

Federal Annual Monitoring and Evaluation (FAME)

Indiana

October 1, 2008 to September 30, 2009

Report Prepared By:



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I. EXECUTIVE SUMMARY

A. SUMMARY OF THE REPORT

This report assessed the Indiana Department of Labor, Occupational Safety and Health program's (IOSH) progress toward achieving the performance goals established by their Federal Fiscal Year (FY) 2009 Annual Performance Plan and reviewed the effectiveness of programmatic areas related to enforcement activities during the period of October 1, 2008 to September 30, 2009.

The report documents a significant number of procedural and documentation deficiencies in the enforcement program which require improvement. The continuing lack of State funding support and proper infrastructure is also of concern and raises questions about the State's ability to effectively address these issues. Increased Federal oversight and technical assistance may be needed to improve Indiana's performance.

The Indiana State Plan is required by State law to be largely identical to the Federal OSHA program; they may not adopt more stringent requirements. Although there are many problems identified in the report, they are mostly ones of inadequate documentation and maintenance of records, including IMIS data. Accurate documentation is critical in determining the correct classification of violations and defending them during contest.

Indiana has had a long history of funding difficulties. The State has been unable to match available funds, has initiated funding reductions and has frequently not spent all of its awarded funds. The funding for the Indiana program has increased by less than 1 percent per year over the past 20 years. However for the first time in 10 years, in FY 2009 Indiana was able to expend all of its 23(g) funds and saw a 22% increase in the number of inspections conducted. The State has also experienced declining occupational injury/illness and fatality rates over the last five years, although the number of fatalities was slightly higher in 2008. The Indiana program has final approval status. Although Indiana maintains sufficient allocated staff to technically meet its compliance staffing benchmarks (47 safety/23 health), the State on-board staffing is significantly below those levels with only 23 safety and 18 health.

While issues with efficient data management still exist, improvement has been shown under the present administration. System operational complaints requiring assistance and review have lessened significantly. Staff members are now handling general issues previously presented for Federal activity. Increased employee training and assignment of responsibilities to specific individuals has aided in maintaining administrative support to understand and address most issues presented.

The State's investigative efforts as revealed through case file review supported adherence to information gathering and report preparation procedures in accident and significant case investigations while the majority of other files did not. Many files were organized poorly and inconsistently between disciplines and often did not contain documentation and/or records to adequately evaluate the appropriateness of investigation outcomes and actions taken or not taken.

Indiana continues to build its voluntary compliance programs with a reported 47 Voluntary Protection Program sites as of December 2009. At the same time, the IDOL is also engaged in other cooperative programs including four Partnerships and nine Alliances. The agency continues to enhance its focus on customer service and is evidenced as the agency recently received the Region's award for customer service.

The 45 recommendations in the report relate primarily to the need for improved procedures and better maintenance of documentation and use of the OSHA data management system (IMIS):

- State compliance officers (CSHO) are trained at the OSHA Training Institute, but few have received anything beyond the basic core courses.
- State CSHOs and some supervisors work largely from home or alternate locations. Data is submitted to the central office by diskette for central data entry. Case files lack copies of many necessary documents.
- No willful (“knowing”) citations were issued during this period. Although two previous fatality cases had “knowing” violations, no follow-up inspections were conducted to assure abatement had been accomplished.
- Victims’ families are notified by letter of the initiation of an investigation and of its findings. The letters are not maintained in the case file, and it does not appear that copies of citations or further information on settlements are provided to them.
- Some serious violations are improperly classified as other-than-serious. Repeat violations were not cited as such; improper gravity assessment was found; and abatement verification was missing.
- The reasons for penalty reductions were not documented. The State offers a 30% penalty reduction in return for an agreement for more training.
- IMIS data is not updated and management reports are not effectively used.
- Per statute, merit discrimination cases not completed within 120 days cannot be processed, thus making it essential that all State cases be dually filed with Federal OSHA.
- The State has no central file records on the participants in its various voluntary programs.

B. BACKGROUND OF THE PROGRAM

The Indiana Department of Labor administers the Indiana Occupational Safety and Health (IOSH) program. The IOSH plan was approved on February 25, 1974 and certified on October 16, 1981. On September 26, 1986, Indiana OSHA received final approval. The State Plan Designee is Lori Torres, Commissioner of the Indiana Department of Labor. The Manager of the State’s OSHA program is Jeff Carter, Deputy Commissioner for IOSHA. Indiana OSHA includes the Occupational Safety and Health (OSH) Compliance Division, which is responsible for compliance program administration through conducting enforcement inspections (General Industry and Construction), adoption of standards, and operation of other related OSHA activities. Also administered by the IDOL is the INSafe program, the State’s 21(d) funded safety and health consultation project which provides free consultation services upon request to help employers prevent workplace injuries, illnesses and fatalities through identification and correction of safety and health hazards.

For FY2009 the State’s 23(g) enforcement grant included state and federal funds totaling \$4,299,600, of which, 50% were federal funds. The State’s current enforcement staff consists of 23 Safety Inspectors and 18 Industrial Hygienists. Two of the Safety CSHOs and one Industrial Hygienist are designated to conduct whistleblower investigations.

Indiana operates a “mirror” enforcement program as state law does not allow for the agency to be more stringent than Federal OSHA and OSHA requires the State to be at least as effective as the Federal program.

According to IC 22-8-1.1-17.5, "The commissioner may not adopt or enforce any provision used to carry out the enforcement of this chapter that is more stringent than the corresponding federal provision enforced by the United States Department of Labor under the Occupational Safety and Health Act of 1970".

Generally, the State adopts all standards and program changes identically with the exception of those standards and changes that are not within their jurisdiction (i.e. Maritime).

According to the Indiana Department of Labor (IDOL) website, "The mission of the Indiana Department of Labor is to advance the safety, health, and prosperity of Hoosiers in the workplace." The State's Occupational Safety and Health Strategic Plan for FY2007 to FY2011 established ten strategic goals. The IDOL submitted an amended Strategic Plan in FY2009 in an effort to promote a more balanced approach to preventing injuries, illnesses and fatalities. FY2009 was the first year for the amended plan under Commissioner Lori Torres who was hired at the beginning of the 2007 Federal Fiscal Year.

One difference unique to the Indiana program is that whistleblower complaints investigated by IOSHA that are determined to be violations are required to be filed in State Court by the 120th day (see IC 22-8-1.1-38.1(b)). After this date, IOSHA is barred from going forward with a merit complaint. Because of the 120 day limit, it is important that complaints are properly dual-filed with Federal OSHA.

Safety and health cases that are not resolved through the informal conference process are heard by the Indiana Board of Safety Review (BSR). The enabling legislation for the BSR is found at IC 615 IAC. The Board is an independent Administrative Review Board housed within the IDOL and is governed by the Indiana Administrative Orders and Procedures Act (AOPA) found at IC 4-21.5-3.

During FY2009, the Indiana Department of Labor (IDOL) lobbied the legislature successfully and secured statutory changes that make it easier for the agency to obtain personal and property lien rights against employers who fail to pay IOSHA penalties. This process became effective July 1, 2009 and is anticipated to result in increased payments of IOSHA penalties.

During FY2009, the State also began to post safety orders from fatality and high profile cases on their website.

For FY2009, the State submitted an amended Five Year Strategic Plan to articulate sufficient detail and plans for the enforcement component of their program. The goal was to provide a better balance between the Consultation and Enforcement programs.

Indiana reported in their FY2009 State OSHA Annual Report (SOAR) that they had met all of the agreed upon performance goals with the exception of one for which progress was curtailed due to the State's budget crisis. The State established ten agreed upon performance goals in their FY2009 Annual Performance Plan. Five new goals were included in the amended plan to provide a better balance between the State's Consultation and Enforcement programs. New goals included increased enforcement activity, decreases in injuries and fatalities in both the manufacturing and construction industries, increased training provided to employers/employees, dissemination of marketing pieces and an increase in public presentations. Goals for the Voluntary Protection Program (VPP) and the Indiana Safety and Health Achievement Recognition Program (INSHARP) were combined with a goal of 11 new participants per fiscal year, a decrease of seven from the previous fiscal year (ten VPP and eight new INSHARP sites). The goal for Partnerships and Alliances remained combined with a goal of two per fiscal year, a reduction from the prior year's goal of two Partnerships and two

Alliances. The reduced goals for cooperative programs reflect the State's desire to more effectively balance and focus its limited resources.

While there are issues that need to be addressed, Indiana continues to work in a positive manner to improve their program. With the exception of staffing levels, the State continues to meet its 23(g) enforcement program's operational requirements.

C. STUDY METHODOLOGY

A review of the Indiana OSHA workplace safety and health program was conducted from January 25, 2010 to February 12, 2010. Thirty nine (39) fatality inspection case files were evaluated. Twenty (20) inspection cases comprised of ten safety and ten health were selected randomly for review. In addition, twenty (20) complaint inspection cases and six (6) complaint investigations were selected for review. Three (3) cases with current penalties in excess of \$50,000 were identified and all three were evaluated. Fifteen (15) whistleblower cases were also selected for evaluation as part of this review. All cases occurred from October 1, 2008, through September 30, 2009.

In addition to reviewing the above cited case files, the study team reviewed data gathered from all Indiana OSHA inspections conducted from October 1, 2008 – September 30, 2009, including general statistical information, complaint processing, and inspection targeting. Indiana data as contained in the Integrated Management Information System (IMIS), OSHA's database system used by the State to administer its program and by the State and OSHA to monitor the program, was examined. Compliance with legislative requirements regarding contact with families of fatality victims, training, and personnel retention was assessed.

As part of the special study, several groups representing workers and employers were solicited for comment regarding their satisfaction with the operation of the program. Groups representing workers included the United Steelworkers (USWA) Local 12775, Iron Workers Local 395, United Auto Workers (UAW) District 3 and Laborers International Union of North America. Groups representing Indiana businesses included the Indiana Chamber of Commerce and Indiana Manufacturers Association. The majority of feedback supported that Indiana OSHA was performing in a positive and acceptable manner and that the program was being managed effectively. The review also included interviews with Indiana's management and compliance staff.

Throughout the entire process, Indiana OSHA was cooperative, shared information and ensured staff was available to discuss cases, policies, and procedures. Also, Indiana OSHA staff members were eager to work with the evaluation team.

This report was prepared under the direction of Michael G. Connors, Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA).

D. SPECIAL STUDY FINDINGS and KEY RECOMMENDATIONS

Highlights of the study findings are as follows:

- **Finding 8:** Fatality case files were not maintained to ensure that all appropriate documentation (i.e. completed OSHA-170, OSHA-1, OSHA-1A, and OSHA-36) and correspondence (i.e. Next of Kin Letters, Union letters) were included, organized, adequately secured in the files, and were not kept up to date. (pages 18-22)
- **Recommendation 8:** Provide clear guidance to all enforcement personnel and administrative staff on the organization of fatality case files and what documentation

needs to be completed and included in each fatality case file. Consider designing and implementing a tracking document for each file that ensures that all appropriate correspondence is completed and documented in each file. Ensure that all documents put into a case file are secured.

- **Finding 9:** Families of victims are not always contacted when a fatality investigation is completed, and no additional communication is initiated by Indiana OSHA once the citations have been issued. (pages 18-22)
- **Recommendation 9:** Consider implementing a tracking system to help ensure that all required correspondence with families of victims is completed and documented in each case file.

- **Finding 11:** Violations were sometimes classified or grouped for reasons not apparent, or citations were not issued to address hazards identified during fatality inspections. (pages 18-22)
- **Recommendation 11:** Consider conducting training to staff on appropriate classification of violations to ensure consistency in issuing Willful (Knowing) and Serious citations. Review grouping policy with staff to ensure that appropriate rationale is applied and documented when grouping violations.

- **Finding 13:** Fatality case files are closed without sufficient abatement documentation. (pages 18-22)
- **Recommendation 13:** Ensure that supervisors use IMIS Abatement Tracking reports and follow-up letters to employers. Audit closed fatality files on occasion to ensure that appropriate abatement information is included in the file.

- **Finding 14:** No follow-up inspections are scheduled or conducted for fatality inspections that have high gravity citations issued related to the fatality. (pages 18-22)
- **Recommendation 14:** Implement a fatality inspection tracking system to ensure that appropriate follow-up inspections are scheduled and conducted.

- **Finding 15:** Violations cited on programmed inspections include a high percentage of other-than-serious citations for hazards that could be classified as serious, such as, but not limited to, electrical hazards. (pages 22-23)
- **Recommendation 15:** Consider conducting training on hazard classification for CSHOs and Supervisors to ensure consistency with violation classification.

- **Finding 16:** Programmed inspections conducted in the construction industry are not effectively targeting sites with serious hazards. (pages 22-23)
- **Recommendation 16:** Consider revising the construction targeting system to maximize efficiency of inspections. Also consider implementing OSHA's National Emphasis Program on Trenching.

- **Finding 24:** When a case is resolved through an EISA, the employer is not required to provide documentation of abatement or required to document the method of abatement. IOSHA only requires the employer to sign a Certificate of Correction which contains the inspection number, date of citation issuance, date of citation abatement, and date of posting of the certificate. (pages 27-28)
- **Recommendation 24:** The Certificate of Correction does not contain a written explanation of the method of abatement the employer used to correct the citation. This written explanation is required to be present under 29 CFR 1903.19(c).

