

# VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

## VIRGINIA OCCUPATIONAL SAFETY AND HEALTH (VOSH) PROGRAM



# MEDIA PACKET

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### Virginia State Plan for Occupational Safety and Health

The Commonwealth of Virginia's Department of Labor and Industry administers the Virginia State Plan for Occupational Safety and Health (VOSH) under grants from the Occupational Safety and Health Administration (OSHA), U. S. Department of Labor (USDOL). State Plans are authorized under §18 of the Occupational Safety and Health Act of 1970 (OSH Act), 29 USC 651, et.seq.

Grants to states are authorized under §23(g) for compliance programs in the private and public sectors as well as onsite consultation for public sector with funding of 50% from the federal government and 50% from the Commonwealth. Section 21(d) of the OSH Act provides grants for free private sector consultation to small employers with funding of 90% from the federal government and 10% from the Commonwealth.

Section 18(e) of the OSH Act provides that a State Plan may seek "final approval" of the program so that the state can assume exclusive jurisdiction over most aspects of OSH Act jurisdiction. The VOSH program has received final approval of its program from OSHA.

### Important Dates

Initial State Plan Approval: September 28, 1976

Program Certification Date: August 15, 1984

Final Approval Date: November 30, 1988

### VOSH Budget

Federal Fiscal Year (September-October): FFY 2017 23(g) \$7,842,600 (50% federal - 50% state funds)

Federal Fiscal Year (September-October): FFY 2017 21(d) \$1,223,667 (90% federal - 10% state funds)

TOTAL FFY 2017: \$9,066,267

### VOSH Coverage

The role of the VOSH Program is to enforce safety and health regulations for general industry, construction, agricultural, and state and local government maritime employers in Virginia. The VOSH Program covers both state and local government and private sector employers and workers in Virginia. VOSH does not cover certain federal enclaves (e.g., military reservations) and the U. S. Postal Service.

In addition, certain industries are exempted from OSHA coverage nationwide by §4(b)(1) of the OSH Act where another federal agency exercises statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health (e.g., the Nuclear Regulatory Commission, Federal Railroad Administration, United States Coast Guard, Federal Aviation Administration, Mine Safety and Health Administration, etc.).

VOSH conducts safety and health inspections in response to accidents, complaints, referrals, and randomly scheduled inspections of high hazard industries. In addition to enforcement efforts, VOSH provides compliance assistance through targeted outreach, education, and training to emphasize increased awareness on the part of both employers and workers of the importance of a safety and health culture.

The VOSH Program mirrors the federal program in many areas but has adopted some different statutes, regulations, policies and procedures to address unique characteristics of the Commonwealth.

Profile of the Virginia State Plan

<b>PROFILE OF THE VIRGINIA STATE PLAN (FY 2016)</b>		
<b>Designee</b>	C. Ray Davenport, Commissioner Virginia Department of Labor and Industry Main Street Centre 600 East Main Street, Suite 207 Richmond, Virginia 23219-4101	
<b>Initial Approval</b>	September 28, 1976	
<b>Plan Certification</b>	August 15, 1984	
<b>Final Approval</b>	November 30, 1988	
<b>FY 2016 23(g) Funding</b>	Federal	\$3,921,300
	State	\$3,921,300
	<b>TOTAL</b>	<b>\$7,842,600</b>
<b>Source of State Funding</b>	General fund and non-general fund	
<b>Compliance Officers</b>	Allocated Positions	38 safety/19.88 health
	On-Board as of August 1, 2017	25 safety/16 health
<b>State and Local Government Consultants</b>	Allocated Positions	.20 safety/1.60 health
	On-Board as of August 1, 2017	.20 safety/.30 health
<b>Compliance Assistance</b>	Allocated Positions	7.0 CAS
	On-Board as of August 1, 2017	1.0 CAS
<b>Covered Workers</b>	3.827 million	
<b>Covered Establishments</b>	264,749	
<b>Coverage</b>	State and local government and private sector workplaces within the state, with the exception of federal workers, the United States Postal Service, private sector maritime, federal military facilities, and other federal enclaves where the state has ceded coverage to the federal government.	

