

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

**Virginia Occupational Safety and Health Program**

**October 1, 2010 to September 30, 2011**

**Date of Report**

**March 27, 2012**



**Occupational Safety  
and Health Administration**

U. S. Department of Labor  
Region III  
Philadelphia, Pennsylvania

## Table of Contents

<b>I.</b>	<b>Executive Summary</b>	
A.	Summary of the Report.....	3
B.	State Plan Introduction.....	3
C.	Data and Methodology.....	6
D.	Findings and Recommendations.....	10
<b>II.</b>	<b>Major New Issues</b> .....	11
<b>III.</b>	<b>State Response to FY 2010 FAME Recommendations</b> .....	11
<b>IV.</b>	<b>Assessment of State Performance of Mandated Activities</b> .....	18
A.	Enforcement .....	18
B.	Review Procedures .....	30
C.	Standards and Federal Program Changes Adoption .....	32
D.	Variances .....	34
E.	Public Employee Program .....	34
F.	Discrimination Program – Special Study .....	35
G.	CASPAs .....	36
H.	Voluntary Compliance Programs .....	36
I.	Public Sector On-site Consultation Program .....	38
J.	Program Administration .....	39
<b>V.</b>	<b>Assessment of State Progress in Achieving Annual Performance Goals (SOAR)</b>	43
 <b>Appendices</b>		
Appendix A	FY 2011 Findings and Recommendations	47
Appendix B	Status of State Actions in Response to FY 2010 EFAME Follow-up Recommendations	48
Appendix C	Enforcement Comparison	51
Appendix D	FY 2011 State Activity Mandated Measures (SAMM) Report	52
Appendix E	FY 2011 State Indicator Report (SIR)	54
Appendix F	FY 2011 State Annual Report (SOAR)	57
Appendix G	FY 2011 23(g) Consultation Data	58
Appendix H	FY 2011 Outreach and Compliance Assistance Activities	59

## **I. Executive Summary**

### **A. Summary of the Report**

The Federal Annual Monitoring and Evaluation (FAME) Report for Fiscal Year (FY) 2011 focused on monitoring and evaluation activities regarding the findings and recommendations detailed in Virginia Occupational Safety and Health (VOSH) responses to the FY 2009 Enhanced Federal Annual Monitoring and Evaluation Report (EFAME), and the Corrective Action Plan (CAP) implemented by VOSH subsequent to the FY 2010 EFAME follow-up report. VOSH's progress in achieving the actions as specified in their approved CAP was evaluated by conducting comprehensive case file reviews.

The VOSH CAP regarding FY 2009 EFAME findings and recommendations were implemented during the First Quarter of FY 2011, with the majority of the corrective actions to be fully implemented beginning February 2011. Federal monitors periodically met with 23(g) Enforcement Program Directors during this evaluation period to determine the ongoing progress of the CAP.

The FY 2009 Virginia EFAME report contained eighteen (18) original findings and recommendations. In its formal response to the EFAME and CAP, Virginia noted that the majority of the deficiencies identified in the report were largely procedural, were often based on only a few instances, were geographically limited to one or two of the four regions, and had no impact on program effectiveness. Two (2) of the eighteen (18) findings were deleted by Federal Occupational Safety and Health Administration (OSHA) based upon further information provided by VOSH.

This report also addresses VOSH's progress towards achieving their annual performance goals as established in their FY 2011 Annual Performance Plan as well as the effectiveness of their five-year strategic plan, 2007-2012. Through effective resource utilization, partnership development, outreach activities, and an overall commitment to performance goal achievements, the majority of goals have been met or exceeded. The primary goal of VOSH's strategic plan is to reduce occupational injuries, illnesses and fatalities through direct intervention. This primary goal has been met as indicated by the steady decrease in workplace fatalities for the last six (6) calendar years. In 2005 there were sixty-four (64) workplace fatalities; in FY 2011 there were twenty-seven (27) reported fatalities that warranted an on-site investigation. VOSH excludes in the recording of workplace fatalities those that were the result of heart attacks and similar non-work causing factors, fatalities that occurred in Virginia but not in VOSH's jurisdiction, and those that involved a sole proprietor.

### **B. State Plan Introduction**

Virginia's Department of Labor and Industry is the State agency designated by the Governor to administer the Virginia Occupational Safety and Health Plan. The VOSH State Plan was approved on September 8, 1976, pursuant to Section 18 of the Occupational Safety and Health Act. The Plan achieved operational status on October 1, 1981. Under Virginia's State Plan, VOSH has jurisdiction over 3.4 million employees in approximately 223,000 establishments. The Virginia State Plan applies to all public and private sector places of employment in the state, with the exception of federal employees, the United States Postal Service, private sector maritime, federal military facilities, and other federal enclaves where the state has ceded jurisdiction to the federal government. On August 21, 1984, a Notice was published in the Federal Register certifying that the State had completed all developmental commitments contained in the Plan. Final approval of the Virginia State Plan was published in the Federal Register on November 30, 1988.

<b>PROFILE OF THE VIRGINIA STATE PLAN (FY 2011)</b>				
<b>Designee</b>	Courtney Malveaux, Commissioner (as of 4/12/2010) Virginia Department of Labor and Industry Powers-Taylor Building 13 S. Thirteenth Street Richmond, Virginia 23219-4101			
<b>Plan Approved</b>	September 8, 1976			
<b>Final Approval</b>	November 30, 1988			
<b>Operational Status Agreement</b>	October 1, 1981			
<b>Plan Certified</b>	August 21, 1984			
<b>FY 2011 Funding</b>	<i>Federal</i>	\$3,319,800		
	<i>State</i>	\$3,319,800		
	<b>TOTAL</b>	<b>\$6,629,600</b>		
<b>Source of State Funding</b>	General fund			
<b>Compliance Officers</b>	38 safety/19.88 health (allocated)			
	30 safety/15.88 health (on-board as of 8/14/2010)			
<b>Public Sector Consultants</b>	.20 safety/1.60 health (allocated)			
	.20 safety/.60 health (on board as of 8/14/2010)			
<b>Compliance Assistance</b>	1.0 CAS (allocated)			
	1.0 (on board as of 8/14/2010)			
<b>FY 2011 Inspections</b>		<i>Goal</i>	<i>Actual</i>	<i>Percent Complete</i>
	<i>Safety</i>	2950	2407	82%
	<i>Health</i>	775	811	105%
	<b>TOTAL</b>	<b>3725</b>	<b>3218</b>	<b>86%</b>
<b>FY 2011 Public Sector Consultation Visits</b>		<i>Goal</i>	<i>Actual</i>	<i>Percent Complete</i>
	<i>Safety</i>	10	6	73%
	<i>Health</i>	5	5	100%
	<b>TOTAL</b>	<b>15</b>	<b>11</b>	<b>73%</b>
<b>Covered workers</b>	3.4 million			
<b>Covered Establishments</b>	223,000			
<b>Coverage</b>	Public and private sector places of employment in the state, with the exception of federal employees, the United States Postal Service, private sector maritime, federal military facilities, and other federal enclaves where the state has ceded jurisdiction to the federal government			

During this evaluation period, the VOSH program conducted 3,218 inspections in the private and public sectors. These inspections resulted in 5,060 violations being issued, of which 3,052 were classified as serious, willful, or repeat for a S/W/R rate of 60%.

The Virginia Department of Labor and Industry, headquartered in Richmond, consists of separate program groups with representatives stationed in different regional and field offices located in Abingdon, Lynchburg, Manassas, Norfolk, Richmond, Roanoke, and Verona. Due to budgetary constraints, the

Winchester Office was closed during this evaluation period. The compliance personnel were re-assigned to other Regional Offices. Each Regional Office has been delegated certain powers by the Commissioner to carry out the specific statutory mandates of the Virginia Department of Labor and Industry.

The VOSH program consists of three major units: enforcement, consultation, training and education. The enforcement unit inspects places of work, issues citations and penalties for violations of established occupational standards, and responds to fatalities, accidents, and employee complaints about workplace safety and health hazards. The consultation unit provides assistance to Virginia public and private sector employers to voluntarily comply with applicable requirements without the issuance of citations and penalties. The VOSH consultation program provides free on-site surveys and technical assistance to Virginia businesses, especially small ones and to public sector employers under the State Plan grant. The VOSH program also provides free educational and training programs for employers and employees to assist them in achieving voluntary compliance.

The majority of VOSH standards are identical to federal OSHA standards. All standards adopted by the Safety and Health Codes Board apply to all employers who have employees working at places of employment within the jurisdiction of the State Plan of the Commonwealth. Standards from Part 1910 apply to employers engaged in general industry; in addition, certain standards from Part 1910 determined by Federal OSHA and the Safety and Health Codes Board to be applicable to the construction industry also apply to the construction industry in Virginia. Standards adopted from 29 CFR Part 1926 apply to the construction industry, and standards adopted from 29 CFR Part 1928 apply to agricultural operations within the jurisdiction of the Commonwealth. In addition, standards from 29 CFR Part 1915, Shipyard Employment; 29 CFR Part 1917, Marine Terminals; and 29 CFR Part 1918, Longshoring, have been adopted for State Plan use in the public sector only.

Any new or unique standard adopted by Virginia for which no Federal OSHA counterpart exists shall apply as specified by the terms of that standard. The VOSH Administrative Regulations, 16 VAC 25-60, et seq., set forth rules defining the applicability of occupational safety and health standards in Virginia. There are several Virginia unique standards, e.g., tree-trimming operations, reverse signal operations in general industry and construction, confined space in construction, confined space in telecommunications, overhead high voltage line safety, approach distances in power transmission, distribution and telecommunications, Virginia excavation standard in construction, underground construction standard, agriculture industry field sanitation, construction industry sanitation, steel erection fall protection, general requirements for clearances in power transmission and distribution for the construction industry, and the VOSH Administrative Regulations Manual. Virginia has also codified in regulation the Multi-Employer Worksite policy and Multi-Employer Worksite defense. The regulation provides that general contractors and prime subcontractors can be cited for certain hazards as “controlling employers”. Virginia has also codified the Employee Misconduct Defense but provides that the defense does not apply to supervisory personnel having control of the worksite. In these instances, Federal OSHA either does not have a comparable standard addressing the specific hazard or condition or, if it does, the federal standard differs substantially.

The VOSH Administrative Regulations Manual outlines the contest process for employers. Section 16 VAC 25-270 provides regulatory guidelines to an employer to whom a citation or proposed penalty was issued as the result of a VOSH inspection or investigation. The notice of contest must be mailed or delivered by hand within fifteen (15) days from the receipt of the citation or proposed penalty. Upon receipt of a notice of contest, the Commissioner will attempt to resolve the matter by settlement, either by participation in an informal conference or through a formal settlement process. If the matter is not settled or it is determined a settlement is not probable, the Commissioner will initiate judicial proceedings by referring the contested issues to the appropriate Commonwealth’s Attorney.

The final determination on whether to appeal an adverse judicial decision will be made by the Commissioner after consultation with the Office of the State Attorney General and/or the applicable Commonwealth's Attorney. Appeals from Circuit Court may be heard by the Virginia Court of Appeals. The Department has thirty (30) days to file an appeal with the Virginia Court of Appeals.

### C. Data and Methodology

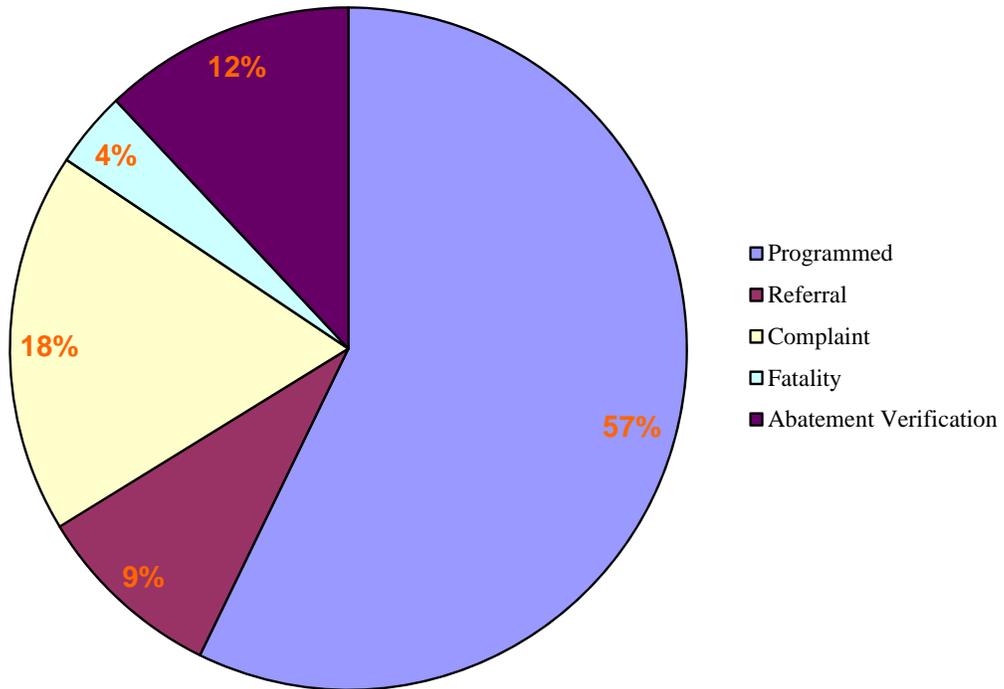
The monitoring and evaluation activities for this year's FAME report concentrated on determining the status of the corrective actions implemented by VOSH regarding the sixteen (16) findings identified during the FY 2009 EFAME. Throughout the evaluation process Virginia was cooperative, shared information and ensured staff was available to discuss cases, policies, procedures and to answer questions.

Onsite case files reviews were conducted from January 17, 2012 to January 20, 2012. One hundred sixty-six (166) safety and health inspection files were reviewed. The case files were randomly selected from inspections conducted during the October 1, 2010 through September 30, 2011 evaluation period. These closed case files included programmed inspections (95), referrals (15), complaints (30), and fatality investigations (6). Twenty (20) additional case files required further review to address abatement verification, an outlier on the FY 2011 SAMM report. In addition, all eleven (11) whistleblower investigation files were reviewed in detail to address FY 2009 EFAME findings regarding whistleblower activities.

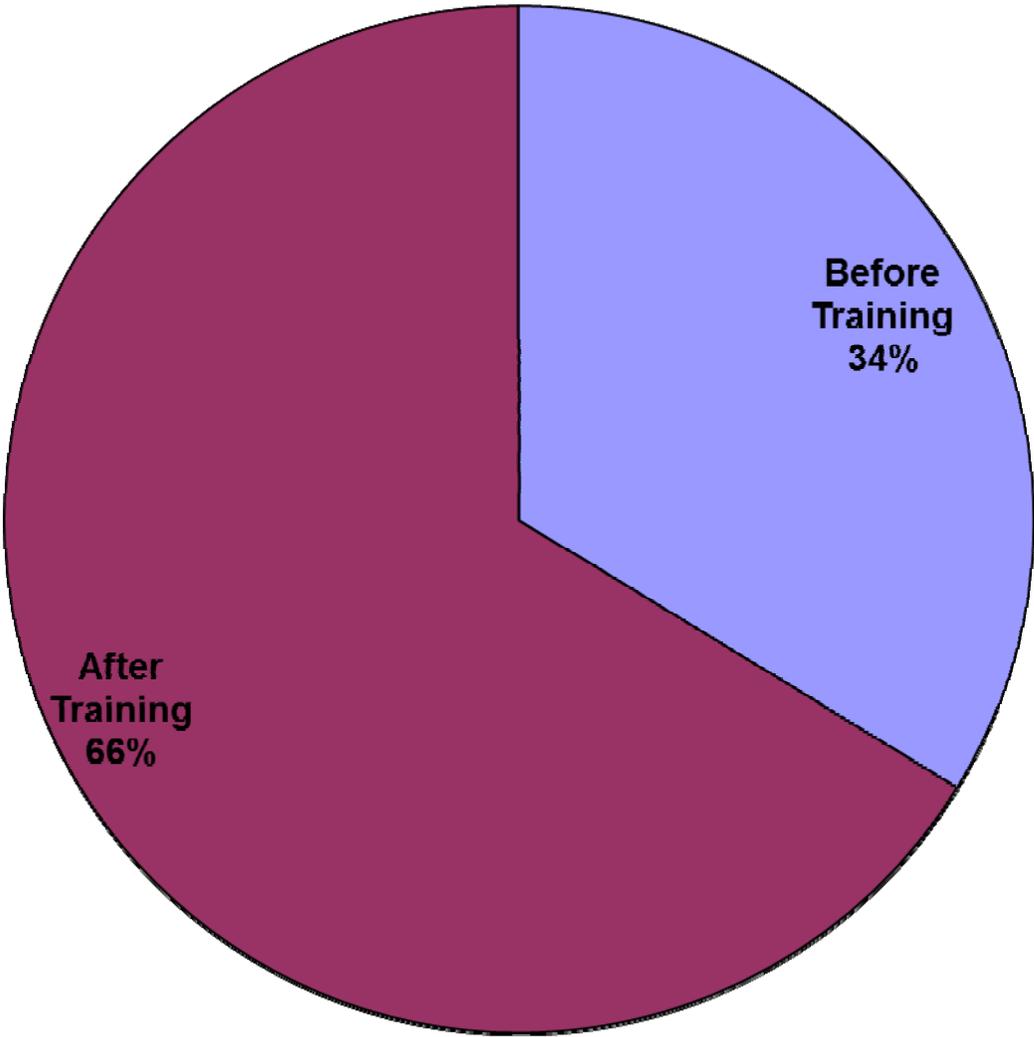
The FY 2011 audit team also reviewed various statistical information and program administration activities. Data contained in the Integrated Management Information System (IMIS), OSHA's database system used by the Commonwealth to administer its enforcement program was also utilized as a means to monitor and evaluate the State's 23(g) enforcement program activities. The Interim State Indicator Report (SIR) and the State Activity Mandated Measures (SAMMs) Report were also used as data sources and monitoring tools during this evaluation period.

