



COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

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SUBJECT: Virginia FFY 2017 Comprehensive Federal Annual Monitoring and Evaluation Report (FAME) Response

Dear Mr. Mendelson:

Thank you for your letter of July 23, 2018, forwarding Virginia’s FFY 2017 Comprehensive Federal Annual Monitoring and Evaluation Report (FAME).

As you know, the Virginia Occupational Safety and Health (VOSH) program diligently worked to address the one finding from the FFY 2015 FAME, so I am pleased to see that finding closed and that no new findings were identified during the 2017 FAME.

ACCOMPLISHMENTS

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

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

	National	Virginia	Difference
2016 Overall TCR* Rate	3.2	2.8	-12.5%
2016 Private Industry TCR* Rate	2.9	2.5	-13.8%
2016 Construction TCR Rate	3.2	3.3	3.1%
2016 Manufacturing TCR Rate	3.6	3.5	-2.8%
2016 State and Local Government TCR Rate	4.7	4.0	-14.9%

- Virginia unique regulations provide safety and health protections to employees and employers in tree trimming operations; overhead high voltage line safety; fall protection in steel erection; reverse signal operation in construction and general industry; confined space hazards in the telecommunications industry; and compliance with manufacturer's instructions for vehicles, machinery, tools and equipment in general industry, construction, agriculture and public sector maritime.
- VOSH's abatement verification regulation requires not only abatement certification (i.e., the employer's signed statement that abatement has occurred), but also requires employers to provide photographs, receipts, purchase orders, etc., as verification that a hazard was abated.
- Public service announcement (PSA) videos have been developed on a number of safety and health topics, including the areas of tree trimming operations, overhead high voltage line safety, trenching safety, the dangers of heat stress and fall protection that can be viewed at <https://www.youtube.com/user/DOLIVirginia/videos>.
- The Virginia Voluntary Protection Program works with Virginia STAR sites and prospective applicants to host (VPP) Best Practice Days and VPP Workshop training days which are provided free of charge to VPP members, prospective applicants, state and local government employers and selected industries. VPP Best Practices days were hosted by:
 - Integrity Doors and Windows (December, 2016 – workshop on hand tool safety and preventing hand injuries)
 - Sysco (December, 2016 – workshop on VPP OCTPS form)
 - NASA Langley Research Center¹ (February, 2017 - public sector safety and health)
 - Raytheon (April, 2017 – safety and health management systems)
 - Tidewater Community College (June, 2017 – fall protection in the public sector)
 - Goodyear Tire and Rubber Company, Danville Plant (September, 2017 – machine guarding)
 - Region III and Virginia VPP (November, 2017 – electrical safety best practices)
 - Cintas and the Associated General Contractors of Virginia (June 2018 – transportation safety).

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

- VOSH has implemented an exemplary and one of a kind Apprenticeship Program for VOSH Compliance Safety and Health Officers (CSHO), Industrial Hygienists and Safety and Health Consultants. The Apprenticeship Program has approval through the U. S. Department of Veteran's Affairs and the Virginia Department of Veteran's Services as an authorizing agency for benefits under the Montgomery and Webb GI Bills.
- The Virginia Voluntary Protection Program has been codified and requires the Virginia Safety and Health Codes Board to enact regulations for the operation of VPP in Virginia, Va. Code §40.1-49.13. Governor Terry McAuliffe proposed the legislation that codified the Virginia Voluntary Protection Program (SB 881 and HB 1768). The legislation passed unanimously.

¹ NASA Langley Research Center is a federal OSHA, Region III, VPP site that worked cooperatively with VOSH to host a Best Practices Day in conjunction with the Winter 2017 Occupational Safety and Health State Plan Association meeting hosted by the Virginia State Plan in Portsmouth, VA.

Governor McAuliffe held a bill signing ceremony on June 4, 2015. The Virginia Safety and Health Codes Board adopted a final regulation implementing the statute with an effective date of January 25, 2018.²

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

The Virginia Safety and Health Codes Board adopted a final regulation on November 30, 2017, amending the VOSH Administrative Regulations Manual (ARM), 16VAC25-60, and providing for VOSH authority to issue penalties to state and local government employers. The final regulation would allow issuance of penalties to state and local government employers for willful, repeat and failure-to-abate violations, as well as serious violations that cause a fatal accident or are classified as “high gravity”. The final regulation is currently undergoing executive branch review. Progress on the regulation as it proceeds through the regulatory promulgation process can be tracked on the Virginia Regulatory Town Hall located on the following site:

