

Appendix B
FY 2010 Vermont Occupational Safety and Health Administration (VOSHA) EFAME Follow-up Report
Prepared by Region I
Status of FY2009 EFAME Findings and Recommendations

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-1	<p>Nine State Activities Mandated Measures (SAMM) were not met: SAMM#4—Percent of complaints/referrals responded to within 1 day (imminent danger); SAMM #6—Percent of S/W/R violations verified; •SAMM#7—Avg. number of calendar days from opening conference to citation issuance (health); ◆SAMM#9—Avg. violations per inspection with S/W/R and Other-than-Serious violations; SAMM#10—Avg. initial penalty per serious violations (private sector); SAMM#11—Percent of total inspections in the public sector; and SAMM#13—Percentage of 11(c) investigations completed within 90 days</p>	<p>Improve performance on all SAMM measures that were not met. By the end of FY2011, VOSHA will have met <i>all</i> SAMM measures</p>	<p>Run monthly SAMM reports to monitor performance; implement a system for tracking employer progress in abating violations; and conduct staff training on the FOM, Chapter 4 (Violations) and Chapter 6 (Penalties).</p>	<p>All corrective actions have been completed and are ongoing.</p>	<p>This finding is pending correction.</p>

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- Since SAMM #7 pertains to both safety and health inspections, *it encompasses two measures*
 - ◆ Since SAMM#9 pertains to both S/W/R violations and other-than-serious violations, *it encompasses two measures.*

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09-2	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.	Improve performance on all SIR measures not met. By the end of FY2011, VOSHA will have met <i>all</i> SIR measures.	Review the SIR quarterly to monitor performance; conduct staff training on the FOM, Chapter 4 (Violations) and Chapter 6 (Penalties).	Completed/ongoing.	This finding is pending correction.
09-#3	Average Violations per Initial Inspection/Average Current Penalty per Serious Violation — 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.	Improve performance to align more closely with Federal OSHA's averages.	Ensure that all penalties are assessed in accordance with Chapter 6 of the FOM; managers will closely review probability and severity assessments before all citations are issued; and run IMIS to monitor performance (monthly).	Completed/ongoing.	Average Violations per Initial Inspection— This finding is pending correction. Average Current Penalty per Serious Violation— This finding is pending correction.

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09-#4	Case file deficiencies —Case files were found to have the following deficiencies: absence of CSHOs’ field notes; inadequate documentation of abatement verification; and failure to document labor organization notification of the informal conference. Also, the CSHOs were not meeting the FOM diary sheet requirements and documents were not in the order established by Appendix C of ADM 03-01-005.	VOSHA staff members must review and follow Appendix C of ADM 03-01-005, OSHA’s guidance on case file organization.	Management will use case file review check list and review all case files.	Completed/ongoing.	This finding was corrected.
09-#5	Complaint documents —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.	VOSHA must include the OSHA-7 form in the case files and send response letters to complainants.	Management will use the case file review check list and review all case files.	Completed/ongoing.	This finding was corrected.
09-#6	Fatality Investigations —Discussions between CSHOs and supervisors were not well documented; the CSHO did not reconstruct the accident scene; and there was no evidence that an initial letter and a copy of the citations had been sent to the victim’s next of kin.	Ensure that: important discussions between CSHOs and supervisors are well documented; all information relevant to the fatality investigation is documented in the case file diary sheet; and families of victims are contacted in accordance with the FOM, Chapter 11.	Managers will conduct an extensive review of the FOM, Chapter 11, Imminent Danger, Fatality, Catastrophe and Emergency Response; managers will review CPL-02-00-137 (Fatality/Catastrophe Investigation Procedures).	Completed/ongoing.	This finding was corrected.