VOSH Laws and Regulations

The VOSH Program administers occupational safety and health activities in the Commonwealth through the Virginia State Plan agreement with federal OSHA as required by Va. Code §40.1-1. The VOSH program is required by the OSH Act to be “at least as effective as” federal OSHA (29 USC 667(c)) and is monitored by OSHA on an annual basis. Financial audits occur every two to three years. In accordance with §40.1-22, the Virginia Safety and Health Codes Board is charged with adopting occupational safety and health standards and regulations applicable to Virginia employers.

The majority of VOSH laws and regulations are identical to OSHA. However, VOSH has enacted unique laws and regulations covering overhead high voltage line safety; tree trimming operations; fall protection in steel erection; reverse signal operation in construction and general industry; compliance with manufacturer’s instruction for vehicles, machinery, tools and equipment in general industry, construction, maritime and agriculture; and confined spaces in the telecommunication industry.

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

Demographic Profile

Under Virginia’s State Plan, VOSH has jurisdiction over approximately 3.8 million workers in over 264,000 establishments in covered industries:

<b>Virginia Employment by Major NAICS<sup>1</sup> Division, Fourth Quarter of 2016</b>			
<b>NAICS Industry Sector</b>	<b>NAICS Codes</b>	<b>Average Establishments</b>	<b>Average Employment</b>
Accommodation and Food Services	72	17,092	343,506
Administrative and Support and Waste Management	56	14,051	241,766
Agriculture, Forestry, Fishing and Hunting	11	1,746	13,459
Arts, Entertainment, and Recreation	71	3,264	64,525
Construction	23	21,357	200,734
Educational Services	61	3,858	365,878
Finance and Insurance	52	11,880	136,739
Health Care and Social Assistance	62	40,908	484,480
Information	51	4,239	72,596
Management of Companies and Enterprises	55	2,246	72,595
Manufacturing	31-33	6,368	242,898
Mining, Quarrying, and Oil and Gas Extraction	21	311	5,849
Other Services (except Public Administration)	81	29,395	141,067
Professional, Scientific, and Technical Services	54	40,876	419,876
Public Administration	92	4,060	248,633
Real Estate and Rental and Leasing	53	9,577	53,100
Retail Trade	44-45	26,138	433,917
Transportation and Warehousing	48-49	6,216	140,316
Unclassified Establishments	99	9,176	16,163
Utilities	22	530	18,486
Wholesale Trade	42	11,461	111,189
<b>Total, All Industries</b>	<b>00</b>	<b>264,749</b>	<b>3,827,771</b>

Source: Virginia Employment Commission Quarterly Census of Employment and Wages (QCEW)

<sup>1</sup> North American Industrial Classification System (NAICS)

## Agency Programs

### ❖ Compliance

VOSH consists of two major units: compliance and cooperative programs. The compliance unit inspects places of work; issues citations, penalties, and abatement dates for violations of established occupational standards; and responds to fatalities, accidents, and worker complaints about workplace safety and health hazards.

Scheduling of inspections is accomplished through an administrative plan, which prioritizes our inspections as follows:

- imminent danger situations;
- fatality/accident inspections;
- employee complaints or referrals from a knowledgeable source; and
- programmed/planned inspections.

Programmed/planned inspections consist of General Schedule and Special Emphasis inspections. General Schedule inspections are initiated from a list of high hazard industries in a random manner and are conducted only when there are no higher priority inspections available. The VOSH Program has a General Schedule for the Manufacturing Industry and Construction.

Special Emphasis inspection programs are developed either by the VOSH<sup>2</sup> program or federal OSHA<sup>3</sup> and are designed to address employers in industries with high rates of injuries or illnesses or a specific safety or health hazard with identified high hazard working conditions.

### Violations and Penalties<sup>4</sup>

Type of Violation	Minimum Penalty	Maximum Penalty
<b>Serious</b>	\$600	\$12,471
<b>Willful</b>	\$10,000	\$124,709
<b>Repeat</b>	N/A	\$124,709
<b>Failure-to-abate</b>	N/A	\$12,471 per day
<b>Other-than-serious</b>	N/A	\$12,471

In assessing penalties, VOSH is required to consider “the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations”, Va. Code §40.1-49.4.A.4.(a).

