

**FY 2012 Abridged Federal Annual Monitoring and Evaluation (FAME)
Report**

State of Indiana

**Indiana Department of Labor
Occupational Safety and Health Administration**

Evaluation Period: October 1, 2011 – September 30, 2012

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I. Executive Summary

The Indiana Department of Labor (IDOL) administers the Indiana Occupational Safety and Health (IOSHA) program. During FY 2012, Lori Torres was the Commissioner of IDOL, and Jeff Carter was the Deputy Commissioner of Labor. In September of 2012, Tim Maley replaced Jeff Carter, and in January of 2013, Sean Keefer replaced Lori Torres. The IOSHA Plan was approved on February 25, 1974 and certified on October 16, 1981. On September 26, 1986, IOSHA received final approval. IOSHA includes the Occupational Safety and Health (OSH) Compliance Division, which is responsible for compliance program administration through conducting enforcement inspections (General Industry and Construction), adoption of standards, and operation of other related OSHA activities. The Indiana program covers all private and public-sector employees within the State, with the exception of railroad employees, federal employees, maritime employees (longshoring, shipbuilding, shipbreaking, and marine terminal operations), private contractors working at Government-owned/contractor-operated (GOCO) facilities, as well as U.S. Postal employees. Also administered by the IDOL is the INSafe program, the State's 21(d) funded safety and health consultation project, which provides free consultation services upon request to help employers prevent workplace injuries, illnesses and fatalities through identification and correction of safety and health hazards.

At the time of the report there were a total of 70 Compliance Officer positions funded under the 23(g) grant. The approved staffing benchmark for IOSHA is 47 Safety Compliance Officers and 23 Health Compliance Officers. IOSHA continues to operate well below the benchmark levels for staffing, and as of August 15, 2012, they were 24 Safety Compliance Officers and three Health Compliance Officers below their benchmark requirements. IOSHA reports that 17 staff changes took place throughout all levels of the program during FY 2012 with 12 of these staff changes occurring in IOSHA and INSafe. During this period, the IOSHA program did not have any 100% State funded positions.

IOSHA's total budget for FY 2012 was \$4,376,000. IOSHA reported that it was necessary to deobligate a portion of its FY 2012 23(g) grant in the amount of \$65,000.

There were 809 total complaints filed, which is a 56% increase from the previous year's 520 complaints filed. The average time to initiate an inspection for all complaint inspections was 32.14 days. In the previous Fiscal Year of 2011, the time was 12.36 days. This is a 160% increase from the previous Fiscal Year. It is recommended that IOSHA not exceed 10 days to initiate a complaint inspection.

Verification of abatement continues to be an outlier with 17% of health violations still not verified 60 days after the abatement due date and 45% of safety violations still not verified 30 days after the abatement due date. Only 78% of serious, willful and repeat violations had been verified as being abated. It is recommended that 100% of the serious, willful and repeat violations be verified within the assigned abatement period.

In FY 2011, there were ten recommendations. Five items are closed. Of the five remaining items, three are still being addressed by IOSHA and two have been addressed by IOSHA but

require verification that the items have been adequately addressed. This will be confirmed via review of case files.

In FY 2012, there are eight recommendations. Three are new in FY 2012 and five remain open from FY 2011.

IOSHA had two goals for enforcement. While they met the established goal to reduce injury and illness rates for construction and general industry and also reduced the fatality rate for construction, they did not meet the goal to reduce manufacturing fatalities. IOSHA also did not meet their goal to conduct 1504 total inspections.

II. Major New Issues

During much of 2012, IOSHA inspected Sensient Flavors, Inc. Sensient manufactures the butter flavoring, for which the National Institute of Occupational Safety and Health (NIOSH) issued a Health Hazard Evaluation (HHE) for the lung damage found in the Sensient workers due to their exposure to diacetyl. In September of 2011, IOSHA received a referral for Sensient. This referral resulted in an inspection, which opened on September 15, 2011. Citations were issued on June 18, 2012. There were 27 serious and three knowing/willful violations. The willful violations were for employees being exposed to hydrogen sulfide and diacetyl. The initial penalty issued at \$367,000. On or about December 26, 2012, a settlement agreement was reached with the company. Sensient agreed to work with their customers to reduce the amount of diacetyl used in their products, use personal protective equipment to reduce exposure to diacetyl by their workers, eliminate diacetyl neat pours where feasible, and place an auto compounding machine in a separate room to perform the remaining diacetyl neat pours. In exchange, IOSHA agreed to reduce the penalty to \$99,000. Sensient also agreed to drop the lawsuit they filed against IOSHA, two IOSHA Compliance Officers, and the Teamster's Industrial Hygienist. The lawsuit alleged that IOSHA harassed, intimidated, and subjected the company to enormous intrusions that violated their constitutional rights under the fourth amendment (unreasonable government search and seizure).

On July 1, 2012, legislation enacted to protect employees who are complainants or were interviewed during IOSHA inspections from having their personal identifiable information released became effective.

From July 20, 2011 until the present, the IDOL had 20 employees quit or retire. While all of the employees were replaced, this resulted in several employees being new and requiring training. This turnover of staff and several employees being involved in high profile cases has resulted in a reduction of the overall inspections performed.

III. State Progress in Addressing FY 2011 FAME Report Recommendations

An update of the State's progress addressing each of the Findings and Recommendations noted in the FY 2011 FAME are included below.