Compliance with legislative requirements, contact with families of fatality victims, training and personnel retention were assessed during this evaluation period. The audit team also conducted interviews with ten (10) VOSH Program Directors and Managers.

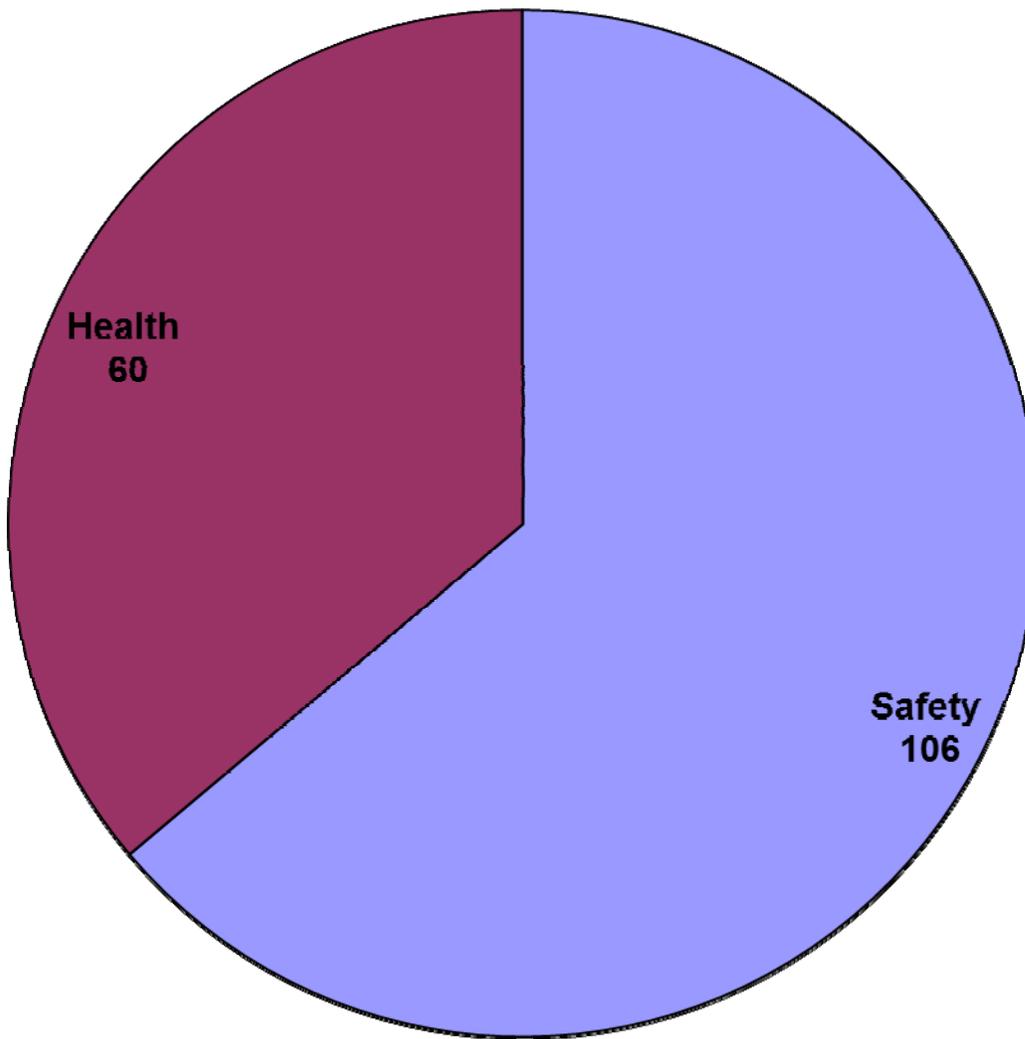
# Inspection Case Files Evaluated FY 2011



**Inspections Conducted Before or After the  
January 20, 2011 Refresher Training**



# Case Files Evaluated FY 2011



#### D. Findings and Recommendations

During the FY 2009 EFAME, there were eighteen (18) original deficiencies found during the case file reviews. Two of these deficiencies were deleted subsequent to further information provided by VOSH. During the FY 2010 evaluation period, VOSH implemented their Corrective Action Plan (CAP), which addressed the remaining sixteen (16) findings. Refresher training to be completed by January 20, 2011, was conducted for all Regional Directors, compliance managers, compliance staff, and administrative personnel to improve and enhance the VOSH program. To verify the effectiveness of the CAP, a federal audit team conducted one hundred sixty-six (166) case file reviews and found significant improvements. The audit team noted significant improvement in VOSH's case file documentation for those inspections or investigations conducted after the January 2011 refresher training. The FY 2010 follow-up findings were reduced from sixteen (16) findings to three (3) findings subsequent to case file reviews and additional monitoring activities. These findings involved minor inconsistencies involving case file documentation, abatement verification, and adoption of federal program changes.

During the FY 2011 case file reviews, the audit team found minor documentation inconsistencies in the randomly selected case files from the four (4) Regional Offices. Twenty-six percent (26%) or forty-three (43) of the one hundred sixty-six (166) case files reviewed were found to have very minor documentation inconsistencies in areas such as hazard descriptions, employee exposure, and employer knowledge as noted on the 1B hazard worksheet. The inconsistent documentation found during case files reviews pertained to the limited or extensive amount of information compliance personnel collected to support the issuance of a citation and how that information was documented on the 1B hazard worksheet. Overall, the documentation did not adversely affect whether a citation was issued. Discussions with VOSH Program Directors indicated these inconsistencies were also found during the State's Internal Evaluation Program (SIEP) and have been addressed by Regional Directors and Compliance Managers when case files are submitted for review.

The inconsistencies in documentation are an overall FY 2011 finding and have been combined as one. It is recommended for Regional Directors, Compliance Managers, Compliance Safety and Health Officers (CSHOs), and administrative staff to follow the guidelines as specified in their VOSH Field Operations Manual, Chapter 9, to eliminate inconsistencies regarding case file documentation throughout the VOSH program. In addition, it is recommended VOSH continue to address these inconsistencies as they occur through their case file reviews prior to citation issuance, and through their annual State's Internal Evaluation Program (SIEP), and implement corrective measures through training or other notices to ensure all Regional Offices are consistent in the documentation required for inspection and investigation case files.

Although abatement verification is an outlier on the SAMM Report, VOSH takes extensive measures to ensure abatement is verified. VOSH requires an employer to submit certification, in writing, that a hazardous condition has been abated, and they also require the employer to submit documentation (such as photos, receipts, etc) as additional verification of corrective action. In addition, VOSH conducts follow-up inspections for those instances where an employer has not provided the abatement certification or documentation as verification.

During this evaluation period, VOSH adopted all three (3) federal program changes published as Federal Register Final Rules within the mandated six (6) month period. However, VOSH did not meet the required adoption of FPC CPL 02-00-150, Field Operations Manual, issued April 22,

2011. This inability to meet the mandated six (6) month adoption is due to current revisions being made to the previously issued FPC CPL 02-00-148, issued as VOSH Directive 02-001F, June 1, 2011. Although this is considered a FY 2011 finding, the inability to meet this mandated measure does not adversely affect the VOSH Program. VOSH will continue to submit timely responses of their intent through the Automated Tracking System (ATS) for all FPCs issued, and will strive to meet all required mandated measures for timely adoption of FPCs.

## **II. Major New Issues**

During FY 2011, budget constraints continued to affect state agencies throughout the Commonwealth. Despite these constraints, VOSH provided safety and health coverage for the Commonwealth. Additionally, there have been no salary increases for state employees since November 2007. The program's greatest liability continues to be the longstanding difficulty to retain trained staff, both in health and safety. The high turnover rate has impacted VOSH's ability to keep a consistent level of experienced compliance staff. This has had an effect on the retention rate of some benchmark positions, particularly in the Northern Virginia. Internal assessments and exit interviews conducted by VOSH show that the primary reason for the high turnover in this area is the comparatively low salaries. Approval from the Secretary of Commerce and Trade, as well as the Governor is required to increase salaries and hire personnel. Budget constraints have also impacted funding available for training and conferences and the travel expenses associated with each, however, they have not impacted new hire or mandatory training.

Information technology issues relating to data utilization, data availability, system upgrades and software migration continue to exist. This is coupled with a difficulty to fully integrate information technology that has been plagued with a lack of timely installation, improper coding, limited maintenance, debugging solutions, and limited training resources to allow staff to fully use the available Integrated Management Information System (IMIS) and other data. The lack of additional data (access to OSHANET) deemed necessary by staff and greater analysis resources hinder their ability to use performance measures to help increase program efficiency and effectiveness to the degree sought by program management.

VOSH will be participating in the new OSHA Information System (OIS), scheduled for deployment in FY 2012. Currently, VOSH's computer network access is provided through the use of digital subscriber lines (DSL), rather than T1 fiber optic lines, which provide faster internet service. VOSH is concerned their DSL lines will not provide adequate internet service to support the new OIS. Due to the VOSH's budget constraints there are no additional funds available to install T1 lines in the Regional Offices.

## **III. State Response to FY 2010 FAME Recommendations**

As a result of the FY 2009 EFAME Report, VOSH submitted a Corrective Action Plan (CAP) addressing the original findings, and FY 2010 follow-up findings. The CAP was developed in November 2010 by VOSH and submitted for review. The VOSH CAP received National Office approval. In January 2011, as specified in the CAP, VOSH conducted refresher training for all Regional Directors, compliance managers, CSHOs, and administrative personnel to improve their program and address the FY 2009 EFAME findings. In addition to case file reviews, federal monitors participated in quarterly meetings with VOSH Program Directors during which the quarterly SAMM report was discussed to address outliers. It should be noted, the State's Internal Evaluation Program (SIEP) was an integral part of the significant improvements made during this evaluation period.

During FY 2011, federal monitoring and evaluation activities were conducted to verify the corrective actions taken and to assess the effectiveness these measures had on the VOSH program. As verified

through these monitoring and evaluation activities, there was significant improvement and the majority of the FY 2009 EFAME findings were eliminated by the corrective actions taken.

As noted by the case file audit team, the refresher training provided in FY 2011 had a positive effect on the findings addressed in the FY 2009 EFAME report and there were no significant new findings to address in FY 2011. Case file documentation, abatement verification and timely adoption of federal program changes remain as FY 2011 findings.

FY 2011 findings and recommendations are detailed in Appendix A. Appendix B provides information regarding verification of the CAP in response to the FY 2010 Follow-up Recommendations.

### **COMPLAINTS:**

**Finding #10-01(#09-01):** Case files lacked written documentation of why a non-formal complaint resulted in an inspection.

**Recommendation 1:** Written documentation should be contained in case files to justify why a non-formal complaint resulted in an inspection.

**Action to date:** VOSH enforcement staff, including Regional and Program Directors, compliance managers and engineers were provided refresher training regarding case file documentation required for complaints and referrals.

Complaint inspection case files audited during this FY 2011 evaluation period found proper coding of complaint inspections on the VOSH-1. Per VOSH's FOM, a complaint filed which involves an alleged hazard covered by a National Emphasis Program (NEP), or Local Emphasis Program (LEP) will result in an on-site inspection; therefore a statement is not required to justify the re-classification of a non-formal complaint to a formal complaint resulting in an on site inspection. Proper NEP and LEP codes are documented on the VOSH-1 for complaint inspections conducted in accordance with these targeted enforcement programs.

**Status: COMPLETED**

**Finding #10-02(#09-02):** Standard language was not being used in response letters to complainants.

**Recommendation 2:** Response letters must include an appropriate response detailing the outcome of the inspection or investigation activity for each alleged complaint item as outlined in VOSH's FOM.

**Action to date:** In January 2011, refresher training was provided to all VOSH enforcement staff, including Regional and Program Directors, compliance managers and engineers to ensure complaint response letters include appropriate information detailing the outcome of an inspection or investigation for each alleged complaint item.

Thirty (30) complaint inspection case files audited during this evaluation period found inspection results letters to the complainants addressed all complaint items in detail. The letters were sent within fifteen (15) days as required by the VOSH FOM. Complainants were provided copies of citations when issued as a result of an inspection.

**Status: COMPLETED**

## **FATALITIES:**

**Finding #10-3(#09-03):** Families of fatality victims were not kept up-to-date about investigations and/or informed of the outcome of investigations.

**Recommendation 3:** Families of fatality victims must be kept up-to date about investigations and informed of the outcome of VOSH investigations.

**Action to date:** VOSH provided refresher training in January 2011 to Regional and Program Directors as well as compliance managers to ensure victims' next-of-kin are contacted when the fatality investigation begin. Families are kept informed of the on-going investigation and offered copies of citations and settlement agreements pertaining to the investigation. Compliance Managers and Regional Directors are responsible for establishing and maintaining contact.

Six (6) fatality investigation case files audited during this evaluation period found next-of-kin letters were sent in a timely manner. The next-of-kin were sent written notifications of the outcome of the fatality investigations. The next-of-kin are provided citations and settlement agreements upon their request.

**Status: COMPLETED**

**Finding #10-04(#09-04):** Interviews with employer representatives and employees were not always documented.

**Recommendation 4:** Ensure interviews with employer representatives and employees are documented in case files.

**Action to date:** VOSH provided refresher training to CSHOs in January 2011 to ensure interviews with employer representatives and employees are properly documented in the case file. VOSH altered the IW-1 form to be used as an employer's representative interview sheet and added a signature line to the document. The IW-1 form is included in each case file.

Case files audited during the FY 2011 evaluation period found interview statements were included in the majority of the case files. Formal interviews of employers and employees during the course of an onsite inspection are documented in the case file.

**Status: COMPLETED**

## **CASE FILE DOCUMENTATION:**

**Finding #10-05(#09-05):** Case file documentation is not in conformance with the requirements of VOSH's FOM.

**Recommendation 5:** The requirements for case file documentation are outlined in VOSH's FOM. These policies and procedures should be reviewed with all management and compliance staff to assure that all employees are following these procedures and understand what specifically is required to be contained in a case file.

**Action to date:** VOSH provided training in January 2011 to ensure CSHOs followed established procedures as defined in their FOM regarding proper case file documentation.

Case files audited during FY 2011 found improvement in case file documentation. However, there were areas where documentation was inconsistent among the Regional Offices and did not follow the guidelines as specified in the VOSH FOM. These inconsistencies included limited documentation for hazard description, employee exposure, and employer knowledge. These inconsistencies were noted in the FY 2011 State Internal Evaluation Program (SIEP) and are addressed in this report.

**Status:** Continue to monitor as Finding #11-01

**FY 2011 Recommendation:** Ensure Regional Offices are complying with established FOM guidelines for case file documentation to ensure consistency throughout the VOSH Program.

**Finding #10-06(#09-06):** Case file diary sheets were not found in inspection files.

**Recommendation 6:** Case file diary sheets must be used in accordance with VOSH's FOM procedures.

**Action to date:** VOSH provided refresher training in January 2011 to all administrative, compliance and supervisory staff ensure case file diary sheets are included in all case files and utilized for documenting all activities regarding the case file. Guidelines for case file setup are established in the VOSH FOM.

As noted during FY 2011 case file reviews, 147 of the 166 cases, or 89% had case file diary sheets used and included in the case file. This is a significant improvement over the previous evaluation periods of FY 2009 and FY 2010.

**Status:** COMPLETED

**Finding #10-07(#09-07):** Employee exposure was not always adequately documented on OSHA 1B forms.

**Recommendation 7:** VOSH must ensure OSHA 1B worksheets are adequately documented. Provide additional training to compliance staff on case file documentation and the importance of having each OSHA 1B fully documented.

**Action to date:** VOSH provided refresher training in January 2011 to ensure all compliance staff include adequate documentation for employee exposure when completing the OSHA 1B worksheet form with emphasis on documentation required to support citations issued.

As noted during case file review, there were minor inconsistencies throughout the Regional Offices regarding OSHA 1B worksheet documentation. These inconsistencies were noted in the FY 2011 State Internal Evaluation Program (SIEP) and are addressed in this report.

**Status:** Continue to monitor as Finding #11-01

**FY 2011 Recommendation:** Ensure Regional Offices are complying with established FOM guidelines for case file documentation to ensure consistency throughout the VOSH Program.

**Finding #10-08(#09-08):** Alleged violation descriptions (AVDs) on OSHA-2 forms were not specific enough to address hazardous condition.

**Recommendation 8:** Alleged violation descriptions should reflect specific hazards noted on OSHA-2 forms for each violation.

**Action to date:** VOSH provided training in January 2011 to ensure all compliance staff, safety specialists and industrial hygienists, properly document alleged violations/hazard descriptions on both the OSHA 1B and OSHA-2 forms.

