

FY 2014 Follow-up Federal Annual Monitoring and Evaluation (FAME) Report

Virgin Islands Division of Occupational Safety and Health (VIDOSH)



Evaluation Period: October 1, 2013 – September 30, 2014

Initial Approval Date: August 31, 1973
Program Certification Date: September 10, 1981
18(e) Approval: April 1984
18(e) Withdrawal/18(b) Implementation: November 1995
Conversion to Public Employee Only Program: July 1, 2003
Final Approval Date: N/A

**Prepared by:
U. S. Department of Labor
Occupational Safety and Health Administration
Region 2
New York, New York**



Contents

I. Executive Summary	3
A. State Plan Activities, Themes, and Progress	3
B. State Plan Introduction	4
C. Data and Methodology	6
D. Findings and Observations	7
II. Assessment of State Plan Performance	8
A. Major New Issues	8
B. Assessment of State Plan Progress in Achieving Annual Performance Goals.....	8
C. Highlights from the State Activity Mandated Measures (SAMM).....	9
III. Assessment of State Plan Corrective Actions	10

Appendices

Appendix A – New and Continued Findings and Recommendations.....	A-1
Appendix B – Observations Subject to New and Continued Monitoring.....	B-1
Appendix C – Status of FY 2013 Findings and Recommendations.....	C-1
Appendix D – FY 2014 State Activity Mandated Measures (SAMM) Report.....	D-1

I. Executive Summary

A. State Plan Activities, Themes, and Progress

The purpose of this report is to assess the Virgin Islands Division of Occupational Safety and Health (VIDOSH) State Plan activities for Fiscal Year (FY) 2014, and its progress in resolving outstanding findings and recommendations from previous FAME reports, with a focus being on the FY 2013 Comprehensive FAME Report.

VIDOSH continues to be ineffective in protecting the safety and health of Virgin Islands' state and local government workers. Findings from the most recent FAME, as well as previous FAMES, show that the State Plan fails to issue citations in a timely manner, achieve abatement for cited hazards, and establish an enforcement presence in the Virgin Islands.

These issues and concerns have been outstanding for over a decade. OSHA's monitoring of the VIDOSH State Plan has documented chronic inability to improve program performance with some outstanding issues dating back to withdrawal of the private sector portion of the plan in 2003.

Based on the history and results of not only this FAME but previous annual evaluations, it is OSHA's belief that the root cause of ineffectiveness stems from VIDOSH's program administration. Despite OSHA's continual efforts to assist and provide support to VIDOSH, the State Plan has demonstrated consistent unwillingness or inability to make programmatic improvements – including being unresponsive to previously identified FAME findings and recommendations. OSHA has been consistently disappointed with the lack of progress, responsiveness, and communication from VIDOSH when trying to address significant programmatic issues.

VIDOSH's management does not ensure that performance and productivity is achieved timely or that cited hazards are abated. The State Plan's safety citation lapse time continues to be higher than the national average. In FY 2014, the health citation lapse time significantly increased from last year's average.

Over the past few years, the Region has enhanced its monitoring of VIDOSH through requested monthly statistical data reports (most often not provided by VIDOSH), and periodic meetings with its Department of Labor (DOL) commissioner, assistant DOL commissioner, and program director of VIDOSH. Unfortunately, these efforts have not yielded any improvement in performance.

During FY 2014, VIDOSH made little to no progress in completing the 12 findings and recommendations from last year's FAME. For example, VIDOSH's overdue abatement continues to be a significant issue. At the end of FY 2014, VIDOSH had 50 case files with overdue abatements. Despite clear guidance, assistance, and direction from the Region, VIDOSH has continually failed to utilize strategies such as conducting follow-up inspections and issuing "failure-to-abate" (FTA) citations; nor have they implemented any provision of 29 CR 1903 to ensure the abatement of cited hazards.

In addition, citations are not issued in a timely manner and the majority of case files are not closed correctly. Of the 54 inspections conducted during FY 2014, only seven cases were closed and available for review for the FY 2014 FAME.

Years of continual ineffective practices such as these have led to feelings of distrust toward VIDOSH from key stakeholders due to its inability to protect workers' safety in their jurisdiction. In addition, VIDOSH had three years to complete the developmental steps that were established in the July 23, 2003 *Federal Register*; however, after 12 years they have failed to accomplish this.

Finally, VIDOSH fails to respond with their intent to adopt Federal Program Changes (FPCs) or federal standards. VIDOSH did not respond to four of the six FPCs and 50% of the federal standards issued during FY 2014. (This is being introduced as a new FAME finding.)

B. State Plan Introduction

Historical Background:

The Virgin Islands State Plan was initially approved on August 31, 1973, completed all of its State Plan developmental steps, and was certified as structurally complete on September 22, 1981. Pursuant to Section 18(e) of the OSH Act and procedures at 29 CFR 1902, OSHA determined that the Virgin Islands program met all requirements and, in actual operation, was "at least as effective" as the federal program, granted the Virgin Islands State plan final approval, and relinquished federal enforcement authority effective April 17, 1984 (49 FR 16766). The Virgin Islands' Department of Labor (VIDOL) has been the designated agency for administering the OSHA funded enforcement program in the Virgin Islands through its Virgin Islands Division of Occupational Safety and Health (VIDOSH).

On November 13, 1995, OSHA announced, as a result of its monitoring, that it had determined that the Virgin Islands State Plan was no longer "at least as effective as" OSHA and that other 18(e) requirements were no longer being met. In response to this finding, the Virgin Islands Commissioner of Labor agreed to voluntarily relinquish the State Plan's final approval status under Section 18(e), to the reassertion of concurrent OSHA enforcement authority and jurisdiction, and to undertake necessary corrective action to regain final approval status (60 FR 56950).