- **Finding 11-01:** Indiana OSHA exceeded the agreed upon time of 10 days to initiate a complaint.

Recommendation 11-01: It is recommended that Indiana OSHA utilize administrative controls to ensure that complaint inspections are initiated within the agreed 10 day period.

State Action Plan 11-01: IOSHA concurs that the timeline is too long. IOSHA is currently reviewing its process to better understand some significant fluctuations. IOSHA has determined that part of the timeline issue may be a function of inappropriate date coding. They have also concluded additional staff may be warranted.

Status Update 11-01: IOSHA has initiated an intake improvement team to decrease administrative time to receive and investigate complaints. Staffing and experience level are still issues in improving this metric. **This item is open.**

- **Finding 11-02:** The OSHA-1 did not indicate if English is a second language for the employees involved in a fatality or catastrophe.

Recommendation 11-02: IMMLANG should be marked in the OSHA-1 form as either yes or no as per the Field Operations Manual.

State Action Plan 11-02: IOSHA has determined that staff may not have checked both boxes in the system. Supervisors are working with individual staff to ensure proper recording of this activity.

Status Update 11-02: Supervisors have worked with staff to correct the recording problem. **This item is open awaiting verification.**

- **Finding 11-03:** In 91% of the cases where sampling had been conducted, the results had not been provided to the employer.

Recommendation 11-03: Ensure that a copy of all sampling results is sent to the employer.

State Action Plan 11-03: IOSHA will develop a method for distributing sampling results to employers.

Status Update 11-03: Conflict due to personal information on sampling results forms - IOSHA is in the process of resolving this. The CSHO verbally gives results to the employer. **This item is open.**

- **Finding 11-04:** Two companies requested a PMA. IOSHA failed to follow the PMA procedure.

Recommendation 11-04: IOSHA should perform the PMA procedure per the Field Operations Manual.

State Action Plan 11-04: IOSHA does not believe this is systemic. We have re-emphasized the need for all PMAs to be in writing.

Status Update 11-04: IOSHA deemed that no further action is necessary. **This item is closed.**

- **Finding 11-05:** Twenty-eight percent of case files reviewed contained inadequate abatement.

Recommendation 11-05: IOSHA should ensure that all abatement is present and is adequate. Two primary items were noted where an abatement item was missing and the item was noted as corrected on the abatement certificate.

State Action Plan 11-05: IOSHA concurs, we are currently evaluating whether the process is flawed, or we are simply not following up.

Status Update 11-05: Construction created an abatement officer. General Industry supervisors are following up on this issue in case files. **This item needs to be verified and remains open.**

- **Finding 11-06:** One inspection was found from the previous year on IMIS where a follow-up should have occurred under the Severe Violator Enforcement Program (SVEP).

Recommendation 11-06: Follow-ups should be performed per SVEP.

State Action Plan 11-06: IOSHA does not concur. One case is not statistically significant. The judgment of the staff at the time was deemed appropriate.

Status Update 11-06: IOSHA deemed that no further action is necessary. **This item is closed.**

- **Finding 11-07:** While employee interviews were almost always indicated as being performed, 27 of 86 files did not contain documentation showing employee interviews had been performed.

Recommendation 11-07: Employee interviews should always be documented to provide proof of employee exposure.

State Action Plan 11-07: The issue is not documentation. The real issue is that interviews are considered to be a public record. Indiana law changed July 1, 2012, and we believe this will resolve itself. They are re-emphasizing to field staff the need for complete written documentation.

Status Update 11-07: Since the change in Indiana law on July 1, 2012, we no longer have an issue with confidentiality. All employee interviews will now be documented in case files. **This item needs to be verified and remains open.**

- **Finding 11-08:** All reasons for modification of the case files during the informal conference were not documented.

Recommendation 11-08: All reasons for modification of a case file should be documented whenever vacating or reclassifying violations or reducing the penalties.

State Action Plan 11-08: IOSHA does not concur, but they have reminded managers to document all changes.

Status Update 11-08: No further action is necessary. **This item is closed.**

- **Findings 11-09:** Every case file reviewed failed to show compliance in the area of case file organization.

Recommendation 11-09: Follow the Whistleblower Investigations Manual, DIS 0-0.9 for case file organization to ensure consistency with case file organization, contents, and tabbing.

State Action Plan 11-09: The file organization methodology was reviewed and approved by Regional staff just one year ago. We will ask for additional guidance from the Whistleblower staff that approved the last plan.

Status Update 11-09: The WB section has adopted the Federal organization plan and is using the Federal table of contents and tabs. The WB section has completed the change and it is currently in use. **This item is closed.**

- **Finding 11-10:** Federal OSHA reviewed a case which appeared to be a merit case as opposed to IOSHA's finding of non-merit.

Recommendation 11-10: Review the elements of a merit case per the Whistleblower Investigations Manual, DIS 0-0.9.

State Action Plan 11-10: IOSHA believes that each of its staff investigators clearly understands the elements necessary for a merit case. A single file disagreement does not indicate a trend. No further action is contemplated.

Status Update 11-10: IOSHA deemed that no further action is necessary. **This item is closed.**

IV. Assessment of FY 2012 State Performance of Mandated Activities

A. Enforcement

1. Complaints

IOSHA handles the intake of complaints through a Duty Officer. Complaints can be made through the IOSHA internet complaint form, the Federal OSHA internet complaint form, mail, email, phone or fax. The Duty Officer is provided the information on each complaint. The Duty Officer maintains an individual phone log.

