

FY 2016 Follow-up Federal Annual Monitoring and Evaluation (FAME) Report

Virgin Islands Division of Occupational Safety and Health (VIDOSH)



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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's activities for Fiscal Year (FY) 2016, and its progress in resolving outstanding findings and recommendations from previous FAME reports, with a focus on the FY 2015 Comprehensive FAME Report.

Although some progress was made in FY 2016 – VIDOSH met its inspection goals and the 23(g) consultation program became operational – VIDOSH continues to fall short when 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, obtain abatement for cited hazards, and establish an enforcement presence in the Virgin Islands (VI).

VIDOSH's programmatic issues have been outstanding for more than a decade, and it is OSHA's position that the program's ineffectiveness stems from the administration and management of the program. Through monitoring of the State Plan, OSHA has documented VIDOSH's continued inability to improve program performance with issues dating back to the withdrawal of its private sector portion of the plan in 2003.

Due to VIDOSH's history of unsatisfactory progress and performance, on October 1, 2015, the VI State Plan was designated as a high-risk grantee in accordance with 2 Code of Federal Regulations (CFR) 200.207. The FY 2016 23(g) grant award letter identified three mandatory grant activities (inspection goals, abatement, and submitting certification documentation) and deadlines to be completed, on schedule, during the FY 2016 performance period. In FY 2016, VIDOSH only completed one of its three mandatory activities (inspection goals).

The most serious issue with mandatory activity is VIDOSH continuing to not effectively address the number of cases with open abatement. Not obtaining abatement of identified hazards puts VI state and local government workers at risk of injury or even death. The Region has provided clear guidance, assistance, and direction to VIDOSH to utilize strategies such as conducting follow-up inspections, issuing "failure-to-abate" (FTA) citations, and implementing the provisions of 29 CR 1903 to ensure the abatement of cited hazards. However, despite support and guidance from OSHA, VIDOSH's program management does not ensure that performance and productivity is achieved timely or that cited hazards are abated.

During the FY 2016 performance period, VIDOSH began conducting some follow-up inspections, but continued to accept final abatement as statements from employers (for example: equipment will be installed) or blank training records. This practice is unacceptable and continues to put VI state and local government workers' health and safety in danger by not focusing on the need for abatement.

In addition, VIDOSH continues to not issue citations in a timely manner and the majority of its case files are closed incorrectly. The VI State Plan's safety and health citation lapse time

continues to be significantly higher than the national average. Of the 85 inspections conducted during FY 2016, more than half (47) were conducted during the 3rd and 4th quarter of the fiscal year. Only 14 (30%) of the 47 case files were closed and available for OSHA to review for this evaluation.

In addition, VIDOSH continues to be unresponsive and untimely regarding their intent to adopt and promulgate applicable Federal Program Changes (FPCs) and/or federal standards. At the end of the FY 2016 performance period, VIDOSH responded late and/or had not promulgated 29 FPCs and federal standards since 2012. VIDOSH must be responsive and adopt and/or promulgate applicable FPCs and federal standards within the required timeframes to have an effective program.

VIDOSH's 23(g) consultation program finally became operational during the performance period; however, following the one consultation that VIDOSH conducted, the written report to the employer (required to be issued within 20 calendar days of the site visit) was issued five and a half months late.

Although OSHA approved VIDOSH's FY 2017 State Plan 23(g) application, due to the majority of the FY 2016 mandatory activities not being met, on October 1, 2016, the VI State Plan was again designated as a high-risk grantee. A fourth mandatory activity (citation lapse time) was added that VIDOSH must successfully complete during the FY 2017 performance period. To be considered for removal of the high-risk grantee designation, VIDOSH must complete all four mandatory activities no later than September 30, 2017. As of the end of the second quarter of FY 2017, VIDOSH made improvement in three of its four mandatory activities. OSHA will continue to closely monitor VIDOSH's performance over the remaining two quarters of FY 2017.

B. State Plan Introduction

Historical Background:

The Virgin Islands State Plan was initially approved on August 31, 1973, completed all of the 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. Effective April 17, 1984, the Virgin Islands State plan was granted final approval, and OSHA relinquished federal enforcement authority (49 FR 16766). The Virgin Islands' Department of Labor (VIDOL) is 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 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 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 was 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 OSHA resumed full jurisdiction over private sector employment in the Virgin Islands. 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.

Current Background:

The Virgin Islands State Plan is currently administered by VIDOSH which is part of VIDOL. VIDOL Commissioner Catherine Hendry oversees VIDOSH which has offices on St. Croix and St. Thomas. These offices cover all safety and health enforcement and consultation activities for state and local government workers in the Virgin Islands. 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 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 Commission as is the case in the federal program.

The table below shows VIDOSH’s funding history over the past five years:

VIDOSH’s FY 2012-2016 Funding History						
Fiscal Year	(\$) Federal Award	(\$)* State Match	(\$) 100% State Funds	(\$) Total Funding	% of State Plan Contribution	Deobligated Funds
2016	\$195,700	0	\$504,092	\$699,792	72%	\$39,140
2015	\$195,700	0	\$504,092	\$699,792	72%	N/A
2014	\$194,800	0	\$463,637	\$658,437	72%	N/A
2013	\$193,700	\$2,100	\$422,990	\$616,690	69%	N/A
2012	\$202,100	\$2,100	\$421,387	\$625,587	68%	N/A

*An agreement was reached on July 1, 2003 between OSHA and the Virgin Islands that 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.