As noted during case file reviews, there was improvement in the alleged violation descriptions (AVDs) for hazards observed for which a citation was issued (OSHA 2). VOSH does not require the use of SAVEs.

**Status: COMPLETED**

**Finding #10-09(#09-09):** OSHA-300 logs were not always obtained from employers and reviewed by compliance officers during on-site inspection activity.

**Recommendation 9:** OSHA-300 logs for three years must be obtained from employers while on-site during inspection activity and reviewed by compliance officers pursuant to VOSH's FOM.

**Action to date:** VOSH provided refresher training in January 2011 to CSHOs to ensure OSHA-300 logs, for those employers required to maintain the log, are reviewed and documented in the case file as required by the VOSH FOM.

As noted during case file reviews, The IW-1 form is used to document the OSHA 300 log review, and copies of the OSHA 300 log are included in the case file for general industry inspections.

**Status: COMPLETED**

**Finding #10-10(#09-10):** Proper documentation to justify violation severity classification was not always contained in inspection files.

**Recommendation 10:** VOSH must retrain compliance staff in the proper type of documentation needed to justify violation severity classification in accordance with VOSH FOM procedures.

**Action to date:** VOSH provided refresher training in January 2011 for CSHOs to ensure violations are properly classified in accordance with their Field Operations Manual and VOSH Directives. During case file reviews, severity classifications were adequately documented on the OSHA 1B worksheet forms, with the nature of the injury (i.e., fractures), agreeing with the classification of the violation (i.e., serious).

**Status: COMPLETED**

**Finding #10-11(#09-12):** Case files did not always contain documentation of how penalty reduction factors were granted to employers where minimal abatement was required to come into compliance.

**Recommendation 11:** Case files must be documented by Regional Directors to explain why the maximum penalty reduction of 40% was granted during informal conferences to employers where minimal abatement was required to come into compliance. Penalty reduction factors should be reviewed in detail with Regional Directors.

**Action to date:** VOSH provided training in January 2011 to all Regional Directors, and Compliance Managers to ensure actions taken during informal conferences with regards to penalty reductions are fully documented in case files. In addition, Regional Directors and Compliance Managers were provided instruction to fully review penalty adjustment factors (size, good faith, and history) to ensure proper penalty reductions are taken and fully documented in the case file prior to citation issuance.

During this evaluation period, VOSH developed the penalty relief justification form to assist Regional Directors and Compliance Managers in documenting actions taken during informal conferences involving penalty reductions. These actions were properly noted on the OSHA 166 form, and entered into the IMIS.

**Status: COMPLETED**

### **ABATEMENT VERIFICATION:**

**Finding #10-12(#09-14):** OSHA-166 forms were not being entered into the database to track abatement verification.

**Recommendation 12:** Promptly enter OSHA-166 data into database.

**Action to date:** OSHA 166 forms (or an equivalent thereof) will be kept in all case files in which violations were not immediately abated or corrected during the inspection. Compliance Managers were provided refresher training to ensure abatement verification dates were being entered into the database. Refresher training was completed by January 20, 2011.

Case files audited during FY 2011 found a significant increase in the use of 166 forms to capture abatement activity. VOSH continues to monitor abatement through the use of weekly IMIS reports and quarterly SAMM reports to ensure abatement is completed in a timely manner.

**Status: COMPLETED**

**Finding #10-13(#09-15):** VOSH was not calling employers or sending abatement letters on all cases where abatement had not been received by VOSH.

**Recommendation 13:** In accordance with its own procedures as outlined in its FOM, Regional Directors and/or Compliance Managers shall call employers for outstanding abatement documentation and/or send abatement letters on all cases where abatement documentation has not been received by VOSH.

**Action to date:** VOSH provided refresher training and additional instruction to Regional Directors, and Compliance Managers to follow procedures as outlined in its FOM and VOSH Directives regarding abatement documentation and verification. All refresher training was completed by January 20, 2011.

Twenty (20) case files were reviewed to evaluate abatement verification which continues to be an outlier on the State Activity Mandated Measures Report (SAMM). The mandated measure requires 100% abatement verification within thirty (30) days of the final abatement date. VOSH met this measure 90% of the time. VOSH maintains abatement is verified in all inspections resulting in a serious, willful, repeat citation. As noted during the case file reviews, abatement verified one day beyond the mandated measure becomes an outlier. In addition, VOSH requires not only certification of corrective action for all serious, willful, or

repeat violations, but also documentation of the corrective actions taken by the employer (i.e., photos, receipts, etc.).

Per discussions with VOSH Program Directors during this evaluation period, there are instances where an employer does not submit the certification form with the supporting documentation, and therefore, an outlier for abatement verification occurs. There were also instances when the compliance officer indicated corrective action was taken during the inspection, yet, it could not be determined if an abatement verification date was entered into the IMIS. Employers often include penalty payment along with their abatement certification and documentation which is sent to the Central Office where penalties are processed. Personnel located at the Central Office do not have the responsibility to enter the abatement verification date when processing penalties paid and an outlier occurs.

During this evaluation period, VOSH was aware of this outlier and utilized weekly abatement tracking reports, and the SAMM report in an effort to ensure timely abatement verification dates were met.

**Status:** Continue to monitor as Finding #11-02

**FY 2011 Recommendation:** Regional Directors and Compliance Managers should continue tracking abatement utilizing the weekly IMIS Abatement Tracking Report, and reviewing the quarterly SAMM Report to ensure abatement verification is obtained in a timely manner in accordance with the mandated measure, as well as procedures outlined in the VOSH FOM for abatement verification.

**IMIS:**

**Finding #10-14(#09-16):** OSHA 91 data is not being entered into the IMIS system. The forms were contained in case files, however, the information was never entered into the database and could therefore not be tracked by running a report from the IMIS system.

**Recommendation 14:** OSHA 91 data should be entered into the IMIS system for all sampling.

**Action to date:** As agreed upon in the CAP, VOSH administrative personnel in the Regional Offices began entering all OSHA 91 data into the IMIS system. All OSHA 91 data was entered into the IMIS from October 1, 2009 to the present.

During FY 2010 and continuing in FY 2011, OSHA 91 sampling information was entered into the IMIS system. The IMIS Sampling Report is reviewed on a regular basis to ensure sampling data is captured.

**Status:** **COMPLETED**

**FEDERAL PROGRAM CHANGES:**

**Finding #10-15(#09-17):** Not all Federal Program Changes (FPC) are adopted within the six month period.

**Recommendation 15:** VOSH must adopt Federal Program Changes within the six month period.

**Action to date:** During the FY 2011 evaluation period, VOSH finalized revisions to their FOM, which was the only FPC not completed within the mandated six month period during FY 2010. The FPC, Field Operations Manual, dated March 26, 2009 requiring a revised VOSH FOM, was issued in June 2011 after many months of review. During FY 2011, there were eleven (11) Federal Program Changes, five (5) of

which required adoption. VOSH provided responses through the Automated Tracking System (ATS) of their actions on the following FPCs: National Emphasis Program (NEP) Microwave Popcorn Processing Plants (will not adopt, due to an absence of microwave processing plants in the State), Revisions to Field Operations Manual (currently under revision, will not meet six month adoption), NEP Primary Metals (adopted September 2011), Site Specific Targeting (SST) (will not adopt, VOSH's general industry targeted inspection list is provided by the OSHA Office of Statistical Analysis) and the Whistle blower Investigations Manual (will adopt Federal identical in FY 2012).

Although VOSH did not meet the required six month adoption period for all FPCs, they provided timely responses regarding their intent.

**Status:** Continue to monitor as Finding #11-03

**FY 2011 Recommendation:** Continue using the ATS to respond to FPCs, for which a six month adoption is required. VOSH should strive to meet six (6) month adoption for all required FPCs.

## **WHISTLEBLOWER INVESTIGATIONS**

**Finding #10-16 (#09-18):** VOSH is using an outdated Discrimination manual that needs to be updated, which lacks guidance for proper organization of cases and documentation required to support actions taken by investigators.

**Recommendation 16:** VOSH must update its current directive. Chapter 2 should list all current whistleblower acts that are referred to Federal OSHA or reference Chapter 1 of Federal OSHA's Discrimination manual, which lists the current whistleblower acts to include ones that need to be referred to Federal OSHA for investigation.

**Action to date:** VOSH published a new Investigations Manual on June 1, 2011. The new manual generally describes the statutes enforced by federal OSHA and specifically directs the reader to the OSHA Office of Whistleblower Protection Program (OWPP) website with a hyperlink.

**Status:** COMPLETED

## **IV. Assessment of State Performance of Mandated Activities**

The following is a discussion of Virginia's program performance during FY 2011 based upon monitoring and evaluation of the mandated measures.

### **A. Enforcement Activities:**

A statistical review of the VOSH Program was conducted using the IMIS Micro-to-Host Inspection and Enforcement Reports and a comparison was made against several monitoring measures from the State Activities Mandated Measures (SAMM) Report and the State Interim Report (SIR). During the evaluation period of this study (October 1, 2010 through September 30, 2011), VOSH conducted 3,218 inspections of its projected inspection goal of 3,725. There were several factors which impacted VOSH's inability to meet its inspection goal in FY 2011. These factors included several senior compliance officers who were on extended medical absences, several new compliance officers who were still in training, and several compliance officers who were re-assigned in management positions in an acting capacity.

The VOSH Program continues to experience vacancies in both safety and health compliance staff positions. The Commonwealth has filled 87% of the safety benchmarks and 81% of the health benchmarks. Ten (10) benchmark positions are not filled. At the present time, VOSH is experiencing a hiring freeze imposed by the Secretary of Commerce and Trade. The Commissioner of Labor and Industry has requested of the Governor to consider a critical hiring agreement so that VOSH staffing levels would not drop below 75% to 80% of benchmarks. At the present time, VOSH will recruit for five (5) of the ten (10) vacant positions as soon as permission is granted. The other five (5) vacant positions will be recruited for and filled when funds are available.

The Commonwealth continues to strive for improvements in their program. While the State did not meet all their goals for Fiscal Year 2011, they made significant progress. They met or exceeded nine (9) of the fourteen (14) State Indicator Report (SIR) measures and met or exceeded thirteen (13) of the fifteen (15) State Activity Mandated Measures (SAMM). VOSH continues to support their five-year strategic plan through positive performance and achievement of their performance goals. Their two (2) strategic goals, to reduce occupational injuries, illnesses, and fatalities through direct intervention; and promote a safety and health workplace culture, showed significant achievement over past years performance.

Of the 3,218 inspections conducted by Virginia during FY 2011, 2,407 were safety-related (75%) while 811 (25%) were health-related. Total programmed inspections were 2,235 (69%) and 983 (31%) were un-programmed inspections. Un-programmed inspections represented fatality investigations, complaints, referrals, follow-up inspections, monitoring inspections and other un-programmed related activities. A total of 3,044 inspections were conducted at private establishments while 174 were conducted at public sector agencies. The following is a statistical comparison of Virginia to other state plans and Federal OSHA during FY 2011:

**Virginia State Plan  
FY 2011 Enforcement Activity**

	VA	State Plan Total	Federal OSHA
<b>Total Inspections</b>	<b>3,218</b>	<b>52,056</b>	<b>36,109</b>
<i>Safety</i>	2,407	40,681	29,671
<i>% Safety</i>	75%	78%	82%
<i>Health</i>	811	11,375	6,438
<i>% Health</i>	25%	22%	18%
<i>Construction</i>	2,006	20,674	20,111
<i>% Construction</i>	62%	40%	56%
<i>Public Sector</i>	174	7,682	N/A
<i>% Public Sector</i>	5%	15%	N/A
<i>Programmed</i>	2,235	29,985	20,908
<i>% Programmed</i>	69%	58%	58%
<i>Complaint</i>	488	8,876	7,523
<i>% Complaint</i>	15%	17%	21%
<i>Accident</i>	40	2,932	762
<i>Insp w/ Viols Cited</i>	1,853	31,181	25,796
<i>% Insp w/ Viols Cited (NIC)</i>	58%	60%	71%
<i>% NIC w/ Serious Violations</i>	79%	63.7%	85.9%
<b>Total Violations</b>	<b>5,060</b>	<b>113,579</b>	<b>82,098</b>
<i>Serious</i>	2,917	50,036	59,856

<i>% Serious</i>	<i>58%</i>	<i>44%</i>	<i>73%</i>
<i>Willful</i>	<i>37</i>	<i>295</i>	<i>585</i>
<i>Repeat</i>	<i>98</i>	<i>2,014</i>	<i>3,061</i>
<i>Serious/Willful/Repeat</i>	<i>3,052</i>	<i>52,345</i>	<i>63,502</i>
<i>% S/W/R</i>	<i>60%</i>	<i>46%</i>	<i>77%</i>
<i>Failure to Abate</i>	<i>37</i>	<i>333</i>	<i>268</i>
<i>Other than Serious</i>	<i>1,971</i>	<i>60,896</i>	<i>18,326</i>
<i>% Other</i>	<i>39%</i>	<i>54%</i>	<i>22%</i>
<i>Avg # Violations/ Initial Inspection</i>	<i>2.8</i>	<i>3.4</i>	<i>2.9</i>
<b>Total Penalties</b>	<b>\$4,846,248</b>	<b>\$ 75,271,600</b>	<b>\$ 181,829,999</b>
<i>Avg Current Penalty / Serious Violation</i>	<i>\$ 793.20</i>	<i>\$ 963.40</i>	<i>\$ 2,132.60</i>
<i>% Penalty Reduced</i>	<i>42.1%</i>	<i>46.6%</i>	<i>43.6%</i>
<b>% Insp w/ Contested Viols</b>	<b>12.5%</b>	<b>14.8%</b>	<b>10.7%</b>
<i>Avg Case Hrs/Insp- Safety</i>	<i>14.0</i>	<i>17.1</i>	<i>19.8</i>
<i>Avg Case Hrs/Insp- Health</i>	<i>20.2</i>	<i>26.8</i>	<i>33.1</i>
<i>Lapse Days Insp to Citation Issued- Safety</i>	<i>31.3</i>	<i>35.6</i>	<i>43.2</i>
<i>Lapse Days Insp to Citation Issued- Health</i>	<i>32.1</i>	<i>43.6</i>	<i>54.8</i>
<i>Open, Non-Contested Cases w/ Incomplete Abatement &gt;60 days</i>	<i>7</i>	<i>1,387</i>	<i>2,436</i>

The VOSH Enforcement program derives its targeted inspection lists from a High Hazard Industry listing provided by the OSHA Office of Statistical Activity. It also participates in the Federal OSHA exempted SIC/NAICS industry list as provided in the current Appropriations Act. The VOSH Enforcement program also participates in the University of Tennessee Dodge Report for randomly selected construction sites to be inspected.

The VOSH Program has developed and implemented ten (10) local emphasis programs (LEPs). These programs include various industries and activities – fall hazards, waste water and water treatment facilities (public & private), first report of injury and illnesses, public sector workshops, heavy equipment – reverse signal, scaffolding, overhead high voltage for both general industry and construction, logging and sawmill industries, tree trimming operations, and spray-on bed liners. There were approximately 1,562 LEP inspections conducted (1,400 safety, and 162 health) during this evaluation period. These inspections resulted in 1,398 serious, 15 willful, 105 repeat and 356 other-than-serious hazards observed for which citations issued resulted in \$1,558,291.00 assessed penalties.

The VOSH Program also participated in the following National Emphasis Programs (NEPs): amputations, combustible dust, crystalline silica, diacetyl, hexavalent chromium, injury and illness recordkeeping, primary metal industry, trenching, and excavation which were established by Federal OSHA. There were 356 NEP inspections conducted (187 safety and 179 health) during this evaluation period. These inspections resulted in 168 serious, 15 repeat and 8 willful hazards observed for which citations issued resulted in \$322,334.00 assessed penalties.

During this evaluation period, programmed inspections conducted under the criteria established by the Federal OSHA NEPs and VOSH LEPs continued to be an integral part of the VOSH enforcement program as evidenced by the numerous violations observed resulting in citations issued and penalties assessed. It was noted that semi-annual internal training for the entire VOSH staff was conducted to support these emphasis programs, address new standards, and specific unique standards, such as cranes in construction and the tree trimming standards. Three employees are fully trained in process safety management through OTI and three additional compliance officers are in the process of completing them.

