

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

**Virgin Islands Division of Occupational Safety & Health
(VIDOSH)**



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I. Executive Summary

The Virgin Islands OSHA State Plan is currently administered by the Division of Occupational Safety and Health (VIDOSH), which is part of the U.S. Virgin Islands Department of Labor. The Commissioner overseeing the State Plan is Albert Bryan Jr. The State Plan has offices on the two major islands: St. Croix and St. Thomas. These offices cover all public sector enforcement and public sector consultation activities in the Virgin Islands.

VIDOSH covers both safety and health disciplines. All private sector and federal government agency complaints are forwarded to Federal OSHA's Puerto Rico Area Office for appropriate action. Prior to June 30, 2003, VIDOSH and Federal OSHA had concurrent jurisdiction over safety issues in the private sector, with Federal OSHA retaining private sector health and maritime industry coverage. Public sector safety and health issues were covered by VIDOSH, as well as consultative services in both private and public sectors. On July 1, 2003, the Virgin Islands Government voluntarily withdrew its private sector enforcement coverage while continuing its coverage for public sector workers, and entered into a new 21(d) private-sector consultation cooperative agreement with Federal OSHA. This was due in large part to continued performance issues surrounding the Virgin Islands State Plan. In September 2005, the 21(d) private sector consultation program was transferred to the University of the Virgin Islands Community Engagement and Lifelong Learning (UVI-CELL) Division. These 21(d) services are covered under a separate grant and a review of that program is not included in this report.

The VI-OSH Act provides for the automatic adoption of federal standards applicable to public sector, with issuance on the effective date specified in the federal standard.

The VI-OSH Act contains provisions for the issuance of Failure-to-Abate monetary penalties for those public sector employers found not to be in compliance with applicable standards on a first instance basis. VIDOSH's review procedures are handled through a Hearing Examiner with the right to appeal to the Commissioner of Labor and the V.I. Superior Court in lieu of the Review Commissioner as is the case in the federal program.

For FY 2012, VIDOSH's initial total 23(g) grant amount was \$625,587, which included federal base grant of \$202,100 (32.31%) the states match of \$2,100 (67.69%) and the 100% overmatch of \$421,387. Staffing continues to be a concern with multiple vacancies with VIDOSH. The total FTE allocated for VIDOSH is eight (8) – of which four (4) fall under enforcement, one (1) is under consultation (23(g) public sector only), and the rest are administrative. Currently VIDOSH has on board; one (1) safety and one (1) health compliance officer, two (2) administrative employees and one (1) manager for a total of five (5) FTE's. This item is being addressed as a finding in this FY 2012 FAME report.

The purpose of this report is to assess VIDOSH's progress related to enforcement activities and progress towards achieving their annual performance goals established in their FY 2012 Annual Performance Plan. This report incorporated the findings of the 2011 Federal Annual Monitoring Evaluation (FAME) for VIDOSH's 23(g) program.

During FY 2012, VIDOSH made little progress in addressing the eleven (11) findings and recommendations from the FY 2011 FAME. Only three (3) were adequately addressed and are completed. One (1) is awaiting verification and seven (7) continue to remain open. Also identified during the on-site review were five (5) new items that will need to be resolved by VIDOSH.

Items still needing to be addressed include:

- Enforcement Program:

Productivity – There is a continued lack of productivity based on a decreasing number of inspection visits per enforcement staff member. The numbers of inspections have continued to decline steadily since FY 2009 when VIDOSH inspected 101 worksites compared to 18 inspected in FY 2012.

Lapse Time – Despite the decrease in the number of inspections conducted, citation lapse times continue to increase and are almost twice the national average for safety cases and more than 50% greater than the national average for health cases. FY 2012 lapse times are 135.52 days for safety compared to 68.67 days in FY 2009. The health lapse time is 178.15 in FY 2012 compared to 115.60 in FY 2009.

Overdue Abatement – Compared to previous years, VIDOSH has made notable improvements in reducing the number of inspections with abatements overdue, but still falls significantly below the national reference standard of 100%. The FY 2012 percentage for VIDOSH was 40.30%.

Union/Employee Involvement- While the on-site case file review showed that VIDOSH invites union representatives to participate during the inspection process, the opinions of stakeholders differ. It appears communication with local leaders in the unions is non-existent. The on-site review also revealed that interviews of employees were not being conducted and/or not being documented in the case files.

- Consultation Program

VIDOSH implemented an operational public sector consultation program towards the end of the 3rd quarter in FY 2012 and conducted two (2) site visits. However, by the end of FY 2012, the program was no longer operational after their consultant resigned and no trained staff was assigned to the program.

- Program Administration

Enforcement case files are not being closed in an expedient manner. Nine (9) of the 21 case files reviewed were not closed because of abatement issues. In those remaining open case files, the average number of day's abatement is overdue

ranges from three (3) days up to 233 days. Management is not following procedures described in their Field Operations Manual (FOM) Chapter 7, Post-Citation Procedures and Abatement Verification. Management is failing to obtain abatement under 1903.19 and follow-up inspections are not being assigned when abatement has not been received from cited employers.

Enforcement case files also are not being issued in an expedient manner. The average number of days from opening conference to citation issuance ranges from 38 to 182 days.

II. Major New Issues

The on-site review revealed five (5) new major issues.

- Notification to Complainant

Although the State Activity Mandated Measures (SAMM) report shows that VIDOSH notified complainants in a timely manner, the onsite review of case files differs. Five (5) complaint files were reviewed and three (3) of the five (5) case files lacked documentation that the complainants had been notified of the results of the inspection.

- Injury/Illness Data

OSHA 300 logs were not collected and placed in case files reviewed, nor was there documentation that the logs were reviewed by the CSHO for potential injury/illness trends.

- Lack of Case File Documentation

Case files reviewed lacked *prima facie* evidence to support the citations issued. For example: case files reviewed lacked documentation that the file had been reviewed by a supervisor prior to issuance of citations, narratives and OSHA 1b's were missing in case files as was field notes.

- Employee Participation

86% or seven (7) of the 11 case files reviewed did not contain notations or documentation that employees had been interviewed.

- Staffing

Staffing also continues to be a challenge. Prior to the resignation of two (2) staff members (one (1) health enforcement and one (1) consultant) during the 4th quarter of FY 2012, VIDOSH was already below its allocated FTE by two (2). With the loss of these two (2) staff member VIDOSH now finds itself three (3)

employees (two (2) safety enforcement, and one (1) consultant) below the allocated FTE of eight (8).

III. State Progress in Addressing FY 2011 FAME Report Recommendations

VIDOSH's 2011 FAME noted 11 recommendations. It is OSHA Region 2's assessment that VIDOSH in its 2011 FAME Corrective Action Plan adequately addressed three (3) items, one (1) is still awaiting verification and seven (7) continue to be open.

Finding 11-01 (09-1)

Timeliness of state response and notifications to complainant:

During this evaluation period, VIDOSH received a total of four (4) formal complaints, with an average of 13.75 days for initiating complaint inspections. In FY 2010, VIDOSH's performance in this area was an average response time of 24 days. VIDOSH continues to not satisfy the mandated requirement for initiating complaint inspections within five (5) working days from notification. (SAMM report 11-08-11 – SAMM #1)

VIDOSH received a total of 17 non-formal complaints, with an average of 1.35 days for initiating the complaint investigations. There has been improvement since FY 2010 when the average number of days to initiate a complaint investigation was 3.75 days; VIDOSH continues to not satisfy this mandated requirement for initiating complaint investigations within one (1) working day. (SAMM report 11-08-11 – SAMM #2)

Recommendation 11-01

Implement internal control measure to ensure that complaint inspections are conducted in a timely manner.

Status 11-01

VIDOSH created an online template form that includes instructions on completing the complaint form and a prefilled FAX coversheet was also included in the online template. The director has oversight and assigns the complaint to a CSHO and is responsible for ensuring the necessary actions are taken to close the complaint. Based on the SAMM measure provided which shows an average of four (4) days to initiate complaint inspections, VIDOSH has met the requirement for initiating complaint inspections within five (5) working days from notification and OSHA considers this section of Finding 11-01 to be completed.

The second section of Finding 11-01 deals with average number of days to initiate complaint investigations. VIDOSH received a total of 10 non-formal complaints with an average of 22.60 days for initiating the complaint investigations. This number represents an increase in the average number of days from the FY 2011 FAME report of 1.35 days and the FY 2010 FAME report of 3.75 days. (SAMM report 11-09-12 – SAMM #2)

VIDOSH continues to not satisfy this mandated requirement for initiating complaint investigations within one (1) working day from notification and OSHA believes this warrants continuing monitoring.