VIDOSH allocated two safety compliance officers, one health compliance officer, and one consultant in their FY 2016 grant application. As of June 24, 2016, VIDOSH hired a consultant who completed one consultation visit for FY 2016. As of July 31, 2016, VIDOSH had one safety compliance officer, one health compliance officer, and one consultant on board.

C. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2016 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 VI State Plan, OSHA reviewed a sample of select case files to determine if these were isolated instances or if this represented a trend that required further action.

OSHA’s case file review focused on the 3rd and 4th quarter of FY 2016 to determine if VIDOSH made progress on findings from the FY 2015 FAME report. VIDOSH conducted 47 inspections during the 3rd and 4th quarter of FY 2016 and only 14 (30%) of the 47 case files were closed and available for OSHA to review for this evaluation. In addition, OSHA also reviewed one consultation case file. OSHA requested that VIDOSH send 15 case files to the Regional State Plan Manager for review, and the case files were reviewed on February 28-29, 2017. The 15 case files are broken down as follows:

- Two safety case files (one follow-up, one programmed planned)
- Twelve (12) health case files (two follow-up, nine complaints, one programmed-related)
- One consultation case file

D. Findings and Observations

VIDOSH made some progress in addressing the previous 13 findings and two observations from the FY 2015 FAME report. This follow-up FAME report contains seven continued findings, one new finding, and six observations. One finding was completed, one observation was continued, and five findings from last year’s FAME were converted to observations. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations

subject to continued monitoring. Appendix C describes the status of each FY 2015 recommendation in detail.

Completed FY 2015 Findings

During the FY 2016 performance period, VIDOSH addressed one finding from last year's FAME report. The completed finding was:

- **State and Local Government On-Site Consultation Program:** The VIDOSH consultant was hired, completed the required training, and conducted one consultation visit.

Continued FY 2015 Findings

OSHA determined that seven findings from the FY 2015 FAME report were not sufficiently addressed. The continued findings are:

- **State Plan Developmental Steps for Certification Package:** An agreed-upon timeline was established for the completion of the developmental steps needed to prepare a certification package for OSHA approval, which includes mandatory sections, appendices, and amendments. VIDOSH has not submitted all of the information needed (three sections) for certification package review in accordance with the timeline.
- **OSHA Information System (OIS):** Enforcement case files are not closed in a timely manner in OIS. During the 3rd and 4th quarter of FY 2016, only 14 of the 47 case files (30%) were closed.
- **Lapse Time:** VIDOSH's lapse time continues to be above the national average. In FY 2016, VIDOSH's safety lapse time was 77.77 days and its health lapse time was 108.43 days.
- **Notification to the Complainant:** Five of the nine (56%) complaint case files lacked documentation that the complainant had been notified of inspection results.
- **Adequate Verification or Evidence of Abatement:** VIDOSH accepted abatement responses from employers and closed the cases without adequate evidence in three of the nine (33%) complaint case files reviewed.
- **Overdue Abatement:** An agreed-upon a timeline was established to address abatement. As of September 30, 2016, VIDOSH had 14 case files with citations issued that have open abatement of cited hazards. Four of these inspections had open abatement over 90 days, seven had open abatement over 60 days, and the remaining three had open abatement over 50 days.
- **Adoption of and Promulgation of Federal Program Changes and Federal Standards:** At the end of the FY 2016 performance period, VIDOSH responded late and/or had not promulgated 29 FPCs and federal standards since 2012.

New FY 2016 Finding

- **Consultation Case File Procedure:** Review of the one consultation case file revealed that the written report to the employer was issued more than 20 calendar days after the closing conference date.

Additional details of the findings and recommendations can be found in Appendix A of this report.

FY 2016 Observations

One observation is being continued and five findings from last year's comprehensive FAME report were converted to observations. Additional details can be found in Appendix B of this report.

II. Assessment of State Plan Performance

A. Major New Issues

As stated previously, due to the on-going history of unsatisfactory program progress and performance, OSHA included an addendum to the FY 2016 23(g) grant award letter designating VIDOSH as a high-risk grantee for FY 2016. The addendum identified three core mandatory grant activities and supplementing deadlines which were to be completed, on schedule, during the FY 2016 performance period. All progress on these mandatory activities, along with supportive documentation, was to be reported by VIDOSH to OSHA Region 2. To be considered for removal of the high-risk grantee designation, VIDOSH had to successfully complete the three mandatory activities by September 30, 2016. The three mandatory activities were:

- Meeting the inspection goals (met)
- Meeting the abatement schedule (not met)
- Revising the developmental steps for draft certification package submission (not met)

In accordance with 2 CFR 200.338, OSHA withholds cash payments by putting a hold on VIDOSH's Payment Management System (PMS) account. Pending review of each specific mandatory activity, along with the related supportive documentation and the completion schedule, OSHA Region 2 notifies VIDOSH if the activity has been met satisfactorily on schedule and approves payment.

In late September 2016, OSHA approved the VI State Plan's FY 2017 grant application; however, since VIDOSH did not complete two of the three mandatory core activities, OSHA again designated the VI State Plan as a high-risk grantee. The FY 2017 grant award letter addendum includes the previous three mandatory core activities along with an additional activity for lapse time.

