

**Enhanced
Federal Annual Monitoring and Evaluation (FAME)
Report**

**STATE OF VERMONT
DEPARTMENT OF LABOR
VERMONT OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
23(G) PROGRAM
(VOSHA)**

Federal Fiscal Year 2009



**Occupational Safety and Health Administration Region I
Boston, Massachusetts
Marthe B. Kent, Regional Administrator**



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I. EXECUTIVE SUMMARY

Vermont State Plan Background

State Designee: **Patricia Moulton Powden, Commissioner** ¹
Vermont Department of Labor
5 Green Mountain Drive
Montpelier, Vermont 05601
 Program Manager: **Robert McLeod**

Plan approved: **October 1, 1973**

Plan Certified (completion of developmental steps): **March 4, 1977**

Final Approval/18(e) Determination: **Pending**

Funding:

Vermont FY 2006-2010 Funding History						
	Federal Award	State Match	100% State Funds	Total Funding	% of State Contribution	Unmatched/ Deobligation/ One-Time Only
2010	\$725,800	\$725,800	\$0	\$1,451,600	50%	\$30,900
2009	\$725,800	\$725,800	\$0	\$1,451,600	50%	\$0
2008	\$713,100	\$713,100	\$12,700	\$1,438,900	50%	\$0
2007	\$725,800	\$725,800	\$0	\$1,451,600	50%	\$0
2006	\$725,800	\$725,800	\$0	\$1,451,600	50%	\$0

Covered Workers:

Vermont 2009 Covered Workers		
Public Sector Employees	Private Sector Employees	Total Employees Covered
46,473	255,438	301,911

¹ Retired effective July 15, 2010. Valerie Rickert has been appointed as acting commissioner.

Staffing:

Vermont FY 2009 Staffing		
<i>Full-Time Equivalents [FTEs] as of 9/30/2009</i>		
23(g) Compliance and Consultation	Safety	Health
Allocated Compliance Staff	6	4
On-Board Compliance Staff	6	4
Compliance Staffing Benchmarks	9	13
Allocated Consultation Staff	.45	.25
Total Allocated 23(g) Staff	14.61	

The Vermont Occupational Safety and Health Administration’s enforcement program has experienced high turnover over the last several years. However, since the start of Fiscal Year 2009, the program has been fully staffed with six safety and four health Compliance Safety and Health Officers (CSHOs), in addition to one Compliance Assistance Specialist (CAS)/Voluntary Protection Program (VPP) Coordinator. The newest member, a safety CSHO, came on board at the start of the first quarter of FY 2009.

VOSHA’s public sector consultation program consists of two safety and two health consultants who commit a fraction of their time to provide on-site consultation, training and assistance to the public sector. The public sector consultation staff is also utilized in support of the VOSHA Strategic Plan.

Significant Program History:

VOSHA has been administered under the Vermont Department of Labor, Division of Workers’ Compensation and Safety, since July 1, 2005. The Department of Labor is the enforcing agency for the program. The Commissioner has the authority to issue safety and health citations. The program is operated through the program’s headquarters at 5 Green Mountain Drive, Montpelier, Vermont, as well as several field offices located throughout the state.

Vermont has adopted most federal standards by reference. The State has two unique standards; one addressing permissible exposure limits and one for electrical power generation, transmission and distribution. Construction, manufacturing (i.e., wood, paper, food, plastic/rubber products, and nonmetallic mineral products), transportation and warehousing, nondurable goods wholesalers, and healthcare and social assistance sectors are the State’s high-hazard targeted industries.

By virtue of the definition of "employer" contained in Vermont’s OSHA Act, coverage of public employees is identical to that of private employees including citation issuance and first instance sanctions. The Vermont State Plan offers a number of voluntary and cooperative programs, including Green Mountain (GM) VPP and Project WorkSAFE (Consultation), SHARP, and Project Road-safe (funded by the Federal Highway Safety Administration; it informs employers on hazards associated with motor vehicles).

The State's current staffing benchmarks (9 safety and 13 health) were established in 1980 as a result of the 1978 Court Order (AFL-CIO v. Marshall). In the 1990s when State Plans were extended opportunities to revise their benchmarks using state-specific data, VOSHA recalculated their benchmarks. Due to health CSHOs being housed and managed under the Health Department and their low productivity levels, Vermont's new health benchmarks would have been set at 8 which is double the number allocated (4), while safety benchmarks would remain equal to the allocated level (6). As a result, Vermont decided not to revise their benchmarks at that time. Since the transfer of health CSHOs to the Department of Labor and Industry in 2002, productivity has increased steadily to the point where VOSHA has expressed interest in revisiting the issue.

VOSHA does not have sufficient funds to staff at its benchmark levels, which would require the State to appropriate 100% state funding. As Vermont currently does not have final approval status, it is not required to maintain its allocated staffing levels to meet its benchmarks. VOSHA's current allocated staffing levels are comparable to those of Federal OSHA's Concord New Hampshire Area Office, which has twice the worker population.

Report Summary

The primary purpose of this report is to provide a baseline evaluation of Vermont's State Plan performance in FY 2009, with a special emphasis on the effectiveness of its enforcement program. We also evaluated the state's progress toward achieving its Fiscal Year 2009 Annual Performance Plan goals and objectives, and its performance with regard to voluntary compliance.

Key findings address such things as notification to unions of citations; communication with families of fatality victims; grouping of serious hazards; case file documentation; use of the diary sheet; abatement verification; informal conferences; hazard identification; notification to complainants concerning the outcome of inspections; lack of IMIS data entry for health sampling results; and documentation of penalty reductions.

We also found deficiencies in meeting some of the standards in the State Activity Mandated Measures (SAMM) report and in the administration of the Whistleblower program; a failure to respond timely to many Federal Program Changes; and some improperly cited standards (we provided the correct citations based on the information in the case file).

On the other hand, VOSHA was able to meet most of its Annual Performance Plan goals and objectives both for inspections and public sector consultation visits. During this evaluation period, the VOSHA program conducted 366 inspections in the private and public sectors. These inspections resulted in the issuance of 727 violations, of which 494 were serious, willful, or repeat violations, for a rate of 68 percent serious and above.

VOSHA also did well in targeting high hazard employers; concluded the fiscal year with no Complaints Against State Program Administration (CASPA's); and received high marks from each of the six stakeholders we interviewed.

Methodology

From March 15 -19, 2010, Region I conducted an onsite review of 76 of the program's FY2009 inspection case files, or files for about one-fifth of the total number of inspections completed during that reporting period. These case files were randomly chosen from an Integrated Management Information Systems (IMIS) scan report of all VOSHA inspections opened in FY2009. We chose cases for review that related to both unprogrammed and programmed inspections, as well as all five of VOSHA's Whistleblower case files that related to Section 11(c) discrimination complaints.²

Since VOSHA is a State Plan state, the program conducts inspections at all worksites, private and public sector (such as town and city halls, public works buildings, school departments, police and fire stations and state employment). On average, VOSHA conducts about 10 percent of its inspections at municipal sites.

At the outset and conclusion of this review, we conducted conferences with the director and the occupational safety and health compliance chief. We also undertook an extensive review of data from various electronic reports (such as OSHA's Integrated Management Information System (IMIS) reports).

Another component of this review included interviews with VOSHA staff, such as the director, the occupational safety and health compliance chief, the administrative assistant, and all of the program's CSHOs. As mentioned above, we also interviewed six VOSHA stakeholders about their relationship and interaction with the program. These organizations are identified later in this report.

The body of this report contains 29 detailed findings and recommendations focusing on the program's enforcement performance in FY2009. In the section below, we have summarized these findings and recommendations. A more detailed listing appears in Appendix A.

² To help ensure that employees are, in fact, free to participate in safety and health activities, [Section 11\(c\) of the OSH Act](#) prohibits any person from discharging or in any manner retaliating against any employee because the employee has exercised rights under the Act. The link to OSHA's Whistleblower web page is: <https://www.osha.gov/dep/oia/whistleblower/index.html>.

Summary of Findings and Recommendations

- VOSHA did not meet nine of the **State Activity Mandated Measures (SAMM)**: percent of complaints and referrals responded to within one day (imminent danger); percent of S/W/R violations verified (private and public); average number of calendar days from opening conference to citation issuance; average violations per inspection with violations (S/W/R and other-than serious); average initial penalty per serious violation—private sector only; percent of total inspections in public sector; and percent of 11(c) investigations completed within 90 days. **#1: VOSHA must improve its performance with respect to these measures in the SAMM. (p. 20)**
- **State Indicator Report (SIR)** standards were not met: private sector serious safety/health violations; private sector average penalty for other-than-serious safety/health violations; private sector safety inspections/100 hours; private sector penalty retention; percent of violations reclassified; and percent of penalty retention. **#2: VOSHA must improve its performance with respect to these eight standards that have not been met. (p. 21)**
- Some **case files** had deficiencies, including: absence of CSHOs' field notes; inadequate documentation of abatement verification; and failure to document labor organization notification of the informal conference. Also, in some instances, the CSHOs were not meeting the Filed Operations Manual (FOM) diary sheet requirements, and documents were not in the order established by OSHA's directive. Our review also found some files that lacked an OSHA complaint form. **#4: VOSHA should organize case file paperwork in accordance with OSHA's directive on "Inspection Case File Organization." VOSHA should also include the documentation and notices that were cited as missing in the appropriate case file(s). (p. 24)**
- VOSHA did not send **response letters to complainants** advising them of the results of the inspection. **#5: VOSHA must send response letters to complainants advising them of the results of the inspections or investigations resulting from their complaints. (p. 25)**
- In some cases relating to **fatality investigations**, we found that discussions between CSHOs and supervisors regarding investigations were not well documented; the CSHO did not reconstruct the scene of the accident; and there was no evidence that an initial letter and a copy of the citations had been sent to the victim's family. **#6: VOSHA must ensure that important discussions between CSHOs and supervisors regarding fatality investigations are documented in the case file diary sheet; information relevant to the fatality investigation must be documented in the case file diary sheet in accordance with the FOM; and VOSHA must follow the FOM requirements with regard to contact with families of victims during an inspection. (p. 27-28)**

- VOSHA's average **violations cited per initial inspection** of 2.4 is below Federal OSHA's average of 3.1. **#8:** *VOSHA's average violations cited per inspection should be brought more into line with Federal OSHA's average. (p. 30)*
- The case file review revealed several **hazard identification** issues: all apparent violations were not cited or some standards were misclassified in the citations sent to the employer. **#9:** *VOSHA CSHOs must improve their hazard recognition skills and ability to reference the correct standards when hazards are identified. (p. 34)*
- We found that CSHOs grouped **serious violations** that should not have been grouped, which also reduces penalties. **#10:** *To group serious violations appropriately, VOSHA must insist that its CSHOs adhere to the guidelines established in the FOM for grouping. (p. 36)*
- In a number of cases, the CSHOs did not correctly assess the **gravity of the violation**, and erred on the side of assessing lower probability and severity than warranted, thus reducing the overall penalties. **#11:** *VOSHA must ensure that CSHOs use penalty calculations that conform to the FOM. (p. 36)*
- Case file reviews found that a few **violations were incorrectly classified** as "other" rather than "serious." **#12:** *VOSHA staff must review the chapters of the FOM that discuss the factors that determine whether a violation is to be classified as serious, and whether violations should be classified as other-than-serious. (p. 36)*
- Some of the case files involving **unions** did not contain any documentation to indicate that the union had been sent a copy of the citations. In addition, field notes, which likely contained the information obtained from the employees during interviews, were not kept in the files. **#13:** *VOSHA must ensure that unions receive proper notification of the citations sent to the employer; copies of this notification must be retained in the case file. In addition, VOSHA must maintain field notes in the official case files. (p. 37)*
- We found some cases that lacked sufficient evidence to legally support the **standards** cited or the actions taken by VOSHA to delete citations. In other cases, the CSHOs cited the incorrect standard or assessed the penalties incorrectly. **#14:** *VOSHA must review and follow the FOM, which discusses the evidence necessary to support violations. (p. 40)*
- Some cases we reviewed did not contain adequate **documentation of abatement**, and some of these case files had been closed without any documentation of adequate proof of abatement. **#16:** *VOSHA must adhere to the FOM, which requires that the case files remain open throughout the inspection process and not be closed until the Agency is*

satisfied that abatement has occurred. Also, VOSHA should review the sections of the FOM that relate to Adequacy of Abatement Documentation. (p. 40)

- Case files with **Petitions for Modification of Abatement (PMA)** were missing the abatement completion date or interim protections to be followed during the PMA. **#17:** *In accordance with the FOM, VOSHA must ensure that all documentation related to Petitions for Modification of Abatement (PMA) are contained in the relevant case files, such as copies of the petition itself, as well as VOSHA's approval (or denial) of the PMA, and any written objections by employees to the PMA. (p. 41)*
- There were a few cases in which the proper **informal conference** procedures were not followed. **#18:** *VOSHA should review and follow the FOM, which discusses the procedures to follow for informal conferences and informal settlement agreements. (p. 43)*
- VOSHA has not yet completed the process of establishing **formal debt collection procedures**. **#19:** *We advise VOSHA to follow through in establishing formal debt collection procedures. State Plan programs must have "an effective debt collection mechanism in place" in accordance with the State Plan grant requirements. (p. 45)*
- VOSHA has fallen behind in promulgation and adoption of new and revised **Federal OSHA standards**, due to the state's time-consuming rulemaking procedures. **#20:** *VOSHA must respond timely to Federal Program Changes (FPCs) and Federal Standard Actions. (p. 50)*
- Two Special Government Employees (SGEs) participated in a Green Mountain (GM) **VPP** onsite without having received approval from the SGE Coordinator. **#21:** *VOSHA must request prior approval from the SGE Coordinator at the National Office to use SGEs on GMVPP onsite reviews. (p. 54)*
- A **VPP** onsite evaluation that involved the Process Safety Management (PSM) standard was conducted although none of the seven team members had received PSM Level 1 auditor training. **#22:** *VOSHA must have at least one CSHO trained in PSM to ensure compliance with the PSM Standard. (p. 55)*
- The PSM questionnaire was not sent to the VOSHA **VPP** site that was covered under the PSM standard. **#23:** *VOSHA should send the PSM questionnaires to the VPP site covered under the PSM standard for completion and these questionnaires must be included in the site's 2009 annual self-evaluation. (p. 55)*
- Our review of the **GMVPP** files uncovered discrepancies related to Medical Access Orders (MAOs), final reports containing 90-day items, and abatement verification or documentation. **#24:** *VOSHA should use the revised report format for initial and recertification of VPP onsite evaluations as prescribed by OSHA. (p. 56)*

- VOSHA staff is required to enter an intervention form for each **VPP** onsite evaluation that is conducted. Staff must also enter the OSHA Form 31 timesheet into IMIS. **#25:** *VOSHA must ensure that staff members enter their weekly activity on the Form 31 timesheets. The intervention form should be incorporated into the Form 31 when appropriate. (p. 57)*
- **GMVPP** files did not contain the dates the applications were received and accepted. *GMVPP files should contain the date the application was received and the date the application was accepted. #26: In addition, VOSHA should send a letter to the applicant acknowledging receipt of the VPP application. (p. 57)*
- The **VPP** records are located on the VPP program manager's personal drive. **#27:** *All GMVPP electronic documents should be placed on the public drive to allow access to management in the Montpelier office in the event of a public request. (p. 58)*
- Some **discrimination case files** were not properly organized and did not contain required documentation. **#28:** *VOSHA must assemble discrimination case files in an orderly fashion and in accordance with OSHA's Discrimination Manual. (p. 60)*
- Some CSHOs have not completed all required **training** courses. **#29:** *The VOSHA director must ensure that all CSHOs complete the remaining courses as soon as possible. (p. 64)*

II. SUMMARY OF RECOMMENDATIONS AND STATE ACTIONS FROM FY 2008 FAME

As a result of the review of VOSHA's programs during FY 2008, OSHA made two recommendations, as follows:

1. We recommend that VOSHA ensure that new Federal OSHA standards and revisions to Federal standards are promulgated and adopted within reasonable time frames. VOSHA's response to this issue is as follows:

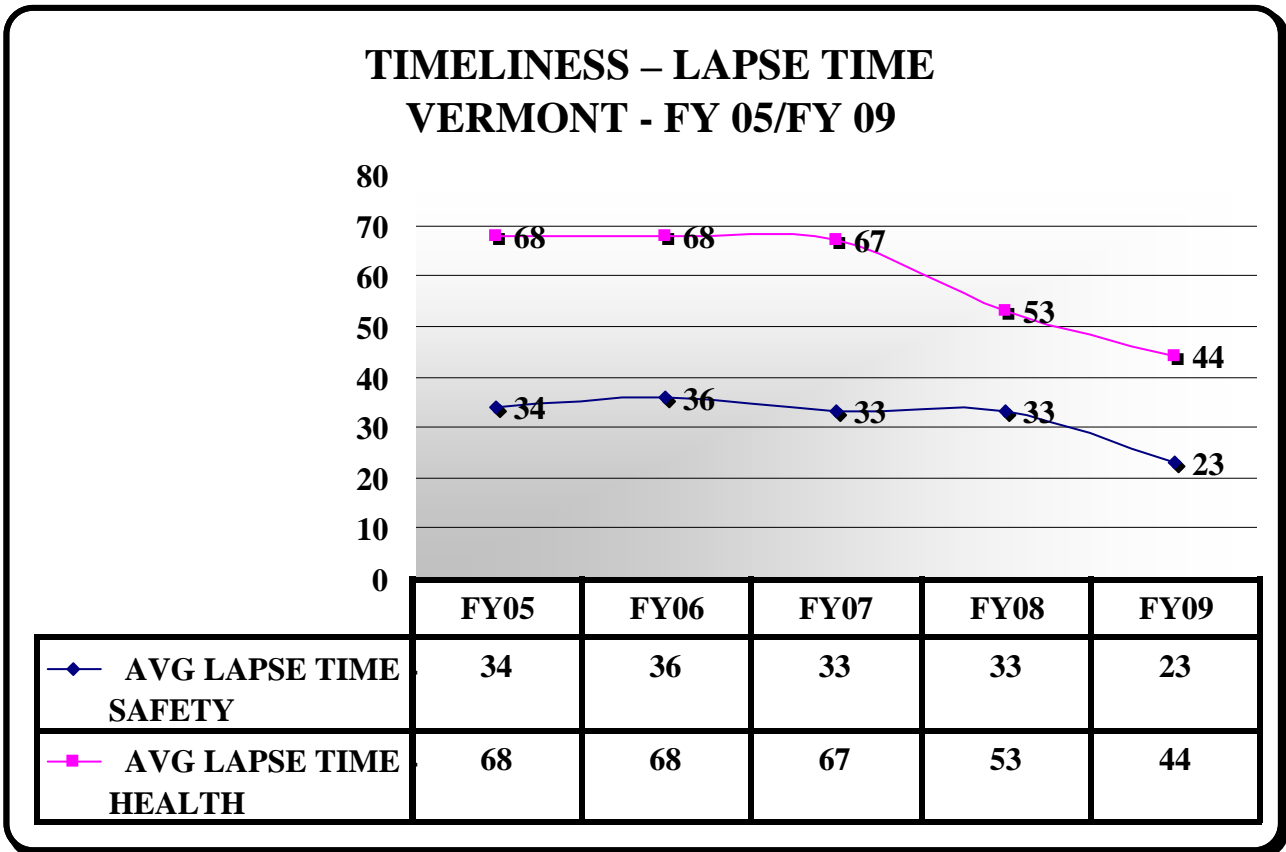
VOSHA is not able to ensure the timeliness of the State's adoption of new Federal OSHA standards and revisions to Federal standards because of the rulemaking procedures in place in Vermont. The Vermont Administrative Procedures specify the process for adoption of rules. The following is a list of steps and time frames:

- Prepare supportive documentation to include: Economic Impact Statement; public input statement; incorporation by reference statement; clean text of the rule and annotated text of the rule;
- Submit supportive documents to the Interagency Committee on Administrative Rules (ICAR) (Committee meets second Monday of each month);
- If approved by ICAR, submit to the Vermont Secretary of State by the following Friday;
- Thirteen days later the rule is published in newspapers throughout the state (the cost for advertising in newspapers is \$2500);
- Publish the rule for public comment seven days later;
- Hold a public hearing no sooner than ten days after the second publication;
- Set the deadline for written comments no sooner than 7 days after the last day of the public hearing;
- Address all substantive comments, by adopting or not adopting them and explaining why they were or were not adopted;
- Submit the final proposed rule to the Legislative Committee on Administrative Rules (LCAR). This committee meets weekly when the legislature is in session, and biweekly when it is not in session;
- VOSHA then testifies before LCAR. The affected industry is notified of the hearing and given an opportunity to participate; and
- If approved by LCAR, the Final Rule is submitted to the Vermont Secretary of State and becomes effective 15 days later.

VOSHA has been affected by severe budgetary constraints, and one of the effects has been to hold off on advertising some federal program changes which cost \$2500 per advertisement. This factor accounts for the delay in some Federal program changes.