Finding 11-02

VIDOSH conducted a total of 54 inspections during FY 2011. This is 52% of the planned annual goal of 103 inspections. Of the 54 inspections, 26 were safety inspections which was 43% of the planned goal of 60; and 28 were health inspections which was 65% of the planned goal of 43. Of the 54 inspections conducted 9% were classified as unprogrammed inspections including four (4) complaint inspections. (Appendix C data)

According to VIDOSH's SOAR, VIDOSH conducted a total of 62 inspections during the fiscal year. This is 60% of the planned annual goal of 103 inspections. Of the 62 inspections, 32 were safety inspections which was 53% of the planned goal of 60; and 30 were health inspections which was 70% of the planned goal of 43.

Recommendation 11-02

VIDOSH must develop an inspection targeting and scheduling system that ensures that its Annual Performance Plan inspection goals are met and that CSHO resources are fully utilized for compliance activities.

Status 11-02

VIDOSH reported that it developed an inspection targeting and scheduling mechanism to ensure the Annual Performance Plan inspection and goals are accomplished. VIDOSH conducted a total of 18 inspections during FY 2012. This is 22.50% of the planned annual goal of 80. Of the 18 inspections, 11 were safety inspections which were 20% of the planned goal of 55, and seven (7) were health inspections which were 28% of the planned goal of 25. Of the 18 inspections, five (5) were unprogrammed (complaints) inspections. Thirteen (13) of the 18 inspections were programmed planned. (INSP8 report 1-24-13)

According to VIDOSH's SOAR, VIDOSH conducted a total of 22 inspections during the fiscal year. This is 27.50% of the planned annual goal of 80 inspections. Of the 22 inspections, 12 were safety inspections which was 21.82% of the planned goal of 55; and 10 were health inspections which was 18.18% of the planned goal of 25.

VIDOSH continues to fall below their targeted inspection goals reported in the Annual Performance Plan. OSHA believes this warrants continuing monitoring.

Finding 11-03

During the evaluation period, VIDOSH issued citations in 20 cases, eight (8) safety and 12 health cases. For the safety cases, VIDOSH had a lapse time of 113.75 days (the national average was 51.9 days). The lapse time for the health cases was calculated at 157.25 days (the national

average was 64.8 days). Both safety and health indicators were higher than the national average. (SAMM report 11-08-11 – SAMM #7)

Recommendation 11-03

VIDOSH must implement mechanisms (e.g., expedited case file reviews, review of management reports, and retrain employees) in order to improve its citation lapse times.

Status 11-03

VIDOSH implemented procedures to improve lapse time such as prioritizing open case files and the utilization of the IMIS reports to forecast deadlines.

This procedure/approach has not lowered the lapse time; in fact, the lapse time has increased for both safety and health. OSHA believes this warrants continuing monitoring.

Finding 11-04

VIDOSH had 74 open non-contested cases with abatements incomplete 60 or more days after the last abatement date and does not utilize a reliable mechanism for achieving abatement for cited hazards. (Appendix C data)

Recommendation 11-04

VIDOSH must fully utilize strategies such as follow-up inspections, “failure to abate” citations, and 29 CFR 1903 provisions to ensure that abatement of cited hazards is achieved in a timely manner.

Status 11-04

VIDOSH implemented program management techniques and procedures to ensure abatement of cited hazards is achieved in a timely manner. The director and the staff reviewed and prioritized all open case files. Additionally, standard NCR reports will be utilized to forecast deadlines.

Region 2 has been monitoring the violation abatement reports for VIDOSH. Below is a breakdown of the progress VIDOSH has made in reducing the number of inspections with open abatements:

Date of report	2008	2009	2010	2011	2012	2013	TOTAL
06/21/2012							142
10/02/2012	8	26	17	15	16		82
01/10/2013	8	24	17	14	21		84
02/11/2013	0	1	10	16	19	1	47

Although VIDOSH has made an improvement in reducing the number of inspections with abatements overdue, the percentage of serious, willful, repeat violations cited that was verified as abated within the abatement date plus 30 days was 40.30% which is lower than the national

reference of 100% (SAMM report-11-09-12-SAMM #6). OSHA believes this warrants continuing monitoring.

Finding 11-05 (09-21)

Standard Adoption: VIDOSH does not exercise its statutory authority to adopt standards and that documentation is not available to verify adoption.

Recommendation 11-05

Standard Adoption: VIDOSH should implement internal controls to ensure that all standards applicable to the public sector are promulgated within six months of the promulgation date of new Federal OSHA standards in accordance with the VIOSH Act.

Status 11-05

VIDOSH implemented a dedicated COMPLIANCE (CPL) DOC Tab on the VIDOL/VIDOSH webpage. This measure resulted in making the CPL information available to the public sector within the six (6) month required adoption time frame. The VIDOSH Webpage provides the public sector with the following reports:

- A Standard CPL Roster with Hyperlinks connecting the customer with the current OSHA documentation.
- A Standard CPL Directive Certificates Roster providing the public sector and Region II with the implementation data for each CPL Directive and Standard, and Doctrine.
- VIDOSH provided listings to the VIDOL Public Information Officer to publish a Government of the Virgin Islands Public Information Notification release.
- The Press Release will be sent to the Governor for approval and it will be released to all Virgin Islands public sector agencies and stakeholders; as well as, the media.
- VIDOSH will also utilize the VIDOL Facebook Page to inform the public of the CPL Directives updates.
- The VIDOL Public Information Office is working with the local media to inform the public of the most current information—the CPLs are included in this effort.
- The VIDOSH CPL Standard and Directives can be downloaded on to the iPhone platform utilizing the I-Books application—This measure provides public sector smart phone users with the searchable and bookmarking features pertaining to the CPL Standard and Directives— VIDOSH.

OSHA considers this item to be completed.

Finding 11-06 (10-4, 10-05, 10-6 – 09-19)

VIDOSH's discrimination program does not meet the 29 CFR part 1977.23 standards. In general, the VIDOSH discrimination program is lacking the staffing, procedural knowledge, experience, and structure necessary to effectively execute investigations and meet program objectives.

Recommendation 11-06

VIDOSH needs to implement an effective discrimination program that follows the Whistleblower Investigation Manual (CPL02-03-002 8/22/2003). VIDOSH must work with the Virgin Island's Attorney General's Office to create a clear path for settlement review and execution of these cases. This includes access and use of the IMIS Whistleblower application and use of appropriate templates.

Finding 11-07 (10-03)

As indicated in the 2009 EFAME, VIDOSH staff refers 11(c) cases to PROSHA and the U.S. Virgin Islands Department of Labor, Division of Labor Relations rather than to Federal OSHA. Staff members understood that private Sector 11(c) complaints should be forwarded to Federal OSHA. Staff members stated that they contacted Federal OSHA Regional Supervisory Investigator for questions.

Recommendation 11-07

VIDOSH staff needs to forward all complainants that allege retaliation to the discrimination investigator for screening. All staff members should be trained to answer basic questions about jurisdiction, coverage, and discrimination complaints. All screenings should be documented according to the guidelines in the Federal Manual. It is suggested that VIDOSH continue to refer cases out of their jurisdiction to Federal OSHA and contact Federal OSHA with any questions. VIDOSH should develop a working relationship with the Virgin Islands Department of Labor, Division of Labor Relations, so that each agency may refer appropriate cases to each other as complainants may concurrently file.

Status 11-06 and 11-07

VIDOSH has jurisdiction on whistleblower discrimination cases arising from public sector employees in the Virgin Islands and there have been no discrimination cases since 1999.

VIDOSH has implemented a discrimination program that is compliance with the Whistleblower Investigation Manual (OSHA CPL 02-03-002 dated 8/22/2003). VIDOSH director and two (2) CSHOs (one (1) safety and one (1) health) completed the 1420 Basic Whistleblower Investigations (11c) OTI course during the FY2012. VIDOSH has adopted CPL 02-03-003 Whistleblower Investigations Manual. VIDOSH has created customized Whistleblower letter templates. Additionally VIDOSH has created a public sector Whistleblower poster; the poster is available in English and Spanish. VIDOSH staff has been trained to answer basic questions about jurisdiction, coverage and discrimination complaints. VIDOSH continues to refer all cases out of their jurisdiction to Federal OSHA. The VIDOSH Whistleblower program is structurally in place.

OSHA considers these two (2) items to be completed.

Finding 11-08 (10-02 – 09-15)

As also indicated in the 2009 EFAME, as required by its 2003 developmental plan, the Virgin Islands has not developed nor maintained a public sector consultation program that can provide no cost safety and health services to public sector employers.