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

(Source: FY 2016 Annual Performance Plan and FY 2016 State OSHA Annual Report)

This section focuses on VIDOSH's progress towards meeting the targeted performance goals as outlined in its FY 2016 Annual Performance Plan (APP) which consisted of two strategic and performance goals. VIDOSH requested an extension to its Five-Year Strategic Plan which OSHA approved.

Strategic Goal #1-1

Improve workplace safety and health for all state and local government 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.

Status: In FY 2016, VIDOSH conducted 85 state and local government agency inspections, issued a total of 272 violations, conducted one consultation visit, and participated in eight outreach sessions.

VIDOSH has not provided OSHA with workers compensation data; therefore, OSHA cannot assess their progress in meeting this goal. OSHA is working with VIDOSH on developing a new five year strategic plan for FY 2018-FY 2022 that is tied to data that can be made readily available for tracking progress.

Strategic Goal #1-2

Improve workplace safety and health for state and local government 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 related 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.

Status: During FY 2016, VIDOSH conducted 58 health inspections.

VIDOSH has not provided OSHA with workers compensation data; therefore, OSHA cannot assess their progress in meeting this goal.

Strategic Goal #2.0

Improve the workplace safety and health for all state and local government 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 state and local government agencies.

Status: VIDOSH reported participating in 12 outreach sessions. VIDOSH has conducted three training and educational sessions for state and local government agencies and workers.

VIDOSH's consultation program was not operational during most of FY 2016 and therefore, VIDOSH could not provide OSHA with the number of SHMS programs within state and local government agencies. OSHA cannot assess their progress in meeting this goal. VIDOSH managed to hire a consultant prior to the end of FY 2016 and has been conducting visits. SHMS program data will be provided to OSHA for FY 2017.

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

(Source: Appendix D SAMM Report, 11-14-2016)

VIDOSH conducted 85 inspections in FY 2016 which was 100% of its inspection goal. However, it is important to note that during the 3rd and 4th quarter of FY 2016, VIDOSH conducted 47 inspections and only 14 (30%) were closed and available for review. In FY 2016, Safety staff conducted 27 inspections (45% of the goal) and industrial hygiene staff conducted 58 inspections (232% of their goal) (SAMM #7). VIDOSH's average for serious/willful/repeat (S/W/R) violations per inspection was 2.52 – substantially above the national average of 1.87. VIDOSH's average for other-than-serious violations per inspection was 1.17 – slightly above the national average of .99 (SAMM #5). In addition, VIDOSH's average lapse time (or the average number of calendar days from opening conference to citation issuance) increased from 52.04 days in FY 2015 to 77.77 days in FY 2016, and continues to be above the one year national rate of 45.16 days. VIDOSH's health lapse time also increased from 99.20 days in FY 2015 to 108.43 days in FY 2016, also above the one-year national rate of 57.28 days (SAMM #11).

III. Assessment of State Plan Corrective Actions

Thirteen findings and two observations were identified in the most recent comprehensive FAME report. In FY 2016, VIDOSH completed one finding and five findings were converted to observations. OSHA determined that one of the two observations would continue to be monitored.

FY 2015 Findings

Finding 15-01 (14-11)

The narrative submitted by VIDOSH lacks the mandatory information needed to complete the draft certification package within the agreed-upon timeline. The certification package will appropriately reflect the current limited state and local government scope.

Status Finding 15-01 (14-11)

An agreed-upon timeline was established for the completion of the developmental steps needed to prepare a certification package for OSHA approval, which includes mandatory sections, appendices, and amendments. VIDOSH has not submitted all of the information needed for certification package review in accordance with the timeline. This finding remains open.

Finding 15-02 (14-12)

During FY 2015, VIDOSH produced 25 closed enforcement case files for review which only represented 25% of the total 99 inspections conducted for the fiscal year. VIDOSH did not utilize OIS system reports to ensure proper monitoring and closure of case files.

Status Finding 15-02 (14-12)

VIDOSH conducted 47 inspections in the 3rd and 4th quarter of FY 2016. Only 14 (30%) of these were closed and available for review. VIDOSH continues to not utilize OIS system reports to ensure proper monitoring and closure of case files. This finding remains open.

Finding 15-03 (14-06)

In FY 2015, VIDOSH's average lapse time for citations was calculated at 52.04 days for safety – a slight decrease from 52.07 days in FY 2014, but still above the one-year OIS national rate of 42.78; the health lapse time was calculated at 99.20 days – a slight decrease from 106.58 days in FY 2014, but still above the one-year OIS national rate of 53.48.

Status Finding 15-03 (14-06)

VIDOSH's average lapse time for citations increased to 77.77 days in FY 2016 and continues to be above the one-year OIS national rate of 45.16 days. VIDOSH's health lapse time also increased to 108.43 days in FY 2016 and again above the one-year OIS national rate of 57.28 days. This finding remains open.

Finding 15-04 (14-01)

All eight (100%) complaint case files lacked documentation that the complainant had been notified of the inspection results.

Status Finding 15-04 (14-01)

Five of the nine (56%) complaint case files reviewed lacked documentation that the complainant had been notified of the results of the inspection. This finding remains open.

