

A New Targeting Model for OSHA's Programmed Construction Inspections

Advice for our next Asst. Secretary

scheme² and offers some suggestions for administrative changes to existing

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OSHA is either too heavy-handed with business or not tough enough. So go the mantras, as they have for decades. Here's an idea that might satisfy both camps when it comes to how the Agency could conduct more effective programmed construction inspections.

programs that would serve the Agency well in its "balanced approach"³.

Since the early 1980's, OSHA has devoted roughly half of its compliance programming resources to construction. While OSHA always has and probably will devote much of its time to inspections prompted by complaints, referrals and fatalities (un-programmed inspections), the resources it directs to programmed inspections in construction must be used effectively. How the Agency determines which construction projects to target has been the subject of much study and debate¹. This article explores an alternative inspection targeting procedure for conducting programmed inspections in the construction industry. It examines the current compliance programming

The selection of targets for programmed inspections must be based on "specific neutral criteria"⁴. Programmed construction inspections are initiated either by lists developed under a contract with the University of Tennessee-affiliated Construction Industry Research and Policy Center (U-Tenn/CRA) from data supplied by F.W. Dodge (Dodge) or lists of sites developed at the area office level. Dodge lists are forwarded to area offices based on geographic locations, project status and other criteria. The Dodge data can be "customized" by an area office (e.g. construction industry sector, project cost, etc.). However, area office personnel who use the lists have, since inception of the strategy, complained that project

¹ See, for example, Wiel, David, 2004. **Making OSHA Inspections More Effective: Alternatives for Improved Inspection Targeting in the Construction Industry**, Harvard University, and Ringen, Knut. 1999. **A Critical Review and Recommendations. Report Prepared for the Directorate of Construction**. Occupational Safety and Health Administration.

² OSHA Instruction CPL 2.25 I

³ John Henshaw, Jonathon Snare, et al. OSHA Outlooks (2002-2006).

⁴ Marshall v. Barlow

status is frequently inaccurate. Project status is critical in determining when a project is most hazardous and when an effective inspection should be conducted. The working of lists by Area Office personnel, whether generated by U-Tenn/CRA or an area office, is resource-intensive.

OSHA's current targeting system for construction identifies specific projects rather than individual employers (contractors). There lies the problem. Construction sites aren't factories where one employer and a fairly constant workforce and set of physical conditions make for easier control of hazards. Unlike factories, unsafe acts (often instantaneous in nature) cause the lion's share of injuries in construction. This alone calls into question whether the root causes of most injuries in construction don't go to breakdowns in, or simply the lack of, individual employers' safety programs rather than the events alone, however tragic. If a contractor implements a safety program incorporating the critical program elements that have been known to the construction industry for decades, it follows that unsafe acts will be reduced by virtue of that company's "safety culture". That said, an examination of an individual construction contractor's implementation of a safety program is at least as important as a snapshot of its work on one project. OSHA has advanced this thinking not only by rigorous enforcement of its construction safety program requirements⁵, but also

through its "focused inspection" initiative.

"Focused Inspections" for construction, developed by OSHA in 1995 in response to a conservative congress' desire to decimate the Act prompted the Agency to address more substantive issues than it allegedly had in the past (e.g. falls, crushed/struck-by, electrocutions, etc). Under the focused inspection program, an OSHA compliance officer can enter a project with an eye toward first determining whether an owner or its authorized representative has an effective safety effort in place. Assuming an effective program exists, the compliance officer can perform a walk-around of representative portions of the project to further verify the program's implementation and that the four most serious hazards associated with fatalities in construction are being addressed. The compliance officer can leave "safe" projects and go on to others in need of greater attention. Focused inspections are noteworthy in that they free compliance officers of older procedures that required wall-to-wall inspections if a project hadn't received one in the past six months. However, even with focused inspections, a compliance officer spends time and other Agency resources preparing for and getting to a project, regardless of whether the intended inspection is programmed or un-programmed.