There were 809 total complaints filed, which is a 56% increase from the previous year's 520 complaints filed. There were 576 nonformal complaint investigations and 233 complaint inspections.

The average time to initiate a complaint investigation for all complaints was 19.73 days. In the previous Fiscal Year of 2011, the time was 8.38 days. This is a 135% increase from the previous Fiscal Year. This increase is partially attributable to the 56% increase in the number of complaints filed.

The average time to initiate an inspection for all complaint inspections was 32.14 days. In the previous Fiscal Year of 2011, the time was 12.36 days. This is a 160% increase from the previous Fiscal Year. IOSHA only inspected six more complaints in FY 2012 than they did in FY 2011. Thirty-two days is well above the 10 days that IOSHA agreed to initiate a complaint inspection.

This information was obtained from Enforcement and Inspection micro to host reports dated 10/30/12.

Finding 12-01: Indiana OSHA exceeded the agreed upon time of 10 days to initiate a complaint.

Recommendation 12-01: It is recommended that Indiana OSHA utilize the use of administrative controls to ensure that complaint inspections are initiated within the agreed 10-day period.

2. Fatalities

During the period from October 1, 2011 through September 30, 2012, there were 42 fatalities/catastrophes which were investigated by Indiana OSHA. In the previous year, FY 2011, there were 41 fatalities.

During non-working hours, there is a designated call list to alert staff of any fatalities that occur. The staff member who takes this call will contact a CSHO to go to the location of the fatality and open an inspection. The remaining procedures are the same as those during normal working hours.

The Deputy Commissioner contacts representatives of Region V when it is determined that the fatality warrants alerting the Region.

Many of the Compliance Officers primarily work outside the main office. Therefore, the supervisor assigns the case to a CSHO and forwards the case documentation to them via e-mail. The supervisor also mails the physical case to the CSHO's home.

Eleven out of 19 fatality files did not include IMMLANG (code designed to allow the agency to track fatalities among Hispanic and immigrant workers) language. The 19 fatality inspections, which are listed on IOSHA's internet pages, were reviewed for IMMLANG using the IMIS database found on www.osha.gov. In FY 2011, this was only noted in two files; however, in FY 2011, not all the fatality and catastrophe files were checked for the required IMMLANG entries.

Finding 12-02: The OSHA-1 did not indicate if English is a second language for the employees involved in a fatality or catastrophe.

Recommendation 12-02: IMMLANG should be marked in the OSHA-1 form as either yes or no as per the Field Operations Manual.

3. Targeting and Programmed Inspections

In FY 2012, the Agency conducted targeted inspections in general industry using the Site Specific Targeting (SSTAR) for safety inspections. The Agency also conducted expanded inspections, as appropriate, under the Diacetyl (popcorn), Amputations, Silica, Grain Handling, Recordkeeping, Hexavalent Chromium, Severe Violators Enforcement Programs, Lead, and Personal Protective Equipment. They did not generate a targeting list for these types of inspections.

The Agency uses the UTENN targeting program to schedule programmed construction inspections for commercial sites. The fall, scaffold, and excavation Emphasis Programs are used to the extent that some CSHOs code them when they conduct an inspection with these types of

hazards identified. However, the Agency does not specifically target these inspections as part of these Emphasis Programs. If these types of hazards are observed by a CSHO while driving by a construction site, the CSHO will normally report these hazards to the Duty Officer, which would result in a referral inspection.

The Deputy Commissioner explained that due to a shortage of storage space for files, they have chosen not to always include a company's safety and health programs unless these programs were being cited.

In FY 2012, the Agency conducted 993 total programmed inspections, including 990 safety and three health targeted inspections. The programmed inspections represented approximately 87% of the total inspections (1,143 total inspections from SAMM report) conducted. A total of 714 inspections of the 993 programmed inspections were in-compliance. For programmed and complaint inspections, there were 3.46 violations per inspection. In FY 2011, there were 1.78 violations per inspection. There was a 94% increase from FY 2011 to FY 2012 for the number of violations per inspection. There were 2.91 serious, willful or repeat violations per inspection. Serious, willful, and repeat violations represented 84% of all violations issued.

Finding 12-03: The In Compliance rate for all safety inspections conducted continues to increase from 63% in FY 2011 to 68% in FY 2012 and with health In Compliance rates increasing from 47% in FY 2011 to 48% in FY 2012.

Recommendation 12-03: IOSHA should determine the cause for these increases and implement an action plan to reduce the number of In Compliance inspections.

4. Citations and Penalties

During the period October 1, 2011 through September 30, 2012, 279 of 993 (29%) programmed inspections contained citations. In the private sector, the average initial penalty for serious violations was \$1,400.

Citations and penalties are assessed by IOSHA whenever a violation is found. IOSHA operates a "mirror" program with regard to standards such as the 29 CFR 1904, Laws and Regulations for Recordkeeping, 29 CFR 1910, Laws and Regulations for General Industry, and 29 CFR 1926, Laws and Regulations for Construction. Violations are issued to employers who fail to comply with these laws and regulations. IOSHA also utilizes the General Duty Clause, which essentially states it is a violation for an employer to expose employees to a recognized serious safety or health hazard. If an applicable OSHA Occupational Safety and Health law or regulation does not exist, then IOSHA can apply the General Duty Clause to address the violation.

IOSHA utilizes knowing, repeat, serious, and non-serious violation types. These are equivalent to Federal OSHA's willful, repeat, serious, and other-than-serious violation types.