Finding 15-05

Violations in eight of the 20 (60%) case files reviewed were not classified correctly. Examples include: citing other-than serious for not providing and mounting fire extinguishers with burns/smoke inhalation listed as the injury, assigning low severity when entrapment, smoke inhalation, burns, and fractures are identified as likely outcomes of the exposure.

Status Finding 15-05

Violations were properly classified in all three (100%) of the case files with violations reviewed. Since only three of the 14 (21%) case files had violations, OSHA converted this finding to an observation (FY 16-OB-02)

Finding 15-06

VIDOSH accepted abatement responses from employers and closed the cases without adequate evidence in 11 of the 20 (55%) case files reviewed.

Status Finding 15-06

VIDOSH accepted abatement responses from employers and closed the cases without adequate evidence in three of the nine (33%) case files reviewed. The following issues were found while reviewing the three case files:

- Employer provided abatement documentation that consisted of a sample program and a blank training record. The VIDOSH director accepted this as abatement and closed the case on 7/6/16. (Note: A follow-up inspection had been conducted 6/15/16 and the violations were not abated at that time.) VIDOSH should have issued a Failure-to-Abate citation.
- Employer submitted abatement on 2/26/16 stating that a new water heater would be acquired. A follow-up inspection was conducted on 6/15/16; the case file diary sheet noted that abatement was collected. On 6/16/16 the employer provided a quote for the new water heater (one day after the follow-up was conducted and marked abated). Final abatement was completed and entered in OIS on 9/8/16. VIDOSH should have issued a Failure-to-Abate citation.
- Employer submitted abatement stating workers were removed from the premises and the hazard. The VIDOSH director accepted this as abatement on 6/13/16. A follow-up was conducted four days later at the same location as the initial inspection and the same workers were interviewed during the follow-up inspection. Since it appears the workers returned to the location, there was no documentation in the case file noting what the employer did to abate the hazards.

These claims of abatement accepted by VIDOSH are inadequate and continue to put VI state and local government workers' health and safety in danger. This finding remains open.

Finding 15-07 (14-07)

Thirty-one (31) of the 56 (55%) inspections with citations issued have open abatement of cited hazards. Not protecting workers from identified hazards by verifying abatement has been an on-going problem for VIDOSH.

Status Finding 15-07 (14-07)

As per the FY 2016 23(g) grant addendum, a timeline was established for the completion of abatement. As of September 30, 2016, VIDOSH had 14 case files where citations were issued that have open abatement of cited hazards. Four of these inspections had open abatement over 90 days, seven had open abatement over 60 days and the remaining three had open abatement over 50 days. This finding remains open.

Finding 15-08 (14-OB-02)

All 22 of the case files (100%) with union representation lacked documentation that the union was notified of the inspection results and provided with a copy of the citations.

Status Finding 15-08 (14-OB-02)

Twelve of the 14 case files reviewed had unions. Of those 12 case files, three (25%) lacked documentation that the union was notified of the inspection results and if citations were issued, were provided with a copy of the citations. OSHA converted this finding to an observation (FY 2016-OB-03).

Finding 15-09

VIDOSH did not schedule or conduct an employer requested informal conference. The contested violation remains on the employer's official record.

Status Finding 15-09

Case files reviewed did not contain any employer requested informal conferences. Due to no employers requesting an informal conference, OSHA converted this finding to an observation and will monitor this issue during the next two FAME cycles (FY 2016-OB-04)

Finding 15-10 (14-13)

VIDOSH's adoption and/or promulgation of federal standards and FPCs are not timely. During FY 2015, 15 FPCs required a response as to whether VIDOSH would adopt. A late response was received for 12 of the 15 (80%) FPCs. Responses for two remain outstanding. The notice of intent to adopt was received past the response due date for all five (100%) of the federal standards issued during FY 2015.

Status Finding 15-10 (14-13)

VIDOSH's adoption and promulgation of federal standards and FPCs is not timely. At the end of the FY 2016 performance period, VIDOSH responded late and/or had not promulgated 29 FPCs and federal standards since 2012. This finding remains open.

Finding 15-11

OSHA's New York Regional Office received a Complaint About State Program Administration (CASPA) from a worker regarding alleged workplace retaliation. VIDOSH did not conduct an investigation into the allegations, and therefore did not follow policies and procedures in accordance with its Whistleblower Investigation Manual.

Status Finding 15-11

There were no new allegations made during this performance period; therefore, OSHA converted this finding to an observation and will monitor this issue during the next two FAME cycles.

Finding 15-12

VIDOSH responded untimely to the conclusions/recommendations regarding the CASPA. A response was due May 2015; VIDOSH requested an extension which was granted by the Region. The new response date was August 2015. The Region received an inadequate response six months later in February 2016.

Status Finding 15-12

There were no new CASPAs submitted during this performance period; therefore, OSHA converted this finding to an observation and will monitor this issue during the next two FAME cycles (FY 2016-OB-06).

Finding 15-13 (14-09)

The VIDOSH state and local government consultation program is not operational.

Status Finding 15-13 (14-09)

The consultant position was filled during FY 2016 and one consultation visit was conducted. This item has been completed.