## State Activity Mandated Measures (SAMM) Report Analysis

Measure #1 - Average days to initiate complaint inspections was at 1.87 days. All 471 complaint inspections were initiated in less than the mandated measure of five days. Monthly reports were generated by region and sent out to the field for corrections to maintain compliance. **VOSH exceeded this measure.**

Measure #2 - Average days to initiate complaint investigations was at 0.21 days. This was less than the mandated measure of one (1) day. VOSH met this measure 100% of the time. **VOSH exceeded this measure.**

Measure #3 - Percent of complaints where complainants were notified on time was 96.21%. This was less than the mandated measure of 100%. A total of 432 out of 449 complainants, were notified by letter within 20 workdays of citation issuance or 30 work days of closing conference without citations. SAMM reports with appropriate exception listings were reviewed each quarter and each of the state Regions were notified of discrepancies. Various administrative oversights kept this mandate from being at 100%. VOSH will continue to monitor this item to correct any discrepancies and ultimately reach the goal of 100%. **VOSH did not meet this measure.**

Measure #4 – Percent of complaints and referrals responded to within 1 day was 100%. **VOSH met this measure.**

Measure #5 – Number of denials where entry was not obtained. There were no denials of entry where entry was not obtained. **VOSH met this measure.**

Measure #6 - Percent of S/W/R violations verified with a goal of 100% was 90.38% in the private sector, and 80.10% in the public sector. This involves abatement verification within 30 days. All abatement is verified, yet VOSH requires all abatement to be documented by the employer as well as certified. VOSH continues to make significant strides in improving their performance in documenting verified abatement activities. **VOSH did not meet this measure**

Measure #7 - Average number of calendar days from opening conference to citation issuance. Safety violations were issued in 41.79 days (National average 51.9). Health violations were issued in 43.5 days (National average 64.8). Weekly lapse time reports are sent out to the field listing each regional office performance for the week by the Assistant Commissioner. **VOSH exceeded this measure.**

Measure #8 – Percent of programmed inspections with serious/willful/repeat (S/W/R) violations. Safety inspections had a S/W/R rate of 54.08% (National average 58.5). Health inspections had a S/W/R/ rate of 49.6% (National average 51.8). **VOSH met this measure.**

Measure #9 – Average violations per inspection with S/W/R Violations. S/W/R violations per inspection was 1.97 (National average 2.1). Other-than-serious violation per inspection was 0.84 (National average 1.2). **VOSH met this measure.**

Measure #10 – Average initial penalty per serious violation was \$1335.00 (National average -\$1680.00). VOSH was within 79% of the national average. VOSH attributes this discrepancy to the larger number of small employers in its jurisdiction. This is a 10.6% increase from last year. VOSH has significantly increased the maximum penalty amounts for serious violations. Penalty amounts continued to increase throughout the fiscal year.

Measure #11 - Percent of total inspections in the public sector was 5.41% (Data reference was 6.5%). **VOSH met this measure.**

Measure #12 - Receipt of contest to first level decision-106.41 days (National average-200 days) VOSH continues to outperform the National average. **VOSH met this measure.**

Measure #13-Percent of 11c investigations completed within 90 days-100%, the goal is 100%. **VOSH met this measure.**

Measure #14 – Percent of 11c complaints that are meritorious. Five percent (5%) of the 11c complaints investigated were found to be meritorious. **VOSH met this measure.**

Measure #15 – Percent of meritorious 11c complaints that are settled. 100% of the meritorious complaints were settled. (National Average 88%). **VOSH met this measure.**

**STATE ACTIVITY MANDATED MEASURES (SAMM)  
October 1, 2010 – September 30, 2011**

Measure		State Data FY 2011	Reference Data	Comment
1. Average number of days to initiate complaint inspections		1.87	5	Goal is exceeded.
2. Average number of days to initiate complaint investigations.		.21	1	Goal is exceeded.
3. Percent of complaints where complainants were notified on time.		96.21	100%	Goal is not met.
4. Percent of complaints and referrals responded to within 1 day- Imminent Danger		100%	100%	Goal is met.
5. Number of denials where entry was not obtained.		0	0	Not applicable.
6. Percent of S/W/R violations verified.	Private	90.38%	100%	Goal is not met. All abatement is verified; however, VOSH requires all abatement to be documented as well as certified.
	Public	80.10%		
7. Average number of calendar days	Safety	41.79	51.9	Goal is met.

from opening conference to citation issuance.	Health	43.50	64.8	Goal is met.
8. Percent of programmed inspections with S/W/R violations – safety.	Safety	54.08%	58.5%	Goal is met.
	Health	49.60%	51.7%	Goal is met.
9. Average violations per inspection with violations.	S/W/R	1.97	2.1	Goal is considered met. It is just slightly under the reference.
	Other	.84	1.2	Goal is considered met. It is slightly under the reference.
10. Average initial penalty per serious violation – private sector only.		\$1335	\$1680	Goal is considered met. This is an increase of 10.6% over FY 2010. Although the penalty amount is slightly lower than the National average, VOSH attributes this to the large number of small employers inspected. VOSH increased the maximum penalty amount during this evaluation period.
11. Percent of total inspections in public sector.		5.41%	6.1%	Goal is met.
12. Average lapse time from receipt of contest to first level of decision.		106.41	199.7	Goal is met.
13. Percent of 11C investigations completed within 90 days.		100%	100%	Goal is met.
14. Percent of 11C complaints that are meritorious.		4.55%	23%	Goal is met.
15. Percent of meritorious 11C complaints that are settled.		100%	87.5%	Goal is met.

**Interim State Indicator Report (SIR) Report Analysis**

Measure #1. Slightly less than eighty percent (76.9%) of VOSH’s total safety inspections were programmed and 47.5% of the total health inspections were programmed. The measure requires that VOSH is no more than 7.5 percentage points below the federal average which was 62.5% in safety and 34.6% in health. VOSH was higher than the federal average. **VOSH met this measure.**

Measure #2. VOSH's programmed inspections with violations were at 50.4% for safety and 39.6% for health. The National average is 70.1% and 56.2% respectively. There can be no more than a 10 percentage point leeway. VOSH takes this discrepancy seriously and is working energetically to meet this measure. VOSH Compliance Managers will continue to review case files and continued internal training for compliance staff will emphasize better hazard analysis and recognition. **VOSH did not meet this measure.**

Measure #3. The percentage of serious violations that were issued is at 61.0% for safety and 48.5% for health. The national average was 76.7% and 64.4% respectively. VOSH is within 25% of the national average as is required in safety but are below in health. **VOSH met this measure.**

Measure #4. The percent of serious violations which have abatement periods greater than 30 days for safety and 60 days for health were 16.5% for safety and 4.4% from health. The national averages were 17.9% and 9.4% respectively. This measure requires VOSH to be no more than 5 percentage points above the federal average. VOSH was less than the federal average. **VOSH met this measure.**

Measure #5. The average VOSH serious penalty amount was \$855.10 for safety and \$1122.20 for health. This was within 25% of the National average of \$1126.90 and \$980.90 respectively. **VOSH met this measure. Note:** The SIR report only lists other than serious amounts. This is a discrepancy of the report's parameters.

Measure #6. VOSH performed 8.5 inspections per 100 hours in safety and 5.9 inspections per 100 hours in health. This was well above the National average of 5.5 and 2.2 respectively. **VOSH met this measure.**

Measure #7. The percentage of violations vacated for non-contested cases was 8.9%. This was above 15% of the national average of 7.0%. **VOSH did not meet this measure.**

Measure #8. The percentage of reclassified violations for non-contested cases was 5.5%. This was not more than 15% of the national average of 4.8%. **VOSH met this measure.**

Measure #9. Penalty retention for non-contested cases was 68.1%. This was not less than 15% of the national average of 62.8%. **VOSH met this measure.**

Measure #10. The percentage of programmed inspections conducted in the public sector was 78.5% in safety and 40.9% in health. This was not more than 7.5 percentage points above the private sector rate of 76.9% in safety and no more than 7.5 percentage points above the private sector rate in health of 47.5%. **VOSH met this measure.**

Measure #11. The percentage of public sector violations cited as serious is 65.9% in safety and 60.9% in health. The private sector rate is 61.0% and 48.5%. This is within 25% of the private sector rate in both categories. **VOSH met this measure.**

Measure #12. The percentage of violations vacated after a contest is 31.3%. The national average for this measure is 23.5%. VOSH is not within the requirement of no more than 5 percentage points above the federal rate. **VOSH did not meet this measure.**

Measure #13. The percentage of violations reclassified after a contest is 21.1%. The national average for this measure is 13.3%. VOSH is not within the requirement of no more than 5 percentage points above the federal rate. **VOSH did not meet this measure.**

Measure #14. The percentage of penalty retained after a contest is 43.8%. The national average for this measure is 62.3%. VOSH is not within the requirement of no more than 5 percentage points below the federal rate. **VOSH did not meet this measure.**

Regarding SIR measures #12, #13, #14 that relate to violations vacated after a contest, violations reclassified after a contest, and penalty retention after a contest, it should be noted that VOSH deal with a lot of small employers who have abated cited violations but haven't the ability to pay penalties. Also, contested cases are handled by Commonwealth Attorneys in each of 105 counties and 34 cities. Many of these are in small towns where it proves difficult to win cases.

**INTERIM STATE INDICATOR REPORT (SIR)  
October 1, 2010 - September 30, 2011**

<b>Measure</b>	<b>State Data FY 2011</b>	<b>Federal Data FY 2011</b>	<b>Comment</b>
Private Sector Programmed Inspections Safety	76.9%	62.5%	Standard set by Federal OSHA is exceeded.
Private Sector Programmed Inspections Health	47.5%	34.6%	Standard set by Federal OSHA is exceeded.
Private Sector Programmed Inspections with Safety Violations	50.4%	70.1%	Standard set by Federal OSHA is not met.
Private Sector Programmed Inspections with Health Violations	39.6%	56.2%	Standard set by Federal OSHA is not met.
Private Sector Serious Safety Violations	61.0%	76.7%	Standard set by Federal OSHA is met.
Private Sector Serious Health Violations	48.5%	64.4%	Standard set by Federal OSHA is not met.
Private Sector Abatement Greater Than 30 Days for Safety Violations	16.5%	17.9%	Standard set by Federal OSHA is met.
Private Sector Abatement Greater Than 30 Days for Health Violations	4.4%	9.4%	Standard set by Federal OSHA is met.
Private Sector Average Penalty for Serious Safety Violations	\$855.10	\$1,126.9	Standard set by Federal OSHA is met, within 25%.
Private Sector Average Penalty for Serious Health Violations	\$691.50	\$855.00	Standard set by Federal OSHA is met, within 25%.
Private Sector Safety Inspections Per 100 Hours	8.5	5.5	Standard set by Federal OSHA is exceeded.
Private Sector Health Inspections Per 100 Hours	5.9	2.2	Standard set by Federal OSHA is exceeded.
Private Sector Violations Vacated	8.9	7.0	Standard set by Federal OSHA is not met.

Private Sector Violations Reclassified	5.5%	4.8%	Standard set by Federal OSHA is met.
Private Sector Penalty Retention	68.1%	62.8%	Standard set by Federal OSHA is met.
Public Sector Programmed Safety Inspections	78.5%	Not Applicable	Standard set by Federal OSHA is met.
Public Sector Programmed Health Inspections	40.9%	Not Applicable	Standard set by Federal OSHA is met.
Public Sector Serious Safety Violations	65.9%	Not Applicable	Standard set by Federal OSHA is met.
Public Sector Serious Health Violations	60.9%	Not Applicable	Standard set by Federal OSHA is met.
Percent of Violations Vacated After Contest	31.3%	23.5%	Standard set by Federal OSHA is not met.
Percent of Violations Reclassified After Contest	21.1%	15.1%	Standard set by Federal OSHA is not met.
Percent of Penalty Retention After Contest	43.8%	62.3%	Standard set by Federal OSHA is not met.

The following is a discussion of Virginia’s Enforcement Program performance during FY 2011. Federal monitoring and evaluation activities included one hundred sixty-six (166) case file audits.

### Complaints and Referrals

During the period October 1, 2010 through September 30, 2011, Virginia received 471 complaints and 423 were investigated within one day (phone & fax) for a response rate of 90%. Although the goal is 100%, state holidays, attempts to contact the complainant for additional information, and an inability to contact an employer on the same day the complaint was received may have contributed to this performance measure not being met. VOSH conducted on-site inspections within five (5) working days for all worker complaints for a response rate of 100%.

Thirty (30) complaint inspection files and fifteen (15) referral inspection case files were randomly selected for review during this evaluation period. The evaluation process included interviews with the VOSH program director and detailed analyses of the case files. VOSH is doing an excellent job in responding to complaints by initiating an inspection within five (5) days.

Complaints and referrals are evaluated by the compliance manager in each Regional Office. Virginia’s response to a complaint is to conduct an on-site inspection or a phone and fax investigation. A referral is a notice of an alleged hazard or violation given to Virginia from a source other than an employee, such as a compliance officer, the media, or another government agency. When essential information is not provided by the complainant or the complaint is too vague to evaluate, Virginia attempts to clarify or supplement the information by contacting the complainant.

Complaints and referrals were responded to in a timely manner. The results of the case file reviews indicated that complainants were notified within fifteen (15) calendar days of results in 100% of the inspections conducted. This response time is in accordance with the procedures outlined in the (VOSH) Field Operations Manual (FOM). Any complaint received for which the alleged complaint item is addressed by either a LEP or NEP will also result in an on-site inspection. As noted during case file audits,

complainant response letters subsequent to an on site inspection provided detailed information regarding each alleged complaint item as well as copies of any citations issued as a result of the complaint inspection.

### Fatalities

During this evaluation period, Virginia investigated twenty-seven (27) workplace related fatalities. Six out of twenty seven (27) fatality investigation case files were extensively reviewed. It should be noted that the Federal Office of State Plan's statistics recorded forty (40) fatalities that occurred in Virginia. However, these numbers included all fatalities that occurred in the workplace, such as heart attacks and other non-work causing fatalities, fatalities not in VOSH's jurisdiction, and those involving sole proprietors.

The compliance manager in each Regional Office notifies the Regional Director and the Program Director of all work related fatalities and catastrophes as soon as they become aware of them. Other regional personnel who receive reports of work related fatalities and catastrophes which may result in high media attention or have statewide implications immediately notify the compliance manager. The Program Director informs the Commissioner of all fatalities and catastrophes and provides all pertinent information. The compliance officer or the compliance manager is responsible for ensuring that all required IMIS forms and accident narratives are completed. The compliance manager exercises his own discretion in dispatching an appropriately trained compliance officer to respond as soon as possible to a fatality or catastrophe. The compliance officer assigned to the fatality or catastrophe is responsible for completing the VOSH-1, Inspection Report and the OSHA-170, Investigation Summary.

All work-related fatalities were investigated within one day (or less) by VOSH, which met the mandated measure. This includes times normally considered non-working hours for department staff. Employers are required under the Code of Virginia to orally report to the nearest Regional Office within eight (8) hours of any occurrence of an employment accident involving a fatality to one (1) or more employees and/or which results in the hospitalization of three (3) or more employees. If an employer fails to notify VOSH a citation is issued for failure to report such an occurrence.

The fatality investigative case files were well organized and the documents were properly maintained and secured in the case files. The case files contained excellent documentation and appropriate citations were issued when warranted. Employer and employee witness statements were included in the case files as required by the VOSH FOM.

Case file reviews revealed an initial letter to the next-of-kin was sent at the beginning of the investigation. As noted during the FY 2011 fatality case file reviews, all next of kin were kept informed of the ongoing fatality investigation and were sent correspondence addressing the final outcome. Copies of the resulting citations (if issued) were sent to the next-of-kin upon their request. A review of the fatality case files indicated the OSHA-170 forms were properly documented and contained standard language in the abstract. The files included proper coding in the optional information field indicating IMMLANG (the code designed to allow OSHA to track fatalities among Hispanic and immigrant workers) documentation.

If the Program Director determines additional investigation or information is needed to substantiate case findings or conclusions, the file is returned to the compliance manager for action. After all appropriate documentation is obtained and reviewed by the compliance manager, the Regional Director and the Program Director, the case is referred to the Division of Legal Support for review and analysis. The Division of Legal Support reviews each violation to determine that all of the elements of a prima facie case are sufficiently documented and classified by the compliance officer.

## Targeted and Programmed Inspections

Virginia targets various industries each year and develops local emphasis programs to achieve most of its programmed inspection activities. VOSH also targets industries through in National Emphasis Programs developed by Federal OSHA. Most of Virginia's local emphasis programs are directly related to strategic areas of emphasis developed by Federal OSHA. As indicated above, Virginia conducted 2,235 programmed inspections during FY 2011 with an average of 2.8 violations per inspection compared to Federal OSHA's 2.9 violations per inspection. Virginia's serious/willful/repeat rate was 60% compared to Federal OSHA's rate of 77%.

VOSH Program Directive 02-051A, Scheduling System for Programmed General Schedule Inspections, dated February 22, 1990, describes the procedures used to compile the VOSH General schedules for safety and health enforcement programmed inspections. VOSH utilizes information compiled from several sources for their safety and health general industry programmed inspections. Federal Occupational Safety & Health Administration provides a Statewide Industry Rank Report (standard industrial classification (SIC) list) that classifies industries by their four-digit SIC code. The Safety SIC List is a statewide listing of manufacturing industries with lost workday injury (LWDI) rates equal to or higher than the lowest BLS national average rate for all private sector industry for the last five (5) years. Industries are then ranked in order of their LWDI rate (the High Rate SIC list) with establishments within a ranking listed in descending order of the highest number of employees.

The Health SIC List is a statewide listing of industries within SIC codes with a previous history of serious OSHA health violations. Industry rankings are listed in descending order of the highest number of employees.

OSHA Enforcement Exemptions and Limitations under the Federal Appropriations Act, OSHA Instruction CPL 2-0.51J, issued July 15, 2009 was adopted as VOSH Program Directive, 02-003K, dated April 15, 2011. This directive provides guidance for inspections for those establishments with ten or fewer employees. Regional Directors and Compliance Managers ensure that enforcement activities are scheduled and conducted as set forth in the OSHA Instruction.

The Federal Appropriations Act contains limits for OSHA activities where 23(g) grant funds are used on a year-by-year basis. Since these 23(g) grant funds are passed through from OSHA to the State Program, VOSH is held to the same restrictions and limits imposed on federal OSHA for the use of federal funds. The Appropriations Act limitations do not apply to 100% state funds.