<http://townhall.virginia.gov/L/ViewChapter.cfm?chapterid=2347>

- The Virginia Annual Safety and Health Conference is now entering its 23rd successful year of outreach to employees, employers, unions, associations and government agencies.
- The 2017 Virginia General Assembly and Governor Terry R. McAuliffe approved 100% general fund monies to fund the three (3) Consultation and Training and three (3) Voluntary Protection Program staff positions.
- The VOSH program has signed a strategic partnership with the Associated General Contractors of Virginia (AGCVA) to establish a recognition program entitled “Virginia BEST” (Building Excellence in Safety, Health and Training) based on OSHA Challenge concepts³. Virginia BEST is designed to improve best practices, compliance efforts and accident prevention on construction worksites through recognizing the outstanding efforts of exemplary employers. The program works with highly successful employers who have demonstrated continual improvement in the arena of occupational safety and health and who are willing to share resources, best practices and advise the construction industry at large. A formal signing ceremony of the strategic partnership occurred on October 13, 2016. Virginia BEST currently has three Level One participants.
- Virginia VPP is entering into a strategic partnership incorporating OSHA Challenge concepts to work with the Virginia Department of Corrections (VDOC) to bring additional correctional facilities/operations into VPP (two facilities have already achieved STAR status, Augusta and Lunenburg Correctional Facilities – the only two correctional facilities in VPP nationwide). A formal signing ceremony is scheduled for August 16, 2018.

² <http://townhall.virginia.gov/L/ViewAction.cfm?actionid=4406>

³ <https://www.doli.virginia.gov/voluntary-protection-program/virginia-best-outreach-docs/virginia-best-program/>

STAFFING AND INSPECTION CONCERNS

As is discussed in more detail under “Funding Concerns” below, the 2019 VOSH grant reflects 12 unfunded benchmark positions (8 safety and 4 health positions). This represents approximately 674 safety and 190 health inspections that are not conducted each year in Virginia.

The 12 unfunded vacancies have had a dramatic impact on the frequency of inspections and identification and correction of serious workplace hazards. The continuous lack of funding for CSHO positions has resulted in thousands of inspections not occurring and tens of thousands of serious workplace hazards not being identified and corrected.

Although no direct correlations can be drawn, there were certainly ominous signs in 2016 and 2017 of the long term issues that could result from a significantly diminished enforcement presence in the Commonwealth.

On August 4, 2016, the Department issued a Public Service Announcement (PSA) warning of a “Surge in Virginia Workplace Fatalities in calendar year 2016:

"In the month of July alone, eight Virginia workers have lost their lives in workplace accidents, devastating families, friends, co-workers and businesses”, said Commissioner Davenport. "If this horrific trend in workplace deaths continues, Virginia will experience an 80% increase in fatal accidents investigated by the Virginia Occupational Safety and Health (VOSH) Program in 2016".

In conjunction with the release of the PSA, VOSH undertook an unprecedented outreach program to thousands of Virginia businesses, employees, associations, unions and stakeholders to get the word out about the surge in fatalities and promote immediate best practice steps that could be taken by employers and employees to avoid workplace fatalities, injuries and illnesses.⁴

At the time of the August 4th PSA, VOSH had investigated 29 fatal accidents, when the average for the two previous entire calendar years had been 31 fatal accidents.

Tragically, but also fortunately, the pace of fatal accidents slowed after the outreach effort and ultimately the number of fatalities reached 42 by the end of the calendar year, still a 35% increase from 2015 and 2014.

Once again, on August 3rd of 2017 the Department issued another PSA highlighting a 2017 repeat of the 2016 “July Surge in Virginia Workplace Fatalities:⁵

"For the second year in a row, there has been a surge in workplace fatalities in July. Seven Virginia workers have lost their lives in workplace accidents versus eight in July, 2016, devastating families, friends, co-workers and businesses", said Commissioner Davenport. "I strongly encourage Virginia’s employers and workers to become familiar with and comply with Virginia’s occupational safety and health laws and regulations".

Again, fortunately, the pace of fatal accidents slowed after the outreach effort and ultimately the number of fatalities reached 34 by the end of calendar year 2017.