With regard to Finding 15-13, review of the one consultation visit conducted in FY 2016 revealed that, contrary to the VIDOSH Consultation Policies and Procedures Manual (CPPM), the written report was issued to the employer more than 20 calendar days after the closing conference. This issue has been identified in a new finding in this report (Finding FY 16-08)

FY 2015 Observations**Observation 15-01 (Finding 14-04)**

In four of the 20 (20%) case files reviewed with violations, there was inadequate evidence documented to support the violation. Examples of missing documentation includes: issuing a citation for no emergency action plan without documenting what standard requires the emergency action plan under CPL 2-1.037 (Compliance Policy for Emergency Action Plans and Fire Prevention Plans); the recordkeeping violations directive (CPL 02-00-135) was not followed in one of the case files; and documentation was lacking as to whether a recordable injury or illness had occurred. One of the case files reviewed contained repeat violations. The citation did not contain the repeat paragraph and there was no documentation in the case file referring to the previous inspection for repeat basis.

Status Observation 15-01 (Finding 14-04)

Adequate evidence to support violations was found in all three (100%) of the case files with violations reviewed. Since only three of the 14 (21%) case files had violations, this observation will be continued.

Observation 15-02

Unions were present in 22 of the 25 (88%) case files reviewed. Union representatives were involved in the opening conference in all but four of the case files, and were involved in the walkaround and closing conference in 14 of the case files. Documentation was lacking in 36% (eight of 22) of the case files reviewed as to why union representatives were not involved in the walkaround and closing conferences during inspections.

Status Observation 15-02

Documentation of union representatives or employee representatives being involved in the inspection process was in all 14 (100%) of the case files reviewed. This observation is closed.

Appendix A – New and Continued Findings and Recommendations
FY 2016 VIDOSH State Plan Follow-up FAME Report

FY 2016-#	Finding	Recommendation	FY 2015-#
FY 2016-01	<p><i>State Plan Developmental Steps</i> An agreed-upon timeline was established for the completion of the developmental steps needed to prepare a certification package for OSHA approval, which includes mandatory sections, appendices, and amendments. VIDOSH has not submitted all of the information needed (three sections) for certification package review in accordance with the timeline.</p>	<p>VIDOSH must submit all mandatory information needed for completion of the draft certification package to reflect its State Plan’s limited state and local government scope within the agreed-upon timeline.</p>	FY 2015-01
FY 2016-02	<p><i>OSHA Information System (OIS)</i> VIDOSH conducted 47 inspections during the 3rd and 4th quarter of FY 2016. Fourteen (30%) of these case files were closed and available for review. VIDOSH did not utilize OIS system reports to ensure proper monitoring and closure of case files.</p>	<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 VIDOSH’s Field Operations Manual (FOM).</p>	FY 2015-02
FY 2016-03	<p><i>Lapse Time</i> In FY 2016, VIDOSH’s average lapse time for citations was calculated at 77.77 days for safety, an increase from 52.04 days in FY 2015, but still above the one year OIS national rate of 45.16 days; the health lapse time was calculated at 108.43 days, an increase from 99.20 days in FY 2015, but still above the one year OIS national rate of 57.28 days.</p>	<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 VIDOSH’s FOM.</p>	FY 2015-03

Appendix A – New and Continued Findings and Recommendations
FY 2016 VIDOSH State Plan Follow-up FAME Report

FY 2016-#	Finding	Recommendation	FY 2015-#
FY 2016-04	<p><i>Notification to the Complainant</i> Five of the nine (56%) complaint case files reviewed lacked documentation that the complainant had been notified of the results of the inspection.</p>	<p>VIDOSH must ensure case files include all required forms and all letters or communications related to the complaint in accordance with VIDOSH’s FOM.</p>	FY 2015-04
FY 2016-05	<p><i>Adequate Verification or Evidence of Abatement</i> VIDOSH accepted abatement responses from employers and closed the cases without adequate evidence in three of the nine (33%) complaint case files reviewed. VIDOSH is accepting statements from employers such as a water heater will be required, blank training records and employees being removed from the premises/hazard but were on the premises four days later without documentation of how the employer abated the hazards.</p>	<p>VIDOSH must utilize strategies such as follow-up inspections, FTA citations, and 29 CFR 1903.19 provisions to ensure that abatement of cited hazards is achieved in a timely manner, and improve case file documentation of abatement.</p>	FY 2015-06
FY 2016-06	<p><i>Overdue Abatement</i> As per the FY 2016 23(g) Grant Addendum, a timeline was established for the completion of abatement. As of September 30, 2016, VIDOSH had 14 case files where citations were issued that have open abatement of cited hazards. Four of these inspections had open abatement over 90 days, seven had open abatement over 60 days and the remaining three had open abatement over 50 days. Not protecting workers from identified hazards by verifying abatement has been an on-going, continuous trend by VIDOSH for years.</p>	<p>VIDOSH must utilize strategies such as follow-up inspections, FTA citations, and 29 CFR 1903.19 provisions to ensure that abatement of cited hazards is achieved in a timely manner, and improve case file documentation of abatement.</p>	FY 2015-07

Appendix A – New and Continued Findings and Recommendations
FY 2016 VIDOSH State Plan Follow-up FAME Report