To the extent this VOSH Directive 02-003K, limits or prohibits the use of Federal funds for certain VOSH activities, VOSH reserved the right to conduct activities limited or prohibited under this directive by paying for these activities with 100% state funds (i.e., VOSH will conduct and pay for, with 100% state funds, fatal accident investigations on farms with 10 or fewer employees and no temporary labor camp activity within the previous twelve months). Approval to conduct and pay for such activities must be received in advance from the VOSH Program Director, Safety Compliance and Regional Office Administration. Compliance officers who are approved to perform 100% state funded inspections keep a record of their time spent on such activities.

VOSH has an in-compliance rate of 41% compared to Federal OSHA's rate of 29%. The in-compliance rate is directly linked to several factors. VOSH must conduct health inspections relating to asbestos under the National Emissions Standards for Air Pollutants (NESHAPS). VOSH receives notification of all asbestos related activities and conducts an onsite inspection upon receipt of this notification. Many of these inspections are found to be in compliance with the asbestos standard. VOSH also conducts an inspection for

any alleged complaint item which are addressed by any of the nine (9) National Emphasis Programs they have adopted, or any of their ten (10) Local Emphasis Programs. Therefore, many of these complaint inspections may result in an incompliance inspection that would contribute to the incompliance rate above the federal average.

### Citations and Penalties

As noted during the case file audits, employer knowledge and employee exposure information was adequate in many of the case files reviewed during this evaluation. Citation classification, severity/probability, and penalty amounts were found to be in accordance with the VOSH FOM. Hazards were identified correctly and cited correctly overall. For willful violations, the evidence in the file supported an intentional violation of Virginia law or plain indifference to its requirements. Repeat violations were also properly cited and there was evidence that the employer had been cited previously for a substantially similar condition within the previous three years. In order to ensure uniformity, consistency and the legal adequacy of a limited category of citations, including willful and repeat violations, VOSH Program Directors, Regional Directors and Compliance Managers and the Division of Legal Support engage in pre-citation consultation in order to determine if additional investigative work needs to be performed prior to the issuance of citations.

VOSH increased their gravity based penalty for serious violations in October 2009 to \$7000.00. VOSH did not adopt the October 2010 Federal OSHA revised penalty adjustments factors for size, good faith or history. During FY 2011, VOSH provided effective consideration to the gravity of violations, the size of the business being inspected, good faith of the employer, the employer's previous inspection history, the type, gravity and severity of the violation when initially assessing penalty adjustment factors in accordance with their established penalty guidelines.

The average current penalty per serious violation is \$793.20 compared to \$2,132.60 for Federal OSHA. The difference in the penalty amounts between the Federal and Virginia programs is due in part to the large number of small employers inspected by the VOSH Enforcement program and their established penalty adjustment factor guidelines for size, good faith and history.

The Interim State Indicator Report (SIR) for FY 2011 indicates that Virginia continues to have a serious violation rate of approximately 61% (safety) and 49% (health) compared to Federal OSHA's rate of 77% (safety) and 64% (health) over a 12 month period. The SIR also indicated over a 12 month period Virginia vacated 8.9% of its cited violations compared to the federal rate of 7%, reclassified 5.5% of its violations compared to the Federal rate of 4.8%, and had a penalty retention rate of 68.1% compared to the federal rate of 62.8%.

During this evaluation period, VOSH developed two new forms to be used by Regional Directors and Compliance Managers during informal conferences to capture actions taken with regard to re-classification of violations, deletions, and penalty reductions. Case files reviewed during the case file audit found these forms were used to document actions taken during the informal conferences and the appropriate updates were entered into the IMIS.

### Abatement

VOSH requires abatement verification and documentation for all items not immediately abated during the inspection activity. This is in addition to the abatement certification form completed by the employer. The FY 2011 SAMM report indicates abatement verification continues to be an outlier. There were forty (40) such case files reviewed during this evaluation period to address this outlier. The VOSH

Program Director indicated there are a couple of elements contributing to this issue. First, there is an apparent data entry issue at the Regional Office level. Second, the VOSH Program requires not only abatement certification (i.e., the employer's statement that abatement has occurred), but VOSH also requires the employers to provide photographs, receipts, purchase orders, etc. as 'verification' that the hazard was abated. During the case file audits, many cases were reviewed where the employer's statement had been received in a timely manner, but no photos or additional information was received to verify the item was abated. The Regional Office then contacts the employer to obtain this information regarding their 'failure to provide' additional information. This often occurs after the abatement date and after the thirty (30) day mandated measure. If the abatement is verified one (1) day after the thirty day mandated measure, the outlier exists. Therefore, even though the item was abated, the abatement was not verified within the 30 day mandated measure, which ultimately results in this outlier. The Enforcement Program Director indicated VOSH will continue to strive to meet this mandated measure through the utilization of weekly IMIS abatement tracking reports, and review of the quarterly SAMM report.

VOSH continues to implement the Abatement Verification Regulation, section 307 of their Administrative Regulations Manual, as referenced by the OSHA Directive, CPL 02-00-114. The Regional Directors follow this directive to obtain abatement verification. In many instances, follow-up inspections are conducted. Attempts to contact an employer are documented on the Case File Diary Sheet.

It should be noted VOSH does not accept just abatement certification from employers in any case where the violation is classified as serious, willful or repeat. VOSH also requires the employer to provide physical documentation, i.e., photos, receipts, etc., for further verification of corrective action. This is far more stringent than Federal OSHA requirements. Therefore, data entry cannot be made until both the certification and the documentation evidence has been received by Virginia. VOSH continues to focus on improving their performance in abatement verification and to properly update the database to reflect that abatement evidence has been received from employers or update the database if extensions have been properly granted to employers and document the case.

### Employee and Union Involvement

As noted during case file reviews, union contacts were initiated during opening conference and documented in the case file. Employees in Virginia are afforded the right of review of alleged violations, abatement periods, and proposed penalties through VOSH procedures as established in the FOM. The procedures also provide employees or their representatives an opportunity to participate in review proceedings and to contest abatement dates.

## B. Review Procedures

### Informal Conferences

During informal conferences, the average penalty reduction of 42% was given by Regional Directors provided the employer provided abatement certification and documentation of corrective actions. Approval to reduce a penalty greater than 40% during the informal conference process must be approved by the Central Office. All Regional Directors attempt to settle cases on a local level rather than have employers contest.

## Formal Review of Citations

The Division of Legal Support conducts formal reviews of all contested cases and provides guidance to all Regional Offices for significant cases that involve any of the following conditions: willful/criminal, willful violations, willful cases suitable for an egregious penalty consideration, fatality/catastrophe, interest at the national level identified by OSHA, interest by media, public officials, or other interest groups identified as significant by the Commissioner, repeat violations (third instance or higher), and ergonomic violations.

A review of contested cases before the Virginia Courts arising under the Virginia Occupational Safety and Health Act was conducted. The average lapse time from receipt of contest to first level decision was significantly lower in Virginia than the nationwide average (106.41 days versus 199.7 days) during FY 2011.

During FY 2011, the following formal litigation activities occurred:

Virginia Circuit Court trials: Two (2) cases were heard, violations and penalties upheld.

Default Judgments: Two (2) cases heard, wherein the employer did not file an answer to the complaint, violations and penalties were upheld.

Administrative Process Act (APA) Informal Fact Finding: 1 case (used in public sector cases); willful violation was re-classified to serious.

Court of Appeals Hearings: One (1) case remanded to Circuit Court for disposition, case is still pending.

Cases Withdrawn: One (1) non-suit (company declared bankruptcy and is no longer in business).

Criminal Conviction: The Commonwealth of Virginia successfully prosecuted a criminal willful case that arose from the 2009 death of a 14 year old employee who was permitted by a tree trimming company to use a wood chipper. The company was performing tree felling and removal and storm clean-up. The chipper was used to dispose of the tree branches and debris. The VOSH investigation revealed the wood chipper had several safety features that were not operational and directly contributed to the fatality. As a result of the investigation, the VOSH Program issued two willful and twelve serious violations and \$185,500.00 in penalties. Criminal charges were also filed for child endangerment and a criminal willful violation of VOSH regulations. The employer pled guilty to the criminal willful violation. The civil case is still pending.

As noted during the FY 2011 case file reviews, Regional Directors and Compliance Managers were documenting actions taken during the informal conference on the revised informal conference notes and penalty relief justification worksheets that were included in the case files. All reclassifications of violations, deletions, or penalty reductions were well documented in accordance with the VOSH FOM.

VOSH Regional Offices operate in a similar manner to Federal OSHA Area Offices. Guidelines for all aspects of the VOSH Program are found in their June 2011 revised FOM. State specific changes were incorporated into this program guideline to reflect the state program elements. The Regional Director and/or the compliance manager conduct informal conferences and assign inspections. Weekly IMIS reports are utilized by the Regional Directors to manage all aspects of the VOSH Program. Inspection case files are reviewed by the compliance managers prior to citation issuance. All significant cases are also reviewed by the Office of Legal Support prior to citation issuance.

Compliance officers input case file information via the CSHO application. Weekly computer backups are performed to ensure inspection data is updated and retained.

## C. Standards and Federal Program Changes Adoption

### Federal Standards resulting in Federal Program Changes:

Final Rule, Hexavalent Chromium, Direct Final Rule, FR Notice, May 14, 2010.

At the August 18, 2010 meeting, The Virginia Safety and Codes Board adopted this Hexavalent Chromium direct final rule. The effective date was November 15, 2010. This FPC was issued as VOSH Directive 12-415B, on November 1, 2010.

Final Rule, Cranes and Derricks in Construction, FR Notice, August 8, 2010.

The Virginia Safety and Health Codes Board adopted the Cranes and Derricks in Construction – Final Rule at its January 2011 meeting. It was incorporated as VOSH Program Directive 12-254 with an effective date of April 1, 2011.

Final Rule, Working Conditions in Shipyards, FR Notice, May 2, 2011

At the October 2011 meeting, the Virginia Safety and Health Codes Board adopted the federal identical FPC “Working Conditions in Shipyards – Final Rule. The effective date was January 15, 2012, except for those provisions which have been extended, 29 CFR 1915.89(k)(ii).

Final Rule, Standards Improvement Project, Phase III, FR Notice, June 8, 2011

At the October 2011 meeting, the Virginia Safety and Health Codes Board adopted, for enforcement by the VOSH Program, the Standards Improvement Project, Phase III as published in 76 FR 33590 on June 8, 2011. The scheduled effective date was January 15, 2011.

### Federal Program Changes (FPC)

During this evaluation period, the following federal program changes were issued by Federal OSHA that required either State adoption or required responses to their intent:

CPL 02-01-049, Enforcement Guidance for Personal Protective Equipment (PPE) in Shipyard Employment, issued November 4, 2010. VOSH responded November 15, 2010 of their intent. VOSH does not have any public sector maritime operations in Virginia, and therefore, did not adopt this federal program change. There was no requirement for State adoption of this FPC.

CPL 03-11-002, Compliance Guidance for Residential Construction, issued December 15, 2010. VOSH formally responded to this FPC on September 1, 2011. This FPC was adopted as VOSH Program Directive 02-390B on June 15, 2011 with an effective date of July 1, 2011. There was no requirement for State adoption of this FPC.

CPL 03-00-005, National Emphasis Program (NEP) – Microwave Popcorn Processing Plants, issued originally July 7, 2007. This FPC updated the original CPL adding 2,3 pentanedione and all related diacetyl substitutes to the list of flavor chemicals included in the previous CPL. VOSH responded formally to this FPC on November 1, 2007 stating they would not adopt this NEP because there are no microwave popcorn processing plants located in the Commonwealth. There was no requirement for State adoption of this FPC.

CPL 02-01-050, Enforcement Guidance for Personal Protective Equipment in General Industry, 29 CFR 1910, Subpart I, issued February 10, 2011. VOSH adopted CPL 02-01-050 as VOSH Program Directive 02-043A, with an effective date of January 15, 2012. There was no requirement for State adoption of this FPC.

CPL 02-00-150, Field Operations Manual, issued April 22, 2011. This FPC contains new chapters on Maritime enforcement and Federal Agency Programs. On June 1, 2009, VOSH responded with their intention to adopt CPL 02-00-148, Field Operations Manual, issued March 26, 2009. This VOSH Directive included provisions and constraints as required by state statutory mandates within VOSH Program operations. The revised VOSH FOM was issued as VOSH Program Directive 02-001F, June 1, 2011. Revisions to the VOSH FOM will include the current CPL 02-00-150 revisions. The mandated six month measure for adoption will not be met due to the ongoing revisions of CPL 02-00-148 and necessary review process of the new FPC CPL 02-00-150.

CPL-03-00-013, National Emphasis Program – Primary Metal Industries, issued May 19, 2011. VOSH responded formally to this FPC on September 19, 2011. VOSH adopted CPL 03-00-013 NEP – Primary Metals Industries as VOSH Directive 14-216 with an effective date of September 1, 2011. VOSH met the six month adoption mandate for this FPC.

CPL 02-00-051, Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment, 29 CFR 1915, Subpart B, issued May 20, 2011. VOSH responded formally to this FPC on September 1, 2011. VOSH adopted CPL 02-01-051 as VOSH Program Directive 02-803 with an effective date of August 15, 2011. There was no requirement for State adoption of this FPC.

CPL 02-00-151, Commercial Diving Operations, issued June 13, 2011. VOSH responded formally to this FPC on September 1, 2011. VOSH adopted CPL 02-01-151 as VOSH Directive 02-234A, with an effective date of September 1, 2011. There was no requirement for State adoption of this FPC.

CPL 02-00-052, Enforcement Procedures for Investigation and Inspecting Incidents of Workplace Violence, issued September 8, 2011. VOSH responded on February 2, 2012 they will not adopt this FPC; however, they reserved the right to reconsider at a later date. There was no requirement for State adoption of this FPC.

CPL-02-11-03, Site – Specific Targeting 2011 (SST-11) issued September 9, 2011. VOSH responded on October 25, 2011, their intent regarding this FPC. As in previous evaluation periods, VOSH has not participated in the site-specific targeting program, and will not adopt this FPC. Their general industry high hazard list used for the programmed inspections is provided by the Federal OSHA Office of Statistical Analysis, and is considered ‘as effective as’.

CPL-02-03-003, Whistleblower Investigations Manual, issued September 20, 2011. VOSH responded on October 25, 2011, outlining their intent regarding this FPC. VOSH adopted the federal identical version of CPL-02-03-003 as VOSH Program Directive 04-001C, with an effective date of January 1, 2012. VOSH met the required six month adoption mandate for this FPC.

VOSH participates in the Automated Tracking System (ATS) regarding federal program and state program changes. The Program Manager, of the Planning and Evaluation Division, has maintained a chronological Federal Program Change Log and Federal Standards Log since 1994 which reflects all federal program changes that VOSH has either adopted as required, or has developed as a more stringent State regulation.

## State Initiated Changes

As previously addressed in this report, VOSH has thirteen (13) unique standards which are more stringent than the Federal OSHA regulations. The most recent unique standard, Tree Trimming Operations, 16VAC25-73, was promulgated by the Virginia Safety and Health Codes Board in March 2011 to reduce and eliminate employee injuries and fatalities in arborist/tree trimming and cutting operations on residential and commercial work sites. The Tree Trimming Industry approached the Department of Labor and Industry about the possibility of adopting a comprehensive regulation addressing tree trimming in 2001. The Industry requested a regulation based on the then current American National Standards Institute (ANSI) consensus industry standard ANSI Z133.1-2000. Discussions with the Department resulted in a commitment from the Industry to make significant changes to the ANSI standard which culminated in the adoption of the revised ANSI Z133.1-2006. The need for the regulation was very evident when fatality statistics were reviewed. Since 2000, there were forty (40) fatalities in the tree trimming industry, which represented 9% of all fatalities reported. For an industry of the relatively small size of the tree care industry, these incidents represented a very high number of fatal accidents. Since the promulgation of this regulation there have been no fatal accidents in the tree trimming industry.

Two (2) VOSH Directives were issued regarding tree trimming operations during this evaluation period. VOSH 02-244, Tree Trimming Operations, Inspection Procedures and Interpretations (corrected) was revised May 9, 2011, and VOSH Directive 12-255, Tree Trimming Operations was published March 82, 2011, with an April 27, 2011 effective date. The State submitted state-initiated changes to Federal OSHA for this unique standard.

During FY 2011, VOSH issued a total of twenty-six (26) guidance documents to field personnel, and posted them on the VOSH website. These documents included FPCs as well as state initiated changes.

The Safety and Health Codes Board is authorized to adopt, alter, amend or repeal rules and regulations to further protect and promote the safety and health of employees in places of employment over which the Commonwealth has jurisdiction and to effect compliance with the Federal OSHA statute. The Board is also authorized to formulate regulations which are designed for the protection of human life and property from the unsafe or dangerous construction, installation, inspection, operation, maintenance and repair of boilers and pressure vessels. The Board is also responsible for the promulgation of regulations to ensure the proper conduct of demolition and renovation of asbestos facilities projects and the proper conduct of lead related projects. The Safety and Health Codes Board is required to meet twice annually with additional meetings as necessary to fulfill statutory or federal regulatory requirements.