2. We recommended in FY2008 that the VOSHA director improve the monitoring of health cases to decrease the lapse time from the opening conference to the issuance of health citations. In response, VOSHA management is reviewing locally generated

reports on a bi-weekly basis with particular emphasis on health cases. The average lapse time has continuously improved and is now approaching the national average of 40 days. The average lapse time for safety cases also improved over the same time period. The chart below shows a comparison of VOSHA performance in this area.³



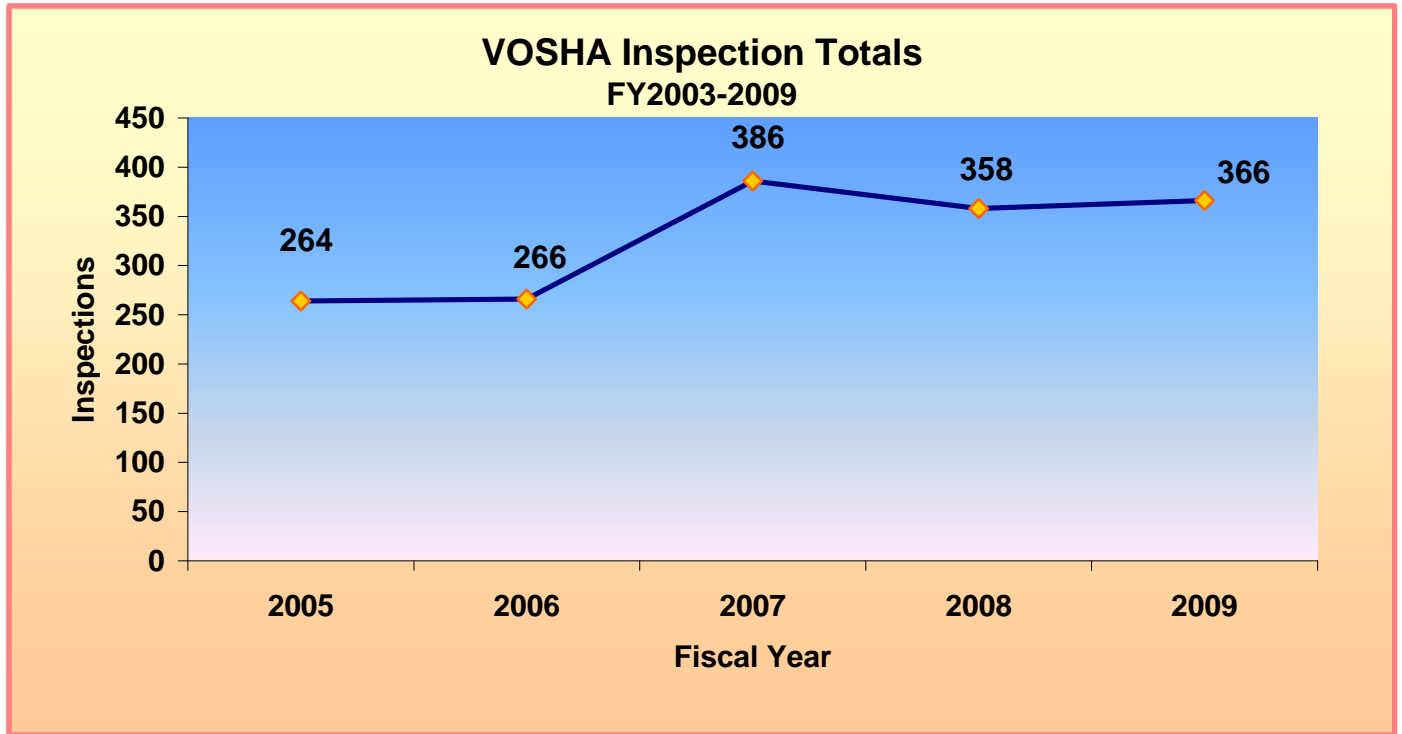
³ Data in this chart is derived from the Enforcement Statistics Report, dated 11/19/2009.

III. ASSESSMENT OF STATE PERFORMANCE

Through its annual performance report, VOSHA provided details on its performance in meeting the first year goals of its five-year strategic plan. Through effective enforcement resource utilization, outreach activities, and an overall commitment to achieving performance goals, the majority of goals have been met or exceeded, including the goals for total number of inspections and consultation visits.

We reviewed the information provided by VOSHA to assess the State's accuracy in meeting its Annual Performance Plan goals for FY2009, the first year of the program's new five-year strategic plan.

As discussed previously, VOSHA has been fully staffed with six safety and four health CSHOs since October 1, 2009. Over the last several years, however, VOSHA has lost several veteran CSHOs, but minor changes in field staffing have more than offset these losses and led to an overall increase in VOSHA's inspection activity in FY 2007-2009. The chart below illustrates VOSHA inspection activity since FY2005. The slight decrease in inspections in FY2008 and FY2009 was due in large part to the military deployment of a senior safety CSHO for 400 days and the resignation of another CSHO in the last quarter of FY2008.



In FY2009, VOSHA exceeded its overall Annual Performance Plan goals for private and public sector inspections. By fiscal year end, the 23(g) enforcement program had completed a total of 366 inspections, or 109 percent of its projection of 335. Of these inspections, 330 were in the private sector and 36 were in the public sector. The consultation program also exceeded its goal by completing a total of 27 visits, or 135 percent of its projection of 20 visits.

A. ASSESSMENT OF PROGRESS IN ACHIEVING ANNUAL PERFORMANCE GOALS

In FY2009, VOSHA identified 10 industries in Vermont that had a higher than average DART rate compared with all other industries in the State. VOSHA's selection of these ten industries was based OSHA's Performance Goals as well as on information obtained from the Vermont Office of Workers' Compensation.

The table below lists the nine identified industries and compares VOSHA's baseline data to calendar year 2008 results (the latest year for which the BLS currently has published statistics).

FY2009 TARGETED INDUSTRIES					
Industry	NAICS	No. of Employees (2006)	VT 2006 DART (baseline)	VT 2008 DART	Pct. Change (from baseline to 2008 DART)
Construction	23	17,200	5.5	4.0	(27)
Wood Product Manufacturing	321	2,300	3.0	4.7	56
Transportation & Warehousing	48-49	6,800	3.6	2.9	(19.4)
Paper Manufacturing	322	1,300	3.9	6.0	53
Food Manufacturing	311	3,800	6.9	4.7	(31)
Plastics & Rubber Products Manufacturing	326	1,200	6.9	4.2	(40)
Nonmetallic Mineral Product Manufacturing	327	2,000	5.0	3.7	(26)
Wholesalers, Nondurable Goods	424	5,100	5.9	3.5	(41)
Healthcare & Social Assistance	62	42,400	2.5	3.2	28

The DART rate has increased from the baseline rate for three of the targeted industries (wood product manufacturing, paper manufacturing, and healthcare and social assistance). However, VOSHA did well in reducing the rates in six of the nine high DART rate industries.

As shown in the next table, Vermont met or exceeded most of its FY2009 Annual Performance Plan goals, as detailed in VOSHA's FY2009 State OSHA Annual Report (SOAR) (see Appendix C).

STRATEGIC GOAL 1: IMPROVE WORKPLACE SAFETY AND HEALTH THROUGH COMPLIANCE ASSISTANCE AND ENFORCEMENT OF OCCUPATIONAL SAFETY AND HEALTH REGULATIONS AND STANDARDS.																																							
Annual Performance Goal	Outcome Measures	Results	Discussion																																				
<p>1.1: Reduce the rate of workplace injuries and illnesses in construction by 15% and reduce fatalities by 25%.</p> <p><i>Area of Emphasis:</i> 1A- Residential & commercial building 1B- Highway, street & bridge construction 1C- Roofing 1D- Falls from elevation 1E- Trenching 1F- Struck by 1G- Electrical 1H- Noise 1I- Silica 1J- Youth 1K- Workzone Safety</p>	<p>Intermediate outcome Measure: Review inspection activity quarterly. Conduct 165 construction inspections.</p> <p>Primary Outcome Measure: Reduction in the FY2009 DART rates by 3% and fatalities by 25% in each area of emphasis.</p>	<p style="text-align: center;">GOAL ACHIEVED (for intermediate outcome measures)</p>	<p>Total inspections: 366 Total inspections in the construction industry: 193 Percent of goal achieved: 117%</p> <p>VOSHA achieved a 27 percent reduction in DART rates in the Construction industry overall, from 5.5 in 2006 to 4.0 in 2008. VOSHA did not document any fatalities in FY2009 in the construction industry.</p> <p>Below is a description of how VOSHA performed in relation to its goals in each of the areas of emphasis (the number indicates inspections unless otherwise noted):</p> <table border="1"> <thead> <tr> <th>Area of Emphasis</th> <th>Goal</th> <th>Activity</th> </tr> </thead> <tbody> <tr> <td>1A- Residential & commercial building</td> <td>130</td> <td>80</td> </tr> <tr> <td>1B- Highway, street & bridge construction</td> <td>20</td> <td>24</td> </tr> <tr> <td>1C- Roofing</td> <td>15</td> <td>37</td> </tr> <tr> <td>1D- Falls from elevation</td> <td>--</td> <td>92</td> </tr> <tr> <td>1E- Trenching</td> <td>--</td> <td>20</td> </tr> <tr> <td>1F- Struck by</td> <td>--</td> <td>37</td> </tr> <tr> <td>1G- Electrical</td> <td>--</td> <td>Hazards addressed on all inspections</td> </tr> <tr> <td>1H- Noise</td> <td>--</td> <td>5</td> </tr> <tr> <td>41I- Silica</td> <td>--</td> <td>6</td> </tr> <tr> <td>1J- Youth</td> <td>--</td> <td>360 trained</td> </tr> <tr> <td>1K- Work zone Safety</td> <td>--</td> <td>16</td> </tr> </tbody> </table>	Area of Emphasis	Goal	Activity	1A- Residential & commercial building	130	80	1B- Highway, street & bridge construction	20	24	1C- Roofing	15	37	1D- Falls from elevation	--	92	1E- Trenching	--	20	1F- Struck by	--	37	1G- Electrical	--	Hazards addressed on all inspections	1H- Noise	--	5	41I- Silica	--	6	1J- Youth	--	360 trained	1K- Work zone Safety	--	16
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<p>Annual Performance Goal 1.1 Reduce the rate of workplace injuries and illnesses in construction by 15% and reduce fatalities by 25%. <i>(Continued)</i></p>	<p>VOSHA will effect a 15% reduction in the construction DART rate and a 25% reduction in fatalities (to be evaluated at the conclusion of the five-year strategic plan).</p>		<p>In addition, VOSHA performed 14 compliance assistance interventions in the construction industry that covered the following subjects: OSHA 10-hr courses; fall protection; residential fall protection and scaffold training; fall protection; highway work zones; confined space; trenching and excavation; lockout/tag; and a 30-hour construction course.</p> <p>The extent to which VOSHA is successful in effecting a 15 percent reduction in DART rates for the targeted groups will be assessed at the conclusion of the five-year strategic plan.</p>
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STRATEGIC GOAL 1: IMPROVE WORKPLACE SAFETY AND HEALTH THROUGH COMPLIANCE ASSISTANCE AND ENFORCEMENT OF OCCUPATIONAL SAFETY AND HEALTH REGULATIONS AND STANDARDS.																																				
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<p>1.2: Reduce the rate of workplace injuries and illnesses in general industry by 15% and reduce fatalities by 25%.</p> <p><i>Area Of Emphasis:</i> 2A- Food Processing 2B- Lumber & Wood Products 2C- Small Business 2D- Large Farm Initiative 2E- Targeted NAICS 2F- Amputations 2G- Isocyanates, Asthma & Allergies 2H- Electrical 2I- Powered Industrial Trucks (PIT) 2J- Noise 2K- Silica 2L- Transportation 2M- Youth Workers</p>	<p>Intermediate outcome Measure: Conduct 82 inspections within the areas of emphasis, in addition to all the employers on the targeted NAICS list.</p> <p>Primary Outcome Measure: Reduction in the FY2009 DART rates by 3% and fatalities by 25% in each area of emphasis.</p>	<p>GOAL ACHIEVED (for intermediate outcome measure)</p>	<p>Total inspections: 366 Total inspections in general industry: 173 Percent of goal achieved: 184%</p> <p>VOSHA achieved an 8 percent reduction in the total recordable case rate in general industry overall from 4.9 in 2006 to 4.5 in 2008. VOSHA experienced one workplace related fatality in FY2009 in general industry.</p> <table border="1"> <thead> <tr> <th>Area of Emphasis</th> <th>Goal</th> <th>Activity</th> </tr> </thead> <tbody> <tr> <td>2A- Food Processing</td> <td>20</td> <td>13</td> </tr> <tr> <td>2B- Lumber & Wood Products</td> <td>12</td> <td>12</td> </tr> <tr> <td>2C- Small Business</td> <td>Outreach</td> <td>Outreach</td> </tr> <tr> <td>2D- Lg Farm Initiative</td> <td>--</td> <td>21(d) only at this time</td> </tr> <tr> <td>2E- Targeted NAICS</td> <td>68 (all sites on list)</td> <td>68</td> </tr> <tr> <td>2F- Amputations</td> <td>40</td> <td>48</td> </tr> <tr> <td>2G- Isocyanates, Asthma, & Allergies</td> <td>--</td> <td>22</td> </tr> <tr> <td>2H- Electrical</td> <td>Review electrical hazards on all inspections</td> <td>Completed</td> </tr> <tr> <td>2I- PIT</td> <td>Review electrical hazards on all inspections</td> <td>Completed</td> </tr> <tr> <td>2J- Noise</td> <td>--</td> <td>2</td> </tr> </tbody> </table>	Area of Emphasis	Goal	Activity	2A- Food Processing	20	13	2B- Lumber & Wood Products	12	12	2C- Small Business	Outreach	Outreach	2D- Lg Farm Initiative	--	21(d) only at this time	2E- Targeted NAICS	68 (all sites on list)	68	2F- Amputations	40	48	2G- Isocyanates, Asthma, & Allergies	--	22	2H- Electrical	Review electrical hazards on all inspections	Completed	2I- PIT	Review electrical hazards on all inspections	Completed	2J- Noise	--	2
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<p>Annual Performance Goal 1.2: Reduce the rate of workplace injuries and illnesses in general industry by 15% and reduce fatalities by 25%. <i>(Continued)</i></p>	<p>VOSHA will effect a 15% reduction in the DART rate and a 25% reduction in fatalities (to be evaluated at the conclusion of the five-year strategic plan).</p>			<table border="1"> <thead> <tr> <th>Area of Emphasis</th> <th>Goal</th> <th>Activity</th> </tr> </thead> <tbody> <tr> <td>2K- Silica</td> <td>10</td> <td>7</td> </tr> <tr> <td>2L- Transportation</td> <td>Outreach</td> <td>Outreach</td> </tr> <tr> <td>2M- Youth Workers</td> <td>Outreach</td> <td>Outreach</td> </tr> </tbody> </table>	Area of Emphasis	Goal	Activity	2K- Silica	10	7	2L- Transportation	Outreach	Outreach	2M- Youth Workers	Outreach	Outreach
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2M- Youth Workers	Outreach	Outreach														
<p>In addition, VOSHA conducted 46 interventions (outreach and training) that included the following in general industry: Two accident investigation trainings for the lumber industry; One GI fall protection session for NE Chapter of VT S&H Council; A S&H webinar with the VT Chamber of Commerce; electrical safety training for electrical and plumbing apprentices through the Vermont Apprenticeship Programs; and a 10-hour course for the VT DOL youth training initiative.</p>																
<p>The extent to which VOSHA is successful in effecting a 15 percent reduction in DART rates for the targeted groups will be assessed at the conclusion of its five-year strategic plan.</p>																

B. ASSESSMENT OF STATE PERFORMANCE OF MANDATED ACTIVITIES AND OTHER RELATED ACTIVITIES

The following analysis is based on information and data obtained from various sources, including: the State Internal Evaluation Program (SIEP) progress reports submitted by the State; the Inspection report; the Enforcement report; the State Activity Mandated Measures (SAMM) report; the Interim State Indicator report; the Mandated Activities Report for Consultation (MARC); previous evaluation reports; quarterly meetings; the Automated Tracking System regarding the State's adoption of OSHA directives; VOSHA's Annual Performance Plan for FY2009; and a week-long study of the VOSHA program conducted onsite that entailed a detailed review and analysis of 76 inspection case files, five Whistleblower case files, interviews with staff, and analysis of various OSHA Integrated Management Information System (IMIS) reports.

Appendix D is the State Activity Mandated Measures Report (SAMM) for Vermont covering the period October 1, 2008 through September 30, 2009. The following table is a summary of VOSHA's performance on the measures covered in the SAMM and a comparison of VOSHA's performance in FY2008 and FY2009 with the National data. Nine out of the 19 measures were not met.

With regard to measure number 6, the percent of serious, willful, and/or repeat (S/W/R) violations verified, VOSHA has worked to improve the data entry for this measure. This measure has improved over the years, and this improvement continued from FY 2008 to FY2009. The VOSHA Director reported that all violations were verified corrected in FY2009.

The percent of programmed inspections with serious, willful, and/or repeat (S/W/R) violations in Vermont is above the National data in both safety and health, as detailed in SAMM #8. The percent of programmed safety inspections with S/W/R violations for FY 2009 is at 76.88, an increase over the state's percent of 60.95 in FY 2008; this compares favorably with the national data of 58.6 percent. Vermont's S/W/R percentage for safety has remained consistently above the national average over the last six years. The percent of programmed health inspections with serious, willful, and/or repeat (S/W/R) violations has been above the national average in four of the last five fiscal years. In 2008, the state recorded 55.56 percent of inspections with S/W/R violations. In 2009, this statistic improved to 57.14 percent, well above the national percentage of 51.2 percent. VOSHA's performance on this measure continues to reflect the state's successful targeting of its worst safety and health offenders.

**STATE ACTIVITY MANDATED MEASURES COMPARISON ⁴
(SAMM)**

Measure		State Data FY 2008	State Data FY 2009	Reference Data	Comment
1. Average number of days to initiate complaint inspections		8.06	4.46	5	Goal is met.
2. Average number of days to initiate complaint investigations.		1.93	.81	1	Goal is met.
3. Percent of complaints where complainants were notified on time.		100%	100%	100%	Goal is met.
4. Percent of complaints and referrals responded to within 1 day- Imminent Danger		100%	66.67%	100%	Goal is not met.
5. Number of denials where entry was not obtained.		0	0	0	Not applicable.
6. Percent of S/W/R violations verified.	Private	76.87%	93.81%	100%	Goal is not met. These measures have improved over the years. However, performance is still below the reference of 100%.
	Public	86.21%	93.55%		
7. Average number of calendar days from opening conference to citation issuance.	Safety	44.09	32.04	43.8	Goal is met.
	Health	75.5	60.11	57.4	Goal is not met.
8. Percent of programmed inspections with S/W/R violations	Safety	60.95%	76.88%	58.6%	Goal is met.
	Health	55.56%	57.14%	51.2%	Goal is met.
9. Average violations per inspection with violations.	S/W/R	1.42	1.74	2.1	Goal is not met.
	Other than serious	.68	.71	1.2	Goal is not met.
10. Average initial penalty per serious violation – private sector only.		\$775.62	\$833.13	\$1335.2	Goal is not met.
11. Percent of total		8.76%	9.86%	11.4%	Goal is not met.

⁴ VOSHA did not meet the standards for both private and public in SAMM #6 and for S/W/R and other-than serious in SAMM #9. Therefore, SAMM #6 and SAMM #9 were actually counted as two instances each in which VOSHA did not meet the standard.

inspections in public sector.				
12. Average lapse time from receipt of contest to first level of decision.	0	0	246.1	Goal is met.
13. Percent of 11(c) investigations completed within 90 days.	75%	50%	100%	Goal is not met.
14. Percent of 11(c) complaints that are meritorious.	0	30%	20.8%	Goal is met.
15. Percent of meritorious 11(c) complaints that are settled.	N/A	100%	86.1%	Goal is met.

#1: We strongly recommend that VOSHA improve its performance with respect to the nine standards of the SAMM report that have not been met.

STATE INDICATOR REPORT (SIR)

The Interim State Indicator Report (SIR) for Vermont covers the period October 1, 2008 through September 30, 2009, and is contained in Appendix E. The following table is a summary of VOSHA's performance on these measures. The last four public sector measures were measured against the private sector in Vermont because no comparable Federal OSHA data are available.

Measure	State Data FY 2009	Federal Data FY 2009	Comment
C.1.A. Private Sector Programmed Inspections Safety	74.8%	66.%	Standard set by Federal OSHA is met.
C.1.B. Private Sector Programmed Inspections Health	45.8%	35.3%	Standard is met.
C.2.A. Private Sector Programmed Inspections with Safety Violations	87.0%	65.8%	Standard is met.
C.2.B Private Sector Programmed Inspections with Health Violations	79.1%	51.7%	Standard is met.
C.3.A. Private Sector Serious Safety Violations	73.4%	80%	Standard is not met.
C.3.B. Private Sector Serious Health Violations	45.9%	69.7%	Standard is not met.
C.4.A. Private Sector Abatement Greater Than 30 Days for Safety Violations	12.6%	17.6%	Standard is met.
C.4.B. Private Sector Abatement Greater Than 30 Days for Health Violations	4.7%	10%	Standard is met.

C.5.A. Private Sector Average Penalty for Other-than-Serious Safety Violations	\$641.70	\$1,030.00	Standard is not met.
C.5.B. Private Sector Average Penalty for Other-than-Serious Health Violations	\$450.00	\$855.00	Standard is not met.
C.6.A. Private Sector Safety Inspections Per 100 Hours	2.9	5.5	Standard is not met.
C.6.B. Private Sector Health Inspections Per 100 Hours	1.4	1.6	Standard is met.
7. Private Sector Violations Vacated (%)	3.6%	5.1%	Standard is met.
8. Private Sector Violations Reclassified (%)	2.9%	4.8%	Standard is met.
9. Private Sector Penalty Retention	56.8%	63.2%	Standard is not met.
D.1.A. Public Sector Programmed Safety Inspections	75%	Not Applicable	
D.1.B. Public Sector Programmed Health Inspections	50%	Not Applicable	
D.2.A. Public Sector Serious Safety Violations	75.5%	73.4%	Standard set by the State is met.
D.2.B. Public Sector Serious Health Violations	50.0%	45.9%	Standard is met.
E.1. Percent of Violations Vacated (Review Procedures)	0	23.4%	Standard is met.
E.2. Percent of Violations Reclassified (Review Procedures)	75.0%	15.1%	Standard is not met.
E.3. Percent of Penalty Retention (Review Procedures)	45.1%	58.5%	Standard is not met.