FY 2016-#	Finding	Recommendation	FY 2015-#
FY 2016-07	<p><i>Federal Program Changes (FPCs) and Federal Standards</i> VIDOSH's adoption and/or promulgation of federal standards and FPCs are not timely. At the end of the FY 2016 performance period, VIDOSH responded late and/or had not promulgated 29 FPCs and federal standards since 2012.</p>	<p>VIDOSH must respond to all standards and FPCs within the established timeframe.</p>	FY 2015-10
FY 2016-08	<p><i>Consultation Case File Procedure</i> All (100%) consultation case files reviewed showed that the written report to the employer was issued more than 20 calendar days after the closing conference date.</p>	<p>VIDOSH must ensure consultation case files are completed in accordance with the VIDOSH Consultation Policies and Procedures Manual (CPPM).</p>	New

Appendix B – Observations Subject to New and Continued Monitoring
FY 2016 VIDOSH State Plan Follow-up FAME Report

Observation # FY 2016-OB-#	Observation# FY 2015-OB-#	Observation	Federal Monitoring Plan	Current Status
FY 2016-OB-01	FY 2015-OB-01	<i>Inadequate Evidence to Support Violations</i> Adequate evidence to support violations was found in all three (100%) of the case files with violations reviewed. Since only three of the 14 (21%) case files had violations, this observation will be continued.	During next year’s FAME, a sample of case files will be reviewed to determine trends.	Continued
	FY 2015-OB-02	<i>Worker Involvement during the Inspection Process</i> Documentation of union representatives or worker representatives being involved in the inspection process was in all 14 (100%) of the case files reviewed.		Closed
FY 2016-OB-02	FY 2015-05	<i>Appropriateness of Violation Classification</i> Violations were properly classified in all three (100%) of the case files with violations reviewed. Since only three of the 14 (21%) case files had violations, OSHA converted this finding to an observation.	During next year’s FAME, a sample of case files will be reviewed to determine trends.	New
FY 2016-OB-03	FY 2015-08	<i>Worker Notification of Inspection Results</i> Twelve of the 14 case files reviewed had unions. Of those 12 case files, three (25%) lacked documentation that the union was notified of the inspection results and if citations were issued, were provided with a copy of the citations.	During next year’s FAME, a sample of case files will be reviewed to determine trends.	New

Appendix B – Observations Subject to New and Continued Monitoring
FY 2016 VIDOSH State Plan Follow-up FAME Report

Observation # FY 2016-OB-#	Observation# FY 2015-OB-#	Observation	Federal Monitoring Plan	Current Status
FY 2016-OB-04	FY 2015-09	<i>Informal Conferences</i> Due to no employers requesting an informal conference during this performance period; therefore, OSHA will monitor this issue during the next two FAME cycles.	During next year’s FAME, a sample of case files will be reviewed to determine trends.	New
FY 2016-OB-05	FY 2015-11	<i>Workplace Retaliation</i> There were no new allegations made during this performance period; therefore, OSHA will monitor the issue during the next two FAME cycles.	During next year’s FAME, a sample of case files will be reviewed to determine trends.	New
FY 2016-OB-06	FY 2015-12	<i>Complaint About State Program Administration (CASPA)</i> There were no new CASPAs submitted during this performance period; therefore, OSHA will monitor the issue during the next two FAME cycles.	During next year’s FAME, a sample of case files will be reviewed to determine trends.	New

Appendix C - Status of FY 2015 Findings and Recommendations

FY 2016 VIDOSH State Plan Follow-up FAME Report

FY 2015-#	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status and Date
FY 2015-01	<p><i>State Plan Developmental Steps</i></p> <p>The narrative submitted by VIDOSH lacks the mandatory information needed to complete the draft certification package within the agreed-upon timeline. The certification package will appropriately reflect the VI State Plan's current limited state and local government scope.</p>	<p>VIDOSH must submit the mandatory required appendices with amendments reflecting the State Plan's limited state and local government scope by the due dates established in the agreed-upon timeline.</p>	<p>To obtain certification, VIDOSH will submit the required appendices to Region 2 to reflect its limited state and local government scope per the established timeline. The timeline was established for the completion of the developmental steps needed to prepare a certification package for OSHA approval, which includes mandatory sections, appendices, and amendments.</p>	Not Completed	Open As of September 30, 2017
FY 2015-02	<p><i>OSHA Information System (OIS)</i></p> <p>During FY 2015, VIDOSH produced 25 closed enforcement case files for review. This represents only 25% of the total 99 inspections conducted for the fiscal year. VIDOSH did not utilize OIS system reports to ensure proper monitoring and closure of case files.</p>	<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).</p>	<p>OIS reports will be generated and distributed to VIDOSH staff on a weekly basis, and the VIDOSH director will utilize these reports to monitor the work and ensure case files are closed in a timely manner.</p>	Not Completed	Open As of September 30, 2017