VOSH also has a maximum fine of \$70,000 and/or imprisonment for not more than six months for any willful violation found to cause the death of an employee for the first such conviction – the punishments

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<sup>2</sup> Local (Virginia) Emphasis Programs: First Report of Injuries and Illnesses; Fall Hazards; Trenching and Excavation; Scaffolding; Public Sector Workshops; Logging and Sawmill Industries; Reverse Signal Operation of Vehicles, Machinery, Equipment, and Heavy Equipment; Overhead High Voltage Line Safety; Tree Trimming Operations; Asbestos; and Wastewater and Water Treatment Facilities.

<sup>3</sup> National Emphasis Programs: Primary Metal Industries; Amputations; Combustible Dust; Crystalline Silica; Process Safety Management Covered Chemical Facilities; Isocyanates; Lead; Facilities That Manufacture Food Flavorings Containing Diacetyl; and Hexavalent Chromium.

<sup>4</sup> State and local government employers are not currently subject to penalties. However, the Virginia General Assembly has authorized the Virginia Safety and Health Codes Board to consider adoption of penalties for such entities. It is anticipated that the Board will take up consideration of a proposed regulation in 2016. Va. Code §40.1-2.1, effective July 1, 2016.

double for a second conviction (§40.1-49.4.K). Individuals whose flagrant, culpable and wanton violation of VOSH laws and regulations results in the death of an employee may also be subject to a charge of manslaughter.

Employers may contest citations, penalties and orders of abatement issued as the result of a VOSH inspection or investigation. Employers are not required to abate violations that have been contested until the contest is resolved through settlement or litigation. Employees may contest the order of abatement. The notice of contest must be mailed or delivered by hand within fifteen days from the receipt of the citation, proposed penalty or order of abatement. Upon receipt of a notice of contest, the Commissioner will attempt to resolve the matter by settlement, either by participation in an informal conference or through a formal settlement process.

If the matter is not settled or it is determined a settlement is not probable, the Commissioner will initiate judicial proceedings by referring the contested issues to the appropriate Commonwealth attorney. Virginia does not use an administrative law judge and review commission system to handle litigated cases. Virginia is unique among State Plans in using local circuit courts and prosecutors (Commonwealth Attorneys) to litigate contested cases. Attorneys assigned to VOSH’s Division of Legal Support have been approved by the Office of the Attorney General to represent VOSH in litigation when they are appointed by the local Commonwealth’s attorney and the Circuit Court judge on a case-by-case basis. Circuit court decisions at trial are appealable to the Virginia Court of Appeals.

Whistleblower/Anti-discrimination protections are afforded to employees who engage in activities protected by Virginia occupational safety and health laws and regulations (e.g., filing an employee complaint regarding safety or health hazards in the workplace, participating in a VOSH inspection, etc.). Va. Code §§40.1-51.2:1 and -51.2:2. The VOSH Office of Whistleblower Protection (OWP) conducts investigations of employee complaints of discrimination.

Inspection Statistics

**CATEGORIES OF OCCUPATIONAL SAFETY AND HEALTH INSPECTIONS**

Calendar Year	2014		2015			2016		
	Safety	Health		Safety	Health		Safety	Health
<b>Planned</b>	1,340	337	<b>Planned</b>	1,416	329	<b>Planned</b>	1,148	196
<b>Follow-Up</b>	38	8	<b>Follow-Up</b>	45	9	<b>Follow-Up</b>	23	4
<b>Complaint</b>	232	230	<b>Complaint</b>	249	195	<b>Complaint</b>	243	231
<b>Referral</b>	67	77	<b>Referral</b>	162	65	<b>Referral</b>	184	78
<b>Accident/Fatality/ Catastrophe</b>	50	6	<b>Accident</b>	42	8	<b>Accident</b>	17	1
			<b>Fatality/Cat.</b>	35	2	<b>Fatality/Cat.</b>	40	3
<b>Other</b>	280	71	<b>Other</b>	112	48	<b>Other</b>	109	65
<b>Totals</b>	<b>2,007</b>	<b>729</b>	<b>Totals</b>	<b>2,061</b>	<b>656</b>	<b>Totals</b>	<b>1,764</b>	<b>578</b>