- **Finding 30:** Although several IMIS management reports are being generated and distributed to the management team on a monthly basis, the majority of the reports are not being used effectively. (pages 32-38)
- **Recommendation 30:** Indiana OSHA must establish a system for the proper handling and review of IMIS management reports. Consideration should be given to the importance of the report when determining the frequency with which it is generated and distributed (weekly, bi-weekly, or monthly).

- **Finding 31:** The IMIS is not kept up-to-date and contains information which does not allow for effective internal evaluation of the Indiana program. (pages 32-38)
- **Recommendation 31:** Indiana OSHA must ensure that the IMIS system is kept up to date and is accurate. All Supervisors and Administrative staff responsible for IMIS data entry must utilize available management reports and follow through with timely updates to the system for all forms and changes in case status (abatement, penalties, extensions, etc.) Additional IMIS Training for staff is recommended to effectively maintain and utilize the system.

- **Finding 35:** Indiana did not issue any willful (knowing) violations during FY2009. (pages 38-43)
- **Recommendation 35:** Indiana OSHA should conduct an internal review of its willful (knowing) citation policy.

- **Finding 37:** Electrical hazards cited were classified as serious only 48% of the time and Fire Protection in construction was classified as serious two times while being cited 71 times. (pages 38-43)
- **Recommendation 37:** Review classification of electrical and fire hazard violations in both Construction and General Industry to ensure consistency with the Field Operations Manual and throughout IOSHA.

- **Finding 39:** OSHA would likely not have come to the same conclusion as the determinations issued by IOSHA in two of the cases reviewed. Many of the case files failed to properly test Respondent's defense or develop one or more of the prima facie elements. (pages 46-48)
- **Recommendation 39:** Ensure that when tolling a complaint that it is appropriate and based on the exceptions for tolling a complaint as indicated in DIS 0.0.9. Also ensure that all cases are adequately investigated which includes a full analysis of prima facie elements and testing the Respondent's defense.

- **Finding 40:** As a result of statutory mandate, Indiana code requires that suit for Whistleblower complaints must be filed in state court within 120 day from date of complaint received. (pages 46-48)
- **Recommendation 40:** Until Indiana is able to change the 120 day restriction, it is important that complaints are properly dual-filed.

- **Finding 45:** Indiana OSHA is staffed well below current benchmarks for the State plan. (pages 52-55)
- **Recommendation 45:** While the State believes that the current benchmark levels are not reflective of the resources necessary to be effective, it is recommended that the State continue to work with OSHA regarding benchmarks and continue to increase staffing levels to the extent feasible.

II. SUMMARY OF RECOMMENDATIONS/STATE ACTIONS FROM FY2008 FAME

Recommendation: Ensure that adequate staffing is allocated to meet approved compliance staffing benchmark levels.

State Action: Indiana has expressed interest in lowering its compliance staffing benchmark levels.

Recommendation: Ensure that the necessary support and matching funds are maintained for all program elements critical to continued State plan approval and to utilize all funding made available to the State.

State Action: The State committed to doing everything possible to spend all funds obligated in the 23(g) grant. The State has returned funds each year for over ten years and made progress with decreasing amounts returned in each of FY2006 and FY2007. Although it was marked improvement over the funds returned in previous years, the State ended up returning \$75,000 in FY2008. During FY2009, the State was able to spend all funds.

Recommendation: Ensure productivity is not compromised due to low staffing levels.

State Action: The agency developed new performance indicators to increase inspection activity and have reversed the trend of decreasing numbers of inspections. The State also submitted a modified Strategic Plan in FY2009 with additional emphasis on enforcement activity.

III. MAJOR NEW ISSUES

The State's Strategic plan was amended for FY2009 to enhance enforcement activity. The amended plan included a new performance goal to increase enforcement inspections by 15% over the life of the plan or through FY2011. During FY2009, the agency conducted 2,139 inspections, an increase of 384 inspections over FY2008 and an increase of 961 over the 1,178 conducted in FY2007. Due to the increased activity, the State also conducted an informal internal audit of 30 cases completed during FY2009 to ensure quality was not compromised and to identify areas for improvement. During FY2009, Indiana averaged three (3) violations per inspection with 58% being Serious/Willful/Repeat compared to Federal OSHA which averaged 3.1 violations per inspection with 81% being Serious/Willful/Repeat. Comparatively, Indiana's percentage of violations classified as serious is higher than the average of 43% for all state plans but 20% lower than that of Federal OSHA's 77%. Indiana's lapse time for safety was 46.98 days, slightly higher than Federal OSHA's 43.8. Indiana's lapse time for health inspections was 46.65, well under Federal OSHA's 57.4.

The agency successfully lobbied the legislature and secured statutory changes that make it easier for the agency to obtain personal and property lien rights against employers that fail to pay final OSHA penalties. This procedure became effective July 1, 2009. Agency Management indicated that several warrants have been issued and 30 to 40 are in the works.

For the first time in over ten years, the State was able to utilize all funds obligated in the FY2009 23(g) enforcement grant. The program actually reported an overmatch of State funds of approximately \$75,000.

Three Complaints About State Program Administration (CASPA's) were received during FY2009. Although the State had an increase in the number of CASPA's for FY2009 with a few resulting recommendations, there were none that resulted in a significant impact to the operation of the plan.

Although not federally funded, the State also reported that the State funded scholarship offering was discontinued in July of 2009 due to budgetary constraints.

IV. ASSESSMENT OF STATE PERFORMANCE

Through its annual performance report, the Indiana Department of Labor's (IDOL) Occupational Safety and Health program continues to show improvement. The program has been cooperative in attempting to fulfill obligations while faced with budgetary constraints. However, monitoring activities support needed program focus in some areas.

Information provided by Indiana OSHA has been reviewed and analyzed to assess its accuracy in meeting performance plan goals and the overall accomplishment of the first year of their amended five year strategic plan.

IV. A. Assessment of Progress in Achieving Annual Performance Goals (See Appendix A – 2009 SOAR)

The following summarizes the activities and/or accomplishments for each of the FY2009 performance goals.

Performance Goal 1.1: Maintain a vigorous enforcement program by increasing safety and health inspections by 5% per FY.

Results: This goal was met.

Activity	FY08 Baseline	FY09 Goal to be Attained	Actual Performed For FY09	% Change
Inspections	1,178	59 or (1,237)	2,139	82% increase

Discussion: Indiana also conducted a special review of several case files to ensure that quality was not compromised by the increase in activity.

Performance Goal 1.2: Reduce the rate of injuries and deaths in construction and manufacturing industries by 9% over the next three federal fiscal years.

Results: This goal was met.

Discussion: The goal has been exceeded in the area of impact to the Injury & Illness rates for the Manufacturing and Construction industries. The rates data is as follows:

2008 Indiana Manufacturing Industry (NAICS 31-33) Total Injury & Illness Rate: 5.8 (per 100) =26% reduction.

2008 Construction Industry (NAICS 23) Total Injury & Illness Rate: 4.6 = 21% reduction.

IOSHA conducted a total of 39 fatality inspections during calendar year 2009 which is a 26% decrease from the 49 fatalities investigated in CY 2008. There were 42 fatality

investigations during FY 2009 and 45 investigations during FY 2008 representing a 7% decrease during the federal fiscal year.

Performance Goal 2.1: Increase participation in the Voluntary Protection Program and INSHARP by 11 combined each FY.

Results: This goal was met.

Discussion: This goal was exceeded. In FY 2009, there were 34 newly certified VPP and INSHARP sites:

VPP: 53 total with 10 new sites (6 Star and 4 Merit sites). Four sites dropped out of the VPP program including AK Steel Rockport, Meyer Stamping Fort Wayne, Rockport Maintenance and Rockport Roll Shop.

INSHARP: 43 total with 24 new sites (21 INSHARP & 3 PRE-SHARP). 3 existing sites became ineligible for continued INSHARP certifications (3 Rauch sites, all located in New Albany, Indiana) due to having Total Recordable Case rates that were too high.

Performance Goal 2.2: Increase the number of and participation by companies and organizations in Alliances and Partnerships combined by two (2) per FY.

Results: This goal was met.

Discussion: This goal was exceeded. In FY 2009, there were four new Partnerships and/or Alliances added:

One Alliance: Eli Lilly and Company

Three Partnerships: EH Construction/Morgan Elementary; Meyer Najam/Ortho Indy; Weigand Pepper/Parkview Hospital.

Existing Partnerships and Alliances include MICCS, ICA, Shiel Sexton/Indiana Convention Center, Indiana Ready Mix Concrete Association (IRMCA), Sheet Metal and Air Conditioning Contractors North America (Indiana Chapter), American Physical Therapists and ACH/UAW. Three Alliances terminated (Indiana Chamber of Commerce, Indiana Manufacturers Association and Risk Management Services). One alliance was added and terminated in the same FY2009, Safety Management Group. Three construction Partnerships concluded (Argosy Casino/Messer Construction, International Airport/Midfield Terminal, and Lucas Oil Stadium).

Performance Goal 3.2: Increase public presentations, including speeches, expos, and conferences to 90 per FY.

Results: This goal was met.

Discussion: This goal has been exceeded. The total number of public presentations conducted for FY 2009 was 93.

IV.B. Assessment of State Performance of Mandated Activities

IV.B.i. Enforcement

IV.B.i.a. State Activity Mandated Measures (SAMMs)

Appendix D is the State Activity Mandated measures Report (SAMM) for Indiana covering the period October 1, 2008 through September 30, 2009. The following is a summary of State performance on the major issues covered in the SAMM. Seven of fifteen measures were not met.

Measure		State Data FY 2009	Reference Data	Comment
1. Average number of days to initiate complaint inspections		8.8	10	Goal is met.
2. Average number of days to initiate complaint investigations.		4.17	5	Goal is met.
3. Percent of complaints where complainants were notified on time.		100%	100%	Goal is met.
4. Percent of complaints and referrals responded to within 1 day- Imminent Danger		84.38%	100%	Goal is not met. Slight decline over previous FY. 27 out of 32.
5. Number of denials where entry was not obtained.		0	0	Goal is met.
6. Percent of S/W/R violations verified.	Private	73.68%	100%	Goal is not met. While private sector violations verified improved by 10% over FY 2008, Public Sector verification declined by nearly 20%. Both are below the reference of 100%.
	Public	52.0%		
7. Average number of calendar days from opening conference to citation issuance.	Safety	46.98	43.8	Goal is not met.
	Health	46.65	57.4	Goal is met. There was a 40% decrease from previous FY.
8. Percent of programmed inspections with S/W/R violations – safety.	Safety	21.22%	58.6%	Goal is not met. This has gone down by 20% from the previous fiscal year.
	Health	58.06%	51.2%	Goal met.
9. Average violations per inspection with violations.	S/W/R	1.89	2.1	Goal is considered met. It is just slightly under the reference.
	Other	1.12	1.2	Goal is met.
10. Average initial penalty per serious violation – private sector only.		\$1271.3	\$1335.2	Goal is met.
11. Percent of total inspections in public sector.		1.62%	2.3%	Goal is considered met. The % is slightly under the reference.
12. Average lapse time from receipt of contest to first level of decision.		517.69	246.1	Goal not met. In FY 2009 there was a 316 day improvement over the previous FY.
13. Percent of 11C investigations completed within 90 days.		96.88%	100%	Goal is not met. Accomplishment is viewed as positive.
14. Percent of 11C complaints that are meritorious.		37.5%	20.8%	Goal is met.

15. Percent of meritorious 11C complaints that are settled.	83.33%	86.1%	Goal is not met. Slightly below the reference.
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SAMM Measure # 4 Percent of Complaints and Referrals responded to within one day (Imminent Danger)

Five cases, including four complaints and one referral, were identified as being coded imminent dangers and not responded to within one day. All five cases were reviewed to determine the circumstances.

Complaint 207071994 (four days to open)

Findings: This complaint involved the report of a trench with no cave in protection on Thursday, June 25, 2009. The Compliance Officer traveled to the site on the morning of Friday, June 26, 2009 and there was no activity or personnel on site. The opening conference took place on Monday, June 29, 2009.

Finding: The State responded within 24 hours.

Complaint 206425765 (16 days to open)

Findings: This complaint involved the report of a scaffold collapse resulting in two employees being sent to a hospital. The report was received on Friday, October 10, 2008 at 4:30 p.m. The CSHO drove to the site on the morning of Saturday, October 11, 2008 to find no one there. The CSHO returned on October 14 to meet with the owner of the site who informed him the Contractor involved would not be on site until October 26, 2009. The CSHO opened with the contractor on October 26, 2009.

Finding: The State responded in 24 hours.

Referral (media) 200992238 (six days to open)

Findings: Upon receiving news on March 27, 2009 that a 12 year old was killed after being pinned between a piece of steel that fell from a forklift, a CSHO was assigned to inspect on March 27, 2009 and then the case was reassigned on April 1, 2009. The inspection was opened on April 2, 2009 and closed shortly after opening.

Finding: The State did not respond within 24 hours.

Complaint 207068172 (20 days to open)

Findings: This complaint was received on March 4, 2009 and involved guarding, protective equipment, hazard communication, and lifting concerns. The complaint was assigned on March 23 and opened on March 24, 2009. No other explanation was found in file.

Finding: The State did not respond within 24 hours.

Complaint 207073988 (five days to open)

Findings: This complaint involved a report of a trench received on September 3, 2009. The file indicated an opening conference date of September 8, 2009 with no explanation for a delay in responding.