Recommendation 11-08

VIDOSH must ensure that a public-sector consultation program is fully operational and provides appropriate services to public-sector employers in the territory.

Status 11-08

VIDOSH implemented an operational public sector consultation program towards the end of the 3rd quarter in FY 2012. VIDOSH's single consultant conducted two (2) site visits prior to resigning during the 4th quarter of FY 2012. VIDOSH has made a new selection for the consultant position and hopes to have that person on board before the 3rd quarter of FY 2013.

OSHA believes this warrants continuing monitoring until a new consultant is on board and conducting site visits.

Finding 11-09 (10-07 – 09-23)

VIDOSH covers public sector employers in water and wastewater treatment activities, covered by the PSM standard. VIDOSH does not have adequate trained staff to deal with these worksites.

Recommendation 11-09

VIDOSH needs to ensure that an adequate number of qualified VIDOSH staff is trained to the requirements of DIRECTIVE NUMBER: 09-06 (CPL 02), "PSM Covered Chemical Facilities National Emphasis Program."

Status 11-09

VIDOSH staff has not completed this training.

This finding is not complete and OSHA considers this item to be open.

Finding 11-10 (10-01 – 09-14)

A draft version of revised State Plan Narrative was due on December 31, 2005. This document has not yet been received by OSHA but VIDOSH reports that it will be submitted to OSHA for approval by the end of the second quarter of FY 2012.

Recommendation 11-10

VIDOSH must ensure that the State Plan narrative, with amendments reflecting the more limited

public sector scope of the program is completed and submitted to OSHA. This includes the narrative document as well as all relevant appendices. VIDOSH must also provide documentation on all outstanding developmental components of its State Plan.

Status 11-10

VIDOSH submitted to Region 2 a draft version of a revised State Plan narrative. It is currently under review and OSHA considers this item to be open.

Finding 11-11

According to VIDOSH, only four (4) of the inspections conducted in FY2011 were actually closed and available for review as part of the FY 2011 FAME study. These closed cases only represent 7.4% of the inspections conducted during FY 2011. Even though four (4) cases were reported by VIDOSH as being closed, only two (2) enforcement case files were made available to Federal OSHA for the FAME review. Both of these inspections were “in-compliance” and no citation items were issued in either inspection. It was noted that of the 54 inspections conducted, 13 reportedly had citations issued.

Recommendation 11-11

VIDOSH needs to develop and implement mechanisms to ensure that inspection case files are closed in an expedient manner and in accordance with adopted policy in the Field Operations Manual (FOM).

Status 11-11

VIDOSH developed and implemented mechanisms to ensure inspection case files are closed in an expedient manner and in accordance with adopted policy in the FOM.

During the on-site review for the FY 2012 FAME, VIDOSH produced 21 enforcement case files. Of the 21 case files reviewed only 11 were closed. The nine (9) files that were still open were reviewed and showed the following:

CASE	#1	#2	#3	#4	#5	#6	#7	#8	#9
Days from opening conference to citation issue	38	168	182	177	134	108	161	160	112
Days from closing conference to citation issue	38	168	181	176	134	108	161	160	112
Days abatement is overdue*	127	42	83	136	24	233	3	3	52

* As of March 14, 2013

Case files are not being closed in an expedient manner and OSHA considers this item to be open.

IV. Assessment of FY 2012 State Enforcement Measures

Inspection Activity

The FY 2012 Inspection Activity micro-to-host report (INSP8 report 1-24-13) shows that VIDOSH conducted a total of 18 inspections during the fiscal year: 11 safety inspections and seven (7) health inspections. This represents 62 inspections below their Planned vs. Actual (PVA) projections of 80 inspections.

A. Enforcement

1. Complaints

During this evaluation period, VIDOSH responded to one (1) complaint with an average response time of 4.0 days from notification. This is a decrease from 13.75 days in FY 2011 and 24 days in FY 2010. (SAMM report 11-09-12 – SAMM #1)

The FY 2011 FAME (11-01) noted that complaint processing timeliness was an issue. There was an excessive time period between receipt of a complaint to initiation of an inspection.

VIDOSH created an online template form that includes instructions on completing the complaint form and a prefilled FAX coversheet was also included in the online template. The director has oversight and assigns the complaint to a CSHO and is responsible for ensuring the necessary actions are taken to close the complaint.

Based on the SAMM measure provided VIDOSH met the requirement for initiating complaint inspections within five (5) working days from notification and OSHA considers this item to be completed.

Finding 12-01 Formerly 11-01, 09-1

Timeliness of State response:

VIDOSH received a total of 10 non-formal complaints with an average of 22.60 days for initiating the complaint investigations. This number represents an increase in the average number of days from the FY 2011 FAME report of 1.35 days and the FY 2010 FAME report of 3.75 days. VIDOSH continues to not satisfy this mandated requirement for initiating complaint investigations within one (1) working day from notification. (SAMM report 11-09-12 – SAMM #2)

Recommendation 12-01

Implement internal control measure to ensure that complaint investigations are initiated within a timely manner.

VIDOSH continues to not satisfy this mandated requirement for initiating complaint investigations within one (1) working day from notification and OSHA believes this warrants continuing monitoring.

Finding 12-02

Notification to Complainant:

Although the SAMM (SAMM report 11-09-12 – SAMM #3) report shows that VIDOSH met this measure and notified complainants in a timely manner 100% of the time the onsite review of case files differ.

Five (5) complaint files were reviewed. Three (3) of the five (5) complaint files lacked documentation that the complainant had been notified of the results of the inspection. In one (1) of the five (5) case files reviewed the OSHA 7 was missing.

Recommendation 12-02

Ensure case files include all required forms and all letters or communications related to the complaint.

2. Fatalities

During FY 2012 no fatalities occurred under VIDOSH's jurisdiction.

3. Targeting and Programmed Inspections

Finding 12-03 Formerly 11-02

VIDOSH conducted a total of 18 inspections during FY 2012. This is 22.50% of the planned annual goal of 80. Of the 18 inspections, 11 were safety inspections which were 20% of the planned goal of 55, and seven (7) were health inspections which were 28% of the planned goal of 25. Of the 18 inspections, five (5) were unprogrammed (complaints) inspections and the remaining 13 were programmed planned. (INSP8 report 1-24-13)

According to VIDOSH's SOAR, VIDOSH conducted a total of 22 inspections during the fiscal year. This is 27.50% of the planned annual goal of 80 inspections. Of the 22 inspections, 12 were safety inspections which was 21.82% of the planned goal of 55; and 10 were health inspections which was 18.18% of the planned goal of 25.

Recommendation 12-03

VIDOSH must develop an inspection scheduling system that ensures that its Annual Performance Plan inspection goals are met and the CSHO resources are fully utilized for compliance activities.

VIDOSH continues to fall below their targeted inspection goals reported in the Annual Performance Plan. OSHA believes this warrants continuing monitoring.

Finding 12-04

Injury/illness data was not collected. OSHA 300 logs were not placed in seven (7) of the 11 case files (86%) reviewed nor was there documentation that the logs were reviewed by CSHOs for injury/illness trends.

Recommendation 12-04

Ensure that CSHOs are collecting the previous three (3) years of OSHA 300 logs and placing them in the case files. This data is required for calculating the Days Away, Restricted, or Transferred (DART) rate.

4. Citations and Penalties

Citations/Notices of Violations:

In FY 2012, VIDOSH issued 121 violations (INSP8 report 1-24-13) compared to 93 violations issued in FY 2011. Of the 121 violations issued, 91 were Serious, 0 Repeat, 0 Willful, 0 Failure to Abate and the remaining 29 were Other-than-Serious.

The percent of inspections with serious/willful/repeat (S/W/R) violations is 66.67% for safety inspections (61% in FY 2011) and 50% for health inspections (100% in FY 2011), the safety percentage is above the national average of 58.5% while the health percentage is slightly below the 53.0%. (SAMM report 11-09-12 – SAMM #8)

VIDOSH issued an average of 2.87 S/W/R violations per inspection and 0.90 for “other-than-serious” violations per inspection. The 2.87 average is above the national average of 2.1 while the 0.90 average for other-than-serious is below the 1.2 national average. FY 2011 violation per inspection averages were higher in that the average S/W/R was 3.0 and other-than-serious was 1.30. (SAMM report 11-09-12-SAMM #9)

Finding 12-05

Lack of Case File Documentation

Unlike last year’s (FY 2011) case file review when the two (2) cases made available did not have citations issued, this year (FY 2012) the team reviewed 11 closed case files. The audit revealed that all 11 case files (100%) reviewed lacked *prima facie* evidence to support the specific citations issued. For example: Of the 11 case files reviewed field notes were lacking in three (3) safety (50%) and two (2) health (50%). One (1) of the six (6) safety case files showed citations were issued but the OSHA 1B was missing from the case file as well any documentation as to what was cited. Narrative documentation was missing in two (2) health files and one (1) safety file. Seven (7) of the 11 case files (86%) lacked CSHO signature and four (4) case files (25%) lacked documentation that a supervisor had reviewed the file prior to issuing citations and/or closing the case file.