#2: We strongly recommend that VOSHA improve its performance with respect to the eight standards of the SIR report that have not been met.

The statistical review of VOSHA's Program was also conducted using the IMIS Micro-to-Host Inspection and Enforcement Reports. During the evaluation period of this study, VOSHA conducted 366 inspections (projected inspection goal of 335). The factors impacting VOSHA's ability to meet its inspection goal in FY2009 includes one senior safety CSHO officer was on extended military leave for the entire year, and a new safety CSHO was hired early in the fiscal year, and attended training for the first couple of months either at the OSHA Training Institute (OTI) or through on the job training with fellow CSHOs.

Of the 366 inspections conducted by Vermont during FY 2009, 275 were safety-related (75%) and 91 (25%) were health-related. VOSHA conducted a total of 247 programmed inspections, or 67 percent, and 119, or 33 percent, were unprogrammed inspections. The unprogrammed inspections represented a fatality, accidents, complaints, referrals, follow-up inspections, monitoring inspections, and other unprogrammed activities. A total of 330 inspections were

conducted in the private sector and 36 were conducted at public sector agencies. The following table displays a statistical comparison of Vermont's performance with that of the other state plans and with Federal OSHA during FY 2009.

**COMPARISON OF VERMONT WITH OTHER STATE PLANS
AND FEDERAL OSHA ENFORCEMENT REPORT**

	Vermont	All State Plans	Federal OSHA
Total Inspections	366	61,016	39,044
Safety	275	48,002	33,221
% Safety	75%	79%	85%
Health	91	13,014	5,783
% Health	25%	21%	15%
Programmed	247	39,538	24,316
% Programmed	67%	65%	62%
Accidents	2	3,098	836
Complaints	62	8,573	6,661
% Complaint	17%	14%	17%
Construction	193	26,103	23,935
% Construction	53%	43%	61%
Total Violations	727	129,363	87,663
Serious	476	55,309	67,688
% Serious	65%	43%	77%
Willful	5	171	401
Repeat	13	2,040	2,761
% S/W/R	68%	44%	81%
Other-than-serious	233	71,336	16,615
% Other-than-serious	32%	55%	19%
Failure to Abate	0	494	207
Average Violations Per Initial Inspection	2.4	3.3	3.1
Total FY 2009 Penalties	\$484,819	\$60,556,670	\$96,254,766
Average Current Penalty Per Serious Violation	\$592.00	\$800.40	\$970.20

	Vermont	All State Plans	Federal OSHA
% Penalty Reduced	48.4%	51.9%	43.7%
Percent of Inspections with Violation Cited	80%	62%	69%
Average Case Hours/Safety	15.7	15.7	17.7
Average Case Hours/Health	31.9	26.2	33.1
Lapse Days to Citation Issued – Safety	23.6	31.6	34.3
Lapse Days to Citation Issued – Health	44.2	40.3	46.7
Open, Non-Contested Cases with Incomplete Abatement >60 days	31	2,010	2,234

#3: *We recommend that VOSHA improve its performance with respect to the highlighted areas above to come more into line with the Federal system.*

The VOSHA Enforcement program derives its general industry targeted inspection lists from a review of Worker’s Compensation data and the Federal OSHA Data Initiative. VOSHA also has a subscription to the Dodge Reports through The McGraw-Hill Company for randomly selected construction sites to be inspected.

1. ENFORCEMENT

a. CASE FILES

VOSHA generally adheres to the requirements established in the FOM (Chapter 5) for case file preparation and documentation. During our case file review, we determined that many but not all of the case files we reviewed were in conformance with the FOM.

The case file deficiencies included such things as the absence of CSHO field notes; inadequate documentation of abatement verification; and failure to document of labor organization notification of the informal conference.

- We also found that in many of the case files we reviewed, the CSHOs were not meeting the FOM requirements with respect to the diary sheet. According to the FOM, the diary sheet is used to document important events or actions related to the case, especially those not noted elsewhere in the case file. The FOM also notes that diary sheet entries should be clear and concise and dated in chronological order to reflect the timeline of case development.

We also found that in some case files, documents were not in the order established by Appendix C of ADM 03-01-005. **#4:** *We recommend that all VOSHA staff members review and follow Appendix*

C of ADM 03-01-005, which provides detailed information regarding "Inspection Case File Organization." This directive provides detailed instructions about which materials should appear on the left of the case file and which materials should appear on the right side of the file, and the specific order in which these documents should be placed.

b. COMPLAINTS

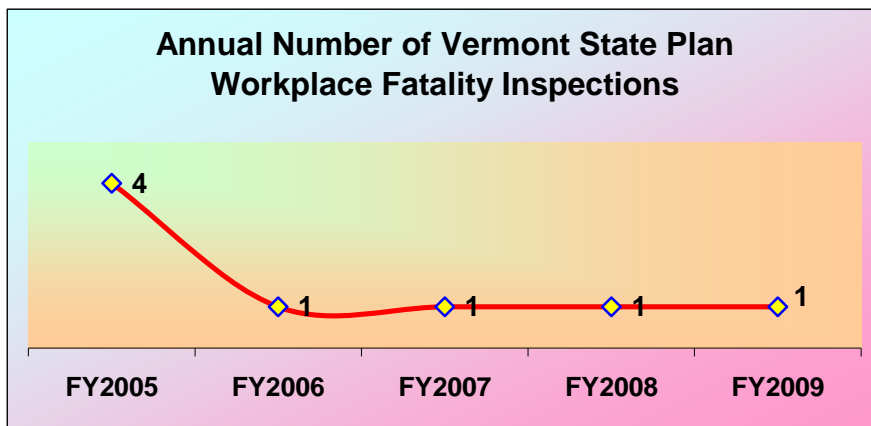
Complaints and referrals are received either by the CSHOs in various locations in the State or by management in Montpelier. The CSHOs immediately refer these complaints to the compliance chief. The complaints are then evaluated and assigned according to the type of violations alleged and the area of specialty of the CSHOs. VOSHA received complaints by telephone, e-mail, and through its web-site. Vermont typically inspects all complaints. At times, if the complaint letter does not warrant an inspection, a letter is sent to the employer that requires a response to the allegations. Complaints or referrals that allege an imminent danger are responded to immediately, within one day. All other complaints or referrals are scheduled for inspection within five days. If the compliance chief is unable to evaluate a complaint because essential information is missing, he attempts to clarify or supplement the information by contacting the complainant.

During the period October 1, 2008 through September 30, 2009, Vermont 's average number of days to initiate 58 formal complaint inspections was 4.46 days, which is within the reference interval of five days. VOSHA's average number of days to initiate 16 complaint investigations (through a letter to the employer) is .81 days, which in accordance with the standard of one day. Vermont provided a notification to all complainants in a timely manner and did so in accordance with the procedures outlined in the FOM. Thirteen complaint files that resulted in on-site inspections were randomly selected for review during this evaluation period. The evaluation process included interviews with the entire VOSHA staff and detailed analyses of the case files. VOSHA is responding to complaints and initiating either an inspection or an investigation in a timely manner. According to interviews with staff, copies of citations are sent to the complainants. However, the case file review found that in several instances the OSHA-7 Complaint form was not contained in the case files. In addition, a few complaint inspection files did not contain copies of the letter sent to the complainant advising of the outcome of the inspection.

#5: VOSHA must send all response letters to complainants advising them of the results of the inspections or investigations resulting from their complaints. In accordance with the FOM, the letters must include an appropriate response detailing the outcome of the inspection or investigation for each alleged complaint item.

c. FATALITIES

The number of reported fatalities that were caused by workplace conditions in Vermont has decreased since FY2005, as shown in the chart below.



As shown in the table below, there was one VOSHA jurisdiction workplace fatality in Vermont during the reporting period. Vermont's total employment increased by nearly one half percent from 2007-2008, while at the same time the total number of reported workplace injuries and illnesses dropped by nearly 10 percent.

Year	TOTAL RPT OF INJURIES & ILLNESSES	TOTAL VERMONT EMPLOYMENT	# RECORDABLE CASES PER 100 EMPLOYEES	WORKPLACE FATALITIES COVERED BY VOSHA
2003	15,168	286,200	5.3	3
2004	16,257	290,300	5.6	2
2005	14,700	292,300	6.1	4
2006	13,500	294,600	5.7	1
2007	14,100	297,300	6.0	1*5
2008	12,800	298,600	5.4	1*6

In accordance with the FOM (see page 11-6), VOSHA investigates every workplace fatality that is reported. Each inspection is initiated as soon as possible after the fatality occurred to determine whether or not a workplace condition caused the incident.

The VOSHA director or compliance chief assigns fatality inspections to senior CSHOs who are accompanied by a newer CSHO. In accordance with the FOM, the VOSHA director is responsible for sending the standard information letter to the individual(s) listed as the emergency contact on the victim's employment records within five working days of the incident. The compliance chief is responsible for ensuring that all required IMIS forms and narratives are completed. The CSHO assigned to the fatality inspection or catastrophe is responsible for completing the OSHA 1, the OSHA 36, and the OSHA-170 when appropriate. CSHOs are also responsible for speaking with

5 The information in this chart is derived from www.bls.gov. The number of fatalities reported by BLS for Vermont in 2009 is 10 fatalities. However, only one was determined to be within VOSHA's jurisdiction.

the victim's family members and maintaining contact with key family members so that these parties can be kept up-to-date on the status of the investigation.

Before VOSHA's CSHOs are permitted to conduct fatality investigations on their own, they must successfully complete the Inspection Techniques and Legal Aspects, and the Accident Investigation courses at OTI. They must also accompany senior CSHOs or the compliance chief on one or more fatality investigations. We verified that all but one CSHO had taken the required courses at OTI. The newest CSHO is scheduled to take these courses in the near future.

During fatality investigations, the CSHO maintains close contact with the VOSHA director and/or compliance chief, keeping them apprised of all developments regarding the investigation. However, VOSHA management acknowledged that these discussions are not documented in the case file as well as they should be.

The case file review included one fatality inspection. The following lists our audit findings with regard to this case:

- The CSHO did not reconstruct the scene of the accident as it existed when the students found the teacher lying on the floor near death.
- Citation 1, Items 1 through 3 - The CSHO assessed the probability as "lesser" even though it had caused a fatality and clearly should have been rated as a "greater" probability.
- The CSHO cited 1910.26(c)(2)(iv) for failing to equip the ladder with slip-resistant pads on the feet of the ladder. The photos in the case file showed that the ladder was placed between the second and third row of seats, which acted as a brace and would have prevented the ladder from kicking out or slipping. The deceased died as a result of falling from the ladder while changing a bulb in the overhead Kleig lights and not as a result of the ladder falling.
- The CSHO should have cited 1910.26(c)(3)(i), which requires the ladder to be set up at a 4 to 1 ratio (for every 4 feet vertically the ladder has to be moved 1 foot away horizontally). The steep angle of the ladder was, more than likely, the direct cause of the accident.
- There was no evidence in the case file that an initial letter had been sent to the victim's family.
- There was no evidence in the file that a copy of the citations had been mailed to the victim's family.

#6(A): *VOSHA must ensure that important discussions between CSHOs and supervisors regarding fatality investigations are documented in the case file diary sheet.*

#6(B): *In addition to discussions between CSHOs and their supervisors, all information relevant to the fatality investigation must be documented in the case file diary sheet in accordance with the FOM (Chapter 5, Section X), which states that: "All case files shall contain an activity diary sheet, which is designed to provide a ready record and summary of all actions relating to a case. It will be used to document important events or actions related to the case, especially those not noted elsewhere in the case file"*

#6(C): *VOSHA must adhere to the FOM, Chapter 11, Section II.G. that discusses the requirements to follow with regard to contact with families of victims during an inspection.*

As discussed above, pictures contained in the case file indicate that VOSHA cited the incorrect standard. VOSHA cited 1910.26(c)(2)(iv) for failing to equip the ladder with slip resistant pads on the feet of the ladder. The photos indicate that the ladder was placed between the second and third row of seats (in an auditorium), which would have acted as a brace and prevented the ladder from slipping. It appears that the victim died as a result of falling from the ladder due to the steep angle. VOSHA should have cited 1910.26(c)(3)(i), which requires the ladder to be set up at a four to one ratio. In addition, the case file should have but did not contain notes reconstructing the scene of the accident. **#7:** We recommend that VOSHA review and follow the FOM, Chapter 11, Section II.E.2. which discusses potential items to be documented in the case file, such as how and why the incident occurred; the physical layout of the worksite; sketches/drawings; measurements; video/audio/photos to identify sources; and whether the accident was work-related.

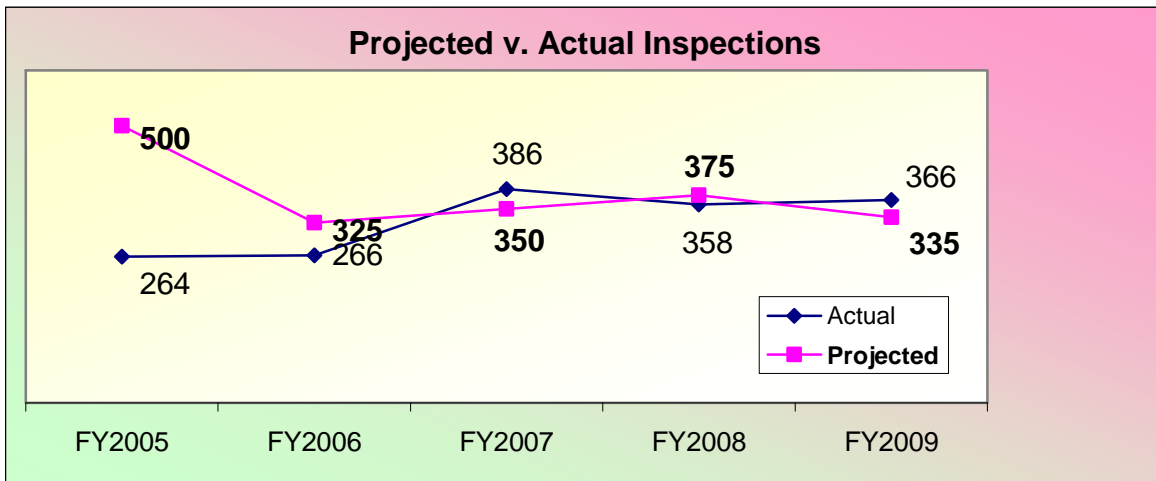
d. TARGETING/INSPECTIONS

- **Projected v. Actual**

During the reporting period, VOSHA completed a total of 366 inspections out of 335 projected. The table below breaks out of the number of inspections projected and completed by safety and health staff.

FY2009 INSPECTIONS			
	<i>Projected</i>	<i>Actual</i>	<i>Actual as Percent of Number Projected</i>
Safety	245	275	112
Health	90	91	101
TOTAL	335	366	109

FY2009 was a fairly good year for VOSHA despite the fact that a senior CSHO was on military leave for a portion of the fiscal year and a new CSHO was hired at the start of the fiscal year. VOSHA completed 109 percent of its total inspection goal for FY2009. VOSHA is fully staffed now and all CSHOs are now conducting their own inspections after taking at least a few of the required courses at OTI. With full staffing into FY2010, we expect to see VOSHA's inspection numbers increase to their FY2007 level.

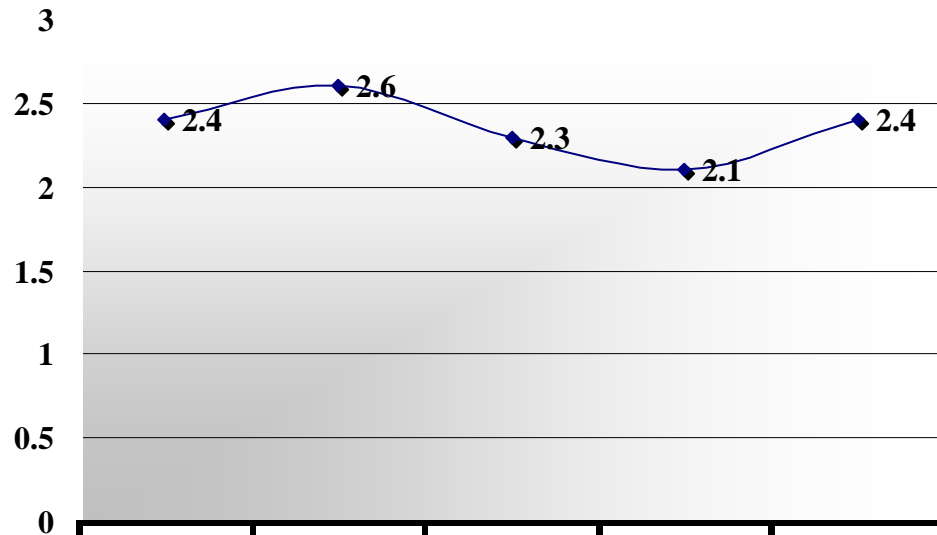


e. VIOLATIONS PER INSPECTION⁶

The chart below indicates the average number of violations cited per inspection that VOSHA has completed over each of the past five fiscal years. FY2009 was a fairly typical year for VOSHA with an average of 2.4 violations per inspection. This is below Federal OSHA's average of 3.1 violations per initial inspection (and also the national state plan average of 3.3).

⁶ FY2009 data based on the Enforcement Report of 11/19/2009.

AVERAGE VIOLATIONS CITED PER INITIAL INSPECTION - VERMONT - FY 05/FY 09



	FY05	FY06	FY07	FY08	FY09
◆ AVG VIOLS CITED PER INIT INSP	2.4	2.6	2.3	2.1	2.4

#8: VOSHA's average violations cited per inspection should increase to align with Federal OSHA's average of 3.1 per initial inspection.

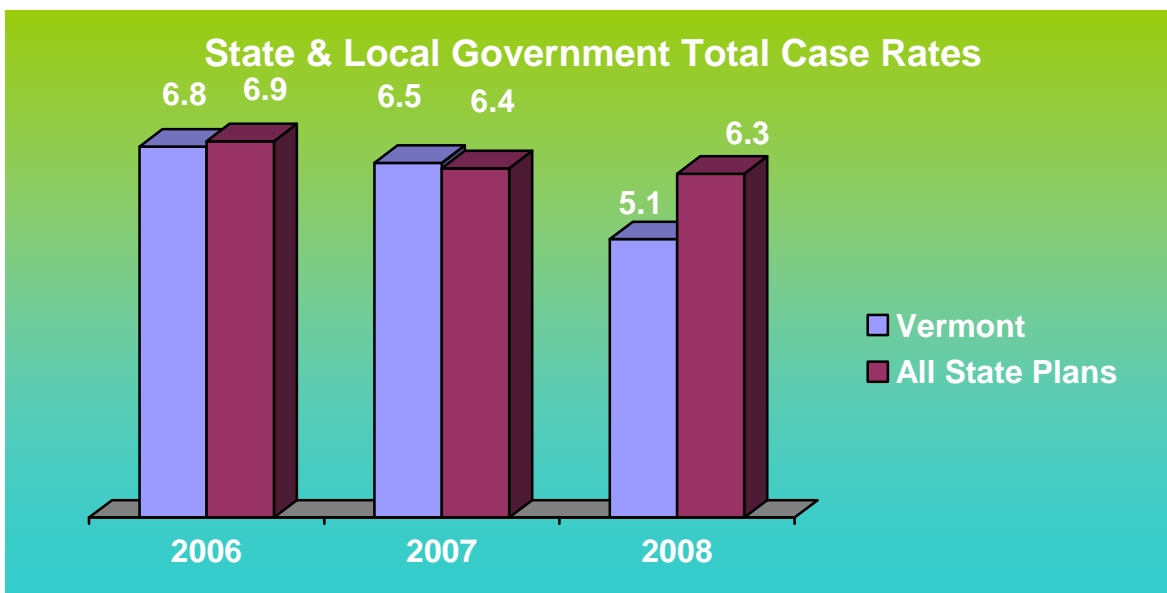
- NUMBER AND PERCENT OF SERIOUS, WILLFUL, REPEAT VIOLATIONS**

VOSHA inspections cover the private and public sectors and include manufacturing, construction and "other" as captured in the Inspection Report (11/19/2009). The following table compares VOSHA's performance with regard to percent serious, willful and repeat violations with that of national OSHA and the State Plans in FY2009.

	VERMONT FY2009	NATIONAL STATE PLAN TOTAL FY2009	NATIONAL FEDERAL TOTAL FY2009
Percent of all violations cited serious	65.5	42.8	77.7
Percent of all violations cited willful	.7	.1	.4
Percent of all violations cited repeat	1.8	1.6	3.2

f. INJURY/ILLNESS INCIDENCE RATES IN VERMONT 7

Overall, the injury and illness rates in the public and private sectors in Vermont have decreased since 2007. According to the Bureau of Labor Statistics (BLS) Incidence Rates, Vermont saw a 21.5 percent reduction in state and local government total case rates (TCR) from 2007 to 2008. Vermont's government TCR and DART rates for 2008 are below the government rates of State Plan States nationwide. The injury/illness incidence rates for Vermont's public sector employees are typically higher than those in the private sector, although in 2008, public sector rates dropped below the rates in the private sector of Vermont for the first time in several years.