IOSHA determines penalties in the same manner as Federal OSHA. IOSHA utilizes a gravity-based penalty system evaluating the severity of the hazard and the probability that an exposure will occur.

5. Abatement

The verification of abatement is the responsibility of the Supervisor assigned to the inspection. Regardless of whether the file is settled through the expedited informal settlement agreement (EISA), informal settlement, or goes through contest, the Supervisor is required to verify the abatement.

Verification of abatement continues to be an outlier with 17% of health violations still not verified 60 days after the abatement due date and 45% of safety violations still not verified after 30 days. Only 78% of serious, willful and repeat violations had been verified as being abated. During the FY 2011 on-site review, it was determined the lack of abatement verification was not a data entry error, but rather a failure to obtain abatement from the employers.

Finding 12-04: Verification of abatement continues to be an outlier with 17% of violations still not verified 60 days after the abatement due date.

Recommendation 12-04: Abatement for violations should be verified in a timely manner.

Finding 12-05: Twenty-eight percent of case files reviewed contained inadequate abatement.

Recommendation 12-05: IOSHA should ensure that all abatement is present and is adequate. Two primary items were noted where an abatement item was missing and the item was noted as corrected on the abatement certificate. This item is complete, awaiting verification.

6. Employee and Union Involvement

IOSHA appeared to have adequate procedures to address employee and union involvement in the inspection process. IOSHA has developed its own forms to ensure that employees are represented and the appropriate contact information is acquired. Opening and closing conference sign-off sheets have also been developed. If there are union representatives present, it is noted on these sheets. This information was also placed in the OSHA-1 Inspection Form.

Prior to July 1, 2012, IOSHA was required to release the names of employees and complainants who spoke with IOSHA whenever an information request was made under the Access to Public Records Act (APRA). IOSHA informed employees of this, and many of these employees asked not to be involved or would not allow IOSHA to place their name in the file. The law now protects these names from release.

Finding 12-06: While employee interviews were almost always indicated as being performed, 27 of 86 files did not contain documentation showing employee interviews had been performed.

Recommendation 12-06: Employee interviews should always be documented to provide proof of employee exposure. This item is complete, awaiting verification.

Finding 12-07: In 91% of the cases where sampling had been conducted, the results had not been provided to the employer.

Recommendation 12-07: Ensure that a copy of all sampling results is sent to the employer.

B. Review Procedures

1. Informal Conferences

For qualifying companies, IOSHA operates a penalty reduction program, termed the Expedited Informal Settlement Agreement (EISA). For companies not involved in a fatality or catastrophe, the companies are offered EISA if they are current on penalties, have five or less higher/greater violations, and total penalties of not more than \$7,500. The company has 15 business days to exercise this option, at which time they will be granted a penalty reduction of 35%.

Informal conferences are usually conducted by the Director of Industrial Compliance and the Director of Construction. They use an informal conference report, an IOSHA form, to record their actions during the informal conference and make any comments. During the informal conference, citations can be upheld, modified, reclassified, or deleted. Items which were not grouped may be grouped at this time. All of this can result in modification of a penalty. The employer may also be granted a 30% reduction in penalty for agreeing to additional non-required training, such as OSHA 30 hour training for construction.

2. Formal Review of Citations

At the beginning of FY 2012, there were 24 cases pending before the Board of Safety Review (BSR). The BSR received 26 new cases during FY 2012. The BSR ended FY 2012 with 13 open cases.

For cases that are not resolved through the informal conference process, appeals are heard by the Indiana Board of Safety Review. The Board is an independent Administrative Review Board housed within the IDOL. The Board consists of five members, including two from labor, two from industry, and one safety and health professional. Appeals of Board decisions are performed by the appropriate County Circuit or Superior Trial Court.

C. Standards Adoption and Plan Changes

1. Standards Adoption

Two standards were required to be adopted during FY 2012. Indiana adopted both standards identical. Under the State of Indiana rules and procedures, the process for the adoption of Federal standards occurs automatically and becomes effective 60 days after the effective date of Federal standards. The Commissioner or their Designee is the person responsible for enforcing the Federal standards 60 days after they become effective. 100% were adopted on time. The Hazard Communication Standard was still in the process, according to IOSHA.

02/11/2013

Federal Standard Number	Subject	Intent to Adopt	Adopt Identical	Promulgated Date	Effective Date
1910,1915, 17,18, 26 2012 47	Hazard Communication - Globally Harmonized System of Classification	YES	YES	09/06/2012	03/26/2013
1910, 1910.102, 1911 2012 46	Revising Standards Referenced in the Acetylene Standard	YES	YES	04/11/2012	05/05/2012

2. Federal Program/State Initiated Changes

The State adopted four of the six standard changes issued in FY 12. Indiana does not have maritime jurisdiction so was not required to adopt the Longshoring and Marine Terminals Tool Shed Directive and adoption was optional for Communicating OSHA Fatality Inspection Procedures to a Victim's Family. There were no State-Initiated Changes.