Recommendation 12-05

Ensure case files include required documentation in accordance with VIDOSH's FOM.

Penalties:

VIDOSH does not allow for the issuance of "first instance" monetary penalties for public employers found being in violation of VIDOSH standards on a first instance basis. VIDOSH did not issue any penalties during FY 2012.

Lapse Time:

Finding 12-06 Formerly 11-03

VIDOSH's citations lapse time (the average number of calendar days from opening conference to citation issuance) for FY 2012 was calculated at 135.52 days for safety, an increase from 113.75 days in FY 2011 and above the national average of 55.9 days. The lapse time for health was 178.15 days, an increase from 157.25 days in FY 2011 which is also above the national average of 67.9 days. (SAMM report 11-09-12-SAMM #7)

One (1) health case file reviewed revealed excessive time between the inspection and the issuance of citations. The other-than-serious citations (two (2) total) were issued more than four (4) months after the inspection was completed.

Recommendation 12-06

VIDOSH implemented procedures to improve lapse time such as prioritizing open case files, using a Cradle to Grave approach and the utilization of the IMIS reports to forecast deadlines. However, this procedure/approach has not lowered the lapse time. VIDOSH must use IMIS data/reports as a tool to effectively manage both the program and the work product of its staff.

OSHA considers this item to be open.

5. Abatement

Finding 12-07 Formerly 11-04

Overdue abatement

During FY 2012, the percentage of serious, willful, repeat violations cited that was verified as abated within the abatement date plus 30 days was 40.30% instead of the 100% national average (27 S/W/R out of 67). This value shows an improvement from the 0% in FY 2011 and 29.09% in FY 2010 but is still lower than the national reference standard. (SAMM report-11-09-12-SAMM #6)

Recommendation 12-07

VIDOSH must fully utilize strategies such as follow-up inspections, "failure to abate"

citations, and 29 CFR 1903.19 provisions to ensure that abatement of cited hazards is achieved in a timely manner.

Although VIDOSH has made great strides in reducing the number of inspections with abatements overdue, the percentage continues to be lower than the national reference value and OSHA believes this warrants continuing monitoring.

Other Issues

The following are minor issues found in only one (1) or two (2) case files and OSHA is not making a formal recommendation at this time:

- One (1) safety and one (1) health case file lacked documentation whether the employer had abated the violation and if so, how was it abated.
- One (1) follow-up case file (safety) reviewed contained pictures of a fire extinguisher as a means of abatement. There was no way to determine what the actual violation was as the original OSHA 1B's were not in the case file. VIDOSH should combine follow up case files with the original case file.
- Excessive abatement periods were given to the employer in one (1) safety case file. 15 days abatement was given for a locked exit door. The seriousness of a locked exit door warrants that the condition be Corrected During Inspection (CDI) with it being documented in the case file that the CSHO observed the abatement.
- A citation issued in one (1) safety case file for failing to provide fire extinguisher training was marked CDI, however the employer had only scheduled the training – it had not been actually completed.

6. Employee and Union Involvement

Union Participation:

VIDOSH continues to have union representation participate during the inspection process. Eight (8) of the 11 case files reviewed had workplaces with union representation. Of those eight (8) case files, six (6) had union representatives participate during the inspection. When union representation was not available, some of the case files had documentation showing that the CSHO selected a non-managerial employee to participate in the process. It appears that only two (2) case files (marked as having a union) lacked documentation as to a reason why a representative from the union and/or an employee was not involved in the inspection.

Observation 12-01

Although the on-site review of case files showed that VIDOSH involves union representation during inspections, the meetings conducted with two (2) stakeholders presented a different picture. It appears communication or lack of communication is a big issue with both unions. Copies of inspection results including copies of any citations issued to an employer are not being sent to the local representative. Also, VIDOSH does not always follow-up with the unions to ensure that items have been corrected.

Employee Participation:

Finding 12-08

A total of 11 case files were reviewed, seven (7) of the case files or 86% (four (4) health and three (3) safety) had no mention or documentation of employee interviews. Case files containing field notes also lacked documentary evidence that employees were interviewed.

Recommendation 12-08

Provide training to all field staff to include interview notes and documentation in case files.

B. Review Procedures

Under VIDOSH's State Plan, the post citation issuance review proceedings are handled through a Hearing Examiner with the right to appeal to the Commissioner of Labor and the Virgin Islands Superior Court in lieu of the Review Commission as in the Federal Program.

1. Informal Conferences

During FY 2012 VIDOSH did not conduct any informal conferences.

2. Formal Review of Citations

No cases went through the review process during FY 2012.

C. Standards and Federal Program Changes Adoption

The FY 2011 FAME (Finding 11-05 (09-21)) noted that VIDOSH does not exercise its statutory authority to adopt standards, and that documentation is not available to verify adoption.

VIDOSH implemented a dedicated COMPLIANCE (CPL) DOC Tab on the VIDOL/VIDOSH webpage. This measure resulted in making the CPL information available to the public sector. The VIDOSH Webpage provides the public Sector with the following reports:

- A Standard CPL Roster with Hyperlinks connecting the customer with the current OSHA documentation.
- A Standard CPL Directive Certificates Roster providing the public sector and Region II with the implementation data for each CPL Directive and Standard, and Doctrine
- VIDOSH provided listings to the VIDOL Public Information Officer to publish a Government of the Virgin Islands Public Information Notification release.
- The Press Release will be sent to the Governor for approval and it will be released to all Virgin Islands public sector agencies and stakeholders; as well as, the media.
- VIDOSH will also utilize the VIDOL Facebook Page to inform the public of the CPL Directives updates.
- The VIDOL Public Information Office is working with the local media to inform the public of the most current information—the CPLs are included in this effort.

- The VIDOSH CPL Standard and Directives can be downloaded on to the iPhone™ platform utilizing the iBooks™ application. This measure provides public sector smart phone users with the searchable and bookmarking features for VIDOSH CPL Standard and Directives.

OSHA considers this item (11-05) to be completed.

1. Standards Adoption

A total of two (2) Federal Standards were issued during FY 2012. The notice of intent to adopt was timely for both standards.

2. Federal Program/State Initiated Changes

During FY 2012 there were a total of six (6) Federal Program Changes that required a notice of intent to adopt. VIDOSH responded in a timely manner with their intent.

D. Variances

There were no variances requests received or processed during FY 2012.

E. Public Employee Program

100% of all inspections conducted by VIDOSH occurred in the public sector.

F. Discrimination Program

VIDOSH has jurisdiction on whistleblower discrimination cases arising from public sector employees in the Virgin Islands and there have been no discrimination cases since 1999.

The FY 2011 FAME noted two (2) findings related to VIDOSH's Discrimination Program:

a) VIDOSH's discrimination program does not meet the 29 CFR part 1977.23 standards. In general, the VIDOSH discrimination program is lacking the staffing, procedural knowledge, experience, and structure necessary to effectively execute investigations and meet program objectives (11-06 (10-4, 10-05, 10-6 – 09-19)

b) As also indicated in the 2009 EFAME, VIDOSH staff refer 11(c) cases to PROSHA and the U.S. Virgin Islands Department of Labor, Division of Labor Relations rather than to Federal OSHA. Staff members understood that private sector 11(c) complaints should be forwarded to Federal OSHA. Staff members stated that they contacted Federal OSHA Regional Supervisory Investigator for questions. (11-07, 10-03)

VIDOSH has implemented a discrimination program that is in compliance with the Whistleblower Investigation Manual (CPL02-03-002 8/22/2003). VIDOSH director and two (2) CSHO's (one (1) safety and one (1) health) completed the 1420 Basic Whistleblower Investigations (11c) OTI course during FY2012. VIDOSH has adopted CPL 02-03-003 Whistleblower Investigations Manual. VIDOSH has created customized Whistleblower letter templates. Additionally VIDOSH has created a public sector Whistleblower poster; the poster is

available in English and Spanish. VIDOSH staff has been trained to answer basic questions about jurisdiction, coverage and discrimination complaints. VIDOSH continues to refer cases out of their jurisdiction to Federal OSHA. The VIDOSH Whistleblower program is operational.

OSHA considers these two (2) items (11-06, 11-07) to be completed.

G. Voluntary Compliance Program

VIDOSH does not have a Voluntary Compliance Program.