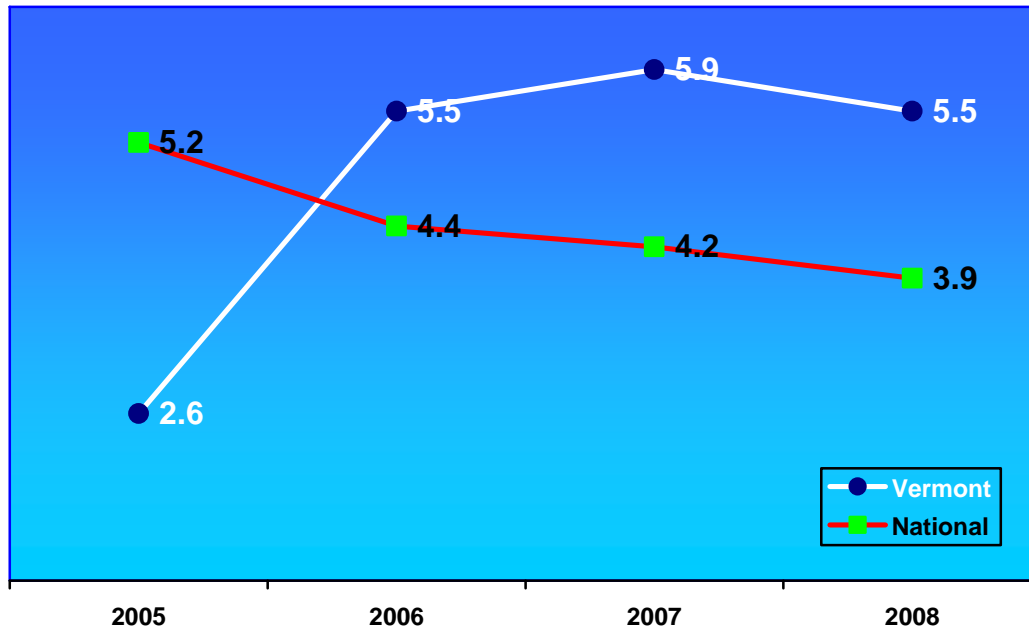


In the private sector, Vermont's total case rates dropped slightly from 5.9 in 2007 to 5.5 in 2008 (a decrease of 6.8 percent). Vermont's rates in the private sector are typically above the National average private sector rates, as was the case in 2008.

Since 2005, there has been a downward trend in the National TRC and DART rates, as can be seen in the chart below.

7 Source: Bureau of Labor Statistics Incidence Rates of Nonfatal Occupational Injuries and Illnesses by Industry and Case Types

Total National and Vermont Case Rate Comparison Private Sector



g. HAZARD IDENTIFICATION

VOSHA's CSHOs usually identify hazards accurately and cite a wide variety of standards. However, the OSHA case file review revealed several hazard identification issues: all apparent violations were not cited or some were misclassified in the citations sent to the employer. Case file review findings that pertain to hazard identification are as follows:

- The case file indicates that VOSHA did not have jurisdiction over LP containers, but 1910.110 has specific requirements for LP tanks.
- The case file indicates on the OSHA1A that the employer did not have a HAZCOM program, although a photo indicated that chemicals were used in the plant. However, 1910.1200 was not cited.
- The case file cited gears using 1910.212(a)(1) instead of citing 1910.219(f)(1) (power transmission equipment).
- A safety CSHO determined that the exposed belt pulleys were operating so slowly that they met the exemption in 1910.219. A photo in the case file showed an unguarded pulley for the Power Ring silver epoxy vacuum that did not meet the exception. 1910.219(a)(1) exempts power transmission belts if operating at 250 rpm or less if they are; flat belts 1" or less; flat belts 2" or less free of metal lacings; round belts ½" or less; and V-belts 13/32" or less. The V-belt on the silver epoxy vacuum was a leather belt with numerous rivets that was ½" wide or greater. It did not meet the above mentioned exceptions. The exemptions are quite specific and each belt must be evaluated closely to ensure that it is in fact exempted.

- The CSHO used 1910.305(g)(1)(iii) to cite the employer's use of relocated power strips that were piggybacked. The appropriate standard for this violation is 1910.303(b)(2) that deals with using electrical equipment in accordance with listing and labeling.
- The CSHO inappropriately cited the employer for running romex type cable through a small hole in the wall using 1910.305(g)(1)(iv)(B). The correct standard would have been 1910.303(b)(2).
- The CSHO cited the employer under 1910.22(a) for pigeon droppings and feathers in the storage area. The CSHO should have cited this under housekeeping, 1910.141(a)(3). The CSHO should also have cited 1910.141(a)(4)(ii) for potentially creating a health hazard during disposal, and 1910.141(a)(5) for vermin control.
- The CSHO inspected a vehicle maintenance bay. The CSHO cited 1910.106(d)(5)(ii), which is specifically for offices, mercantile, and warehousing sites. None of these apply to vehicle maintenance bays. To cite for the storage of flammable aerosol cans, the CSHO would have to prove that the quantities listed in 1910.106(e)(2)(ii)(b) were present. If they did not exceed the listed amounts, a citation cannot be issued for storage.
- The OSHA 1A stated that the employer did not have a HAZCOM program, training, proper labeling, and lacked MSDSs. The CSHO should have cited 1910.1200(e)(1).
- The CSHO cited 1910.26(c)(2)(iv) for failing to equip the ladder with slip resistant pads on the feet of the ladder. The photos contained in the case file showed the ladder placed between the second and third row of seats, which acted as a brace and prevented the ladder from kicking out. The deceased died as a result of falling from the ladder while changing a bulb in the Kleig lights and not as a result of a falling ladder. The CSHO should have cited 1910.26(c)(3)(i), which requires the ladder to be set up at a 4 to 1 ratio (for every 4 feet vertically the ladder has to be moved 1 foot away horizontally). The steep angle of the ladder was, more than likely, the direct cause of the accident.
- Pictures in the file also depict romex type wiring spliced and wire nuted together outside an electrical box that employees were exposed to. This hazard should have been cited.
- The case file contains pictures of hazards that are not cited. The pictures depict a scaffold with a chop saw and hand grinder on the top plank as well as a 5-gallon pail on the first tier. The scaffold in the pictures is shown as being 4 tiers high and measuring approximately 24 feet above the ground. Pictures also show a scaffold that was not fully planked and with no guard rails. Also no access ladder was used to gain access to the platforms above. It also appeared that the scaffold was not secured as required to prevent tipping over due to the height (4 to 1 safety factor). The following standards should have been cited: 1926.451(b)(1) for planking; 1926.451(c)(1) for 4 to 1 bracing; 1926.451(g)(1) for guardrails.
- A separate citation should have been issued for a ladder violation, 1053(b)(1). Employees used a 6 foot ladder to gain access to a scaffold measuring about 6 feet. Ladders are required to extend 3 feet above landings to prevent falls.
- The OSHA 1A states the employer did not have a Hazcom Program. According to the pictures in the case file, the employer had approximately 18-five gallon pails of a combustible adhesive (TRUCO INC. #7140 Rubber Coating) with a flash point of 105 degrees and a "2" rating for flammability on the NFPA 704 label. (According to the MSDS on internet). Employer should have received a citation for Hazcom for the adhesives that the employees were manually spreading on the roof. Due to the combustible adhesive on the roof, the employer is required to have a fire protection program per 1926.150(a)(1), which was not cited.
- The employer should have received two additional citations. The pictures depict unsecured oxygen and acetylene cylinders stored next to each other. The CSHO should have cited 1926.350(a)(9) for unsecured cylinders.
- The photos show employees working on a pitched residential roof without fall protection. This violation was not cited and should have been under 1926.501(b)(13).

- A photo in the case file shows 5-gallon containers of flammable liquids (dispensing). There is no indication of the bonding and grounding of the containers per 1910.106(e)(6)(i) and (e)(6)(ii). A citation should have been issued.
- Other photos in the case file depict the following: 1) an unguarded table saw, 2) unguarded unused portion of saw blade on band saw, 3) Drill Press – unguarded chuck guard/not mounted to work bench, 4) unguarded portion of belt and pulley. There is no indication in the file as to whether or not there was employee exposure. This should have been addressed, and if there was exposure, there should have been citations for each violation. There is also a photo of an employee operating a powered industrial truck (PIT). There is no documentation in the case file to indicate that the employer had a PIT program and training program. There is no citation for a hazard found in a photo of an employee on a 3-4' fixed ladder (standing on ladder looking into a hopper). Ladder is located on platform/runway that is greater than 4 feet from the floor without a standard guardrail. This should have been cited under 1910.23(c)(1).
- The CSHO issued a citation for 1910.39 for lack of a fire prevention plan. The standard states that this standard can only be cited if required by a specific OSHA standard. This standard should not have been cited.
- Photos in the case file appear to show containers of dye that do not have ID labels or hazard warning labels. Case file notes indicate that the dyes are non-hazardous. There should be copies of material safety data sheets to verify this.

[#9: VOSHA should review the pictures taken by CSHOs more closely and do more research and also should train and network with appropriate staff throughout region to improve hazard recognition and referencing of the correct standards when hazards are identified.](#)

h. VIOLATION CLASSIFICATION; GROUPING

The review revealed that, in a number of cases, the CSHOs did not correctly assess the gravity of the violation, and erred on the side of assessing lower probability and severity than warranted, thus reducing the overall penalties. In other cases we found that CSHOs grouped serious violations that should not have been grouped, which also reduces penalties. A few violations were incorrectly classified as “other” rather than “serious.” Our onsite case file review showed that out of 137 serious violations cited, nine were grouped as serious, or 6.5 percent. Of these nine grouped citations, we found that four were grouped incorrectly. Below are details of the case file review findings that pertain to violation classification and grouping of citations.

- The CSHO grouped citations dealing with a bench grinder that should have been issued as stand alone serious violations.
- The CSHO grouped the tool rest and tongue guard of a pedestal grinder when each is a stand alone serious violation.
- An employer was cited for lack of guard rails on a scaffold 18 feet above the ground. The CSHO assessed this as a “medium” severity and described the injury/illness in the 1B as “Death”. This should have been given a “High” severity.
- The general contractor (GC) was cited under the multi employer worksite policy as the controlling employer. A subcontractor received a serious citation for a hazard. The GC was issued an “Other than Serious (OTS) Violation” for the same hazard. Under the multi employer worksite policy, both

parties are required to receive the same violation. The CSHO justified an OTS violation because the jobsite did not have any other hazards identified. The absence of other hazards does not change the classification of a citation.

- A 16 foot fall hazard from an unprotected scaffold should have a “high” severity, but was listed as “medium.” Death or permanent disability is the most likely outcome of a 16 foot fall.
- The employer was cited for having a table saw without a guard. The CSHO applied a “medium” severity to the violation. An amputation could result from the lack of a guard, and therefore, the citation should have been classified with a “high” severity.
- An unguarded floor hole opening was 45”x45” with a 6 foot fall hazard. There was no protection around the opening and it was cited with a “low” severity. A “medium” severity or higher would have been more appropriate.
- The employer was cited for setting up a scaffold too close to power lines and a “medium” severity was applied. The most likely outcome is an electrocution, and therefore a “high” severity is more appropriate.
- The employer was cited for a 6 foot step ladder being used on top of a 6 foot scaffold. The CSHO gave it a “medium” severity but a 10 to 12 foot fall should have been given a “high” severity.
- Pictures in the case file depict employees exposed to fall hazards. The CSHO applied a “low” severity and a “low” probability. This should have been cited as a “medium or high” severity and a “greater” probability due to the high risk of a fall.
- The CSHO classified a fall hazard with an 8 foot fall to the ground as “low” severity. This should have been classified as “high or medium”.
- The employer was issued a repeat “other” violation for a ladder not extending 3 feet above the landing. Case file pictures confirm the violation. This should have been cited as a “serious” repeat violation because employees were exposed to falling approximately 8 feet to the ground when getting on and off the roof.
- A Citation for a Hearing Conservation Program (case file was documented with overexposure) should be cited as “serious” versus OTS. The “Alleged Violation Description” (AVD) should have had a description of the work area monitored, exposure levels, and time sampled/time un-sampled.
- The case file contained three grouped citations for overexposure to silica and lack of respirators. Based on overexposure and lack of the use of respirators, the CSHO should have applied high probability/greater severity versus medium/greater. Also the CSHO stated in narrative that several MSDSs were missing. This could be cited and grouped with 1910.1200(e). The CSHO narrative indicates that negative pressure respirators are available for employees, there is no fit testing, and the employer does not have a written Respiratory Protection Program. This hazard was not cited by the CSHO (a serious violation). The citation for 1910.1200(e), no written hazard communication program also should be cited as serious based on the hazards documented during inspection.
- The CSHO applied a lower severity when a medium or greater severity would have been more appropriate based on a lead hazard and the fact that employee exposure assessments made by employer show that employees were often exposed to lead above the PEL.
- The CSHO documented noise exposures at 90 dB (time weighted average (TWA)) and as a result should have applied a greater probability versus lesser. The CSHO cited this as a recordkeeping violation (1904) – the FOM states that in calculating the probability for a regulatory OTS, reductions in penalty shall only apply to history and size. (0% reduction for good faith). In this instance, a reduction of 15 percent was inappropriately given for good faith.
- The CSHO cited for lack of a suitable eyewash when employees were using/dispensing phosphoric acid. The severity should have been medium or high, based on the seriousness of the hazard posed by the acid.

- A CSHO gave the employer 15 percent for good faith when there were no written programs onsite and several other deficiencies were found. Good faith should be 0 percent under these circumstances.

#10: To group serious violations appropriately, VOSHA CSHOs must adhere to the guidelines established in the FOM for grouping. Chapter 4, Section X of the FOM lists the situations that normally call for grouping violations.

#11: VOSHA must ensure that CSHOs use penalty calculations that conform to the FOM. The minimum and maximum penalties are discussed in Chapter 6.II.C. and D, respectively. Section III discusses the four factors to take into consideration: 1) The gravity of the violation; 2) Size of the employer's business; 3) The good faith of the employer; and 4) The employer's history of previous violations. VOSHA staff should also review the Gravity-Based Penalty (GBP) section in the FOM, which is discussed in Chapter 6.III, sections 3, 4 and 5.

#12: We recommend that VOSHA staff review Chapter 4, Section II of the FOM, which discusses the factors that determine whether a violation is to be classified as serious, and also Chapter 4, Section IV of the FOM, which discusses the factors that determine whether violations should be classified as other-than-serious.

i. IN-COMPLIANCE INSPECTION⁸

Another indicator that VOSHA effectively targeted high hazard employers for enforcement was VT's relatively low in-compliance rate. In FY2009, VOSHA had 294 out of 366 total inspections with violations cited. This translates into an in-compliance rate of 19.6 percent, and compares favorably to Federal OSHA's in-compliance rate of 30 percent, and the in-compliance rate for all State Plans nationwide (combining public sector and private sector enforcement) of 38 percent.

FY2009								
Federal OSHA			All State Plans (public and private sector enforcement)			VOSHA		
No of insp. Completed	No. of insp. With violations cited	% in- compliance	No of insp. Completed	No. of insp. With violations cited	% in- compliance	No of insp. Completed	No. of insp. With violations cited	% in- compliance
39,004	27,165	30	61,016	37,978	38	366	294	19.6

⁸ FY2009 VOSHA in compliance rate based on data from US Department of Labor Enforcement Report of 1/14/2010; FY2009 in compliance rates for Federal OSHA and all State Plan enforcement nationwide (private sector and public sector combined) was based on data from the US Department of Labor (OSHA) Enforcement Report of 11/19/2009.

According to the table below, VOSHA’s in-compliance rate is considerably lower in FY2009 than it has been in the past three fiscal years.

VOSHA								
FY2007			FY2008			FY2009		
No of insp. Completed	No. of insp. With violations cited	% in-compliance	No of insp. Completed	No. of insp. With violations cited	% in-compliance	No of insp. Completed	No. of insp. With violations cited	% in-compliance
384	283	26	358	257	28	366	294	19.6

J. EMPLOYEE AND UNION INVOLVEMENT

The case file review included seven employers’ locations that were unionized. In accordance with Chapter 5 of the FOM, Section XI.B.2, “Citations shall be mailed to employee representatives after the Certified Mail Receipt card is received by the Area Office...” Six of the case files involving unions did not contain any documentation to indicate that the union had been sent a copy of the citations. In addition, field notes, which likely contained the information obtained from the employees during interviews, were not kept in the files. Field notes are required to be kept as part of the file in accordance with the FOM, *Chapter 5, Section XII. A. 2. which states “All official forms and notes constituting the basic documentation of a case must be part of the case file. All original field notes are part of the inspection record and shall be maintained in the file...”*

We confirmed during interviews with VOSHA CSHOs that they invite the union or other labor representatives to participate in opening and closing conferences. They also invite the union to accompany them during the walk around of the employer’s facility.

#13: *VOSHA should adhere to the FOM, Chapter 5, Section XI.B.2 by sending a notification to the unions of the citations sent to the employer and retaining a copy of such in the case file. In addition, VOSHA should review the FOM, Chapter 5, Section XII.A.2 regarding maintaining field notes in the official case files.*

K. INITIAL CITATIONS AND PENALTIES

The table below summarizes the results of our onsite case review with respect to initial citations and penalties.

Case File Review Results for Initial Citations and Penalties			
	CORRECT	INCORRECT	PERCENT CORRECT
Standards Citations	60	12	83
Violation Classification	62	11	85
Penalty Classification	52	22	71

As shown in the list below, we found some cases which lacked sufficient evidence to legally support the standards cited or the actions taken by VOSHA to delete citations. In other cases, the CSHO cited the incorrect standard or assessed the penalties incorrectly. The following list contains detailed comments on findings pertaining to initial citations and penalties of the case files reviewed.

- The case file did not contain adequate documentation as to why some of the citations were deleted. The CSHO’s inspection pictures depict employee exposure to romex type wiring spliced and wire nutted together outside an electrical box; however, there was no citation issued for this violation.
- The CSHO’s pictures also show an electrical panel without the dead front. The CSHO did not cite the employer for employee exposure to unguarded live parts.
- VOSHA issued a citation to an employer who was a sole proprietor with no employees. OSHA has no jurisdiction over this type of employer and no citation should have been issued.
- Citation 1, item 1—The employer was cited for lack of fall protection while performing roof work under (1926.501(b)(11). In accordance with OSHA’s Interim Fall Protection Compliance Guidelines for Residential Construction (STD 3-0.1A), the CSHO should have cited 1926.501(b)(13).
- A picture shows a scaffold that was set up at the roof eaves. The employer argued in their letter to VOSHA that the scaffold served as fall protection. The scaffold is not adequate fall protection because it did not have railings to prevent the worker from rolling off it, if in fact the employee had landed on it after falling off the roof. The pictures also show an air line for a gun and an employee working outside the area where scaffolds were erected. The CSHO should document this in the 1(b) in order for the VOSHA manager to discredit the employer’s arguments and make the case for legal sufficiency.
- Citation 1, item 1 was issued incorrectly under 1926.104(d) for employees who were exposed to fall hazards without having adequate fall protection. The particular standard cited, however, requires workers to wear body belts when exposed to falls over six feet. However, body belts are only used for restraint positioning and do not provide adequate fall protection.
- Citation 1, item 4 was improperly cited. This citation was for a defective seat belt on a Hyster Rough Terrain forklift. Instead, the CSHO cited under “earth moving equipment.”
- Also, seat belts must be cited under 5(a)(1) for forklifts. The CSHO should also state the specific machinery name that is the hazard (i.e., Hyster Forklift).
- 1926.350(a)(10) should have been cited for oxygen and acetylene tanks that were stored together.
- Citation 1, item 1—CSHO used “CRR” instead of CFR in charging language for 29 CFR 1926.451.

- Citation 1, item 2- Good citation, however the AVD should be more descriptive as to the hazard. The CSHO wrote that the extension cords were used and not suitable for use, but should have written that “a 16 gauge extension cord used to supply power to a circular saws was underrated.”
- The first inspection for the employer at this jobsite was on 7/1. A second inspection was conducted at this jobsite on 7/24. Both cases had citations for 1926.501(b)(11) for the same jobsite and on the same building. Technically, OSHA cannot issue another citation for the same condition until after the final order date. Instead, since the violation continued to exist 3 weeks later, the CSHO should have explored a “Willful” violation.
- Citation 1, item 1-The AVD Description is too generic and needs to be more specific. For example, it should read something like: “Location 1, Lobby 101- each disconnecting means was not marked..., etc.”
- Citation 1, item 1—The CSHO’s description of employer knowledge is too weak. The description should read, “The CSHO spoke with John Doe, Foreman, and he stated that he is aware of the condition or is aware that circuits must be labeled, etc.”
- Citation 1, item 1- The citation description reads, “The employer shall be responsible for ... In the AVD, the CSHO incorrectly wrote: “The employer was not responsible for...” The way the CSHO worded it meant the employer was not responsible for the hazard and no citation should have been issued. Actually, The employer was responsible and the wording should have read, “The employer did not....”
- Citation 1, item 1- The AVD has too much information in the citation to the employer. For example, the CSHO spelled out the multi-employer relationship in the charging language. That information needs to be left in the OSHA 1(b) worksheet and not in the citation to the employer.
- In the multi-employer citation, the OSHA 1(b) worksheet should discuss the general contractor’s responsibilities, such as controlling, correcting and creating.
- The CSHO was conducting a follow-up inspection of a monitoring inspection conducted on 12/6/06 but failed to indicate the original inspection date. The items cited during this visit were the same as the violations cited during the original visit. As a result the reviewer was unable to determine if the employer should have been cited repeated versus serious/other-than-serious violations.
- Copies of the original citation for the three items cited should have been included in the case file.
- The safety inspection cited repeat violations but the health inspection did not, even though the serious and two other-than-serious items were the same.
- Supervisor allowed the issuance of citation 1, item 2, only to remove it during the IFC. It was obvious to the reviewer that the item should not have been cited or issued. The item dealt with the use of improper pneumatic hose connections. The photos revealed that the connections were suitable for use.
- The CSHO cited gears using 1910.212(a)(1) instead of 1910.219(f)(1) (power transmission equipment) in citation 1, item 2.
- The CSHO grouped the tool rest and tongue guard of a pedestal grinder when each is a stand alone, serious item in citation 1, item 3a & 3b.
- The health CSHO made a referral for exposed belt pulleys. The safety CSHO determined that they were operating too slowly and met the exemption in 1910.219. The safety CSHO had a photo in the file that showed an unguarded pulley for the Power Ring silver epoxy vacuum that did not meet the exception. Standard 1910.219(a)(1) exempts power transmission belts (flat belts, 1 “ or less) if operating at 250 rpm or less; flat belts, 2” or less, free of metal lacings; round belts, ½” or less; and V-belts, 13/32” or less. The V-belt on the silver epoxy vacuum was a leather belt with numerous rivets that was ½” wide or greater. It did not meet the above mentioned exceptions. The exemptions are quite specific and each belt must be evaluated closely to ensure that it is in fact exempted.

