning the five areas addressed by the team:

The team found there are several internal controls that can be implemented to improve administration of the program.

### **Internal Controls**

- 1. Focus the Directorate of Cooperative and State Programs (DCSP) review on the technical details of the initial approval report and bring repeated problems to the attention of the appropriate Regional Administrator (RA).**
- 2. Follow the guidance in the VPP manual to spot check reapprovals instead of reviewing all reapprovals.**
- 3. Update the VPP manual to incorporate changes reflected in the various memoranda issued from 2009-2011; the "Revisions to the Voluntary Protection Programs to Provide Safe and Healthful Working Conditions," published in Federal Register Notice 74 FR 927, January 9, 2009; and, recommendations adopted from this report.**
- 4. Require National Office staff to participate periodically on audits of the VPP program in the regions. Consider allowing DCSP to participate on VPP participant onsite reviews.**

The team found that there are several actions the Agency can take to enhance the administration of the VPP.

### **Enhancements**

- 5. Ensure the VPP Automated Data System (VADS) is up-to-date and improve the timeliness and accuracy of the data by allowing regions to enter VPP data. Clarify how Corporate Program participants should be counted, track the date the regions send the report to the national office, and reflect the date approved for reapprovals as the date the RA signs the letter to the site.**
- 6. Explore the feasibility of graduating VPP participants from the program.**

- 7. Explore the feasibility of discontinuing the Corporate Program.**
- 8. Discontinue the Merit Program.**
- 9. Ensure OSHA VPP staff understands the time frame requirement for the first Mobile Workforce post-approval evaluation. Discuss further the feasibility of changing these time frames and provide more RA discretion in determining the time frames.**
- 10. Consider allowing Special Government Employees (SGEs) to participate in non-traditional activities including annual report reviews, reviewing new applications and performing pre-audits at prospective VPP applicants' sites.**
- 11. Consider requiring participation in at least one onsite or other defined activity per year for SGEs currently on the active rolls.**
- 12. Modify OSHA policy to allow VPP Program Managers (VPMs) and/or Team Leaders (TLs) to use as many SGEs as they determine necessary to complete the evaluation. Maintain a requirement for a minimum of one OSHA team leader on all onsite evaluations.**
- 13. Improve the SGE application process and training program to ensure SGEs have the requisite knowledge, experience and ability to perform onsite evaluations.**
- 14. Improve the SGE database to include SGE expertise; ensure the database is current.**
- 15. Develop and implement OSHA policy for removal of SGEs and update the SGE manual.**
- 16. Revise and improve the onsite evaluation report worksheet format to elicit better information on the eligibility of the applicant.**
- 17. Determine if data can be provided through online reporting to eliminate duplication of data entry. Consider the use of an online tool for the participants to use when submitting the annual evaluation report.**
- 18. Amend the current success story templates to include best practices and communicate the change to VPP participants.**
- 19. Require sites to report and explain significant changes in the previous three years' data in the annual evaluation. Consider additional modifications to the annual evaluation to improve its usefulness.**

The team also found the Agency has several areas that need to be addressed to ensure consistency in the administration of VPP.

### **Consistency issues**

- 20. Ensure the regions understand the Agency policy on incentive programs at VPP sites.**
- 21. Revisit how the Process Safety Management (PSM) portion of the onsite evaluation is handled at VPP sites to determine the best method to obtain accurate PSM information including a review of the former system. Issue the Annual Self-Evaluation, PSM Supplement B timely to ensure participants have enough time to evaluate and answer the questions.**
- 22. Require OSHA staff conducting recordkeeping reviews for VPP to receive recordkeeping audit training.**
- 23. Consider implementing a requirement that participants conduct recordkeeping audits on a regular basis.**
- 24. Ensure better communication, between the region and national office, of injury and illness data discrepancies found during the onsite evaluations. Ensure the Annual Submission spreadsheet is updated to contain the most up-to-date and accurate information.**
- 25. Develop an appropriate plan to address regional inconsistencies identified through the survey.**
- 26. Develop and implement a training plan for personnel designated or assigned to be TLs on VPP Evaluations.**
- 27. Develop a VPP training course for new VPMs and TLs.**

The team provided recommendations concerning actions the Agency could take in response to enforcement activities at VPP sites.

### **Enforcement Activities**

- 28. Allow the RA to propose termination for a VPP participant in cases where the RA believes employees' safety and health are seriously endangered or that a lack of trust has occurred between VPP management and OSHA.**
- 29. Include a Merit finding under Section 11(c) of the Act as a reason for automatic termination from VPP.**

- 30. Rewrite the current guidance on procedures for regions to follow after a work-related fatality, catastrophe, or other significant enforcement activity. Require the region to conduct a thorough evaluation following such an event.**
- 31. Allow Area Directors the authority to make a determination concerning initiating an enforcement action at a VPP site following a referral for a safety and health hazard the participant will not correct.**
- 32. Continue to allow VPP participants to be exempt from programmed inspections even in industries where OSHA has a National Emphasis Program.**
- 33. Develop a process after a work-related fatality or significant enforcement activity whereby a site is placed in an “Inactive” status pending completion of an investigation.**

The team found the Agency should explore additional lagging indicators, leading indicators, and outcome measures to expand measurement of program effectiveness.

#### **Performance Measures**

- 34. Create a team which includes OSHA, VPP stakeholders, and experts to identify effective lagging indicators, leading indicators, and outcome measures to track VPP performance.**

#### **Implementation**

Finally, the team believes the recommendations in this report provide a road map for management to follow to enhance the administration of VPP. Many of the concerns raised from various sources regarding VPP could be addressed through the adoption of these recommendations. The team believes that the Directorate should develop a plan to include an internal tracking mechanism to help facilitate that process.

## **I. Project Overview**

In April 2011, Assistant Secretary Dr. David Michaels and Deputy Assistant Secretary Richard Fairfax of the Occupational Safety and Health Administration (OSHA) created a Voluntary Protection Programs (VPP) Review Team. The VPP Review Team was directed to conduct a review of the VPP and to make recommendations to the Assistant Secretary to enhance the program.

The VPP Review team (hereinafter referred to as “the team”) was comprised of Nancy Smith, Deputy Regional Administrator, Region VIII; Kris Hoffman, Area Director, Region II; Christi Griffin, Assistant Regional Administrator for Cooperative and State Programs, Region IV; John Newquist, Assistant Regional Administrator for Cooperative and State Programs, Region V; Mark Briggs, Area Director, Region VI; and Diane Price, Program Analyst, Directorate of Cooperative and State Programs.

### **A. Objective**

To conduct a comprehensive review of OSHA’s VPP in further response to a Government Accountability Office (GAO) report issued in May 2009 that concluded: “Improved Oversight and Controls Would Better Ensure Program Quality” for the Voluntary Protection Program. The GAO report can be found at [www.gao.gov/products/GAO-09-395](http://www.gao.gov/products/GAO-09-395).

### **B. Scope**

The team reviewed organizational structure, VPP policies and procedures, National and Regional Office functions and responsibilities. The review was limited to Federal VPP. The scope of the review included an assessment of the following:

1. Internal Controls
2. Enhancements to the VPP
3. Consistency in the administration of the VPP
4. Agency policies on terminations, withdrawals, and enforcement activities at VPP sites
5. Performance measures for VPP.

### **C. Approach**

The team held pre-review conference calls with Greg Baxter, Acting Director of the Directorate of Cooperative and State Programs (DCSP), to establish the project expectations. The team then met face-to-face with Assistant Secretary Dr. David Michaels, Deputy Assistant Secretary Rich Fairfax, and Greg Baxter, Acting Director of DCSP to further discuss the scope of the project. The team then continued to meet to develop an implementation plan for the review.

The team decided to administer a survey to all internal program managers and a representative sample of OSHA personnel who serve as TLs on VPP evaluations to gather information and opinions on issues related to the VPP.

In addition to the survey, the team reviewed the GAO report, VPP memoranda developed after the 2009 GAO report, the VPP manual, the 2009 Federal Register Notice (FRN) relating to VPP, the Special Government Employee (SGE) manual, and informal comments received from the Regional Administrators. The team also interviewed DCSP staff and met with external stakeholders to solicit their recommendations for enhancements to the VPP.

#### **D. Government Accountability Office Report**

In 2009, GAO conducted an audit of OSHA's VPP which resulted in three major findings. These include:

- 1) OSHA's internal controls are not sufficient to ensure that only qualified worksites participate in the VPP
- 2) OSHA's oversight is limited because it does not have internal controls, such as reviews by the national office, to ensure that regions consistently comply with VPP policies for monitoring sites' injury and illness rates and conducting onsite reviews
- 3) OSHA has not developed goals or measures to assess the performance of the VPP, and the agency's efforts to evaluate the program's effectiveness have been inadequate.

GAO made the following three recommendations as a result of their findings:

- 1) Develop a documentation policy regarding information on follow-up actions taken by OSHA's regional offices in response to fatalities and serious injuries at VPP sites
- 2) Establish internal controls that ensure consistent compliance by the regions with OSHA's VPP policies for conducting on-site reviews and monitoring injury and illness rates so that only qualified worksites participate in the program
- 3) Establish a system for monitoring the performance of the VPP by developing specific performance goals and measures for the program.