Finding: The State did not respond within 24 hours.

Findings and Recommendations

Finding 1: SAMM Measure # 4. Not all complaints and referrals coded as Imminent Danger were responded to within one day.

Recommendation 1: Ensure all complaints and referrals are appropriately coded, and those coded as imminent danger are responded to within one day.

IV.B.i.b. Complaints

Complaint Case File Reviews

During the period October 1, 2008 through September 30, 2009, Indiana received 944 complaints. Of those, 259 received inspections. Thirty (30) complaints which resulted in an onsite inspection were randomly selected to be reviewed as part of this evaluation. In addition, six (6) complaints resulting in a phone and fax type investigation were randomly selected for review. The evaluation process included interviews with the Deputy Commissioner, Directors, Supervisors, Complaint Duty Officers and the Assistant to the Deputy Commissioner. The interviews supported the evaluation team's case file review findings.

IOSHA handles the intake of complaints through a Duty Officer. This position is performed on a rotational basis with each tour of duty lasting three months. When appropriate, this position is also used as a light duty position for Compliance Safety and Health Officers (CSHOs) who are unable to go into the field.

Each Complaint Duty Officer works from the same desk with a dedicated phone and fax to receive complaints. Whether complaints come in through mail, email, phone or fax, the Duty Officer is provided the information on the complaint. Each Duty Officer maintains an individual phone log. The phone log is associated with the person rather than the position. The log was viewed and no information was found beyond the name of the person, telephone number, and a brief indication for the reason for the phone call. While there was an allegation made that Union calls were not returned, no evidence was found to support this. Additionally, no reference was made to an individual's union affiliation in the log that was viewed.

Union affiliation is noted when a union representative is making a complaint on behalf of employees the union represents. It is a part of the OSHA-7 complaint form. The Complaint Duty Officer, who was assigned at the time of the evaluation, was interviewed. The Complaint Duty Officer stated that phone calls are usually returned immediately with the only delay occurring when already involved in another phone call. When the Duty Officer is absent another employee is asked to cover the phones. This person may not sit at the desk all day, but rather alternates between the Duty Officer desk and their own desk which would further delay the return of a phone call. Based on the evidence gathered, there was not a circumstance where a phone call would not be returned promptly. There was no evidence that any calls were "weeded" out based on union affiliation. None of the 43 cases reviewed had a union representative as a complaining party.

The average time to initiate a complaint investigation was 4.17 days. The average time to initiate a complaint inspection was 8.8 days. From the case file review it was noted that 10 of the 30 (33%) complaints reviewed were over the ten days agreed upon to initiate a complaint inspection; however, it was difficult to find a date on which the complaints were formalized as four of the ten (40%) cases lacked tracking data in the IMIS and no data was entered to show receipt of complaint. In these four cases, there was no diary entry that could be used to indicate the formalization date. Starting approximately June of 2009, the employees report that they were no longer able to print any of the forms on the NCR database. The OSHA-7 complaint form was one

of the forms from the NCR database. This could be one of the reasons the information was not being placed in the OSHA-7 form. These four cases provide evidence that the State's tracking of days for "average time to initiate a complaint inspection" is being understated due to the State not entering data into the OSHA-7. A visual review of the IMIS "Complaints Received" report revealed that information such as the date of receipt and date a signature was received were routinely not entered into IMIS.

None of the 30 complaints reviewed contained the initial letters to the Complainant. Twenty three (23) of the 30 (73%) complaints provided an email or mailing address. Only one of the 23 (4%) complaints contained only an email address, and the State did not send a results letter to that Complainant. Twenty two (22) of 23 (96%) Complainants were sent a final results letter.

Six (6) non-formal, valid complaints were reviewed. One of the six (17%) complaints was a formalized complaint which failed to be updated in the OSHA-7. A formalized complaint is a complaint in which an onsite inspection is performed. This left five non-formal complaints which are handled by phone and fax with the employer. None of the five (100%) non-formal complaint files had a "certificate of posting". There was no evidence that IOSHA sent a "certificate of posting" to the employer as required. A "certificate of posting" is the only means to ensure that employees are aware of the complaint at the facility.

Six emphasis inspections conducted were initiated by complaints. When a complaint is reported on an emphasis program, the State does not require a signed complaint to initiate an onsite inspection. It was found that none of the four construction emphasis case files and none of the two general industry emphasis case files contained Complainant information. Due to the small number of cases, nothing can be conclusively derived; however, it is an indication that the Complaint Duty Officer may not have attempted to collect the Complainant's contact information whenever an emphasis complaint is received.

Five complaints were handled by phone and fax. It was found that all five (100%) of the complaints reviewed did not contain the letters to the employer, but the files did contain diary log entries indicating that the letter had been sent or contact was made with the employer. Discussions with the Duty Officers yielded that a letter may not always be sent to the employer. At times the letter to the employer expressing allegations of safety and health hazards will be handled verbally via telephone. There is no way to tell from the file whether the employer was sent a letter or if the complaint was just handled by phone. When complaints were only handled verbally, the employer was not sent the OSHA-7 complaint form which lists the hazards. Therefore, there was no opportunity for the complaints to be posted.

All 30 of the complaint files which were initially requested contained evidence that the State's responses to the Complainants appeared to be appropriate; however, some of the supporting documentation that a hazard did not exist was not complete. This was especially true on complaint items where the Complainant expressed concern about an overexposure to a hazardous substance. Fifteen complaint inspection files were reviewed where the Complainant stated they were exposed to a specific contaminant; however, 13 of the 15 (87%) files contained no sampling for that contaminant. None of the 13 files contained an explanation of why sampling did not occur.

The files were not maintained with any consistent order. All 30 (100%) files reviewed were found to have unbound documents. The only documents bound were those related to the complaint intake and complaint investigation.

In all 30 of the files reviewed (100%), paper documentation was only sporadically included in files. The missing paper documentation was from documents/photos maintained electronically in the file, and these electronic documents included OSHA 1/1As, OSHA 1Bs, and Complainant letters.

Photos were placed on a CD. All the other electronic documents were placed on a floppy disk. The OSHA 1/1A and OSHA 1B files were only accessible as Word Perfect Documents. These documents had to be converted into Microsoft Word in order to view them. It was noted that sections of these converted documents were missing; however, these documents were viewable in their entirety with the CSHO Application Program which none of the evaluators had on their computers. This was noted as a particular problem for files that go through the formal review process as the attorneys would not be aware of the missing information for these files without the CSHO Application, and it was learned from the Assistant Attorney General that these files are not always printed in their entirety when they receive them.

Construction files were found to have little documentation. One of the Construction Supervisors was interviewed about what should be in the construction files. The Construction Supervisor indicated that programs should be reviewed and placed in the file when possible, interviews should be conducted and placed in the file when possible, photographs should be taken, and any other pertinent documentation should be present.

Findings and Recommendations

Finding 2: It was determined that the individual employees at OSHA who act as complaint Duty Officers each maintain a log of phone calls. There was no evidence that this was a tool to prevent unions from making or taking part in complaints. There was no evidence that supported IOSHA was not returning phone calls from any Complainant.

Evidence in the files supported that when given a name and mailing address, IOSHA did provide results to all Complainants. Complainants were only asked to identify who they were as a part of classifying the complaint.

Recommendation 2: A single log book of calls dedicated to the Complaint Duty Officer position should be utilized.

Finding 3: Complaint investigations and inspections were timely. However, the files did not always contain an updated OSHA-7 with all pertinent actions in it. Copies of all letters required to be sent by IOSHA were not found in the file. The missing letters were notification letters to Complainants and where appropriate, to Respondents, and inspection result letters specifically to the unions. The diary logs did indicate that the employer and union letters were sent. No diary log entries indicated that Complainant acknowledgement letters were sent. There was also no evidence that IOSHA sent the "certificate of posting" to the employer when appropriate.

Recommendation 3a: All appropriate entries should be made on the OSHA-7, and an updated OSHA-7 should be maintained in the file. These entries should be performed in accordance with OSHA Instruction 03-06 (IRT 01) (03-06 (ADM 01)), The IMIS Enforcement Data Processing Manual: Table of Contents and Chapters 1 through 7.

Recommendation 3b: All notification letters should be sent and when appropriate the "certificate of posting".

Finding 4: There was not always adequate documentation that supported that a complaint item did not exist. A note in the file is not normally adequate; however, IOSHA did frequently address complaint items through photos and interviews. Thirteen out of 15 files that were associated with exposure to hazardous substances did not contain any sampling information or justification as to why sampling was not necessary. Interview statements and related safety and/or health programs were not in the files. Notes with a list of employees interviewed were in the files however, the files did not contain individual statements for employees interviewed.

Recommendation 4: The OSHA Field Inspection Reference Manual CPL 2.103 does provide for CSHOs to make their own decisions about what supporting documentation is needed to effectively document a hazard. Although documentation is not required to support that a hazard does not exist, it is recommended that evidence be present in the file that supports that all complaint items have been evaluated. When addressing complaints about exposure to contaminants, an explanation should be provided when a contaminant is not sampled.

Finding 5: No emphasis inspections were found to have Complainants who left an address to which results could be mailed. There is no evidence that this purposefully occurred or occurred with every emphasis inspection.

Recommendation 5: Every effort should be made to obtain addresses from complainants.

Finding 6: Files were not maintained in an orderly manner. Not all file sections were tabbed with contents, files were not completely bound, and not all the files contained paper copies of digital records. Furthermore, staff that may need access to the files did not always have the software and hardware required to access the file information.

Recommendation 6: A paper copy of documents kept electronically should be placed in every file. Files should be orderly and all documents bound.

IV.B.i.c. Fatalities

Fatality Case File Reviews

During the period October 1, 2008 through September 30, 2009, Indiana experienced 39 fatalities which were investigated by Indiana OSHA. All 39 fatality files and three additional fatality-related files were reviewed as part of this evaluation. In addition to the case file reviews, the evaluation process included interviews with the Deputy Commissioner, Directors, supervisors, compliance officers (CSHOs), Assistant to the Deputy, and legal counsel. The interviews supported the evaluation team's case file review findings.

Fatality Inspection Process

The process for conducting fatality investigations begins with the Duty Officer, who takes the reported information via phone call and completes the initial OSHA Form 36 (Fatality/Catastrophe Report) and OSHA Form 170 (Accident Investigation Summary), and OSHA Form 168 (Inspection Assignment). The Duty Officer prints out and saves the OSHA-36 as final, and saves the OSHA-170 and OSHA-168 as draft into the NCR / IMIS database. The Duty Officer creates a physical file and records the associated form numbers on the diary sheet and gives the file to a supervisor for assignment. The Duty Officer also sends an electronic copy of the OSHA-36 via E-Mail to a distribution list that includes the Commissioner, the Deputy Commissioner, the Directors, and a Federal National Office OSHA representative. The fatality information is presently not distributed to OSHA's Chicago Regional Office.

Since the Compliance Officers work primarily outside the main office, the supervisor assigns the case to a CSHO and forwards the electronic OSHA-36 to them via e-mail. The supervisor also mails (via the Post Office) the physical case file with the diary sheet and printed OSHA-36 to the CSHO's home.

The CSHO is responsible for completing the investigation and appropriate inspection forms via laptop computer using the CSHO Applications program, saving the data and inspection forms to a 3 ½ inch floppy disk, assembling the case file with any photos, documentation, etc., and mailing

the disk and completed case file back to the supervisor. The CSHO also collects the next of kin information and e-mails this to the assistants for the Deputy Commissioner and Commissioner. These assistants are responsible for preparing and sending out the initial fatality investigation notification letter to the next of kin (signed by the Deputy Commissioner) and a sympathy card (signed by the Commissioner), as well as next of kin contact information to the AFL-CIO, who uses it for the Worker Memorial in April each year.

After receiving the case file and floppy disk from the CSHO, the Supervisor is then responsible for transferring the appropriate case file forms to the NCR via the floppy disk and saving as final, reviewing the case file and any proposed citations, printing out any citations, assembling the final case file, and giving the case file to the appropriate Director with any proposed Safety Orders (citations) for final review and signature. Many of the OSHA forms, including the OSHA-1Bs (citation worksheets), are not normally printed out in the case file, unless the case is contested. They are stored on the 3 ½ floppy disk in the file. The State recently added a Fatality Review step to this process where the Deputy Director, Director, and supervisor meet to discuss the fatality investigation findings and any proposed citations. This meeting allows the management team to discuss any findings and issues related to the case before citations are issued or the case is closed without issuing any citations. Another letter is then sent to the next of kin with the findings of the investigation. No other letters are sent to the next of kin.

The appropriate supervisor is responsible for the final review of abatement and closing of case files. The appropriate director handles any informal conferences and signs any informal settlement agreements for the State.

Findings

Ten (10) of the 39 fatalities (26%) were related to work in the construction industry, versus 29 (74%) in general industry. Three of the inspections began as referral inspections, and were subsequently coded as fatalities after the accident victim died several days after the initial accident.

Twenty-nine (74%) of the fatality inspections were opened within one day of the fatality information receipt by the State. Of the ten (10) inspections that were opened at least two days after initial notification of the fatality, only two had information explaining the reason for the delay. In one case (#24) the CSHO waited an extra day for a Corporate Safety representative to travel to the facility, and in another case (#6) the CSHO waited eight days for the small business (which was closed for mourning) to reopen. Another five (5) of the delayed inspections were initiated after two to three days because the fatalities were reported on a Friday or Saturday, and the CSHO did not begin the inspection until the following Monday. The three other inspections (#1, #20, and #22) were initiated from five to ten (5-10) days after the fatality was reported for unknown reasons not documented in the file.