Federal Program Change Summary for IN Report 02/11/2013

Directive Number	Title	Adoption Required; Equivalency Required or Adoption encouraged/Not Required	Intent to Adopt	Adopt Identical	State Adoption Date
<u>CPL-02-01-053</u> <u>2012 482</u>	Compliance Policy for Manufacture, Storage, Sale, Handling, Use and Display of Pyrotechnics	Equivalency Required	YES	YES	04/27/2012
<u>CPL-03-00-014</u> <u>2012 483</u>	National Emphasis Program - PSM Covered Chemical Facilities	Adoption Required	YES	YES	3/1/12
<u>CPL-03-00-016</u> <u>2012 484</u>	Nursing Home NEP	Adoption Required	YES	NO	07/01/2012
<u>CPL-02-00-153</u> <u>2012 504</u>	Communicating OSHA Fatality Inspection Procedures to a Victim's Family	Adoption encouraged, but not required	NO	N/A	N/A
<u>CPL-02-00-154</u> <u>2012 524</u>	Longshoring and Marine Terminals Tool Shed Directive	Equivalency Required	NO	N/A	N/A
<u>CPL-02-03-004</u> <u>2012 544</u>	Section 11(c) Appeals Program	Equivalency Required	YES	YES	02/12/2013

D. Variances

IOSHA granted one variance during FY 2012, which was to Ben Hur Construction Company. Ben Hur was granted a temporary variance from January 25, 2012 until May 1, 2012 at St. Vincent Fishers Hospital in Fishers, Indiana. 29 CFR 1926.754(b)(3) requires that decks, planks or nets be placed within two stories or 30 feet, whichever is less, directly under erection work. Due to the height of the columns being 30.8 feet, this made the placement of the nets impractical. Ben Hur requested that they be allowed to place the nets, decking and planks at 32 feet.

A review of the variance finds that technically the distance of 32 feet does not meet the minimum requirements of the standard. Under the circumstances, the temporary variance adding two feet to the distance does not affect the overall safety and health of the exposed employees.

E. Public Employee Program

The IDOL operates a Program that covers public sector employees. During FY 2012, there were 27 programmed enforcement inspections of public sector entities. Public sector programmed inspections represented 2.44% of the State's inspection activity.

Safety Orders issued to public sector entities contain an invoice with penalties indicating that if the hazards are corrected in a timely manner, the Deputy Commissioner has the authority to waive associated penalties.

INSafe conducted a total of 22 onsite consultation visits in the public sector during FY 2012; 44 serious hazards were identified. The grant projected that in FY 2012 27 safety visits would be performed, but only 15 safety visits were performed. In FY 2012, 12 health visits were projected to be performed, but only seven health visits were performed.

F. Discrimination Program

IOSHA Whistleblower Investigators use the Federal directives DIS 0-0.9 and 29 CFR Part 1977 for guidance during their investigations and for case file management. They do not appear to use any other directives related to their Whistleblower Program.

It is important to note that under IOSHA, merit Whistleblower complaints are required to be filed in State Court within 120 days of the file date. After this date, IOSHA is barred from going forward with a merit complaint. Investigators are required to have their Final Investigative Reports to the Deputy Commissioner by day 60 and in the event it is not, an explanation is required. Complaints that appear to have a merit finding must be referred to the Attorney General's office by day 90, so the Attorney General's office has time to review the complaint and meet the 120 day State Court filing requirement. Based on their 60 and 120 day rules, it is important that complainants are informed of their right to dual-file with OSHA. Complaints, which are not pursued due to exceeding the 60 day and 120 day rules, will be pursued by Federal OSHA.

IOSHA currently has seven pending cases, and the oldest is 78 days old. During FY 2012, IOSHA received 62 total cases. Only one of these cases was overage. Sixteen of these cases, or

28%, were found to have merit. IOSHA settled 15 cases and received settlements totaling \$18,266.34 for these merit cases.

Finding 12-08: Currently, whistleblower investigations must be completed within 120 days.

Recommendation 12-08: The Agency should seek revision of the 120-day statutory deadline for filing in court.

G. Voluntary Compliance Programs

1. VPP

The Voluntary Protection Program (VPP) is operated by two full-time IOSHA employees. They perform almost all of their reviews utilizing Special Government Employees (SGE). IOSHA utilizes approximately 40 SGEs. The VPP program follows the same policies and procedures that Federal OSHA follows.

The VPP reports are kept as paper files at the IOSHA office. There is also a complete electronic copy. The IOSHA VPP follows the Federal OSHA Program with the exception of obtaining medical access orders (MAO) prior to entering an establishment. Annual and onsite evaluations of the VPP sites were performed. The State of Indiana does not have an MAO. Instead, they use an alternative procedure in which they send a notification to the company of their intent to view injury and illness data. The company is asked to post the notification. This notification provides a means for any employee objections. This meets the intent of the MAO.

There were 16 companies which were recertified or newly certified in the VPP. Four were new VPP sites and 12 were re-certifications.

2. Alliances and Partnerships

These programs are performed by Indiana Consultation, INSafe. IOSHA is a signatory on the Alliance and Partnership agreements and they receive reports from the verification and/or onsite visits performed by Consultation. IOSHA does this so as not to have any conflicts of interest when inspecting the establishments.

There were two Alliances during FY 2012. There were seven total Partnerships and Alliances during FY 2012.

H. Program Administration

1. Training

IOSHA has implemented staff training initiatives consistent with improved employee development. During FY 2012, 37 of the IOSHA staff attended one or more of five Occupational Training Institute (OTI) courses or eight webinars. Besides the initial required courses, these courses included, but were not limited to OSHA's New Guidance on Workplace, Revised Hazard

Communication Standard Aligning With GHS, Overview of Victim’s Family and Nursing Home NEP Directives. IOSHA has adopted OSHA’s directive for CSHO training, TED 01-00-018 *Initial Training Program for OSHA Compliance Personnel*, and supplemented staff training where opportunities have been presented. The program has also encouraged staff to seek professional certifications to further enhance individual expertise. The program has also implemented a policy of paying for test fees, prep fees, and a \$500 award for those successfully earning certification. One employee was certified as an Industrial Hygienist during FY 2012.