H. Program Administration

Staffing:

Finding 12-09

During the first nine (9) months of FY 2012, VIDOSH was operating with one (1) safety officer and two (2) industrial hygienists' (IH) – one (1) of the industrial hygienist was assigned as a consultant, thus ensuring the Consultation Program was operational. During the fourth (4th) quarter of FY 2012, two (2) staff members resigned – one (1) enforcement industrial hygienist and the one (1) consultant. VIDOSH no longer has an effective consultation program due to the resignation of the consultant. With the loss of the enforcement IH, VIDOSH is unable to reach its anticipated inspection goal for FY 2013. VIDOSH staffing level is allocated for eight (8) employees but currently there are only two (2) enforcement, two (2) administrative and one (1) manager are on board.

Recommendation 12-09

VIDOSH must fill current staffing vacancies with qualified applicants.

Training:

Training is essential for VIDOSH so they may continue to develop and improve their case file documentation. VIDOSH continued to provide CSFO's the opportunity to attend the OSHA Training Institute (OTI) for the much needed safety and health technical training. During FY 2012, VIDOSH personnel attended a total of eight (8) formal OTI courses.

Finding 12-10 Formerly 11-09 (10-07 – 09-23)

VIDOSH covers public sector employers in water and wastewater treatment activities, covered by the PSM standard. VIDOSH does not have adequate trained staff to deal with these worksites.

Recommendation 12-10

VIDOSH needs to ensure that an adequate number of qualified VIDOSH staff is trained to the requirements of Directive Number: 09-06 (CPL 02), "PSM Covered Chemical Facilities National Emphasis Program."

Although VIDOSH has made an attempt to schedule at least one (1) staff member for the OTI 3430-Advanced PSM in the Chemical Industries course, no staff have received training in this area. As of this date VIDOSH has submitted a request to have a staff member attend the June 2013 – 3410 Advanced Process Safety OTI course.

VIDOSH staff has not completed this training and OSHA considers this item to be open.

Funding:

VIDOSH did not return any 23(g) funding during FY 2012.

Information Management (IMIS):

Finding 12-11 Formerly 11-10 (10-01- 09-14)

A draft version of revised State Plan Narrative was due on December 31, 2005. This document has not yet been received by OSHA but VIDOSH reports that it will be submitted to OSHA for approval by the end of the second quarter of FY 2012.

Recommendation 12-11

VIDOSH must submit their State Plan narrative (and relevant appendices) with amendments reflecting its program's more limited public sector scope; VIDOSH must also provide documentation on all outstanding components of its State Plan.

VIDOSH completed a draft version of their revised State Plan narrative and submitted to the Region for review and necessary actions; currently awaiting verification from the Region.

Finding 12-12 Formerly 11-11

During the on-site review for the FY 2012 FAME, VIDOSH produced 21 enforcement case files. Of the 21 case files reviewed, only 11 were closed. Of the 10 files still open, the average number of days from the opening conference to citations being issued and the average number of days from the closing conference to citations being issued was 151 days. Overdue abatement was extensive for these 10 open case files. The average number of days abatement was overdue was 71.4 days.

Recommendation 12-12

VIDOSH needs to develop and implement mechanisms to ensure that inspection case files are closed in an expedient manner and in accordance with adopted policy in the Field Operations Manual (FOM).

Case files are not being closed in an expedient manner and OSHA considers this item to be open.

V. State Progress in Achieving Annual Performance Goals

VIDOSH's FY2012 Annual Performance Plan consisted of two (2) broad-based strategic goals with complementary performance goals.

During FY 2012, VIDOSH reports the following results as it related to:

Goal #1 – Improve Workplace Safety and Health for All Public Employees in the U.S. Virgin Islands

Performance Goal #1-1: Reduce occupational hazards exposures in the public sector by conducting direct interventions in agencies with a history of Workers Compensation claims.

Year One Performance Goal #1-1.1: Reduce occupational hazards exposures in the public sector by focusing on public employees with frequent Workers Compensation claims over the past three (3) years.

The U.S. Virgin Islands BLS data showed a TRC rate decrease trend on five (5) public sector agencies for CY 2011.

Outcome Measure

VIDOSH targeted public sector agencies whose operations were Service providers, a total of 12 safety (S) and 10 health (H) inspections were conducted with 11 such industries in specific NAICS codes noted below.

NAICS 92212	VI Police Department	H (0)	S (1)
NAICS 61110	VI Department of Education	H (1)	S (3)
NAICS 612399	VI Department of Health/Hospital	H (1)	S (1)
NAICS 541820	VI Public Service	H (1)	S (1)
NAICS 926110	VI Department of Tourism	H (1)	S (1)
NAICS 517910	VI Bureau Of Information	H (1)	S (1)
NAICS 813910	Office of Collective Bargaining	H (2)	S (1)
NAICS 921120	VI Legislatures	H (2)	S (1)
NAICS 921130	VI Internal Revenue	H (0)	S (1)
NAICS 921190	Government Employee Retirement	H (1)	S (0)
NAICS 812930	Department of Housing Parks and Recreation	H (1)	S (0)

According to VIDOSH's SOAR, this goal was partially met in that VIDOSH conducted a total of 22 inspections and a total of 50 citations were issued for all enforcement activities.

Staffing limitation impacted the complete implementation; VIDOSH experienced the resignation of one (1) industrial hygienist on September 7, 2012, the vacancy impacted the performance goal. Prior to the official resignation date the employee also took personal leave. During FY 2012, revisions were made to VIDOSH public sector Employees Injuries and Illnesses Database.

Performance Goal #1-2: Reduce occupational hazards exposures in the public sector by ensuring that workplaces receive direct intervention.

Year One Performance Goal #1-1.2: Reduce occupational hazards exposures in the public sector by conducting programmed inspections, focusing on establishments that have not been inspected in the past three (3) years. Achieve 1% reduction using baseline data established in CY 2008 data of 2.9 per 100,000 people.

Outcome Measure

a) Number of establishments receiving direct interventions: 22

VIDOSH conducted a total of 22 enforcement activities. The enforcement activities per categories were: 12 safety inspections and 10 health inspections.

b) Number of citations issued:

A total of 50 violations were issued for all enforcement activities, all of them issued during FY 2012.

Performance Goal #1-3: Reduce occupational hazard exposures in the public sector by ensuring that workplaces receive direct intervention.

Year One Performance Goal #1-1.3 Conduct health inspections, including being able to address indoor air quality (IAQ) issues.

Outcome Measure

a) **Number of Health Inspections:** VIDOSH conducted a total of 10 health enforcement activities. The enforcement activities included planned and complaint inspections. During FY 2012 the percentage of IAQ inspection was 40% for all public sector agencies. Several factors impacted VIDOSH operations: The resignation of the enforcement industrial hygienist resulted in incompleteness of four case files.

Activity Measures:

- a) Number of health inspections /investigations conducted: 4
- b) Number of IAQ issues observed: 4
- c) Number of IAQ complaint received: 4
- d) Number of IAQ complaint investigation completed: 4

b) VIDOSH will implement IAQ procedures and strategies to develop a specific IAQ procedure applicable for this type of intervention. Workplace and establishment inspections will be performed using monitoring methodology procedures to follow through the OSHA Technical Manual and published OSHA references and guidelines.

VIDOSH adopted 02-00-140 CPL standards (Complaint Policies and Procedures) and the development and implementation of VIDOSH Complaint database; the tool has facilitated and enhanced collection of pertinent information during the complaint process.

In the implementation process during FY 2012, VIDOSH maintained the database recording a total of 8 Non Formal Complaints. These complaints were received either by phone, referral or by walk-ins. The origin of the complaints covered two of the three islands as follows:

- St Croix 1 Complaints 12.5 %
- St Thomas 7 Complaints 87.5%
- St John 0 Complaints 0 %

***VIDOSH will no longer be entering into the NCR an OSHA 90 (referral) when a private sector employee contacts them to file a complaint. VIDOSH is instructing the complainants to contact the Puerto Rico Federal OSHA office directly via fax/email/phone.*

Goal #2 - Promote a Safety and Health Culture within the U.S. Virgin Islands Public Sector Workplaces

Performance Goal #2-1: Promote a safety and health consultation and training, education, seminars, etc.

Year One Performance Goal #2-1.1: Increase training and education to public employers/employees to promote systematic approaches to safety and health.

Outcome Measure

a. Internal Training/Education.

Ensure that VIDOSH staff attended at least two (2) courses per CSHO at OTI during FY 2012.

Number of training sessions VIDOSH staff attended during FY2012:

Four (4) VIDOSH staff attended eight (8) OTI courses.

b. External Training Education Compliance Assistance

The VIDOSH director continued efforts to ensure that Territorial Government offices are educated about their responsibilities and works toward creative avenues to achieve compliance with safety and health regulations.