Thirteen (13) of the 39 (33%) files were found to be in-compliance, with no citations issued. The files were closed as in-compliance files for reasons such as no hazards identified, no applicable standards, or other reasons not clearly documented in the file. At least four of these thirteen in-compliance inspections could have been coded as no inspections due to one heart attack (#17), two self-employed individuals (#5 and #6), and one highway vehicle accident (#22). Of the nine other files with no citations issued, only three (#15, #35 and #39) had documentation explaining the reasons no citations were issued. Another file (#25) was a fatality due to overexposure to nitrous oxide in a hospital, which appeared to be self-inflicted by the deceased employee, but it was not clearly explained in the file. The other five files (#2, #8, #23, #33, and #36) included two employees who fell from the back of trucks, and three employees who were backed over / crushed-by vehicles. None of these inspections documented any rationale for not issuing citations related to these accidents.

Case files were mostly well organized and tabbed with documents secured in the files prior to citation issuance. However, after the file was reviewed for violations and citations were issued, the citations, correspondence, and abatement documentation were placed in the folders unsecured and were not organized, which could result in important case file documentation being lost or misplaced.

The diary sheet was used in all case files reviewed to help document events throughout the inspection process. However many case files were missing copies of correspondence letters with next of kin and union contacts, even though the diary sheet indicated that the letters were sent.

Indiana does a good job in sending an initial fatality investigation letter and sympathy card to the next of kin of fatality victims. Only one inspection (#2) did not have any letters sent, and one additional inspection (#15) did not have an inspection findings letter sent. The Assistant to the Deputy Commissioner keeps an electronic record of these letters and has only recently started to include copies of these letters in the case file. However, no subsequent notifications were sent to family members of fatality victims regarding settlement agreements or when the case file is closed.

Compliance Officers did not always complete or include a final copy of the OSHA-170 or OSHA-36 in the case file. Nineteen (19) of the 39 files (49%) did not contain a completed OSHA-170. Three of these files also did not contain a completed OSHA-36. The OSHA-1 in each case file was the original form printed out before citation issuance, so it did not reflect the latest additions or resolution of each file. (For example, if an inspection was closed with no violations issued, the OSHA-1 was not updated in the file to indicate this.)

Thirty-six (36) of the 39 (92%) case files did not include IMMLANG (code designed to allow the Agency to track fatalities among Hispanic and immigrant workers) documentation. Of the thirty-six (36) files missing IMMLANG documentation, at least two of the files contained information suggesting that the workers' primary language was Spanish.

Five (5) inspections out of the 39 reviewed were identified as having union representation and participation in the inspection process. All five case files had appropriate union contact information, and the diary sheet noted that copies of the citations were mailed to the contacts, but no copies of the correspondence were kept in the case file. Two of these cases were contested by the company, but there was no documentation in the case file that the Union was notified or asked for Party status. The other three cases were uncontested and the penalties were paid in full by the company.

In twelve (12) of the 39 files, the narrative (OSHA-1A) and evaluation of the employer's safety and health program was either incomplete or not completed at all.

The majority of the cases contained excellent documentation and appropriate violations were issued related to the fatality. In the cases where citations were issued the documentation was generally very complete and supported the citations. All files contained written interview statements signed by the worker in accordance with the Indiana Field Inspection Reference Manual (IFIRM).

Two of the inspections (#16 and #37) resulted in Willful ("Knowing") violations issued to the company related to the fatality (issued in FY2010). Neither of these cases had documentation of a review for criminal charges or any reasons or rationale why criminal charges were not pursued. Both cases had documentation showing that there was a strong case for criminal charges to be considered. Four additional cases (#1, #12, #28 and #29) had documentation that supported potential Willful ("Knowing") violations related to the fatality, but they were classified as Serious.

Five of the cases (#3, #4, #14, #26 and #29) had individual violations grouped together without documentation explaining the rationale. One case (#26) resulted in 17 Serious violations grouped into six (6) violations with a total proposed penalty of \$8,250. After an Informal Conference, the case was settled with a total of five (5) Serious grouped violations and one Other-Than-Serious violation with a total penalty of \$5,250. Another case (#29) resulted in 18 Serious violations grouped into six (6) violations with a total proposed penalty of \$16,500. This case was settled in an Informal Conference with a reduced penalty of \$9,450.

One of the inspections (#38) had evidence that additional violations could have been issued to the company related to the fatality, but only one violation was issued. In this case an employee was struck in the head by a falling piece of metal scrap, and there were no violations for lack of head protection or a personal protective equipment assessment by the company. There were also two photos in this file documenting electrical hazards, but no violations were issued related to these hazards as well. No documentation or explanation why no violations were issued was found in this file.

Fifteen (15) of the 26 cases where citations were issued had informal conferences conducted. These conferences are conducted either by phone or in person by the appropriate Director. CSHOs do not normally attend these informal conferences. In twelve of these fifteen cases, a settlement agreement was signed with an average penalty reduction of 47%. The informal conference narratives did not document the rationale for the penalty reductions or changes in classification.

Five (5) of the case files (#1, #3, #11, #28, and #31) did not contain adequate abatement documentation to justify closing the case file. No other documentation was in the file to explain the rationale for closing the file. None of the fatality inspections that had high gravity citations issued had been scheduled for a Follow-Up inspection in accordance with the Enhanced Enforcement Program procedures.

Findings and Recommendations

Finding 7: Fatality inspections were not always initiated in a timely fashion, and the reasons for the delay were not documented in the case file.

Recommendation 7: Prioritize fatality inspections to ensure that CSHOs open the inspection as soon as possible after initial notification to the Indiana OSHA office. Ensure that CSHOs communicate and document reasons for any delays in the case file.

Finding 8: Fatality case files were not maintained to ensure that all appropriate documentation (i.e. completed OSHA-170) and correspondence (i.e. Next of Kin Letters, Union letters) were included, organized, and adequately secured in the files.

Recommendation 8: Provide clear guidance to all enforcement personnel and administrative staff on the organization of fatality case files and what documentation needs to be completed and included in each fatality case file. Consider designing and implementing a tracking document for each file that ensures that all appropriate correspondence is completed and documented in each file. Ensure that all documents put into a case file are secured.

Finding 9: Families of victims are not always contacted when a fatality investigation is completed, and no additional communication is initiated by Indiana OSHA once the citations have been issued. Information sharing with families of victims should be provided through the case settlement process.

Recommendation 9: Consider implementing a tracking system to help ensure that all required correspondence with families of victims is completed and documented in each case file.

Finding 10: Inspection forms (i.e. OSHA-1, OSHA-1A, OSHA-36, OSHA-170) were not completed with the detail required and the latest versions were not maintained in the case file. This includes lack of IMMLANG documentation.

Recommendation 10: Instruct staff on the accurate completion of required inspection forms in each fatality inspection and the appropriate review of each file to ensure this is completed. Review the current procedures for IMMLANG to ensure that staff are familiar with the required documentation.

Finding 11: Violations were sometimes classified or grouped for reasons not apparent, or citations were not issued to address hazards identified during fatality inspections.

Recommendation 11: Consider conducting training to staff on appropriate classification of violations to ensure consistency in issuing Willful (Knowing) and Serious citations. Review grouping policy with staff to ensure that appropriate rationale is applied and documented when grouping violations.

Finding 12: Informal conference documentation does not include sufficient justification and/or rationale for changing citation classification and reducing penalties.

Recommendation 12: Ensure that Directors adequately document informal conference narrative sheets to explain informal settlement rationale.

Finding 13: Fatality case files are closed without sufficient abatement documentation.

Recommendation 13: Ensure that supervisors use IMIS Abatement Tracking reports and follow-up letters to employers. Audit closed fatality files on occasion to ensure that appropriate abatement information is included in the file.

Finding 14: No follow-up inspections are scheduled or conducted for fatality inspections that have high gravity citations issued related to the fatality.

Recommendation 14: Implement a fatality inspection tracking system to ensure that appropriate follow-up inspections are scheduled and conducted.

IV.B.i.d. Targeting and Inspections

A review was conducted of IOSHA's targeted / programmed inspection systems for general industry and construction. The review included IMIS Inspection, Enforcement Statistics, and Detailed Scan reports for programmed inspections conducted in FY2009, as well as individual case file reviews. The evaluation process also included interviews with the Deputy Commissioner, Directors, Supervisors, and Compliance Officers (CSHOs).

In FY2009 the agency conducted targeted inspections in general industry using the Site Specific Targeting (SSTAR08) for safety inspections. The agency also conducted expanded inspections as appropriate under the Silica, Amputations, Lead, and Explosive Dust National Emphasis Programs, although they did not generate a targeting list for these types of inspections. In FY2009 the agency conducted targeted inspections in the construction industry using the UTENN targeting

system. They also had the University of Tennessee set some parameters for an additional new targeting system that targeted residential construction in addition to commercial sites.

In FY2009 the agency conducted 1,347 total programmed inspections, including 1,258 safety and 89 health targeted inspections. The programmed inspections represented approximately 65 percent of the total inspections (2,085) conducted.

General Industry: The general industry targeted inspections, both safety (150 total) and health (89 total), were fairly productive, with 104 (69%) of the safety inspections resulting in citations and 50 (56%) of the health inspections resulting in citations. Five (10%) of the health targeted inspections with citations issued had only other-than-serious citations issued. However, out of the targeted general industry safety inspections with citations issued, 32 (31%) had only other-than-serious citations issued.

Construction: The agency uses the UTENN targeting program to schedule programmed construction inspections for commercial sites. During FY 2009, the State also worked with UTENN to create a residential construction targeting system to inspect residential sites. The FALL, SCAFFOLD, and TRENCH emphasis programs are also used to the extent that some CSHOs code them when they conduct an inspection with these types of hazards identified; however, the agency does not specifically target inspections as part of these emphasis programs. If these types of hazards are observed by a CSHO while driving by a construction site, the CSHO will normally report these hazards to the Duty Officer, which would result in a referral inspection.

Of the 1,426 construction inspections conducted by the agency in FY2009, 1,108 (78%) were programmed. These targeted inspections were not very productive in that only 269 (24%) of these programmed construction inspections resulted in citations being issued. Of the 269 inspections with violations cited, 600 total violations were issued (2.5 violations per inspection) with 45% of these violations cited as serious or repeat. No willful (knowing) violations were issued.

An IMIS detailed scan report of programmed inspections with citations issued for FY2009 was reviewed, which included 198 construction inspections. Of these 198 construction inspections, 86 (43%) had only other-than-serious citations issued. These other-than-serious citations included 28 violations for electrical standard violations such as 1926.403(h), 1926.404(f)(6), and 1926.416(e)(1) that normally should have been categorized as serious due to the hazard of electrocution.

Findings and Recommendations

Finding 15: Violations cited on programmed inspections include a high percentage of other-than-serious citations for hazards that could be classified as serious, such as, but not limited to, electrical hazards.

Recommendation 15: Consider conducting training on hazard classification for CSHOs and Supervisors to ensure consistency with violation classification.

Finding 16: Programmed inspections conducted in the construction industry are not effectively targeting sites with serious hazards.

Recommendation 16: Consider revising the construction targeting system to maximize efficiency of inspections. Also consider implementing OSHA's National Emphasis Program on Trenching.

IV.B.i.e. Employee and Union Involvement

A representative of the Laborers International Union (LIUNA) inquired about taking part in the evaluation of the Indiana OSHA program. A representative from the Federal OSHA evaluation team met with representatives from the union in order to identify their concerns. The concerns included:

- IOSHA maintains a phone log and uses it to weed out calls from unions.
- When the union calls about concerns on different job sites the State does not return their calls or perform inspections of the job sites.
- IOSHA has failed to share the results of investigations and inspections in which the union was the source.
- Penalties assessed by IOSHA are not equivalent to the penalties assessed by Federal OSHA.
- Penalty reductions are not predicated on factually correct or adequate reasoning.

IOSHA appeared to have adequate procedures to address employee and union involvement in the inspection process. IOSHA has developed its own forms to insure that if the employees are represented, the appropriate contact information is acquired. Opening and closing conference sign-off sheets have also been developed. If there are any union representatives present, it is noted on these sheets. This information was also placed in the OSHA 1. Of the 36 files reviewed only six (17%) indicated the presence of a union, and all six of the files indicated that the union was involved.

The files reviewed indicated that interviews with employees were always performed when the employees were on site, but it was noted that documentation of employee interviews beyond a listing of an address was not present in seven construction files and one general industry file out of 36 total files. Outside of the employee's address, files did not contain any other documentation supporting that an interview was conducted. A Construction Supervisor and Industrial Safety Supervisor were asked about the lack of documentation. The Supervisors indicated that the only documentation required was the documentation needed to support the violations. The Construction Supervisor expressed that the lack of documented conversations being present in the file was due to the inability of the Compliance Safety and Health Officers (CSHO) to obtain an individual statement. According to the Construction Supervisor, the CSHO was unable to get an interview statement in all seven cases. While written statements are not required, documentation such as notes reflecting conversations often provide evidence necessary to document employee exposures and conditions supporting a violation.

A checklist indicates that discrimination rights were reviewed with employee and employer representatives during the opening and closing conference. In the files reviewed it showed on the diary that citations were mailed to the union; however the letter was not present.