2. Funding

State and Federal funds allocated to the IOSHA 23(g) program in FY 2012 were \$4,376,000. In FY 2012, Indiana deobligated \$65,000. While the amount deobligated is low, deobligation of program funds has been a consistent action over time.

3. Staffing

IOSHA enforcement program management is the responsibility of the Deputy Commissioner for IOSHA. The Deputy Commissioner is assisted by two Directors (General Industry and Construction) and several Supervisors that handle day-to-day activities necessary for required programmatic actions.

Indiana has not moved close enough to filling their required benchmark requirements, and this is further impacted by an improving economy, which has resulted in staff members leaving to seek other economic opportunities. In 2007, IOSHA increased pay for Construction and Industrial Hygiene positions by \$6,000 to assist with retention and recruiting of personnel. While this action has helped to some extent, staff turnover is still seen as an issue of concern. The Indianapolis Area Office continues to monitor staffing issues with the program and stresses the need of maintaining required benchmark staffing levels. Twenty employees have left the Indiana Department of Labor (IDOL) since July 2011.

		FY 09	FY 10	FY 11	FY 12
Safety	Benchmark	47	47	47	47
	Positions Allocated	47	47	47	47
	Positions Filled	19	25	23	23
	Vacancies	24	22	24	24
	% of Benchmarks Filled	51%	53%	49%	49%
Health	Benchmark	23	23	23	23
	Positions Allocated	23	23	23	23
	Positions Filled	18	21	18	20
	Vacancies	4	2	5	3
	% of Benchmarks Filled	78%	91%	78%	87%

4. Information Management

IOSHA utilizes the Integrated Management Information System (IMIS) database in order to manage their program and data. Indiana has a designated System Administrator. According to the System Administrator, all IMIS support is obtained through the OMDS Help Desk. Information technology issues not related to IMIS are handled by the Department of Information Technology (DIT) through the State of Indiana.

The System Administrator indicated that several IMIS reports are generated and distributed to the management team on a monthly basis, including:

- Unsatisfied Activity*
- Select Violation Abatement Report*
- Complaint Tracking Report*
- Citations Pending Report*
- Open Inspections*
- Case Lapse Time Reports*

5. State Internal Evaluation Program (SIEP)

Indiana OSHA uses a SIEP, which focuses on six areas of the program, including:

- Inspection Activity*
- Adequacy and Timeliness of Abatement*
- Staffing, Performance Management, and Training*
- Board of Safety Review*
- Discrimination Program*
- Quality Metrics and Statistics*

These identified areas are used for improvements and to establish corrective actions. One area identified as needing improvement was abatement verification, which has been an outlier for years. IOSHA continues to address this area.

The State uses an audit plan for its internal evaluation plan with various metrics to be reviewed on an annual, semiannual, quarterly and monthly basis. Indiana OSHA has also developed audit interview questions, an inspection review sheet, and uses the Federal OSHA Area Office Audit Checklist as a supplementary tool to assist with audit strategies as they develop and implement their SIEP.

V. State Progress in Achieving Annual Performance Goals

The State's Strategic Plan has been created in a collaborative effort between Consultation and Enforcement. The result is one document that has the Consultation Annual Performance Plan (CAPP) as well as the Enforcement Strategic Plan. Consultation and Enforcement goals are not separated, but we will only discuss Enforcement related goals in this report. The Enforcement goals are Performance Goal 1.1 and Performance Goal 1.2.

Starting in FY 2009, IOSHA and INSafe presented OSHA with a new Strategic Plan, which contained new and broader goals. This plan would cover FY 2009 to FY 2011. During FY 2011, the State requested that the plan be extended for an additional year, until FY 2012. The goals were updated to reflect the additional year.

Enforcement Performance goals 1.1 and 1.2 are discussed below. The rest of the goals in IOSHA's Strategic Plan are primarily Consultation goals, and they will be addressed in the Regional Annual Consultation Evaluation Report (RACER).

Annual Performance Goal 1.1: The State was to increase safety and health inspections by 5% per Federal Fiscal Year.

Discussion: For the annual performance goal, the State reports they fell short of the target amount of 1504 safety and health inspections by 299 inspections; 1,205 inspections were conducted. (According to the SAMM report, there were 1,143 total inspections conducted. This discrepancy may be due to data entry not being complete at the time of the SAMM report.)

Result: This goal was not met.

Annual Performance Goal 1.2: The State was to reduce injuries and deaths in the construction and manufacturing industries by 3% per Federal Fiscal Year.

Discussion: For the annual performance goal for manufacturing fatalities, the rate was increased by 12%.

Result: This goal was not met.

Discussion: For the annual performance goal for manufacturing injuries and illnesses, the rate was unchanged.

Result: This goal was met.

Discussion: For the annual performance goal for construction fatalities, the rate was reduced by 5%.

Result: This goal was met.

Discussion: For the annual performance goal for construction injuries and illnesses, the rate was reduced by 3%.

Result: This goal was met.

While IOSHA met the established goal to reduce injury and illness rates for construction and general industry and also reduced the fatality rate for construction, they did not meet the goal to reduce manufacturing fatalities. IOSHA also did not meet their second goal to conduct 1504 total inspections.