**CATEGORIES OF VIOLATIONS ISSUED**

Calendar Year	2014		2015		2016	
	Safety	Health	Safety	Health	Safety	Health
Serious	1,834	694	2,128	1,498	1,473	422
Willful	4	2	14	0	16	1
Repeat	76	13	49	6	57	4
Other (OTS&FTA)	689	471	484	875	755	303
<b>Totals</b>	<b>2,612</b>	<b>1,180</b>	<b>2,675</b>	<b>2,379</b>	<b>2,301</b>	<b>730</b>

**CATEGORIES OF PENALTIES ASSESSED (IN DOLLARS)**

Calendar Year	2014		2015		2016	
	Safety	Health	Safety	Health	Safety	Health
<b>Totals</b>	<b>\$1,493,765</b>	<b>\$525,346</b>	<b>\$1,761,969.50</b>	<b>\$1,004,151.32</b>	<b>\$4,678,428.00</b>	<b>\$664,715.00</b>

**CATEGORIES OF VIOLATION INSTANCES AND EXPOSED EMPLOYEES**

Calendar Year	2014	2015	2016
Violation Instances	22,077	19,257	18,981
Exposed Employees	Data Not Available	48,894	70,027

❖ **Cooperative Programs**

VOSH cooperative programs provide assistance to Virginia’s state and local government and private sector employers to voluntarily comply with applicable requirements without the issuance of citations and penalties.

The VOSH consultation program provides free on-site surveys and technical assistance to Virginia small businesses in high-hazard industries, and to state and local government employers under the State Plan 21(d) grant. Visit the Safety and Health Consultation Services site for more information by clicking [here](#).

**332** Consultation Visits Performed

Industries Served

	Construction .....	158
	Manufacturing .....	204
	Maritime .....	2
	Service .....	43
	Retail .....	19
	Other .....	38

Hazards Identified

**1,927**

VOSH has two safety and health management system programs designed primarily for small businesses and larger employers respectively.

The Safety and Health Achievement Recognition Program (SHARP) recognizes small, high-hazard businesses of 250 or fewer employees that have developed and implemented exemplary safety and health management systems. Virginia SHARP sites regularly maintain injury and illness rates 60% or more below the national average for their respective industries. **As of July, 2017, there were 16 active SHARP sites with another 12 pursuing SHARP status.** Visit the SHARP site for more information on the SHARP program by clicking [here](#).

The Virginia Voluntary Protection Program (VPP) recognizes and promotes exceptional safety and health management systems. In VPP management and labor establish a cooperative relationship at a general industry, construction or public sector workplace to develop and implement an exceptional safety and health program. VPP STAR sites, the highest level of recognition, regularly maintain injury and illness rates 60% or more below the national average for their respective industries. **As of July, 2017, there were 43 VPP sites in Virginia.** Visit the VPP site for more information on the VPP Program by clicking [here](#).

Current Virginia VPP Sites:



## Accomplishments

The VOSH program strives to maintain equally strong enforcement and cooperative program elements; and has accomplished many important achievements that benefit Virginia's employees and employers:

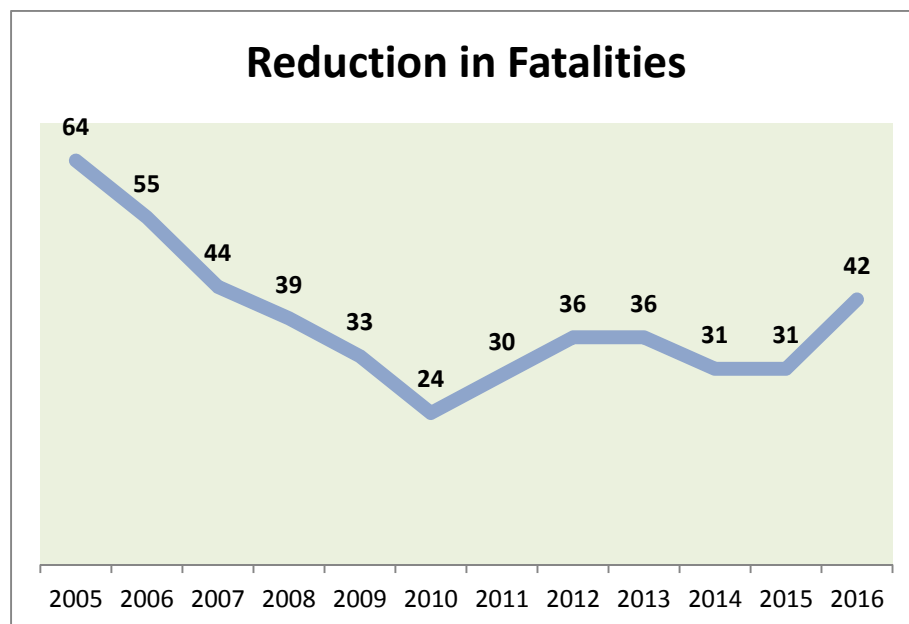
- ✚ Virginia's injury and illness rates are consistently well below the national average in both private and public sector employment.