Only three informal conferences were indicated as having been performed out of the 37 cases and only one of the conferences involved a company with a union. Although there was no indication in the file that the union was notified by IOSHA of the informal conference, it is IOSHA policy to contact the Union Representative via telephone when an informal is requested and scheduled.

IOSHA adequately documents union involvement with the OSHA 1, IOSHA's union representative information sheet, and IOSHA's opening and closing conference sign-in sheets. Whenever IOSHA indicated a union presence at a facility, the file documented that the union was involved in the inspection.

Findings and Recommendations

Finding 17: While employee interviews were always indicated as being performed, in 8 out of 36 files nothing beyond contact information was listed in the file.

Recommendation 17: For support of citations, better documentation proving exposure should have been provided. Due to the lack of this documentation, one file reviewed indicates that the all citations were deleted.

Finding 18: The final letter and citations were indicated as having been sent to the union; however, no letters were found in the file. Also there is no evidence in the file that the union was informed of the informal settlement conference by IOSHA.

Recommendation 18: Include union representation in every aspect of the inspection and keep them informed as required under the IFIRM. This includes sending the union a copy of the Notification of Citation and Penalty and informing union representation of any informal conferences.

IV.B.i.f. Citations and Penalties

Case File Reviews

Thirty seven (37) files were randomly selected and reviewed as part of this evaluation. These files included four (4) General Industry safety files, four (4) Construction files, and ten (10) Health files. In addition, observations from the review of nineteen (19) complaint files were also included as part of the case file review process. The evaluation process included interviews with the Deputy Commissioner, Directors, Supervisors, Compliance Safety and Health Officers (CSHOs) and the Assistant to the Deputy Commissioner. The interviews supported the evaluation team's case file review findings.

Most files reviewed contained evidence of adequate documentation to support violations. The primary documentation missing in files was individual employee statements, although in most instances, photographic evidence provided sufficient documentation of employee exposure to a hazard.

Each of the 37 (100%) files reviewed appeared to have hazards classified appropriately. One file was noted as questionable, but there was not enough documentation in the file to support why it was or was not cited as serious.

IOSHA's policy for issuing repeat violations is that the repeat violation must be based upon the violations issued in the last three (3) years and in the State of Indiana. The violation history can only be used after the previous case against the company has been closed. While the violations from other states can be used for knowledge, they are not used as history (for purposes of determining repeated violations). The first 28 case files in the review of complaint and programmed inspections were assessed for repeat violations. Three (11%) case files were found to have serious violations which could have been classified as repeated. All three of these case files were Industrial Compliance files. This was discussed with the Deputy Commissioner. The Deputy Commissioner maintained that all staff has been instructed that they are to review files for possible repeat violations. The CSHOs, Supervisors, and Director were supposed to be checking the files for possible repeat violations in accordance with IOSHA policy, however, these three files were overlooked.

A construction union that had filed several complaints against a non-union construction firm alleged that IOSHA had failed to issue repeat violations against the construction firm. The evidence supported that the repeat violations could not be issued under IOSHA's policies and procedures, in that the previous violations had not become Final Orders. As with many state plans, IOSHA does not allow open cases to be used as "history".

All apparent violations were cited; however, most files had little documentation contained within them. This made it difficult to evaluate if all hazards were addressed by the CSHO.

IOSHA has adopted the same penalty calculation policy as Federal OSHA. For FY2009, IOSHA's average serious penalty was \$1,271, slightly lower than the National (Federal and State) average of \$1,335. IOSHA uses the same monetary amounts and adjustment factors as Federal OSHA. The use of these adjustment factors (size, history and good faith) were appropriate in all cases reviewed. Except for two (6%) of the 37 cases, the gravity of the violation was also found to be correctly assessed.

The first case involved a local newspaper. An employee was removing a jam from a machine. The machine had not been guarded. The employee attempted to remove the jam, and the employee received an amputation of three of his fingers. IOSHA assessed that the severity was medium. A medium severity means that the illness or injury is temporary and reversible. IOSHA also stated that the probability was low that this injury or illness would occur. IOSHA did not explain why this assessment was made.

The second case involved a foundry. An employee was sent to work on a furnace that was not properly functioning. Guardrails and fall protection were not present at one end of the furnace area. The employee slipped and fell 18 feet into a pit. This fall resulted in multiple bones being broken and loss of proper function of limbs. IOSHA rated the severity as medium, and the probability as low.

The general case file review (37 files) revealed that methodologies used by the State to calculate the penalties of concern to the union were found to be appropriate. While a Union alleged that the State did not assess penalties equivalent to those assessed by Federal OSHA, the State has adopted and follows procedures equivalent to Federal OSHA.

The Industrial Compliance Director was asked why such a low gravity was assessed for these two accidents. The Director stated that they do their assessment as he was directed to by the previous Industrial Compliance Director. The previous Director believed that assessment should be based on the violation and not the accident. In both of previously discussed cases, the hazards had the potential to result in injuries resulting in permanent disability warranting a high severity classification and because injuries actually occurred, a probability of higher may have been appropriate. This was discussed with the Deputy Commissioner during the special study resulting in new instructions to staff not to disregard the accident when performing the severity and probability assessment.

When issuing citations not related to fatality and catastrophes or significant cases, the case is first reviewed by the Supervisor, and then it is sent to the Director for signature and final approval.

Findings and Recommendations

Finding 19: Most files had adequate documentation to support the violations with the exception of several files that did not contain documentation of interviews to support exposure to a hazard.

Recommendation 19: Interviews should be documented in the file to support employee exposure to a hazard.

Finding 20: Three of twenty-eight Industrial Compliance case files were found to have repeat violations improperly classified as serious violations.

Recommendation 20: Supervisors should be instructed to use the IMIS database to check for repeat violations.

Finding 21: It was discovered that in two of the Industrial Compliance files reviewed that the severity assigned was too low based on the potential injuries as a result of exposure to the hazard.

Recommendation 21: If an accident had occurred, it cannot be disregarded when assessing the severity of an injury and illness.

VII.B.i.g. Abatement

Case File Reviews

Thirty seven (37) files were randomly selected and reviewed as part of this evaluation. These files included four (4) General Industry safety files, four (4) Construction files, and ten (10) Health files. In addition, observations from the review of nineteen (19) complaint files were also included as part of the case file review process. The evaluation process included review of IMIS reports and interviews with the Deputy Commissioner, Directors, Supervisors, Compliance Safety and Health Officers (CSHOs) and the Assistant to the Deputy Commissioner. The interviews supported the evaluation team's case file review findings.

Although the Violation Abatement Report is generated for each Supervisor monthly, staff interviews revealed that the reports are not consistently utilized as a tool to track abatement and the reports are not kept up to date with most current information.

During this review, the reports were run and provided to each Supervisor to report on the status of each of the cases listed under them. It was learned from these reports that a majority of the abatement not verified was on construction citations. Through interviews, it was learned that this was primarily due to a lack of timely data entry into the IMIS. In one (3%) of the 37 cases reviewed, it was found that an extension had been given and not entered into IMIS. The other citations for which abatement was not indicated as verified was because the IMIS had not been updated and/or the Supervisor was not successful obtaining abatement from the employer.

In many instances, employers were not required to provide proof of abatement for hazards cited. If the employer was allowed to use an expedited informal settlement agreement (EISA), IOSHA only required the company to sign a certification that they had corrected all violations. Of the 28 files reviewed with citations, 25 (89%) of these files were settled using EISA, and therefore, these files were not required to have any documentation of abatement other than the signature of the employer representative. Because the files contained no documentation offering proof of correction, IOSHA could not verify that citations were corrected. While several of the case files did include abatement, it was learned from Supervisors that the documentation submitted may not always be reviewed if it had been provided for a case settled through an EISA. Two Supervisors were consulted on how they handled abatement that was received, but not required under the EISA. One of the Supervisors confirmed that if abatement was submitted it would be reviewed regardless. However, another Supervisor indicated that if the abatement was not required by IOSHA policy to be submitted, it would not be reviewed. As a percentage of total inspections, OSHA conducted follow-up inspections at the rate of 3% while IOSHA only conducted one follow-

up inspection during the FY2009. According to the FY2009 Internal Evaluation Plan, the state indicated that the major impediment to progress on follow-up inspections, at least with regard to abatement verification, is time limitations associated with heavy workloads.

Two Industrial Compliance case files were reviewed which contained inadequate abatement information from the employer and both had been settled through the EISA process. Both cases involved incorrectly developed respiratory protection programs. Respiratory protection was not appropriate or evaluated for the hazards present, and no change-out schedule for cartridges had been included. The abatement in both case files was accepted as adequate and subsequently closed even though the abatement provided was not adequate.

Of the 28 files with citations issued and not resolved through an EISA, three (11%) did not contain any abatement documentation. The first file had the citations deleted in the informal conference process due to lack of evidence of employee exposure. The second had all violations corrected during the inspection and the third file was closed without evidence of abatement being provided. The abatement timeframes, where assigned, were for a reasonable time period.

Findings and Recommendations

Finding 22: Although generated and distributed monthly, Supervisors are not utilizing IMIS reports to track abatement.

Recommendation 22: Supervisors must consistently review IMIS reports to track abatement and update the IMIS in a timely manner.

Finding 23: In some cases, abatement was not late as the employer had been informally granted extra time to submit abatement. One file was reviewed where the employer had petitioned for a modification of the abatement due date. The time requested was not noted. The Supervisor did not note any discussion with the employer; however, abatement was submitted at a much later date than the original due date.

Recommendation 23: Require employers to follow procedures for Petition to Modify Abatement (PMA) and ensure that IMIS is timely updated to reflect any extensions granted.

Finding 24: IOSHA appeared to be following abatement documentation requirements of 29CFR 1903.19(c) for EISA's except for providing the method of abatement. When a case is resolved through an EISA, the employer is not being required to provide certification of the method of abatement. IOSHA only requires the employer to sign a Certificate of Correction which contains the inspection number, date of citation issuance, date of citation abatement, and date of posting of the certificate.

Recommendation 24: The Certificate of Correction should contain the method of abatement the employer used to correct the citation. Certification is required to be present under 29 CFR 1903.19(c).

Finding 25: When viewing Industrial Compliance case files, two cases were reviewed with incorrect abatement; however, the Supervisors accepted the abatement and closed the cases.

Recommendation 25: All abatement documentation submitted must be reviewed.

IV.B.i.h. Review Process

Informal Conferences

Informal conferences are usually conducted by the Director of Industrial Compliance and the Director of Construction. Twenty eight cases were reviewed that had citations issued. Of those 28, three of the employers participated in the informal conference process. Only one company had a union, and no indication could be found in the file that the union had been notified of the informal conference.

During the informal conference citations can be upheld, modified, reclassified or deleted. Items which were not grouped may be grouped at this time. All of this can result in modification of a penalty. There can also be a 30% reduction in penalty for companies which agree to additional training.

One of the cases resulted in the deletion of all violations. According to the Construction Director, the deletions occurred due to the lack of evidence supporting employee exposure. The penalty total went from \$2,250 to \$0. In the second case, a violation was deleted and the second citation was reduced in penalty. The penalty total went from \$3,750 to \$914. The Construction Director listed no reason for his actions, so it is not apparent what the justification was, if any, for the modifications. The third case involved a series of actions. Several violations were grouped, another item had the penalty removed, and the third item was reduced by 35%. There was an indication in the file that additional training was required as part of the informal settlement. There was no explanation in the file justifying the reductions and grouping that occurred. This case file was closed upon arrival of the penalty payment even though no abatement information was provided. The total penalty went from \$9000 to \$2925. While few files in the random selection were handled through the informal conference, the three present showed an average lowering of the penalty by 74%. Nothing was noted as being incorrect, but only one case contained any documentation justifying modifications by the Construction Director.

Expedited Informal Settlement Agreements (EISA)

Case File Reviews

Thirty seven (37) files were randomly selected and reviewed as part of this evaluation. These files included four (4) General Industry safety files, four (4) Construction files, and ten (10) Health files. Of the 37 files reviewed, 28 contained violations and/or penalties. Of those 28 files, 25 were settled with an EISA. In addition, observations from the review of nineteen (19) complaint files were also included as part of the case file review process. The evaluation process included interviews with the Deputy Commissioner, Directors, Supervisors, Compliance Safety and Health Officers (CSHOs) and the Assistant to the Deputy Commissioner. The interviews supported the evaluation team's case file review findings.

The EISA Policy was requested. A summary of the policy was received from the State. The policy summary stated that no willful, repeat or failure to abate citations could be present. The employer had to correct hazards within the time frame noted. The safety order could not be related to an accident, fatality or catastrophe. The employer had to be current on all penalties owed to the State. Finally, there could not be more than five high severity violations cited. If none of the above, then the employer is eligible for a 35% reduction of the initial penalty amounts.

The Directors indicated that this has helped to reduce the time spent conducting informal conferences. The determination to send the EISA is initially made by the Industrial Compliance and Construction Supervisors.

While both Supervisors use the same decision tree to decide if a company can utilize the EISA process, each of the Supervisors interpreted the elements within the tree differently.

Inconsistencies noted include:

1. There is a \$5,000 limit in total penalty after initial adjustments. One Supervisor said this was true while the other did not.
2. No high severity / greater probability violations were allowed. One Supervisor said this was true while the other did not.
3. While both agreed that EISA citations did not require abatement documentation, one Supervisor believed that abatement should be reviewed if it was submitted. The other chose not to review the abatement that was submitted because the EISA settlements did not require it.