## **II. Background**

OSHA's VPP encourages and recognizes employers, workers, and union representatives who demonstrate a commitment to excellence in safety and health. VPP participants work cooperatively with OSHA to create exemplary worksite safety and health management systems. VPP consists of three programs: Star, Merit, and Demonstration. These are described in more detail in Appendix A. Star is recognition for employers who demonstrate exemplary achievement in workplace safety and health. Merit is recognition for employers who have implemented good safety and health management systems that

need additional improvement. Demonstration is recognition for employers who are interested in testing alternatives to current VPP eligibility and performance requirements.

The three options for participation are Site-Based, Mobile Workforce, or Corporate. Site-Based is for fixed worksites, some long-term construction sites, resident contractors at participating VPP sites and resident contractors working elsewhere but as part of a larger organization approved under VPP’s corporate option. Mobile Workforce is for construction companies and employers in other industries whose employees perform work at a variety of locations. Corporate is for large organizations that have committed to bringing multiple facilities into VPP.

**Status of sites as of July 31, 2011**

<b>Region</b>	<b>Federal VPP</b>	<b>State VPP</b>	<b>Total</b>
1	86	8	94
2	170	17	187
3	153	63	216
4	277	238	515
5	264	124	388
6	545	12	557
7	122	44	166
8	56	13	69
9	18	139	157
10	36	62	98
<b>Total</b>	1727	720	2447

**National Office Structure**

Responsibility for National Office oversight of the VPP rests with the DCSP, Office of Partnerships and Recognition (OPR), located in Washington DC. The Director of DCSP allocates approximately 15% of his/her time to VPP and the Deputy Director devotes about 20% of her time to the program. Five positions in OPR are allocated to the program’s administration; however, one position is vacant. The OPR Director position is not filled permanently, although a manager is serving this role in an acting capacity. The OPR Director allocates approximately 90% of her time to VPP, although the DCSP Deputy Director thought this time would be about 66% once the acting OPR Director was more familiar with the program. A Safety and Health Specialist within OPR provides assistance on an as needed basis and administrative support is provided by the Directorate. The OPR staffing is as follows:

- 1 Office Director GS-15 (acting)
- 1 Supervisory Program Analyst, GS-14 (vacant)
- 1 Program Analyst, GS-13 responsible for Regions 1, 2
- 1 Program Analyst, GS-13 responsible for Regions 3, 4, 5
- 1 Program Analyst, GS-13 responsible for Regions 6, 7, 8
- 1 Program Analyst, GS-13 responsible for Regions 9, 10.

## **Regional Structures**

Currently there are several different staffing structures in place throughout the ten regions administering the VPP. A chart showing regional VPP resources is included in Appendix A. The numbers vary from .5 Full-Time Equivalents (FTEs) to 15.5 FTEs per region for a total of 47.85 FTEs dedicated to VPP in the field. In addition to these FTEs, each of the GS-13 VPP Managers reports to a GS-14 Assistant Regional Administrator.

Administrative support for the program is provided by regional and/or area office staff. Additionally, six of the ten regions use enforcement personnel on a limited and as needed basis.

## **III. Internal Controls**

### **A. Role of DCSP**

The role of DCSP is outlined in the VPP manual and provided in detail in Appendix A. In summary, DCSP is responsible for the following: developing policies and procedures for the administration of the VPP; reviewing all onsite evaluation reports for new participants and completing a spot-check of Regional Administrators' recommendations on reapprovals; providing regions with program support; maintaining a public file; maintaining a comprehensive national database of VPP participants' information; and generating VPP information for offices. The team believes the role of DCSP is appropriately defined in the VPP manual, but that the administration of the VPP could be improved if the recommendations and suggestions provided in this report are implemented.

Contrary to the VPP manual, all reapproval reports are reviewed by the National Office. The reports are reviewed in a manner similar to initial approval reports. The review process for both reapprovals and initial approvals has been untimely. This may be partially because the National Office staff review includes a review of format including grammar and style. Some regions believe there may be more focus on grammar and style than significant technical content. Concern with a region's repeated problems with format, grammar, and accuracy should be brought to the attention of the Regional Administrator (RA) for correction.

The team concluded additional review for reapprovals is unnecessary since the Regional Administrator has reapproval authority and the VPP participant has already been provided the report. To improve timeliness of processing of reapprovals, it is strongly recommended that the National Office only spot-check reapprovals.

### **Recommendations:**

**Focus the DCSP review on the technical details of the initial approval report and bring repeated problems to the attention of the appropriate RA.**

**Follow the guidance in the VPP manual to spot check reapprovals instead of reviewing all reapprovals.**

## **B. Program Oversight**

A significant finding by GAO was that OSHA's oversight is limited because it does not have internal controls, such as reviews by the National Office, to ensure that regions consistently comply with VPP policies for monitoring sites' injury and illness rates and conducting on-site reviews.

The 2009 GAO report identified several examples of this lack of internal controls including:

- 1) The lack of follow through ensuring appropriate actions have been taken at the regional level following incidents such as fatalities and serious injuries at VPP sites
- 2) Proper documentation is not maintained for these incident evaluations
- 3) Inconsistent application of policies and procedures
- 4) National Office did not require regions to report on Rate Reduction Plans
- 5) A pilot program provided for less comprehensive reviews at VPP sites
- 6) Regions did not follow policy regarding injury and illness rate verification.

DCSP issued the following series of memoranda to address concerns raised by GAO:

1. VPP Policy Memorandum #1, Improving the Administration of the Voluntary Protection Programs, issued August 3, 2009, provided instructions on specific actions the Regions and the National Office must take to improve OSHA's administration of VPP.
2. VPP Policy Memorandum #2, Further Improvements to the Voluntary Protection Programs (VPP), issued November 9, 2009, eliminated the Modified Application Process (MAP), phased out the pilot program, and clarified procedures related to obtaining Medical Access Orders.
3. VPP Policy Memorandum #3, Regional Correspondence to VPP Participant Reapprovals and Verification of VPP Injury and Illness Rates, issued November 16, 2009, outlined the process regions will use to notify VPP participants and their union representatives of their reapproval. It also included procedures to reconcile the annual injury and illness rates reported to OSHA in VPP participant annual self-evaluations with OSHA- 300 log information reviewed during VPP onsite revaluations.
4. VPP Policy Memorandum #4, Further Improvements to the Voluntary Protection Programs (VPP), issued February 11, 2011, rectified a problem the Agency had discovered with the manner in which companies were reporting injury and illness data.

These memoranda addressed many of GAO's concerns with internal controls, but additional follow-up needs to be done. Appendix B provides more discussion on the Agency's response.

The use of memoranda to provide critical guidance and to implement program changes creates undue confusion and leads to inconsistent application. Moreover, on occasion these memoranda offer contradictory guidance that leaves those trying to use them confused. For example, some guidance in Memorandum #3 supersedes Memorandum #1, while other parts of Memorandum #3 supplement Memorandum #1. Several of the memoranda address injury and illness reporting, which is of critical importance to the program. As such, it is extremely important that all guidance on the subject be consolidated and provided to the regions in one document. Individuals responsible for implementing the VPP, particularly in the field, should not find it necessary to navigate through a maze of unclear, contradictory governing and guidance documents.

**Recommendation:**

**Update the VPP manual to incorporate changes reflected in various memoranda issued from 2009-2011; the "Revisions to the Voluntary Protection Programs to Provide Safe and Healthful Working Conditions," published in Federal Register Notice 74 FR 927, January 9, 2009; and, recommendations adopted from this report.**

**C. Program Audit**

OSHA Instruction, EAA 01-00-004, Management Accountability Program, September 15, 2010, requires regions to audit Regional Office operations, including VPP, at least once every four years. The report and findings are provided to the Directorate of Evaluation and Analysis (DEA), but they are not reviewed or shared with DCSP. The regions also are required to develop action plans to address significant findings and report to DEA on their progress. It would be beneficial for DEA to share the audit results and action plans that relate to VPP with DCSP.

DEA periodically updates questions to be used by auditors during an audit to assist the auditor in assessing whether or not the latest policies and procedures applicable to the specific program being audited are being properly executed. DEA recently worked with DCSP to develop new questions to verify that the policies and procedures identified in the various memoranda issued by DCSP have been incorporated into regional operations. DCSP is not involved in the actual audit process. Their involvement, however, could improve the quality of this program oversight. DCSP should participate on full onsite audits of regional VPP on a regular basis. Additionally, the staff may benefit by being allowed to participate with the regions on some VPP participant onsite reviews.

**Recommendation:**

**Require National Office staff to participate periodically on audits of the VPP in the regions. Consider allowing DCSP to participate on VPP participant onsite reviews.**

## **IV. Enhancements to the VPP**

### **A. Tracking**

#### **VPP Automated Data System (VADS)**

VADS is an automated Access™ database maintained by DCSP and designed to provide up-to-date information on the status of VPP. The regions are allowed to view VADS but they are not allowed to input data. Currently, the data is inaccurate. For example, a search request for the number of Corporate VPP sites did not provide accurate information. The National Office only counts Corporate sites as those sites brought into the program after a company achieved Corporate status. Some regions count a site as corporate if they are under an approved corporate entity, even if the site was approved for VPP before the company achieved corporate status. In another example, a search for the number of active sites found that the regions' count of the numbers of Mobile Workforce, Demonstration, and Federal Agency sites significantly differed from the numbers reflected in VADS. The VADS system also does not track Star conditionals.