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09-#7	Incorrect standards —VOSHA cited the incorrect standard (cited 1910.26(c) (2) (iv) but should have cited 1910.26(c) (3) (i)), and the [fatality] case file did not contain notes reconstructing the scene of the accident.	Review and follow the FOM, Chapter 11, Section II.E.2., which discusses potential items to be documented in the case file	Managers and staff will review of the FOM, Chapter 11, Imminent Danger, Fatality, Catastrophe and Emergency Response and management will ensure compliance with FOM requirements.	Completed/ongoing.	This finding was corrected.
09-#8	Average Number of Violations Cited per Initial Inspection —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.	Run monthly SAMM reports to monitor performance; implement a system for tracking employer progress in abating violations; and conduct staff training on the FOM, Chapter 4 (Violations) and Chapter 6 (Penalties).	Completed/ongoing.	This finding is pending correction.
09-#9	Hazard identification issues —The case file review revealed that all apparent violations were not cited or some [standards] were misclassified in the citations sent to the employer.	Management should review the pictures taken by CSHOs more closely; CHSOs should network with appropriate staff throughout region to improve hazard recognition.	VOSHA will devote a portion of monthly staff meetings to training on standards and hazard recognition.	Completed/ongoing.	This finding was corrected.
09-#10	Grouping violations —CSHOs grouped serious violations that should not have been grouped, which also reduces penalties.	CSHOs must adhere to Chapter 4, Section X of the FOM which lists the situations that normally call for grouping violations.	Conduct staff training on Chapter 4 of the FOM.	Completed/ongoing.	This finding was corrected.
09-#11	Gravity/probability assessments —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.	CSHOs should review and adhere to Chapter 6 of the FOM, which discusses gravity based penalties.	Conduct staff training on Chapter 4 of the FOM (Violations) and Chapter 6 (Penalties) of the FOM.	Completed/ongoing.	This finding is pending correction.

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09- #12	Violation classification —A few violations were incorrectly classified as “other” rather than “serious.”	VOSHA staff should review Chapter 4 of the FOM, which discusses the factors that determine whether a violation is to be classified as serious or other-than-serious.	Conduct training on the FOM, Chapter 4 (Violations).	Completed/ongoing	This finding was corrected.
09- #13	Copies of citations —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.	VOSHA should adhere to the FOM, Chapter 5, Case File Preparation.	VOSHA will conduct staff training on the FOM, Chapter 5, Case File Preparation.	Completed/ongoing.	This finding is pending correction.
09- #14	Evidence of violations —Some cases 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.	VOSHA must review and follow the FOM, Chapter 4, which discusses the evidence necessary to support violations.	Train staff on Chapter 4 of the FOM.	Completed/ongoing.	This finding is pending correction.
09- #15	SAMM#6—Percent of S/W/R Violations Verified Timely —VOSHA did not meet the standard of 100 percent.	Meet the standard to help ensure that workers are protected from hazards that have been identified.	Run monthly SAMM reports to monitor performance; implement a system for tracking employer progress in abating violations; and conduct staff training on the FOM, Chapter 4 (Violations) and Chapter 6 (Penalties).	Completed/ongoing.	This finding is pending correction.

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09- #16	Evidence of abatement — Some of the case files we reviewed lacked proper evidence of abatement.	VOSHA must thoroughly review and adhere to Chapter 7 of the FOM on Abatement Verification.	Management will review Chapter 7 of the FOM; implement a system for tracking employer progress in abating violations; and cite employers who do not provide adequate documentation under 1903.19 (c).—	Completed/ongoing; VOSHA has not had to cite any employers under 1903.19(c).	This finding was corrected.
09- #17	Petitions for Modification of Abatement (PMAs) documentation — Case files with PMAs were missing the abatement completion date or interim protections to be followed during the PMA.	Ensure that all documentation related to PMAs are contained in the relevant case files.	Develop a system for tracking PMA deadlines, and review all case files to ensure that they contain all documentation related to PMAs (where appropriate).	Completed/ongoing	This finding was corrected.
09- #18	Informal conference documentation —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 15-day period).	(A) Managers should review and follow the FOM, Chapter 7, which discusses informal conference procedures. (B) The VOSHA supervisor must be sure to document reasons for granting penalty reductions (and extended abatement dates) on the case file diary sheet.	Managers will: review Chapter 7 of the FOM; ensure that all procedures informal conference procedures are properly followed.	Completed/ongoing	This finding was corrected.
09- #19	Debt Collection Procedures — VOSHA had not established formal debt collection procedures.	VOSHA must follow through on establishing formal debt collection procedures based on those set forth in Chapter 6 of the FOM.	Develop and establish formal debt collection procedures.	Completed.	This finding was corrected.