There is obvious disagreement on monetary limitations, the assessment of the gravity of the citations, and abatement between the Supervisors. It was also noted that an accident case involving an amputation was allowed to take advantage of the EISA.

It was estimated that 30 to 40% of all cases are handled using EISA. In some cases, IOSHA receives no abatement documentation from these companies that accept EISA. Only one follow-up was done for FY2009. There is no other process in place to ensure that abatement is completed and adequate for employers eligible for the EISA.

Formal review of citations

For cases that are not resolved through the informal conference process, appeals are heard by the Indiana Board of Safety Review. The enabling legislation for the Board is found at IC 615 IAC. The Board is an independent Administrative Review Board housed within the IDOL and is governed by the Indiana Administrative Orders and Procedures Act (AOPA) found at IC 4-21.5-3. The Board consists of five members, including two from labor, two from industry and one safety and health professional.

Four contested cases that were certified to the Board of Safety Review were evaluated. During FY2009, 31 cases were certified to the Board.

Case A - This case was currently appealed to the Superior Court pending trial. The BSR decision upheld the State's Safety Order, which included one serious citation for Hazard Communication training with a penalty of \$4,500.00. The employer denied knowledge of the hazard and requested the violation and penalty be vacated. The State's evidence supported employer knowledge and resulted in the BSR decision upholding the State's findings. The time from contest to hearing was approximately ten months and from contest to first level decision was approximately 18 months.

Case B (fatality) - This case was contested in July of 2008. The BSR Hearing took place in June of 2009 and IOSHA was still waiting on a decision. The file included a letter to the employee representatives informing them of their right to petition for party status. This letter was sent at the same time the State notified the employer representative that the case was being certified to the BSR. The case includes five serious violations related to rigging and working under suspended loads with penalties totaling \$12,500.

Case C - The employer in this case was a general contractor who was cited for scaffolding violations under the multi-employer worksite policy. Five serious citations were issued totaling \$7,500. The case was contested in September of 2008 and the State and the employer entered into an Agreed Entry in September of 2009 prior to a formal hearing before the BSR. The State agreed to reclassify the five citations to nonserious and the penalty was upheld. The employer

also agreed to send its Foremen and Superintendants to a 30 Hour Construction course within six months of the date of the Agreed Entry. No additional justification was noted for reclassification of the violations.

Case D - The State issued two serious, six knowing, and one nonserious violation totaling \$129,900 in August of 2008. The case was contested and set for hearing in July of 2009. Prior to the hearing, the employer filed for bankruptcy and failed to appear for the hearing. The BSR issued a final order upholding the State's safety orders and penalties.

During FY2009, 3.6% of Indiana inspections had contested violation(s) which was the lowest percentage among state plans in Region V and approximately half of Federal OSHA's 7.0%. Agency management indicated during an interview that roughly six to eight cases actually went to hearing during FY2009. All others were resolved prior. According to IMIS, Indiana vacated 5.2% of violations while Federal OSHA vacated 5.1%. Indiana also reclassified 4.0% of violations while Federal OSHA reclassified 4.8% of violations. With regard to penalties, Indiana retained approximately 47.3% while Federal OSHA retained 63.2% of penalties. While the timeline from contest to first level decision is roughly twice that of OSHA's, the Agency has worked diligently to reduce this time significantly, shaving 300 days in FY2009 over the previous FY. The IDOL reports that the Board of Safety Review continues to efficiently manage contested cases. Its docket is now at a manageable level of less than 30 cases compared with five years ago when over 300 cases were open and dated to the mid 1990s. When the State receives a timely notice of contest, the appropriate employee representative(s), if applicable, are notified of their right to petition the board for party status.

The State reports that there have been no IOSHA inspection cases accepted for criminal prosecution during the audit period. Program management indicated that criminal matters must go through the appropriate County Attorney because the Attorney General for the State is not authorized to prosecute criminal cases. According to the Deputy Commissioner for IOSHA, a County Attorney was approached in a couple of cases but declined to prosecute each time.

Findings and Recommendations

Finding 26: IOSHA does not appear to be working from one detailed policy for EISA.

Recommendation 26: Provide to everyone the EISA policy, and train everyone on the elements of the policy.

Finding 27: No method exists for ensuring that abatement is completed by employers taking part in the EISA process.

Recommendation 27: Periodic follow up inspections should be initiated as a means of ensuring abatement is completed by employers taking part in the EISA process or requests for abatement documentation could be made.

Finding 28: The average lapse time from receipt of contest to a first level decision is approximately one and a half years.

Recommendation 28: Continue to identify ways to reduce the time for receiving a decision on contested cases.

IV.Bi.i. Public Employee Program

The IDOL operates a program that covers public sector employees. During FY2009, there were 32 enforcement inspections of public sector entities. Public sector inspections represented 1.62% of the State's inspection activity which is slightly lower than the reference measure of the State's three year average of 2.3%.

Safety Orders issued to public sector entities contain an invoice with penalties indicating that if the hazards are corrected in a timely manner that the Deputy Commissioner has the authority to waive associated penalties. The State has not had to actually collect a penalty from a public sector entity to date. Targeting or programmed inspections have not been used to generate public sector inspections. All activity was unprogrammed.

IV.B.i.j. Information Management

Indiana has a designated System Administrator. According the System Administrator, all IMIS support is obtained through the OMDS Help Desk. Information technology issues not related to IMIS are handled by the Department of Information Technology (DoIT) through the State of Indiana.

Process Flow

Most CSHOs work out of their homes. There are eleven CSHOs that work out of the Indianapolis Office. Four are Construction and seven are Industrial Hygienists. One Construction Supervisor also works out of his home. All CSHOs are equipped with a laptop, printer, internet access, access to the IMIS via a VPN/State LAN and each utilize the CSHO Application.

Assignments OSHA 168

The Duty Officer creates an OSHA 168 assignment record and distributes it to the appropriate Supervisor based on type of discipline and geographic location of inspection. Assignments and complaints can be scanned and emailed to CSHOs and the initial files subsequently mailed to them. The CSHO opens the inspection and enter all the data into the CSHO Application and save it to a floppy (3.5 disk) contained in the file. The CSHO then transfers the OSHA-1 information to the NCR via a VPN which allows access to the State LAN. (The CSHOs also complete their 31s from home as well). The file and floppy disk are mailed to the Supervisor. The Supervisor downloads inspection information from the floppy to his/her CSHO application and reviews the file. Supervisors then print Safety Orders from the CSHO Application and then transfer the information from the CSHO Application to the NCR. All forms and information are then saved as final. If there are complaint letters associated with the file they are printed and mailed out as well. The System Administrator indicated that sometimes they run into problems transferring information, for example, 1Bs to the NCR. When this occurs, Administrative staff may enter the information directly into the IMIS.

Fatalities

In the case of Fatalities/Catastrophes, the Duty Officer enters the OSHA Form 36 and saves it final. The Duty Officer also creates a 168 assignment record, a 170 is also entered draft into the IMIS, and a hard file is created which is distributed to the appropriate Supervisor for assignment. The CSHO is emailed the assignment and the file is mailed. The CSHO updates the 170 and 36 if necessary. The 36 also goes to a routing list via email. The System Administrator is on the list and holds the 36 until next of kin information is received via email from the CSHO. At that point, the next of kin letter is sent. When the investigation and file is complete, the file is sent to the appropriate Supervisor. Safety Orders are prepared as above and are also mailed to the next of kin. The Commissioner also sends a sympathy card. Next of kin letters were previously

maintained electronically, however, hard copies are now kept in the case files. Information on fatalities is also provided to the AFL-CIO for use during the Worker Memorial Day Ceremony. Prior to issuing safety orders, a fatality review meeting is held with the CSHO, the Supervisor, the Deputy Commissioner, and appropriate Director. The purpose is to make sure that all issues were addressed prior to safety orders being sent.

IMIS Management

A review of the management of the Integrated Management Information System (IMIS) and the reports available through IMIS was conducted to determine the effectiveness of Indiana OSHA's information management programs.

All transmissions to the host computer (End-of-Day [EOD] and Start-of-Day [SOD] are conducted on a daily basis. Administrative Staff indicated that the agency was notified by the National Office earlier in the FY that system backups were not being performed regularly. They are now performed weekly and monthly. Staff indicated that some difficulty is encountered due to intermittent connectivity problems typically remedied by rebooting the system.

Forms in Draft

Administrative staff interviews revealed that draft OSHA 1s are entered by CSHOs and the Supervisors are supposed to save them as final once the file is submitted for review by the CSHO. The OSHA 36, 7, and 90 should be saved final by the Duty Officer who receives the accident, complaint, and referral information. CSHOs enter their own 31s. As indicated in the table below, 589 forms were indicated as draft in the IMIS. The bulk of the forms (OSHA 1, 1B, and 31s) should be saved as final by the Supervisors and CSHOs.

Form Type	Indiana OSHA Forms in Draft
OSHA-1	166
OSHA-1B	176
OSHA-170	18
OSHA-36	3
OSHA-7	41
OSHA-90	3
OSHA-31	182
Total	589

Rejected Forms

Only one OSHA 300 form was indicated as a reject at the time of this study. One Administrative Staff person is assigned to handle any rejects and based on the fact there was only one reject on the date requested, the program appears to be handling this adequately.

Health Sampling Information

Only two of the eighteen Industrial Hygiene Compliance Officers have been entering health sampling information. Though the information entered thus far was not being saved as final. The sampling data has not been entered into the system or attempted by other CSHOs. Indiana was one of nine states that have not been entering this information into IMIS.

IMIS Management Reports

A review of the local management reports menu system was made to determine if the Indiana OSHA management team has a system for review of the most widely used management reports. While some reports are generated and distributed to managers on a monthly basis, other reports are not generated and distributed at all. The time period used for these reports is January 1, 1980 (beginning of the database system) through September 30, 2009 (the last date for this

special study time frame) with the exception of the Complaint Tracking Report, which ran from October 1, 2008 through September 30, 2009, the review period for this special study. The System Administrator indicated that several IMIS reports are generated and distributed to the management team on a monthly basis including:

Unsatisfied Activity on the 15th of each month

Select Violation Abatement Report on the 15th of each month

Complaint Tracking Report on the 1st of each month

Citations Pending Report on the 15th of each month

Open Inspections on the 1st of each month

Case Lapse time Reports (reviewed by QMS Director) on the 1st of each month

Complaint Tracking Report

The Complaint tracking report- is used to determine if complaints need to be closed that are still open. This report is generated and distributed to Supervisors monthly.

Complaint - Employer Response Due Report

This report lists all complaint inquiries where the employer's response to OSHA's request to investigate the complaint allegations has not been received. This report is available for use by management to contact the employer and remind them that their abatement response is past due or to schedule the complaint for an inspection due to the lack of response. The report lists sixty one (61) cases past due, six that are over five years old, eight over four years old, three from 2007, 23 from 2008 and the rest from 2009.

Interview of program staff revealed that this report is not being used. The Duty Officer is responsible for tracking employer responses to complaints. The current practice is to log complaints into an Excel spreadsheet to track as well as scan the nonformal investigation files daily for overdue responses.

The System Administrator eliminated all outliers on this report. Coding errors were identified as the problem.

Complaint – OSHA-7 for Signature

This report lists all complaint inquiries where the employee's requested signature has not been received. This report is available for use by management to contact the employee and remind them that their signed complaint form is past due, or maintain the "non-formal" classification due to the lack of the employee's signature and process the complaint as an inquiry. The current report indicated eight cases past due with two cases being 18 months past due and five cases 10 months past due and one case at 4 months past due.

Currently, when the Agency receives a complaint, it is logged on a paper tablet and noted as "waiting on signature" and then placed in the Duty Officer's tray. The tray is reviewed daily to determine if signatures are due. If a signature is not received after ten calendar days, the complaint is made nonformal and entered into IMIS. If a signature is received within the ten day period, the complaint is made formal and entered into IMIS. Complaints are also tracked by the Duty Officer on an Excel spreadsheet.

This report is not currently being used. This report would not be useful to the State based on their current practice of not entering complaint information into IMIS until after a signature is received. The System Administrator eliminated all eight (8) outliers on this report after it was generated.

Unsatisfied Activity Report

This report lists all complaint, referral and accident/event records that have been selected for an inspection yet no inspection has been initiated. The report listed 186 cases, including 10 fatalities, 117 complaints and 59 referrals. Of the listed cases, 121 had inspection records, however, the activity's safety/health requirements were not marked as satisfied.

Fatalities:

Three fatalities listed were older than 900 days and seven were less than 70 days old. Of the ten fatality cases listed none had an inspection number listed and all but three cases had assignment records.

The System Administrator identified that two of the fatalities were duplicates that had been entered into the system and that one was listed because of a coding error. All have been corrected.

Complaints:

Approximately 117 complaints were listed on the report. All but 15 of those had inspection records. Those without any indication of an inspection being conducted were between 74 and 152 days old. Those with inspection records had a satisfied activity marked which did not match up with the activity's safety/health requirements.

The System Administrator identified coding errors and eliminated most of the complaints listed on the report.

Referrals:

Approximately 59 referrals were listed on this report. Nineteen of the referrals also listed associated inspection numbers. Those without inspections included seven that were more than 900 days old, 11 between 500-800 days, and the rest were less than 500 days old. Supervisors relied mostly on the open cases report to track inspection activity.