Appendix C - Status of FY 2015 Findings and Recommendations

FY 2016 VIDOSH State Plan Follow-up FAME Report

FY 2015-#	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status and Date
FY 2015-03	<p><i>Lapse Time</i> In FY 2015, VIDOSH's average lapse time for citations was calculated at 52.04 days for safety which is above the one year OIS national rate of 42.78; the health lapse time was calculated at 99.20 days which is above the one year OIS national rate of 53.48.</p>	<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).</p>	<p>OIS reports will be generated and distributed to VIDOSH staff on a weekly basis, and the VIDOSH director will utilize these reports to monitor the work and ensure case files are closed in a timely manner.</p>	Not Completed	Open As of September 30, 2017
FY 2015-04	<p><i>Notification to the Complainant</i> All eight (100%) complaint case files lacked documentation that the complainant had been notified of the results of the inspection.</p>	<p>VIDOSH must ensure case files include all required forms and all letters or communications related to the complaint in accordance with VIDOSH's FOM.</p>	<p>During case file reviews, the VIDOSH director will be responsible for ensuring that all required forms/letters or communications relating to a complaint are properly documented in the case file. In addition, VIDOSH staff will receive training regarding notification requirements following an inspection.</p>	Not Completed	Open As of September 30, 2017

Appendix C - Status of FY 2015 Findings and Recommendations

FY 2016 VIDOSH State Plan Follow-up FAME Report

FY 2015-#	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status and Date
FY 2015-05	<p><i>Appropriateness of Violation Classification</i> Violations in eight of the 20 (60%) case files reviewed were not classified correctly. Examples include: citing other-than serious for not providing and mounting fire extinguishers with burns/smoke inhalation listed as the injury, assigning low severity when entrapment, smoke inhalation, burns, and fractures are identified as likely outcomes of the exposure.</p>	VIDOSH needs to ensure that violations are properly classified in accordance with the FOM.	During case file reviews the VIDOSH director will be responsible for ensuring that violations are properly classified. In addition, VIDOSH staff will receive training regarding appropriate classification/severity/probability of violations.	Not Completed	Converted to an observation
FY 2015-06	<p><i>Adequate Verification or Evidence of Abatement</i> VIDOSH accepted abatement responses from employers and closed the cases without adequate evidence in 11 of the 20 (55%) case files reviewed. VIDOSH is accepting statements from employers such as training will be scheduled or the draft program is being reviewed as final abatement. VIDOSH is not obtaining the final verification that the training has been completed and/or the program has been finalized.</p>	VIDOSH must utilize strategies such as follow-up inspections, FTA citations, and 29 CFR 1903.19 provisions to ensure that abatement of cited hazards is achieved in a timely manner, and improve case file documentation of abatement.	OIS reports will be generated and distributed to VIDOSH staff on a weekly basis, and the VIDOSH director will utilize these reports to monitor the work and ensure that adequate verification/evidence of abatement is obtained from employers. Follow-up inspections will be conducted and FTAs will be issued when abatement is not received.	Not Completed	Open As of September 30, 2017

Appendix C - Status of FY 2015 Findings and Recommendations

FY 2016 VIDOSH State Plan Follow-up FAME Report

FY 2015-#	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status and Date
FY 2015-07	<i>Overdue Abatement</i> Thirty-one (31) of the 56 (55%) inspections with citations issued 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 is achieved in a timely manner, and improve case file documentation of abatement.	OIS reports will be generated and distributed to VIDOSH staff on a weekly basis, and the VIDOSH director will utilize these reports to monitor the work and ensure that adequate verification/evidence of abatement is obtained from employers. Follow-up inspections will be conducted and FTAs will be issued when abatement is not received. Case files with overdue abatement will be channeled to the VIDOL commissioner for further action.	Not Completed	Open As of September 30, 2017
FY 2015-08	<i>Worker Notification of Inspection Results</i> All 22 (100%) of the case files reviewed with union representation lacked documentation that the union was notified of the inspection results and given a copy of the citations.	VIDOSH must ensure that worker representatives are provided with a copy of the citation and notified of the inspection results.	During case file reviews, the VIDOSH director will be responsible for ensuring that a copy of the citation and notification of the inspection results is provided to worker representatives. In addition, VIDOSH staff will receive training regarding proper communication and providing relevant information to worker representatives.	Not Completed	Converted to an observation

Appendix C - Status of FY 2015 Findings and Recommendations

FY 2016 VIDOSH State Plan Follow-up FAME Report

FY 2015-#	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status and Date
FY 2015-09	<i>Informal Conferences</i> VIDOSH did not schedule or conduct an employer requested informal conference resulting in contested violations remaining on employers' official records.	VIDOSH must ensure that when requested, informal conferences are conducted in a timely manner.	The VIDOSH director will be responsible for ensuring that any requested informal conference is conducted within the 15 day time frame established in the FOM.	September 30, 2016	Converted to an observation
FY 2015-10	<i>Federal Program Changes (FPCs) and Federal Standards</i> VIDOSH's adoption and/or promulgation of federal standards and FPCs are not timely. During FY 2015, 15 FPCs required a response as to whether VIDOSH would adopt. A late response was received for 12 of the 15 (80%) FPCs.	VIDOSH needs to respond to all standards and FPCs within the established timeframe.	The VIDOSH director will respond timely to all standards and FPCs within the established timeframe.	Not Completed	Open As of September 30, 2017