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09- #20	Adoption of Standards — VOSHA has fallen behind in promulgation and adoption of new and revised Federal OSHA standards, due to the State’s time-consuming rulemaking procedures.	VOSHA must respond in a timely manner to FPCs and Federal Standard Actions	The VOSHA Director will begin the rulemaking process upon notification that a final rule has been promulgated by OSHA. VOSHA will notify the Regional Office within three days of when the rule has been submitted to the Secretary of State.— <i>Completed/ongoing</i>	Completed/ongoing.	This finding was corrected.
09- #21	Green Mountain VPP (GMVPP) (Obtaining permission to use Special Government Employees (SGEs)) — 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 SGEs on GM VPP onsite reviews.	Implement recommendation.	Completed.	This finding was corrected.
09- #22	Process Safety Management (PSM) Training —The GMVPP onsite evaluation that involved the PSM standard was conducted, 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.	VOSHA has enrolled one CSHO in all three of the PSM courses prescribed by the OSHA Training Institute. This CSHO will complete all of these courses in FY2011.	Completed.	This finding was corrected.
09- #23	PSM Questionnaires —The PSM questionnaire was not sent to the VOSHA GMVPP site covered under the PSM standard.	VOSHA must send the PSM questionnaires for completion by the VPP site covered under PSM for completion. These questionnaires must be included in the site’s 2009 annual self-evaluation.	Implement recommendation.	Completed.	This finding was corrected.

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09- #24	Medical Access Orders (MAOs) — Effective April 18, 2008, CSP 03-01-003 modifies procedures for VPP onsite evaluations. A 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.	VOSHA will use CSP 03-01-003 when performing all activities associated with GMVPP. Each file will have a copy of the MAO and the State will require that all 90 day items are corrected before approval is granted.	Completed/ongoing.	This finding was corrected.
09- #25	OSHA 55 Intervention Form — VOSHA CSHOs are required to enter an OSHA 55 intervention form for each GMVPP onsite evaluation that is conducted. Staff must also enter the OSHA form 31 timesheet into IMIS.	Ensure that all CSHOs 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.	Implement recommendation.	Completed.	This finding was corrected.
09- #26	GMVPP Files —The GMVPP manager verbally accepts the application and schedules the onsite within two months at the convenience of the applicant. Files did not contain the dates the applications were received and accepted.	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.	Implement recommendation.	Completed.	This finding was corrected.
09- #27	GMVPP Records —The GMVPP records are located on the GMVPP 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.	Implement recommendation.	Completed.	This finding was corrected.

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09- #28	Discrimination Files — Some files 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 <i>were</i> not included in some of the case files.	VOSHA must assemble discrimination case files in accordance with OSHA’s Discrimination Manual, Chapter 5.III.B.1.	Management and Whistleblower staff will complete a review of OSHA’s Discrimination Manual and files will be maintained accordingly.	Completed.	This finding was corrected.

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09- #29	CSHO training — Some CSHOs have exceeded the time frame of three years from date of hire to complete all courses required under TED 01-00-018.	CSHOs must complete the required training as soon as possible.	VOSHA staff members will be scheduled to attend the #1310 Investigative Interviewing Techniques by January 14, 2011. On December 1, 2010, VOSHA submitted a request to the Regional Administrator to hold course #2450 in Vermont. <i>(CSHOs have been enrolled in Course #1310, but no response has been received from OTI regarding Course #1250.)</i>	Partially completed. CSHOs have been enrolled in Course #1310, but no response has been received from OTI regarding Course #1250.	This finding is pending correction.
	•Longshoring and Marine Terminal Standard — VOSHA did not adopt the longshoring and marine terminal standard because there is no maritime industry in the state. However, upon further research, it was found that Vermont has sites subject to Section 29 CFR 1915 and 1917.	VOSHA must reevaluate the need to adopt the longshoring and marine terminal standard and advise the region of its findings.	VOSHA plans to adopt this standard by May 1, 2011.	Partially completed. VOSHA has begun the standard adoption process.	This finding is pending completion.
	•Use of Appropriate Forms — 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.	Use forms that are appropriate for 11(c) cases.	VOSHA has discontinued using safety and health inspection forms for Discrimination cases and will follow the directions in the Discrimination Manual.	Completed.	This finding was corrected.

• Issues identified with informal suggestions.