

A Regulator's Perspective of Risks Associated with Construction Sites

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OSHA Stuff – Outline

- Federal OSHA and State Plan Programs
- New Penalty Structure
 - Citation methodology
- Safety and Health Management System Elements
 - Implementation at multi-employer sites
- New(er) OSHA regulations for construction
 - Silica
 - Confined Spaces

State Plans and Jurisdiction

- State Plans
 - OSHA-approved job safety and health programs operated by individual states instead of federal OSHA
 - Must be at least as effective (ALAE) as the federal OSHA program
 - OSHA approves and monitors all State Plans
 - OSHA provides as much as fifty percent of the funding for each program

State Plans

- Alaska
- Arizona
- California
- Hawaii
- Indiana
- Iowa
- Kentucky
- Maryland
- Michigan
- Minnesota
- Nevada
- New Mexico
- North Carolina
- Oregon
- Puerto Rico
- South Carolina
- Tennessee
- Utah
- Vermont
- Virginia
- Washington
- Wyoming

Standards and Regulations

- Must be "at least as effective as" as OSHA standards
- Adopt standards identical to OSHA
- Promulgate standards covering hazards not addressed by OSHA standards
- State Plans must
 - Conduct inspections to enforce its standards
 - Cover state and local government workers
 - Operate occupational safety and health training and education programs

Penalties

- Own penalty reduction policies and procedures but must be ALAE
- All State Plan policies and procedures related to penalties must be submitted and reviewed by OSHA
- Own system for review and appeal of citations, penalties, and abatement periods
- The procedures are generally similar to OSHA's, but cases are heard by a state review board or equivalent authority

Jurisdiction

Varies by State Plan agreement but generally speaking:

- State Plans
 - Private employers
 - Local public agencies
- Federal OSHA
 - Federal agencies
 - Some maritime
 - Some contractors on federal property
 - No authority over local agencies

State Plan Monitoring

- Federal Annual Monitoring Evaluation (FAME) process
- Determine whether the State Plan is continuing to operate at least as effectively as OSHA
- Track a State Plan's progress in achieving its strategic and annual performance goals
- Ensure that the State Plan is meeting its mandated responsibilities under the Act and other relevant regulations

New Federal Penalties

- Legislation
 - Federal Civil Penalties Inflation Adjustment Act of 1990
 - Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

Key Dates

- Publish Federal Register by July 1, 2016
- Implement new penalties by August 2, 2016
- Adjust penalties annually each January 15th

Three Key Changes

- 78% Increase in Penalties
- New Size Category
- Further Guidance on Area Director Discretion

Maximum Penalties

Level	Previous Maximum	New Maximum
Serious	\$7,000 per violation	\$12,471 per violation
Other-Than-Serious	\$7,000 per violation	\$12,471 per violation
Willful or Repeated	\$70,000 per violation	\$124,709 per violation
Posting Requirements	\$7,000 per violation	\$12,471 per violation
Failure to Abate	\$7,000 per day unabated beyond the abatement date [generally limited to 30 days maximum]	\$12,471 per day unabated beyond the abatement date [generally limited to 30 days maximum]

Change in Gravity Based Penalty Amounts

Severity	Probability	Gravity	Previous GBP	New GBP
High	Greater	High	\$7,000	\$12,471
Medium	Greater	Moderate	\$6,000	\$10,689
Low	Greater	Moderate	\$5,000	\$8,908
High	Lesser	Moderate	\$5,000	\$8,908
Medium	Lesser	Moderate	\$4,000	\$7,126
Low	Lesser	Low	\$3,000	\$5,345

Probability and Severity assessment

Size Adjustment

# Employees	Pervious Percent Reduction	New Percent Reduction
1-10	60	70
11-25		60
26-100	30	30
101-250	10	10
251+	None	None

AD Discretion

- Employer on SVEP list
- Citations meet requirements for SVEP
- Citations related to fatality/catastrophe
- No previous abatement verification for proposed FTA citation
- Willful/Repeat related to fatality
- Employer referred to debt collection
- Numerous RK violations - Injuries/Illnesses
- Failure to report under 1904.39

