

VPP in Construction

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Introduction

The Occupational Safety and Health Administration's (OSHA) Voluntary Protection Programs (VPP) is a group of programs that provides significant focus on the importance of safety and health in the workplace. Collectively they are a recognition program for those workplaces that have gone the extra lengths to not only meet the OSHA Safety and Health Program Management Guidelines, but to also exceed the OSHA standards wherever feasible. These workplaces have recognized that having a strong management commitment to safety and health includes involving active employee participation in all safety and health activities.

The VPP was initiated by OSHA in 1982 and was based on an experiment that took place in California during the construction of the San Onofre Power Plant. The construction of the power plant was under the direction of Bechtel, a company that already had a strong safety and health program that included management leadership and commitment, and encouraged employee involvement. Bechtel, the California Building Trades Council, and the National Constructors Association worked together to initiate a joint labor-management safety and health committee to oversee the safety and health activities at the construction project. The committee was responsible for performing routine worksite inspections and the investigation of worker complaints. California OSHA (Cal/OSHA) agreed to empower this committee to perform routine workplace inspections and to not perform any programmed compliance inspections. This program was approved by the California OSHA State Plan and submitted to OSHA for their concurrence; OSHA agreed to allow Cal/OSHA to proceed with the experiment. At the conclusion of the project, the experiment was deemed a success based on the sense of ownership of the safety and health program expressed by the trades' workers, as well as being one of the safest such construction projects at the time.

Effectiveness of the VPP

The Voluntary Protection Programs have proven themselves as effective in improving workplace safety and health management systems. The VPP participants have on average about 54% lower injury and illness rates than their non-VPP counterparts and employee involvement in safety and

health activities is much stronger. The VPP participants have also realized other benefits including:

- Reduced workers' compensation costs
- Improved quality
- Improved productivity
- Fewer union and employee complaints and grievances
- Reduced absenteeism
- Improved relationship with OSHA
- Increased profits

Construction in the VPP

It is interesting that although the VPP had its start with a construction project, the construction industry is not a major participant in the current program. Traditionally, the VPP has focused on general industry worksites for participation. One of the very basic requirements for the VPP application is that worksites have three full calendar years of OSHA recordkeeping data. Since most construction projects do not last anywhere close to three years, OSHA made an exception that allowed construction applicants to submit their applications with only twelve months of data. Still, allowing for an additional six months of application processing, including the onsite evaluation and report reviews, most construction projects were still precluded from applying. Not only that, there was no way for the smaller trades contractors to apply since they are usually not present at any one project long enough to meet the requirements. Hence, one of the most hazardous industries was generally precluded from participation in a program that would help to enhance safety and health at their projects.

Recognizing that construction is one of the most hazardous industries in the United States and was underrepresented in the VPP, OSHA has worked to encourage construction companies to participate in the VPP. In 2006 OSHA collected the following data to emphasize the underrepresentation of the construction industry in the VPP.

- Construction represented 7% of the workforce
- Construction accounted for 21% of fatalities
- Construction represented only 4% of current VPP sites
- 67% of OSHA Strategic Partnerships (Alliances and Partnerships) were in the construction industry

The fact that the construction industry was the predominant participant in the OSHA Strategic Partnerships was understood to be a confirmation that the industry was looking for ways to partner with OSHA. To facilitate entry of construction companies and projects into OSHA's premier partnership program, the VPP, OSHA has initiated several alternate requirements and Demonstration and Pilot Programs with a focus on simplifying the VPP application requirements for construction companies. OSHA has developed the VPP Policies and Procedures Manual to allow larger construction projects to apply to the conventional VPP. To be able to apply, a construction applicant must be the general contractor, owner, or an organization that provides overall management at a worksite, controls site operations, and has ultimate responsibility for assuring safe and healthful working conditions at the worksite. Instead of the three years

experience required of general industry applicants, construction projects must have been in operation for at least twelve months prior to approval. The rate calculation is also reduced from three years to just the amount of time that the project has been in operation when the application is submitted. If the project's Total Case Incident rate (TCIR) and Days Away, Restricted and Transferred (DART) rates are below those for the general construction BLS rates the project may qualify for Star. If the project's rates are above the BLS rates the applicant may still qualify for Merit if the company-wide three-year TCIR and DART rates are below the national average.