The reapproval data is also inaccurate. The actual reapproval is effective the date the Regional Administrator (RA) signs a notification letter to the site; however, VADS tracks the date the Assistant Secretary signs a letter sent to the company. At times, the dates of the RA and the Assistant Secretary's letters vary by several months. As a consequence, when the National Office runs a report of overdue reapprovals, it does not match the status of reapprovals identified in the regions. Also, for some regions the data reflected in VADS relative to when a site's reapproval is overdue (past the date the onsite is required) or seriously overdue (6 months past the date the onsite is required) is incorrect. As a consequence of the unreliability of VADS data, most regions had to develop their own tracking systems.

The data in VADS could be improved if the data was entered as soon as the onsite was completed; the data was reconciled on a quarterly basis between the regions and National Office; and, the National Office solicited input from the field when making improvements to the system.

#### **Recommendation:**

**Ensure the VPP Automated Data System (VADS) is up-to-date and improve the timeliness and accuracy of the data by allowing regions to enter VPP data. Clarify how Corporate Program participants should be counted, track the date the regions send the report to the national office, and reflect the date approved for reapprovals as the date the RA signs the letter to the site.**

## **B. Changes to the Program**

The survey administered to internal staff solicited ideas for making changes to the program. All ten VPMs completed the survey, while 46 out of 52 TLs completed the survey. Several potential changes were addressed including the following:

### Graduation

Only 30% of the VPMs and 33% of TLs felt that graduating employers into an alternate recognition program such as one run by the Voluntary Protection Program Participants' Association (VPPPA) after some period of time was a viable option for the Agency. Stakeholders had a wide range of opinions from a definitive "no" to suggesting the Agency explore the possibilities. Suggestions for consideration included charging a fee after being in the program for some period of time, ensuring there was some form of continued recognition, and establishing clear criteria for graduation. Based on the input received, the team felt graduation should be explored further, and that additional stakeholder input is needed.

### **Recommendation:**

**Explore the feasibility of graduating VPP participants from the program.**

### Corporate VPP

When asked about discontinuing the Corporate VPP, 60% of the VPMs and 50% of the TLs felt it was a good idea. One region stated that the Corporate program is not an accurate way to determine the effectiveness of each site's safety and health management systems. According to the National Office, OSHA's experience has shown that corporations do not bring in the required number of sites within the time frames specified in the January 9, 2009 Federal Register Notice (FRN). It is also noteworthy that two stakeholders participating in the Corporate program were not opposed to discontinuing the Corporate program and felt that many times participation had not resulted in a streamlined evaluation or review process. Based on the input received, the team believes the Agency should consider discontinuing the Corporate program. However, further discussion and study would be necessary prior to making a final decision.

### **Recommendation:**

**Explore the feasibility of discontinuing the Corporate Program.**

### Merit

Sixty percent of the VPMs felt the Merit program should be discontinued, but only 20% of the TLs supported this option. Prior to this review, the field had been asked for suggestions concerning VPP and several of those who commented also proposed OSHA discontinue the Merit program. The concern expressed by the regions was that the

program requires a lot of maintenance and multiple onsite evaluations. The team also endorses discontinuing the Merit Program because of workload constraints. Those regions with large numbers of VPP sites and reapprovals are often unable to process applications from those companies they believe can only achieve Merit status. This practice can lead to applicants being treated differently from region-to-region.

**Recommendation:**

**Discontinue the Merit Program.**

Mobile Workforce

The survey showed that 70% of both VPMs and TLs felt Mobile Workforce should continue. At the same time, 100% of the VPMs and 45% of the TLs felt the time between the approval and the first post-approval reevaluations should be extended. A further review of the survey results showed several staff appeared to misunderstand the time frames identified in the January 9, 2009 FRN. The FRN indicated that the first post-approval reevaluation must be conducted within 18-24 months and then no greater than every 36 months.

**Recommendation:**

**Ensure the OSHA VPP staff understands the time frame requirements for the first Mobile Workforce post-approval evaluation. Discuss further the feasibility of changing these time frames and provide more RA discretion in determining the time frames.**

**C. Special Government Employees (SGEs)**

The SGE Program was established to allow industry employees to work alongside OSHA during VPP onsite evaluations. This program also was intended to benefit OSHA by supplementing its onsite evaluation teams. In addition, it gives industry and government an opportunity to work together and share views and ideas.

Only qualified volunteers from VPP sites are eligible to participate in the SGE program. These volunteers must be approved by OSHA and they must be funded by their companies to participate. After submitting an application and completing required training, these volunteers are sworn in as SGEs and are approved to participate as VPP onsite evaluation team members.

The consensus among OSHA personnel as well as stakeholders is that there is need for improvement in the SGE program. Challenges identified include ensuring SGEs on the active rolls participate in the program, difficulty recruiting and tracking active SGEs, and problems ensuring SGEs have the requisite training, experience, and/or interpersonal skills necessary to fulfill their duties.

## SGE Participation

A total of 1270 SGEs are included in the national SGE database of “active” SGEs. More than 50% of SGEs on the active rolls did not participate in an evaluation during fiscal year 2010.

The lack of participation reflected above was attributed to a number of factors including:

- Inadequate maintenance of SGE information in OSHA databases resulting in obsolete contact information
- Many SGEs are not willing to participate in an evaluation
- VPMs and TLs reported some SGEs habitually cancel with little advance notice
- Some SGEs are not selected because they lack knowledge, experience, training, and/or the interpersonal skills to perform their duties.

External stakeholders generally agreed there are many SGEs that go through the training program and do not participate in the process thereafter. One stakeholder indicated they have some SGEs that have never been contacted to perform an evaluation, suggesting a communication problem may exist between OSHA and the SGEs.

The team identified that a possible solution to improve SGE participation is to require some type of compulsory SGE participation as a program requirement. Seventy percent of both OSHA VPMs and TLs are in favor of some form of compulsory SGE participation among VPP participants on a sliding scale based on company size.

Other staff cautions that making participation mandatory for every participant site may be problematic because some sites do not have the resources for personnel to travel or the expertise necessary to provide quality SGEs. Given this, it may be more appropriate to require mandatory participation from SGEs who went through the SGE training program rather than from every VPP site.

The SGE database is not up-to-date. Regions reported problems with the SGE database in that some email addresses were no longer valid, SGEs were no longer with the VPP participant, or incorrect contact information was in the system. The Agency needs to develop a better method to ensure SGEs notify OSHA of any changes to their status and contact information in a timely manner. These changes should also be reported in the site’s annual evaluation report.

The SGE database also does not include all the information the field needs when recruiting SGEs. For example, all SGE qualifications should be clearly listed in the national SGE database so that TLs may select prospective SGEs based on the SGE’s qualifications and the specific technical needs required for the evaluation. The current database needs to be accessible to all VPMs and TLs.

The VPPPA and most industry stakeholders recommended that the Agency make improvements in the overall management of the SGE program. One industry

stakeholder was in favor of some sort of compulsory SGE participation. While the VPPPA did not recommend compulsory SGE participation for every site, they advocated mandatory participation from SGEs who are on the active rolls. If an SGE does not participate within some defined period of time, the SGE should be removed from the rolls. In addition, the VPPPA advocated changing OSHA policy to allow more SGEs to participate in each evaluation and to use SGEs in non-conventional ways including:

- Participating in review and follow-up on VPP site's annual self evaluation reports
- Assist with new application reviews and pre-audits
- Assist with tracking 90-day item abatements prior to final OSHA review.

### SGE Qualifications and Training

Current policy states that an individual can apply to participate as an SGE as either a safety and health professional with defined qualifications and experience or as an hourly employee or individual who has several years of experience implementing effective safety and health management systems. In addition, SGEs must be currently working for a VPP participant; they are required to have strong interpersonal, reading, and writing skills; the physical ability to perform their duties; and management or corporate support for SGE participation.

OSHA's Policies and Procedures Manual for Special Government Employee (SGE) does not address how to remove an SGE from the rolls. As a result, individuals continue to be on the SGE active rolls in spite of a lack of knowledge, skills, experience, or availability.

It appears that some TLs may be assuming incorrectly that all SGEs participating on the onsite evaluations have significant safety and health knowledge and experience. VPMs and TLs need to be aware of the SGE's safety and health knowledge limitations prior to selecting a particular SGE. An updated SGE database would help in the selection process.

Internal and external stakeholders agree SGE training needs to be enhanced. The VPPPA offered to collaborate with OSHA to present joint workshops at national and regional conferences to provide enhanced SGE training. A general industry stakeholder recommended looking at developing a more rigorous training program for SGEs to hone their audit skills and ensure they focus on tying problems found during evaluations to breakdowns with management systems. This same stakeholder recommended that the SGE training include classroom instruction as well as hands-on training to include an audit of a program involving a walkthrough of a workplace to validate skill sets, improve interpersonal skills and demonstrate competency. This stakeholder also suggested that the SGE training program should be developed, at least partially, by a working group much like what was done with the Challenge program. The workgroup should include, in addition to OSHA personnel, interested non-OSHA stakeholders and present and former SGE's of The Year.