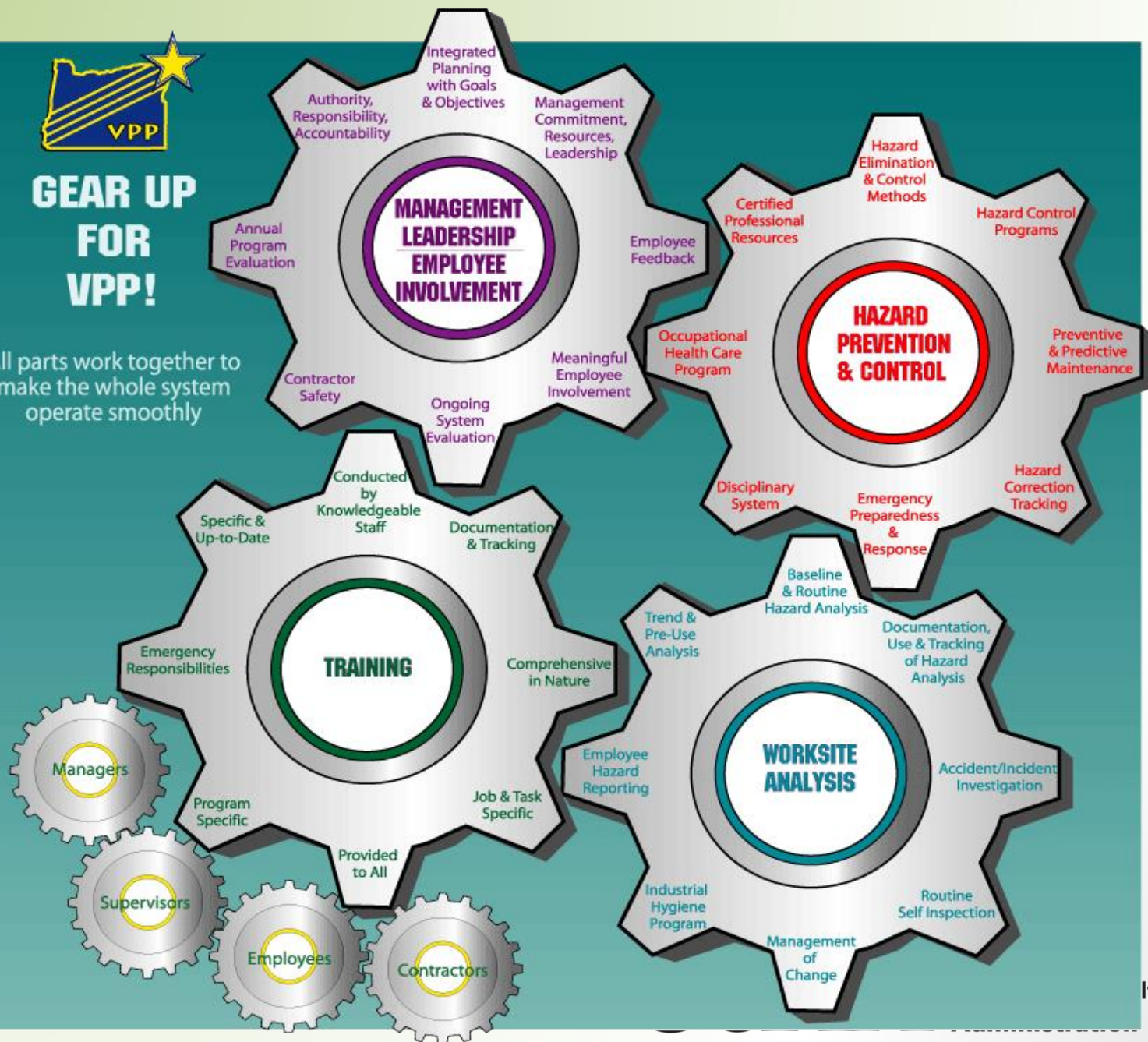
Effective SHMS

- Management Leadership
- Employee Involvement
- Worksite Analysis
- Hazard Prevention and Control
- Safety and Health Training



GEAR UP FOR VPP!

All parts work together to
make the whole system
operate smoothly



Management Commitment

- S&H Program written & signed
- Set the example
- Goals & Objectives
- Responsibilities & Authority Assigned/Defined
- Resources Provided
- Accountability System
- Integrated Planning System
- Communication Lines

Employee Involvement

- Three meaningful ways
 - Self inspections, audits, JHA, suggestions, observations, training, etc.
- Trained to do their jobs
- Receive feedback
 - Reports, suggestions, ideas
- Notified of rights

Worksite Analysis

- Baseline Hazard Analysis
- Routine Hazard Analysis
 - JHA, Phase or Process Analysis
- Significant Change Analysis
 - MOC Program
- Pre-Use Analysis
 - Prior to implementation
- Routine Self-Inspections
- Hazard Reporting for Employees
- Industrial Hygiene Program
- Investigation of Accidents & Near Misses
- Trend Analysis