Director Andrews attended the following activities:

- Three (3) Quarterly OSHSPA Meetings (Fall, Winter, and Summer)
- State Plan Monitoring meetings /conferences

- Whistleblower Training

During FY2012 VIDOSH completed several Interventions/ Training Outreach Sessions. VIDOSH provided outreach to ten thousand three hundred and sixty four individuals. This is a substantial increase over the annual goal of 150 personnel. During one of the Outreach sessions VIDOSH was interviewed and televised.

1. Alexander Henderson Elementary School - May 14, 2012.
2. Cladue O Markoe Elementary School - May 23, 2012.
3. Virgin Islands Territorial Agency - All Hazards Preparedness EXPO – May 27, 2012.
4. Virgin Islands Territorial Agency – mini All Hazards Preparedness EXPO (televised) – June 30, 2012.
5. Virgin Islands Dept. Human Services – Pre School Service – August 20, 2012.
6. VI Water and Power Authority – August 20, 2012.

VI. Other Areas of Note

1- Public Sector On-Site Consultation Program (MARC report 11-07-12)

During FY 2012, VIDOSH's public sector consultation program conducted a total of two (2) consultation visits, eight (8) visits below their projected 10 visits outlined in the Annual Performance Plan. The two (2) visits were full service visits and resulted in 23 serious hazards being addressed.

Inconsistencies were discovered while reviewing the two (2) consultation case files. Both files contained a 1910.38(a) (1) violation that was not appropriate to cite. One (1) of the two (2) case files was missing the request form as well as the visit form. The reviewer was unable to determine union coverage, and the number of employees impacted by the visit.

Finding 12-13 Formerly 11-08

The VIDOSH public sector consultation program is presently not operational.

VIDOSH implemented an operational public sector consultation program towards the end of the 3rd quarter in FY 2012. The one (1) consultant conducted two (2) site visits prior to resigning from the position during the 4th quarter of FY 2012.

Recommendation 12-13:

VIDOSH must ensure that a public sector consultation program is fully operational and provides appropriate services to public sector employers in the territory.

2- Complaint About State Program Administration (CASPA)

No CASPAs were received during the evaluation period.

3- Stakeholder and Public Contact

While conducting the onsite review for this Federal Annual Monitoring and Evaluation (FAME) report, Federal OSHA took the opportunity to contact and interview key labor contacts in the Virgin Islands. We reached out to the same unions that were contacted during the FY 2009 EFAME. The overall impressions following these interviews were that VIDOSH is ineffective and does not meet the needs and expectations of the community it is supposed to serve. These impressions of VIDOSH have not changed since the last contact was made with the unions in 2009. The following is a summary of the feedback received during these interviews.

**United Industrial, Service, Transportation, Professional & Government Workers of North America; SEAFARERS INTERNATIONAL UNION, AGLIWD/NMU
P.O. Box 7630 Sunny Isle
ST. CROIX, USVI 00823
TEL: 773-6055**

The Seafarers International local, representing over 3,000 public sector workers in several agencies, described VIDOSH as being nonfunctioning, not effective and almost non-existent. The Seafarers have concerns that the VIDOSH staff lack adequate training and do not have the necessary tools to carry out their work such as equipment for testing air quality. Also since VIDOSH inspects all government facilities, they feel it's like the government is inspecting itself, an obvious conflict of interest. The director of VIDOSH is a political position and the union feels VIDOSH should be a separate department. There was also discussion about how members of the union at times fear reprisal and intimidation if they file a complaint with VIDOSH, in fact most of them start the process but then withdraw before the process is completed. When asked if he was aware of the Whistleblower Program, he was not. The Seafarers representative was most vocal regarding the lack of communication between VIDOSH and the union or the public. For example: VIDOSH was called, and a message was left on their machine regarding lack of electricity and water at the Dept. of Justice building. They never responded back as to the results of the complaint. The representative also stated he is aware of some complaints and inspections being performed but he does not always receive a copy of the inspection results. He stated if there were no VIDOSH it would mean "the runaway train would pick up speed" another words they would get worse. VIDOSH needs to educate the public communities regarding who they are, what they can and can't do, and what rights they have as employees.

**American Federation of Teachers - Local 1826
P.O. BOX 1530 - KINGSHILL, ST. CROIX
UNITED STATES VIRGIN ISLANDS 00851-1530
TEL: (340) 778-4414**

The American Federation of Teachers Local 1826 covers over 900 teachers, counselors, support staff, kitchen staff etc. The representative that we spoke with was serving her 1st term as President of the union and has called VIDOSH for assistance especially regarding mold and vermin control in the schools. The staff is helpful, polite and seems to be knowledgeable. With regards to their effectiveness she feels they cite the schools but there is no follow-up to ensure

the condition has been abated. Communication between VIDOSH and union members is lacking; she was not aware of the VIDOL.gov website. The AFT shop stewards meet every 2nd Wednesday of every month and in October when the schools close for a week the teachers hold a large conference; these are avenues that VIDOSH can use to educate the union members with regards to standards and their rights as employees.

OSHA Comment – The comments made by the stakeholders are consistent with what OSHA found during previous meetings for the FY 2009 EFAME. As was the case in FY 2009, when unions requested information contained in inspection case files VIDOSH failed to provide the information and VIDOSH also failed to ensure that violations cited were corrected. It appears communication or lack of communication is a big issue with both unions. VIDOSH is not getting the message out to the people they protect.

Appendix A – New and Continued Findings and Recommendations

FY 2012 Virgin Islands Division of Occupational Safety & Health (VIDOSH) State Plan Abridged FAME Report

Rec #	Findings	Recommendations	FY 11
12-01	<p><i>Timeliness of State response:</i> VIDOSH received a total of 10 non-formal complaints with an average of 22.60 days for initiating the complaint investigations. This number represents an increase in the average number of days from the FY 2011 FAME report of 1.35 days and the FY 2010 FAME report of 3.75 days. VIDOSH continues to not satisfy this mandated requirement for initiating complaint investigations within one (1) working day from notification. (SAMM report 11-09-12 – SAMM #2)</p>	Implement internal control measure to ensure that complaint investigations are initiated within a timely manner.	11-01
12-02	<p><i>Notification to Complainant:</i> Although the SAMM (SAMM report 11-09-12 – SAMM #3) report shows that VIDOSH met this measure and notified complainants in a timely manner 100% of the time the onsite review of case files differ.</p> <p>Five (5) complaint files were reviewed. Three (3) of the five (5) complaint files lacked documentation that the complainant had been notified of the results of the inspection. In one (1) of the five (5) case files reviewed the OSHA 7 was missing.</p>	Ensure case files include all required forms and all letters or communications related to the complaint.	NA
12-03	<p>VIDOSH conducted a total of 18 inspections during FY 2012. This is 22.50% of the planned annual goal of 80. Of the 18 inspections, 11 were safety inspections which were 20% of the planned goal of 55, and seven (7) were health inspections which were 28% of the planned goal of 25. Of the 18 inspections, five (5) were unprogrammed (complaints) inspections. Thirteen (13) of the 18 inspections were programmed planned. (INSP8 report 1-24-13)</p>	VIDOSH must develop an inspection scheduling system that ensures that its Annual Performance Plan inspection goals are met and the CSHO resources are fully utilized for compliance activities.	11-02
12-04	<p>Injury/illness data was not collected. OSHA 300 logs were not placed in seven (7) of the 11 case files (86%) reviewed nor was there documentation that the logs were reviewed by CSHOs for injury/illness trends.</p>	Ensure that CSHOs are collecting the previous 3 years of OSHA 300 logs and placing them in the case files. This data is required for calculating the Days Away, Restricted, or Transferred (DART) rate	NA
12-05	<p><i>Lack of Case File Documentation</i></p>	Ensure case files include required	NA

Appendix A – New and Continued Findings and Recommendations

FY 2012 Virgin Islands Division of Occupational Safety & Health (VIDOSH) State Plan Abridged FAME Report