The team suggests including stakeholders in the development of SGE training. SGE training may also be enhanced through different methods such as collaboration with the VPPPA or providing increased access to OSHA's Training Institute and OSHA Education Center courses. (Currently the OSHA Education Centers charge SGEs for classes.) This would serve to enhance their ability to recognize hazards and perform safety and health program audits.

#### OSHA Use of SGEs

OSHA policy limits the number of SGEs that may participate on a VPP evaluation. The number of SGEs on each evaluation is limited to the number of OSHA personnel plus one. For instance, if an evaluation team has one OSHA team leader there can be no more than two SGEs on the evaluation team. At least two regions have deviated from this policy and these regions found no negative impact on the quality of their evaluations. They further reported this practice helped them handle their workload. Regions need more flexibility in determining the number of SGEs to use on an evaluation.

#### **Recommendations:**

**Consider allowing SGEs to participate in non-traditional activities including annual report reviews, reviewing new applications and performing pre-audits at prospective VPP applicants' sites.**

**Consider requiring participation in at least one onsite or other defined activity per year for SGEs currently on the active rolls.**

**Modify OSHA policy to allow VPMs and/or TLs to use as many SGEs as they determine necessary to complete the evaluation. Maintain a requirement for a minimum of one OSHA team leader on all onsite evaluations.**

**Improve the SGE application process and training program to ensure SGEs have the requisite knowledge, experience and ability to perform onsite evaluations.**

**Improve the SGE database to include SGE expertise; ensure the database is current.**

**Develop and implement OSHA policy for removal of SGEs and update the SGE manual.**

#### **D. Process Improvements**

##### **Evaluation Report**

A written report is generated as a result of an onsite evaluation. The onsite consists of an opening conference, a document review, a physical walkthrough of the facility, interviews, daily discussion of findings, and a recommendation to the Assistant Secretary

and/or Regional Administrator. The VPP manual prescribes a specific report format for use by OSHA reviewers and includes a site worksheet.

Surveys reflected that the regions felt the required worksheets are generic and do not lend themselves to providing site specific information. Several questions in the worksheet are redundant.

If a potential VPP site is covered by a National Emphasis Program, the report should reflect how the site addresses hazards covered by the NEP.

Strong consideration should be given to adopting some type of an assessment worksheet that scores the applicant or participant against requirements. The use of a scoring system could help achieve more consistency in evaluations and should be explored further.

**Recommendation:**

**Revise and improve the onsite evaluation report worksheet format to elicit better information on the eligibility of the applicant.**

Annual Evaluation

VPP participants must have written procedures to annually evaluate the effectiveness of their safety and health management system and they must conduct an annual evaluation of their program. The participants are required to submit the annual evaluation to their respective regional VPP Managers or other designated person by February 15<sup>th</sup>.

The annual evaluation must be a critical review and assessment of the effectiveness of all elements and sub-elements of a comprehensive safety and health management system. OSHA expects the evaluation to include participant and applicable contractor injury and illness data, progress toward Merit or One-Year Conditional goals (if applicable), and success stories. These reports are not meant to replace the onsite evaluation process.

A suggested template can be found in the VPP manual Appendix C. This format is not required, but its use by the regions is highly suggested to ensure consistency and ease of review. The annual evaluations are reviewed by the VPP Manager, VPP Coordinator or Officer, Compliance Assistance Specialist, and other personnel assigned to VPP.

From the survey, it was found that there is confusion as to what should be done with the evaluations. There also seems to be a question as to the usefulness of the annual evaluation. The variation in information provided by the participants is extremely wide and inconsistent. Nevertheless, the team believes OSHA could use the evaluation as an opportunity to collect information to help OSHA assess VPP's effectiveness. This also would be a good opportunity to collect both leading and lagging indicators as well as best practices.

Currently the evaluations often contain limited, redundant, outdated information and pro forma text that is the same year-after-year. The ability of some regions to effectively use this information is hampered by the sheer volume of evaluations to review. The annual evaluation process does not appear to achieve the results intended. These reports will be more useful if they are modified to collect critical performance information. These reports should focus on two primary issues, injury and illness data (lagging indicators) and preventive measures (leading indicators).

Another suggestion made through the surveys was that the format should be modified to facilitate the collection and processing of the evaluation information. Several survey responders suggested that an online tool should be developed and used to reduce paperwork. Currently when annual evaluations are submitted, the regions are required to submit a lengthy spreadsheet to report all of the injury and illness data for each site. The use of an online tool would allow injury and illness data to be compiled once which would reduce duplication of data entry.

OSHA provides VPP success stories on the OSHA website. However, the Agency could make it easier on VPP participants to provide additional useful information by amending the current success story template to include best practices. Participants could submit their best practices electronically to be published on the OSHA website and provide evidence of their submission when completing their annual evaluation report. To avoid using resources to vet the best practice, the Agency could include a disclaimer on the website that clarified that this information is not necessarily what OSHA considers a best practice; rather, it is what a participant identified as a best practice.

The team believes the annual evaluation report needs to be modified to focus on critical and useful performance information as well as data OSHA might be able to use to measure VPP effectiveness. Information collected should be limited to the past twelve months. More study is needed to determine what information should be collected, but suggestions include the following:

- Safety and health improvements and accomplishments
- Progress on the top three established safety and health goals, and reasons goals are not achieved, if applicable
- Progress toward Merit or One-Year Conditional goals (if applicable)
- Potential concerns or problems and the site's plans to address them
- Success stories
- Best practices.

To ensure the accuracy of VPP-related injury and illness rates, VPP participants should be required to provide the previous three years' injury and illness data with their annual evaluation. Any changes in previously reported data should be explained.

## **Recommendations:**

**Determine if data can be provided through online reporting to eliminate duplication of data entry. Consider the use of an online tool for the participants to use when submitting the annual evaluation report.**

**Amend the current success story templates to include best practices and communicate the change to VPP participants.**

**Require sites to report and explain significant changes in the previous three years data in the annual evaluation. Consider additional modifications to the annual evaluation to improve its usefulness.**

## **V. Consistency in the Administration of the VPP**

### **A. Process Issues**

#### Incentives

The Agency evaluates incentive programs during VPP application reviews and during onsite evaluations. The GAO issued a report on recordkeeping on October 15, 2009, entitled “Workplace Safety and Health: Enhancing OSHA’s Records Audit and Process Could Improve the Accuracy of Worker Injury and Illness Data.” The GAO found many factors affect the accuracy of employers’ injury and illness data including the following:

- Disincentives that may discourage employers from recording
- Disincentives that pressure occupational health practitioners to provide insufficient medical treatment that avoids the need to record injury and illness,
- Employees fear of disciplinary action or fear of jeopardizing rewards based on achieving low injury and illness rates

In addition, the Agency itself is concerned that companies are rewarding the absence of injuries thereby creating a climate where employees are discouraged from reporting.

VPP Policy Memorandum #5, Further Improvements to the Voluntary Protection Programs (VPP), dated April 22, 2011, was issued to provide more clarity concerning incentive programs. The memo was revised in June 29, 2011, to further clarify the Agency’s position after the Agency received feedback that the initial memorandum seemed to take an overly restrictive position on incentive programs. The memo provided the following clarification:

- A positive incentive program encourages or rewards workers for reporting injuries, illnesses, near-misses, or hazards; and/or recognizes, rewards, and thereby encourages worker involvement in the safety and health management system.

- An incentive program that focuses on injury and illness numbers often has the effect of discouraging workers from reporting an injury or illness. When an incentive program discourages worker reporting or, in particularly extreme cases, disciplines workers for reporting injuries or hazards, problems remain concealed, investigations do not take place, nothing is learned or corrected, and workers remain exposed to harm.

According to the survey results, most VPMs and TLs seem to have a good understanding of how to evaluate incentive programs. Most said that they have always evaluated whether non-reporting or underreporting of injuries and illnesses is taking place at a worksite. During the onsite interview process, the interviewer inquires about the individual's injury and illness experience and verifies the response against the OSHA-300 logs. Many conduct numerous interviews to determine whether there is any pressure or incentive to not report hazards or injuries. The responses at the VPP sites are very consistent, and they generally do not find situations of non-reporting or underreporting.

Although it appears most evaluators understand the importance of identifying disincentive programs, there are inconsistencies in how a finding of the existence of a potential disincentive program is handled. At least one region believes if a site has any incentive tied to their bonuses then they cannot be in the program. Other regions allow injury and illness rates to be tied to the incentive program provided it is determined that it has not resulted in a disincentive and that it is not a substantial part of the incentive program.