VI. Other Areas of Note

IOSHA had several areas of note occur. The complainant and witness statements are now protected in the file. Previously, under the Access to Public Records Act (APRA), this information was available to the public, and it was not allowed to be redacted. Effective July 1, 2012, this information was no longer accessible through APRA.

IOSHA Compliance Officers are no longer subject to subpoenas in related personal injury cases for the purpose of making inquiries into an OSHA inspection. Effective July 1, 2012, the only way a Compliance Officer would be subject to providing testimony is if the court finds the Compliance Officer's testimony essential. There is no reasonable alternative, and a significant injustice would occur if the Compliance Officer did not testify.

During FY 2012, one Complaint About State Plan Administration (CASPA) was received. The complainant contended that 3½ years ago he filed a safety and health complaint as well as an 11(c) discrimination complaint with IOSHA, and IOSHA failed to act on his complaints. It was determined that the complaint was about allergies and no 11(c) discrimination complaint was filed. IOSHA did not pursue the safety and health complaint due to it not being a valid complaint under OSHA standards. However, IOSHA did fail to notify the complainant of their decision. IOSHA did appropriately address all items in the complaint, but failed to notify the complainant. The failure to send the proper notification was a problem 3½ years ago. IOSHA has already addressed and rectified this problem. Further follow-up by IOSHA was not required.

Appendix A – New and Continued Findings and Recommendations
 FY 2012 Indiana State Plan Abridged FAME Report

Rec #	Findings	Recommendations	FY 11
12-01	Indiana OSHA exceeded the agreed upon time of 10 days to initiate a complaint.	It is recommended that Indiana OSHA utilize the use of administrative controls to ensure that complaint inspections are initiated within the agreed 10-day period.	11-01
12-02	The OSHA-1 did not indicate if English is a second language for the employees involved in a fatality or catastrophe.	IMMLANG should be marked in the OSHA-1 form as either yes or no as per the Field Operations Manual.	11-02
12-03	The in-compliance rate for all safety inspections conducted continues to increase from 63% in FY 2011 to 68% in FY 2012 and with health in-compliance rates increasing from 47% in FY 2011 to 48% in FY 2012.	IOSHA should determine the cause for these increases and implement an action plan to reduce the number of in-compliance inspections.	NA
12-04	Verification of abatement continues to be an outlier with 17% of violations still not verified 60 days after the abatement due date.	Abatement for violations should be verified in a timely manner.	NA
12-05	Twenty-eight percent of case files reviewed contained inadequate abatement.	IOSHA should ensure that all abatement is present and is adequate. Two primary items were noted where an abatement item was missing and the item was noted as corrected on the abatement certificate. This item is complete, awaiting verification.	11-05
12-06	While employee interviews were almost always indicated as being performed, 27 of 86 files did not contain documentation showing employee interviews had been performed.	Employee interviews should always be documented to provide proof of employee exposure. This item is complete, awaiting verification.	11-07
12-07	In 91% of the cases where sampling had been conducted, the results had not been provided to the employer.	Ensure that a copy of all sampling results is sent to the employer.	11-03
12-08	Currently, whistleblower investigations must be completed within 120 days.	The Agency should seek revision of the 120-day statutory deadline for filing in court.	NA

Appendix B – Observations Subject to Continued Monitoring
FY 2012 Indiana State Plan Abridged FAME Report

There no Observations for fiscal year 2012.

Appendix C – Status of FY 11 Findings and Recommendations
 FY 2012 Indiana State Plan Abridged FAME Report

Rec #	Finding	Recommendation	Corrective Action Plan	State Action Taken	Status
11-01	Indiana OSHA exceeded the agreed upon time of 10 days to initiate a complaint.	It is recommended that Indiana OSHA utilize the use of administrative controls to ensure that staffing levels are maintained and that complaint inspections are initiated within the agreed 10-day period.	IOSHA concurs that our timeline is too long. IOSHA is currently reviewing its process to better understand some significant fluctuations. We have determined that part of the timeline issue may be a function of inappropriate date coding. We have also concluded additional staff may be warranted.	IOSHA has initiated an intake improvement team to decrease administrative time to receive and investigate complaints. Staffing and experience level are still issues in improving this metric.	Open
11-02	The OSHA-1 did not indicate if English is a second language for the employees involved in a fatality or catastrophe.	IMMLANG should be marked in the OSHA-1 form as either yes or no as per the Field Operations Manual.	IOSHA has determined that staff may not have checked both boxes in the system. Supervisors are working with individual staff to ensure proper recording of this activity.	Supervisors have worked with staff to correct the recording problem.	Open
11-03	In 91% of the cases where sampling had been conducted, the results had not been provided to the employer.	Ensure that a copy of all sampling results is sent to the employer.	IOSHA will develop a method for distributing sampling results to employers.	Conflict due to personal information on sampling results forms. In the process of resolving. CSHO verbally gives results.	Open
11-04	Two companies requested a PMA. IOSHA failed to follow the PMA procedure.	IOSHA should perform the PMA procedure per the Field Operations Manual.	IOSHA does not believe this is systemic. We have re-emphasized the need for all PMA's to be in writing.	IOSHA deemed that no further action is necessary.	Closed
11-05	Twenty-eight percent of	IOSHA should ensure that	IOSHA concurs, we are	Construction created an	Open