Rec #	Findings	Recommendations	FY 11
	<p>Unlike last years (FY 2011) case file review when the two (2) cases made available did not have citations issued, this year (FY 2012) the team reviewed 11 closed case files. The audit revealed that that all 11 case files (100%) reviewed lacked <i>prima facie</i> evidence to support the specific citations issued. For example: Of the 11 case files reviewed field notes were lacking in three (3) safety (50%) and 2 health (50%). One (1) of the six (6) safety case files showed citations were issued but the OSHA 1B was missing from the case file as well any documentation as to what was cited. Narrative documentation was missing in two (2) health files and one (1) safety file. Seven (7) of the 11 case files (86%) lacked CSO signature and four (4) case files (25%) lacked documentation that a supervisor had reviewed the file prior to issuing citations and/or closing the case file.</p>	<p>documentation in accordance with VIDOSH’s FOM.</p>	
12-06	<p>Lapse Time VIDOSH’s citations lapse time (the average number of calendar days from opening conference to citation issuance) for FY 2012 was calculated at 135.52 days for safety, an increase from 113.75 days in FY 2011 and above the national average of 55.9 days. The lapse time for health was 178.15 days, an increase from 157.25 days in FY 2011 also above the national average of 67.9 days. (SAMM report 11-09-12-SAMM #7) One (1) health case file reviewed revealed excessive time between the inspection and the issuance of citations. The other-than-serious citations were issued more than four (4) months after the inspection was completed.</p>	<p>VIDOSH must use IMIS data/reports as a tool to effectively manage both the program and the work product of its staff.</p>	11-03
12-07	<p>Overdue abatement During FY 2012, the percentage of serious, willful, repeat violations cited that was verified as abated within the abatement date plus 30 days was 40.30% instead of the 100% national average (27 SWR out of 67). The 40.30% is an improvement from the 0% in FY 2011 and 29.09% in FY 2010 but still lower than the national reference. (SAMM report-11-09-12-</p>	<p>VIDOSH must fully utilize strategies such as follow-up inspections, “failure to abate” citations, and 29 CFR 1903 provisions to ensure that abatement of cited hazards is achieved in a timely manner.</p>	11-04

Appendix A – New and Continued Findings and Recommendations

FY 2012 Virgin Islands Division of Occupational Safety & Health (VIDOSH) State Plan Abridged FAME Report

Rec #	Findings	Recommendations	FY 11
	SAMM #6)		
12-08	<p>Employee Participation A total of 11 case files were reviewed, seven (7) of the case files or 86% (4 health and 3 safety) had no mention or documentation of employee interviews. Case files containing field notes also lacked documentary evidence that employees were interviewed.</p>	Provide training to all field staff to include interview notes and documentation in case files.	NA
12-09	<p>Staffing Staffing continues to be an issue with VIDOSH having multiple vacancies. VIDOSH staffing level is allocated for eight (8) employees but currently there are only two (2) enforcement, two (2) administrative and one (1) manager are on board.</p>	VIDOSH must fill current staffing vacancies with qualified applicants.	NA
12-10	<p>Training VIDOSH covers public sector employers in water and wastewater treatment activities, covered by the PSM standard. VIDOSH does not have adequate trained staff to deal with these worksites.</p>	Ensure adequate number of qualified staff specifically trained in accordance with “PSM Covered Chemical Facilities NEP.”	11-09
12-11	A draft version of revised State Plan Narrative was due on December 31, 2005. This document has not yet been received by OSHA but VIDOSH reports that it will be submitted to OSHA for approval by the end of the second quarter of FY 2012.	VIDOSH must submit their State Plan narrative (and relevant appendices) with amendments reflecting its program’s more limited public sector scope; VIDOSH must also provide documentation on all outstanding components of its State Plan. VIDOSH completed a draft version of their revised State Plan narrative and submitted to the Region for review and necessary actions; currently awaiting verification from the Region.	11-10
12-12	During the on-site review for the FY 2012 FAME, VIDOSH produced 21 enforcement case files. Of the 21 case files reviewed, only 11 were closed. Of the 10 files still open the average number of days from the opening conference to citations being issued and the average number of	VIDOSH needs to develop and implement mechanisms to ensure that inspection case files are closed in an expedient manner and in accordance with adopted policy in the	11-11

Appendix A – New and Continued Findings and Recommendations

FY 2012 Virgin Islands Division of Occupational Safety & Health (VIDOSH) State Plan Abridged FAME Report

Rec #	Findings	Recommendations	FY 11
	days from the closing conference to citations being issued was 151 days. Overdue abatement was extensive for these 10 open case files. The average number of days abatement was overdue was 71.4 days.	Field Operations Manual (FOM).	
12-13	<i>Public Sector Consultation</i> The VIDOSH public sector consultation program is presently not operational.	VIDOSH must ensure that a public sector consultation program is fully operational and provides appropriate services to public sector employers in the territory.	11-08

Appendix B – Observations Subject to Continued Monitoring

FY 2012 Virgin Islands Division of Occupational Safety & Health (VIDOSH) State Plan Abridged FAME Report

Rec # [OB-1]	Observations	Federal Monitoring Plan	FY 11#
12-01	Although the on-site review of case files showed that VIDOSH involves union representation during inspections, the meetings conducted with two (2) stakeholders presented a different picture. It appears communication or lack of communication is a big issue with both unions. Copies of inspection results including copies of any citations issued to an employer are not being sent to the local representative. Also VIDOSH does not always follow-up with the unions to ensure that items have been corrected.	Region 2 OSHA will contact unions biannually to determine progress in this area qualitatively.	NA

Appendix C - Status of FY 2011 Findings and Recommendations

FY 2012 Virgin Islands Division of Occupational Safety & Health (VIDOSH) State Plan Abridged FAME Report

Rec. #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
11-01	<p>A-Formal Complaints During this evaluation period, VIDOSH received a total of 4 formal complaints, with an average of 13.75 days for initiating complaint inspections. In FY 2010 VIDOSH performance in this area was an average of 24 days. VIDOSH continues to not satisfy this mandated requirement for initiating complaint inspections within 5 working days from notification.</p> <p>B- Non-Formal Complaints VIDOSH received a total of 17 non-formal complaints, with an average of 1.35 days for initiating the complaint investigations. There has been improvement since FY 2010 when the average number of days to initiate a complaint investigation was 3.75 days; VIDOSH continues to not satisfy this mandated requirement for</p>	Implement internal control measure to ensure that complaint inspections are conducted in a timely manner.	VIDOSH developed online complaint forms to ensure the timeliness of state response and notifications to complainant.	<p>A-Formal Complaints VIDOSH created an online template form that includes instructions on completing the complaint form and a prefilled FAX coversheet was also included in the online template. The director has oversight and assigns the complaint to a CSHO and is responsible for ensuring the necessary actions are taken to close the complaint.</p> <p>B-Non-Formal Complaints VIDOSH continues to not satisfy this mandated requirement for initiating complaint</p>	Completed A Open B

Appendix C - Status of FY 2011 Findings and Recommendations

FY 2012 Virgin Islands Division of Occupational Safety & Health (VIDOSH) State Plan Abridged FAME Report

Rec. #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
	initiating complaint investigations within 1 working day from notification.			investigations within one (1) working day from notification.	
11-02	VIDOSH conducted a total of 54 inspections during the fiscal year. This is 52% of the planned annual goal of 103 inspections. Of the 54 inspections, 26 were safety inspections which was 43% of the planned goal of 60; and 28 were health inspections which was 65% of the planned goal of 43.	VIDOSH must develop an inspection targeting and scheduling system that ensures that its Annual Performance Plan inspection goals are met and that CSHO resources are fully utilized for compliance activities.	VIDOSH developed an inspection targeting and scheduling mechanism.	VIDOSH developed an inspection targeting and scheduling mechanism but only met 22% of the inspection goal; therefore this item remains open.	Open
11-03	During the evaluation period, VIDOSH issued citations in 20 cases, 8 safety and 12 health cases. For the safety cases, VIDOSH had a lapse time of 113.75 days (the national average was 51.9 days). The lapse time for the health cases was calculated at 157.25 days (the national average was 64.8 days). Both safety and health indicators were higher than the national average	VIDOSH must implement mechanisms (e.g., expedited case file reviews, review of management reports, and retraining of employees) in order to improve its citation lapse times	VIDOSH implemented mechanisms in order to improve its citation lapse time.	VIDOSH implemented procedures to improve lapse time such as prioritizing open case files and the utilization of the IMIS reports to forecast deadlines. This procedure/ approach has not lowered the lapse time; in fact, the lapse time has	Open

Appendix C - Status of FY 2011 Findings and Recommendations

FY 2012 Virgin Islands Division of Occupational Safety & Health (VIDOSH) State Plan Abridged FAME Report