Appendix C - Status of FY 2015 Findings and Recommendations

FY 2016 VIDOSH State Plan Follow-up FAME Report

FY 2015-#	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status and Date
FY 2015-11	<p><i>Workplace Retaliation</i> The New York Regional Office received a Complaint About State Program Administration (CASPA) from a worker alleging workplace retaliation. VIDOSH did not conduct an investigation into the allegations; therefore, policies and procedures in accordance with the Whistleblower Investigation Manual were not followed.</p>	<p>VIDOSH must ensure that the Whistleblower Investigation Manual, adopted in March 2012, is followed during investigation of all workplace retaliation allegations.</p>	<p>VIDOSH will adhere to the Whistleblower Investigation Manual procedures during investigations of workplace retaliation allegations.</p>	September 30, 2016	Converted to an observation
FY 2015-12	<p><i>Complaint About State Program Administration (CASPA)</i> VIDOSH responded untimely to the conclusions/recommendations regarding the CASPA. A response was due in May 2015 and extended to August 2015. An inadequate response was provided by VIDOSH in February 2016.</p>	<p>VIDOSH must ensure a timely response is provided for CASPAs.</p>	<p>The VIDOSH director will respond timely to CASPAs.</p>	September 30, 2016	Converted to an observation

Appendix C - Status of FY 2015 Findings and Recommendations

FY 2016 VIDOSH State Plan Follow-up FAME Report

FY 2015-#	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status and Date
FY 2015-13	<p><i>State and Local Government On-Site Consultation Program</i></p> <p>The VIDOSH state and local government consultation program is not operational.</p>	<p>VIDOSH must ensure that its state and local government consultation program is fully operational and provides the necessary services to state and local government workplaces in the territory.</p>	<p>VIDOSH will ensure that its state and local consultation program is fully operational and provides the necessary services to state and local government workplaces in the territory. VIDOSH's consultant has conducted one consultation visit and has one more visit scheduled to be conducted before the end of the fiscal year.</p>	June 24, 2016	Closed

Appendix D – FY 2016 State Activity Mandated Measures (SAMM) Report
FY 2016 VIDOSH State Plan Follow-up FAME Report

FY 2016 is the first year since the transition from the NCR (OSHA’s legacy data system) began that all State Plan enforcement data has been captured in OSHA’s Information System (OIS). All State Plan and federal whistleblower data continues to be captured in OSHA’s WebIMIS System. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report and State Plan WebIMIS report run on November 14, 2016, as part of OSHA’s official end-of-year data runs. The further review levels for SAMMs 5, 8, 9, 11, 12, 15, and 17 have been negotiated to rely on a three-year national average. However, due to the recent transition to OIS, the further review levels for these SAMMs will rely on a one-year national average for one more year.

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Virgin Islands - VIDOSH			FY 2016	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	5.52	5	Further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	2.66	N/A	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)	0.33	1	Further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	0.17	N/A	This measure is for informational purposes only and is not a mandated measure.

Appendix D – FY 2016 State Activity Mandated Measures (SAMM) Report
FY 2016 VIDOSH State Plan Follow-up FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
3	Percent of complaints and referrals responded to within one workday (imminent danger)	N/A	100%	N/A – The State Plan did not receive any imminent danger complaints and referrals in FY 2016. Further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	Further review level is fixed for all State Plans.
5	Average number of violations per inspection with violations by violation type	SWRU: 2.52	+/- 20% of SWRU: 1.87	Further review level is based on a one-year national rate.
		Other: 1.17	+/- 20% of Other: .99	
6	Percent of total inspections in state and local government workplaces	100%	100%	Since this is a State and Local Government State Plan, all inspections are in state and local government workplaces.
7	Planned v. actual inspections – safety/health	S: 27	+/- 5% of S: 60	Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
		H: 58	+/- 5% of H: 25	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	N/A	+/- 25% of \$2,279.03	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate.

Appendix D – FY 2016 State Activity Mandated Measures (SAMM) Report
FY 2016 VIDOSH State Plan Follow-up FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
	a. Average current serious penalty in private sector (1-25 workers)	N/A	+/- 25% of \$1,558.96	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate.
	b. Average current serious penalty in private sector (26-100 workers)	N/A	+/- 25% of \$2,549.14	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate.
	c. Average current serious penalty in private sector (101-250 workers)	N/A	+/- 25% of \$3,494.20	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate.
	d. Average current serious penalty in private sector (greater than 250 workers)	N/A	+/- 25% of \$4,436.04	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate.
9	Percent in compliance	S: 11.11%	+/- 20% of S: 28.85%	Further review level is based on a one-year national rate.
		H: 31.91%	+/- 20% of H: 35.68%	
10	Percent of work-related fatalities responded to in one workday	N/A	100%	N/A – The State Plan did not have any work-related fatalities in FY 2016. Further review level is fixed for all State Plans.

Appendix D – FY 2016 State Activity Mandated Measures (SAMM) Report
FY 2016 VIDOSH State Plan Follow-up FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
11	Average lapse time	S: 77.77	+/- 20% of S: 45.16	Further review level is based on a one-year national rate.
		H: 108.43	+/- 20% of H: 57.28	
12	Percent penalty retained	100%	+/- 15% of 69.86%	Further review level is based on a one-year national rate.
13	Percent of initial inspections with worker walk around representation or worker interview	95.29%	100%	Further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	0%	100%	Further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	0%	+/- 20% of 24%	Further review level is based on a three-year national average.
16	Average number of calendar days to complete an 11(c) investigation	0	90	Further review level is fixed for all State Plans.
17	Percent of enforcement presence	N/A	+/- 25% of 1.26%	N/A – This is a State and Local Government State Plan and is not held to this SAMM. Further review level is based on a one-year national rate.