Stakeholders offered valuable insights relative to incentives. It seemed to be a consensus that the use of incentives that focus heavily or only on the absence of injury or illnesses does not serve the purpose of VPP. Effective incentive programs focus on several leading and lagging indicators such as employee participation on safety and health committees, reporting safety and health hazards, employee participation on hazard surveys, employee participation on accident investigation teams, etc. In addition to these, recognition for driving down injury and illness rates is acceptable but it needs to be incidental to the incentive program rather than its key focus.

### **Recommendation:**

**Ensure the regions understand the Agency policy on incentive programs at VPP sites.**

### Process Safety Management (PSM)

In 2008, OSHA began requiring a PSM review for VPP applicants and participants covered by the PSM standard. The onsite review must be conducted in accordance with the PSM Directive by a PSM "Level 1" Auditor (or SGE equivalent). The review must include one or more PSM processes. It is clear from the surveys, that there is a great deal of variation in the PSM review process throughout the regions.

There are three different PSM supplementary questionnaires that are currently used in VPP. Supplement A is attached to the application and the questions do not change. Supplement B, which changes annually, is sent to participants for completion as part of the annual self-evaluation. The information is then verified during the next scheduled reevaluation. This has not been a timely process requiring that sites covered under PSM be granted extensions each year. Supplement C is used during all PSM related VPP evaluations and the questions are derived from the Refinery National Emphasis Program (NEP). These questions do not necessarily relate to other industries.

These supplements are usually reviewed by the VPM, although various personnel in each region may be used for this purpose. This may include Compliance Assistance Specialists (CAS), VPP Coordinators or Officers, and in some regions enforcement personnel. These supplements cause confusion for the regions. Prior to 2008, process safety management was addressed in the evaluation report through an assessment of the 14 elements found in the PSM standard. The report identified and documented how each of the 14 elements was met. This latter method may be better than the revised approach.

#### **Recommendation:**

**Revisit how the PSM portion of the onsite evaluation is handled at VPP sites to determine the best method to obtain accurate PSM information, including a review of the former system. Issue the Annual Self-Evaluation, Supplement B in a timely manner to ensure that participants have enough time to evaluate and answer the questions.**

#### Recordkeeping

The team noted inconsistencies in the way the recordkeeping reviews are conducted across regions. Inconsistencies could easily be addressed by additional guidance and training. The VPP manual should be updated to include guidance on how to perform an effective records review.

Since recordkeeping is important to the Agency and is one of the measures of VPP effectiveness, VPP participants should be required to conduct recordkeeping evaluations on a regular basis. In fact, sixty percent of the VPMs and 66% of the TLs supported such a requirement. However, prior to implementation of such a requirement, the Agency should define the specific processes and procedures to be used by the VPP participants to accomplish this task.

#### **Recommendations:**

**Require OSHA staff conducting VPP recordkeeping reviews to receive recordkeeping audit training.**

**Consider implementing a requirement that participants conduct recordkeeping audits on a regular basis.**

## Injury and Illness Rates

Memorandum #3 states that if during an onsite review, a discrepancy is found to exist between the injury and illness rates reported in a VPP participant's most recent annual self-evaluation and the records reviewed onsite, the region must request the participant to send a corrected annual self-evaluation to the region with an explanation of the discrepancy. In some regions, participants are not required to submit the entire corrected annual self-evaluation to the region. Nevertheless, it appears the regions are notifying the National Office when a discrepancy is found during the onsite evaluation.

Memorandum #3 also states the Region must notify DCSP using the Participant and Team Information Sheet of any recordkeeping discrepancy observed. DCSP then makes a notation on the consolidated DCSP Annual Self-Evaluation Spreadsheet for the corresponding calendar year. The regions are notifying DCSP when a discrepancy exists as required; however, DCSP is not entering the corrected injury and illness rates into the consolidated DCSP Annual Self-Evaluation Spreadsheet.

Memorandum #4 provides specific guidance for VPP sites on how to complete their annual self-evaluation report to ensure accurate injury and illness data reporting. This guidance was issued to minimize the chance of misinterpretation relating to injury and illness rate reporting requirements. Since the memorandum was issued after some regions had already requested the annual report data from their participants for 2010, the change will not be implemented until participants submit their annual reports for 2011.

The Agency's effort to address GAO's concern with the accuracy of injury and illness data is confusing, implementation is inconsistent, and the process is very resource intensive. Moreover, the DCSP Annual Self-Evaluation Spreadsheet is not updated when changes occur. The Agency needs to develop an improved system to track injury and illness data and to ensure the data is up-to-date and accurate information.

### **Recommendation:**

**Ensure better communication, between the regions and DCSP, of injury and illness data discrepancies found during the onsite evaluations. Ensure the Annual Submission spreadsheet is updated to contain the most up-to-date and accurate information.**

## Miscellaneous

In addition, the survey administered to VPMs and TLs included questions regarding inconsistencies among the regions. There was agreement by 50% of VPMs and 91% of TLs that there are inconsistencies in the implementation of the VPP policies and procedures. Inconsistencies focused on three areas: the VPP evaluation report, the VPP onsite evaluation, and the use of SGEs.

Comments received concerning inconsistencies are as follows:

- Some regions do not follow the evaluation site report template.
- Days on site vary between 3 and 5 days; some regions require a set number of days for all onsite evaluations.
- Variance across regions on how the recommendation for reapproval is communicated to the participant. Some wait until the report is issued, while others get RA concurrence while onsite.
- Some do not review to determine correct NAICS; rather, they accept what is in the application.
- Some regions use more SGEs than allowed by PPM.
- One region requires VPP participants in their region to have programs not required by other regions.

These areas of inconsistencies need to be reviewed further.

**Recommendation:**

**Develop an appropriate plan to address regional inconsistencies identified through the survey.**

**B. Training/Skills Building**

Building Expertise within VPP

An OSHA TL coordinates the OSHA onsite evaluation team and ensures that all evaluation activities are performed. According to the VPP manual, the qualifications for a TL are the following: experience on three onsite evaluations, including once as a team member, once as a backup team leader, and once as a team leader in training (with a qualified team leader as backup team leader).

VPMs and TLs responded in the survey that they believe they receive enough training to be effective; however, they agreed that additional training would be beneficial and help ensure consistency among the regions. The team believes that administration of the VPP in the regions would be improved with a training plan for personnel designated or assigned to be TLs on VPP evaluations. Refresher training on new emphasis programs and topics such as recordkeeping, combustible dust, PSM, confined space would be beneficial to the staff and could be done by webinars, Learning Link, or attending courses at OTI or local venues. DCSP should explore training needs further to elicit topics of interest to the field including areas such as safety and health assessment.

Periodic meetings should be held for the field VPP staff to receive refresher training, an update on policies and procedures, and foster a free exchange of information and best practices.

A VPP basic course should be developed to address: techniques; best practices during a VPP evaluation; emphasis on what to do if a site needs assistance; how to provide a critical professional critique of the annual self-evaluation; application denial procedures; accident investigation (root cause analysis); team building; effective writing; interviewing techniques; and recordkeeping reviews.

**Recommendation:**

**Develop and implement a training plan for personnel designated or assigned to be TLs on VPP Evaluations.**

**Develop a VPP training course for new VPMs and TLs.**

**VI. Policies On Termination, Withdrawal, and Enforcement Activities at VPP Sites**

**A. Termination and Withdrawals**

The VPP manual states that only the Assistant Secretary can decide on termination of a participant; however, the Regional Administrator can provide a participant with a notice of OSHA's intent to terminate participation in the VPP.

For the latter, the participant has 30 days to appeal the intent to terminate to the Assistant Secretary. Upon review of the participant's justification, and in consultation with the Regional Administrator and DCSP, the Assistant Secretary will decide if the participant will be terminated or allowed to continue in VPP.

OSHA's policy on withdrawal states that participants may withdraw of their own accord or may be asked by OSHA to withdraw from VPP. The VPP manual further states that OSHA must request that a participant withdraw from VPP if the Agency determines that the participant is no longer meeting the requirements for VPP participation.

There is considerable confusion in the regions concerning the process for termination of a VPP participant. Although the January 9, 2009, FRN provided several examples of reasons for termination, there is limited guidance on how to actually terminate a participant. In addition, the 2009 FRN states that when there is evidence that the essential trust and cooperation between labor, management, and OSHA no longer exists, the RA can recommend termination. It is not clear if the RA can propose termination for a VPP participant in cases where the RA believes employees' safety and health are seriously endangered or that a lack of trust has occurred between VPP management and OSHA.

The VPP manual does not address the issue of what should be done if a participant receives a merit finding under Section 11 (c) of the Act. The VPP manual states that if an applicant has had an 11(c) violation during the 36 months prior to applying they are not eligible for VPP. At the same time, the 2009 FRN does not list a Merit finding under Section 11 (c) of the Act as a reason for termination. When OSHA issues a Merit finding

under Section 11(c) of the Act at a current VPP site, it should be grounds for automatic termination.