Similar to a conventional VPP application, all employees must be made aware of the VPP application or participation and of their rights, roles, and responsibilities. This information must be conveyed to the employees of the applicant as well as those of all subcontractors. Evidence that all subcontractors at the worksite recognize these conditions is necessary and may include:

- The contractual agreement.
- A written statement of willingness to cooperate.
- Attendance at safety meetings.
- Orientation sessions for incoming subcontractor employees.

Employees at construction sites must be involved in safety and health at the worksite to the degree practical based on the time they will spend on site. Examples of short-term involvement include attending daily toolbox talks on safety and health, and participating in daily self-inspections. The more time they spend on site, the more involvement OSHA expects. Those employees who may work on the project longer than others would be expected to participate on the safety and health committee, and participate in some form of hazard analysis. The onsite evaluation team will judge the sufficiency of employee involvement through interviews and observations.

Construction projects that hire only union workers must also obtain a statement of support, or non-objection, to the VPP from each of the represented unions. The statement is usually obtained from a group that represents all local trades unions, such as a Construction and Building Trades Association. Those construction worksites that hire both union and non-union workers should use the criteria detailed in Figure 1 to determine if they must obtain official union support for the VPP application.

| IF | THEN |
|--|--|
| Majority of employees are represented by unions | Signed statement(s) required. Must be obtained from enough unions to represent a majority of employees. |
| Some employees but less than a majority are represented by unions | No statement of union support required. |
| No employees are represented by unions | Requirement not applicable. |

Figure 1. Application requirements based on union represented employees.

Another difference between the VPP requirements for general industry and construction applicants is the frequency of worksite inspections. To address the continually changing conditions of construction projects, safety and health inspections must be conducted at least weekly with the entire project inspected at least monthly. That is different than the general industry requirement of monthly inspections covering the entire worksite at least quarterly. Since the VPP covers all workers at the project, all hazards must be corrected, including those created by subcontractors. Unlike the general industry VPP, construction VPP projects must submit an end of project final comprehensive evaluation.

Demonstration Program for Short-Term Construction Projects

In April, 1998 OSHA initiated the Demonstration Program for Short-Term Construction Projects to allow short-term construction projects to apply to the VPP. There are very few construction projects that extend beyond eighteen months to two years. This demonstration program was established to overcome the application obstacles by allowing construction general and trades contractors to apply to the VPP for their shorter term projects. This was accomplished by having construction companies submit an application based on the company's corporate programs and injury/illness records rather than the data for their individual projects. OSHA would then evaluate the company's corporate structure including a review of the organization of safety and health in the corporate structure, assignments and responsibilities for managers and supervisors, resources for safety and health activities, all hazard control programs, procedures for worksite analyses, and the level of management leadership and commitment and employee involvement. When the corporate structure had been approved, the company could then submit an abbreviated application for individual projects that were still in the beginning phases of work. If the individual projects met the requirement, they would be approved as VPP sites under the demonstration program.

Mobile Workforce for Construction Demonstration Program

To substantially increase participation in the VPP Assistant Secretary of Labor for OSHA John Henshaw fostered the creation of the 3-C Demonstration Programs in 2003. One of the 3-C programs was the Mobile Workforce for Construction Demonstration Program. This program was developed by combining the former Demonstration Program for Short Term Construction Projects and the Mobile Workforce Demonstration Program. Although the primary industry focus of this demonstration program is the construction industry, all types of industry classifications were welcome to apply.

This Demonstration Program was initiated to create greater opportunity for employers and employees in the construction and other industries to participate in the VPP. In so doing, it was anticipated that employers would be able to significantly strengthen worker protections. At the same time, it was intended to provide OSHA with additional opportunities to explore and test appropriate modifications to the VPP and the administration of alternate safety and health management systems. These alternative requirements help OSHA bring the benefits of the VPP to the construction industry and other sparsely represented industries.

The first step in the application process for this Demonstration Program is to create a dialog with the OSHA Regional VPP Manager. The Regional VPP Manager will discuss the requirements of the program and geographic extent of the application. The geographic coverage of the application is referred to as the Designated Geographic Area (DGA) which must be agreed to by OSHA and the company. The usual DGA is that area covered by a single OSHA Area Office. The DGA may be extended to a larger area based on the size of the area and the number of active applicant worksites in the DGA. Although it is possible to extend the DGA across

OSHA Regional jurisdictions that is very rare and must be arranged with the cooperation of all involved OSHA regions.