- The CSHO cited the employer for an ungrounded refrigerator but in the charging language he stated that the refrigerator was energized. CSHO should have stated that the path to ground for the refrigerator was not permanent and continuous.
- Citation 1, item 2 – Charging language on the citation states that the “employer not responsible for...” Careful review of the charging language is necessary for legal sufficiency.
- It appears from the case file that the CSHO did not adequately address the complaint item listed on the OSHA 1A. The CSHO stated that the employer is using a safety monitor to watch employees bring material in and out through window areas. However, a safety monitor cannot be used for this purpose. Hoisting operations require fall protection when railings are down.

#14: VOSHA must review and follow the FOM, Chapter 4 which discusses the evidence necessary to support violations.

VOSHA’s penalties over the years have consistently been lower on average than those in Federal states, but higher than those of its counterpart in State Plan States on average. VOSHA’s average penalty per serious violation is \$490.90 in FY2009 as compared with \$217.9 in all State Plan States combined. However, VOSHA’s average penalty is only about half the Federal average penalty per serious violation of \$985.00.

L. ABATEMENT VERIFICATION

VOSHA has a system to verify abatement that involves sending a letter to the employer requesting verification of abatement. The data in SAMM #6 shows that VOSHA fell below the 100 percent standard for verifying S/W/R violations abated in a timely manner, with year-end percentages of 93.81 in the private sector and 93.55 in the public sector. However, these percentages are a vast improvement over VOSHA’s FY2006 results for this measure. In FY 2008, VOSHA began cleaning up the data in the IMIS, and these efforts appear to have paid off in FY2009. Although VOSHA did not meet the 100 percent standard, it is far closer to meeting this goal than it was a few years ago.

SAMM #6 (Private Sector)											
FY2006			FY2007			FY2008			FY2009		
No. S/W/R violations	No. S/W/R violations abated timely	Percent S/W/R violations verified timely	No. S/W/R violations	No. S/W/R Violations abated timely	Percent S/W/R violations verified timely	No. S/W/R violations	No. S/W/R Violations abated timely	Percent S/W/R violations verified timely	No. S/W/R violations	No. S/W/R Violations abated timely	Percent S/W/R violations verified timely
285	116	40.7	337	279	82.79	294	226	76.87	420	394	93.81

#15: We strongly recommend that VOSHA work harder to ensure timely abatement of serious, willful or repeat violations helps ensure that workers are protected from injuries and illnesses.

In accordance with the FOM, VOSHA requires the employer to provide evidence, such as purchase orders, photographic or video evidence of abatement, or other written records verifying correction of the violation. However, some of the case files we reviewed lacked proper evidence of abatement. All abatement documentation received by VOSHA is reviewed by the compliance chief.

We found that 13 out of the 76 cases (17 percent of cases) we reviewed did not contain adequate documentation of abatement. Some of these case files had been closed without any documentation of adequate proof of abatement. VOSHA must ensure that cases remain open until the agency is sure that proof of abatement has been received.

#16a: VOSHA must adhere to the directives in Chapter 7 of the FOM, Section IV (b), which also states the “case file remains open throughout the inspection process and is not closed until the Agency is satisfied that abatement has occurred. If abatement was not completed, annotate the circumstances or reasons in the case file and enter the proper code in the IMIS.”

#16b: VOSHA should also ensure that Chapter 7 of the FOM, Section XV is adhered to. This section states: “The closing of a case file without abatement certification(s) must be justified through a statement in the case file by the Area Director or his/her designee, addressing the reason for accepting each uncertified violation as an abated citation.” In the case files lacking verification that we reviewed, no such documentation was found.

In addition to providing written verification of hazard abatement, employers must also provide relevant “documents, plans and progress reports.” In some cases, we noted that the file did not contain such documents, such as written hazard communication programs, evidence of training, and emergency action plans, that were required to be provided by the employer.

#16c: We recommend that VOSHA thoroughly review and adhere to Chapter 7 of OSHA’s FOM on Abatement Documentation, particularly Section B, which relates to Adequacy of Abatement Documentation. As stated in that section, examples of documents that demonstrate that abatement is complete include “(a) copy of program documents if the citation was related to a missing or inadequate program, such as a deficiency in the employer’s respirator or hazard communication program.”

#17: VOSHA must also ensure that all documentation related to Petitions for Modification of Abatement (PMA) are contained in the relevant case files, such as copies of the petition itself, as well as VOSHA’s approval (or denial) of the PMA, and any written objections by employees to the PMA. See Chapter 7 of the FOM, Section III for more information on PMAs.

Although some case files clearly had deficiencies with respect to abatement verification, many files that we examined were well organized and contained all required documentation and diary sheet entries.

The following is a list of detailed comments on the abatement verification findings of the onsite review.

- The diary sheet notes that the employer provided photos showing abatement, but these pictures were not found in the case file.
- There was no abatement letter in the case file.
- The employee received near fatal injuries but there was no abatement documentation in the case file.

- The case file was closed with no abatement documentation.
- There was no abatement documentation in the case file to close out the hazards.
- The case file contained no abatement documentation from the employer.
- According to the diary sheet, the employer stated at the informal conference that he had corrected the hazard. However, the file must contain evidence of abatement; a verbal statement is not sufficient. The CSHO must observe the abated hazard and note it in the case file or the employer must send in certification of abatement.
- There was no abatement letter in the case file.
- There was no abatement letter in the case file.
- There was no abatement letter included in the case file. The Petition for Modification of Abatement (PMA) did not include the date for the completion of the abatement.
- There was no abatement information from the employer in the case file and the diary sheet did not track case file activity.
- VOSHA granted the employer a Petition for Modification of Abatement (PMA). There was no mention in the case file of the interim protection provided by the employer during the PMA period.
- The abatement period given (30 days) was too long for abatement of Citation 1, items 1 and 3.
- There was no abatement documentation in the case file for two other-than-serious hazards. Citations were issued on 10/7/08. Dunning letters were sent on 12/9/08, 2/20/09, and 4/1/09 requesting abatement.
- As directed by OSHA's silica directive, CPL 03-00-007, specific information to show abatement (see Appendix I of this directive) must be sent to OSHA's National Office.

M. INFORMAL CONFERENCES

The compliance chief conducts the informal conference with the employer. CSHOs are not typically included in the informal conferences. The compliance chief and the VOSHA director make the final decision on penalty reductions and classification changes.

Of the 76 case files reviewed during the onsite, 45 documented informal conferences with the employer. In 43 of the 45 case files with informal conferences, informal settlement agreements were signed. All informal settlement agreements resulted in penalty reductions. Penalties were dropped entirely in a total of three cases. In 11 out of 43 cases with settlements, the violations were changed, and in four of the 11 cases, the violations were dropped.

Seven of these 45 cases had union involvement. Our review found evidence in only one case file that the union was informed of the informal conference. Thirty-three informal conferences resulted in the signing of an Informal Settlement Agreement, for a 73 percent settlement rate. There were a few cases in which the proper procedures were not followed; these are explained below.

- The employer received a \$1700 penalty for a serious violation. During the informal conference, VOSHA changed the violation from serious to other-than-serious and issued another citation. The original citation was not in the case file. It should not be removed from the case file.
- The case file contains inadequate documentation for reasons why citations were deleted. It appears that hazards were properly cited and should not have been deleted. There were no informal conference notes in the case file.

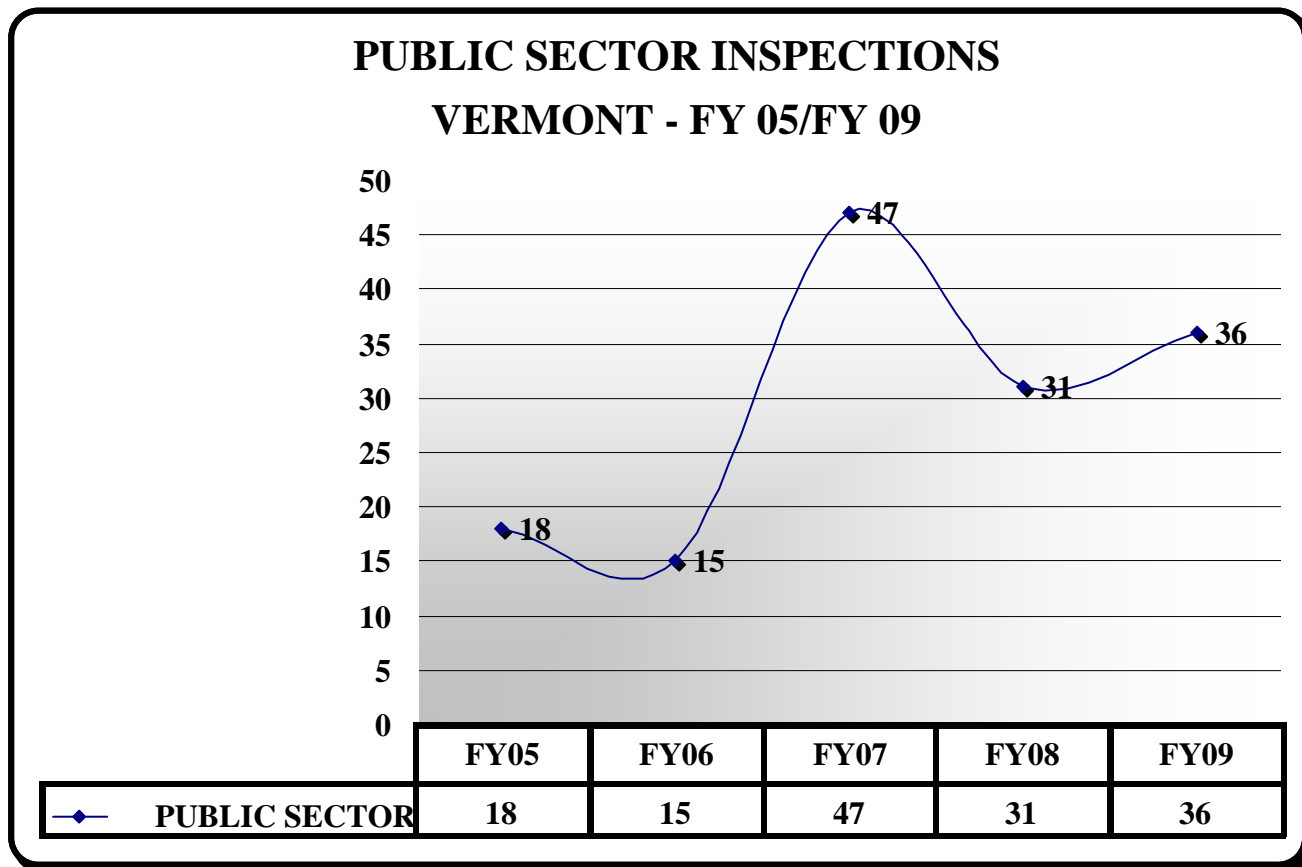
- The case file did not contain a copy of the informal settlement agreement. There is no information in the file to determine the date of the settlement. The case file does not have any abatement documentation to close out the hazards.
- Based on dates contained in the case file and IMIS SCAN Report, it looks as though the Informal Conference was held after the 20-day period.

#18a: VOSHA should review and follow the FOM, Chapter 7, which discusses the procedures to follow for informal conferences and informal settlement agreements. It states that the informal conference will be conducted within the 20 calendar day contest period. In addition, this section discusses the requirement that an affected employee or his representative shall be given the opportunity to participate, and VOSHA must be sure to follow this direction.

#18b: The VOSHA supervisor who conducts the informal conference must be sure to document reasons for granting penalty reductions (and extended abatement dates) on the case file diary sheet.

N. PUBLIC EMPLOYEE PROGRAM

VOSHA accomplished 90 percent of the total number of public sector inspections projected for the year by completing 36 out of 40 inspections. In terms of public sector consultation visits, Project WorkSafe completed 27 out of 20 projected, or 135 percent of the goal. The chart below shows VOSHA public sector inspection activity over the last five years.



VOSHA treats public sector entities the same as those in the private sector in terms of monetary penalties.

2. INFORMATION MANAGEMENT

Overall, we found VOSHA’s use of IMIS reports for program management satisfactory. In the table below, we list detailed findings related to VOSHA’s IMIS management.

IMIS Management	FINDINGS
Draft Forms	VOSHA had no forms in draft from prior years. This indicates that VOSHA is timely in terms of IMIS data entry.
Host Rejects	We found none. This is closely monitored by VOSHA’s Administrative Assistant.
End of Day (EOD)/Start of Day (SOD) Transmissions	VOSHA’s IT staff periodically conducts the EOD and SOD transmissions. <i>The standard practice is to perform EOD transmissions on Fridays and SOD transmissions on Mondays.</i>
Data Backup	According to the administrative assistant, VOSHA’s IT staff follows standard practice by performing the daily backup each day, Monday through Friday; the weekly backup is performed every Friday and the monthly is performed the first Friday of each month.

IMIS Management	FINDINGS
Cases with Citations Pending	We found some old inspections on this list that still have citations pending. Some of the cases are contested and must be entered into the IMIS as such to be taken off this list. VOSHA may need to enter data in the IMIS 1671 form to ensure it is appropriately updated for contested cases.
Open Inspection Report	We found several inspections listed on this report going back for as long as four years. This report needs to be reviewed and “cleaned up” and monitored on a quarterly basis.
Unsatisfied Activity Report 9	We found that several inspections over the last four years are reflected on this report as unsatisfied. VOSHA is researching the inspection files and updating the IMIS system appropriately. As a result of this finding, we recommend VOSHA run an unsatisfied activity report on a monthly or quarterly basis to ensure that the inspection data is current and accurate.
Violation Abatement Report	This report prints case level information about inspections with violations. Cases that have been contested are listed in this report as having incomplete abatement. VOSHA needs to review the IMIS Enforcement Data Processing Manual (ADM 1-1.31) to ensure that contested cases are entered into IMIS properly.
Inspection Report	Contested cases are not reflected in this report. See ADM 1-31.
Area Office Complaint Log-Auditing Report	We found complaints on this report that have not been satisfied and closed.
Staff Program Activity	OSHA 31 Form- VOSHA CSHOs must accurately fill out this form weekly regarding inspection and compliance assistance activity.
Industrial Hygiene Sampling Forms 91 and 93	VOSHA CSHOs and consultants must be sure to complete two forms— Form 93 (Direct Reading Report) and Form 91 (Air Sampling Report)—and enter the data from these forms into the IMIS system. The information on these forms, combined with other enforcement information in the IMIS, provides exposure and citation information by industry and occupation categories. The procedures for submitting the OSHA 91 and 93 can be found in the IMIS Enforcement Data Processing Manual (ADM1-1.31). Prior to our onsite review, VOSHA was not entering their sampling data from Forms 91 and 93 into the IMIS system. The program has since corrected this matter. The “Health Sampling Results by Inspection” report now shows that VOSHA is in fact entering its sampling data from Forms 91 and 93 into the IMIS system.

Overall, VOSHA is doing a good job of IMIS management. However, there are some reports listed above that should be run more frequently and be reviewed to ensure that the data is accurate.

When we conducted the onsite review, VOSHA was in the process of having legal counsel establish a formal policy on debt collection procedures. VOSHA provided us with a draft version of the “VOSHA Penalty Collection Protocol,” which is currently being formalized. VOSHA does not currently have any employers with unpaid debt to collect.

#19: We advise VOSHA to follow through in establishing formal debt collection procedures based on those set forth in Chapter 6 of the FOM. State Plan programs must have “an effective debt

⁹ This report alerts supervisors to those activities where a decision was made to conduct an inspection but the inspection was never initiated. This report also lists those cases where, although an inspection had commenced, the OSHA inspection form (OSHA 1) was entered into the IMIS but the operator failed to link the inspection record to the originating record.

collection mechanism in place” in accordance with the State Plan grant requirements established in OSHA Directive 09-02 (CSP-02). This debt collection mechanism must also be documented in the State Plan. VOSHA procedures, once finalized, should be sent to the regional office for approval and then will become part of VOSHA’s State Plan.

3. STANDARDS AND FEDERAL PROGRAM CHANGES

• **FEDERAL PROGRAM CHANGES**

The Commissioner of the Vermont Department of Labor and Industry adopts (with rare exception) identical Federal standards for enforcement in the State of Vermont. The Vermont State Plan has two differing state standards (29 CFR 1910.1000 Permissible Exposure Limits (PELs) and 1910.269 Electric Power Generation, Transmission and Distribution.) Copies of the differing state standards can be found on the VOSHA website at <http://labor.vermont.gov/?TabId=383>

According to VOSHA management, Vermont begins the State’s administrative procedures to adopt new Federal standards immediately after a standard is promulgated in the Federal Register. However, VOSHA has fallen behind in its promulgation and adoption of new Federal OSHA standards and revisions of Federal standards. Until OSHA standards are formally adopted, VOSHA utilizes the General Duty Clause (21 V.S.A. Section 223(a)) to enforce the standard.

VOSHA’s explanation for its failure to adopt Federal standards in a timely manner is that it is unable to adopt new Federal OSHA standards and revisions to Federal standards timely as a result of the state’s time-consuming rulemaking procedures. Vermont Administrative Procedures specify the process for the adoption of rules. The following is a list of the steps and time frames:

- Prepare supportive documentation to include: Economic Impact Statement; public input statement; incorporation by reference statement; clean text of the rule and annotated text of the rule;
- Submit supportive documents to the Interagency Committee on Administrative Rules (ICAR) (Committee meets second Monday of each month);
- If approved by ICAR, submit to the Vermont Secretary of State by the following Friday;
- Thirteen days later the rule is published in newspapers throughout the state (the cost for advertising in newspapers is \$2500);
- Publish the rule for public comment seven days later;
- Hold a public hearing no sooner than ten days after the second publication;
- Set the deadline for written comments no sooner than 7 days after the last day of the public hearing;
- Address all substantive comments, by adopting or not adopting them and explaining why they were or were not adopted;
- Submit final proposed rule to the Legislative Committee on Administrative Rules (LCAR). This committee meets weekly when the legislature is in session, and biweekly when it is not in session;
- VOSHA then testifies before LCAR. The affected industry is notified of the hearing and given an opportunity to participate; and
- If approved by LCAR, the Final Rule is submitted to the Vermont Secretary of State and becomes effective 15 days later.

VOSHA has been affected by severe budgetary constraints, and one of the effects has been to hold off on advertising some federal program changes which cost \$2500 per advertisement. This factor accounts for the delay in some Federal program changes.

FEDERAL PROGRAM CHANGES					
Date of Directive	Directive Number	Title	Adopted (yes or no)	Adopt Identical (yes or no)	Comments
09/30/2009	CPL-02-09-08 2010 355	Injury and Illness Recordkeeping National Emphasis Program	yes	Yes	NONE
09/30/2009	CPL-02-01-046 2010 354	Rescission of OSHA's de minimis policies relating to floors/nets and shear connectors	yes	Yes	NONE
08/18/2009	CPL-03-00-010 2009 353	NEP Petroleum Refineries — Extension of Time	no	No	The state doesn't have any petrochemical facilities.
07/27/2009	CPL-02(09-06) 2009 334	NEP — PSM Covered Chemical Facilities	no	No	NONE
07/20/2009	CPL-2(09-05) 2009 333	Site-Specific Targeting 2009 (SST-09)	yes	no	Because there are only 250 firms that are surveyed in VT for the OSHA Data initiative and since there are usually fewer than 75 firms that have a DART rate that exceeds 8.0 and/or a DAFWII case rate of 6.0., VOSHA makes every effort to inspect ALL of these companies with the exception of the ones that have a comprehensive consultation inspection. VOSHA does not use primary, secondary or tertiary lists. All the companies are inspected.
03/26/2009	CPL-02-00-148 2009 332	Field Operations Manual	yes	yes	Although the region just received notification 11/17/2009 that VT was adopting this FPC, it has actually been in effect in VT since 7/1/2009.

As shown in the table below, VOSHA was successful in responding timely to only two out of the six FPCs that were issued in FY2009. More often than not, Region I must remind VOSHA to provide a response to Federal OSHA that indicates whether or not it intends adoption of the FPC.

Title	Date of Directive	Response Due Date	Date State E-mailed Response
Injury and Illness Recordkeeping National Emphasis Program	09/30/2009	11/30/2009	11/30/2009
Rescission of OSHA's de minimis policies relating to floors/nets and shear connectors	09/30/2009	11/30/2009	11/30/2009
NEP Petroleum Refineries — Extension of Time	08/18/2009	10/30/2009	11/10/2009
NEP — PSM Covered Chemical Facilities	07/27/2009	9/28/2009	3/3/2010
Site-Specific Targeting 2009 (SST-09)	07/20/2009	9/21/2009	11/12/2009
Field Operations Manual	03/26/2009	6/1/2009	11/17/2009

FEDERAL STANDARD ACTIONS

As indicated in VOSHA's comment, the program did not adopt the longshoring and marine terminal standard because there is no maritime industry in the state. However, according to the IMIS and as a result of further research on Maritime enforcement, we found that Vermont may in fact have sites subject to Sections 29 CFR 1915 and 1917. As a result, VOSHA must reevaluate the need to adopt the longshoring and marine terminal standard and advise the region of its findings.