### **Recommendations:**

**Allow the RA to propose termination for a VPP participant in cases where the RA believes employees' safety and health are seriously endangered or that a lack of trust has occurred between VPP management and OSHA.**

**Include a Merit finding under Section 11(c) of the Act as a reason for automatic termination from VPP.**

### **B. Enforcement Policies**

The VPP manual is confusing and inconsistent when it describes the actions a region should take after enforcement activities. Issues of particular concern include:

- Overly cumbersome and sometimes conflicting direction on how to handle an enforcement inspection at a VPP site
- Lack of clarity regarding the interrelationship between enforcement personnel and the VPM when an enforcement action occurs
- Guidance in the VPP manual is confusing regarding whether or not a VPP onsite evaluation must be conducted after a fatality
- Lack of clarity regarding the appropriate action to take when a VPP participant is issued a willful violation
- Lack of clarity regarding the meaning of “when an enforcement action is complete.”

The procedures in the VPP manual for regions to follow after a significant enforcement activity should be rewritten and streamlined. The VPM should be required to conduct a thorough evaluation of a VPP site's safety and health management system after any significant enforcement activity, particularly one associated with a work-related fatality, catastrophe, or whenever a willful citation is issued. The purpose of the review is to determine if the site should continue to participate in VPP or be terminated.

Additionally, the following guidance on unprogrammed inspections is confounding:

- The VPP manual states that when an area office receives a referral from the VPP evaluation team, the Area Director must notify the participant and the Assistant Secretary. Enforcement action may be initiated only after the Assistant Secretary approves such action.
- The FRN states that safety and health problems discovered during any contact with VPP participants normally are resolved cooperatively; however, OSHA reserves the right, where employees' safety and health are seriously endangered and management refuses to correct the situation, to refer the situation to the

Assistant Secretary for review and enforcement action. The employer will be informed that a referral will be made to the Assistant Secretary and that enforcement action may result.

This overly restrictive requirement in the VPP manual concerning a referral from the VPP onsite team is neither practical nor reasonable. If the VPP evaluation team is making a referral, the Area Director should be allowed to make a determination concerning initiating an enforcement action. It is also unclear as to who would make a referral to the Assistant Secretary in instances when employees' safety and health are seriously endangered and management refuses to correct the situation.

**Recommendations:**

**Rewrite the current guidance on procedures for regions to follow after a work-related fatality, catastrophe, or other significant enforcement activity. Require the regions to conduct a thorough evaluation following such an event.**

**Allow Area Directors the authority to make a determination concerning initiating an enforcement action at a VPP site following a referral for a safety and health problem the participant will not correct.**

**C. Programmed Inspections and National Emphasis Programs**

The team considered whether VPP companies should be allowed to be exempt from programmed inspections at VPP sites covered under National Emphasis Programs. Under current policy VPP companies are exempt from programmed inspections. Stakeholders from VPP companies all wanted the exemption from programmatic inspection to remain. They said this was often the "hook" to get management to put in resources into VPP. Several unions disagreed.

The Regions and VPP TLs indicated that VPP participants should continue to receive exemptions from programmed inspections including those under National Emphasis Programs and Local Emphasis Programs. This would conserve resources. The team concluded a better use of resources would be to inspect sites that have a higher chance of non-compliance rather than sites OSHA has been to in the last three to five years. The survey responses indicated issues related to emphasis programs are typically addressed as part of onsite evaluations.

**Recommendation:**

**Continue to allow VPP participants to be exempt from programmed inspections even in industries where OSHA has a National Emphasis Program.**

## **D. Additional Considerations**

### Fatality and Significant Enforcement Activities

OSHA is considering whether additional actions should be taken following a significant enforcement activity. A significant enforcement includes a work-related fatality or catastrophe, or the issuance of citations for willful or multiple serious violations. The team discussed whether there should be a designation of “Inactive” in these instances. Inactive essentially would suspend the company from the VPP until an OSHA investigation was concluded. The team believes this would be helpful to OSHA; however, the Agency would need to provide procedures for the administration of an “Inactive” status.

External stakeholders indicated the following:

One stakeholder said “A VPP site who is accused of a willful violation is the ultimate sin. A process must occur. The process must uncover why there was a willful violation. If you find it willful then kick out the company.”

The National Safety Council said the VPP site should be suspended, but they should have a chance to regain status after a defined period.

The VPPPA felt that a suspension would cause people to decide the company was guilty before it had been proven.

One union official stated it makes sense to provide some type of suspension while OSHA is investigating. A willful violation should be immediate termination. With a fatality they should not necessarily be terminated but there needs to be an immediate investigation and OSHA should be able to make a determination fairly quickly whether or not the fatality was related to OSHA standards. If there is a fatality the company shouldn't just be treated the same as if there had not been a fatality. A Severe Violator Enforcement Program (SVEP) company should be terminated from the program. Companies that discriminate against employees for reporting injuries or making safety and health complaints should be terminated. OSHA should look at where the fatalities have occurred and find out what kind of standards, what hazards were involved, and what caused it.

Other stakeholders agreed that a willful violation indicated a deficient safety and health management system.

#### **Recommendation:**

**Develop a process after a work-related fatality or significant enforcement activity whereby a site is placed in an “Inactive” status pending completion of an investigation.**

## **VII. Performance Measures**

The 2009 GAO report concluded that OSHA had not developed performance goals or measures for the VPP to adequately assess the program's performance. Although OSHA measures lost workday injuries and illnesses as well as total case injury and illness rates, the GAO concluded there were discrepancies between the injury and illness rates reported by VPP sites in their annual self-evaluation reports and the rates noted in OSHA's regional on-site review reports for the same time periods.

The GAO also concluded that, other than injury and illness rates, OSHA does not use leading indicators reported annually by VPP sites as part of their annual self-evaluations to develop goals or measures that could be used to assess overall program performance. Specifically, the GAO report found each report contained potentially useful information to assess the effectiveness of each program.

Leading indicators are a measure of actions or activities that are designed to prevent negative events or incidents such as lost workday injuries and illnesses. These negative events or incidents are considered lagging indicators. Many experts believe that only measuring lagging indicators such as accidents, near misses (or near hits), fatalities and lost workday injury and illnesses, are a measure of failure and only suggest corrective actions after an incident. By contrast, leading indicators provide performance feedback prior to an incident occurring. Most safety and health experts agree that monitoring of both leading and lagging indicators is crucial to managing an effective safety and health management system. Moreover, the systematic collection of positive outcome measures relating to maintaining effective safety and health management systems is important to demonstrate the positive impact such systems have on the overall health of business and their worksites. Some examples of leading indicators include: (1) numbers of inspections conducted; (2) numbers of safety and health hazards identified; (3) decreases in time for hazard abatement; (4) increases in employee training; (5) increases in the number of near misses captured and addressed; (6) increases in root cause incident investigations; (7) number of employees involved in safety committees; (8) results of standardized perception surveys; (9) safety suggestions implemented; and (10) job hazard analyses completed.

The team feels that VPP participant leading indicators should be systematically reported and tracked by the Agency to measure proactive efforts being taken by VPP participants to address safety and health hazards and minimize risk at participating sites. It has been determined that although leading indicator information is commonly included in the annual evaluation report, it is optional and there is no standardized format to report it. Furthermore, only injury and illness data is captured in any systematic way by the Agency.

OSHA has traditionally only captured two lagging indicators to support the success of VPP in the form of injury and illness rates. In addition to leading indicators described above, additional outcome measures should be captured to support the effectiveness of comprehensive safety and management systems. Numerous studies have concluded that

the institution of exemplary safety and health management systems have positive impact on many other areas of the businesses implementing them including improved productivity, improved morale, decreased absenteeism, improved quality and decreased workers compensation costs.

Although VPP sites track and report various lagging indicators, leading indicators, and outcome measures as part of their overall management systems, they do not all track the same indicators. Given VPP participants are in a myriad of industries with significant variation in work processes, it is clear there is not a “one size fits all” answer to what indicators each site should track for reporting to OSHA.

The team feels capturing lagging indicators, leading indicators, and outcome measures would enhance the Agency’s ability to measure effectiveness of the VPP and the overall efficacy of implementing effective injury and illness prevention programs. The team is in agreement that selection should be done with great care, ensuring the capture of only meaningful data. This selection should be conducted by a team which includes OSHA and VPP stakeholders as well as recognized experts that have done much research in this field.

**Recommendation:**

**Create a team which includes OSHA, VPP stakeholders, and experts to identify effective lagging indicators, leading indicators, and outcome measures to track VPP performance.**

**VIII. Implementation**

This report highlights a significant number of concerns and issues that need to be addressed to improve the VPP. An action plan needs to be developed to complete those actions management decides to implement. The plan should include time frames and a method for reporting on accomplishments. The team suggests that the Directorate develop an implementation plan to include an internal tracking mechanism to help facilitate the process.

## Appendix A

### A. Summary of Voluntary Protection Programs

OSHA's Voluntary Protection Program (VPP) encourages and recognizes employers, workers, and union representatives who demonstrate a commitment to excellence in safety and health. VPP participants work cooperatively with OSHA to create exemplary worksite safety and health management systems.

VPP consists of three programs:

**Star:** This is the highest level of VPP recognition and is for employers who demonstrate exemplary achievement in workplace safety and health through the development, implementation, and continuous improvement of safety and health management programs. Star participants must have injury/illness rates below their industry's national average.

**Merit:** This is for employers and employees who have implemented good safety and health management systems that need additional improvement to reach Star quality. Merit participants must demonstrate the potential and commitment to achieve Star quality within three years.