Hazard Prevention & Control

- Certified Professional Resources
- Hazard Elimination & Control Methods
 - Hierarchy of Controls
 - Engineering
 - Administrative
 - Work Practice
 - Personal Protective Equipment
- Hazard Control Programs
- Occupational Health Care Program
- Preventive/Predictive Maintenance of Equipment
- Tracking of Hazard Correction
- Disciplinary System
- Emergency Preparedness & Response

Training

- Comprehensive in nature
- Provided to All Employees
- Required training
- Trained to meet Responsibilities
 - PPE, site hazards, protective measures, task specific, JHA, accident investigation, self inspections
- Documented
- Specific, up-to-date curriculum
- Conducted by knowledgeable staff

Multi-Employer Sites

- Host employer and contractor, subcontractor, or temporary staffing agency
 - Respective safety and health responsibilities and obligations
 - Procedures for coordinating these responsibilities
 - Communicating safety and health information
- Provide a copy of the safety and health policy to all contractors, subcontractors, and temporary staffing agencies

Multi-Employer Sites

- Share the results of hazard assessments
- Provide timely notice of any unsafe conditions or potential hazards that are identified
- Share information regarding
 - Measures, programs, and procedures to be used to control exposure to hazards, and comply with applicable standards
- All workers receive relevant general and hazard specific training before starting their assignment

Silica – 29 CFR 1926.1153

- Written exposure control plan
 - Identify tasks that involve exposure
 - Methods used to protect workers
 - Procedures to restrict access to work areas
- Designate a competent person
- Restrict housekeeping practices that expose workers to silica

Silica

- Medical exams
 - Where required to wear a respirator for 30 or more days per year
 - Chest X-rays and lung function tests
 - Every three years
- Train workers
 - Work operations that result in silica exposure
 - Ways to limit exposure
- Keep records of workers' silica exposure and medical exams

Silica Exposure Control

- Control methods in Table 1, **OR**
- Conduct monitoring where exposures may be at or above the action level of 25 µg/m³ (micrograms of silica per cubic meter of air) averaged over an eight-hour day
- Implement controls where workers are exposed above the permissible exposure limit (PEL) of 50 µg/m³, averaged over an eight-hour day
- Provide respirators to workers when dust controls cannot limit exposures to the PEL

Table 1: Specified Exposure Control Methods When Working with Materials Containing Crystalline Silica

Equipment/ Task	Engineering and Work Practice Control Methods	Required Respiratory Protection and Minimum Assigned Protection Factor (APF)	
		≤4 hrs/shift	>4 hrs/shift
(ii) Handheld power saws (any blade diameter)	<p>Use saw equipped with integrated water delivery system that continuously feeds water to the blade</p> <p>Operate and maintain tool in accordance with manufacturer's instructions to minimize dust emissions</p> <ul style="list-style-type: none"> • When used outdoors • When used indoors or in an enclosed area 	<p>None</p> <p>APF 10</p>	<p>APF 10</p> <p>APF 10</p>

Compliance Schedule

- Standards take effect on June 23, 2016
- Construction - June 23, 2017
- General Industry and Maritime - June 23, 2018
- Hydraulic Fracturing - June 23, 2018,
 - Except Engineering Controls - June 23, 2021

Confined Space – 29 CFR 1926 Subpart AA

- Identical to the General Industry standard with a few exceptions
 - New definitions
 - Construction specific requirements
 - Expansion of GI requirements
- Effective August 3, 2015

New Definitions

- **Entry Employer** – The employer with employees it directs entering a permit space
 - There may be more than one entry employer
 - Each entry employer is responsible for complying with all provisions in the Confined Spaces standard
- **Host Employer** – The employer that owns or manages the property where the construction work is taking place
 - Must share information about permit space hazards on the site with the controlling contractor

New Definitions

- **Controlling Contractor** – The employer with overall responsibility for construction at the worksite
 - Responsible for coordinating entry operations where there are
 - More than one entry employer
 - Other activities on the site could foreseeably result in a hazard in the permit space
 - Must provide any information they have about any permit space hazards and precautions previously used in the space

5 New Requirements

- Coordinate activities when there are multiple employers at the worksite
- Competent person to evaluate the work site and identify confined spaces, including permit spaces

5 New Requirements

- Continuous atmospheric monitoring whenever possible
- Continuous monitoring of engulfment hazards
- Allows for the suspension of a permit, instead of cancellation, for temporary changes near the space

Expansion of General Industry Requirements

- Entry under the “alternate” system
 - Exposure to physical hazards is eliminated through hazard or isolation methods such as lockout/tagout
- Arrange for local emergency service responders to give the employer advance notice if they will be unable to respond for a period of time
- Provide training in a language and vocabulary that the worker understands

Summary

- Jurisdiction
- Citations and penalties
- SHMS
- Silica and confined spaces

Questions?