The 1995 decision to reinstate concurrent jurisdiction allowed OSHA to exercise full discretionary concurrent enforcement authority to assure worker protection, while allowing the Virgin Islands time and assistance to improve its performance. However, between 1995 and 2003, VIDOSH was unable to institute improvements to its staffing and operational performance. A series of meetings between the Region and then Virgin Islands Governor Charles W. Turnbull were initiated to discuss these outstanding performance issues and next steps.

Pursuant to Governor Turnbull's May 12, 2003 letter, OSHA revised 29 CFR 1952 and 29 CFR 1956 in July 2013 to reflect the Virgin Islands' decision to exclude private sector employment from coverage under the plan while retaining coverage of public sector employment, and to reflect the new status of the plan as one that applies to the state and local government workers

only. State Plan coverage of all private sector employers and employees was terminated effective July 1, 2003 and exclusive OSHA jurisdiction over private sector employment in the Virgin Islands was resumed on the same date. This action made it possible for OSHA to devote its resources to providing safety and health protection in Virgin Islands workplaces, rather than expending its resources in a possibly lengthy and complex proceeding under 29 CFR 1955 to formally terminate State Plan approval.

The agreement allowed the Virgin Islands to qualify for enhanced funding under a provision of the Omnibus Insular Areas Act of 1977 (48 U.S.C. Section 1469 (d)), which authorizes OSHA to waive the requirement for Territorial matching funds for grant amounts under \$200,000. A new subpart H to 29 CFR part 1956 was added and codified the Virgin Islands State Plan as a developmental plan under 29 CFR part 1956, to allow the Territory to make certain adjustments to its state and local government employee program structure, and to revise its State Plan document to reflect its more limited scope. This change also terminated the private sector consultation services that were provided under the 23(g) grant funding. To address this, OSHA provided funding for a new 21(d) private sector consultation program for the Virgin Islands in July 2003.

Current Background:

The Virgin Islands State Plan is currently administered by the Division of Occupational Safety and Health (VIDOSH) which is part of the United States (U.S.) Virgin Islands Department of Labor. Commissioner Albert Bryan Jr. oversees the State Plan, which has offices on St. Croix and St. Thomas. These offices cover all enforcement and consultation activities for state and local government workers in the Virgin Islands. VIDOSH covers both safety and health disciplines. All private sector and federal government agency complaints are forwarded to OSHA’s Puerto Rico Area Office for appropriate action.

The VI-OSH Act provides for the automatic adoption of federal standards applicable to state and local government, 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 state and local government 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 Virgin Islands Superior Court in lieu of the Review Commissioner as is the case in the federal program. The table below shows VIDOSH’s funding levels from FY 2010 through FY 2014:

FY 2010-2014 Funding History						
Fiscal Year	Federal Award (\$)	State Match (\$)*	100% State Funds (\$)	Total Funding (\$)	% of State Contribution	Deobligated/One-Time Only Requested/Reobligated (\$)
2014	\$194,800	0	\$463,637	\$658,437	72%	0/\$11,712/0
2013	\$193,700	\$2,100	\$422,990	\$616,690	69%	0/71,500/19,000
2012	\$202,100	\$2,100	\$421,387	\$625,587	68%	0/100,000/0
2011	\$202,100	\$2,100	\$466,188	\$670,388	70%	0/81,500/0
2010	\$201,000	\$1,000	\$464,238	\$666,238	70%	0/33,558/0

*An agreement reached on July 1, 2003 between OSHA and the Virgin Islands resulted in the Virgin Islands qualifying for enhanced funding under a provision of the Omnibus Insular Areas Act of 1977 (48 U.S.C. Section 1469 (d)) which authorizes OSHA to waive the requirement for Territorial matching funds for grant amounts under \$200,000.

The table below shows the number of full-time and part-time staff as of August 15, 2014:

FY 2014 Staffing					
23(g) Grant Positions	Allocated FTE* Funded 50/50	Allocated FTE 100% State Funded	Total	50/50 Funded FTE On Board	100% State Funded FTE On Board
Managers/ Supervisor (Administrative)	1.0	0.0	1.0	1.0	0.0
First Line Supervisors (Program)	0.0	1.0	1.0	0.0	1.0
Safety Compliance Officers	0.0	2.0	2.0	0.0	1.0
Health Compliance Officers	0.0	1.0	1.0	0.0	1.0
Public Sector Safety Consultants	0.0	0.0	0.0	0.0	0.0
Public Sector Health Consultants	0.0	1.0	1.0	0.0	0.0
Compliance Assistance Specialist	0.0	0.0	0.0	0.0	0.0
Clerical	0.0	2.0	2.0	0.0	2.0
Other (all positions not counted elsewhere)	0.0	0.0	0.0	0.0	0.0
Total 23(g) FTE	1.0	7.0	8.0	1.0	5.0

*FTE=Full-Time Equivalent

C. Data and Methodology

OSHA established a two-year cycle for the FAME process. This is the follow-up year and as such, OSHA was not required to perform an on-site evaluation and case file review. However, due to longstanding concerns regarding the VIDOSH State Plan's ineffectiveness and inability to protect the safety and health of state and local government workers in the Virgin Islands, this FAME warranted a more comprehensive approach; therefore, OSHA conducted an on-site evaluation and case file review.

The on-site evaluation was conducted in St. Croix on February 10, 2015 by a CSHO from the federal Puerto Rico Area Office. The evaluation of VIDOSH covered the FY 2014 performance period (October 1, 2013 - September 30, 2014) and included the State Activity Mandated Measures (SAMM) Report and a micro-to-host report. The micro-to-host report produced a total of 54 inspections during that time period. Seven case files were closed and available to review. They were broken down by the following:

- Three safety case files (one follow-up, one complaint, one programmed planned)
- Four health case files (two follow-up, one complaint, one programmed planned)

D. Findings and Observations

This report contains 13 findings (one new and 12 continued) and two observations. VIDOSH made little to no progress in addressing the 12 findings and recommendations and two observations from the FY 2013 FAME report. VIDOSH also needs to substantially improve its communication when providing necessary follow-up regarding the status of these items during the next performance period.