As shown in the table below, VOSHA exceeded the adoption due date for the electrical standard by several months in FY2007. This standard was updated in FY2009. For the standard regarding clarification of employer duty to provide PPE (FR standard date of 12/12/2008), VOSHA missed the adoption by a few weeks, and e-mailed its intent to adopt one week late. For the standard entitled, "Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment" (FR standard date of 9/21/2009), VOSHA did not respond with its intent to adopt until 4/14/2010, which was considerably beyond the response due date of 11/21/2009. Consequently, VOSHA's effective date of 12/31/2010 for this standard far exceeds the adoption due date of 3/9/2010.

FEDERAL STANDARD ACTIONS						
Federal Register (FR) Standard Date	Title	Adopted (yes or no)	Adopt Identical (yes or no)	COMMENTS	Adoption Due Date	Effective Date
10/29/2008	Electrical Installation Standard 1910 Subpart S; Clarifications and Corrections (see Final Rule in FY2007)	Yes	yes	<p>The Subpart S rule has completed the public hearing and comment period. There are no changes to the rule. The rule went before the Legislative Committee on Administrative Rules (LCAR) for February 6, 2008.</p> <p>The Legislative Committee on Administrative Rules (LCAR) approved the Subpart S electrical rule on 2/6/08. VOSHA filed the Adopted Rule paperwork the same day and the rule was effective February 25, 2008.</p>	8/14/2007	2/25/2008
12/10/2008	Longshoring and Marine Terminals; Vertical Tandem Lifts	No	No	This rule may apply to Vermont. Final determination will be made by the National Office.	6/10/2009	TBD
12/12/2008	Clarification of Employer Duty to Provide Personal Protective Equipment and Train Each Employee	Yes	Yes		6/12/2009	7/1/2009
09/21/2009	Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment	Yes	Yes		3/9/2010	12/31/2010

Title	FR Standard Date	Response Due Date	Date State E-mailed Response
Electrical Installation Standard 1910 Subpart S; Clarifications and Corrections (see <i>Final Rule in FY2007</i>)	10/29/2008	4/23/2007	10/11/2007
Longshoring and Marine Terminals; Vertical Tandem Lifts	12/10/2008	2/17/2009	12/19/2008
Clarification of Employer Duty to Provide Personal Protective Equipment and Train Each Employee	12/12/2008	2/17/2009	2/24/2009
Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment	09/21/2009	11/20/2009	4/14/2010

VOSHA must respond to FPC and Federal Standard Action due dates for intent to adopt.
[#20: We urge VOSHA to respond timely to FPCs and Federal Standard Actions.](#)

4. VOLUNTARY COMPLIANCE

The evaluation of the Vermont Public Sector Consultation Project included an evaluation of the project's performance in those areas that have been assigned in the Mandated Activities Report for Consultation (MARC) (see Appendix F). The public sector consultation program has an integral role in assisting VOSHA in meeting its annual and strategic goals. The Vermont public-sector consultation program has improved its performance considerably over the last couple of years. The consultation program has improved productivity since FY 2002, when only nine visits were completed in the public sector. The total number of visits in FY 2009 is 27 visits (19 safety and 8 health). The analysis below is based on the project's performance in those areas that have been assigned in the Mandated Activities Report for Consultation (MARC). The MARC used in this report was run by Region I on October 13, 2009 for FY2009.

The analysis provides a comparison of VOSHA's performance with regard to the MARC measures over the past three fiscal years. *However, it is important to note that MARC measures 1 and 2 are not applicable for public sector only consultation programs. Therefore, we begin our analysis with MARC measure 3.*

• **MANDATED ACTIVITIES REPORT FOR PUBLIC SECTOR CONSULTATION (MARC)**

3. Employee Participation (MARC 3)

The data for MARC 3, as shown below, indicates that VOSHA has met the 100 percent goal for visits where consultants conferred with employees during initial visits. VOSHA did not conduct any follow-up or training and assistance visits (with compliance assistance only) in FY 2009 as there were no requests for these types of visits.

Percent of Initial Visits where Consultant conferred with Employees (MARC 3)			
Fiscal Year	2007	2008	2009
Goal	Not < 100	Not < 100	Not < 100
Actual	100	100	100

Percent of Follow-Up Visits where Consultant conferred with Employees (MARC 3)			
Fiscal Year	2007	2008	2009
Goal	Not < 100	Not < 100	Not < 100
Actual	N/A	100	N/A

Percent of Training and Assistance Visits (w/ Compliance Assistance Only) Where Consultant conferred with Employees (MARC 3)			
Fiscal Year	2007	2008	2009
Goal	Not < 100	Not < 100	Not < 100
Actual	N/A	N/A	N/A

VOSHA has a solid track record of ensuring that all visits include employee participation.

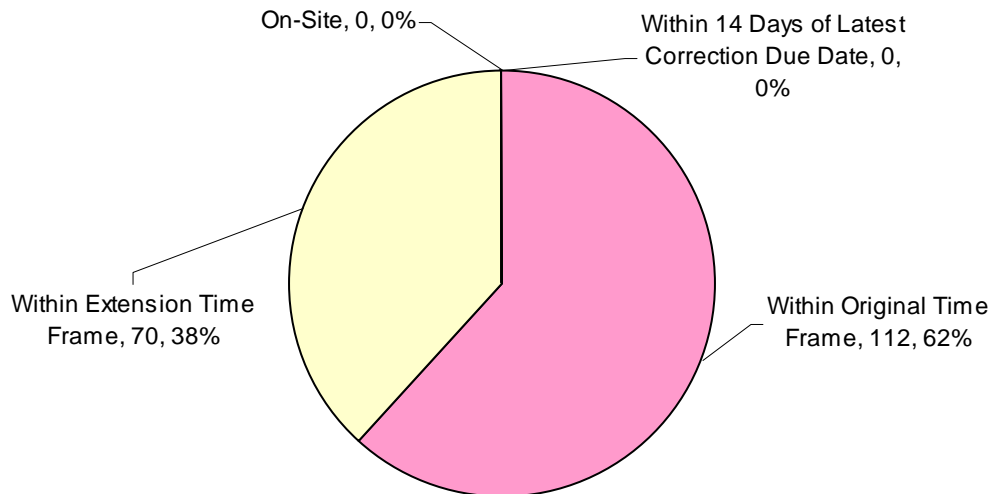
4A. Serious Hazards Verified Corrected in a Timely Manner (MARC 4A)

VOSHA did meet the goal of 100 percent for obtaining timely verification of the correction of serious hazards within 14 days from the latest correction due date, as shown in the table below.

Percent of Serious Hazards Verified Corrected in a Timely Manner (within 14 days from the latest correction due date) (MARC 4A)			
Fiscal Year	2007	2008	2009
Goal	Not < 100	Not < 100	Not < 100
Actual	100	100	100

In FY2009, VOSHA verified as corrected all of the 182 serious hazards identified in a timely manner (or within 14 days of the latest correction due date). The chart below provides a breakdown of the results of VOSHA's performance with respect to MARC measure 4A.

Number of Serious Hazards Verified Corrected



4B. Serious Hazards NOT Verified Corrected in a Timely Manner (MARC 4-B)

Percent of Serious Hazards NOT Verified Corrected in a Timely Manner (MARC 4B)			
Fiscal Year	FY2007	FY2008	FY2009
Goal	Not > 0	Not > 0	Not > 0
Actual	.00	.00	.00

4C. Serious Hazards Referred to Enforcement (MARC 4-C)

The VOSHA 23 (g) consultation program typically does not have any overdue serious hazards to refer to enforcement. However, the project staff understands that if any employer refuses to correct a serious hazard that is overdue, it will be referred to enforcement as soon as possible.

4D. Serious Hazards Verified Onsite and/or Within the Original Time frame (MARC 4-D)

As shown below, VOSHA was slightly below the standard of 65 percent, with a year end percentage of **61.54**.

Percent of Serious Hazards Verified On-Site and/or Within Original Time Frame (MARC 4D)			
Fiscal Year	2007	2008	2009
Goal	Not < 65	Not < 65	Not < 65
Actual	70.46	76.02	61.54

Although VOSHA's FY2009 percentage was the lowest in the last three fiscal years and did not meet the standard, VOSHA's performance indicates that no hazards were left uncorrected beyond the original time frame or the extension due date (within 14 days of the latest correction due date). VOSHA verified as corrected 112 out of 182 serious hazards within the original time frame.

5. Uncorrected Serious Hazards (MARC 5)

VOSHA ended the fiscal year with no serious hazards that remained uncorrected more than 90 days past the latest correction due date.

Number of Uncorrected Serious Hazards with Correction Date >90 Days Past Due (MARC 5)			
Fiscal Year	2007	2008	2009
Goal	0	0	0
Actual	0	0	0

- ***VOLUNTARY PROTECTION PROGRAM***

VOSHA adopted the following OSHA Directives on March 20, 2003: TED 8.1a, Revised Voluntary Protection Program (VPP) Policies and Procedures Manual and TED 3.5, Interim Guidance for Voluntary Protection Programs. VOSHA has also implemented the Challenge Program.

VOSHA currently has eight Star sites. Three sites have employees who are represented by collective bargaining agent(s). One site is covered under the PSM standard. One site entered the program as Merit and has achieved Star status. In addition to the eight Star sites, one site has withdrawn from the program. The following is a list of the current Green Mountain (GM)VPP Star sites.

1. Ben & Jerry's
2. Energizer Battery Manufacturing, St. Albans
3. Energizer Battery Manufacturing, Bennington
4. Entergy
5. General Electric Rutland,
6. IBM,
7. United Water and
8. Vermont Agency of Transportation (VTrans) District 7

There have been no fatalities at any of the GMVPP sites. One VPP construction project was completed on November 27, 2007 and the site's withdrawal from the GMVPP is electronically documented.

OSHA's Special Government Employee (SGE) Program was established to allow industry employees to work alongside OSHA during VPP onsite evaluations. VOSHA signed the SGE Memorandum of Understanding (MOU) with OSHA on November 5, 2008 that enables VOSHA to use OSHA-approved SGEs for VPP onsite evaluations.

The SGE Program requires OSHA or the State Plan State to submit a request to the OSHA SGE Coordinator at the National Office to verify that the following criteria have been met: the requested SGE has been approved; his/her term of service continues to be in effect; and no financial conflict of interest or appearance of impropriety precludes participation of the requested SGE at the worksite.

Our review noted that two SGEs participated on the IBM onsite on April 2-10, 2008 without having received approval from the SGE Coordinator.

[#21: VOSHA must request prior approval from the SGE Coordinator at the National Office to use SGEs on GMVPP onsite reviews.](#)

Our review found that the team leader appropriately checks IMIS OSHA establishment history and verbally checks with the 11(c) Investigator to ensure that the site to be evaluated is not currently

under any OSHA investigation. We recommend the use of a file checklist to document historical research.

To ensure compliance with PSM Level 1 training, a CSHO conducting a review of a PSM site must have received equivalent training in the concepts described in the course descriptions for the following OTI Courses:

- #3300 Safety and Health in the Chemical Processing Industries,
- #3400 Hazard Analysis in the Chemical Processing Industries, and
- #3410 Advanced Process Safety Management, or other equivalent specialized seminars in PSM.

One of VOSHA's VPP sites is covered by the PSM Standard (29 CFR 1910.119). The VPP onsite evaluation was conducted on September 17-20, 2007, although none of the seven team members had received PSM Level 1 auditor training.

#22: VOSHA must have at least one CSHO trained in PSM as described above to ensure compliance with the PSM Standard.

According to the CSP 03-01-003, Chapter VI, II (A) 3, the first onsite evaluation must be conducted 18 to 24 months following initial approval of Merit participants.

The initial Merit Energy Nuclear report was approved on April 5, 2005, and the next recertification onsite was conducted on April 21-24, 2008, which exceeded the required time limit discussed above.

According to the CSP 03-01-003, Chapter V, Sec. B (i), each year by February 15, VPP participants must submit annual self-evaluations to the OSHA or the State Plan State Office. Additionally, sites covered under the PSM Standard must complete the VPP PSM questionnaire. The PSM questionnaire is compiled annually using selected questions from OSHA's Dynamic Inspection Priority Lists. Questions address all PSM-covered operations. Our review found that this questionnaire was not sent to the VOSHA VPP site covered under the PSM standard.

#23: VOSHA must send the PSM questionnaires for completion by the VPP site covered under PSM for completion and must be included in the site's 2009 annual self-evaluation.

In accordance with CSP 03-01-003, Chapter VI, Onsite Evaluation, Section II, B (5), the team leader must prepare and submit a Medical Access Order (MAO) request form to the Commissioner and direct the applicant or participant to post the MAO for at least 15 working days prior to the onsite evaluation.

During our review of the GMVPP files we found only two VPP files included a copy of MAOs and only five folders had MAO requests. One file did not have a copy of the request or the MAO. Two files did contain copies of the MAOs, although both were issued in a timely manner.

According to CSP 03-01-003, effective April 18, 2008, modifies procedures for VPP onsite evaluations. The revised instruction requires additional information on recordkeeping, contractors, annual evaluations and PSM to be included on onsite reports. This revision also condensed the corporate facility onsite process (C-FOP) and the compressed re-approval process (CRP) worksheets. These new report templates should be used by VOSHA for future initial and recertification onsites.

#24: VOSHA should use the revised report format for initial and recertification VPP onsite evaluations.

According to CSP 03-01-003, Appendix E, Onsite Evaluation Report User Guide, Section 2.3 (2), once the applicant has completed 90-day items, this section should be removed from the final report that is transmitted to the National Office or Commissioner. The report listing these 90-day items, however, should be kept in the evaluator’s working file.

Our review found that the final reports forwarded with the Commissioner’s approval letters contained 90-day items. Approval letters were sent out prior to the abatement of the 90-day items. In addition, two files did not contain documented proof of abatement of the 90-day items listed in the reports.

Since September 2007, the average turnaround time for reports is 48 days. The turnaround time starts on the last day the audit team is onsite to the issuance of the approval letter. The quick turnaround time is a result of sending the reports out prior to receiving abatement of 90-day items.

Site	Last Day of Onsite	Report & Approval Letter to Employer	90-day Items	Lapse Time (Days)
1	10/20/2007	10/22/2007	Yes	2
2	9/17/2009	10/21/2009	Yes	34
3	7/19/2007	8/22/2007	Yes	34
4	4/29/2009	7/8/2009	Yes	70
5	4/2/2009	4/8/2009	Yes	6
6	4/10/2008	7/10/2008	Yes	91
7	6/10/2008	8/12/2008	Yes	63
8	1/15/2009	4/8/2009	Yes	83

VOSHA has an active GMVPP Challenge Program. All eight GMVPP sites have signed commitment letters to participate in the VOSHA Challenge Program as Challenge Administrators. The VPP program manager has quarterly administrators’ meetings held in the Vermont Agency of Transportation facility in White River Junction, Vermont. The program’s goal is to have each VPP site mentor at least one potential VPP candidate.

Since VOSHA has had success in implementing the Challenge Program, we recommend that VOSHA submit an article and photos to The Leader for some well earned recognition for the administrators and the GMVPP program manager.

VOSHA staff are required to enter an OSHA 55 intervention form for each VPP onsite evaluation that is conducted. Staff must also enter the OSHA form 31 timesheet into IMIS.

We found that the team leader has entered a 55 intervention for each of the sites evaluated. The timesheets that we reviewed included the following activities:

- VPP onsites;
- review of annual self-evaluations;
- training sessions;
- VPP flag raising ceremonies;
- challenge quarterly meetings; and,
- conferences.

The IMIS State Staff Program Activity Report dated March 14, 2010 reflects that the OSHA form 31 timesheets have been entered and are current through the end of calendar year 2009. The IMIS 31 forms require some updating for calendar year 2010.

#25: VOSHA must ensure that staff enter their weekly activity on the OSHA form 31 timesheets. The OSHA 55 intervention form should be incorporated into the OSHA form 31 when appropriate.

We found that each GMVPP site has a current annual self-evaluation in its file, with the exception of one, which has been granted an extension. Each of the seven sites' annual injury and illness rates have been reviewed and their three-year averages calculated. All of the three-year averages were below the 2008 BLS rates for their respective industries. Therefore, none of the GMVPP sites require a 1-Year Conditional or Rate Reduction Plan.

VOSHA's VPP files contain the original application for all its GMVPP sites. Each application is complete with the following information: general information page; three-year recordable rates; management leadership and employee involvement; worksite analysis; hazard prevention and control; safety and health training; union support letters; organizational charts; and assurances.

The GMVPP manager verbally accepts the application and schedules the onsite within two months at the convenience of the applicant. Files were lacking in that they did not contain the dates the applications were received and accepted.

Applications did contain commitment letters from respective unions. The commissioner's acceptance letters have also been sent to the collective bargaining representatives.

#26: VOSHA should ensure that GMVPP files contain the date the application was received and the date the application was accepted. In addition, VOSHA should send a letter to the applicant acknowledging receipt of the VPP application.

According to CSP 03-01-003, Chapter II, Section III (F) (A) 1, the Agency is responsible for maintaining a public file on all approved participants to include the following:

- a. The General Information section from the application;
- b. VOSHA Director's memorandum to the Commissioner requesting approval of a VPP onsite evaluation report;
- c. Onsite evaluation reports;
- d. The Commissioner's letter to the participant (which includes notification of a copy sent to any and all collective bargaining agents);
- e. Congressional and Gubernatorial letters; and
- f. Any formal correspondence to and from the Regional Administrator, the VPP site, or the public.

Currently, the VPP records are located on the VPP program manager's personal drive.

[#27: All of the GMVPP electronic documents must be placed on the "S" \(public\) drive to allow access to management in the Montpelier office in the event of a public request.](#)

5. DISCRIMINATION PROGRAM

Monitoring of state 11(c) discrimination programs is mandated under [29 CFR 1977.23](#), which provides that state's 11(c) discrimination programs must be "as effective" as [Section 11\(c\) of the Occupational Safety and Health Act](#). Also, in accordance with 29 CFR 1977.23, "a state which is implementing its own occupational safety and health enforcement program pursuant to Section 18 of the Act...must have provisions as effective as those of Section 11(c) to protect employees from discharge or discrimination."

The State of Vermont discrimination program is operated and administered by the Vermont Department of Labor, under 21 V.S.A § 231 which states:

- (a) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself, herself, or others of any right afforded by this chapter.
- (b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of this section may, within 30 days after such violation occurs, file a complaint with the commissioner alleging such discrimination. Upon receipt of such complaint, the commissioner shall cause such investigation to be made as he or she deems appropriate. If upon such investigation, the commissioner determines that the provisions of this section have been violated, he or she shall bring an action in any appropriate state court against such person. In any such action, the state courts shall have jurisdiction, for cause shown to restrain violations of subsection (a) of this section and order all

appropriate relief including rehiring or reinstatement of the employee to his or her former position with back pay.

(c) Within 90 days of the receipt of a complaint filed under this section, the commissioner shall notify the complainant of his or her determination under subsection (b) of this section. (Added 1973, No. 214 (Adj. Sess.), § 20.)

In addition, under 21 V.S.A. § 232, employees have a private right of action. An employee aggrieved by a violation of section 231 of this title may bring an action in superior court for appropriate relief, including but not limited to reinstatement, triple wages, damages, costs and reasonable attorney's fees. Such an action may be brought in addition to or in lieu of an action under section 231 of this title. (Added 1989, No. 164 (Adj. Sess.)).

Our review found some areas of concern which are listed below and discussed in more detail later in this report.

- Inconsistency in case file organization and presentation;
- Duplicate entry in IMIS;
- Letters to complainant and respondent not retained in files; and
- Inappropriately linking 11(c) cases to OSHA-1 and the OSHA-7 Complaint forms

Areas in which the state's performance was superior include:

- Appropriate lapse time between filing and determination; and
- Well written and detailed final investigative reports.

This evaluation looked at five cases that were filed or that had a determination date recorded, in FY2009. We discussed our findings with the VOSHA director and compliance chief. Informal discussions were also held with two CSHOs who investigated the discrimination complaints.

Prior to the study, we ran three IMIS reports: one for "pending cases," which included seven that were listed as pending as of 1/15/2010 (two of the cases listed are U.S Postal Service cases and are therefore being investigated by Federal OSHA); the second was for "length of investigation" for all cases with a determination date in FY2009, which yielded six cases with determinations during this period; and the third was a listing "for all cases filed between 10/1/2008 and 09/30/2009," which indicated that 8 cases were filed within this time period (one case was a duplicate and was later deleted from the system; another Federal 11c case was erroneously listed on this report; and a third case remained open at the time of the special study). Thus there were five cases to review.

A review of the "pending cases" report of 1/15/2010 found that one case was pending for 437 days. This case was the duplicate case described above. A "length of investigation" report, run on 2/1/2010, reflected that case was "settled" on 12/31/2008. We brought this finding to the attention of VOSHA management and this problem was corrected in the IMIS.

For each of the five 11(c) cases that we reviewed, we found the outcomes to be appropriate, i.e., we believe Federal OSHA would have reached the same conclusion. In response to one case that was dismissed, VOSHA went a step further and held training about the employer's and employees' rights and responsibilities for the entire staff at the employer's facility. Issues raised by Federal OSHA's review are discussed below.

Discrimination complaints typically are received by telephone at the VOSHA Office of the compliance chief. When VOSHA receives a complaint, the compliance chief immediately assigns it to one of the two CSHOs (who have both received 11(c) training at OTI as well as on-the-job training). The assigned investigator screens the complaint for jurisdiction and timeliness. If the complaint meets the threshold requirements, the investigation proceeds.