Unfortunately, with a targeting program that focuses on projects rather than

⁵ Title 29 Code of Federal Regulations, Part 1926.20(b) (one of OSHA's most frequently cited standards) as interpreted by OSHA STD 3-1.1.

contractors, the Agency can only take half steps in identifying specific construction employers in need of attention. OSHA spends valuable time getting to sites that may or may not be “ripe” for inspection and that may or may not have an effective safety program.

The rationale that because OSHA requires an objective basis for selecting construction sites, the Dodge “system” is the only viable data source would be understandable if the Agency didn’t already have the a method of collecting data and procedures for measuring the effectiveness of individual construction contractors’ safety programs already in place: By combining portions of its current targeting program for general industry (SST) with its focused inspection program for construction (both of which were “administrative changes” themselves), the Agency can vastly improve its use of resources and target construction employers truly in need of regulatory attention.

OSHA’s Site-specific targeting program (SST)⁶ has enabled the Agency to successfully identify general industry employers with higher-than-average injury rates. SST evolved from a pilot program that initially targeted 200 general industry employers to a data collection initiative that currently queries 80,000. The Agency surveys employers in designated high hazard industries and, based on their feedback, lists them (or doesn’t) as candidates for inspection. The program has successfully identified

and targeted employers with less-than satisfactory safety records. Those with injury rates appreciably above the national average for their industry classifications and subject to that data collection initiative have taken actions to improve their safety efforts.

Because OSHA is not precluded by the OSHAct from collecting its own data, certain aspects of the SST program infrastructure can be directly employed for targeting construction. Others cannot. For example, not all contractors have a Dun and Bradstreet number. However, now more than ever, an abundance of data bases are available for identifying contractors, much of it in the public domain. Contractors advertise and keep their listings current for business’ sake. Still other valuable sources of information are computer service bureaus that compile business and consumer lists from tapes purchased from financial services. Many such lists are custom-runs, based on very specific search criteria.

Construction employers vary. When it comes to specialty contractors, the employer’s injury data would serve as an effective predicate for targeting just as it does for general industry employers. General contractors and construction managers (project constructors) are another matter. Only the “best of the best” keep project-wide injury and illness data. That sort of contractor needs recognition (e.g. a VPP), not programmed inspections. Moreover, traditional general contractors that self-

⁶ OSHA Directive 04-02 (CPL 02)

perform at least some work are being replaced by construction managers with only a superintendent who often relies on one subcontractor for the ongoing maintenance of temporary structures and another for housekeeping. With no crafts in their direct employ, many of them, if asked about their incidence of injury, would report few to none. One approach in identifying less safety-conscious project constructors might be through the use of a profiling questionnaire that could measure responses on issues going to their day-to-day implementation of project safety, their market specialty⁷, whether fatalities have occurred on their projects in the past three years, and the level of formalized safety training afforded their project supervisors. As with OSHA's targeting system for general industry, responses from contractors, regardless of type, could be subject to random verification.

The OSH Act prohibits advance notice of inspections. The meaning of advance notice has been refined since the Act's inception. Visiting offices of contractors rather than actual construction sites is no more a case of advance notice than what is currently taking place under the focused inspection procedure - a CSHO is essentially "auditing" to determine a contractor's implementation/non-implementation of the required safety program elements. In fact, more elements of a traditional construction safety program can be evaluated at a contractor's home base: management commitment, record-keeping, accident

investigation, job hazard analysis, hazard-specific training, etc. Arguably, an office "audit" would present a fairer picture of a contractor's overall safety effort than a snap shot of one project. It would also have the added benefit of allowing its "auditors" to gather a more substantive body of craft and industry-specific accident data for rulemaking than is currently available.

Summary: The necessary data sources to enable OSHA to determine the identities and locations of small, medium and large construction contractors are available, just as they are for general industry. The Agency has the ability to collect data and the funds currently obligated for targeting information can be redirected to do just that. The same results realized by its focused inspection initiative can be accomplished with less legwork by its compliance personnel. The deterrent effect this program would have on unsafe contractors that would not be inspected under current inspection scheduling procedures or through national/local emphasis programs will be significant and move the construction industry that much closer to injury and illness-free projects.

⁷ Anecdotally, industrial construction has clearly outflanked commercial and residential construction in its accident prevention efforts because of private sector procurement policies.

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