FY 2014 Findings

Unlike previous years when VIDOSH was unable to meet its projected goal of enforcement inspections, VIDOSH conducted a total of 54 enforcement inspections in FY 2014 which was 98% of their projected goal of 55 inspections. It is important to note, however, that out of the 54 inspections conducted, only seven (13%) were closed and available for review.

Enforcement case files are not closed in an expedient manner. Forty-seven of the 54 (87%) inspections conducted during FY 2014 remain open. The lapse time continues to be above the national average. In FY 2014, VIDOSH's safety lapse time was 57.03 days and its health lapse time was 106.58 days.

VIDOSH program management has continually failed to follow protocol and procedures as described in its Field Operations Manual (FOM) Chapter 7, Post-Citation Procedures and Abatement Verification. Abatement is not obtained under 1903.19 and follow-up inspections are not assigned when abatement has not been received from cited employers.

VIDOSH's 23(g) consultation program remains non-operational due to having no consultants on-board to perform consultation visits.

New Issue/Finding Identified

VIDOSH's adoption of federal standards and FPCs is not timely. During FY 2014, a total of six FPCs required a response as to whether VIDOSH would adopt. A response was not received for four of the six (67%) FPCs. The notice of intent to adopt was only received for one of the two (50%) federal standards issued during FY 2014. Additional details of the findings and recommendations can be found in Appendix A of this report.

FY 2014 Observations

The two observations noted in the FY 2013 FAME report are being continued. Details can be found in Appendix B of this report.

II. Assessment of State Plan Performance

A. Major New Issues

In late September 2014, VIDOSH received its grant approval letter for FY 2015. Due to the outstanding and continuing concerns identified in the most recent FAME report, as well as a history of unsatisfactory program progress and performance, OSHA enclosed an addendum to the grant approval letter. The addendum identified five mandatory grant activities as consistent deficiencies within VIDOSH which are essential to having an effective State Plan. These five core activities were:

- Conducting training
- Hiring staff
- Meeting inspection goals
- Meeting abatement schedule
- Revising developmental steps and timeline for certifying the State Plan

The addendum also listed deadlines for completing each mandatory activity during the upcoming performance year which are conditions of VIDOSH's FY 2015 State Plan grant. Completion of each activity, along with supporting documentation, is to be reported to OSHA's New York Regional Office by the established deadline. If VIDOSH does not comply with the FY 2015 grant conditions as outlined in the addendum by the established deadlines, OSHA will take action to remedy the non-compliance by restricting the usage of grant funds.

B. Assessment of State Plan Progress in Achieving Annual Performance Goals (Source: FY 2014 APP and FY 2014 SOAR)¹

This section focuses on VIDOSH's progress toward meeting its targeted performance goals as outlined in its FY 2014 Annual Performance Plan (APP), which consisted of two strategic goals and performance goals. FY 2014 is the fourth year of VIDOSH's current Five-Year Strategic Plan.

Strategic Goal #1-1

Improve workplace safety and health for all public workers in the U.S. Virgin Islands as evidenced by fewer hazards, reduced exposures, fewer injuries, illnesses, and fatalities.

Performance Goal #1-1: Reduce the total number of worker compensation claims by 1% per year for a total of 5% for five years compared to the baseline.

¹ VIDOSH gathered data for their SOAR independently from OSHA's FAME process. While this data depicts VIDOSH's self-reported experiences, data in this section may not be consistent with data reported by OSHA throughout the FAME.

In FY 2014, VIDOSH conducted 58 public sector agency inspections, issued a total of 165 violations, and conducted 11 outreach sessions.

Strategic Goal #1-2:

Improve workplace safety and health for public workers in the U.S. Virgin Islands Department of Health Services agencies/facilities using worker compensation data by focusing on employers with a history of injury and illness related claims.

Performance Goal #1-2: Reduce the number of worker compensation claims relating to healthcare in the Department of Health Services agencies/facilities by 1% per year for a total of 5% for the five years compared to the baseline.

During FY 2014, VIDOSH conducted 28 health inspections.

Strategic Goal #2.0:

Improve the workplace safety and health for all public workers in the U.S. Virgin Islands as evidenced by fewer hazards, reduced exposures and fewer injuries, and illnesses and fatalities by developing or enhancing effective safety and health programs and through effective outreach and consultation.

Performance Goal #2.0: Foster the development or enhancement of effective safety and health management systems (SHMS) by 50% (10% per year for five years) within public sector agencies.

VIDOSH reported participating in outreach sessions at the governor's safety and health conferences. Specific outreach activities and outcomes were not documented.

C. Highlights from the State Activity Mandated Measures (SAMM)

(Source: Appendix D SAMM Report 02-23-2015)

VIDOSH conducted 54 inspections in FY 2014 which is 98% of the 55 inspection goal; however, it is important to note that out of these 54 inspections, 47 (87%) cases remain open. Safety staff conducted 28 inspections (93% of the goal) and industrial hygiene staff conducted 26 inspections (100% of their goal). (SAMM #17)

In FY 2014, VIDOSH's average of serious/willful/repeat (S/W/R) violations per inspection was 3.26 which is substantially above the national average of 1.99. VIDOSH's average for other-than-serious violations per inspection was 1.11 – slightly below the national average of 1.22. (SAMM #9a & #9b)

VIDOSH showed a decrease in the safety lapse time for citations (the average number of calendar days from opening conference to citation issuance) from 115.77 days in FY 2013 to 57.03 days in FY 2014, but was still substantially above the national average of 43.4 days. VIDOSH's health lapse time increased to 106.58 days from 77.78 in FY 2013 – a significant increase from last year and again above the national average of 57.05 days. (SAMM #23a & #23b)

III. Assessment of State Plan Corrective Actions

Twelve findings and two observations were noted in the FY 2013 FAME report. In FY 2014, VIDOSH did not complete corrective actions for any of the previous 12 findings; however, on October 31, 2014 (FY 2015), VIDOSH conducted a training that may positively impact the corrective actions for five of the 12 findings. The impact of this training on VIDOSH's case file documentation and ability to follow proper procedure and policy has not yet been verified as effective by OSHA; therefore, the status of these five findings is awaiting verification until an on-site case file review is conducted. Based on the limited number (seven) of case files available for review, OSHA determined that both observations from FY 2013 would continue to be monitored as well.