### D. Variances

In accordance with the VOSH Administrative Regulations Manual (ARM), any employer or group of employers may file an application with the Commissioner for a temporary or a permanent variance from a standard or regulation pertaining to occupational safety and health. There were no variances requested during this FY 2011 evaluation period.

### E. Public Employee Program

VOSH conducted 173 safety and health inspections in the public sector or 5.4% of its total inspection activity for FY 2011. There were serious violations observed and citations issued in 66% of the safety and 61% of the health inspections conducted. Although no penalties are assessed against public sector

employers, VOSH has worked successfully with these agencies to bring them into compliance with current safety and health standards.

#### F. Discrimination Program

VOSH has been successful in reducing its whistleblower case backlog since 2003 when it had 112 cases that were unresolved. These cases are mandated by Federal OSHA to be completed in 90 days or less from the date the complaint is received. During FY 2011, VOSH has been able to significantly address any whistleblower complaints; there were no cases over 90 days old. This was achieved by direct management oversight and close monitoring to ensure cases were settled or adjudicated within established timeframes.

##### Investigative Case File Reviews

Ten (10) case files were reviewed out of twenty-four (24) that were opened during FY 2011. No conflicts were found with federal policies and procedures. All of the cases were completed within ninety (90) days. Although no complaints were found to be meritorious, settled or litigated, the sample of twenty-four (24) complaints was too small to determine if the rates were appropriate. The following was noted in the review of case files:

Although it is not required in the VOSH discrimination manual, it was noted that confidential witness interviews were not marked as such. It is recommended that VOSH identify confidential witness interviews to make them less likely to be released if there is a Freedom of Information Act request. During the review it was noted that five out of the ten files reviewed had incomplete case file diary log. In an additional file, no diary log was present.

**Finding #11-4:** Diary logs are to be completed and present in the investigation files as required by the VOSH Discrimination Manual.

**Status:** Continue to monitor as Finding #11-04

**Recommendation 11-4:** Ensure that diary logs are present and maintained in all investigative files.

Additional items were noted during the case file review and are included as recommendations to improve the program. Ensure that all items identified in the table of contents are present in the case file. Likewise, ensure that items referred to in the Case Diary Log are present in the case file. It is also recommended that the state attach proof of delivery to correspondence to document that the parties received the proper notifications. Although according to the SAMM report only 4.5% of VOSH's cases were meritorious in FY 2011 (compared to 23% nationally), no trend of deficiencies of the investigations were noted during the case file review.

##### Program Management

During the review of the state program, it was noted that complaints that were screened out were not entered into IMIS. Although the current federal Whistleblower Investigations Manual does not specifically require entry of such cases into IMIS, VOSH quickly acted upon the suggestion to enter these cases in order to more accurately track the program's investigative activity. Formerly screened complaints, which had been

maintained in a separate file as was the long standing practice, were entered into the system and VOSH is keeping current with new complaints.

### Resources

VOSH sent their current investigator to the all hands Whistleblower Investigations Conference in September 2011. The person currently assigned to whistleblower investigations is a seasoned investigator. They have demonstrated a thorough knowledge of the policies and procedures of whistleblower investigations.

#### G. Complaint About State Program Administration (CASPs)

There were no CASPs received in FY 2011.

#### H. Voluntary Compliance Programs

In the area of Outreach and Cooperative Programs, the VOSH Program hosted the 16<sup>th</sup> Annual Virginia Safety and Health Conference, from October 5-7, 2011, in Portsmouth, Virginia. The conference was attended by two hundred eighteen (218) employees, employers and safety and health professionals from around the Commonwealth for three (3) days of training and outreach opportunities. In addition, there were thirty (30) vendors sharing safety and health product information to the attendees. VOSH's safety and health program is strengthened through the participation of these industry representatives from manufacturing, construction, and public sector employers at this annual conference.

During this evaluation period, the Commissioner, Assistant Commissioner, VOSH Program Directors, Regional Directors and Compliance Staff provided outreach and compliance assistance regarding workplace safety and health issues to numerous organizations. These activities provided information on the many elements of the Virginia Occupational Safety and Health (VOSH) Program, such as their unique standards, the mission of their safety and health program, consultation program, and various activities offered to the 'hard to reach workers'. These extensive VOSH outreach and compliance assistance activities are detailed in Appendix H.

Virginia also has thirty-two (32) SHARP participants. The impact of compliance inspections was significantly enhanced by support and strengthening relationships with public and private organizations that represent safety and health best practices.

### Voluntary Protection Program (VPP) and Safety and Health Achievement Recognition Program (SHARP)

The Virginia Voluntary Protection Program (VPP) is designed to recognize and promote exceptional safety and health management programs. VOSH's VPP establishes cooperative relationships at a general industry or public sector workplace that has implemented a strong safety and health program. VOSH's VPP program and its guidance follow the procedures set out in the Federal VPP program.

During FY 2011, VOSH conducted nine (9) VPP evaluations. They now have a total of forty (40) STAR sites. One (1) STAR site was added during this evaluation period. There was one site pending further evaluation during this reporting period, with the expectation of being awarded STAR status in December 2011. In addition to the VPP STAR sites, there were thirty-two (32) small employers participating in the Safety and Health Achievement Recognition Program (SHARP).

An offsite review of VOSH's VPP policy and procedures and two VPP evaluation reports was conducted. In addition, an informal interview with the VPP Program Manager was held. The review found that Virginia's VPP program included appropriate tracking procedures. Both of the two reports reviewed had onsite and recertification visits that were conducted in a timely manner, and 90 day items were corrected prior to approval. It was noted that the team leader and evaluation teams were trained appropriately. No deficiencies were noted during the review.

The VPP and SHARP programs continue to be a viable element of VOSH's Cooperative Program.

#### Outreach and Compliance Assistance Activities

In addition to the VPP and SHARP programs, another integral component of VOSH's Cooperative Program is their participation in Outreach and Compliance Assistance Activities. During FY 2011, VOSH was very active in their attempts to inform their stakeholders, employers, employees, and other safety and health professionals of the VOSH program. The following activities were conducted during this evaluation period.

VOSH provided three (3) YouTube© public service announcements (psa) on the Virginia Department of Labor & Industry (DOLI) website to reach the 'hard to reach workers'. The psa's concerned the following: tree trimming operations, overhead high-voltage power line safety and trenching safety. Additional psa's are aired on the website as needed to emphasize seasonal and occupational areas of concern.

To ensure workers were informed of the tree trimming safety regulation VOSH translated the regulation and supporting outreach documentation into Spanish. Additionally, an extensive mailing to over 1,000 employers in the arborist and landscaping industry was conducted. This outreach effort offered a wide range of assistance and education to enhance compliance with the new regulation.

VOSH continued participation in an outreach program sponsored by the Mexican Consulate to address concerns of Spanish speaking workers in a non-threatening environment. Question and answer sessions in Spanish were conducted at various locations in each VOSH region to help non-English speaking employees understand their right to work safely and how to report hazardous conditions at their workplace. This program reached over 1,000 Spanish-speaking workers.

In the aftermath of Hurricane Irene which occurred in August 2011, VOSH fielded six (6) teams from both the compliance and consultation programs to assist employers and property owners in safe cleanup operations. The teams carried out forty-one interventions during a three (3) day period. During these interventions, the teams interfaced with over one-hundred (100) employees and homeowners to offer information on safety and health hazards associated with cleanup activities. The teams provided information on personal protective equipment (ppe), fall protection, ladder safety, first aid and cardio pulmonary resuscitation (CPR) requirements, first aid kit, emergency preparedness and tree trimming operations. During several interventions, the team members provided ppe such as ear plugs, hard hats, safety glasses, and the use of high visibility vests if working near a roadway. They also provided instructional information on the safe use of chain saws and provided the new handout on tree trimming operations.

#### Alliances

In accordance with VOSH Program Directive, Partnership Programs, 09-010, dated July 15, 1997, VOSH continued its alliance with the Virginia State Association of Occupational Health Nurses (VSAOHN).

The mission of this association is the promotion of healthy and safe workplaces in large and small businesses in areas such as emergency management, ergonomics, health and wellness, healthcare worker safety and respiratory protection. As previously mentioned, the VSAOHN has been actively involved in DOLI VOSH activities, notably the annual Occupational Safety and Health Conference.

In addition to the formal alliance with VSAOHN, VOSH continues to work closely with stakeholders and other organizations that support VOSH's strategic goals. Notable organizations include the Voluntary Protection Participants Association (VPPPA), Drive Smart Virginia, the Virginia Manufacturers Association, the Virginia Chapters of the American Society of Safety Engineers (ASSE), and Miss Utility.

#### I. Public Sector On-site Consultation Program

The Virginia FY 2011 MARC report for the public sector is attached as Appendix F. According to the FY 2011 MARC, VOSH Consultants conducted nine (9) public sector consultation visits in FY 2011, six (6) were initial visits. MARC measures 1 and 2 do not apply to the public sector, although data is included in the printout in Appendix F.

MARC 3	Percent of Visits where Consultant Conferred with Employees.  Consultants conferred with employees during 100% (6/6) of initial visits.
MARC 4.A	Percent of Serious Hazards Verified Corrected in a Timely Manner (within 14 days of latest correction due date).  All of the fifty (50) serious hazards identified during the period (100%) were verified corrected within 14 days of the latest correction due date. This is outstanding performance on ensuring employees are removed from exposure to serious hazards.
MARC 4.B	Percent of Serious Hazards Not Verified Corrected in a Timely Manner (within 14 days of latest correction due date).  All of the fifty (50) serious hazards identified during the period (100%) were verified corrected within 14 days of the latest correction due date.
MARC 4.C	Percent of Serious Hazards Referred to Enforcement.  No serious hazards identified during the period were referred to enforcement.
MARC 5	Number of Uncorrected Serious Hazards with Correction Date more than 90 Days Past Due.  There were no serious hazards with correction due date more than 90 days past due.

**Virginia State Plan  
FY 2011 23(g) Consultation Activity**

	VA Public Sector	Total State Plan Public Sector
<b>Requests</b>	<b>11</b>	<b>1,328</b>
<i>Safety</i>	6	576
<i>Health</i>	5	560
<i>Both</i>	-	192
<b>Backlog</b>	<b>1</b>	<b>123</b>
<i>Safety</i>	-	51
<i>Health</i>	1	58
<i>Both</i>	-	14
<b>Visits</b>	<b>9</b>	<b>1,632</b>
<i>Initial</i>	6	1,336
<i>Training and Assistance</i>	3	175
<i>Follow-up</i>	-	121
<i>Percent of Program Assistance</i>	100%	67%
<i>Percent of Initial Visits with Employee Participation</i>	100%	96%
<b>Employees Trained</b>	<b>40</b>	<b>5,030</b>
<i>Initial</i>	25	2,144
<i>Training and Assistance</i>	15	2,886
<b>Hazards</b>	<b>67</b>	<b>6,063</b>
<i>Imminent Danger</i>	-	3
<i>Serious</i>	56	4,804
<i>Other than Serious</i>	10	1,171
<i>Regulatory</i>	1	85
<i>Referrals to Enforcement</i>	-	6
<b>Workers Removed from Risk</b>	<b>2,254</b>	<b>171,075</b>
<i>Imminent Danger</i>	-	55
<i>Serious</i>	2,067	136,884
<i>Other than Serious</i>	162	26,046
<i>Regulatory</i>	25	8,090

J. Program Administration

The VOSH program is allocated fifty-nine (59) benchmark positions in accordance with their approved State Plan. They are allocated thirty-eight (38) safety specialist positions and twenty-one (21) industrial hygienist positions. Currently, they are staffed with thirty-three (32) safety specialists and seventeen (17) industrial hygienists. Therefore, ten (10) benchmark positions are not filled. At the present time, VOSH is experiencing a hiring freeze imposed by the Secretary of Commerce and Trade. The Commissioner of Labor and Industry has requested of the Governor to consider a critical hiring agreement, so that VOSH staffing levels would not drop below 75% to 80% of benchmarks. At the present time, VOSH will recruit for five (5) of the ten (10) vacant positions as soon as permission is granted. The other five (5) vacant positions will be recruited for and filled when funds are available.

During FY 2011, all state employees were furloughed one day as a cost saving measure for overall expenditures throughout the Commonwealth. The Assistant Commissioner indicated the VOSH Safety and Health Program continued to provide safety and health coverage for the Commonwealth by responding to all fatalities and complaints as required by VOSH's policies and procedures. Additionally,

there have been no pay increases for state employees since November 2007 and there are none forecasted for the next two years. This has had an effect on the retention rate of some benchmark positions, particularly in the Northern Virginia Regional Office which is in close proximity to Washington D.C. Budget constraints have also impacted funding available for training and conferences and the travel expenses associated with each.

VOSH established an Apprentice Program for safety compliance officers in April 2005. The first graduate of this program was in August 2006, and a total of thirty-one (31) have graduated since the program began. There are currently fifteen (15) apprentices in this program. This formal training program includes extensive on-the-job training as well as excellent classroom training that prepares compliance officers in all aspects of hazard recognition and abatement verification. Additionally, the program helps to improve the overall safety and health of the State's workforce and also reduces the bottom line business costs of equipment, property as well as helping to reduce injuries and illnesses to employees. VOSH also established an Apprentice Program for Industrial Hygienists (IH) in September 2005, and the first graduate of this program was in January 2007. A total of seven (7) IH's have graduated since that time. There are currently five (5) IH apprentices in this program.

VOSH gained approval through the United States Department of Veterans' Affairs and the Virginia Department of Veterans' Services for its Apprentice Program as an authorizing agency for benefits under the Montgomery and Webb GI bills. This approval was granted in April 2006. In addition, VOSH currently has a program directive which outlines its professional development training for compliance personnel.

### Debt Collection

Cases with outstanding penalties of \$3,000 or less are sent to the Accounting Department for debt collection. When penalty payments have not been received, debt collection letters are sent by the Accounting Department and referred to a local debt collection service for further action if necessary. Cases with penalties in excess of \$3,000 are sent to the Attorney General's Office for collection. Before issuing any refunds to taxpayers, Virginia law requires a check of any person or entity to determine if they owe the state any money. If any such debt is found, regardless of the type of tax return filed, all or part of the refund may be withheld to satisfy that debt to the Commonwealth. Legal action may also be filed against persons or entities who owe debts to the Commonwealth. Interest is assessed by VOSH on all unpaid penalties.

In the past debt collection was not a high priority for the Attorney General's Office due to lack of staff resources. However, staff has been increased and this office is being much more aggressive in its collection efforts. As with Federal OSHA debts which are determined to be uncollectible, either through a company's bankruptcy or the amount is not large enough to refer for legal action, are administratively waived and the case is closed in IMIS.

### IMIS/Program Management

All transmissions to the host computer (e.g., End-of Day (EOD) and Start-of-Day (SOD)) are conducted on a daily basis by administrative staff. Daily back-ups of local databases are also performed on a daily basis by administrative staff. A detailed review was made of various management reports to determine if VOSH was timely processing data and updating the system appropriately. Forms rejected by the host computer in Washington, D.C. are handled as expeditiously as possible by administrative staff.

Discussions with Regional Directors and the VOSH Program Director revealed the following local reports were run and reviewed on a weekly basis:

**Complaint Tracking Report:** The Complaint tracking report is used to determine if complaints need to be closed that are still open. This report is generated and distributed to supervisors monthly.

**Referral Tracking Report:** The Referral tracking report is used to determine if referrals need to be closed that are still open. This report is generated and distributed to supervisors monthly.

**Complaint - Employer Response Due Report:** This report lists all complaint inquiries where the employer's response to OSHA's request to investigate the complaint allegations has not been received. This report is available for use by management to contact the employer and remind them that their abatement response is past due or to schedule the complaint for an inspection due to the lack of response.

**Complaint – VOSH-7 for Signature:** This report lists all complaint inquiries where the employee's requested signature has not been received. This report is available for use by management to contact the employee and remind them that their signed complaint form is past due, or maintain the "non-formal" classification due to the lack of the employee's signature and process the complaint as an inquiry.

**Unsatisfied Activity Report:** This report lists all complaint, referral and accident/event records that have been selected for an inspection yet no inspection has been initiated. These reports are run on a weekly basis and distributed to supervisors for review and action. All coding issues are immediately identified and eliminated by the system administrator.

**Citations Pending Report:** This report lists all open inspections where the citations have not been issued. This report is available for use by management to track the six-month statute of limitation for issuing citations. There were no instances found where citations were not issued within the six month time frame.

**Violation Abatement Report:** This report lists all cases with abatement past due for specific violations and is available for use by management to contact the employer and remind them of their past due abatement, or schedule a follow-up inspection because of the lack of the employer's abatement response. Although this report is generated and distributed to the management team on a weekly basis, abatement verification (SAMM Measure #8) has been an outlier for years, due to VOSH's requirement for the employer to provide not only abatement certification but also, abatement documentation.

**Open Inspection Report:** This report lists all open inspections for each office. For internal audit purposes, this report can be reviewed to determine if case file management is being handled properly. The review will identify all cases that have all abatements completed and all penalties paid, so the cases can be effectively closed on the IMIS system.

**Fatality/Catastrophe Report:** The fatality/catastrophe report lists all inspections in which an OSHA-170 has not yet been entered into the system. This report is reviewed on a weekly basis by management.