**Demonstration:** This is for employers and employees who operate VPP-quality safety and health management systems and who are interested in testing alternatives to current VPP eligibility and performance requirements.

Applications are accepted from sites from both the private and the federal sectors. These include employers working in Maritime, Agriculture, Construction and General Industry. Applications are processed as either Site-based, Mobile Workforce, or Corporate. These options are described below:

**Site-Based:** This option is for fixed worksites and some long-term construction sites. This option is also available to resident contractors at participating VPP sites and resident contractors working elsewhere but as part of a larger organization approved under VPP's corporate option.

**Mobile Workforce:** This option is for construction companies and employers in other industries whose employees perform work at a variety of locations. Applicants apply for VPP status within a Designated Geographic Area (DGA) – for example, the boundaries of an OSHA Regional or Area Office or a state under OSHA jurisdiction. If approved, employer's worksites or projects within the DGA will also participate in VPP.

**Corporate:** This option is for large organizations that have committed to bringing multiple facilities into VPP. The employer must implement an organization-wide established safety and health management system, and must provide prescreening

and continuing oversight of individual sites' system implementation and performance. Organizations that achieve corporate VPP status are able to use streamlined application and onsite evaluation processes during initial site and subsequent reevaluations.

## **Role of DCSP**

According to the VPP manual, the role of DCSP to:

- Develop, interpret, and revise policies and procedures for the administration and management of the VPP.
- Review all onsite evaluation reports for new participants and spot-check Regional Administrators' recommendations on reapprovals to ensure that national formatting requirements are met and evidence that the VPP requirements are met is clearly documented.
- Provide regions with program support when requested and when resources are available.
- Respond to Congressional inquiries and provide information to the public upon request.
- Consider proposed change supplements relating to VPP in state plans, in accordance with the State Plan Policies and Procedures Manual, STP 2-0.22B.
- Maintain Records and Data. Specifically, DCSP must:
  1. Maintain a public file on all approved participants that includes:
    - a. The General Information section from the application.
    - b. DCSP Director's memorandum to the Assistant Secretary requesting approval of a VPP onsite evaluation report.
    - c. Onsite evaluation reports.
    - d. The Assistant Secretary's letter to the participant (which includes notification of a copy sent to any and all collective bargaining agents).
    - e. Congressional and Gubernatorial letters.
    - f. Any formal correspondence to and from the Regional Administrator, the VPP participant, or the public.
- Develop and maintain a comprehensive national database of VPP participants' information including, but not limited to, name, location, contact person, telephone number, approval date, VPP status, TCIR and DART rate, union information if applicable, and number of employees.

- Generate and distribute to appropriate offices monthly VPP information, including:
  - a. VPP Onsite Evaluation Log.
  - b. VPP Application Status Log.
  - c. Monthly Statistical Charts.
  - d. SGE Usage Report.
  - e. Regular information updates for the OSHA VPP web site.
  - f. Monthly information for inclusion in publications.
  - g. Monthly information for inclusion in OSHA's Government Performance and Results Act (GPRA) and Strategic Plan reports.

### Field Office Structure for VPP

<b>Region</b>	<b>Title</b>	<b>Percent of time on VPP</b>	<b>Grade</b>	<b>Location</b>	<b>FTE</b>
<b>1</b>	VPP Mgr	100	13	RO	1
	VPP Coordinator	100	12	RO	1
	7 CASs	25	13	AO	1.75
<b>Total</b>					<b>3.75</b>
<b>2</b>	VPP Mgr	100	13	RO	1
	VPP Officer	100	12	RO	1
	7 CASs	50	13	AO	3.5
<b>Total</b>					<b>5.5</b>
<b>3</b>	VPP Mgr	100	13	RO	1
	VPP Outreach Coordinator	100	13	RO	1
	9 CASs	50	13	AO	4.5
<b>Total</b>					<b>6.5</b>
<b>4</b>	VPP Mgr	100	13	RO	1
	5 VPP Officers-report to RO	100	12	AO	5
<b>Total</b>					<b>6</b>
<b>5</b>	VPP Mgr	100	13	RO	1
	15 CASs	30	13	AO	4.5
<b>Total</b>					<b>5.5</b>
<b>6</b>	VPP Mgr	100	13	RO	1
	VPP Assistant	50	7	RO	.5
	10 VPP Team Ldrs	100	13	AO	10
	12 CASs	30	13	AO	4
<b>Total</b>					<b>15.5</b>
<b>7</b>	VPP Mgr	100	13	RO	1
	VPP RO CAS	75	13	RO	.75
<b>Total</b>					<b>1.75</b>
<b>8</b>	VPP Mgr	100	13	RO	1
	Labor Liaison	10	13	RO	.1
	5 CASs	10	13	AO	.5
	3 RO staff	5	13	RO	.15
<b>Total</b>					<b>1.75</b>
<b>9</b>	VPP Mgr	50	13	RO	.5
<b>Total</b>					<b>.5</b>
<b>10</b>	VPP Mgr	70	13	RO	.7
	CAS	30	13	RO	.3
	1 FSO staff person	10	13	RO	.1
<b>Total</b>					<b>1.1</b>
<b>Total</b>					<b>47.85</b>

### VPP Breakdown for Federal Agencies and Corporate

<b>Region</b>	1	2	3	4	5	6	7	8	9	10	Total
<b>Total</b>	<b>94</b>	<b>187</b>	<b>216</b>	<b>515</b>	<b>388</b>	<b>557</b>	<b>166</b>	<b>69</b>	<b>157</b>	<b>98</b>	<b>2447</b>
Star	90	171	214	506	345	537	155	54	156	86	2314
Merit	3	9	0	3	20	13	6	10	0	9	73
<b>Fed</b>	<b>11</b>	<b>25</b>	<b>25</b>	<b>50</b>	<b>26</b>	<b>30</b>	<b>6</b>	<b>2</b>	<b>14</b>	<b>12</b>	<b>201</b>
USPS	8	25	11	39	10	21	3	1	9	8	135
OSHA	0	0	0	0	9	0	1	0	0	0	10
Navy	1		2	6		2			1	4	16
Army			3		1	2		1			7
Air Force	1			1	5				1		8
Marine									1		1
DefenseLogistics					1				1		2
NASA			2	2		4			1		9
NIOSH			1								1
NSA			5								5
TSA				1							1
US Mint			1								1
State Dept	1			1							2
Ntl Monuments						1	1				2
Ntl Nuclear							1				1
<b>Corporate</b>	<b>2</b>	<b>3</b>	<b>1</b>	<b>6</b>	<b>14</b>	<b>5</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>36</b>
Parsons	1	1		2	2						6
GE	1	2	1	1	10	4	5				24
URS				1	2	1					4
Delta				2							2

New corporate sites include Fluor, Morton Salt, and Jacobs Engineering although these corporations have not added sites since becoming Corporate VPP.

## Appendix B

### Follow-up to GAO Report

A significant finding by GAO was that OSHA's oversight is limited because it does not have internal controls, such as reviews by the National Office, to ensure that regions consistently comply with VPP policies for monitoring sites' injury and illness rates and conducting on-site reviews.

The 2009 GAO report identified several examples of this lack of internal controls including:

- 1) The lack of follow through ensuring appropriate actions have been taken at the regional level following incidents such as fatalities and serious injuries at VPP sites
- 2) Proper documentation is not maintained for these incident evaluations
- 3) Inconsistent application of policies and procedures
- 4) National Office did not require regions to report on Rate Reduction Plans
- 5) A pilot program provided for less comprehensive reviews at VPP sites
- 6) Regions did not follow policy regarding injury and illness rate verification.

The team reviewed the Agency's response to the findings in the GAO report and found that many of the issues were addressed, but work still needs to be done.

DCSP issued the following series of memoranda to address concerns raised by GAO:

1. VPP Policy Memorandum 1, Improving the Administration of the Voluntary Protection Programs, issued August 3, 2009, provided instructions on specific actions the Regions and the National Office must take to improve OSHA's administration of VPP.
2. VPP Policy Memorandum 2, Further Improvements to the Voluntary Protection Programs (VPP), issued November 9, 2009, eliminated the Modified Application Process (MAP), phased out the pilot program, and clarified procedures related to obtaining Medical Access Orders.
3. VPP Policy Memorandum 3, Regional Correspondence to VPP Participant Reapprovals and Verification of VPP Injury and Illness Rates, issued November 16, 2009, outlined the process regions will use to notify VPP participants and their union representatives of their reapproval. It also included procedures to reconcile the annual injury and illness rates reported to OSHA in VPP participant annual self-evaluations with OSHA- 300 log information reviewed during VPP onsite revaluations.
4. VPP Policy Memorandum 4, Further Improvements to the Voluntary Protection Programs (VPP), issued February 11, 2011, rectified a problem the Agency had discovered with the manner in which companies were reporting injury and illness data.