The System Administrator was able to identify coding errors or that the OSHA 1 had not been transferred to IMIS yet as the problem with the majority of referrals listed on the report.

Although the report is generated monthly and distributed to Supervisors, it is apparently not being utilized given the number of cases, age and the fact that inspections were conducted in many cases appearing on the report. Most instances appear to be due to inappropriate coding of health items being marked as satisfied by a safety action or vice versa. Several cases are listed without associated OSHA 1s which would indicate that it was assigned but no indication that it had been inspected. The CSHOs are supposed to mark the OSHA 1 as satisfied and then submit to Supervisor who should close the inspection once transferred and issued.

Citations Pending Report

This report lists all open inspections where the citations have not been issued. This report is available for use by management to track the six-month statute of limitation for issuing citations. Fifteen (15) cases were listed with an opening conference date beyond 180 days with no citations issued. In fact, these cases show the number of days open, ranging from 202 days to 665 days. All cases were listed with an opening conference date, thus making it possible to determine the six-month statute of limitations date for the issuance of citations.

This report is generated monthly and distributed to the Supervisors. Either no safety order was issued and the case did not get closed or safety orders were issued and the 1Bs were not transferred to the IMIS. Administrative staff indicated that this is mostly a matter of follow through by the Supervisors who transfer information to IMIS and also selection of the appropriate activity being satisfied and ensuring that it is consistent with the type of activity indicated as needing

satisfied. Supervisors relied on the Open Inspection report to track open cases. There were no instances found where citations were not issued within the six month time frame.

Violation Abatement Report

This report lists all cases with abatement past due for specific violations and is available for use by management to contact the employer and remind them of their past due abatement, or schedule a follow-up inspection because of the lack of the employer's abatement response. Although this report is generated and distributed to the management team on a monthly basis, abatement verification (SAMM Measure #8) has been an outlier for years.

Violation Abatement Reports were generated for each of the Supervisors:

IH Supervisor - 21 cases were listed as having abatement past due with the oldest being June of 2008 and the majority due in late 2009 and 2010. One case involved a Repeat violation due in June of 2009. The remainder of items past due were classified as Serious or Other-than-serious.

IH Supervisor- 16 cases were listed as having abatement past due with the oldest being October 2004(three Serious), another case was due in April 2006 (two Other). All cases listed as past due contained Serious or Other classifications.

Construction Supervisor- 26 cases were listed as having violations past due with the oldest being 2004 (one Serious). All cases contained Serious and/or Other classifications.

Construction Supervisor- 26 cases were listed as having abatement past due with the oldest being December of 2007 (four Serious, one Other). All cases contained either Serious and/or Other classifications.

Construction Supervisor- 26 cases were listed as having violations past due with the oldest being 2004 (one Serious). All cases contained Serious and/or Other classifications.

Industrial Safety Supervisor- Eight cases were listed on the report. Only one case contained due dates prior to this review and was due in December of 2009 (One Serious, One Other). All cases contained violations classified as either Serious or Other.

Approximately 101 cases were listed with abatement past due. Of those, 23 cases were less than one month past due, 28 were less than three months, and the remainder were greater than three months. Twelve cases were due in 2008, three cases were due in 2007, two cases were due in 2006 and two were due in 2004. All others were due in 2009 or 2010.

A review of the above listed cases revealed that 21 of them were already abated and in need of being updated in the IMIS. While some cases were ready to be closed in IMIS, others were waiting on penalty payment or additional documentation such as proof of 10 hour training agreed to during the informal settlement process. Many of the cases had been scheduled for penalty hearings or had initiated the warrant process to file a lien on property for nonpayment. Regardless, the abatement status of cases should be updated in IMIS in a timely manner.

Staff interviews revealed that the IMIS is not consistently updated when abatement is received and sometimes the cases are only updated when they are ready to be closed. This results in the system information and report not being current with regard to abatement status and any extensions that may have been granted.

Although this report is generated monthly and distributed to the management team, Supervisor interviews revealed that the Open Inspection report is most commonly used for tracking abatement for open cases.

Open Inspection Report

This report lists all open inspections for each office. For internal audit purposes, this report can be reviewed to determine if case file management is being handled properly. The review will identify all cases that have all abatements completed and all penalties paid, so the cases can be effectively closed on the IMIS system. The report lists 571 open cases. Of those, 78 cases were listed with all abatement dates over two weeks past and 153 were reported as involving debt collection and 34 were in contest.

This report is generated monthly and distributed to the management team. The System Administrator reported that she trained the Supervisors on how to use the reports.

Debt Collection Report

This report lists all cases with outstanding penalties that require action by the office. This report is available for use by management and/or administrative staff to pursue the collection of penalties and refer cases to the Attorney General for collection when local collection attempts fail. While the report was run for the purposes of this study, it has not been used by the State since the 1990s. The IMIS report listed 82 cases. 20 of the cases listed did not contain penalty due dates. Administrative staff indicated that missing penalty due dates for many of the cases were the result of not entering a new due date after sending a penalty demand letter or updating IMIS after receiving payments from employers on payment plans. Alternatively, the State has developed its own internal system for debt collection monitoring. Currently, an Administrative Support staff employee is responsible for tracking all penalties issued.

Debt Collection Process Flow

In 2005, an Excel spreadsheet was developed to track penalties. The IDOL discontinued the practice of using a collection agency and instead issue warrants obtaining liens on property. The Administrative Support staff issues/mails all safety orders and if a penalty is attached it is recorded on the spreadsheet. When the certified receipt is returned, IMIS is updated and the file is returned to the Supervisor. The spreadsheet is filtered at the 15th working day to determine the status of cases if it has not been returned settled or contested. In July of 2009, the agency began issuing penalty demand letters approximately one week following the end of the contest period indicating that unless payment is received in 10 days, the agency will begin proceedings to impose a lien on any real or personal property owned by the employer. A second letter is sent approximately three weeks later setting the matter for a hearing with the Deputy Commissioner and the Administrative staff responsible for tracking penalties (aka Hearing Officer). If the employer does not appear for the hearing, a third letter is sent a week or two following the hearing date indicating that the agency will be filing a warrant with the Clerk in their county which attaches a lien on personal or real property which is valid for ten years. This is the only letter sent via certified mail. If no response is received, a warrant is sent to the applicable county Clerk along with a copy of the third letter to the employer. After filing the warrant with the Clerk, the file is also transferred to the Attorney General's office for handling. Currently, there are approximately 200 to 250 employers on the tracking list at any one time, which of course, fluctuates daily. Several employers are on payment plans and are also tracked using the same spreadsheet. At the time of this review, 49% of all outstanding penalties due are made up of 31 cases that are in contest. The oldest case being tracked via spreadsheet had safety orders issued in 1998.

Staff interviews indicate that the threat of property liens have resulted in a better response and increased payments from employers, which is an improvement over sending the matter to the AG for handling or to a collection agency.

Findings and Recommendations

Finding 29: Indiana OSHA has a significant number of draft records in the IMIS system.

Recommendation 29: Indiana OSHA must conduct a performance review and cleanup of the IMIS database records on a regular basis to ensure that all draft forms are finalized and transmitted to the host computer as soon as possible, with the exception of OSHA 1Bs that are less than six months old as modifications may be necessary prior to issuing safety orders. Procedures must be developed to ensure periodic reviews of draft IMIS forms are conducted to maintain a viable information system.

Finding 30: Although several IMIS management reports are being generated and distributed to the management team on a monthly basis, the majority of the reports are not being used effectively.

Recommendation 30: Indiana OSHA must establish a system for the proper handling and review of IMIS management reports. Consideration should be given to the importance of the report when determining the frequency with which it is generated and distributed(weekly, bi-weekly, or monthly).

Finding 31: The IMIS is not kept up-to-date and contains information which does not allow for effective internal evaluation of the Indiana program.

Recommendation 31: Indiana OSHA must ensure that the IMIS system is kept up to date and is accurate. All Supervisors and Administrative staff responsible for IMIS data entry must utilize available management reports and follow through with timely updates to the system for all forms and changes in case status (abatement, penalties, extensions, etc.) Additional IMIS Training for staff is recommended to effectively maintain and utilize the system.

OSHA Instruction ADM 1-1.31 IMIS Enforcement Data Processing Manual

Finding 32: The State has not been entering health sampling information into the IMIS.

Recommendation 32: The State will need to start entering health sampling data into the IMIS.

Finding 33: Complaint information is not entered into the IMIS when received. The OSHA-7 for Signature report is not utilized. Staff interviews revealed that Complainant's are allowed up to ten days to formalize a complaint.

Recommendation 33: Indiana OSHA should enter complaints into the IMIS when received. The OSHA-7 for Signature report should be generated and reviewed periodically to ensure the system reflects current status of complaints. The FOM indicates that Complainants are given up to five working days to formalize nonformal complaints.

IV.B.i.k. General Inspection Statistics

A review of Indiana enforcement statistics was conducted using the IMIS Inspection and Enforcement Reports for the review period, FY2009. During the review period, Indiana conducted 2,139 inspections.

General Statistics

Of the 2,139 inspections, 1,863 (87%) were safety-related while 276 were health-related. Total programmed inspections were 1,437(67%), while total unprogrammed inspections were 702 (33%).

The 702 unprogrammed inspections were comprised of the following: 43 accident investigations, 433 complaint inspections, 113 referral inspections, one follow-up inspection, and 112 unprogrammed related inspections. No monitoring or variance inspections were conducted during the review period.

Breaking out the inspections by industry, a significant number were construction related with 1,426 (66.7%) inspections. The remaining inspections were conducted at manufacturing facilities (370) or other categories (343).

A total of 2,101 inspections were conducted at private sector establishments and 38 inspections were conducted at public sector agencies.

Programmed Inspections

Of the 1,437 programmed inspections, 575 were coded as programmed planned while 852 were coded as programmed-related. This is consistent with the large number of construction inspections and associated multi-employer worksites.

Of the 2,139 inspections conducted during the review period, 916 (43%) inspections resulted in citations. Of those, 74.1% resulted in the issuance of serious violations, while 25.5% of the inspections resulted in the issuance of "other-than-serious" violations. Comparatively, Indiana's percentage of inspections with citations is significantly lower than the average for all State plans which was 62% and that of Federal OSHA which was 70%. The low percentage is indicative of the need to reevaluate the inspection process, especially the targeting system, so that resources are focused on the most highly hazardous workplaces. Indiana's percentage of violations which were serious was slightly higher than the percentage for all State Plans which was 62% and lower than Federal OSHA's 87%. For FY2009, Indiana's performance was calculated at 21.22% NIC inspections with S/W/R violations for programmed safety inspections which is less than half of the national (Federal and State data) average of 58.6% NIC inspections with S/W/R violations. For health programmed inspections, Indiana's performance was calculated at 58.1% NIC inspections with S/W/R violations, which is slightly higher than the national average of 51.2%. This data may be found on the State Activity Mandated Measures (SAMM) Report, Measure #8.

Violations per Inspection

During FY2009, Indiana issued a total 2,614 violations with 1,498 classified as serious (57.3%), 13 (.5%) were classified as repeat and 1,103 (42.2%) were classified as other-than-serious. There were no violations issued that were classified as willful or failure-to-abate. Comparatively, Indiana's percentage of violations classified as serious is higher than the average of 43% for all state plans but 20% lower than that of Federal OSHA's 77%. Based on information contained in SAMM Measure #9, Indiana issued 1.89 violations per inspection which is slightly lower than the 3-year national average of 2.1 violations per inspection.

Willful Violations

Indiana does not classify violations as Willful. The comparable classification for the State is "Knowing". During FY2009 the State did not issue any "Knowing" violations.

Follow-Up Inspection Statistics

During FY2009, Indiana performed one follow-up inspection. As part of the Indiana 2009 SIEP, the State identified abatement verification as issue needing addressed and reported that it will be taking steps to ensure follow-up inspections will be conducted during FY2010. Although distributed on a monthly basis to all Supervisors, the Violation Abatement Report, which shows a large number of past due abatements, is not consistently used to track abatement and/or identify candidates for follow-up inspections.

Most Frequently Cited Standards

A review was conducted of the most frequently cited standards by Indiana OSHA. The top cited standard was Hazard Communication with 82 Serious and 239 Other-than-serious, and two Repeat violations. Only 25% of the violations were classified as Serious compared to 59% for Federal OSHA. The second most frequently cited standard was 1926.451- Scaffolds, with 139 Serious, ten Other-than-serious and one Repeat violation. This indicates that 93% of these violations were classified as Serious. Approximately 33% of the top ten most frequently cited standards are construction related in Indiana and 50% for Federal OSHA. Comparison of the Indiana OSHA's and Federal OSHA's top 10 cited standards for all industries provides that IOSHA and Federal OSHA shared five standards in their top 10 frequently cited standards and these were hazard communications 1910.1200, scaffolds 1910.451, fall protection 1910.501, machine guarding 1910.212, and construction general safety and health provisions 1926.020. Below are the tables of the Top 10 Most Frequently Cited Standards for Indiana OSHA and Federal OSHA.