### **State Internal Evaluation Report (SIEP)**

During the FY 2011 evaluation period, VOSH Regional Directors performed mandatory case file audits as an element of their internal review process. A total of 2,524 case files were randomly selected throughout the

Commonwealth for review. As a result of these audits, VOSH Regional Directors identified the following issues and required corrective actions in each of its Regional Offices. The results of these case file reviews are listed below from each Region:

### **Central Region**

The Central Regional Director reviewed approximately 780 case files during FY 2011.

No major systematic problems noted. Some trend situations were detected such as a particular CSHO citing in a manner which required further review. A number of exceptions were identified such as improperly cited standard sections i.e., citing definitions instead of specific standard language for the hazardous condition. Prompt corrective action was coordinated through the Compliance Manager and Support Manager.

### **Southwest Region**

The Southwest Regional Director reviewed approximately 815 case files during FY 2011.

Compliance managers review case files for merit and discuss any issues with CSHOs. Case files with citations are reviewed again by Regional Directors prior to citation issuance.

Reviews revealed isolated problems with typographical errors, incomplete or vague alleged violation descriptions (AVDs), and severity was not appropriate for the likely injury/illness. Overall, case file documentation improved especially with the requirement to include employer statements to support knowledge.

### **Tidewater Region**

The Tidewater Region Director reviewed approximately 326 case files last FY11. The Compliance Manager continues to review all files prior to issuance in a concentrated effort to screen out errors.

Most of the discrepancies continue to be a result of inexperienced CSHOs in this region. CSHOs were not conducting adequate interviews, and therefore, were not obtaining adequate interview statements to document and support certain violations. Additionally, some CSHOs did not follow the FOM when assessing probability and severity in an effort to keep penalties low.

### **Northern Region**

The Northern VA Region conducted about 603 inspections during the FY 2011. All case files were reviewed by either a Senior Engineer or Compliance Manager before citations were issued or the case closed with no citations issued. Approximately 80% of the case files were reviewed by several people before being issued. If problems were noted during the review process, the case file was typically returned to the CSHO with notes, and/or discussed with the CSHO. The file was resubmitted after corrections were made. Compliance Managers would discuss any major concerns with the Regional Director.

Fatalities, catastrophes and other significant cases were normally reviewed by an Engineer, Compliance Managers and the Regional Director before they were submitted to the Program Director and Director of Legal Support for review.

Any areas of concern that came into question during informal conferences were typically reviewed with the CSHOs and discussed at accountability meetings attended by all CSHOs/IHs so that the group experienced a teachable moment.

The Region had several new CSHOs and there were some problems with writing skills and AVDs particularly. CSHOs were encouraged to proof read each others' work and writing suggestions and/or comments were frequently made. Consistency in gravity determination was also observed and whenever inconsistencies were noted, they were discussed with the CSHOs.

## **V. Assessment of State Progress in Achieving Annual Performance Goals**

Through the State OSHA Annual Report (SOAR), the Commonwealth of Virginia has provided information that supports positive performance in the accomplishment of meeting their five-year strategic plan for 2007-2012. Through effective resource utilization, partnership development, outreach activities, and an overall commitment to performance goal achievements, the majority of goals have been met or exceeded. The primary goal of VOSH's strategic plan is to reduce occupational injuries, illnesses, and fatalities through direct intervention. BLS data for 2010 was utilized for this performance measure. During 2010, an injury and illness rate of 3.3 indicates VOSH activities continue to have a positive affect in reducing recordable injury and illness rates established by 2006 baseline rate of 4.4. VOSH was also able to achieve a reduction in workplace fatalities investigated over the last 5 calendar years: 2007: 44; 2008: 39; 2009: 33; 2010: 24; and 2011: 27. Until this evaluation period, workplace fatalities investigated have been steadily decreasing in Virginia over the last 5 years. VOSH was also able to successfully initiate inspections in 100% of fatalities and catastrophes within one working day of notification.

Section 18 of the Occupational Safety and Health Act of 1970 encourages states to develop and operate their own job safety and health programs. Federal OSHA approves and monitors state plans and provides up to 50 percent of an approved plan's operating costs. Virginia is one of twenty-seven (27) states and American territories approved to operate its own safety and health enforcement program. Among other things, states that develop these plans must adopt standards and conduct inspections to enforce those standards.

The FY 2011 Annual Performance plan for the Virginia Occupational Safety and Health Administration (VOSH) fully supports Virginia's long-term strategic goals while at the same time addressing state-specific issues and concerns. Promoting a safe and healthful workplace culture in order to improve workplace safety is the central theme of the VOSH strategic plan. The FY 2011 Annual Performance Plan recognized the interconnection and importance of the various program tools (enforcement, consultation, training, partnerships) available to the State and the Annual Performance Plan was designed to make full use of these tools.

VOSH's approach for achieving its long-term strategic goals is to identify significant problems, determine the most effective ways to address them, use the best mix of available tools, and then measure the results. The VOSH program has adopted two interdependent strategic goals in their Annual Performance Plan. These goals are to reduce occupational injuries, illnesses, and fatalities through direct intervention in Virginia's workplaces, as evidenced by fewer hazards, reduced exposures, and fewer injuries, illnesses, and fatalities and to promote a safe and healthy workplace culture. In addition to these goals, VOSH utilized Worker's Compensation First Reports of Accidents to promptly investigate amputations and other serious accidents. Other emphasis programs on scaffolding, heavy equipment, overhead high voltage line safety, fall protection, lumber and wood

products, public workshops, silicosis, tree felling and tree de-limbing operations, wastewater treatments plants, lead, combustible dust, amputations, spray on truck bed lining and trenching resulted in increased awareness of safety and health in these related industries.

Through its annual performance report, the Commonwealth of Virginia has provided information that supports positive performance in the accomplishment of meeting their five-year strategic plan. Through effective resource utilization, partnership development, outreach activities, and an overall commitment to performance goal achievements, the majority of goals have been met or exceeded.

The following summarizes the activities and/or accomplishments for each of the FY 2011 VOSH performance goals. VOSH met all of its FY 2011 performance goals. The State OSHA Annual Report (SOAR) can be found in Appendix F.

**Strategic Goal 1: Reduce occupational injuries, illnesses, and fatalities through direct intervention.**

**Performance Goal 1.1A:** By 2012, decrease injuries and illnesses per 100 workers in the workplace by 5%.

**Result:** VOSH met this goal.

**Discussion:** Review of the most recent BLS data shows the VOSH program, through direct intervention activities, continued to work towards the 5% performance goal of the baseline rate of recordable injury and illness rates as follows: 2007 (4.40) , 2008 (4.35), 2009 (4.30), 2010 (4.25) and 2011 (4.20).

**Performance Goal 1.1B:** Annually initiate investigations of 100% of worker complaints within one working day or conduct an on-site inspection within five working days.

**Result:** VOSH met this goal.

**Discussion:** VOSH received 471 complaints in FY 2011 and 423 were investigated within one day for a response rate of 96.21%. State and Federal holidays affect the 100% performance goal from being met, yet, it is not indicative of the overall performance goal. VOSH conducted on-site inspections within five working days for all 423 worker complaints for a response rate of 100%.

**Performance Goal 1.2A:** By 2012 decrease fatalities in the workplace per 100,000 workers by 5%.

**Result:** VOSH met the goal.

**Discussion:** The performance data for this particular measure has not yet been released by BLS, however, workplace fatalities in Virginia decreased 13% last year, there were 104 workplace fatalities reported in 2010, a decrease from 119 in 2009. Over the last 5 calendar years fatality investigations decreased as well: 2006: 55, 2007: 44; 2008: 39; 2009: 33, and 2010: 24. Although there was a reduction in the number of workplace fatalities, there was a slight increase in the number of fatality investigations conducted in 2011, there were 27. It should be noted that VOSH excludes in the recording of workplace fatalities those that were the result of heart attacks and similar non-work causing factors, fatalities that occurred in Virginia but not in VOSH's jurisdiction, and those that involved sole proprietors. The Federal Office of State Plan's statistics includes these cases; therefore their data reported a total of forty (40) fatalities that occurred in Virginia.

The impact of VOSH compliance inspections has had a positive effect through its increased support in strengthening its relationships with both public and private organizations that represent safety and health best

practices. One way that VOSH has been able to strengthen its relationships is through its Annual Occupational Safety and Health Conference. The goal of the conference is to help educate employers and employees in developing safe and healthy work environments and to provide affordable safety and health training opportunities to employers, employees, and safety and health professionals.

**Performance Goal 1.2B:** Annually initiate inspections of 100% of fatalities and catastrophes within one working day of notification.

**Result:** VOSH met this goal.

**Discussion:** VOSH has been successful meeting the performance goal of one-day to initiate a fatality investigation upon notification, 100% of the investigations were initiated within one day.

**Performance Goal 1.3.A:** Reduce the rate of workplace injuries and illness in worksites through participation in the VPP Programs.

**Result:** VOSH met this goal.

**Discussion:** During FY 2011, VOSH had forty (40) active VPP sites in Virginia. The Virginia Voluntary Protection Program is designed to recognize and promote exceptional safety and health management programs. VOSH verifies that employer programs meet VPP criteria and also reassesses employer programs periodically to confirm that the site continues to meet VPP criteria. A detailed analysis of employer injury and illness rates is performed annually to confirm that rates are in compliance with program requirements. Any employer whose rates are increasing will be removed from the VOSH VPP program.

## **Strategic Goal 2: Promote a Safety and Health Workplace Culture**

**Performance Goal 2.1:** One-hundred percent (100%) of VOSH on-site activities (e.g., inspections or consultation visits) will include a worker involvement component annually, such as interviews, informal conferences, and walk-around inspections.

**Result:** VOSH met this goal.

**Discussion:** VOSH has been monitoring this aspect of its public sector consultation visits and its inspection activities for a number of years to ensure that employees are involved during all aspects of VOSH on-site activities. All nine (9) public sector consultation visits had employee involvement. These consultation visits resulted in fifty (50) recognized serious hazards. Corrective action was verified on all hazards observed. The consultation project manager reviews public sector reports and compliance managers review inspection data on a regular basis to ensure this goal continues to enhance worker involvement in all aspects of VOSH's safety and health activities.

**Performance Goal 2.2:** Increase consultant time during consultation activities while reducing request lag time and issuance of employer reports.

**Result:** VOSH met this goal.

**Discussion:** Consultation activity time during on-site evaluations increased from 25.42% to 26.65% during this evaluation period, while reducing lag time from 2.26 days to 2.03 days. The report issuance time decreased from 12.62 days to 10.37 days. VOSH continued to make great strides in increasing its

consultation on-site activity and reducing its lag time from receipt of consultation request to actual visit. Report issuance time continues to be within the 20 calendar days after the closing conference was held.

**Appendix A**  
**FY 2011 Virginia State Plan FAME Report**  
**Findings and Recommendations**

Rec #	Findings	Recommendations	FY 10 #
11-01	Case file documentation is not in conformance with the requirements of the VOSH FOM. Inconsistencies included limited documentation for hazard description, employee exposure, and employer knowledge on the 1B worksheet.	Ensure Regional Offices are complying with established VOSH FOM guidelines for case file documentation to ensure consistency throughout the VOSH Program; continue State Internal Evaluation Program (SIEP) which includes random case file audit	#10-05 & #10-07
11-02	VOSH was not achieving abatement verification 100% as required by the State Activity Mandated Measure (SAMM)	Ensure Regional Offices are utilizing weekly IMIS reports, such as the Abatement Tracking Report, and review quarterly SAMM reports to ensure timely abatement verification is achieved	#10-13
11-03	Not all Federal Program Changes (FPCs) are adopted within the six month period.	Continue to strive to meet this mandated measure.	#10-15
11-04	Diary logs are to be completed and present in the investigation files as required by the VOSH Discrimination Manual.	Ensure that diary logs are present and maintained in all investigative files.	

**Appendix B**  
**FY 2011 Virginia State Plan FAME Report**  
**Status of FY 2010 Findings and Recommendations**

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-1	Case files lacked written documentation of why a non-formal complaint resulted in an inspection	Written documentation should be contained in case files to justify why a non-formal complaint resulted in an inspection	Provide refresher training regarding complaints and referrals. All non-formal complaints converted to formal complaints will require a statement in the case file to justify why the complaint resulted in an inspection. This action will appear on the Case File Diary Sheet	All VOSH enforcement personnel, including Directors and Managers, were provided refresher training. Training was completed by January 20, 2011.	COMPLETED
10-2	Standard language was not used in response letter to complainants	Response letters must include an appropriate response detailing the outcome of the inspection or investigation activity for each alleged complaint item.	Provide refresher training regarding response letter standard language, detailing the results of an inspection or investigation for each alleged complaint item.	All VOSH enforcement personnel, including Directors and Managers, were provided refresher training. Training was completed by January 20, 2011.	COMPLETED
10-3	Families of fatality victims were not kept up-to-date about investigations and/or informed of the outcome of investigations.	Up-to-date investigation information must be provided to families of fatality victims.	Provide refresher training regarding fatality investigation requirements for next-of-kin being informed of all aspects of the investigation.	All Regional and Program Directors as well as Compliance Manager were provided refresher training to ensure next-of-kin are fully informed of fatality investigations, and their outcome. Training was completed by January 20, 2011.	COMPLETED
10-4	Interviews with employer representatives and employees were not always documented.	Ensure interviews with employer representatives and employees are documented in the case file.	Provide refresher training regarding proper documentation is obtained during interviews, and included in the case file.	All VOSH enforcement personnel were provided refresher training, and the VOSH IW-1 form was revised to include a signature line for employer representatives, and employees interviewed. Training was completed by January 20, 2011.	COMPLETED

10-5	Case file documentation is not in conformance with the requirements of the VOSH Field Operations Manual (FOM)	Ensure case files are documented as outlined in Chapter 9, of the June 2011 revision of the VOSH FOM.	Provide refresher training regarding proper case file documentation, and ensure management and compliance personnel utilize these guidelines.	All VOSH compliance personnel were provided refresher training regarding proper case file documentation. Training was completed by January 20, 2011.	FY 2011 Finding #11-01
10-6	Case file diary sheets were not found in all inspection files.	Case file diary sheets must be used in accordance with established FOM guidelines.	Provide refresher training regarding the use of the case file diary sheet, and ensure they are included in the case files.	VOSH administrative, compliance, and supervisory personnel were provided refresher training to ensure Case File Diary sheets were completed for all case files. Training was completed by January 20, 2011.	COMPLETED
10-7	VOSH must ensure 1B worksheets are properly documented for all hazards observed during an inspection/investigation.	Ensure all compliance staff include adequate documentation for employee exposure to a hazard, with emphasis on documentation to support citations issued.	Provide refresher training regarding proper documentation on the 1B worksheet to support citations issued.	VOSH compliance personnel were provided refresher training on 1B documentation. Training was completed by January 20, 2011.	FY 2011 Finding #11-01
10-8	Alleged violation descriptions (AVDs) on OSHA 2 forms were not specific to address the hazardous condition.	Ensure all compliance staff fully document AVDs to reflect specific hazards noted for each observed hazard	Provide refresher training regarding proper documentation on the OSHA 2 form.	VOSH safety and health compliance personnel were provided refresher training on properly documented all AVDs for hazards observed. Training was completed by January 20, 2011.	COMPLETED
10-9	OSHA-300 logs were not always obtained from employers and reviewed by compliance officers during an inspection activity.	Ensure three year OSHA 300 data is obtained from the employer during the inspection activity, and reviewed by the compliance officer.	Provide refresher training regarding the requirement for OSHA 300 data, and ensure the information is included in the case file.	VOSH safety and health compliance personnel were provided refresher training on obtaining OSHA 300 information. Training was completed by January 20, 2011.	COMPLETED
10-10	Proper documentation to justify violation severity classification was not always maintained in the case file.	Ensure proper documentation is included in the case file to support the severity classification for each violation.	Provide refresher training to ensure violations are properly classified in accordance with the VOSH FOM.	VOSH safety and health compliance personnel were provided refreshed training to ensure violations are properly classified, and well-documented on the 1B worksheet. Training was completed by January 20, 2011.	COMPLETED
10-11	Case files did not always contain documentation of how	Case files must be documented by	Provide refresher training to Regional Directors,	VOSH Regional Directors and	COMPLETED

	penalty reduction factors were determined where minimal abatement was required.	Regional Directors to explain why maximum penalty reductions were granted to employers where minimum abatement was required.	and Compliance Managers to ensure actions taken during Informal Conferences with regards to penalty reductions are fully documented.	Compliance Managers were provided refresher training, and instruction to fully review penalty adjustment factors (size, good faith, and history) to ensure proper penalty reductions are taken, and fully documented in the case file prior to citation issuance. Training was completed by January 20, 2011.	
10-12	Abatement verification is not always obtained within thirty days after the required abatement date.	Abatement verification must be obtained within the required timeframe, and attempts to obtain abatement documented in the case file.	Provide refresher training to Regional Directors and Compliance Managers on abatement verification requirements.	VOSH Regional Directors and Compliance Managers were provided refresher training and instruction on abatement verification, and abatement documentation. Training was completed by January 20, 2011.	COMPLETED
10-13	Employers were not contacted, nor dunning letters sent for instances where abatement documentation was not received.	Attempts to contact employers to obtain abatement documentation must be included in the case files.	Provide refresher training to Regional Directors and Compliance Managers on abatement documentation requirements.	VOSH Regional Directors and Compliance Managers were provided refresher training and instruction on abatement verification and documentation. Training was completed by January 20, 2011.	FY 2011 Finding #11-02
10-14	OSHA 91 data is not being entered into the IMIS system.	Sampling data documented on the OSHA 91 must be entered into the IMIS system.	Provide addition instruction to administrative staff regarding the OSHA 91 data, and requirement to enter the data into the IMIS.	Beginning April 2010, all OSHA 91 data, retroactive to October 1, 2009, was entered into the IMIS.	COMPLETED
10-15	Not all Federal Program Changes are adopted within the required six-month requirement.	VOSH must adopt all Federal Program Changes within the six-month required timeframe.	The VOSH FOM was the only Federal Program Change exceeding the six-month requirement for adoption.	The VOSH FOM revision was completed in June 2011.	FY 2011 Finding #11-03
10-16	VOSH's 11c/Whistleblower guidelines are outdated.	VOSH must update their Whistleblower guidelines, or reference the Federal OSHA Discrimination Manual.	VOSH will revise their Discrimination Manual using the Federal OSHA Manual as a guide document.	VOSH adopted the federal identical Whistleblower Investigation Manual issued January 1, 2012	COMPLETED