Rec. #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				increased for both safety and health.	
11-04	VIDOSH had seventy-four (74) open non-contested cases with abatements incomplete 60 or more days after the last abatement date and does not utilize a reliable mechanism for achieving abatement for cited hazards.	VIDOSH must fully utilize strategies such as follow-up inspections, “failure to abate” citations, and 29 CFR 1903 provisions to ensure that abatement of cited hazards is achieved in a timely manner	VIDOSH implemented program management techniques and procedures to ensure abatement of cited hazards is achieved in a timely manner.	<p>The director and the staff reviewed and prioritized all open case files. Standard NCR reports will be utilized to forecast deadlines.</p> <p>Region 2 has been monitoring the violation abatement reports for VIDOSH and has noted that VIDOSH has made an improvement in reducing the number of inspections with abatements overdue, but still fall below the national reference.</p>	Open
11-05	Standard Adoption: VIDOSH does not exercise its statutory authority to adopt standards and that documentation is not available to verify adoption.	VIDOSH should implement internal controls to ensure that all standards applicable to the public sector are promulgated within six	VIDOSH implemented internal controls to ensure all standards applicable to the public sector are promulgated within six months of the promulgation date of new	VIDOSH implemented a dedicated COMPLIANCE (CPL) DOC Tab on the VIDOL/VIDOSH	Completed

Appendix C - Status of FY 2011 Findings and Recommendations

FY 2012 Virgin Islands Division of Occupational Safety & Health (VIDOSH) State Plan Abridged FAME Report

Rec. #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
		months of the promulgation date of new Federal OSHA standards in accordance with the VIOSH Act.	federal OSHA standards in accordance with the VIOSH Act..	webpage. This measure resulted in making the CPL information available to the public sector within the six (6) month required adoption time frame.	
11-06	VIDOSH's Discrimination Program does not meet § 1977.23 standards. In general, the VIDOSH discrimination program is lacking the procedural knowledge, experience, and structure necessary to effectively execute investigations and meet program objectives.	VIDOSH needs to implement an effective discrimination program that follows the Whistleblower Investigation Manual (CPL02-03-002 8/22/2003) VIDOSH must work with the Virgin Island's Attorney General's Office to create a clear path for settlement review and execution of these cases. This includes access and use of the IMIS Whistleblower application and use of appropriate templates.	VIDOSH implemented an effective discrimination program that is in-compliance with the Whistleblower Investigation Manual (CPL 02-03-002.	VIDOSH director and two CSHOs (one safety and one health) completed the 1420 Basic Whistleblower Investigations (11c) OTI course during the FY2012. The VIDOSH Whistleblower program is operational.	Completed
11-07	As also indicated in the 2009 EFAME, VIDOSH Staff refers 11(c) cases to	VIDOSH staff needs to forward all complainants that allege retaliation to	VIDOSH implemented an effective discrimination program that is in-compliance	The staff has been trained to answer basic questions about	Completed

Appendix C - Status of FY 2011 Findings and Recommendations

FY 2012 Virgin Islands Division of Occupational Safety & Health (VIDOSH) State Plan Abridged FAME Report

Rec. #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
	<p>PROSHA and the U.S. Virgin Islands Department of Labor, Division of Labor Relations rather than to Federal OSHA. Staff members understood that private Sector 11(c) complaints should be forwarded to Federal OSHA. Staff members stated that they contacted Federal OSHA Regional Supervisory Investigator for Questions.</p>	<p>the discrimination investigator for screening. All staff members should be trained to answer basic questions about jurisdiction, coverage, and discrimination complaints. All screenings should be documented according to the guidelines in the Federal Manual. It is suggested that VIDOSH continue to refer cases out of their jurisdiction to Federal OSHA and contact Federal OSHA with any questions. VIDOSH should develop a working relationship with the Virgin Islands Department of Labor, Division of Labor Relations, so that each agency may refer appropriate cases to each other as complainants may concurrently file.</p>	<p>with the Whistleblower Investigation Manual (CPL 02-03-002).</p>	<p>jurisdiction, coverage, and discrimination complaints. VIDOSH refers all cases out of their jurisdiction to Federal OSHA.</p>	
11-08	As also indicated in the 2009	VIDOSH must ensure	VIDOSH implemented a	The VIDOSH public	Open

Appendix C - Status of FY 2011 Findings and Recommendations

FY 2012 Virgin Islands Division of Occupational Safety & Health (VIDOSH) State Plan Abridged FAME Report

Rec. #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
	EFAME, as required by its 2003 developmental plan, VIDOSH has not developed nor maintained a public sector consultation program that can provide no cost safety and health services to public sector employers.	that a public-sector consultation program is fully operational and provides appropriate services to public-sector employers in the territory.	fully operational public sector consultation program. The program provides services to public sector employers in the territory.	sector consultation program is presently not operational.	
11-09	VIDOSH covers establishments in water and wastewater treatment activities, subject to PSM standard. VIDOSH does not have adequate trained staff to deal with these worksites.	VIDOSH needs to ensure that an adequate number of qualified VIDOSH staff is trained to the requirements of DIRECTIVE NUMBER: 09-06 (CPL 02), "PSM Covered Chemical Facilities National Emphasis Program."	VIDOSH will ensure staff receives the required PSM training to perform inspections in the water and wastewater treatment industry. VIDOSH has current staff members that have worked within PSM environments; however these members are waiting to attend the OTI PSM course.	VIDOSH staff has not completed this training.	Open
11-10	A draft version of revised State Plan Narrative was due on December 31, 2005. This document has not yet been received by OSHA but VIDOSH reports that it will be submitted to OSHA for approval by the end of the second quarter of FY 2012.	VIDOSH must ensure that the State Plan narrative, with amendments reflecting the more limited public sector scope of the program is completed and submitted to OSHA. This includes the narrative document as well as all		VIDOSH submitted to Region 2 a draft version of a revised State Plan narrative.	Awaiting verification

Appendix C - Status of FY 2011 Findings and Recommendations

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Rec. #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
		relevant appendices. VIDOSH must also provide documentation on all outstanding developmental components of its State Plan.			
11-11	According to VIDOSH, only four (4) of the inspections conducted in FY2011 were actually closed and available for review as part of this year's EFAME study. These closed cases only represent 7.4% of the inspections conducted during FY 2011. Even though four (4) cases were reported by VIDOSH as being closed, only two (2) enforcement case files were made available to OSHA for the EFAME review. Both of these inspections were "in-compliance" and no citation items were issued in either inspection. It was noted that of the 54 inspections conducted, 13 reportedly had citations issued.	VIDOSH needs to develop and implement mechanisms to ensure that inspection case files are closed in an expedient manner and in accordance with adopted policy in the Field Operations Manual (FOM).	VIDOSH developed and implemented mechanisms to ensure that inspection case files are closed in an expedient manner and in accordance with adopted policy in the FOM.	Case files are not being closed in an expedient manner.	Open

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

FY 2012 Virgin Islands Division of Occupational Safety & Health (VIDOSH) State Plan Abridged FAME Report

NOV 09, 2012
RID: 0257800

MEASURE	From: 10/01/2011 To: 09/30/2012	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	4 4.00 1	0 0	Negotiated fixed number for each state
2. Average number of days to initiate Complaint Investigations	226 22.60 10	7 2.33 3	Negotiated fixed number for each state
3. Percent of Complaints where Complainants were notified on time	1 100.00 1	0 0	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	0 0	0 0	100%
Public	27 40.30 67	0 .00 24	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	2575 135.52 19	358 179.00 2	2032800 55.9 36336
Health	2316 178.15 13	0 0	647235 67.9 9527

0*VI FY12

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

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

FY 2012 Virgin Islands Division of Occupational Safety & Health (VIDOSH) State Plan Abridged FAME Report

NOV 09, 2012

RID: 0257800

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			
Safety	16 66.67 24	2 100.00 2	76860 58.5 131301
Health	10 50.00 20	0 0 0	9901 53.0 18679
9. Average Violations per Inspection with Violations			
S/W/R	92 2.87 32	15 7.50 2	367338 2.1 175950
Other	29 .90 32	4 2.00 2	216389 1.2 175950
10. Average Initial Penalty per Serious Violation (Private Sector Only)	0 0 0	0 0 0	624678547 1990.5 313826
11. Percent of Total Inspections in Public Sector	14 100.00 14	0 0 0	113 100.0 113
12. Average lapse time from receipt of Contest to first level decision	0 0 0	0 0 0	3197720 187.0 17104
13. Percent of 11c Investigations Completed within 90 days*	0 0	0 0	100%
14. Percent of 11c Complaints that are Meritorious*	0 0	0 0	1619 23.4 6921
15. Percent of Meritorious 11c Complaints that are Settled*	0 0	0 0	1444 89.2 1619

*Note: Discrimination measures have been updated with data from SAMM reports run on 1/3/2013

0*VI FY12

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix E - State OSHA Annual Report (SOAR)

FY 2012 Virgin Islands Division of Occupational Safety & Health (VIDOSH) State Plan
Abridged FAME Report

[Available Upon Request]