BLS <sup>5</sup> Rates	National	Virginia	Difference
2015 Overall TCR <sup>6</sup> Rate	3.3	2.6	-21.2%
2015 Private Industry TCR* Rate	3	2.4	-20.0%
2015 Construction TCR Rate	3.5	2.9	-17.1%
2015 Manufacturing TCR Rate	3.8	3.6	-5.3%
2015 State and Local Government TCR Rate	5.1	4.3	-15.7%

- ✚ Census of Fatal Occupational Injuries (CFOI) data that indicate that occupational fatalities in Virginia have decreased substantially since 2012<sup>7</sup>:

2015: 106  
2014: 116  
2013: 128  
2012: 149

- ✚ Although VOSH experienced a significant increase in the number of fatal accidents it investigated from 2015 to 2016 (from 31 to 42 or 35%), there has still been a 34% reduction in fatal accidents covered by VOSH jurisdiction from calendar years 2005 to 2016:



- ✚ A national top thirteen ranking in the rate of state occupational safety and health inspections per number of employers.<sup>8</sup>

<sup>5</sup> Bureau of Labor Statistics

<sup>6</sup> Total Case Incident Rate

<sup>7</sup> Fatalities counted by CFOI include those caused by traffic accidents and workplace crimes which generally are investigated by law enforcement and not by VOSH.



- ✚ Development of public service announcement (PSA) videos in the areas of tree trimming operations, overhead high voltage line safety, trenching safety, the dangers of heat stress and fall protection. Visit our YouTube channel by clicking [here](#).
- ✚ A thriving Virginia Voluntary Protection Program (VPP) with 43 active sites and the scheduling of regular VPP Best Practices training days provided free of charge to VPP members, prospective applicants and state and local government employers. VPP Best Practices days were hosted by:
  - Norfolk State University (January, 2016);
  - Sysco (May, 2016 - poultry processing);
  - 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 Center<sup>9</sup> (February, 2017 - public sector safety and health);
  - Raytheon (April, 2017 – safety and health management systems); and
  - Tidewater Community College (June, 2017 – fall protection in the public sector).

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](http://www.doli.virginia.gov) website.

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

- ✚ A statute that recognizes the Virginia Voluntary Protection Program 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. Governor McAuliffe held a bill signing ceremony on June 4, 2015. The Virginia Safety and Health Codes Board is currently developing a regulation to implement the statute. Progress on the regulation as it proceeds through the regulatory promulgation process can be tracked on the Virginia Regulatory Town Hall by clicking [here](#).
- ✚ An improving Safety and Health Achievement and Recognition Program (SHARP) with 16 active members and 12 sites that are pursuing SHARP status.
- ✚ An annual safety and health conference which is now entering its 22nd successful year of outreach to hundreds of employees, employers, unions, associations and government agencies.

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<sup>8</sup> “Death on the Job: The Toll of Neglect”, 26th edition, April 26, 2017, AFL-CIO.

<sup>9</sup> 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.

- ✚ 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 proposed regulation on February 16, 2017, on public sector penalties amending the VOSH Administrative Regulations Manual (ARM), 16VAC25-60. The proposed regulation would allow issuance of penalties to public sector 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”. Progress on the proposed regulation as it proceeds through the regulatory promulgation process can be tracked on the Virginia Regulatory Town Hall by clicking [here](#).

- ✚ 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 concepts. Virginia BEST will work to improve best practices, compliance efforts and accident prevention on construction worksites through recognizing the outstanding efforts of exemplary employers. The program will work 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. More information on Virginia BEST can be found by clicking [here](#).

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