Appendix C – Status of FY 11 Findings and Recommendations
 FY 2012 Indiana State Plan Abridged FAME Report

Rec #	Finding	Recommendation	Corrective Action Plan	State Action Taken	Status
	case files reviewed contained inadequate abatement.	all abatement is present and is adequate. Two primary items noted in which an abatement item was missing and the item was noted as corrected on the abatement certificate.	currently evaluating whether the process is flawed, or we are simply not following up.	abatement officer. General Industry supervisors are following up on this issue in case files.	
11-06	One inspection was found from the previous year on IMIS where a follow-up should have occurred under the Severe Violator Enforcement Program (SVEP).	Follow-ups should be performed per SVEP.	IOSHA does not concur. One case is not statistically significant. The judgment of the staff at the time deemed appropriate.	IOSHA deemed that no further action is necessary.	Closed
11-07	While employee interviews were almost always indicated as being performed, 27 of 86 files did not contain documentation showing employee interviews had been performed.	Employee interviews should always be documented to provide proof of employee exposure.	The issue is not documentation. The real issue is that interviews are considered to be a public record. Indiana law changed July 1, 2012, and we believe this will resolve itself. We are, however, re-emphasizing to field staff the need for complete written documentation.	Since change in Indiana law, July 1, 2012, we no longer have an issue with confidentiality. All employee interviews will now be documented in case files.	Open
11-08	All reasons for modification of the case files during the informal conference were not documented.	All reasons for modification of a case file should be documented whenever vacating or reclassifying violations or reducing the penalties.	IOSHA does not concur but has reminded managers to document all changes.	IOSHA deemed that no further action is necessary.	Closed

Appendix C – Status of FY 11 Findings and Recommendations
 FY 2012 Indiana State Plan Abridged FAME Report

Rec #	Finding	Recommendation	Corrective Action Plan	State Action Taken	Status
11-09	Every case file reviewed failed to show compliance in the area of case file organization.	Follow the Whistleblower Investigations Manual, DIS 0-0.9 for case file organization to ensure consistency with case file organization, contents, and tabbing.	The file organization methodology was reviewed and approved by Regional staff just one year ago. We will ask for additional guidance from the Whistleblower staff that approved the last plan.	The WB section has adopted the federal organization plan and using the federal table of contents and tabs. The WB section has completed the change and it is currently in use.	Closed
11-10	Federal OSHA reviewed a case which appeared to be a merit case as opposed to IOSHA's finding of non-merit.	Review the elements of a merit case per the Whistleblower Investigations Manual, DIS 0-0.9.	IOSHA believes that each of its staff investigators clearly understand the elements necessary for a merit case. A single file disagreement does not indicate a trend. No further action is contemplated.	IOSHA deemed that no further action is necessary.	Closed

Appendix D - FY 2012 State Activity Mandated Measures (SMM) Report FY 2012 Indiana State Plan Abridged FAME Report

NOV 09, 2012
RID: 0551800

MEASURE	From: 10/01/2011 To: 09/30/2012	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	7489 32.14 233	54 7.71 7	Negotiated fixed number for each state
2. Average number of days to initiate Complaint Investigations	11365 19.73 576	50 3.57 14	Negotiated fixed number for each state
3. Percent of Complaints where Complainants were notified on time	237 99.16 239	8 100.00 8	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	3 100.00 3	0 0 0	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	696 78.47 887	36 25.90 139	100%
Public	13 61.90 21	0 .00 3	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	23271 61.89 376	751 39.52 19	2032800 55.9 36336
Health	5877 78.36 75	116 58.00 2	647235 67.9 9527

IN FY12

PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix D - FY 2012 State Activity Mandated Measures (SMM) Report

FY 2012 Indiana State Plan Abridged FAME Report

NOV 09, 2012
RID: 0551800

MEASURE	From: 10/01/2011 To: 09/30/2012	CURRENT FY-TO-DATE	REFERENCE/STANDARD	
8. Percent of Programmed Inspections with S/W/R Violations				
	267	13	76860	
Safety	30.31	65.00	58.5	National Data (3 years)
	881	20	131301	
	1	0	9901	
Health	50.00		53.0	National Data (3 years)
	2	0	18679	
9. Average Violations per Inspection with Violations				
	1313	48	367338	
S/W/R	2.91	2.28	2.1	National Data (3 years)
	451	21	175950	
	252	12	216389	
Other	.55	.57	1.2	National Data (3 years)
	451	21	175950	
10. Average Initial Penalty per Serious Violation (Private Sector Only)	1755700	56175	624678547	
	1400.07	1170.31	1990.5	National Data (3 years)
	1254	48	313826	
11. Percent of Total Inspections in Public Sector	29	0	99	
	2.54	.00	2.0	Data for this State (3 years)
	1143	12	4940	
12. Average lapse time from receipt of Contest to first level decision	7722	0	3197720	
	286.00		187.0	National Data (3 years)
	27	0	17104	
13. Percent of 11c Investigations Completed within 90 days	4	4	100%	
	100.00	100.00		
	4	4		
14. Percent of 11c Complaints that are Meritorious	2	2	63	
	50.00	50.00	24.5	National Data (3 years)
	4	4	257	
15. Percent of Meritorious 11c Complaints that are Settled	2	2	58	
	100.00	100.00	92.1	National Data (3 years)
	2	2	63	

Appendix E - State OSHA Annual Report (SOAR)
FY 2012 Indiana State Plan Abridged FAME Report

[Available Upon Request]