The applicant company completes a special application that details the corporate or company safety and health management system and the corporate or company structure for safety and health. It also details how the company provides for the safety and health of its workers at their remote worksites. The application includes a description of the type of work and the types of locations that the work is at. The application process also requires a Participation Plan that focuses on the following information:

- Designated Geographic Area (DGA)
- Unique Aspects of Company's Mobile Workforce
- Subcontractor Oversight
- Hazard Recognition and Control as a Non-controlling Employer
- Employee Involvement
- Baseline Hazard Analysis
- Emergency Response

Once the application has been accepted OSHA starts the evaluation phase. Unlike a typical evaluation, the VPP on site evaluation for this Demonstration Program is actually a multi-phased process. OSHA first visits the company headquarters to evaluate the company records including the injury and illness information and specific safety and health hazard control programs. OSHA also interviews several company managers and employees. The purpose of this visit is to verify the information in the application.

Upon successful completion of the company headquarters evaluation, OSHA selects a small number of active sites within the DGA for evaluation. These evaluations focus on the information in the Participation Plan and include observations of the work and worksite, and employee interviews. It is important to note that the work and activities of non-company workers will also be observed and are expected to be safe with all hazards properly controlled.

Once these worksite evaluations are completed, OSHA will make a determination about the effectiveness of the company's safety and health management system. If the evaluation is positive, OSHA will write an evaluation report that will contain a recommendation for participation in the VPP as either a Star or Merit worksite. The report is then forwarded to the OSHA National Office with the Regional Administrators concurrence with the recommendation. After several reviews in the National Office, the report is sent to the OSHA Assistant Secretary for the final decision. Once approved, the company will be notified and all company projects in the Designated Geographic Area will be considered to be covered by the VPP. That will remove all covered projects from OSHA programmed inspection lists. However, OSHA may still conduct enforcement inspections based on employee complaints, fatality or catastrophe incidents, or other events that may be considered significant.

Having evaluated this Demonstration Program and determining that it is an effective method for such companies to participate in the VPP, OSHA has again revised the VPP. Beginning on May 9, 2009 employers with mobile workforces will be able to apply for VPP participation without the need for the Demonstration Program. This change opens new opportunities for

participation by exemplary employers in the construction industry plus mobile workforce employers in other industries.

Summary

As of January 31, 2009 the 141 construction industry participants represented about 6.5 percent of the 2171 VPP participants. Although that is an increase over the 4% in 2006 it indicates that the construction industry is still underrepresented in the VPP when occupational fatalities are considered. In 2006 the construction industry represented seven percent of the total employment in the United States. In that same year 21 percent, 1239 of the 5840, fatal occupational injuries occurred in the construction industry. The OSHA initiatives to focus on the construction industry in the Voluntary Protection Programs are beginning to work. More construction companies can now participate and the application requirements have been simplified. The next step in this process is to enhance the publicity of the VPP in the construction industry. Those construction companies that are currently in the VPP can also assist by mentoring other construction companies in the VPP process.

Bibliography

Bennett, B., Deitch N. *OSHA's VPP: The Value of Participating, Professional Safety*, December 2007.

Occupational Safety and Health Administration (OSHA). 2006. *VPP Mobile Workforce Demonstration for Construction, Implementation Training for OSHA Personnel*. Webinar PowerPoint Presentation for OSHA employees, September, 2006.

Occupational Safety and Health Administration (OSHA). 2008. *CSP 03-01-003 Voluntary Protection Programs (VPP): Policies and Procedures Manual* (retrieved March 3, 2009). (http://www.osha.gov/OshDoc/Directive_pdf/CSP_03-01-003.pdf).

Occupational Safety and Health Administration (OSHA). 2009. *Industries in the VPP Federal and State Plans as of 1/31/2009*. (retrieved March 6, 2009). (<http://www.osha.gov/dcsp/vpp/sitebysic.html>).

Bureau of Labor Statistics (BLS). 2009. *Employment by major industry sector* (retrieved March 6, 2009). (<http://www.bls.gov/emp/empmajorindustry.htm>).

Bureau of Labor Statistics (BLS). 2008. *NATIONAL CENSUS OF FATAL OCCUPATIONAL INJURIES IN 2007* retrieved March 6, 2009). (<http://www.bls.gov/news.release/pdf/cfoi.pdf>).