FY 2013 Findings

Finding 13-01:

The one complaint file that was closed lacked adequate documentation that the complainant had been notified of the results of the inspection. The OSHA 7 was also missing from the case file reviewed.

Status Finding 13-01:

Of the seven available case files reviewed, two showed that complainants were notified of the results of the inspection. Although corrective action was taken by the State Plan in October 2015, the Region has yet to determine if the actions achieved the intended results. This finding is awaiting verification.

Finding 13-02:

VIDOSH conducted a total of 49 inspections during FY 2013 (61% of the planned annual goal of 80). Of the 49 inspections, 20 were safety inspections which were 36% of the planned goal of 55, and 29 were health inspections which were 116% of the planned goal of 25. Of the 49 inspections, five were unprogrammed (complaints and a follow-up), and the remaining 41 were programmed planned.

Status Finding 13-02:

VIDOSH conducted 54 inspections (98% of the 55 inspection goal). Safety staff conducted 28 inspections (93% of the goal), and industrial hygiene staff conducted 26 inspections (100% of the goal). (SAMM report 02-23-2015 – SAMM #17) Due to the extremely small number of case files available for review, this finding remains open.

Finding 13-03:

Injury and illness data (OSHA 300 logs) was not collected in three of the four (75%) safety case files reviewed, nor was there documentation that the logs were reviewed by the assigned CSHO for injury and illness trends.

Status Finding 13-03:

Of the seven available case files reviewed, injury and illness data was not collected in two of the seven case files reviewed. Although corrective action was taken by the State Plan in October

2015, the Region has yet to determine if the actions achieved the intended results. This finding is awaiting verification.

Finding 13-04:

Recordkeeping violations directive (CPL 02-00-135) was not followed when issuing citations for lack of OSHA injury/illness 300 logs. Four of the 10 (40%) health case files reviewed cited employers for failure to maintain OSHA 300 injury/illness logs; however, there was no documentation as to whether a recordable injury or illness had occurred. In addition, the citations were incorrectly issued as serious when they should have been issued other-than-serious.

Status Finding 13-04:

Recordkeeping violations directive (CPL 02-00-135) was not followed in the one case file where a recordkeeping citation (1904.29(a)) was issued. There was no documentation in the case file as to whether there were injuries/illnesses. Although corrective action was taken by the State Plan in October 2015, the Region has yet to determine if the actions achieved the intended results. This finding is awaiting verification.

Finding 13-05:

The audit revealed that four of the five (80%) case files completed by the safety officer lacked *prima facie* evidence to support the specific citations issued. For example, 80% of the case files lacked field notes completed by the safety compliance officer. Field notes were discovered in an unlabeled folder. One of the safety case files contained only a diary sheet with notations of an inspection being performed. The case file was missing an OSHA 1 and OSHA 1A. One of the safety files showed citations were issued but the OSHA 1B was missing from the case file. These findings were not discovered in the review of case files completed by the VIDOSH health compliance officer.

Status Finding 13-05:

Of the seven available case files reviewed, three were safety case files. All were in-compliance. Although corrective action was taken by the State Plan in October 2015, the Region has yet to determine if the actions achieved the intended results. This finding is awaiting verification.

Finding 13-06:

In FY 2013, VIDOSH's lapse time for citations (the average number of calendar days from opening conference to citation issuance) was calculated at 115.77 days for safety which is significantly above the national average of 43.4 days.

Status Finding 13-06:

VIDOSH showed a decrease in the safety lapse time for citations from 115.77 days in FY 2013 to 57.03 days in FY 2014, but was still substantially above the national average of 43.4 days. VIDOSH's health lapse time increased to 106.58 days from 77.78 in FY 2013 – a significant increase from last year and again above the national average of 57.05 days. (SAMM report 02-23-2015 – SAMM #23a & #23b) This finding remains open.

Finding 13-07:

Failing to obtain abatement verification continued to be a trend during FY 2013. Fifteen percent of the case files reviewed lacked evidence that violations were abated. VIDOSH is not utilizing strategies such as follow-up inspections (VIDOSH only conducted one follow-up inspection), FTA citations, and 29 CFR 1903.19 provisions to ensure that abatement of cited hazards is achieved in a timely manner.

Status Finding 13-07:

Although it appears that abatement verification was obtained to an extent for inspections conducted in FY 2013, failure to obtain abatement verification significantly decreased in FY 2014. Forty-two (42) of the 54 (78%) inspections conducted during FY 2014 remained open. VIDOSH has done very little to verify abatement has been accomplished. This finding remains open.

Finding 13-08:

VIDOSH did not use the case file worker interview template in all four (100%) of the safety case files reviewed, and they lacked documentary evidence that workers were interviewed.

Status Finding 13-08:

Of the seven available case files reviewed, documentation that workers had been interviewed was evident in all seven case files. Although corrective action was taken by the State Plan in October 2015, the Region has yet to determine if the actions achieved the intended results. This finding is awaiting verification.

Finding 13-09:

The VIDOSH public sector consultation program is presently not operational. VIDOSH does not have a consultant on staff to perform consultation visits.

Status Finding 13-09:

The VIDOSH public sector consultation program continues to be non-operational. VIDOSH still does not have a consultant on staff to perform consultation visits. This finding remains open.

Finding 13-10:

VIDOSH staffing level is allocated for eight employees, but currently there are only two enforcement staff, two administrative staff, and one manager on board (five total).

Status Finding 13-10:

VIDOSH's staffing level is allocated for eight employees, but currently there are only three enforcement staff, two administrative staff, and one manager on board (six total). This finding remains open.

Finding 13-11:

VIDOSH did not meet the revised developmental steps established in July 2003. A draft version of revised State Plan narrative was due on December 31, 2005. This document submitted by VIDOSH to the Region lacks significant information, including mandatory required sections and appendices.

Status Finding 13-11:

The Region provided VIDOSH a list of the developmental steps that has not been completed. Once verification of the missing developmental steps is received from VIDOSH and approved by the Region, a new timeline for the developmental steps will be developed and implemented. This finding remains open.

Finding 13-12:

During FY 2013, VIDOSH presented 14 closed enforcement case files for review which only represented 28% of the total 49 inspections conducted for the fiscal year. Of the 35 case files still open, the average number of days these cases have remained open ranged from one to 150 days.

Status Finding 13-12:

VIDOSH only presented seven of 54 (13%) closed enforcement case files for review. VIDOSH did not utilize the integrated management information system reports to ensure proper monitoring and closure of case files in accordance with adopted policy in the Field Operations Manual (FOM). This finding remains open.

FY 2013 Observations**Observation 13-01:**

VIDOSH received a total of 22 non-formal complaints with an average of 1.57 days for initiating the complaint investigation. This is above the mandated one day requirement.

Status Observation 13-01:

VIDOSH received a total of three non-formal complaints with an average of 0.66 days for initiating the complaint. (SAMM report – 02-23-2015 – SAMM #2) Due to the extremely small number of case files available for review, this observation is being continued. During next year's FAME, a sample of case files will be reviewed to determine trends.

Observation 13-02:

On-site review of case files showed that copies of inspection results are not being sent to the authorized worker unions. Results from the data collected during the interviews conducted, as well as the on-site review, revealed that union involvement and communication needs to improve significantly.

Status Observation 13-02:

On-site review of case files showed that only one of the seven employers inspected had a workers' union. The union was notified of the results of the inspection. Due to the extremely small number of case files available for review, this observation is being continued. During next year's FAME, a sample of case files will be reviewed to determine trends.

Appendix A – New and Continued Findings and Recommendations
FY 2014 VIDOSH State Plan Follow-up FAME Report

FY 2014-#	Finding	Recommendation	FY 2013-#
FY 2014-01	<p><i>Case file documentation/formal complaint/notification to complainant:</i> Of the seven available case files reviewed, two showed that complainants were notified of the results of the inspection.</p>	<p>Ensure case files include all required forms and all letters or communications related to the complaint in accordance with VIDOSH’s FOM. Corrective action complete, awaiting verification.</p>	FY 2013-01
FY 2014-02	<p><i>Goals:</i> VIDOSH conducted 54 inspections in FY 2014 which is 98% of the 55 inspection goal; however; out of these 54 inspections, 47 (87%) cases remain open. Safety staff conducted 28 inspections (93% of the goal) and industrial hygiene staff conducted 26 inspections (100% of their goal).</p>	<p>VIDOSH must develop an inspection scheduling system that ensures its Annual Performance Plan inspection goals are met.</p>	FY 2013-02
FY 2014-03	<p><i>Adequate evidence to support violations and recordkeeping:</i> Of the seven available case files reviewed, injury and illness data was not collected in two of the seven case files reviewed.</p>	<p>Ensure that CSHOs are collecting the previous three years of OSHA 300 logs and documenting in the case files in order to provide adequate evidence to support violations. Corrective action complete, awaiting verification.</p>	FY 2013-03
FY 2014-04	<p><i>Adequate evidence to support violations and recordkeeping:</i> The directive (CPL 02-00-135) was not followed in the one case file where a recordkeeping citation (1904.29(a)) was issued. There was no documentation in the case file as to whether there were injuries/illnesses.</p>	<p>Train compliance officers to follow procedures outlined in the recordkeeping directive (CPL 02-00-135) when issuing citations under the 1904 standard. Corrective action complete, awaiting verification.</p>	FY 2013-04

Appendix A – New and Continued Findings and Recommendations

FY 2014 VIDOSH State Plan Follow-up FAME Report

FY 2014-#	Finding	Recommendation	FY 2013-#
FY 2014-05	<i>Lack of case file documentation:</i> Of the seven available case files reviewed, three were safety case files and all three were in compliance.	Ensure the case files include required documentation to support specific citations issued in accordance with VIDOSH’s Field Operations Manual (FOM). Corrective action complete, awaiting verification.	FY 2013-05
FY 2014-06	<i>Lapse time:</i> VIDOSH showed a decrease in the safety lapse time for citations (the average number of calendar days from opening conference to citation issuance) from 115.77 days in FY 2013 to 57.03 days in FY 2014, but was still substantially above the national average of 43.4 days. VIDOSH’s health lapse time increased to 106.58 days from 77.78 days in FY 2013 – a significant increase from FY 2013 and again above the national average of 57.05 days.	VIDOSH must use OIS data/reports as a tool to effectively manage both the program and the work product of its staff.	FY 2013-06
FY 2014-07	<i>Overdue abatement:</i> Forty-two (42) of the 54 (78%) inspections conducted have open abatement of cited hazards. Not protecting workers from identified hazards by verifying abatement has been an on-going, continuous trend by VIDOSH for years.	VIDOSH must utilize strategies such as follow-up inspections, FTA citations, and 29 CFR 1903.19 provisions to ensure that abatement of cited hazards are achieved in a timely manner.	FY 2013-07
FY 2014-08	<i>Training and documentation:</i> In all seven (100%) of the case files reviewed, worker interview documentation was evident.	VIDOSH must provide training to staff to include worker interview/comments template in case files. Corrective action complete, awaiting verification.	FY 2013-08
FY 2014-09	<i>Public sector on-site consultation program:</i> The VIDOSH public sector consultation program continues to remain non-operational.	VIDOSH must ensure that a public sector consultation program is fully operational and provides the necessary services to public sector employers in the territory.	FY 2013-09

Appendix A – New and Continued Findings and Recommendations
FY 2014 VIDOSH State Plan Follow-up FAME Report

FY 2014-#	Finding	Recommendation	FY 2013-#
FY 2014-10	<p><i>Staffing:</i> VIDOSH’s staffing level is allocated for eight employees, but currently there are only three enforcement staff, two administrative staff, and one manager on board (six total).</p>	VIDOSH must fill current staffing vacancies with qualified applicants.	FY 2013-10
FY 2014-11	<p><i>State Plan developmental steps:</i> VIDOSH has not submitted a draft of the State Plan narrative in almost a decade (due on December 31, 2005).</p>	VIDOSH must ensure that the revised developmental steps established in July 2003 are met. VIDOSH must show effort by working with the Region to establish a new timeline for development and implementation of the Comprehensive Developmental Steps for the Virgin Islands’ State Plan. VIDOSH must submit their State Plan narrative (with mandatory required sections and appendices) with amendments reflecting its State Plan’s limited public sector scope and provide documentation on all outstanding components of its State Plan.	FY 2013-11
FY 2014-12	<p><i>IMIS/OIS:</i> During FY 2014, VIDOSH only presented seven of 54 (13%) closed enforcement case files for review. VIDOSH did not utilize the integrated management information system reports to ensure proper monitoring and closure of case files in accordance with adopted policy in the Field Operations Manual (FOM).</p>	VIDOSH must utilize OIS reports as a tool to both effectively manage both the program and work product of its staff. This ensures proper monitoring and closure of case files in accordance with adopted policy in the Field Operations Manual (FOM).	FY 2013-12

Appendix A – New and Continued Findings and Recommendations

FY 2014 VIDOSH State Plan Follow-up FAME Report

FY 2014-#	Finding	Recommendation	FY 2013-#
FY 2014-13	<i>Federal Program Changes:</i> Adoption of standards and Federal Program Changes (FPCs) is not timely. During FY 2014, six FPCs required a response as to whether VIDOSH would adopt. A response was not received in four of the six (67%) FPCs. The notice of intent to adopt was not received for one of the two (50%) federal standards issued during FY 2014.	VIDOSH needs to respond to all standards and FPCs within the established due dates.	

Appendix B – Observations Subject to New and Continued Monitoring
FY 2014 VIDOSH State Plan Follow-up FAME Report

Observation # FY 2014-OB-#	Observation# FY 2013-OB-#	Observation	Federal Monitoring Plan	Current Status
FY 2014-OB-01	FY 2013-OB-01	<i>Complaint processing response time:</i> VIDOSH received three non-formal complaints with an average of 0.66 days for initiating a response.	During next year's FAME, a sample of case files will be reviewed to determine trends.	Continued
FY 2014-OB-02	FY 2013-OB-02	<i>Union involvement:</i> On-site review of case files revealed only one of the seven employers inspected had a union. The union was notified of the results of the inspection.	During next year's FAME, a sample of case files will be reviewed to determine trends.	Continued

Appendix C - Status of FY 2013 Findings and Recommendations

FY 2014 VIDOSH State Plan Follow-up FAME Report

FY 2013-#	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status and Date
FY 2013-01	The one complaint file that was closed lacked documentation that the complainant had been notified of the inspection results. The OSHA 7 was also missing from the case file reviewed.	Ensure case files include all required forms and all letters or communications related to the complaint in accordance with VIDOSH's FOM.	Appropriate training for VIDOSH staff will be conducted that ensures their understanding of proper case file documentation, the process of conducting worker interviews, complaint notification procedures, abatement documentation requirements, and the specific requirements of the Recordkeeping Directive (CPL 02-00-135) including collection of OSHA 300 logs. The training syllabus and provider of this training will be approved by OSHA.	October 31, 2014	Awaiting verification (October 31, 2014)
FY 2013-02	VIDOSH conducted a total of 49 inspections during FY 2013 (61% of the planned annual goal of 80). Of these 49 inspections, 20 were safety inspections (36% of the planned goal of 55), and 29 were health inspections. Of these 49 inspections, five were unprogrammed (complaints and one follow-up), and the remaining 41 were programmed planned.	VIDOSH must develop an inspection scheduling system that ensures its Annual Performance Plan inspection goals are met.	An inspection scheduling system will be developed and implemented to ensure VIDOSH's APP inspection goals are met.	Not Completed	Open (September 30, 2014)

Appendix C - Status of FY 2013 Findings and Recommendations

FY 2014 VIDOSH State Plan Follow-up FAME Report

FY 2013-#	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status and Date
FY 2013-03	Injury/illness data (OSHA 300 logs) was not collected in three of the four (75%) safety case files reviewed nor was there documentation that the logs were reviewed by the CSHO for injury/illness trends.	Ensure that CSHOs are collecting the previous three years of OSHA 300 logs and correctly documented in each case file in order to provide adequate evidence to support violations.	Appropriate training for VIDOSH staff will be conducted that ensures their understanding of proper case file documentation, the process of conducting worker interviews, complaint notification procedures, abatement documentation requirements, and the specific requirements of the Recordkeeping Directive (CPL 02-00-135) including collection of OSHA 300 logs. The training syllabus and provider of this training will be approved by OSHA.	October 31, 2014	Awaiting verification (October 31, 2014)
FY 2013-04	Recordkeeping violations directive (CPL 02-00-135) was not followed when issuing citations for lack of OSHA 300 logs. Forty percent (40%) of health case files cited employers for failure to maintain OSHA 300 injury/illness logs, but there was no documentation as to whether a recordable injury or illness had occurred and the citations were issued serious when they should have been issued other-than-serious.	Train compliance officers to follow procedures outlined in the recordkeeping directive (CPL 02-00-135) when issuing citations under the 1904 standard.	Appropriate training for VIDOSH staff will be conducted that ensures their understanding of proper case file documentation, the process of conducting worker interviews, complaint notification procedures, abatement documentation requirements, and the specific requirements of the Recordkeeping Directive (CPL 02-00-135) including collection of OSHA 300 logs. The training syllabus and provider of this training will be approved by OSHA.	October 31, 2014	Awaiting verification (October 31, 2014)

Appendix C - Status of FY 2013 Findings and Recommendations

FY 2014 VIDOSH State Plan Follow-up FAME Report

FY 2013-#	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status and Date
FY 2013-05	Four of the five (80%) case files completed by the safety officer lacked <i>prima facie</i> evidence to support the specific citations issued.	Ensure the case files include required documentation to support specific citations issued in accordance with VIDOSH's FOM.	Appropriate training for VIDOSH staff will be conducted that ensures their understanding of proper case file documentation, the process of conducting worker interviews, complaint notification procedures, abatement documentation requirements, and the specific requirements of the Recordkeeping Directive (CPL 02-00-135) including collection of OSHA 300 logs. The training syllabus and provider of this training will be approved by OSHA.	October 31, 2014	Awaiting verification (October 31, 2014)
FY 2013-06	VIDOSH's citation lapse time (the average number of calendar days from opening conference to citation issuance) was calculated at 115.77 days for safety – above the national average of 43.4 days.	VIDOSH must use IMIS data/reports as a tool to effectively manage both the program and the work product of its staff.	Systems will be implemented to reduce lapse time to the national average by the end of FY 2015 (09/30/15). A minimum of a 5% reduction per month (when compared to the previous months lapse time value as reported on the previous month's SAMM report that is compiled on the business day closest to the 5 th of the month) will be the goal.	Not Completed	Open (September 30, 2014)

Appendix C - Status of FY 2013 Findings and Recommendations

FY 2014 VIDOSH State Plan Follow-up FAME Report

FY 2013-#	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status and Date
FY 2013-07	Since 2010, VIDOSH has had 34 case files that lack abatement verification and failing to obtain abatement verification continued to be a trend during FY 2013. VIDOSH is not utilizing strategies to ensure that abatement of cited hazards is achieved in a timely manner. VIDOSH also needs to improve its case file documentation of abatement.	VIDOSH must utilize strategies such as follow-up inspections, failure- to-abate citations, and 29 CFR 1903.19 provisions to ensure that abatement of cited hazards are achieved in a timely manner, and case file documentation of abatement is improved.	Outstanding abatement items will be reduced to eliminate the number of case files that have abatement issues over 60 days old. The following schedule will be adhered to.	Not Completed	Open (September 30, 2014)
FY 2013-08	VIDOSH implemented a case file template that includes an interview/comments page. The review of case files revealed that the template was not used in the four safety case files (100%) and the case files lacked documentary evidence showing that workers were interviewed.	Provide training to staff to include worker interview/comments template in case files.	Appropriate training for VIDOSH staff will be conducted that ensures their understanding of proper case file documentation, the process of conducting worker interviews, complaint notification procedures, abatement documentation requirements, and the specific requirements of the Recordkeeping Directive (CPL 02-00-135) including collection of OSHA 300 logs. The training syllabus and provider of this training will be approved by OSHA.	October 31, 2014	Awaiting verification (October 31, 2014)

Appendix C - Status of FY 2013 Findings and Recommendations

FY 2014 VIDOSH State Plan Follow-up FAME Report

FY 2013-#	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status and Date
FY 2013-09	The VIDOSH public sector consultation program is not operational and VIDOSH does not have a consultant on staff to perform consultation visits.	VIDOSH must ensure that its public sector consultation program is fully operational (e.g., hiring a consultant) and provides appropriate services to public sector employers in the territory.	VIDOSH will fill the consultant position using a specific timeline approved by the Region.	Not Completed	Open (September 30, 2014)
FY 2013-10	The VIDOSH staffing level is allocated for eight employees, but currently there are only two enforcement staff, two administrative staff, and one manager on board (five total).	VIDOSH must fill current staffing vacancies with qualified staff.	VIDOSH will develop and implement a plan to ensure the vacant enforcement positions are filled.	Not Completed	Open (September 30, 2014)
FY 2013-11	VIDOSH did not meet the revised developmental steps established in July 2003. A draft version of the revised State Plan narrative was due on December 31, 2005. The document submitted by VIDOSH still lacks significant information.	VIDOSH must ensure that the revised developmental steps established in July 2003 are met, submit the narrative, and provide accurate documentation.	VIDOSH will develop a revised timeline for each of the developmental steps. Upon the Regions acceptance of the revised timeline, VIDOSH will implement a plan to ensure the submission of all mandatory required documentation and appendices are timely.	Not Completed	Open (September 30, 2014)

Appendix C - Status of FY 2013 Findings and Recommendations

FY 2014 VIDOSH State Plan Follow-up FAME Report

FY 2013-#	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status and Date
FY 2013-12	During FY 2013, VIDOSH produced 14 closed enforcement case files for review. This represents only 28% of the total 49 inspections conducted for the fiscal year. Of the 35 case files still open the average number of days these cases have remained open ranged from one-150 days.	VIDOSH must develop and implement mechanisms to ensure that inspection case files are closed correctly and in accordance with adopted policy in the Field Operations Manual (FOM).	VIDOSH will develop and implement mechanisms to ensure that inspection case files are closed correctly and in accordance with adopted policy in the FOM.	Not Completed	Open (September 30, 2014)

Appendix D – FY 2014 State Activity Mandated Measures (SAMM) Report FY 2014 VIDOSH State Plan Follow-up FAME Report

OSHA is in the process of moving operations from a legacy data system (NCR) to a modern data system (OIS). During FY 2014, federal OSHA case files were captured on OIS, while most State Plan case files continued to be processed through NCR. Virgin Islands opened 54 enforcement inspections in FY 2014. Of those, 54 inspections were captured in NCR, while 0 were captured in OIS. The SAMM Report, which is native to IMIS (a system that generates reports from the NCR), is not able to access data in OIS. Additionally, certain algorithms within the two systems are not identical. These challenges impact OSHA's ability to combine the data. For FY14 we will use a format very similar to the one used for FY13. Below is an explanation of which data OSHA was able to use when calculating each metric.

- a. Measures 1 & 2 will use State Plan data for FY14 as captured in NCR and compared to the State Plan's negotiated number. Any State Plan data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR.
- b. Measures 20a-b, 23, and 24 will use State Plan data for FY14 as captured in NCR and compared to the historical FY2011 national average (FY09-11). Any State Plan data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR.
- c. Measures 5, 9, 11, 17, 19, 21, and 25 will use State Plan data for FY14 as tabulated manually to include both OIS and NCR data and compared to the fixed/negotiated/national numbers associated with them.
- d. Measures 13, 14 and 16 will be extracted from NCR (OIS conversion should not impact). National data will be pulled from WebIMIS for FY12-14.
- e. Measures 18a-e will use State Plan data for FY14 as captured in NCR. Any data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR. Much like FY13, no national data will be available for comparison.
- f. Measure 22 will be excluded from the report (other than as a placeholder to demonstrate that it is one of the agreed upon metrics, but not one we can currently generate).
- g. Measure 4 will use State Plan data for FY 14 as captured in NCR.

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Virgin Islands			FY 2014	
SAMM Number	SAMM Name	State Plan Data	Reference/Standard	Notes
1	Average number of work days to initiate complaint inspections	3.9	5 days	State Plan data taken directly from SAMM report generated through IMIS. The reference/standard is a negotiated number for each State Plan.

Appendix D – FY 2014 State Activity Mandated Measures (SAMM) Report
FY 2014 VIDOSH State Plan Follow-up FAME Report

2	Average number of work days to initiate complaint investigations	0.66	1 day	State Plan data taken directly from SAMM report generated through IMIS. The reference/standard is a negotiated number for each State Plan.
4	Percent of complaints and referrals responded to within 1 work day (imminent danger)	0.0%	100%	State Plan data taken directly from SAMM report generated through IMIS.
5	Number of denials where entry not obtained	0	0	State Plan data taken directly from SAMM report generated through IMIS and Open Inspection OIS report.
9a	Average number of violations per inspection with violations by violation type	3.26	SWR: 1.99	State Plan data taken from SAMM report generated through IMIS and the Inspection summary report generated in OIS; national data was manually calculated from data pulled from both IMIS and OIS for Fiscal Years (FY) 2012-2014.
9b	Average number of violations per inspection with violations by violation type	1.11	Other: 1.22	
11	Percent of total inspections in the public sector	100.00%	100.00%	State Plan data taken from SAMM report generated through IMIS and the Inspection summary report generated in OIS. The reference/standard is derived from the FY 14 grant application.
13	Percent of 11c Investigations completed within 90 calendar days	0%	100%	State Plan data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2012-2014.
14	Percent of 11c complaints that are meritorious	0	24.8% meritorious	State Plan data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2012-2014.
16	Average number of calendar days to complete an 11c investigation	0	90 Days	State Plan data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2012-2014.
17	Planned vs. actual inspections - safety/health	28/26	30/25	State Plan data taken from SAMM report generated through IMIS and the Inspection summary report generated in OIS; the reference standard number is taken from the FY 2014 grant application. The reference/standard is a negotiated number for each State Plan.

Appendix D – FY 2014 State Activity Mandated Measures (SAMM) Report
FY 2014 VIDOSH State Plan Follow-up FAME Report

18a	Average current serious penalty - 1 -25 Employees	0		State Plan data taken directly from SAMM report generated through IMIS.
18b	Average current serious penalty - 26-100 Employees	0		
18c	Average current serious penalty - 101-250 Employees	0		
18d	Average current serious penalty - 251+ Employees	0		
18e	Average current serious penalty - Total 1 - 250+ Employees	0		
19	Percent of enforcement presence	n/a	National Average 1.51%	Data is pulled and manually calculated based on FY 2014 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.
20a	20a) Percent In Compliance – Safety	7.69	Safety - 29.1	State Plan data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2014 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
20b	20b) Percent In Compliance – Health	0	Health - 34.1	
21	Percent of fatalities responded to in 1 work day	n/a	100%	State Plan data is manually pulled directly from IMIS for FY 2013.
22	Open, Non-Contested Cases with Abatement Incomplete > 60 Days	n/a		Data not available.
23a	Average Lapse Time - Safety	57.03	43.4	State Plan data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
23b	Average Lapse Time - Health	106.58	57.05	
24	Percent penalty retained	0	66	State Plan data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.

Appendix D – FY 2014 State Activity Mandated Measures (SAMM) Report
FY 2014 VIDOSH State Plan Follow-up FAME Report

25	Percent of initial inspections with employee walk around representation or employee interview	100	100%	State Plan data taken from SAMM report generated through IMIS and the Inspection where Workers Involved report generated in OIS.
-----------	---	-----	------	--