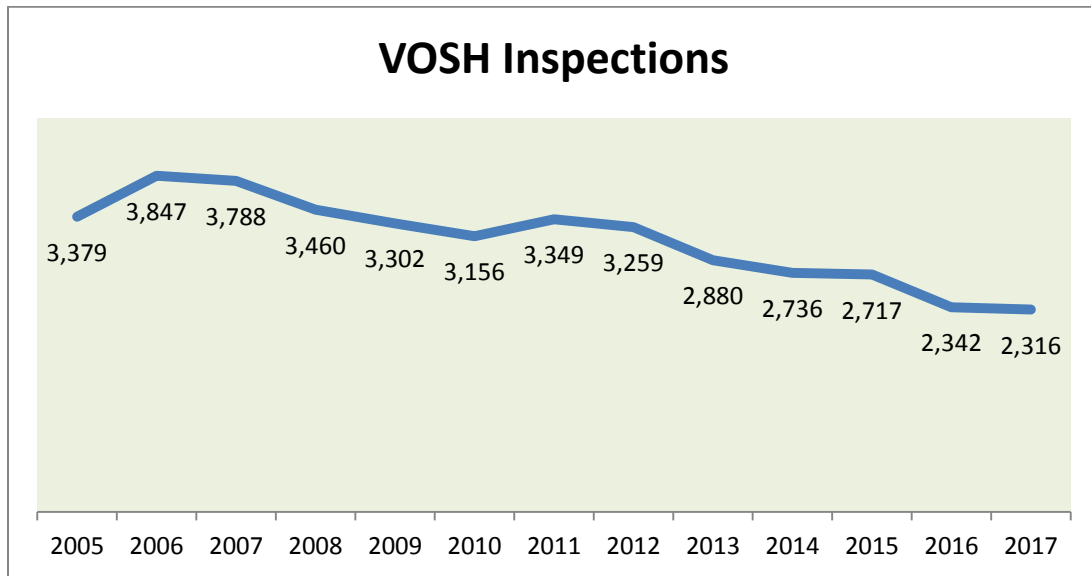
Although the data lags two years behind, the Bureau of Labor Statistics (BLS) Census of Fatal Occupational Injuries (CFOI) data indicate that the heretofore downward trend in occupational fatalities in Virginia that occurred from 2012 to 2015 may also be trending upward:

⁴ <https://www.doli.virginia.gov/vosh-programs/best-practices/>

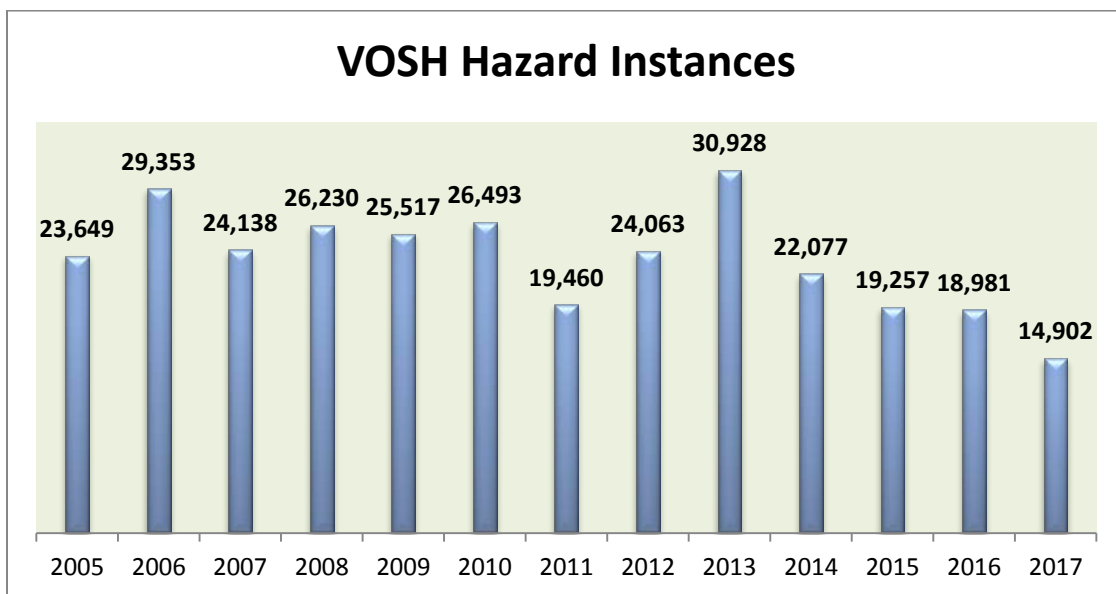
⁵ <https://www.doli.virginia.gov/wp-content/uploads/2018/07/2017-Workplace-Fatalities-PSA.pdf>

2012	2013	2014	2015	2016
149	128	116	106	153

The long term continued lack of federal funding for compliance officer positions is painfully evident in VOSH productivity statistics. During the three (3) year period of 2012-2014, the average number of VOSH inspections was 2,950. During the most recent three (3) year period of 2015 to 2017, the average number of inspections was 2,458, a difference of 500 inspections per year or a decline of 16.9%.