- **Complaint Processing**

Discrimination complaints should always receive high priority for assignment and, in the VT cases we reviewed, we found that all complaints were promptly (within a few days) assigned to an investigator. The quality of the investigations and written documentation were generally satisfactory. In all of the cases we reviewed, the investigations were handled expeditiously.

- **Case File Organization**

Some, but not all of the case files we examined, were assembled in the proper format and order in accordance with [Chapter 5, Section III.B.1 of OSHA's Discrimination Manual \(DIS 0-0.9\)](#). However, the case files had some loose paperwork.

Some files had detailed phone logs, and others did not contain any phone log. All calls and events of significance to the case must be documented on an activity/telephone log with the appropriate details, in accordance with Chapter 3, IV.B.1.

The OSHA Form 87 (or the IMIS Case Activity Worksheet) was not found in some of the files. In addition, copies of notification letters and closing letters to the complainant and respondent were not included in some of the case files.

[#28: VOSHA must assemble discrimination case files in an orderly fashion and in accordance with OSHA's Discrimination Manual, Chapter 5.III.B.1, which includes a Case Activity Worksheet, or OSHA 87 and notification and closing letters to the parties. In addition, an activity/telephone log must be accurately documented with telephone calls and significant events that occur with respect to the case.](#)

- **IMIS Review**

The timeliness and accuracy of data entry by all Whistleblower IMIS users is required to produce accurate Whistleblower IMIS statistics, and to ensure effective monitoring and evaluation. This review noted the following:

1. The average number of days (43) to complete a case was well below the 90-day guideline.
2. The timeliness rate for determination of cases filed in FY2009 was 83 percent, with only one out of the five cases we reviewed completed beyond the 90-day guideline.
3. Two cases were entered as duplicates in the system. In addition, the review revealed that VOSHA was using OSHA-1 inspection numbers to assign a case number to the 11(c) cases and also was filing the 11(c) complaint on an OSHA-7 complaint form. OSHA safety and health inspection forms have a completely separate purpose from 11(c) forms. VOSHA management and investigators were informed of this and were instructed not to use the OSHA-1 and the OSHA-7 forms for 11(c) complaints. Following this practice will avoid duplication of files in the system.
4. The settlement rate of 20 percent (based on one case settled out of five cases investigated during the report period), is consistent with the settlement rate for Federal OSHA.

Chapter 4 of OSHA's Discrimination Manual states that, "A successful investigation is one that reveals the truth of the situation in a timely manner and correctly applies the law to arrive at the proper case disposition. This should result in appropriate remedy to employees whose rights were violated and no remedy to those whose rights were not violated."

During this review of VOSHA's Whistleblower Protection Program, we found that it generally had adequate policies and procedures in place, and that these policies and procedures were, in fact, largely being followed. To improve the program, however, the State should work on the following issues: assembling and maintaining case files in an orderly fashion; retaining copies of letters to all parties involved in the cases; avoiding the use of the OSHA-1 and OSHA-7 forms for 11(c) complaint forms; and avoiding duplicate entry of cases in the OSHA web-based system. In addition, we recommend that in writing up the final analysis in a case, listing the elements separately will help to ensure that all the required elements are covered (see page 5-7 of the DIS Manual) as follows:

Analysis:

1. *Protected Activity:*
2. *Knowledge:*
3. *Adverse Action (Reprisal):*
4. *Nexus (Timing, Animus, Disparate Treatment):*

We believe that a thorough review of these sections of the DIS Manual by VOSHA staff will enhance the overall performance of the program.

6. PROGRAM ADMINISTRATION

a. EVALUATION OF CSHO TRAINING

Initial Training Program for OSHA Compliance Personnel, TED 01-00-018, issued in August 2008, provides direction and guidance for the required policies and procedures for training

CSHOs. The next table lists the training requirements for the three CSHO career paths (safety, health and construction) as set forth in this directive. This directive supersedes TED 1.12A, which was issued in July 1992.¹⁰

Training Requirements

- A. At least the following two courses must be completed within the first year of hire.
 - 1. #1000 Initial Compliance.
 - 2. One of the following courses on OSHA Standards.
 - a. #1050 Intro to Safety Standards for Safety Officers (safety career path).
 - b. #1250 Intro to Health Standards for Industrial Hygienists (health career path).
 - c. #2000 Construction Standards (construction career path).
- B. The following courses will be taken after one of the Standards courses.
 - 1. #1310 Investigative Interviewing Techniques.
 - 2. #1410 Inspection Techniques and Legal Aspects.
 - 3. #2450 Evaluation of Safety and Health Management Systems.
 - 4. #1230 Accident Investigation.
- C. At least one of the following courses will be taken during the initial three-year period to enhance multi-disciplinary competence.
 - 1. Safety career path CSHOs will take at least one of the following:
 - a. #1080 Health Hazard Awareness for Safety Officers
 - b. #1250 Intro to Health Standards for Industrial Hygienists
 - c. #2000 Construction Standards
 - 2. Health career path CSHOs will take at least one of the following:

¹⁰ States are also required under 29 CFR 1902.3(h) and 1956.10(g) to have a sufficient number of adequately trained and qualified personnel for the enforcement of standards. States must have a formal training program for their compliance personnel, which must be documented in their State plans and revised as necessary to reflect current practices.

- a. #1280 Safety Hazard Awareness for Industrial Hygienists
- b. #1050 Intro to Safety Standards for Safety Officers
- c. #2000 Construction Standards

3. Construction career path CSHOs will take at least one of the following:

- a. #1280 Safety Hazard Awareness for Industrial Hygienists
- b. #1050 Intro to Safety Standards for Safety Officers
- c. #1080 Health Hazard Awareness for Safety Officers
- d. #1250 Intro to Health Standards for Industrial Hygienists

D. The #8200 Incident Command System (ICS) I-200 course or equivalent training (i.e., web-based courses conducted by other governmental agencies) must be also completed during the initial three years of training.

The following table shows the courses that VOSHA staff must complete in order to fulfill the training requirements in accordance with the current directive.

CSHO/Courses Missing	CSHO/Courses Missing
<p><u>Safety Compliance Chief</u></p> <p>B.1. #1310 B.4. #1230</p> <p>B.3. #2450</p>	<p><u>Safety CSHO (New)</u></p> <p>B.1. #1310 B.4. #1230</p> <p>B.3. #2450 C. (choice)</p>
<p><u>Safety CSHO</u></p> <p>B.1. #1310 B.3. #2450</p> <p>B.2. #1410 C. (choice)</p>	<p><u>CAS/VPP Manager*</u></p> <p>B.1. #1310</p> <p>C. (choice)</p>
<p><u>Safety CSHO</u></p> <p>B.1. #1310 B.3. #2450</p> <p>C. (choice)</p>	<p><u>Health CSHO</u></p> <p>B.1. #1310 B.4. #1230</p> <p>B.3. #2450</p>
<p><u>Safety CSHO¹¹</u></p> <p>A.2. (choice) B.3. #2450</p>	<p><u>Health CSHO*</u></p> <p>B.1. #1310 B.4. #1230</p>

¹¹ *A few senior Vermont CSHOs have been grandfathered in under the TED. Nevertheless, OSHA recommends that they take the appropriate courses.

B.1. #1310	B.4. #1230	B.2. #1410	C. (choice)
B.2. #1410	C. (choice)	B.3. #2450	
<u>Safety CSHO*</u>		<u>Health CSHO</u>	
A.2. (choice)	B.3. #2450	B.1. #1310	C. (choice)
6B.1. #1310		B.3. #2450	
<u>Health CSHO</u>			
B.1. #1310	B.4. #1230		
B.3. #2450	C. (choice)		

According to the current training directive, CSHOs should complete all required courses within three years of the date when they were hired. **#29:** Since some of the program's CSHOs have not met this time frame, the VOSHA director should ensure that all staff complete their remaining courses as soon as possible.

Although we are aware that Vermont state agencies have been severely restricted in their ability to use out of state travel due to budgetary issues, CSHOs must have the **basic** knowledge and skills necessary to carry out OSHA's core mission.

b. BENCHMARKS

As shown in the table on the following page, VOSHA's allocation for CSHOs is far below its benchmark for both safety and health, and has been for many years. VOSHA has expressed interest in revising its benchmark levels for both safety and health. VOSHA management has stated that the current benchmarks in both disciplines far exceed what is necessary based on the covered population in Vermont.

VOSHA	Safety			Health		
	Allocated	Benchmark	On board as of 9/30/09	Allocated	Benchmark	On board as of 9/30/09
	6	9	6	4	13	4

7. COMPLIANCE ASSISTANCE

- ***Strategic Partnerships and Alliances***

During FY 2009, VOSHA continued with several of its compliance assistance programs, such as the Partnership in Safety along with Project WorkSAFE, the Small Business Development Center, and Green Mountain Coffee Roasters. The Partnership in Safety provides quarterly safety and health training seminars to businesses. The Compliance Assistance Specialist participates in these seminars.

The Vermont Department of Labor website includes information on the VPP, Compliance Assistance activities and partnership and alliance information. Information on partnerships and alliances is also distributed in Association newsletters, local press releases and by VOSHA and Project WorkSAFE staff at public presentations. The following list provides a summary of VOSHA's cooperative activity with other organizations:

- Small Business Development Center and the Green Mountain Coffee Roasters
- Project Road-Safe
 - VOSHA works with Norman James on work place traffic safety programs, and contributes articles to a monthly newsletter.
- Vermont Department of Labor
 - VOSHA uses their database to target employers in selected SIC and NAICS codes to receive training and informational materials.
- Association of General Contractors (AGC)
 - VOSHA promotes workplace safety through the AGC, and this relationship has been expanded to include small contractors.
- Vermont Agency of Transportation (VTRANS)
- Alliance with the VT Chamber of Commerce
 - Covers issues relating to vehicular safety, workplace violence and ergonomics. VOSHA is participating in the development of webinars on various safety and health topics.
- North Country Career Center
 - VOSHA provides safety and health training to students.
- Vermont State Police (VSP)
 - The purpose of this Alliance is to provide training for VSP officers on blood-borne pathogens, work zone issues, and PPE. This Alliance will lapse in May 2009 and VOSHA is beginning the renewal process.
- Vermont Rural Water Association
 - VOSHA will provide training on trenching for well drillers and municipal water superintendents. This is a highly successful alliance because it has spread the word on trench safety and the five basic trench safety requirements.
- IBEW
 - IBEW and VOSHA have agreed to cooperate in providing electrical training.
- VT Safety & Health Council
 - This Alliance has the potential to reach an audience of small to large employers in various industries, especially those employers who might not be served by traditional

- outreach.
- Essex Vocational Tech. Ctr.
 - VOSHA provides safety and health training to students under this program.
- Hartford Area Vocational Center
 - The focus of this alliance is on youth worker safety. VOSHA supports the OSHA 10 hour outreach courses (both general industry and construction) through this alliance.

8. STAKEHOLDER INTERVIEWS

We conducted interviews with six VOSHA stakeholders as another measure for gauging the program’s overall effectiveness. The table below provides a breakdown of the types of groups that were represented in these interviews.

STATE AGENCY	LABOR ORGANIZATION	EMPLOYERS
Vermont Department of Transportation (VTRANS), District #7 (<i>VPP Partner</i>)	International Brotherhood of Electrical Workers (IBEW), Local 300	GE Aviation (<i>VPP Partner</i>) Green Mountain Coffee Roasters (GMCR) Cabot Cheese (<i>Alliance Partner</i>) United Water (<i>VPP Partner</i>)

The comments we received about the VOSHA program were favorable. Here is a summary of the key comments:

1. VOSHA goes above and beyond in terms of reaching out to employers to provide much needed safety and health training. Small employers in particular appreciate these outreach efforts, especially since they typically do not have the resources necessary to stay current on emerging issues related to workplace safety and health.
2. VOSHA is dedicated to promoting workplace safety and health. For example, the VOSHA CAS provides seminars where safety directors from various types of businesses can meet and exchange ideas, information and best practices related to workplace safety and health. The VOSHA CAS is a well seasoned instructor who encourages business representatives to conduct training and make presentations as well.
3. Employers find VOSHA easily accessible and cooperative when they need to “pick up the phone” with questions and/or concerns.
4. VOSHA staff members are highly experienced and conduct themselves in a professional manner. CSHOs are knowledgeable of OSHA standards and other regulations.

We asked the stakeholders to rate VOSHA on a scale of 1(lowest) to 10 (highest) in three areas. The table below shows VOSHA’s average scores.

CATEGORY	AVERAGE SCORE (SCALE OF 1-10)
Professionalism	9.8
Competence	9.4
Helpfulness	9.8

The size of the stakeholders’ organization varied in terms of number of employees. For example, one relatively large employer had as many as 1,500 employees; two medium sized employers had multiple worksites (including office, production and warehouse facilities); and another was much smaller, with about 50 employees at one site.

The stakeholders’ interaction with VOSHA included a wide range of activities. Most had received enforcement inspections as well as benefited from some type of training activity provided by the program. Three of the six were VPP Partners, while one participated in an Alliance with VOSHA. The labor organization represented various employee groups, many of whose members had interacted with VOSHA, both in terms of enforcement and compliance assistance activities.

During our interviews with the stakeholders, we asked them to complete a questionnaire regarding their experience with VOSHA. Every single response and comment reflected a positive experience with VOSHA. We have provided a few quotes from the stakeholder representatives below that capture their collective estimation of the VOSHA program:

- “Our site has benefitted greatly from our relationship with VOSHA through the VPP program. We have been able to maintain excellent safety performance due to the training services provided by VOSHA.”
- “I have dealt with OSHA in positions I have held in other states, and VOSHA is the best. They really care about safety. They are very knowledgeable and a tough cookie when your number comes up for an inspection.”
- “I rate our company’s experience with VOSHA as ‘extremely beneficial.’ They have a wealth of knowledge and have repeatedly shown us that they are there to help us ensure that we have the safest workplace possible. They not only let us know what needs to be done but give us contacts and advice for how to make the necessary changes...”
- “We interact with VOSHA numerous times on an annual basis. This has been key in reducing our injury and illness rates, which translates into happier, healthier employees. This [interaction] decreases our workers compensation expenses and is great for the bottom line.”

IV: CONCLUSION

A review of the 29 findings and recommendations by Federal OSHA indicates that most of the deficiencies cited in this report can be remedied by following the practices set forth in the FOM. Therefore, the VOSHA Director should facilitate a comprehensive review of the FOM for all staff members, concentrating on the sections of the FOM that were cited in this report.

Although our review identified some standards that were incorrectly cited, most of VOSHA's CSHOs have a solid knowledge of OSHA's rules. However, some refresher training in OSHA standards would be beneficial to the compliance staff as well. A good source of this training would be courses conducted by OSHA's training Institute. In view of the fact that VOSHA is operating under tight budgetary constraints, OSHA CASs should be considered as a low cost alternative to OTI.

VOSHA must also ensure that CSHOs who have not yet completed all required training courses do so as soon as possible to ensure that they have the basic knowledge necessary to carry out OSHA's core mission. In addition, providing PSM training for one health CSHO should also be a top priority for VOSHA.

We thank all VOSHA staff members for their assistance and cooperation in working with OSHA to conduct this review.

APPENDIX A

Findings and Recommendations

Italics = paraphrase

	Findings	Recommendations
1	<i>Nine out of 19 State Activity Mandated Measures (SAMM) standards were not met – % of complaints/referrals responded to within 1 day (imminent danger); % of S/W/R violations verified (private and public); average no. of calendar days from opening conference to citation issuance; average violations per inspections with violations (S/W/R and other-than-serious); average initial penalty per serious violation-private sector only; % of total inspections in the public sector; and % of 11(c) investigations completed within 90 days.</i>	We strongly recommend that VOSHA improve its performance with respect to the nine standards of the SAMM report that have not been met.
2	<i>State Indicator Report (SIR) standards were not met – private sector serious safety/health violations; private sector average penalty for other-than-serious safety/health violations; private sector safety inspections/100 hrs.; private sector penalty retention; % of violations reclassified; and % of penalty retention.</i>	We strongly recommend that VOSHA improve its performance with respect to the eight standards of the SIR report that have not been met.
3	<i>Based on statistical comparison of enforcement performance with other State Plans and Federal OSHA, VT's average violations per initial inspection and average current penalty per serious violation marked below the data for all State Plans and Federal OSHA.</i>	We recommend that VOSHA improve its performance with respect to the highlighted <i>[enforcement performance]</i> areas to come more into line with the Federal system.
4	<i>Case file deficiencies included absence of CSHO's field notes; inadequate documentation of abatement verification; and failure to document labor organization notification of the informal conference. The CSHOs were not meeting the FOM diary sheet requirements. Documents were not in the order established by Appendix C of ADM 03-01-005.</i>	We recommend that all VOSHA staff members review and follow Appendix C of ADM 03-01-005, which provides detailed information regarding "Inspection Case File Organization." This directive provides detailed instructions about which materials should appear on the left of the case file and which materials should appear on the right side of the file, and the specific order in which these documents should be placed.
5	<i>Case file review found that in several instances the OSHA-7 Complaint Form was not contained in the case files. A few files did not contain copies of the letter sent to the complainant advising of the outcome of the inspection.</i>	VOSHA must send all response letters to complainants advising them of the results of the inspections or investigations resulting from their complaints. In accordance with the FOM, the letters must include an appropriate response detailing the outcome of the inspection or investigation for each alleged complaint item.
6	Fatality investigation case files 1: <i>(A) Discussions between CSHOs and supervisors regarding investigations were not well documented.</i> <i>(B) The CSHO did not reconstruct the scene of the accident.</i> <i>(C) There was no evidence that an initial letter and a copy of the citations had been sent to the victim's family.</i>	(A) VOSHA must ensure that important discussions between CSHOs and supervisors regarding fatality investigations are documented in the case file diary sheet. (B) In addition to discussions between CSHOs and their supervisors, all information relevant to the fatality investigation must be documented in the case file diary sheet in accordance with the Field Operations Manual (FOM) (Chapter 5, Section X), which states that: "All case files shall contain an activity diary sheet, which is

	Findings	Recommendations
	<i>(Other finding: the CSHO assessed the probability "lesser" when it should have been rated "greater")</i>	designed to provide a ready record and summary of all actions relating to a case. It will be used to document important events or actions related to the case, especially those not noted elsewhere in the case file (C) VOSHA must adhere to the FOM, Chapter 11, Section II.G. that discusses the requirements to follow with regard to contact with families of victims during an inspection.
7	Fatality investigation case files 2: VOSHA cited the incorrect standard (cited 1910.26(c)(2)(iv) but should have cited 1910.26(c)(3)(i)), and the case file did not contain notes reconstructing the scene of the accident.	We recommend VOSHA review and follow the FOM, Chapter 11, Section II.E.2., which discusses potential items to be documented in the case file, such as how and why the incident occurred; the physical layout of the worksite; sketches/drawings; measurements; video/audio/photos to identify sources; and whether the accident was work-related.
8	VOSHA's average of 2.4 violations cited per initial inspection is below the Federal OSHA average of 3.1 violations.	VOSHA's average violations cited per inspection should increase to align with Federal OSHA's average of 3.1 per initial inspection.
9	Case file review revealed several hazard identification issues: all apparent violations were not cited or some [standards] were misclassified in the citations sent to the employer (p.28).	VOSHA should review the pictures taken by CSHOs more closely and do more research and also should train and network with appropriate staff throughout region to improve hazard recognition and referencing of the correct standards when hazards are identified.
10	We found that CSHOs grouped serious violations that should not have been grouped, which also reduces penalties. <i>Nine out of 137 (6.5%) serious violations were grouped as serious. Of these nine grouped citations, we found that four were grouped incorrectly.</i>	To group serious violations appropriately, VOSHA CSHOs must adhere to the guidelines established in the FOM for grouping. Chapter 4, Section X of the FOM lists the situations that normally call for grouping violations.
11	<i>The [case file] review revealed that, in a number of cases, the CSHOs did not correctly assess the gravity of the violation, and erred on the side of assessing lower probability and severity than warranted, thus reducing the overall penalties.</i>	VOSHA must ensure that CSHOs use penalty calculations that conform to the FOM. The minimum and maximum penalties are discussed in Chapter 6.II.C. and D, respectively. Section III discusses the four factors to take into consideration: 1) The gravity of the violation; 2) Size of the employer's business; 3) The good faith of the employer; and 4) The employer's history of previous violations. VOSHA staff should also review the Gravity-Based Penalty (GBP) section in the FOM, which is discussed in Chapter 6.III, sections 3, 4 and 5.
12	<i>[Case file reviews found that] a few violations were incorrectly classified as "other" rather than "serious."</i>	We recommend that VOSHA staff review Chapter 4, Section II of the FOM, which discusses the factors that determine whether a violation is to be classified as serious, and also Chapter 4, Section IV of the FOM, which discusses the factors that determine whether violations should be classified as other-than-serious.
13	Six of the case files involving unions did not contain any documentation to indicate that the union had been sent a copy of the citations. In addition, field notes , which likely contained the information obtained from the employees during interviews, were not kept in the files.	VOSHA should adhere to the FOM, Chapter 5, Section XI.B.2 by sending a notification to the unions of the citations sent to the employer and retaining a copy of such in the case file. In addition, VOSHA should review the FOM, Chapter 5, Section XII.A.2 regarding maintaining field notes in the official case files.
14	We found some cases which lacked sufficient evidence to legally support the standards cited or the actions taken by VOSHA to delete citations. In other cases, the CSHO cited the incorrect standard or assessed the	VOSHA must review and follow the FOM, Chapter 4 which discusses the evidence necessary to support violations.