**Appendix C  
Virginia State Plan  
FY 2011 Enforcement Activity**

	VA	State Plan Total	Federal OSHA
<b>Total Inspections</b>	<b>3,218</b>	<b>52,056</b>	<b>36,109</b>
Safety	2,407	40,681	29,671
% Safety	75%	78%	82%
Health	811	11,375	6,438
% Health	25%	22%	18%
Construction	2,006	20,674	20,111
% Construction	62%	40%	56%
Public Sector	174	7,682	N/A
% Public Sector	5%	15%	N/A
Programmed	2,235	29,985	20,908
% Programmed	69%	58%	58%
Complaint	488	8,876	7,523
% Complaint	15%	17%	21%
Accident	40	2,932	762
Insp w/ Viols Cited	1,853	31,181	25,796
% Insp w/ Viols Cited (NIC)	58%	60%	71%
% NIC w/ Serious Violations	79%	63.7%	85.9%
<b>Total Violations</b>	<b>5,060</b>	<b>113,579</b>	<b>82,098</b>
Serious	2,917	50,036	59,856
% Serious	58%	44%	73%
Willful	37	295	585
Repeat	98	2,014	3,061
Serious/Willful/Repeat	3,052	52,345	63,502
% S/W/R	60%	46%	77%
Failure to Abate	37	333	268
Other than Serious	1,971	60,896	18,326
% Other	39%	54%	22%
Avg # Violations/ Initial Inspection	2.8	3.4	2.9
<b>Total Penalties</b>	<b>\$4,846,248</b>	<b>\$ 75,271,600</b>	<b>\$ 181,829,999</b>
Avg Current Penalty / Serious Violation	\$ 793.20	\$ 963.40	\$ 2,132.60
% Penalty Reduced	42.1%	46.6%	43.6%
<b>% Insp w/ Contested Viols</b>	<b>12.5%</b>	<b>14.8%</b>	<b>10.7%</b>
Avg Case Hrs/Insp- Safety	14.0	17.1	19.8
Avg Case Hrs/Insp- Health	20.2	26.8	33.1
Lapse Days Insp to Citation Issued- Safety	31.3	35.6	43.2
Lapse Days Insp to Citation Issued- Health	32.1	43.6	54.8
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	7	1,387	2,436

*Note: Federal OSHA does not include OIS data.  
The total number of inspections for Federal OSHA is 40,684.  
Source: DOL-OSHA. State Plan & Federal INSP & ENFC Reports, 11.8.2011*

## Appendix D FY 2011 State Activity Mandated Measures (SAMM) Report

NOV 09, 2011

PAGE 1 OF 2

U. S. D E P A R T M E N T O F L A B O R

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

STATE ACTIVITY MANDATED MEASURES (SAMMs)

State: VIRGINIA

RID: 0355100

MEASURE	From: 10/01/2010 To: 09/30/2011	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	885 1.87 471	264 7.54 35	Negotiated fixed number for each State
2. Average number of days to initiate Complaint Investigations	92 .21 423	6 .18 32	Negotiated fixed number for each State
3. Percent of Complaints where Complainants were notified on time	432 96.21 449	39 100.00 39	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	0 0	0 0	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	1992 90.38 2204	106 62.72 169	100%
Public	318 80.10 397	12 30.77 39	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	64453 41.79 1542	5458 58.68 93	2631708 51.9 50662
Health	18707 43.50 430	2242 54.68 41	767959 64.8 11844
			National Data (1 year)
			National Data (1 year)

\*VA FY11

\*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

NOV 09, 2011

PAGE 2 OF 2

U. S. D E P A R T M E N T O F L A B O R  
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
STATE ACTIVITY MANDATED MEASURES (SAMMS)

State: VIRGINIA

RID: 0355100

MEASURE	From: 10/01/2010 To: 09/30/2011	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
Safety	1027 54.08 1899	63 53.85 117	90405 58.5 154606 National Data (3 years)
Health	187 49.60 377	16 48.48 33	10916 51.7 21098 National Data (3 years)
9. Average Violations per Inspection with Vioations			
S/W/R	3928 1.97 1986	283 2.06 137	419386 2.1 198933 National Data (3 years)
Other	1685 .84 1986	89 .64 137	236745 1.2 198933 National Data (3 years)
10. Average Initial Penalty per Serious Violation (Private Sector Only)	4460226 1334.99 3341	314095 1236.59 254	611105829 1679.6 363838 National Data (3 years)
11. Percent of Total Inspections in Public Sector (years)	174 5.41	11 4.78	635 6.5 Data for this State (3 years)
12. Average lapse time from receipt of Contest to first level decision	3218 16920 106.41 159	230 972 88.36 11	9806 3533348 199.7 17693 National Data (3 years)
13. Percent of 11c Investigations Completed within 90 days	22 100.00 22	1 100.00 1	100%
14. Percent of 11c Complaints that are Meritorious	1 4.55 22	0 .00 1	1517 23.0 6591 National Data (3 years)
15. Percent of Meritorious 11c Complaints that are Settled	1 100.00 1	0 0 0	1327 87.5 1517 National Data (3 years)

\*VA FY11  
REVISION

\*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND

## Appendix E FY 2011 Sate Indicator Report (SIR)

QQQQ Q SIR Q4SIR51 SIR51 111011 111854 PROBLEMS - CALL Y Goodhall 202 693-1734

1111011

U. S. D E P A R T M E N T O F L A B O R

PAGE 1

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT (SIR)

STATE = VIRGINIA

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	3694 61.3 6026	369 72.6 508	8169 61.4 13312	875 75.0 1166	18137 62.5 29042	1765 76.9 2295	40070 63.7 62876	3603 78.3 4600
B. HEALTH	480 39.7 1208	92 47.7 193	1020 36.4 2806	184 48.4 380	2126 34.6 6150	351 47.5 739	4357 34.7 12569	674 47.6 1417
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	3378 73.7 4583	298 55.0 542	7266 72.4 10036	609 53.3 1143	14959 70.1 21330	1122 50.4 2226	32614 69.1 47196	2204 50.4 4377
B. HEALTH	456 57.0 800	71 46.4 153	890 57.2 1555	125 43.6 287	1723 56.2 3068	206 39.6 520	3487 55.3 6309	397 40.3 984
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	11703 79.6 14698	673 69.6 967	23768 77.4 30703	1191 64.5 1847	48704 76.7 63528	1984 61.0 3253	109064 78.4 139117	4091 61.6 6642
B. HEALTH	2634 66.6 3957	209 53.7 389	5290 64.7 8180	356 50.4 706	10266 64.4 15930	585 48.5 1205	21598 66.7 32380	1277 51.2 2493

4. ABATEMENT PERIOD FOR VIOLS

	2394	153	4978	261	10776	480	23693	931
A. SAFETY PERCENT >30 DAYS	16.6	15.8	16.8	15.3	17.9	16.5	17.9	15.6
	14465	970	29573	1705	60243	2914	132414	5979
	259	8	711	35	1451	50	3159	108
B. HEALTH PERCENT >60 DAYS	6.5	2.1	8.6	5.6	9.4	4.4	10.0	4.6
	4006	378	8234	623	15507	1144	31619	2369

C. ENFORCEMENT (PRIVATE SECTOR)

5. AVERAGE PENALTY

A. SAFETY

	505479	12450	1258835	26270	2803637	57295	5086228	131845
OTHER-THAN-SERIOUS	1181.0	889.3	1195.5	796.1	1126.9	855.1	1055.2	856.1
	428	14	1053	33	2488	67	4820	154

B. HEALTH

	219203	1900	441915	8200	853346	20200	1667151	30505
OTHER-THAN-SERIOUS	1184.9	475.0	1077.8	745.5	980.9	1122.2	958.7	1089.5
	185	4	410	11	870	18	1739	28

6. INSPECTIONS PER 100 HOURS

	6874	650	15417	1417	33850	2804	73070	5610
A. SAFETY	6.0	8.3	5.6	8.5	5.5	8.5	5.4	8.5
	1138	78	2730	166	6145	331	13476	658
	1458	261	3330	520	7311	989	14958	1875
B. HEALTH	2.4	6.5	2.2	6.2	2.2	5.9	2.0	5.5
	615	40	1501	84	3390	167	7404	340

	1270	64	3026	229	6577	497	12352	1037
7. VIOLATIONS VACATED %	5.6	3.7	6.6	7.2	7.0	8.9	6.2	8.8
	22608	1723	46128	3176	93448	5610	200310	11765

	737	44	1997	130	4456	308	9147	661
8. VIOLATIONS RECLASSIFIED %	3.3	2.6	4.3	4.1	4.8	5.5	4.6	5.6
	22608	1723	46128	3176	93448	5610	200310	11765

	19478404	494663	40012395	1142820	77322520	2009339	134938244	3936173
9. PENALTY RETENTION %	61.0	69.3	61.6	71.0	62.8	68.1	62.8	65.9
	31918969	713841	65001782	1608701	123124542	2949061	214845679	5974845

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT

STATE = VIRGINIA

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	369	21	875	41	1765	84	3603	207
	72.6	87.5	75.0	83.7	76.9	78.5	78.3	73.9
	508	24	1166	49	2295	107	4600	280
B. HEALTH	92	5	184	14	351	27	674	57
	47.7	38.5	48.4	46.7	47.5	40.9	47.6	43.2
	193	13	380	30	739	66	1417	132
2. SERIOUS VIOLATIONS (%)								
A. SAFETY	673	82	1191	141	1984	306	4091	679
	69.6	83.7	64.5	82.9	61.0	65.9	61.6	68.2
	967	98	1847	170	3253	464	6642	996
B. HEALTH	209	15	356	28	585	78	1277	197
	53.7	71.4	50.4	66.7	48.5	60.9	51.2	64.2
	389	21	706	42	1205	128	2493	307
E. REVIEW PROCEDURES								
1. VIOLATIONS VACATED %	579	59	1131	101	2220	318	4270	540
	22.8	25.1	23.4	24.9	23.5	31.3	23.0	32.8
	2542	235	4834	406	9442	1015	18586	1647
2. VIOLATIONS RECLASSIFIED %	328	50	620	91	1259	214	2360	343
	12.9	21.3	12.8	22.4	13.3	21.1	12.7	20.8
	2542	235	4834	406	9442	1015	18586	1647
3. PENALTY RETENTION %	3616720	82586	9500018	150550	16062961	342340	28079915	575272
	56.1	47.9	62.4	50.9	62.3	43.8	60.6	38.7
	6443756	172410	15212620	295515	25766759	781730	46371522	1487665

**Appendix F**  
**FY 2011 State OSHA Annual Report (SOAR)**  
(Available Separately)

**Appendix G**  
**FY 2011 23(g) Consultation Data**

	VA Public Sector	Total State Plan Public Sector
<b>Requests</b>	<b>11</b>	<b>1,328</b>
<i>Safety</i>	6	576
<i>Health</i>	5	560
<i>Both</i>	-	192
<b>Backlog</b>	<b>1</b>	<b>123</b>
<i>Safety</i>	-	51
<i>Health</i>	1	58
<i>Both</i>	-	14
<b>Visits</b>	<b>9</b>	<b>1,632</b>
<i>Initial</i>	6	1,336
<i>Training and Assistance</i>	3	175
<i>Follow-up</i>	-	121
<i>Percent of Program Assistance</i>	100%	67%
<i>Percent of Initial Visits with Employee Participation</i>	100%	96%
<b>Employees Trained</b>	<b>40</b>	<b>5,030</b>
<i>Initial</i>	25	2,144
<i>Training and Assistance</i>	15	2,886
<b>Hazards</b>	<b>67</b>	<b>6,063</b>
<i>Imminent Danger</i>	-	3
<i>Serious</i>	56	4,804
<i>Other than Serious</i>	10	1,171
<i>Regulatory</i>	1	85
<i>Referrals to Enforcement</i>	-	6
<b>Workers Removed from Risk</b>	<b>2,254</b>	<b>171,075</b>
<i>Imminent Danger</i>	-	55
<i>Serious</i>	2,067	136,884
<i>Other than Serious</i>	162	26,046
<i>Regulatory</i>	25	8,090

Source: DOL-OSHA. 23(g) Public & Private Consultation Reports, 11.29.2011

**Appendix H**  
**FY 2011 Outreach & Compliance Assistance Activities**

<b>Presenter</b>	<b>Title of Presentation</b>	<b>Date</b>	<b>Target Audience</b>
<b>Commissioner</b>	<b>Current Industry Trends</b>	<b>January 18, 2012</b>	<b>ASSE Annual Meeting - Tidewater</b>
<b>Director, Div. of Legal Support</b>	<b>Tree Trimming regulation based on ANSI Z133.1-2006</b>	<b>April 27, 2011</b>	<b>Logging employers</b>
<b>Safety &amp; Health Compliance Engineer Richmond</b>	<b>Sharp Logger Program</b>	<b>September 2011</b>	<b>Rappahannock Chapter of Society of American Foresters</b>
<b>Regional Director Richmond</b>	<b>Chesterfield Building Collapse Inspection</b>	<b>FY 10</b>	<b>Department of Housing and Community Development</b>
<b>Program Support Technician Manassas</b>	<b>VOSH program mission, complaint procedures, employee's rights and responsibilities</b>	<b>October 22/23, 2011</b>	<b>Mexican Mobile Consulate, Harrisonburg, VA</b>
<b>Program Support Technician Manassas</b>	<b>VOSH program mission, complaint procedures, employee's rights and responsibilities</b>	<b>November 5, 2011</b>	<b>Mexican Consulate, Virginia Beach, VA</b>
<b>Safety &amp; Health Compliance Officer Norfolk</b>	<b>Top 10 residential cited hazards</b>	<b>June 2011</b>	<b>Tidewater Builders Association, Tidewater Office</b>
<b>Safety &amp; Health Compliance Officer Norfolk</b>	<b>Top 10 citations for Residential Construction Trades to include number of citations, instances and total penalties imposed and Fall Hazards in Construction.</b>	<b>April and October 2011</b>	<b>Tidewater Builders Association, Tidewater Office</b>
<b>Regional Director Manassas &amp; Safety &amp; Health Compliance Officer Richmond</b>	<b>Allowed hours of work and prohibited occupations for minors, frequent violations in the food service industry and frequent employee complaint items.</b>	<b>October 14, 2010</b>	<b>Subway Store Owners, in Verona, VA</b>
<b>Regional Director Manassas</b>	<b>Review of the state OSHA programs following the Nevada and compliance problem issues unique to</b>	<b>November 10, 2010</b>	<b>Mercer ORC Network in Washington, DC</b>

	<b>Virginia.</b>		
<b>Assistant Commissioner &amp; Regional Director Manassas</b>	<b>Unique VA standards and the VOSH inspection process.</b>	<b>November 12, 2010</b>	<b>Blue Ridge Safety Association</b>
<b>Regional Director Manassas &amp; Safety &amp; Health Compliance Officer Manassas</b>	<b>New Crane Standard and VOSH procedures.</b>	<b>February 10, 2011</b>	<b>Superior Paving Co. in Manassas, VA</b>
<b>Safety &amp; Health Compliance Engineer Roanoke</b>	<b>OSHA new regulations residential fall protection in Roanoke, VA</b>	<b>May 9, 2011</b>	<b>Landin Companies</b>
<b>Safety &amp; Health Compliance Engineer Roanoke</b>	<b>OSHA new regulations tree trimming in Blacksburg. VA</b>	<b>May 25, 2011</b>	<b>Virginia Department of Transportation</b>
<b>Public Service Announcements</b>	<b>Tree Trimming, Trenching and Power Line Safety</b>	<b>2011</b>	<b>YouTube Viewers (Public Access)</b>
<b>VOSH CSHO and Consultation</b>	<b>Hurricane Irene Central Region Worker Protection</b>	<b>August 2011</b>	
<b>Regional Director &amp; Compliance Officers Manassas</b>	<b>General OSHA Overview</b>	<b>March 2011</b>	<b>Construction Contractors</b>
<b>Southwest Region</b>	<b>Clean-up/ repair activities - stressed fall protection and PPE.</b>		<b>Pulaski County Tornado emergency responders</b>
<b>Richmond Regional Director</b>	<b>VOSH Compliance inspections and how they relate to public sector in Virginia</b>	<b>FY 2011</b>	<b>Virginia Department of Human Resource Management – Annual Risk Management Conference</b>