In viewing the impact of the unfunded CSHO positions through the lens of VOSH hazard instances (i.e., each hazard instance corrected represents an occupational hazard that was corrected and from which employees were protected), there has also been a steady decline over the last several years which represents increased risk for Virginia employees and employers. The average number of instances (17,713) for the most recent three (3) years of 2014 to 2017 is 31.0% below that for the period 2010 to 2013 (25,689).



There is a very significant economic impact associated with workplace safety and health hazards going uncorrected in the workplace. In 2015, the National Safety Council reported that the average cost of a medically consulted occupational injury in 2013 was \$42,000.⁶ In 2013, the Washington Post reported that the average net profit margin for all U.S. companies was 8.2 percent⁷. **With a net profit margin of 8.2%, a business needs to generate \$512,195 in new revenues to simply pay for the costs of that single injury.**

In 2015, the National Safety Council reported that in 2012 Virginia Workers' Compensation payments totaled 913.8 million dollars⁸. A recent study indicates that Workers' Compensation payments only cover approximately 21% of the cost of workplace injuries⁹. If Virginia's workers' compensation payout in 2012 of 913.8 million dollars represents only 21% of the cost, **the total impact of compensated injuries in 2012 in Virginia was 4.351 billion dollars.**

That same study found that approximately 50% of the cost of workplace accidents is born by the employee and his/her family, so of the estimated 4.351 billion cost to Virginia in 2012, **approximately 2.175 billion dollars was born by Virginia workers and their families.**

Virginia remains very concerned about the negative impacts of the long term lack of compliance officer resources.

FUNDING CONCERNS

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

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

- The Virginia 23g Enforcement grant for FFY 2018 reflects a continued 3.2% federal sequestration reduction (\$258,400 – 50%/50%).
- The grant reflects 12 unfunded benchmark positions (8 safety and 4 health compliance officers). This represents fully 20% of Virginia benchmark positions (38 safety and 21 health compliance officers) and approximately 674 safety and 190 health inspections that are not conducted each year in Virginia.
- Vacancy rates are likely to increase during the FFY 2019 Grant Application process due to scheduled State salary and fringe rate increases to possibly take effect during the grant period.

⁶ http://www.nsc.org/Membership%20Site%20Document%20Library/2015%20Injury%20Facts/NSC_InjuryFacts2015Ed.pdf

⁷ https://www.washingtonpost.com/business/on-small-business/why-small-businesses-are-better-off-now-than-before-the-recession--in-one-chart/2014/04/23/f501aad2-ca54-11e3-93eb-6c0037dde2ad_story.html

⁸ The National Safety Council reports that in 2012, \$61.9 billion dollars, including benefits under deductible provisions was paid out under state workers' compensation.
http://www.nsc.org/Membership%20Site%20Document%20Library/2015%20Injury%20Facts/NSC_InjuryFacts2015Ed.pdf

⁹ Adding Inequality to Injury: The Costs of Failing to Protect Workers on the Job, OSHA; <https://www.dol.gov/oshareport/20150304-inequality.pdf>; Leigh JP, Marcin JP. Workers' compensation benefits and shifting costs for occupational injury and illness. Journal of Occupational and Environmental Medicine 2012;54:445-450

At the national level, State Plans “overmatch” federal grant funds by over 110%. In FFY 2017, federal funding of 23g grants totaled \$100.7 million and state plans matched with 212.8 million – an overmatch of \$112.1 million. Reference: “OSHSPA Numbers at a Glance” which is taken from the *2017 OSHSPA Grassroots Worker Protection*¹⁰ publication.

OSHSPA’s *2018 Special Report on the Impact and Funding of State Occupational Safety and Health Programs*¹¹ in 2018 demonstrates the disparity with which OSHA and State Plans are treated from a funding standpoint by Congress:

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

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

Thank you again for this opportunity to provide our response to the Virginia’s 2017 FFY Comprehensive FAME report. We look forward to an ongoing cooperative and mutually supportive relationship with Region III. Please accept our sincere thanks for the valuable services you have provided to the Commonwealth of Virginia’s employees and employers.

Sincerely,



C. Ray Davenport
Commissioner

cc: Assistant Commissioner Bill Burge
VOSH Directors

¹⁰ <https://www.oshspa.org/wp-content/uploads/2013/09/2017Grassroots.pdf>

¹¹ https://www.oshspa.org/wp-content/uploads/2013/09/OSHSPA_Special_Report_18.pdf.pdf