	Findings	Recommendations
	penalties incorrectly.	
15	The data in SAMM #6 shows that VOSHA fell short of the goal of 100 percent for verifying S/W/R violations abated in a timely manner, with a year-end percentage of 93.81 in the private sector and 93.55 percent in the public sector.	We strongly recommend that VOSHA work harder to ensure timely abatement of serious, willful or repeat violations which helps ensure that workers are protected from injuries and illnesses.
16	Some of the case files we reviewed lacked proper evidence of abatement . (A)-(B) We found that 13 out of the 76 cases (17%) we reviewed did not contain adequate documentation of abatement. Some of these case files had been closed without any documentation of adequate proof of abatement. (C) In addition to providing written verification of hazard abatement, employers must also provide relevant "documents, plans and progress reports." In some cases, we noted that the file did not contain such documents, such as written hazard communication programs, evidence of training, and emergency action plans, that were required to be provided by the employer.	(A) VOSHA must adhere to the directives in Chapter 7 of the FOM, Section IV (b), which also states the "case file remains open throughout the inspection process and is not closed until the Agency is satisfied that abatement has occurred. If abatement was not completed, annotate the circumstances or reasons in the case file and enter the proper code in the IMIS." (B) VOSHA should also ensure that Chapter 7 of the FOM, Section XV is adhered to. This section states: "The closing of a case file without abatement certification(s) must be justified through a statement in the case file by the Area Director or his/her designee, addressing the reason for accepting each uncertified violation as an abated citation." (C) We recommend that VOSHA thoroughly review and adhere to Chapter 7 of OSHA's FOM on Abatement Documentation, particularly Section B, which relates to Adequacy of Abatement Documentation. As stated in that section, examples of documents that demonstrate that abatement is complete include "(a) copy of program documents if the citation was related to a missing or inadequate program, such as a deficiency in the employer's respirator or hazard communication program."
17	Some of the case files we reviewed lacked proper evidence of abatement . <i>Case files related with Petitions for Modification of Abatement (PMA) were missing the abatement completion date or interim protections to be followed during the PMA.</i>	VOSHA must also ensure that all documentation related to Petitions for Modification of Abatement (PMA) are contained in the relevant case files, such as copies of the petition itself, as well as VOSHA's approval (or denial) of the PMA, and any written objections by employees to the PMA. See Chapter 7 of the FOM, Section III for more information on PMAs.
18	There were a few cases in which the proper [informal conference] procedures were not followed (e.g., missing original citation following violation reclassification; inadequate documentation on the reason for citation deletion, on the informal settlement agreement or abatement; or held after the 20-day period).	(A) VOSHA should review and follow the FOM, Chapter 7, which discusses the procedures to follow for informal conferences and informal settlement agreements. It states that the informal conference will be conducted within the 20 calendar day contest period. In addition, this section discusses the requirement that an affected employee or his representative shall be given the opportunity to participate, and VOSHA must be sure to follow this direction. (B) The VOSHA supervisor who conducts the informal conference must be sure to document reasons for granting penalty reductions (and extended abatement dates) on the case file diary sheet.
19	<i>When we conducted the on-site review, VOSHA was in the process of having legal counsel establish a formal policy on debt collection procedures, and provided us with the draft "VOSHA Penalty Collection Protocol," currently being formalized.</i>	We advise VOSHA to follow through in establishing formal debt collection procedures based on those set forth in Chapter 6 of the FOM. State Plan programs must have "an effective debt collection mechanism in place" in accordance with the State Plan grant requirements established in OSHA Directive 09-02

	Findings	Recommendations
		(CSP-02). This debt collection mechanism must also be documented in the State Plan. VOSHA procedures, once finalized, should be sent to the regional office for approval and then will become part of VOSHA's State Plan.
20	<i>VOSHA has fallen behind in promulgation and adoption of new and revised Federal OSHA standards, due to the State's time-consuming rulemaking procedures. One of the effects of severe budgetary constraints has been to hold off on advertising some federal program changes (\$2,500/ad), which is a factor for the delay in some FPCs.</i>	We urge VOSHA to respond in a timely manner to FPCs and Federal Standard Actions.
21	VPP - Two SGEs participated on the IBM onsite on April 2-10, 2008 without having received approval from the SGE Coordinator.	VOSHA must request prior approval from the SGE Coordinator at the National Office to use SGE's on <i>Green Mountain (GM)</i> VPP onsite reviews.
22	The VPP onsite evaluation that involved the PSM standard was conducted on September 17-20, 2007, although none of the seven team members had received PSM Level 1 auditor training.	VOSHA must have at least one CSHO trained in PSM to ensure compliance with the PSM Standard.
23	Our review found that the PSM questionnaire was not sent to the VOSHA VPP site covered under the PSM standard.	VOSHA must send the PSM questionnaires for completion by the VPP site covered under PSM for completion and must be included in the site's 2009 annual self-evaluation.
24	Effective April 18, 2008, CSP 03-01-003 modifies procedures for VPP onsite evaluations. Review of the GMVPP files we found discrepancies related to Medical Access Orders (MAOs), final reports containing 90-day items, abatement verification or documentation.	VOSHA should use the revised report format for initial and recertification VPP onsite evaluations.
25	VOSHA staff are required to enter an OSHA 55 intervention form for each VPP onsite evaluation that is conducted. Staff must also enter the OSHA form 31 timesheet into IMIS. We found that the team leader has entered a 55 intervention for each of the sites evaluated.	VOSHA must ensure that staff enter their weekly activity on the OSHA form 31 timesheets. The OSHA 55 intervention form should be incorporated into the OSHA form 31 when appropriate.
26	The GMVPP manager verbally accepts the application and schedules the onsite within two months at the convenience of the applicant. Files were lacking in that they did not contain the dates the applications were received and accepted.	VOSHA should ensure that GMVPP files contain the date the application was received and the date the application was accepted. In addition, VOSHA should send a letter to the applicant acknowledging receipt of the VPP application.
27	The VPP records are located on the VPP program manager's personal drive.	All of the GMVPP electronic documents must be placed on the "S" (public) drive to allow access to management in the Montpelier office in the event of a public request.
28	Some [discrimination] files had detailed phone logs, and others did not contain any phone log. The OSHA Form 87 (or the IMIS Case Activity Worksheet) was not found in some of the files. In addition, copies of notification letters and closing letters to the complainant and respondent were not included in some of the case files.	VOSHA must assemble discrimination case files in an orderly fashion and in accordance with OSHA's Discrimination Manual, Chapter 5.III.B.1, which includes a Case Activity Worksheet, or OSHA 87 and notification and closing letters to the parties. In addition, an activity/telephone log must be accurately documented with telephone calls and significant events that occur with respect to the case.
29	Some CSHOs have exceeded the time frame of three years from date of hire to complete all courses required under TED 01-00-018.	Since some of the program's CSHOs have not met this timeframe, the VOSHA director should ensure that all staff complete their remaining courses as soon as possible.

Issues identified with informal suggestions

	Findings	Recommendations
1	<p>VOSHA did not adopt the longshoring and marine terminal standard because there is no maritime industry in the state. However, according to the IMIS and as a result of further research on Maritime enforcement, we found that Vermont may in fact have sites subject to Section 29 CFR 1915 and 1917 (p. 48).</p>	<p>VOSHA must reevaluate the need to adopt the longshoring and marine terminal standard and advise the region of its findings.</p>
2	<p>VOSHA was using OSHA-1 inspection numbers to assign a case number to 11(c) cases and also was filing the 11(c) complaint on an OSHA-7 complaint form (p. 61).</p>	<p>VOSHA management and investigators were informed <i>that safety and health inspection forms have a separate purpose from 11(c) forms</i>, and were instructed not to use the OSHA-1 and the OSHA-7 forms for 11(c) complaints. Following this practice will avoid duplication of files.</p> <p>In addition, in writing up the final analysis in a case, listing the elements separately will help ensure that all required elements are covered.</p>

APPENDIX B

Vermont State Plan (VOSHA) FY 2009 Enforcement Activity

	Vermont	State Plan Total	Federal OSHA
Total Inspections	366	61,016	39,004
Safety	275	48,002	33,221
<i>% Safety</i>	75%	79%	85%
Health	91	13,014	5,783
<i>% Health</i>	25%	21%	15%
Construction	193	26,103	23,935
<i>% Construction</i>	53%	43%	61%
Public Sector	36	7,749	N/A
<i>% Public Sector</i>	10%	13%	N/A
Programmed	247	39,538	24,316
<i>% Programmed</i>	67%	65%	62%
Complaint	62	8,573	6,661
<i>% Complaint</i>	17%	14%	17%
Accident	2	3,098	836
Insp w/ Viols Cited	294	37,978	27,165
<i>% Insp w/ Viols Cited (NIC)</i>	80%	62%	70%
<i>% NIC w/ Serious Violations</i>	75%	62%	87%
Total Violations	727	129,363	87,663
Serious	476	55,309	67,668
<i>% Serious</i>	65%	43%	77%
Willful	5	171	401
Repeat	13	2,040	2,762
Serious/Willful/Repeat	494	57,520	70,831
<i>% S/W/R</i>	70%	44%	81%
Failure to Abate	-	494	207
Other than Serious	233	71,336	16,615
<i>% Other</i>	32%	55%	19%
Avg # Violations/ Initial Inspection	2.4	3.3	3.1
Total Penalties	\$ 484,819	\$ 60,556,670	\$ 96,254,766
Avg Current Penalty / Serious Violation	\$ 592.00	\$ 800.40	\$ 970.20
Avg Current Penalty / Serious Viol- Private Sector Only	\$ 597.50	\$ 934.70	\$ 977.50
<i>% Penalty Reduced</i>	44.3%	51.9%	43.7%
% Insp w/ Contested Viols	1.6%	13.0%	7.0%
Avg Case Hrs/Insp- Safety	15.7	15.7	17.7
Avg Case Hrs/Insp- Health	31.9	26.6	33.1
Lapse Days Insp to Citation Issued- Safety	23.6	31.6	34.3
Lapse Days Insp to Citation Issued- Health	44.2	40.3	46.7
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	31	2,010	2,234

APPENDIX C

FY 2009 State OSHA Annual Report (SOAR)

[Available separately]

APPENDIX D

FY 2009 State Activities Mandated Measures (SMM)

U. S. DEPARTMENT OF LABOR
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

FEB 08, 2010
 PAGE 1 OF 2

State: VERMONT

RID: 0155010

MEASURE	From: 10/01/2008		CURRENT	REFERENCE/STANDARD
	To: 09/30/2009		FY-TO-DATE	
1. Average number of days to initiate Complaint Inspections	261 4.42 59		335 15.95 21	Negotiated fixed number for each State
2. Average number of days to initiate Complaint Investigations	13 .81 16		2 1.00 2	Negotiated fixed number for each State
3. Percent of Complaints where Complainants were notified on time	61 100.00 61		23 100.00 23	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	2 66.67 3		0 0 0	100%
5. Number of Denials where entry not obtained	0		0	0
6. Percent of S/W/R Violations verified				
Private	394 93.81 420		74 98.67 75	100%
Public	29 93.55 31		1 20.00 5	100%
7. Average number of calendar days from Opening Conference to Citation Issue				
Safety	7307 32.04 228		2020 32.58 62	2491324 43.8 56931 National Data (1 year)

Health

4629	1164	694117
60.11	55.42	57.4
77	21	12096

National Data (1_year)

*SAMMVAN

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

U. S. DEPARTMENT OF LABOR
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMS)

FEB 08, 2010
 PAGE 2 OF 2

State: VERMONT

RID: 0155010

MEASURE	From: 10/01/2008		CURRENT		REFERENCE/STANDARD
	To: 09/30/2009		FY-TO-DATE		
8. Percent of Programmed Inspections with S/W/R Violations					
	153		35	92288	
Safety	76.12		63.64	58.5	National Data (3 years)
	201		55	157825	
	24		4	11005	
Health	54.55		44.44	51.1	National Data (3 years)
	44		9	21545	
9. Average Violations per Inspection with Violations					
	533		146	420882	
S/W/R	1.74		1.75	2.1	National Data (3 years)
	305		83	201239	
	219		58	243623	
Other	.71		.69	1.2	National Data (3 years)
	305		83	201239	
10. Average Initial Penalty per Serious Violation (Private Sector Only)					
	393238		136291	493118722	
	833.13		1024.74	1336.7	National Data (3 years)
	472		133	368917	
11. Percent of Total Inspections in Public Sector					
	36		4	126	
	9.78		4.12	11.4	Data for this State (3 years)
	368		97	1110	
12. Average lapse time from receipt of Contest to first level decision					
	0		0	4373918	
				240.9	National Data (3 years)
	0		0	18160	
13. Percent of 11c Investigations Completed within 90 days					
	5		0	100%	
	50.00				
	10		0		
14. Percent of 11c Complaints that are					
	3		0	1476	

Meritorious	30.00	0	20.8	National Data (3 years)
	10	0	7083	
15. Percent of Meritorious 11c Complaints that are Settled	3	0	1269	
	100.00	0	86.0	National Data (3 years)
	3	0	1476	

*SAMMVAN

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

APPENDIX E

FY 2009 State Indicator Report (SIR)

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2009

INTERIM STATE INDICATOR REPORT (SIR)

STATE = VERMONT

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
1. PROGRAMMED INSPECTIONS (%)								
A. SAFETY	6212	42	11892	105	21855	184	42572	320
	67.3	76.4	67.5	73.9	66.8	74.8	65.2	67.5
	9230	55	17617	142	32713	246	65304	474
B. HEALTH	508	3	1004	14	1963	38	3678	62
	34.5	20.0	34.1	35.9	35.3	45.8	34.0	34.1
	1471	15	2946	39	5559	83	10829	182
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	4645	50	8997	92	16745	160	32019	278
	67.7	92.6	65.9	86.8	65.8	87.0	65.9	80.1
	6860	54	13654	106	25453	184	48603	347
B. HEALTH	368	6	746	18	1486	34	2884	57
	52.2	66.7	50.8	81.8	51.7	79.1	55.6	81.4
	705	9	1468	22	2873	43	5187	70
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	15510	102	29490	185	56535	359	111717	613
	81.8	76.1	81.1	70.9	80.0	73.4	79.4	71.5
	18952	134	36371	261	70692	489	140747	857
B. HEALTH	2802	17	5343	29	10035	83	19393	131
	70.1	40.5	69.9	33.3	69.7	45.9	67.7	42.5
	4000	42	7645	87	14395	181	28659	308
4. ABATEMENT PERIOD FOR VIOLS								
A. SAFETY PERCENT >30 DAYS	2938	22	5782	42	12109	55	25516	64
	15.9	17.6	16.2	19.1	17.6	12.6	18.7	8.6
	18492	125	35597	220	68607	436	136812	748
B. HEALTH PERCENT >60 DAYS	256	0	577	2	1452	5	3111	7
	6.3	.0	7.5	5.3	10.0	4.7	10.9	4.2
	4078	23	7720	38	14561	107	28488	166

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2009

INTERIM STATE INDICATOR REPORT (SIR)

STATE = VERMONT

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
5. AVERAGE PENALTY								
A. SAFETY								
	280876	900	628826	900	1303857	1925	2663433	4500
OTHER--THAN--SERIOUS	923.9	900.0	998.1	900.0	1030.7	641.7	1049.4	500.0
	304	1	630	1	1265	3	2538	9
B. HEALTH								
	83100	450	142950	450	294225	450	654830	1800
OTHER--THAN--SERIOUS	799.0	450.0	803.1	450.0	855.3	450.0	867.3	450.0
	104	1	178	1	344	1	755	4
6. INSPECTIONS PER 100 HOURS								
A. SAFETY								
	10459	67	19991	171	37160	282	73338	544
	6.1	2.8	5.7	3.3	5.5	2.9	5.3	3.0
	1722	24	3533	52	6727	96	13759	180
B. HEALTH								
	1764	26	3581	50	6701	98	12705	209
	1.8	1.6	1.7	1.4	1.6	1.4	1.5	1.5
	994	16	2112	35	4125	70	8503	139
7. VIOLATIONS VACATED %								
	1278	3	2561	13	5139	28	10097	49
	4.9	1.4	5.0	3.1	5.1	3.6	5.0	3.5
	26336	212	51387	414	100187	787	201495	1393
8. VIOLATIONS RECLASSIFIED %								
	1130	7	2440	12	4798	23	9539	43
	4.3	3.3	4.7	2.9	4.8	2.9	4.7	3.1
	26336	212	51387	414	100187	787	201495	1393
9. PENALTY RETENTION %								
	13523966	45450	27149245	102764	54889469	197589	111585445	351510
	63.4	55.2	62.9	55.7	63.2	56.8	62.9	54.4
	21315664	82272	43130384	184583	86796382	348058	177346966	645692

U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2009

INTERIM STATE INDICATOR REPORT

STATE = VERMONT

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC
D. ENFORCEMENT (PUBLIC SECTOR)								
1. PROGRAMMED INSPECTIONS %								
A. SAFETY	42 76.4 55	8 88.9 9	105 73.9 142	20 87.0 23	184 74.8 246	21 75.0 28	320 67.5 474	35 71.4 49
B. HEALTH	3 20.0 15	4 57.1 7	14 35.9 39	4 57.1 7	38 45.8 83	4 50.0 8	62 34.1 182	4 22.2 18
2. SERIOUS VIOLATIONS (%)								
A. SAFETY	102 76.1 134	34 82.9 41	185 70.9 261	36 83.7 43	359 73.4 489	37 75.5 49	613 71.5 857	63 71.6 88
B. HEALTH	17 40.5 42	1 33.3 3	29 33.3 87	1 33.3 3	83 45.9 181	2 50.0 4	131 42.5 308	5 41.7 12

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2009

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = VERMONT

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
E. REVIEW PROCEDURES								
1. VIOLATIONS VACATED %	446	0	875	0	1756	0	3749	0
	22.8	.0	24.2	.0	23.4	.0	24.1	.0
	1956	4	3609	4	7506	4	15528	4
2. VIOLATIONS RECLASSIFIED %	282	3	563	3	1133	3	2274	3
	14.4	75.0	15.6	75.0	15.1	75.0	14.6	75.0
	1956	4	3609	4	7506	4	15528	4
3. PENALTY RETENTION %	2319074	13575	4080249	13575	10792902	13575	20045599	13575
	54.1	45.1	51.5	45.1	58.5	45.1	55.9	45.1
	4286744	30075	7922126	30075	18457526	30075	35865959	30075

APPENDIX F

FY 2009 Mandated Activities Report (MARC)

CCNOMARC
DOL-OSHA-OMDS
(RSCCOVER)

U. S. D E P A R T M E N T O F L A B O R
O C C U P A T I O N A L S A F E T Y A N D H E A L T H A D M I N I S T R A T I O N
C O N S U L T A T I O N R E P O R T

12/10/09

KEEP THIS PAGE WITH THIS REPORT.
IT CONTAINS IMPORTANT INFORMATION ABOUT
THE WAY CASES WERE SELECTED

TYPE OF REPORT: MANDATE ACTIVITIES

USER SELECTION NAME: MARCVT23

REQUESTOR: OSH20104

***** SELECTION CRITERIA *****

FISCAL YEAR: 2009

QUARTER: 4

OWNERSHIP: PUBLIC

REGION: 01 AREA: 950 DISTRICT:

PRINT OPTION: Y

PROJECT NAME: Vermont PUBLIC SECTOR

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
TOTAL VISITS	3	27	
1. Percent of Initial Visits in High Hazard Establishments			Not Less than 90%
Number High Hazard Visits	1	14	
Percent	100.00	93.33	
Number of Initial Visits	1	15	
2. Percent of Initial Visits to Smaller Businesses			Not Less than 90%
Initial Visits	1	15	
Visits <= 250 Employees in Estab	1	14	
Percent	100.00	93.33	
Visits <= 500 Employees CB by Empr	1	14	
Percent	100.00	93.33	
3. Percent of Visits where Consultant Conferred with Employees			100%
Initial			
Number with Empe Conferences	1	15	
Percent	100.00	100.00	
Number of Initial Visits	1	15	
Follow-Up	0	0	
Number with Empe Conferences			
Percent	0	0	
Number of Follow-Up Visits			
Training & Assistance Visits with Compliance Assistance ONLY			
Number with Empe Conferences	0	0	
Percent			
Number of T&A Visits	0	0	

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

PROJECT NAME: Vermont PUBLIC SECTOR

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
4A Thru 4D based on Closed Cases ONLY			
4A. Percent of Serious Hazards Verified Corrected in a Timely Manner (<=14 Days of Latest Correction Due Date)			100%
Number Verified Timely	57	182	
Percent	100.00	100.00	
Total Serious Hazards	57	182	
Number of Serious Hazards Verified Corrected:	57	182	
On-Site	0	0	
Within Original Time Frame	46	112	
Within Extension Time Frame	11	70	
Within 14 Days of Latest Correction Due Date	0	0	
4B. Percent of Serious Hazards NOT Verified Corrected in a Timely Manner (> 14 days after Latest Correction Due Date)			
Number NOT Verified Timely	0	0	
Percent	.00	.00	
Total Serious Hazards	57	182	
4C. Percent of Serious Hazards Referred to Enforcement			
Number Referred to Enforcement	0	0	
Percent	.00	.00	
Total Serious Hazards	57	182	
4D. PERCENT OF SERIOUS HAZARDS VERIFIED CORRECTED (IN ORIGINAL TIME OR ONSITE)			65%
NUMBER VERIFIED	46	112	
Percent	80.70	61.54	
Total Serious Hazards	57	182	

Number of Serious Hazards Verified CORRECTED (IN ORIGINAL TIME OR ONSITE)	46	112	
On-Site	0	0	
Within Original Time Frame	46	112	
5. Number of Uncorrected Serious Hazards with Correction Date > 90 Days Past Due (Open Cases for last 3 Years, excluding Current Quarter)			0

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION