

**FY 2015 Comprehensive
Federal Annual Monitoring and Evaluation (FAME) Report**

Virginia Occupational Safety and Health (VOSH) Program



Evaluation Period: October 1, 2014 – September 30, 2015

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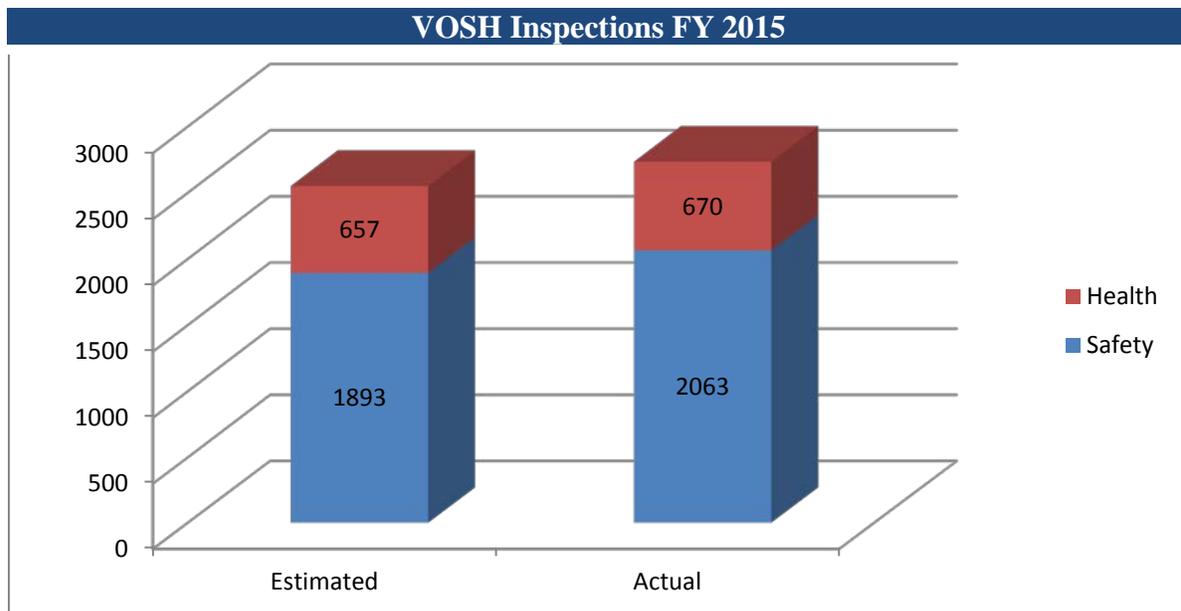
I. Executive Summary

A. State Plan Activities, Trends, and Progress

The Federal Annual Monitoring and Evaluation (FAME) report for Fiscal Year (FY) 2015 focused on assessing the Virginia Occupational Safety and Health (VOSH) Program's enforcement performance and measuring progress in meeting its annual and strategic performance goals. The evaluation for this reporting period also included a comprehensive review of safety and health inspection files randomly selected and obtained from the OSHA Information System (OIS). In addition to the safety and health inspection files, whistleblower case files obtained from the Integrated Management Information System (IMIS) were reviewed. There were no outstanding recommendations or findings from the previous FAME report to address.

In the past, VOSH has promptly responded to previously identified findings, observations, and recommendations. VOSH readily addresses any areas of potential concern which have been discussed at quarterly meetings and continuously strives to improve the VOSH Program. VOSH regularly works cooperatively with OSHA and continues to administer the program with excellence in mind. VOSH has worked diligently to cultivate multiple areas of distinction within the program. Some of these areas include VOSH's initiative to prevent worker misclassification, participation in Executive Order 13650 – Improving Chemical Safety and Security, and the fall stand-down campaign.

VOSH continues to have a significant enforcement presence in the workplace through its inspection activity. VOSH exceeded its estimated goal of 1,893 safety inspections by 170 and its estimated goal of 657 health inspections by 13. VOSH conducted a total of 2,733 inspections during FY 2015, and was directly responsible for the identification and correction of 20,109 instances of workplace hazards in the Commonwealth of Virginia.



The FY 2015 comprehensive on-site review revealed one area where VOSH needs to enhance their program. During the on-site review, OSHA determined that VOSH's case files were lacking the appropriate documentation in the form of worker interviews. VOSH policy, per the Field Operations Manual (FOM), requires that at least one non-managerial and one supervisor/manager interview be documented in each case file. The review revealed that the lack of documented worker interviews may be one factor which contributed to a low percent penalty retained (53.80%). The lack of documented worker interviews may have contributed to hazard descriptions and employer knowledge documentation which were not fully developed. This deficiency may contribute to a low percent penalty retained (53.80%).

B. State Plan Introduction

The VOSH Program is administered by the Virginia Department of Labor and Industry (DOLI). Virginia operates a State Plan occupational safety and health program under Section 18 of the federal Occupational Safety and Health Act of 1970 (Act). The mission of the VOSH program is to "Improve and protect Virginia's workplaces through education and enforcement, reducing fatalities and injuries at work." This mission is embodied in the statutory mandate for the Virginia Safety and Health Codes Board, VA Code §40.1-1 which states in part:

“...The Department shall be responsible for administering and enforcing occupational safety and occupational health activities as required by the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596), in accordance with the state plan for enforcement of that act; ...”

VOSH operates within DOLI and is headquartered in Richmond, Virginia. The Safety, Health, and Consultation Services, as well as the Division of Legal Support (DLS), Office of Research and Analysis, Office of Whistleblower Protection, and Voluntary Protection Program (VPP) directors are under the direction of the Assistant Commissioner who, in turn, reports to the Commissioner. The separate program groups have representatives stationed in different regional and field offices located in Abingdon, Lynchburg, Manassas, Norfolk, Richmond, Roanoke, and Verona. Each of the four regional offices has two regional directors – one safety and one health.

The role of the VOSH Program is to enforce safety and health regulations for general industry, construction, agricultural, and state and local government maritime employers. The VOSH Program covers both state and local government and private sector employers and workers in Virginia. In addition to enforcement efforts, VOSH provides compliance assistance through targeted outreach, education, and training to emphasize increased awareness on the part of both employers and workers of the importance of a safety and health culture. VOSH conducts safety and health inspections in response to accidents, complaints, referrals, and randomly scheduled inspections of high hazard industries. The VOSH Program mirrors the federal program as closely as possible while recognizing the autonomy and unique characteristics of the state.

PROFILE OF THE VIRGINIA STATE PLAN (FY 2015)	
Designee	C. Ray Davenport, Commissioner Virginia Department of Labor and Industry Main Street Centre 600 East Main Street, Suite 207 Richmond, Virginia 23219-4101
Initial Approval	September 28, 1976
Plan Certification	August 21, 1988
Final Approval	November 30, 1988
FY 2015 Funding	Federal \$3,903,800
	State \$3,903,800
	TOTAL \$7,807,600
Source of State Funding	General fund
Compliance Officers	38 safety/19.88 health (allocated)
	31safety/14.88 health (on-board as of 30 July 2015)
State and Local Government Consultants	.20 safety/1.60 health (allocated)
	.20 safety/.30 health (on board as of 30 July 2015)
Compliance Assistance	7.0 CAS (allocated)
	1.0 CAS (on bard as of 30 Sept 2015)
Covered Workers	3.4 million
Covered Establishments	223,000
Coverage	State and local government and private sector workplaces within the state, with the exception of federal workers, the United States Postal Service, private sector maritime, federal military facilities, and other federal enclaves where the state has ceded coverage to the federal government.

VOSH consists of two major units: compliance and cooperative programs. The compliance unit inspects places of work; issues citations and penalties for violations of established occupational standards; and responds to fatalities, accidents, and worker complaints about workplace safety and health hazards. The cooperative programs unit provides assistance to Virginia's state and local government and private sector employers to voluntarily comply with applicable requirements without the issuance of citations and penalties. The VOSH consultation program provides free on-site surveys and technical assistance to Virginia businesses, especially small businesses in high-hazard industries, and to state and local government employers under the State Plan grant.

The Virginia State Plan applies to all state and local government and private sector workplaces within the state, with the exception of federal workers, the United States Postal Service, private sector maritime, federal military facilities, and other federal enclaves where the state has ceded coverage to the federal government.

The majority of VOSH standards are identical to OSHA standards. However, VOSH has enacted unique regulations covering confined spaces in the construction and telecommunication industries, overhead high voltage line safety, fall protection in steel

erection, reverse signal operation in construction and general industry, compliance with manufacturer's instruction for vehicles, machinery, tools and equipment in general industry, construction, maritime and agriculture, and a regulation covering tree trimming.

All standards adopted by the Safety and Health Codes Board apply to all employers who have workers working at places of employment within the jurisdiction of the State Plan of the Commonwealth. Standards from 29 CFR Part 1910 apply to employers engaged in general industry; in addition, certain standards from 29 CFR Part 1910 determined by OSHA and the Safety and Health Codes Board to be applicable to the construction industry also apply to the construction industry in Virginia. Standards adopted from 29 CFR Part 1926 apply to the construction industry, and standards adopted from 29 CFR Part 1928 apply to agricultural operations within the jurisdiction of the Commonwealth. Furthermore, standards from 29 CFR Part 1915, Shipyard Employment; 29 CFR Part 1917, Marine Terminals; and 29 CFR Part 1918, Longshoring, have been adopted for State Plan use in state and local government workplaces only.

C. Data and Methodology

A six-person federal OSHA team, which included a whistleblower investigator, was assembled from Region III to conduct the on-site comprehensive case file review at the VOSH Tidewater Regional Office located in Norfolk, Virginia, from February 16, 2016 to February 19, 2016. A total of 155 safety, health, and whistleblower inspection files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period (October 1, 2014 through September 30, 2015). The population of selected files included:

- Twenty-two (22) fatality files,
- Sixty (60) complaint files,
- Twenty-five (25) accident files, and
- Twenty-five (25) files where repeat citations were issued.

In addition to the safety and health inspection files, 23 closed whistleblower case files obtained from WebIMIS for FY 2015 were reviewed. Each case file was thoroughly reviewed for:

1. The quality of documentation
2. The correctness of violation classifications
3. The application of probability and severity in determining violation penalties
4. Procedures for abatement certification/verification
5. Abatement verification
6. The appropriateness of penalty reductions, and the appropriateness of any violation reclassification or dismissal in cases where an informal conference was held
7. The evaluation of complaint items and whether a letter to the complainant was sent
8. Whether next-of-kin letters were sent in fatality cases
9. Union and/or worker participation during inspections
10. Whether employer injury/illness data was collected

11. IMIS processing and documentation

The FY 2015 audit team reviewed statistical information, program administration activities, and data contained in OIS and IMIS as a means to monitor and evaluate the VOSH Program. The State OSHA Annual Report (SOAR) and State Activity Mandated Measures (SAMM) Report were also used as data sources and monitoring tools during this evaluation period. Throughout the evaluation process VOSH was cooperative, shared information, and ensured staff was available to discuss cases, policies and procedures, and answer questions.

D. Findings and Observations

The FY 2015 review of case files revealed one finding and two observations. The noted finding was associated with a lack of documentation in the case file in the form of worker interviews. Observations appeared in a larger than acceptable number of case files reviewed and involved the lack of OSHA 300 logs in the file and final outcome next-of-kin letters. These items will be closely monitored in FY 2016.

New Finding

During the on-site review it was determined that the case files were lacking worker interviews. VOSH policy, per the Field Operations Manual (FOM), requires that at least one non-management and supervisory interview be documented in each case file. At least one non-management and one supervisory interview were not included in 57 of 132 (43%) case files reviewed. In 30 of the case files reviewed, worker interviews – which include one non-management and one supervisory interview – were not included in the file. In 16 of the cases reviewed, only one worker interview was documented in the case file. In 11 of the case files reviewed, two non-management interviews, but no supervisory interviews were included in the file.

In the case files OSHA reviewed, higher penalty reductions were provided in cases lacking documentation in accordance with the VOSH FOM. When the data was filtered to evaluate those cases with informal conferences, there was a 48% penalty retention for those cases which were evaluated and met the VOSH FOM requirement. All cases with three or more worker interviews were assumed to meet the requirement unless it was otherwise documented. There was a 29% percent penalty retention for those cases reviewed which did not meet the VOSH FOM requirement. According to SAMM #12, the percent penalty retained was 21% below the national average of 67.96% at 53.80%. OSHA believes that there is a correlation between the lack of documented worker interviews and the low percent of penalties retained (53.80%) by VOSH.

The lack of documented worker interviews may have contributed to hazard descriptions and employer knowledge which were not fully developed. In 25 of the 42 (62%) cases reviewed where informal settlement conferences were held, it was noted that some violations were vacated and/or reclassified.

Finding FY 15-01: Case files were lacking the appropriate documentation in the form of worker interviews. Documentation did not meet VOSH interview requirements in at least

57 of 132 (43%) of the cases reviewed. VOSH retained 29% of the penalty in cases which did not meet VOSH interview documentation requirements.

Recommendation: VOSH should ensure that all case files, where possible, include documentation in the form of worker interviews to at least meet the interview documentation requirements in the VOSH FOM so that adequate evidence can be developed to support violations and maintain associated penalties.

New Observations

The FY 2015 comprehensive on-site review also revealed two observations. In 58 of 132 (44%) of case files reviewed, where the employer employed 10 or more workers, OSHA 300 logs were not maintained in the case file.

Observation FY 15-OB-01: VOSH did not include the OSHA 300 logs in 44% of case files reviewed where the employer employed 10 or more workers.

Federal Monitoring Plan: In FY 2016, a limited number of case files will be selected and randomly and reviewed to determine if this item was addressed.

In five of 22 fatality case files (23%) reviewed, the case file did not contain documentation that the final next-of-kin letter with the inspection results was sent.

Observation FY 15-OB-02: VOSH did not include documentation that the final next-of-kin letter with the inspection results was sent in 23% of the fatality case files reviewed.

Federal Monitoring Plan: In FY 2016, a limited scope review of selected case files will be reviewed to determine if this item was addressed.

II. Major New Issues

Budget uncertainties at both the state and federal level continue to have substantial impact on the State Plan's performance. Although there is was not an official hiring freeze in effect during this evaluation period, the length of time for funding to become available to backfill vacant safety and health positions negatively impacts the VOSH Program. Budget constraints also impact the funding available for training and professional development conferences and the associated travel expenses. These constraints did not adversely affect mandatory training.

III. Assessment of State Plan Performance

The following is a discussion of the VOSH Program's performance during FY 2015 based upon monitoring and evaluation of the SAMM Report. A review of the VOSH Program was also conducted using the VOSH Program's SOAR.

A. STATE PLAN ADMINISTRATION

1. Training

VOSH established an apprentice program to train safety and health compliance officers in 2005. To date, 52 compliance safety and health officers (CSHOs) and consultant apprentices have graduated from the unique VOSH Apprenticeship Program. This includes 30 safety officers and 22 industrial hygienist officers. VOSH gained approval through the United States Department of Veterans' Affairs and the Virginia Department of Veterans' Services for its Apprentice Program as an authorizing agency for benefits under the Montgomery and Webb GI bills. Additionally, VOSH has developed and implemented a directive which transmits a professional development training program for VOSH compliance and consultation personnel.

2. Funding

VOSH received a federal award base amount of \$3,903,800 and matched that amount for a total of \$7,807,600 in FY 2015.

3. Staffing

The VOSH Program continues to experience vacancies in both safety and health compliance staff positions. In FY 2015, the Commonwealth filled 87% of the safety benchmarks and 75% of the health benchmarks. Ten benchmark positions were not filled. At the present, VOSH is recruiting for the vacant positions as soon as federal and state funding is made available.

4. OSHA Information System (OIS)

VOSH began using the federal OIS in FY 2014. In FY 2015, VOSH was entering all newly initiated inspections into OIS and utilizing reports run from OIS to evaluate and manage the VOSH Program.

5. State Internal Evaluation Program (SIEP) Report

Fatality and/or catastrophe cases are typically reviewed by a very experienced lead CSHO and one or both regional directors before being submitted to the appropriate program director in DLS for a final review prior to issuance. After review in the Richmond headquarters, any comments or suggestions are again reviewed by the lead CSHO or regional director with the CSHO before final citations are issued. Cases involving proposed willful citations or the use of the General Duty Clause undergo a similar review process.

On a daily basis, the regional directors discuss the results of these case file reviews with the leads and as needed, follow-up with the CSHOs. The lead CSHOs and regional directors have daily interaction with CSHOs to discuss case status, problems, applicable

standards, and strategy.

Where informal conferences are conducted, the regional directors attempt to discuss the final outcome with the CSHO(s) involved to make them aware of any weak points or to convey positive comments. Problems that are perceived to be either office-wide or region-wide are discussed in group meetings or through emails.

B. ENFORCEMENT

1. Complaints

a. Timeliness of State Plan Response and Notifications to Complainant

During the period October 1, 2014 through September 30, 2015, the SAMM report indicates that VOSH received 416 complaints where investigations were determined to be warranted. VOSH's response rate to these complaints was less than one day (0.5 days) which was less than the agreed upon measure of three days. VOSH conducted 459 complaint inspections which were initiated within an average of 2.33 days. This was below the negotiated fixed number of days which is five working days. VOSH responded to 100% of the complaints pertaining to imminent danger within one day.

b. State Plan Response

During the on-site review it was noted that the letter to the complainant was not included in at least two of the complaint case files. The diary sheet often lacked notes concerning whether the letter was mailed. While it is important to maintain a copy of the letter in the case file and annotated in OIS for complete case file documentation, it was noted that documentation of the letter in the case file did not occur in a statistically significant number of cases and can likely be attributed to an administrative error.

2. Fatalities

a. Contact and Involvement of Families of Victims

Case file reviews revealed appropriate next-of-kin contact was initially made in each fatality case. The majority of case files reviewed revealed that the next-of-kin were kept informed of the ongoing fatality investigation and were sent correspondence addressing the final outcome, where appropriate. However, it was noted in 23% of the fatality case files reviewed that they did not contain supporting documentation of the final outcome or indicate if copies of the resulting citations (if issued) were provided to the next-of-kin. The review of the fatality case files indicated the Fatality and Catastrophe Investigation Summaries (OSHA 170 form) were properly documented and contained standard language in the abstract.

b. Appropriate Use of “No Inspection” or “No Jurisdiction”

Most of the fatality case files were appropriately coded to indicate whether VOSH maintained jurisdiction. The review revealed that two cases fell under federal jurisdiction; one under OSHA and the other under the Department of Transportation. Neither case was coded as “no inspection” due to lack of jurisdiction.

c. Timeliness, Notification, and Opening Conference

A regional director in each regional office notifies the program director of all work-related fatalities and catastrophes as soon as they are made aware. Other regional personnel who receive reports of work-related fatalities and catastrophes which may result in high media attention or have statewide implications immediately notify their respective regional director. The program director informs the Commissioner of all fatalities and catastrophes and provides all pertinent information. The compliance officer or the regional director is responsible for ensuring that all required forms, accident narratives, and OIS inputs are completed. The regional director exercises their discretion in dispatching an appropriately trained compliance officer to respond as soon as possible to a fatality or catastrophe. The compliance officer assigned to the fatality or catastrophe is responsible for completing the inspection report and the investigation summary.

VOSH responded to all 32 fatalities within one day of notification, therefore VOSH responded to 100% of workplace fatalities within one day which met the mandated measure. Employers have been required under the Code of Virginia to orally report to the nearest regional office within eight hours of any occurrence an accident involving a fatality to one or more workers and/or which results in the hospitalization of three or more workers. If an employer fails to notify VOSH a citation is issued for failure to report such an occurrence.

d. Bureau of Labor Statistics Used to Assess Trending and Use of Resources

VOSH Program Directive 02-051A, Scheduling System for Programmed General Schedule Inspections, dated February 22, 1990, describes the procedures used to compile the VOSH general schedules for safety and health enforcement programmed inspections. VOSH utilizes information compiled from several sources for their safety and health general industry programmed inspections. OSHA provides a Statewide Industry Rank Report (standard industrial classification (SIC) list) that classifies industries by their four-digit SIC code. The Safety SIC List is a statewide listing of manufacturing industries with lost workday injury (LWDI) rates equal to or higher than the lowest Bureau of Labor Statistics’ (BLS) national average rate for all 10 private sector industry for the last five years. Industries are then ranked in order of their LWDI rate (the High Rate

SIC list) with establishments within a ranking listed in descending order of the highest number of workers.

e. Appropriateness of Investigation Findings

VOSH evaluated each fatality for potential violations. Most fatality case files reviewed either cited volatile conditions or discussed why citations were inappropriate. During the on-site review, it was noted that one fatality case file lacked documentation concerning manufacturer information for the equipment associated with the fatality. This information may have provided the means to issue a citation as the case was in-compliance.

3. Targeting and Programmed Inspections

a. Goals, Emphasis Programs, Participation in National Emphasis Programs (NEPs)

The VOSH Enforcement program derives its targeted inspection lists from a High Hazard Industry listing provided by the OSHA Office of Statistical Activity. It also participates in the federal OSHA exempted SIC/NAICS industry list as provided in the current Appropriations Act. The Federal Appropriations Act contains limits for OSHA activities where 23(g) grant funds are used on a year-by-year basis. Since these 23(g) grant funds are passed through from OSHA to the State Plan, VOSH is held to the same restrictions and limits imposed on OSHA for the use of federal funds. The Appropriations Act limitations do not apply to 100% State Plan funds.

To the extent this VOSH Directive, 02-003K, limits or prohibits of the use of federal funds for certain VOSH activities, VOSH reserved the right to conduct activities limited or prohibited under this directive by paying for these activities with 100% State Plan funds. (For example, VOSH will conduct and pay for, with 100% State Plan funds, fatal accident investigations on farms with 10 or fewer workers and no temporary labor camp activity within the previous twelve months.) Approval to conduct and pay for such activities must be received in advance from the VOSH program director and regional office administration. Compliance officers who are approved to perform 100% State Plan-funded inspections keep a record of their time spent on such activities. The VOSH Enforcement Program also participates in the C-Target listing for randomly selected construction sites to be inspected.

VOSH has implemented emphasis programs to target exceptionally problematic areas, such as one special emphasis program that uses Worker's Compensation First Reports of Injury to investigate falls, struck-by, amputations, and other serious accidents. Other special emphasis programs include scaffolding, heavy equipment, and trenching, all of which have resulted in increased awareness of safety in the ever dangerous construction industry.

VOSH targets various industries each year and develops local emphasis programs to achieve most of its programmed inspection activities. VOSH also targets industries through in National Emphasis Programs developed by federal OSHA. Most of VOSH's local emphasis programs are directly related to strategic areas of emphasis developed by Federal OSHA. Virginia conducted 1,689 programmed inspections during FY 2015.

b. In-Compliance Inspections

VOSH's in compliance rate for safety cases was 41.26% and 47.57% for health cases in FY 2015. These higher than normal rates are largely due to two unique Virginia policies.

For safety, Virginia's policy for conducting multi-employer inspections in the construction industry is different from that of OSHA. Virginia's policy is to open an inspection and assign an inspection number to all employers covered by the scope of the inspection, regardless of whether violations are documented or issued to the employer. VOSH conducts a full inspection with each subcontractor.

Recalculating the Virginia safety in-compliance rate by adjusting for Virginia's unique policy on conducting multi-employer construction inspections results in a rate of 31.14%, well within the +/-20% Further Review Level rate of 28.47%.

For health, Virginia conducts a much higher percentage of asbestos inspections than OSHA because of a longstanding policy that requires all formal and non-formal asbestos complaints alleging worker exposure be inspected, and a statutory requirement to inspect certain asbestos contractors that results in a large number of planned asbestos inspections. These planned and complaint-based inspections often result in no citations being issued because Virginia has an Asbestos and Lead Contractors and Workers statute (VA Code §54.1-500.1, et. seq.) that requires all asbestos contractors, supervisors and workers to be fully trained and licensed by the Virginia Board for Asbestos, Lead, and Home Inspectors.

Recalculating the Virginia health in compliance rate by adjusting for Virginia's unique policy on asbestos inspections results in a rate of 36.74% -- well within the +/-20% Further Review Level rate of 33.58%.

c. Hazard Identification

The FY 2015 on-site review, the case files did not indicate any significant areas where hazards were not identified. However, because the case files were lacking non-management and supervisory interviews in accordance with the VOSH FOM, it was not possible to determine if any significant amount of violations were not identified through discussion.

d. Violations per Inspection

VOSH averaged 1.81 serious, willful, or repeat violations per inspection, and an average of 0.68 other than serious violations per inspection with violations.

e. Number and Percentage of Serious, Willful, and Repeat Violations

In FY 2015, VOSH issued 5,336 violations. The majority of these, 78% were classified as serious. In total, 4,154 were classified as serious, 1,072 as other than serious, and 71 as repeat serious. Thirteen violations were issued as willful.

f. Significant Cases

VOSH did not have any significant cases in FY 2015. VOSH does have a significant case review process that includes review by the appropriate compliance director and DLS prior to citation issuance or the decision to not issue citations. Virginia significant cases include all fatalities, catastrophes, proposed willful citations, repeat violations third instance or higher, ergonomics violations, egregious penalty cases, criminal willful cases, cases with interest at a national level identified by OSHA, and cases with significant interest by the media, public officials or other interest groups. Virginia reviewed 70 such cases during FY 2015.

4. Citations and Penalties

a. Adequate Evidence to Support Violations

The case file review revealed that the evidence supporting the violations is lacking in some cases. Many of the VOSH case files do not have fully developed hazard descriptions and lack useful employer knowledge. During the on-site review it was determined that the case files were lacking the appropriate documentation in the form of non-management and supervisory interviews. VOSH policy, per the Field Operations Manual (FOM), requires that at least one worker and one supervisory interview be documented in each case file. At least one non-management and one supervisory interview were not located in 57 of 132 (43%) case files reviewed. As previously noted, this may have contributed to hazard descriptions and employer knowledge documentation not being fully developed. This could lead to violations being reclassified or vacated at the informal conference stage and a low percent penalty retained (53.80%).

b. Citations for All Apparent Violations

Due to at least 43% of the cases reviewed not meeting the VOSH FOM requirement of documenting at least one non-management and one supervisory interview, it was difficult to determine if violations beyond the cited conditions were present or appropriate. However, in one case file reviewed, it was noted that

the employer failed to report a worker fatality in a timely manner. VOSH did not issue a citation for failing to report the fatality in a timely manner. In four other cases, the review revealed the potential for violations based on the documentation present in the case files. It was determined that there was not enough documentation in the case file to determine if citations were warranted in these cases.

VOSH's average current penalty per serious violation in private sector (SAMM 8: 1-250+ workers) was \$920.66 in FY 2015. The Further Review Level (FRL) is - 25% of the National Average (\$2,002.86) which equals \$1,502.14. Penalty levels are at the core of effective enforcement, and State Plans are therefore required to adopt penalty policies and procedures that are "at least as effective as" (ALAE) those contained in the FOM which was revised on October 1, 2015 to include changes to the penalty structure in Chapter 6 – Penalty and Debt Collection.

Note that with the passage of the Bipartisan Budget Bill on November 2, 2015, OSHA is now required to raise its maximum penalties in 2016 and to increase penalties according to the Consumer Price Index (CPI) each year thereafter. State Plans are required to follow suit. As a result of this increase in maximum penalties, OSHA will be revising its penalty adjustment factors in Chapter 6 of the FOM. Following completion of the FOM revision and after State Plans have the opportunity to adopt the required changes in a timely manner, OSHA will be moving forward with conducting ALAE analysis of State Plan penalty structures, to include evaluation of average current penalty per serious violation data.

c. Number and Percentage of Serious, Willful, and Repeat Violations

VOSH averaged 1.81 serious, willful, or repeat violations per inspection, and an average of 0.68 other than serious violations per inspection with violations. In FY 2015, VOSH issued 5,336 violations. The majority of these, 78% were classified as serious. In total, 4,154 were classified as serious, 1,072 as other than serious, and 71 as repeat serious. Thirteen violations were issued as willful.

d. Appropriateness of Violation Classification

The case file review revealed that citation classification, severity/probability, were found to be in accordance with the VOSH FOM. Hazards were identified correctly and acceptably classified overall. The VOSH FOM gravity of the violation primarily determines penalty amounts. It is the basis for calculating the basic penalty for both serious and other-than-serious violations. To determine the gravity of a violation, VOSH determines the severity of the injury or illness which could result from the alleged violation as well as probability that an injury or illness could occur as a result of the alleged violation.

e. Grouping of Violations

VOSH grouped citations where appropriate. The case file review did not note any major deviations from VOSH or OSHA policy.

f. Willful and Repeat Violation Classifications

Twenty-five (25) files containing repeat violations were reviewed. The review indicated that VOSH cited repeat violations where it was appropriate. VOSH issued 13 willful violations during FY 2015.

g. Level of Review for Notice of Violations

The VOSH DLS engages in pre-citation consultation in order to determine if additional investigative work needs to be performed prior to the issuance of citations.

h. Average Serious Penalty

The average serious penalty in the private sector in FY 2015 was \$920.66. A breakdown based on the number of workers is located in the table below:

Average Penalty	
Number of Workers	Average Serious Penalty
1 -25	\$643.59
26 -100	\$873.70
101-250	\$1,718.01
Greater than 250	\$2,331.75

i. Appropriateness of Penalties

VOSH followed the current policies and procedures and appropriately assessed penalties in each of the reviewed files. During FY 2015, VOSH provided effective consideration to the gravity of violations, the size of the business being inspected, good faith of the employer, the employer’s previous inspection history, the type, gravity, and severity of the violation when initially assessing penalty adjustment factors in accordance with their established penalty guidelines.

5. Abatement

The on-site review revealed the VOSH was requesting the appropriate abatement periods. Of the case files reviewed, it was determined that the CSHO and the regional safety or health director used professional judgment while keeping the best interest of the workers in mind to justify reasonable abatement dates. A specific date for final abatement was included with the citations when the violation was not corrected during the inspection.

VOSH requires abatement verification and documentation for all items not immediately abated during the inspection activity. This is in addition to the abatement certification form completed by the employer. In the past, VOSH has had abatement verification times that were longer than the federal average. This is because VOSH requires not only abatement certification (e.g., the employer's statement that abatement has occurred), but also requires the employers to provide photographs, receipts, purchase orders, etc. as verification that the hazard was abated.

VOSH continues to implement the Abatement Verification Regulation, Section 307 of their ARM, as referenced by the OSHA Directive, CPL 02-00-114. The results of the case file review show that VOSH is effectively verifying abatement of hazards.

VOSH conducted 50 follow-up inspections during FY 2015 and issued 13 failure to abate serious and five failure to abate other than serious citations. The on-site review did not reveal any deviations from current VOSH policy.

6. Worker and Union Involvement.

Worker involvement is addressed in both the FOM and as a performance goal in VOSH's Five Year Strategic Plan. VOSH met performance goal 2.1 which is to enhance worker involvement in all aspects of safety and health.

During the on-site review, it was determined that the case files were lacking the appropriate documentation in the form of non-management and supervisory interviews. VOSH policy, per FOM requires that at least one worker and one supervisory interview be documented in each case file. At least one non-management and one supervisory interview were not located in 57 of 132 (43%) case files reviewed. In 30 of the case files reviewed, worker interviews, which include at least one non-management and one supervisory interview was not located in the file. In 16 of the cases reviewed, only one worker interview was documented in the case file. In 11 of the case files reviewed, two non-management interviews, but no supervisory interviews were located in the file.

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

C. REVIEW PROCEDURES

1. Informal Conferences

a. Penalty Reduction Programs

VOSH follows the FOM guidance when determining penalty reductions during the informal conference. The regional safety or health director negotiates the amount of penalty reduction or a penalty installment payment plan, depending on the circumstances of the case, the financial condition of the employer and what improvements in worker safety and health can be obtained in return. The average pre-contest penalty reduction during this evaluation period was 46.20%. In previous years, the approval to reduce a penalty greater than 40% during the informal conference process must have been approved by the central office; that is no longer the case. Regional directors attempt to settle cases on a local level rather than have employers contest, and in doing so, VOSH had a 53.80% penalty retention rate which was significantly lower than standard reference percentage of 67.96%.

b. Adequacy of Procedures

The procedures which VOSH has outlined in the FOM provide an adequate means to reduce the penalties in an informal agreement to obtain safety improvements from the employer. During FY 2015, VOSH provided effective consideration to the gravity of violations, the size of the business being inspected, good faith of the employer, the employer's previous inspection history, the type, gravity and severity of the violation when initially assessing penalty adjustment factors in accordance with their established penalty guidelines. Regional safety or health directors may contact the DLS to request assistance in drafting settlement agreements containing safety and health improvements. In at least 10 of the 42 cases with informal conferences, it was noted that the informal settlement notes did not fully justify the penalty reduction provided.

c. Violations Vacated and/or Reclassified

In 25 of the 42 (62%) cases reviewed where informal settlement conferences were held, it was noted that some violations were vacated and/or reclassified. The lack of non-management and supervisory interviews documented in the case file may be a contributing factor. Documentation was not always sufficient to maintain the violations.

d. Penalties Reduced or Retained, Initial vs. Final Penalties

SAMM #12 indicates that VOSH only retained 53.80 percent of issued penalties. In the past, VOSH used a second tier concurrence/approval system for penalty reductions greater than 40%. However, concurrence/approval practice was not used during FY 2015. Furthermore, in 25 of the 42 (62%) cases reviewed where informal settlement conferences were held, it was noted that some violations were vacated and/or reclassified. This deficiency, which may be attributed to lack of worker documentation, may contribute to a low percent penalty retained. During the review, it was determined that documentation was not always sufficient to maintain the penalties.

e. Appropriateness and Documentation of Changes Made

In at least one case reviewed it was noted that VOSH reduced the penalty to 0 dollars by inappropriately combining two cases with the same company. In at least 10 of the 42 cases with an informal conference, it was noted that the informal settlement conference notes did not fully justify the penalty reduction provided. However, it was noted that more complete documentation in the form of non-management and supervisory interviews could provide the means for fewer citations to be reclassified or vacated in some cases.

f. Reasons for Modifications

VOSH attributes some of this discrepancy to the larger percentage of small employers within its jurisdiction. Small employers have a much more difficult time competing in a challenging economy and VOSH makes every effort to assure that violations at such establishments are identified, cited, appropriately penalized, and corrected. Penalty reductions at informal conferences are provided to acknowledge the costs of abatement and to encourage future compliance. During the on-site review it was noted that VOSH was inconsistent documenting a sufficient number of non-management and supervisory interviews in the case files. Conducting and documenting more worker interviews would provide more robust information to include in the hazard description and may help develop employer knowledge so that the regional safety or health director has more information with which to settle the cases and maintain penalties.

g. Patterns of Settlements

The on-site review revealed that the informal conference notes did not always justify the percentage by which the penalty was reduced. Additional documentation by the regional director needs to be included in the case file to support settlement terms.

2. Formal Review of Citations

a. Adequacy of State Plan Defense

The VOSH Administrative Regulations Manual (ARM) outlines the contest process for employers. Section 16 VAC 25-270 provides regulatory guidelines to an employer to whom a citation or proposed penalty was issued as the result of a VOSH inspection or investigation. The notice of contest must be mailed or delivered by hand within fifteen days from the receipt of the citation or proposed penalty. Upon receipt of a notice of contest, the Commissioner will attempt to resolve the matter by settlement, either by participation in an informal conference or through a formal settlement process.

If the matter is not settled or it is determined a settlement is not probable, the Commissioner will initiate judicial proceedings by referring the contested issues to the appropriate Commonwealth attorney. Virginia does not use an administrative law judge and review commission system to handle litigated cases. Virginia is unique among State Plans in using local circuit courts and prosecutors (Commonwealth attorneys) to litigate contested cases. Attorneys assigned to Virginia's DLS have been approved by the Office of the Attorney General to represent VOSH in litigation when they are appointed by the local Commonwealth's attorney and the Circuit Court judge on a case-by-case basis.

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

b. Violations Vacated and/or Reclassified

Only three of the cases reviewed during FY 2015 were contested. In two of the three cases, citations were vacated and/or reclassified.

c. Penalties Reduced or Retained, Initial vs. Final Penalties

Only three of the cases reviewed during FY 2015 were contested. In two of the three cases, penalties were reduced.

d. Changes Due to Problems with Original Citations

The review did not reveal that there were concerns with the original citations.

e. Review of Adverse Decisions by State Plan

According the VOSH FOM, after each trial, the staff attorney in consultation with other VOSH personnel in attendance will prepare a memorandum outlining the results of the trial. The memorandum will discuss the strengths and weaknesses of the case and its result, and include a recommendation regarding any appeal of an adverse decision. The case file review did not reveal any review of adverse decisions by VOSH.

f. Transparency of Process, Availability of Decisions to Public

All public records are handled according to the procedures for a Freedom of Information Act request.

g. Quality of Decisions, Consistency with Federal Precedence

Of the contested cases reviewed, there do not appear to be any discrepancies associated with federal precedence or concerns with the quality of decisions.

h. Procedural issues (timely hearings, full-time review board members and staff)

The on-site review did not reveal any discrepancies with the procedures outlined in the FOM.

D. STANDARDS AND FEDERAL PROGRAM CHANGES (FPCs) ADOPTION

1. Standards Adoption

State Plans are required to respond within 60 days of initial notification to declare whether they intend to adopt an OSHA change. According to 29 CFR 1953, when a federal change is identified as having the potential to impact the effectiveness of the State Plan, State Plans are required to either adopt the change identically, or submit an alternative approach with a State Plan supplement that is at least as effective as the federal change. In FY 2015, the Virginia Safety and Health Codes Board adopted five federal identical standards. The below table presents these standards:

Adopted Standards		
Standard	Reference	Actions Taken
Vehicle-Mounted Elevating and Rotating Work Platforms	1910.67	Corrections Made
Logging Operations, 1910.266; Corrections	1910.266	Corrections Made
Electric Power Generation, Transmission, and Distribution	1910.269	Correcting Amendments
Cranes and Derricks in Construction: Operator Qualification and Certification 1926.147 (k); Amendment.	1926.147 (k)	Amendment
Occupational Injury and Illness Recording and Reporting Requirements- NAICS Update and Reporting Revisions	16VAC25-85-190.2 and 16VAC25-85-1904.39	Amendment

VOSH’s formal response to these changes was generally after the response date was due; however, VOSH adopted the standards timely. VOSH was not able to adopt the Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update Reporting Revisions for approximately one year because it was first necessary to update the Code of Virginia before the standard could be adopted. While VOSH

experienced a delay in adopting one standard during FY 2015 due to the need to adopt legislation the standards were adopted.

All of the standards adopted by VOSH in FY 2015 were adopted as identical except for the Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update Reporting Revisions. Due to an error when the bill was drafted, the regulation reads that all fatalities, hospitalizations, amputations, and losses of an eye need to be reported in eight hours. Before VOSH can make updates, they will issue citations as normal for any fatality not reported within eight hours, but will issue only a de minimus violation for any employer who does not report a hospitalization, amputation, or loss of an eye within eight hours as long as they report it within 24 hours. If they do not report it within 24 hours, violations will be issued but they will not be issued as de minimus.

The majority of VOSH standards are identical to OSHA standards. However, VOSH has enacted unique regulations covering confined spaces in the construction and telecommunication industries, overhead high voltage line safety, fall protection in steel erection, reverse signal operation in construction and general industry, compliance with manufacturer’s instruction for vehicles, machinery, tools and equipment in general industry, construction, maritime and agriculture, and a regulation covering tree trimming operations.

2. OSHA or State Plan-Initiated Changes

VOSH’s formal response to FPCs was generally after the response date was due; however, VOSH made efforts to adopt FPCs in a timely manner. All of the FPCs that VOSH adopted were adopted identically. While VOSH was not able to adopt Inspection Procedures for the Hazard Communication Standard within six months of federal adoption, the directive was adopted very shortly thereafter. The Whistleblower Investigations Manual is expected to be adopted by June of 2016. The below table presents these FPCs:

Federal Program Changes		
FPC	OSHA Adoption Date	VOSH Adoption Date
Whistleblower Investigations Manual (CPL-02-03-005)	April 21, 2015	Expected June 2016
Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis (CPL-02-02-078)	June 30, 2015	August 15, 2015
Inspection Procedures for the Hazard Communication Standard (CPL-02-02-079)	July 9, 2015	February 1, 2016
July 29, 2015: OSHA Alliance Program (CSP-04-01-002)	July 29, 2015	Not Adopting
July 30, 2015: Special Government Employee (SGE) Program Policies & Procedures Manual for the	July 30, 2015	Not Adopting

Occupational Safety and Health		
August 13, 2015: National Emphasis Program on Amputations (CPL-03-00-019)	August 13, 2015	February 1, 2016
Alternative Dispute Resolution Process for Whistleblower Protection Program (CPL 02-03-006)	August 18, 2015	Action not Determined
Directive on the National Emphasis Program - Primary Metal Industries (CPL-03-00-018).	October 20, 2014	March 15, 2015
Compliance Directive for the Cranes and Derricks in Construction Standard (CPL-02-01-057).	October 17, 2014	December 11, 2014

While VOSH was not able to adopt Inspection Procedures for the Hazard Communication Standard within six months of federal adoption, the directive was adopted very shortly thereafter. VOSH anticipates adoption of the Whistleblower directives by the end of June 2016. As VOSH does not have the same range of authority as OSHA under Virginia law, VOSH is finalizing certain revisions to the document in regard to settlements.

In FY 2015, VOSH adopted thirteen guidance documents. The table below presents these guidance documents:

VOSH Directives	
Directive	Date
National Emphasis Program: Lead (14-437B)	December 15, 2014
First Report of Injuries and Illnesses (FRI) Local Emphasis Program (LEP) (14-005C)	December 18, 2014
Electric Power Generation, Transmission and Distribution and Amendments, Parts 1910 and 1926; Amendment to Electrical Protective Equipment Standard, 1910.137; Correcting Amendments (12-248C)	January 15, 2015
Logging Operations, General Industry, 1910.266; Corrections (12-250C)	January 15, 2015
Cranes and Derricks in Construction, §§ 1926.1400 through 1926.1442: (12-254C)	January 15, 2015
Vehicle-Mounted Elevating and Rotating Work Platforms, §1910.67 (12-257)	January 15, 2015
VOSH Whistleblower Investigation Manual (04-001D)	February 1, 2015
National Emphasis Program Primary Metal Industries (14-216A)	March 15, 2015
OSHA Technical Manual (OTM) (09-052B)	April 1, 2015
VOSH Procedures to comply with OSHA	April 1, 2015

Enforcement Exemptions and Limitations under the Federal Appropriations Act, OSHA Instruction CPL 02-00-051 (formerly CPL 2-0.51J); Appendix “A” Revision (02-003P)	
Program Directive Development, Classification and Numbering System for VOSH (01-001C)	May 1, 2015
OSHA TECHNICAL MANUAL (OTM) (09-052C)	June 15, 2015
Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis (02-433A)	August 15, 2015
Occupational Injury and Illness Recording and Reporting Requirements, 1904.0 through 1904.46; and Amendments (12-152D)	September 15, 2015

During FY 2015, VOSH has regularly maintained contact with the regional office concerning the status of any necessary legislative and regulatory actions. VOSH targets industries through adoption of NEPs and LEPS. There have not been any concerns with VOSH’s action and adoption of emphasis programs.

E. VARIANCES

In accordance with the VOSH ARM, any employer or group of employers may file an application with the Commissioner for a temporary or a permanent variance from a standard or regulation pertaining to occupational safety and health. There were no variances requested during the FY 2015 evaluation period.

F. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

VOSH conducted 141 safety and health inspection in state and local government workplaces or 5.16% of its total inspection activity for FY 2015. Serious violations were observed and citations issued. Although no penalties are assessed against state and local government employers, VOSH has worked successfully with these agencies to bring them into compliance with current safety and health standards.

G. WORKPLACE RETALIATION PROGRAM

All cases are reviewed by the Director of Legal Support, who is also an attorney. The director prepares all findings letters based on the evidence provided by the investigator. If the director has need of additional evidence, they request that information from the investigator.

During the on-site review, it was noted that VOSH procedures were at least as effective as OSHA’s. It should be noted that complainants are given 60 days to file a whistleblower complaint, which exceeded OSHA’s 30 day timeframe. Virginia also has a private right of action for workers in cases where VOSH chooses not to pursue a whistleblower case (VA Code §40.1-51.2:2.B).

The VOSH investigator attempts to settle complaints during the investigation. Unlike OSHA, a copy of a draft settlement agreement is mailed to respondent with the opening letter. During the review it was indicated that there were four to five cases currently in the Division of Legal Support awaiting settlement. This would account for the statistically lower settlement rate in the closed cases reviewed in comparison to the national average. It is left to the Office of Legal Support to make the determination, dismiss, obtain settlement, or decide to litigate. VOSH case files contain a deadline date for completion of the file within 90 days of filing. Unless there are uncooperative witnesses or unusually complex issues, the cases were worked within the 90-day limit.

H. Complaint About State Program Administration (CASPA)

The Region received two CASPAs in FY 2015. VOSH responded timely and thoroughly to both and readily provided additional information when requested. It was determined that VOSH was following the appropriate policies and procedures in one case; however, OSHA made one minor suggestion to VOSH. The other CASPA involves State Plans in Region IV and is being evaluated at the National Office.

I. VOLUNTARY COMPLIANCE PROGRAM

1. Adequacy of Written Policies and Procedures for Voluntary and Cooperative Programs

The Virginia VPP and Safety and Health Achievement Recognition Program (SHARP) are designed to recognize and promote exceptional safety and health management programs. VOSH's VPP is designed to recognize establishments that achieve an exceptional program through a cooperative relationship with management and labor in general industry or state and local government workplace. VOSH's SHARP was developed to provide incentives and support to smaller (less than 250 workers), high-hazard employers to work with workers to develop, implement, and continuously improve safety and health programs. SHARP is implemented through VOSH's private sector consultation 21(d) grant; therefore, a review of SHARP activity is included in VOSH's Regional Annual Consultation Evaluation Report (RACER). These programs are an integral component of VOSH's Cooperative Program.

In accordance with VOSH Directive Partnership Programs 09-010, dated July 15, 1997, VOSH continued its alliance with the Virginia State Association of Occupational Health Nurses (VSAOHN) during the FY 2015 evaluation period. The mission of this association is the promotion of healthy and safe workplaces in large and small businesses in areas such as emergency management, ergonomics, health and wellness, healthcare worker safety and respiratory protection. VSAOHN has been actively involved in DOLI VOSH activities, notably the annual Occupational Safety and Health Conference.

VOSH has developed and implemented a comprehensive VPP Policies and Procedures Manual. The manual describes the policies in detail and provides adequate guidance for the administration of VPP in the state.

2. State Plan Appropriateness to Provide Exemptions and Other Enforcement Incentives

VOSH VPP policies and procedures closely mirror that of OSHA VPP. Exemptions for enforcement activities are discussed in the VOSH VPP manual and provide appropriate context for the administration of VPP within the state. VOSH VPP policy enables the Agency to remove participating sites from programmed inspection lists, allowing VOSH to focus its inspection resources on establishments in greater need of agency oversight and intervention. However, VOSH continues to investigate valid worker safety and health complaints, fatalities, catastrophes, and other significant events at VPP participant sites.

3. State Plan Voluntary and Cooperative Program Changes

On June 3, 2015, Governor Terry McAuliffe signed a bill for the historic Voluntary Protection Programs (VPP) Act in Virginia (VA Code §40.1-49.13). The bill will continue developing the successful VPP system – encouraging companies to take safety and health above and beyond VOSH/OSHA safety and health requirements. VOSH has begun the process of promulgating a regulation required by the new statute.

J. STATE AND LOCAL GOVERNMENT 23(g) ON-SITE CONSULTATION PROGRAM

According to the FY2015 Mandated Activities Report for Consultation (MARC), The VOSH Consultation Program conducted five on-site consultation visits to state and local government workplaces in FY 2015. All five were indicated as initial visits and 100% of the visits with hazards were abated within the required timeframe.

VOSH projected that 20 total visits would be conducted in state and local government workplaces. However, VOSH fell 15 inspections short of the goal. Meeting the goal is dependent upon receiving voluntary requests for visits and only five were received for the year. VOSH actively markets 23(g) consultation services to state and local government agencies in a number of different ways, including during on-site consultation visits, the annual Virginia Safety and Health Conference, the VOSH website, VPP press releases, VOSH compliance inspections and informal conferences, and in outreach activities such as presentations to the annual Virginia Workers Compensation Conference and VPP Best Practices Days. VOSH only achieved 25% of the visits projected in the most recent grant. However, VOSH responded to all voluntary requests.

IV. Assessment of State Plan Progress in Achieving Annual Performance Goals

Through the SOAR, VOSH shows positive signs of achieving its 2013-2017 Five-Year Strategic Plan. Through effective resource utilization, partnership development, outreach activities, and an overall commitment to performance goal achievements, VOSH met 100%

of their goals. The primary goal of VOSH’s strategic plan was to reduce occupational injuries, illnesses, and fatalities through direct intervention.

VOSH has worked to achieve a reduction in workplace fatalities investigated over the last five calendar years: 2015 (32); 2014 (31); 2013 (35); 2012 (36); 2011 (30). VOSH was able to successfully initiate inspections in 100% of fatalities and catastrophes within one work day of notification.

VOSH’s FY 2015 Annual Performance Plan fully supports Virginia’s long-term strategic goals while at the same time addressing state-specific issues and concerns. Promoting a safe and healthful workplace culture in order to improve workplace safety is the central theme of the VOSH Five-Year Strategic Plan. The Annual Performance Plan recognized the interconnection and importance of the various program tools (enforcement, consultation, training, partnerships) available to the state.

VOSH’s approach for achieving its long-term strategic goals is to identify significant problems, determine the most effective ways to address them, use the best mix of available tools and then measure the results. VOSH has adopted two inter-dependent strategic goals in their annual performance plan. These goals are to reduce occupational injuries, illnesses, and fatalities through direct intervention in Virginia workplaces, as evidenced by fewer hazards, reduced exposures, and fewer injuries, illnesses, and fatalities. The second goal is to promote a safe and healthy workplace culture. In addition to these goals, VOSH utilized Worker’s Compensation First Reports of Accidents to promptly investigate amputations and other serious workplace accidents.

Through its annual performance report, VOSH has provided information that supports positive performance in the accomplishment of meeting its five-year strategic plan. The following tables summarize VOSH’s activities and accomplishments in FY 2015.

Goal 1.1 A		
Strategic Goal	1	Reduce Occupational Injuries, Illnesses and Fatalities through Direct Intervention
Performance Goal	1.1	Reduce the rate of workplace injuries and illnesses.
	1.1A	By 2015, decrease injuries and illnesses per 100 workers in the workplace by 5%.

Strategy	<ul style="list-style-type: none"> Analyze data to better identify establishments for inspections. Research new sources for information to identify best targets. Inspect worksites in non-programmed areas through rapid response to complaints, referrals and utilizing multi-employer policy. Inspect 5% of total inspections as state and local government worksites. Analyze results and effectiveness of compliance inspections to determine their impact on fatalities, injury and illness rates. Identify and implement adjustments that will increase the impact of compliance inspections. Analyze the effectiveness of guidance and standards and identify needed changes. 		
Performance Indicator	2006 Total Recordable Injury and Illness Baseline. The performance data for this measure for 2015 has not been released by BLS yet so the most recent data was utilized for 2014.		
FY 2015 Results	The Total Recordable Injury and illness rate for CY14 is 3.0 per 100 workers.		
Conclusion	Baseline	2015 Target	2015 Result
	2006 TRII	4.0	3.0
	VOSH met this goal.		

Goal 1.1 B			
Strategic Goal	1	Reduce Occupational Injuries, Illnesses, and Fatalities through Direct Intervention	
Performance Goal	1.1	Reduce the rate of workplace injuries and illnesses.	
	1.1 B	Annually initiate investigations of 100% of worker complaints within one working day or conduct an on-site inspection within five working days.	
Strategy	<ul style="list-style-type: none"> Promptly and accurately investigate a workplace complaint within one workday or conduct an inspection within five workdays in an effort to reduce injuries and illnesses. 		
Performance Indicator	Percent of worker complaints that have an investigation initiated within one working day or an on-site inspection initiated within five working days.		
FY 2015 Results	100% of worker complaints had an investigation initiated within one working day or an on-site inspection initiated within five working days.		
Conclusion	Baseline	2015 Target	2015 Result
	NA	100%	100%
	VOSH met this goal.		

Comments	VOSH offers workers the choice between two approaches to handle their complaints: VOSH will conduct an investigation by contacting the employer via phone/fax to inform them of the complaint (requiring a response from the employer within five work days), or VOSH will conduct an on-site inspection.
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Goal 1.2 A			
Strategic Goal	1	Reduce Occupational Injuries, Illnesses, and Fatalities through Direct Intervention	
Performance Goal	1.2	Reduce the rate of workplace fatalities.	
	1.2A	By 2015 decrease fatalities in the workplace per 100,000 workers 5%.	
Strategy	<ul style="list-style-type: none"> Analyze data to better identify establishments for inspections. Research new sources for information to identify best targets. Inspect worksites in non-programmed areas. Inspect identified state and local government worksites Analyze results and effectiveness of compliance inspections to determine their impact on fatalities, injury and illness rates. Identify and implement adjustments that will increase the impact of compliance inspections. Analyze the effectiveness of guidance and standards and identify needed changes. 		
Performance Indicator	Workplace fatality rate in Virginia per 100,000 workers. The performance data for this measure for CY 2015 has not been released by BLS yet, but fatality counts are provided in the meantime. Baseline rate of 4.2 fatalities per 100,000 workers in 2006.		
FY 2015 Results	The number of total fatal injuries in Virginia decreased 8% percent last year CY2014, to 116 from 126 in CY 2013.		
Conclusion	Baseline	2015 Target	2015 Result
	4.2	3.8	<i>Pending BLS data</i>
	VOSH met this goal.		

Goal 1.2 B			
Strategic Goal	1	Reduce Occupational Injuries, Illnesses, and Fatalities through Direct Intervention	
Performance Goal	1.2	Reduce the rate of workplace fatalities.	
	1.2B	Annually initiate inspections of 100% of fatalities and catastrophes within one working day of notification.	

Strategy	<ul style="list-style-type: none"> Promptly initiate fatality and catastrophe investigations within one workday. 		
Performance Indicator	Percent of inspections of fatalities and catastrophes initiated within one working day of notification.		
FY 2015 Results	100% of inspections of fatalities and catastrophes were initiated within one working day of notification.		
Conclusion	Baseline	2015 Target	2015 Result
	NA	100%	100%
	VOSH met this goal.		

Goal 1.3 A			
Strategic Goal	1	Reduce Occupational Injuries, Illnesses, and Fatalities through Direct Intervention	
Performance Goal	1.3	Reduce the rate of workplace injuries and illness in worksites.	
	1.3 A	Reduce the rate of workplace injuries and illnesses in work sites through participation in the VPP Programs.	
Strategy	<ul style="list-style-type: none"> Increase the number of employers participating in the VPP. 		
Performance Indicator	Reduce the rate of workplace injuries and illnesses in work sites through participation in the VPP. National averages show that VPP sites are routinely 50% below normal workplace injuries and illnesses for their respective industries.		
FY 2015 Results	The average Virginia VPP worksite had a Total Case Incident Rate (TCIR) 53% below the BLS national average for its industry (three-year rolling national average, 2011-2013).		
Conclusion	Baseline	2015 Target	2015 Result
	NA	50% below	56.4% below
	VOSH met this goal.		
Comments	There are 44 active VPP sites in Virginia, 43 STAR sites and one Merit site.		

Goal 2.1 A			
Strategic Goal	2	Promote a Safe and Healthful Workplace Culture through Worker Involvement in all Aspects of Safety and Health	
Performance Goal	2.1	Enhance worker involvement in all aspects of safety and health.	
	2.1 A	One hundred percent (100%) of VOSH on-site activities (e.g., inspections) will include a worker involvement component annually, such as interviews, informal conferences, and walkaround inspections.	

Strategy	• Ongoing monitoring of inspection data.		
Performance Indicator	Observed data in OIS/IMIS review.		
FY 2015 Results	Worker involvement through interviews, informal conferences, and walkaround inspections as reviewed by regional safety and health directors at 100%.		
Conclusion	Baseline	2015 Target	2015 Result
		100%	100%
	VOSH met this goal.		

The Commonwealth continues to strive towards improving their program. While VOSH did not meet all their mandated measures for FY 2015, they made significant progress. They met or exceeded 10 of the 17 mandated measures. VOSH continues to support their Five- Year Strategic Plan through positive performance and achievement of their performance goals. Their two strategic goals, to reduce occupational injuries, illnesses, and fatalities through direct intervention and to promote a safety and health workplace culture, showed continued improvement over previous year performance.

V. Other Special Measures of Effectiveness and Areas of Note

Misclassification in the Workplace

In response to Governor's Executive Order 24 entitled "Establishing an Inter-Agency Task Force on Worker Misclassification and Payroll Fraud," on June 2nd, 2015, the Commissioner of Labor and Industry announced a new policy to address Worker Misclassification in VOSH cases. VOSH's new initiative was showcased on OSHA's public website during FY 2015.

VOSH's new policy improves protections for workers because misclassification can result in payroll fraud, reduced workers' compensation and unemployment insurance protections and violations of the tax code and other laws designed to protect workers. VOSH recognized that employers who are willing to commit payroll fraud and cut corners when it comes to providing worker protections such as workers' compensation and unemployment insurance may be willing to cut corners when it comes to providing a safe and healthy workplace.

This policy is intended to level the playing field for employers who currently provide all legal protections for their workers against those who misclassify workers. Employers who properly classify workers incur higher payroll costs because they pay costs avoided by employers who misclassify. VOSH is attempting to ensure that all employers are playing by the same rules when it comes to classifying workers.

Effective July 1, 2015, where VOSH has reasonable cause to believe that worker misclassification has occurred in a VOSH case, the following actions are normally taken:

- In the event that citations and penalties are proposed for the employer, penalty reductions

for size and good faith will NOT be afforded to the employer.

- In construction multi-employer worksite situations, each contractor (e.g., general contractors, prime subcontractors and lower tier subcontractors) will be asked to provide proof of their Department of Professional and Occupational Regulation (DPOR) contractor's license AND for proof of the DPOR license for any of its' subcontractors.
- When it is determined that a construction employer has contracted with an unlicensed subcontractor, VOSH will make a written referral to DPOR for the contractor and its unlicensed subcontractor (DPOR sanctions for contracting with unlicensed subcontractors may include fines, probationary terms, suspension or license revocation).
- In cases where the contract value for the specific subcontractor's job is less than \$1,000, VOSH will make a written referral to the Virginia Employment Commission (VEC) and/or the Virginia Workers' Compensation Commission (VWCC) for potential audits of the employer's employment practices. There may be instances where referrals will be made for contract values over \$1,000.00 as well.

VOSH made 21 referrals to DPOR during the first three months of the new policy.

Executive Order (EO) 13650 – Improving Chemical Facility Safety and Security

Recent catastrophic chemical facility incidents in the United States prompted President Obama to issue EO 13650 on August 1, 2013 to enhance the safety and security of chemical facilities and reduce risks associated with hazardous chemicals to owners and operators, workers, and communities. The EO directed the Environmental Protection Agency (EPA), the Department of Labor (DOL), the Department of Homeland Security (DHS), the Department of Justice, the Department of Agriculture, and the Department of Transportation to identify ways to improve operational coordination with state, local, tribal, and territorial partners; to enhance federal agency coordination and information sharing; to modernize policies, regulations, and standards to enhance safety and security in chemical facilities; and to work with stakeholders to identify best practices to reduce safety and security risks in the production and storage of potentially harmful chemicals.

The EO established a Chemical Facility Safety and Security Working Group to oversee this effort which is tri-chaired by the EPA, DOL, and DHS, and includes leadership and subject matter experts from each of the above listed departments and agencies. The Working Group, its member agencies, and the broader community of stakeholders have practices, operations, protocols, and policies that address chemical facility safety and security, and all recognize that improvement is necessary and requires a shared commitment from all stakeholders. VOSH has dutifully filled a critical role in this order by regularly sharing Process Safety Management (PSM) inspection violations with OSHA, EPA, and DHS during FY 2015. VOSH also actively seeks information from these agencies to assist in its own inspection process.

Fall Stand-Down Campaign

In May 2015, VOSH Compliance and Consultation programs actively participated in OSHA's National Fall Stand-Down campaign to prevent construction industry falls. VOSH's Stand-Down activities were a success. Outreach activities during the week long campaign consisted of stand-downs, fall protection PPE demonstrations, tool box training, formal presentations, publication distribution, and social media outreach. Employers that participated in Stand-Down activities were encouraged to complete a VOSH survey. Results of the survey indicated that during the Stand-Down event, Virginia employers trained 813 workers, spent 232 man hours on fall protection training, and spent 35 hours performing fall hazard inspections.

Appendix A – New and Continued Findings and Recommendations
FY 2015 Virginia Occupational Safety and Health Program Comprehensive FAME Report

FY 20XX-#	Finding	Recommendation	FY 2015-# or FY 2014-OB-#
FY 2015-01	Case files were lacking the appropriate documentation in the form of worker interviews. Documentation did not meet VOSH interview requirements in at least 57 of 132 (43%) of the cases reviewed. VOSH retained 29% of the penalty in cases which did not meet the VOSH interview documentation requirements. Adequate evidence is lacking in the case files to support violations and maintain associated penalties.	VOSH should ensure that all case files (where possible) include documentation in the form of worker interviews to meet the interview documentation requirements in the VOSH FOM, and to provide adequate evidence to support violations and maintain associated penalties.	

Appendix B – Observations Subject to New and Continued Monitoring
FY 2015 Virginia Occupational Safety and Health Program Comprehensive FAME Report

Observation # FY 20XX-OB-#	Observation# FY 20XX-OB-# or FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
FY 2015-OB-01		In 48% of case files reviewed, where the employer employed 10 or more workers, the OSHA 300 logs were not maintained in the case file.	In FY 2016, a limited number of case files will be selected randomly and reviewed to determine if this item was addressed.	New
FY 2015-OB-02		In 23% of the fatality case files reviewed, the case file did not contain documentation that the final next-of-kin letter with the inspection results was sent.	In FY 2016, a limited scope review of selected case files will be reviewed to determine if this item was addressed.	New

Appendix C - Status of FY 2014 Findings and Recommendations

FY 2015 Virginia Occupational Safety and Health Program Comprehensive FAME Report

FY 20XX-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status

There were no findings in FY 2014.

Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report
FY 2015 Virginia Occupational Safety and Health Program Comprehensive FAME Report

OSHA is in the final stages of moving operations from NCR, a legacy data system, to OIS, a modern data system. During FY 2015, OSHA case files and most State Plan case files were captured on OIS. However, some State Plan case files continued to be processed through NCR. 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. In addition, SAMMs 5, 8, 9, 11, 12, 15, and 17 have further review levels that should rely on a three-year national average. However, due to the transition to OIS, the further review levels for these SAMMs in this year’s report will rely on a one-year national rate pulled only from OIS data. Future SAMM year-end reports for FY 2016 and FY 2017 should rely on a two-year national average and three-year national average, respectively. All of the State Plan and federal whistleblower data is captured directly in OSHA’s WebIMIS System. See the “Notes” column below for further explanation on the calculation of each SAMM. All of the Virginia State Plan’s enforcement data was captured in OIS during FY 2015. The Virginia State Plan opened 2,733 enforcement inspections and they were all captured in OIS.

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
Virginia - VOSH				FY 2015
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	2.33	5	State Plan data is pulled only from OIS. Further review level is negotiated by OSHA and the State Plan.

Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report
FY 2015 Virginia Occupational Safety and Health Program Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1b	Average number of work days to initiate complaint inspections (federal formula)	1.16	N/A	State Plan data is pulled only from OIS. This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	.50	3	State Plan data is pulled only from OIS. Further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	.25	N/A	State Plan data is pulled only from OIS. This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	State Plan data is pulled only from OIS. Further review level is fixed for every State Plan.
4	Number of denials where entry not obtained	0	0	State Plan data is pulled only from OIS. Further review level is fixed for every State Plan.
5	Average number of violations per inspection with violations by violation type	SWRU: 1.81	+/-20% of SWRU: 1.92	State Plan data is pulled only from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
		Other: .68	+/-20% of Other: .87	

Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report
FY 2015 Virginia Occupational Safety and Health Program Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
6	Percent of total inspections in state and local government workplaces	5.16%	+/-5% of 5.17%	State Plan data is pulled only from OIS. Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
7	Planned v. actual inspections – safety/health	S: 2,063	+/-5% of S: 1,865	State Plan data is pulled only from OIS.
		H: 670	+/-5% of H: 650	Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$920.66	+/-25% of \$2,002.86	State Plan data is pulled only from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
	a. Average current serious penalty in private sector (1-25 workers)	\$643.59	+/-25% of \$1,402.49	State Plan data is pulled only from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
	b. Average current serious penalty in private sector (26-100 workers)	\$873.70	+/-25% of \$2,263.31	State Plan data is pulled only from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
	c. Average current serious penalty in private sector (101-250 workers)	\$1,718.01	+/-25% of \$3,108.46	State Plan data is pulled only from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$2,331.75	+/-25% of \$3,796.75	State Plan data is pulled only from OIS. Further review level is based on a one-year national rate, pulled only from OIS.

Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report
FY 2015 Virginia Occupational Safety and Health Program Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
9	Percent in compliance	S: 41.26%	+/-20% of S: 28.47%	State Plan data is pulled only from OIS.
		H: 47.57%	+/-20% of H: 33.58%	Further review level is based on a one-year national rate, pulled only from OIS.
10	Percent of work-related fatalities responded to in one workday	100%	100%	State Plan data is pulled only from OIS. Further review level is fixed for every State Plan.
11	Average lapse time	S: 34.46	+/-20% of S: 42.78	State Plan data is pulled only from OIS.
		H: 30.94	+/-20% of H: 53.48	Further review level is based on a one-year national rate, pulled only from OIS.
12	Percent penalty retained	53.80%	+/-15% of 67.96%	State Plan data is pulled only from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
13	Percent of initial inspections with worker walk around representation or worker interview	99.30%	100%	State Plan data is pulled only from OIS. Further review level is fixed for every State Plan.
14	Percent of 11(c) investigations completed within 90 days	36%	100%	State Plan data is pulled from WebIMIS. Further review level is fixed for every State Plan.

Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report
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SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
15	Percent of 11(c) complaints that are meritorious	0%	+/-20% of 24%	State Plan data is pulled from WebIMIS. Further review level is based on a three-year national average pulled from WebIMIS.
16	Average number of calendar days to complete an 11(c) investigation	137	90	State Plan data is pulled from WebIMIS. Further review level is fixed for every State Plan.
17	Percent of enforcement presence	1.90%	+/-25% of 1.35%	State Plan data is pulled only from OIS. Further review level is fixed for every State Plan.