The team's assessment on the Agency's effort to address the examples GAO provided area as follows:

- 1) The allegation of a lack of follow through to ensure appropriate actions are taken at the regional level following fatalities and serious injuries at VPP sites was addressed. In 2010, the National Office reviewed two regions' documentation following fatality investigations, and they requested this type of information from all the regions for fatality investigations that occurred in FY 11. In addition, the National Office made efforts to adopt GAO's recommendation to track fatalities or other serious events by updating the VPP Fatality Log to include actions taken by the regions. The regions are documenting actions following a fatality or serious event and notifying DCSP. DCSP maintains a fatality database; however, it has not yet begun maintaining a database on serious events
- 2) The concern regarding proper documentation being maintained for these incident evaluations was addressed in Memorandum 1. This memo instructed the regions to place documentation in the participant file regarding action following an enforcement action. The documentation includes a description of the event, a summary of enforcement actions that includes the final disposition of the case or information relative to the status of a contested case, and a complete chronological record of VPP actions taken by the Agency.
- 3) The GAO identified the Agency's processing of Medical Access Orders (MAOs) as an example of inconsistent application of policies and procedures (issue 3). MAOs are required on all VPP evaluations to evaluate the injury and illness experience at the site. It was found that there were several instances where MAOs had not been requested prior to onsite evaluations. Memoranda 1 and 2 clarified the procedures and the process. The regions are following these procedures, so GAO's concern has been addressed. An additional concern that was not identified by GAO was that the standard wording for the MAOs does not conform to the privacy requirements, i.e. it requires that OSHA obtain social security numbers. This needs to be reviewed further and changes made as necessary.
- 4) In response to GAO's concern regarding National Office review of Rate Reduction Plans, DCSP issued guidance in Memorandum 1 that requires the regions to notify DCSP via email when a participant is placed on a 2-year rate reduction plan, and again when the plan is completed to the satisfaction of the region. The regions are complying with these instructions.

Memorandum 1 also required the National Office to work with the Directorate of Information Technology to modify the VADS to capture participant's injury and illness rates and to create a report to identify sites that exceed rate requirements. Although this has not been completed, injury and illness data continues to be collected using a spreadsheet. Memorandum 1 required the implementation of a formal system to track rate reduction plans at the national level, which is a work in-progress.

5) GAO's concern with the Modified Application Process is moot as the program was discontinued.

6) GAO's concern regarding injury and illness rate verification was addressed through Memoranda 1, 3, and 4. The 2009 GAO report concluded that although OSHA measures lost workday injuries and illnesses as well as total case injury and illness rates, these rates may not be the best measure of performance because they found there were discrepancies between the rates reported by VPP sites in their annual reports and the rates found by OSHA during their on-site evaluations.

Memorandum 1 required the Region to notify DCSP-OPR of appropriate changes to the annual VPP summary data. Corrections are to be submitted via email to the Director OPR and the OPR VPP data coordinator. The Regions are not forwarding corrections to annual summary to the National Office via email since the policy has apparently been superseded by Memorandum 3.

Memorandum 1 stated the National Office would develop and implement procedures to examine a sampling of VPP participant self-evaluations. This examination would be used to verify the quality of self-evaluations, assess compliance with VPP requirements, determine the appropriateness of the regional review, determine the need for further response or actions, and assess the quality of the regional documentation. The National Office has made preparations to start this process.

Memorandum 3 requires that if a discrepancy is found to exist between the injury and illness rates reported in a VPP participant's most recent annual self-evaluation and the rates identified during the OSHA onsite evaluation, the Region must request the participant to send a corrected annual self-evaluation to the Region with an explanation of why the discrepancy occurred. Some regions do not require the participant to submit an entirely new (corrected) annual self-evaluation, while others do. However, regardless of how the information is documented, the regions are notifying the National Office when a discrepancy is found during the onsite evaluation.

Memorandum 3 also stated the Region must notify DCSP using the Participant and Team Information Sheet of any discrepancy observed. DCSP then is to make a notation on the consolidated DCSP Annual Self-Evaluation Spreadsheet for the corresponding calendar year. The regions are notifying DCSP when a discrepancy exists as required; however, DCSP is not entering the corrected injury and illness rates into the consolidated DCSP Annual Self-Evaluation Spreadsheet.

Memorandum 4 provided specific guidance for VPP sites on how to complete their annual self-evaluation report to ensure accurate injury and illness data reporting. This guidance was issued to minimize the chance of misinterpretation relating to injury and illness rate reporting requirements. Since the memorandum was issued after some regions had already requested the annual report data from their participants for 2010, the change will not be implemented until participants submit their annual reports for 2011.

The Agency's guidance on improving the accuracy of injury and illness data is confusing, which has resulted in inconsistent implementation. Additionally, it is resource intensive. At the same time, the DCSP Annual Self-Evaluation Spreadsheet is not updated when changes occur. The Agency needs to develop a better system to track injury and illness data and that is up-to-date and accurate.

The 2009 GAO report also contained the following three recommendations:

- 1) Develop a documentation policy regarding information on follow-up actions taken by OSHA's regional offices in response to fatalities and serious injuries at VPP sites
- 2) Establish internal controls that ensure consistent compliance by the regions with OSHA's VPP policies for conducting on-site reviews and monitoring injury and illness rates so that only qualified worksites participate in the program
- 3) Establish a system for monitoring the performance of the VPP by developing specific performance goals and measures for the program

The Agency has made progress on the first two recommendations. Specifically, the Agency developed a policy advising the regions on what documentation is needed for all follow up actions taken by OSHA in response to fatalities and serious injuries at VPP sites. The Agency also provided additional instructions on how to reconcile discrepancies found between data submitted in the participant's annual evaluation report and OSHA's findings during an onsite evaluation. Further review of this issue is recommended. The issue of providing better internal controls in the administration of the VPP is still being assessed. Recommendations provided in this report will provide assistance in addressing this issue. Lastly, this report also provides a recommendation relative to how the Agency should develop additional VPP performance measures as suggested by GAO.

## Appendix C

### References

1. OSHA Instruction CSP-03-01-003, VPP Policies and Procedures Manual, April 18, 2008.
2. “Revisions to the Voluntary Protection Programs to Provide Safe and Healthful Working Conditions,” published in Federal Register Notice 74 FR 927, January 9, 2009.
3. “Revisions to the Voluntary Protection Programs to Provide Safe and Healthful Working Conditions,” published in Federal Register Notice 65 FR 45650, July 24, 2000.
4. OSHA's Voluntary Protection Programs: Improved Oversight and Controls Would Better Ensure Program Quality, GAO-09-395 May 20, 2009.
5. OSHA's Voluntary Compliance Strategies Show Promising Results, but Should Be Fully Evaluated before They Are Expanded, GAO-04-378, March 2004.
6. OSHA Instruction CPL 02-00-148, Field Operations Manual, November 9, 2009.
7. OSHA Instruction CPL 02-00-149, Severe Violator Enforcement Program (SVEP), June 18, 2010.
8. VPP Policy Memorandum #1, Improving the Administration of the Voluntary Protection Programs, issued August 3, 2009.
9. VPP Policy Memorandum #2, Further Improvements to the Voluntary Protection Programs (VPP), issued November 9, 2009.
10. VPP Policy Memorandum #3, Regional Correspondence to VPP Participant, Reapprovals and Verification of VPP Injury and Illness Rates, issued November 16, 2009.
11. VPP Policy Memorandum #4, Further Improvements to the Voluntary Protection Programs (VPP), issued February 11, 2011.
12. VPP Policy Memorandum #5, Further Improvements to the Voluntary Protection Programs (VPP), dated April 22, 2011, and revised in June 29, 2011.
13. OSHA Instruction CSP 03-01-001, Policies and Procedures Manual for Special Government Employee (SGE) Activity Conducted Under the Auspices of the Occupational Safety and Health Administration's (OSHA) Voluntary Protection Program, January 4, 2002.

14. Evaluation of the Voluntary Protection Program Findings Report, The Gallup Organization, September 2005.

## Appendix D

### External Stakeholders Interviewed

1. James Thornton, Director, Environmental, Health and Safety, Newport News Shipbuilding
2. Dave Heidorn, Manager, Governmental Affairs and Policy, JD, American Society of Safety Engineers
3. Michael Vigezzi, Global Manager, VPP & Safety Programs, General Electric Corporation
4. Dennis Mendenhall – HSE Professional, Marathon
5. Frank Mirer, Special Assistant to OSHA, Ex-UAW
6. Jim Johnson; Luke George – NSC
7. Jim Frederick – United Steel Workers
8. Davis Layne, Executive Director, VPPPA
9. Adam Pawlus, Assistant Director, VPPPA
10. Mike Maddox, National VPPPA Board Chairperson
11. Eric Frumin, Health and Safety Director – Change to Win
12. Garrett “Doc” Dougherty, President, Teamsters Local 877
13. Tad McMichael – Georgia-Pacific
14. Larry McElroy –VPP Director- Brock Group (contractor)
15. Lori Gualandri – VPP Manager Ineos
16. Trevor Eischen – University of Missouri (OSHA Intern)
17. Eric Hamilton – United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial Service Workers International Union, AFL-CIO, CLC Local 13-43
18. Earl Hilson, Safety Manager for Olin Chlor Alkali
19. Peg Seminario, Safety and Health Director of the AFL-CIO