Indiana OSHA Most Frequently Cited Standards – All Industries October 1, 2008 to September 30, 2009

	<i>Standard</i>		<i>Serious</i>	<i>Other</i>	<i>Repeat</i>	<i>Total</i>	<i>% Serious</i>
1	1910.1200	<i>Hazard Communication</i>	82	239	2	323	25%
2	1926.451	<i>Scaffolds</i>	139	10	1	150	93%
3	1910.134	<i>Respiratory Protection</i>	92	42	0	134	69%
4	1910.303	<i>Electrical-General</i>	65	51	0	116	56%
5	1926.501	<i>Fall Protection</i>	99	4	0	103	96%
6	1910.212	<i>Machine Guarding</i>	80	16	0	96	83%
7	1910.146	<i>Confined Space</i>	67	21	0	88	76%
8	1926.020	<i>Construction- General S/H Provisions</i>	73	9	0	82	89%
9	1910.305	<i>Electrical- Wiring, methods, components and equipment for general use.</i>	27	50	0	77	35%
10	1926.150	<i>Fire Protection</i>	2	69	0	71	3%

Federal OSHA Most Frequently Cited Standards – All Industries October 1, 2008 to September 30, 2009

	<i>Standard</i>		<i>Serious</i>	<i>Other</i>	<i>Repeat</i>	<i>Total</i>	<i>% Serious</i>
1	1926.501	<i>Unprotected sides and edges</i>	6143	319	451	6953	88
2	1926.1053	<i>Use of ladders</i>	2813	257	65	3139	90
3	1910.147	<i>Lockout tagout program</i>	2394	492	68	2969	81
4	1926.451	<i>Fall protection</i>	2696	58	193	2961	91
5	1910.1200e	<i>Hazard communications program</i>	1378	1075	51	2504	55
5	1910.212	<i>Machine guarding</i>	2074	149	48	2284	91
7	1910.1200h	<i>Hazard communication training</i>	1355	701	41	2104	64
8	1926.503	<i>Training – fall</i>	1704	112	80	1898	90
9	1910.178	<i>PIV training</i>	1421	419	23	1864	76
10	1926.20	<i>Accident prevention responsibilities</i>	1479	343	40	1862	79

Two of the top ten most frequently cited standards in general industry and three of the top ten most frequently cited standards in construction were related to electrical hazards (1910.303, 1910.305, 1926.404, 1926.405, and 1926.403).

While these standards were cited a total of 372 times, only 178 (48%) were classified as Serious citations. The fourth most cited construction standard (1926.150 – Fire Protection) was cited 71 times, but was classified as Serious only two times (3%). Federal OSHA cited fall protection 1926.501 the most frequently and issued serious violations 88% of the time. For IOSHA fall protection 1926.501 was their fifth most frequently cited standard, and serious violations were issued 96% of the time. An overall statistical analysis of the tables shows that IOSHA issued 726 (59%) serious violations out of 1,240 total violations. Federal OSHA issued 23,457 (82%) serious

violations out of 28,538 total violations. This represents a percentage difference of 23%. Total repeat violations shows that IOSHA issued three repeat violations out of 1,240 total violations. Federal OSHA issued 1,060 (4%) repeat violations out of 28, 538 total violations. This represents a percentage difference of 4%.

Indiana OSHA Most Frequently Cited Standards - Construction
October 1, 2008 to September 30, 2009

	<i>Standard</i>		<i>Serious</i>	<i>Other</i>	<i>Repeat</i>	<i>Total</i>	<i>% Serious</i>
1	1926.451	<i>Scaffolds</i>	139	10	1	150	93%
2	1926.501	<i>Fall Protection</i>	99	4	0	103	96%
3	1926.020	<i>Construction- General S/H Provisions</i>	73	9	0	82	89%
4	1926.150	<i>Fire Protection</i>	2	69	0	71	3%
5	1926.404	<i>Electrical - Wiring Design and Protection</i>	35	34	0	69	51%
6	1926.405	<i>Electrical - Wiring, methods, components and equipment for general use.</i>	31	33	0	64	48%
7	1926.503	<i>Fall Protection Training</i>	55	9	0	64	86%
8	1926.454	<i>Scaffold Training</i>	49	2	0	51	96%
9	1926.403	<i>Electrical - General Requirements</i>	20	26	0	46	43%
10	1926.502	<i>Fall Protection Systems</i>	39	5	0	44	89%

Federal OSHA Most Frequently Cited Standards - Construction
October 1, 2008 to September 30, 2009

		<i>Standard</i>		<i>Serious</i>	<i>Other</i>	<i>Repeat</i>	<i>Total</i>	<i>% Serious</i>
1		1926.501	<i>Unprotected sides and edges</i>	6036	312	450	6838	88
2		1926.1053	<i>Use of ladder</i>	2763	256	65	3088	89
3		1926.451g	<i>Fall protection</i>	2651	57	193	2915	91
4		1926.503	<i>Training</i>	1672	107	8	1861	90
5		1926.020	<i>Accident prevention responsibilities</i>	1451	334	40	1825	80
5		1926.451b	<i>Scaffold platform</i>	1654	49	79	1790	92
7		1926.453	<i>Aerial lift requirement</i>	1521	79	94	1697	90
8		1926.100	<i>Head protection</i>	1492	98	63	1653	90
9		1926.451e	<i>Scaffold access</i>	1239	35	87	1372	90
10		1926.451c	<i>Criteria for support scaffold.</i>	1210	58	32	1301	93

Comparison of the Indiana OSHA's and Federal OSHA's top ten cited standards for construction reveals that IOSHA shared four standards with Federal OSHA. Those standards included scaffolds 1926.451, fall protection 1926.501, construction general safety and health provisions 1926.020, and fall protection 1926.503. IOSHA cited scaffolds 1926.451, their most frequently cited construction standard, as serious 93% of the time while Federal OSHA cited scaffolds 1926.451, listed as third, fifth, ninth and tenth on their table, as serious 91% of the time. Federal OSHA cited control of hazardous energy 1910.147 as the most frequent and issued serious violations 81% of the time. For IOSHA, control of hazardous energy 1910.147 was their tenth most frequently cited standard and serious violations were issued 77% of the time.

An overall statistical analysis of the tables revealed that IOSHA issued 542 (73%) serious violations out of 744 total violations. Federal OSHA issued 21,689 (89%) serious violations out of 24,340 total violations. This represents a percentage difference of 16%.

An analytical comparison of total repeat violations shows that OSHA issued one repeat violation out of 744 total violations. Federal OSHA issued 1,111 (5%) repeat violations out of 24,340 total violations. This represents a percentage difference of 5%.

**Indiana OSHA Most Frequently Cited Standards – General Industry
October 1, 2008 to September 30, 2009**

	Standard		Serious	Other	Repeat	Total	% Serious
1	1910.1200	Hazard Communication	82	239	2	323	25%
2	1910.134	Respiratory Protection	92	42	0	134	69%
3	1910.303	Electrical-General	65	51	0	116	56%
4	1910.212	Machine Guarding	80	16	0	96	83%
5	1910.146	Confined Space	67	21	0	88	76%
6	1910.305	Electrical- Wiring, methods, components and equipment for general use.	27	50	0	77	35%
7	22.008	General Duty Clause	64	2	0	66	97%
8	1910.107	Spray Finishing Operations	49	17	0	66	74%
9	1910.22	Walking Working Surfaces	20	41	2	63	35%
10	1910.147	Control of Hazardous Energy	48	14	0	62	77%

**Federal OSHA Most Frequently Cited Standards – General Industry
October 1, 2008 to September 30, 2009**

	Standard		Serious	Other	Repeat	Total	% Serious
1	1910.147	Lockout tagout program	2175	437	60	2687	81
2	1910.212	Machine guarding	1890	132	35	2071	91
3	1910.178	PIV training	1075	328	17	1421	76
4	1910.1200e	Hazard communications program	677	469	18	1164	58
5	1910.305g	Flexible cords	886	230	18	1134	78
5	1910.305b	Electrical cabinets, boxes and fittings	819	187	15	1021	80
7	1910.1200h	Hazard communications training	670	294	23	994	67
8	1910.303b	Electrical examination, installation and use of equipment	679	159	5	844	80
9	1910.303g	Working spaces about electrical equipment	636	170	12	818	78
10	1910.134	Respiratory protection program	391	348	8	747	52

Comparison of the Indiana OSHA's and Federal OSHA's top ten cited standards for general industry reveals that OSHA shared six standards with Federal OSHA. These included hazard communication 1910.1200, respiratory protection 1910.134, electrical 1910.303, machine guarding 1910.212, electrical 1910.305 and control of hazardous energy 1910.147. OSHA cited hazard communication 1910.1200, their most frequently cited general industry standard, as serious 25% of the time and Federal OSHA cited hazard communication, listed as fourth and seventh on their table, as serious 62% of the time. Federal OSHA cited control of hazardous energy 1910.147 most frequently and issued serious violations 81% of the time. For OSHA, control of hazardous energy 1910.147 was their tenth most frequently cited standard and serious violations were issued 77% of the time.

An overall statistical analysis of the general industry tables revealed that OSHA issued 594 (54%) serious violations out of 1,091 total violations. Federal OSHA issued 9,898 (77%) serious violations out of 12,901 total violations. This represents a percentage difference of 23%.

An analytical comparison of total repeat violations shows that OSHA issued four repeat violations out of 1,091 total violations. Federal OSHA issued 211 (2%) repeat violations out of 12,901 total violations. This represents a percentage difference of 2%.

Findings and Recommendations

Finding 34: Only 21.22% of programmed safety inspections resulted in S/W/R citations. Of the 1,437 programmed inspections, 575 were coded as programmed planned while 852 were coded as programmed-related. This is consistent with the large number of construction inspections and associated multi-employer worksites.

Recommendation 34: Indiana OSHA must evaluate its Construction targeting system and make modifications to ensure that its limited resources are inspecting sites/locations where serious hazards are likely to be present. Indiana OSHA must also ensure that violations are being classified in accordance with the IN FOM.

Finding 35: Indiana did not issue any willful (knowing) violations during FY2009.

Recommendation 35: Indiana OSHA should conduct an internal review of its willful (knowing) citation policy.

Finding 36: Indiana OSHA conducted one Follow-up inspection during FY2009. IMIS reports are not utilized to identify cases requiring follow-up inspections.

Recommendation 36: Indiana OSHA must begin using IMIS reports to identify and assign establishments requiring follow-up inspections.

Finding 37: Electrical hazards cited were classified as serious only 48% of the time and Fire Protection in construction was classified as serious two times while being cited 71 times.

Recommendation 37: Review classification of electrical and fire hazard violations in both Construction and General Industry to ensure consistency with the Field Operations Manual and throughout OSHA.

IV.B.i.I. BLS Rates

Occupational injury and illness rates for Indiana have declined steadily over the last five years. The trend for fatalities is similar. While there was an increase of five fatalities in 2008, the IDOL anticipates that the rate, when published, will likely be at or lower than the 2007 rate.

		2004	2005	2006	2007	2008
TRC ^{1, 3}	National	4.8	4.6	4.4	4.2	3.9
	Indiana	6.3	5.8	5.4	5.1	4.7
DART ^{2, 3}	National	2.5	2.4	2.3	2.1	2.0
	Indiana	3.0	2.8	2.7	2.5	2.3
Fatality Counts ⁴	Indiana	153	157	148	127	132

¹ Total Recordable Case (TRC).

² Days Away Restricted or Transferred (DART).

³ Rate for Private industry as defined by the Department of Labor – Bureau of Labor Statistics

⁴ State fatality rates unavailable. Counts include fatalities outside of Indiana OSHA's jurisdiction.

Although higher than the National rates, Indiana has experienced a decline in both the TRC and DART rates in each year leading up to 2008, similar to the National trend. Indiana's TRC rate experienced a slightly greater decline than was seen nationally. Over the five year period 2004 to 2008, Indiana's TRC declined from 6.3 to 4.7 or 25%. Nationally, the TRC rate declined from 4.8 to 3.9 or 19% over the same five year period.

Indiana's DART rate experienced a slightly greater decline than the National DART rate. From 2004 to 2008, Indiana's DART rate saw a decline from 3.0 to 2.3 or 23%. Nationally, the DART rate declined from 2.5 to 2.0 or 20%.

The enforcement program does not analyze BLS data for targeting purposes. The agency does utilize the Site Specific Targeting System (SST) for General Industry, UTENN for Construction and emphasis programs for targeting purposes. The agency's current emphasis programs include:

- Combustible Dust
- Recordkeeping
- Flavorings
- Lead
- Silica
- Amputations
- Trenches
- Falls
- Reflective Vests

During Calendar Year (CY) 2009, the State conducted 39 fatality investigations and 42 investigations during FY2009. Of those, 14 were in the construction industry. As indicated in the table below, the largest number of fatalities in the construction industry occurred from being struck by an object, an increase of two over the previous CY, however, still three fewer than the nine that occurred in CY2006. Although there was an increase of one fall related death during CY2009, over the last five years, fatalities due to falls have been on the decline in the State.

Indiana Construction Fatalities					
Type		2006	2007	2008	2009
Struck-by		9	3	4	6
Caught-between		3	0	3	0
Asphyxia		0	0	1	0
Fall		8	6	2	3
heart attack		0	0	0	1
trench collapse		2	1	1	1
electrocution		1	1	1	1
Arc Blast		1	0	0	0
Explosion		0	0	1	0
Drowned		0	0	0	1
slips/trips		0	0	0	1
Total		24	11	13	14

Source: IMIS Micro to Host Report

IV.B.ii. Standards Adoption and Plan Changes

IV.B.ii.a. Standards Adoption

Only two applicable standards were required to be adopted during FY2009. Both were dealt with by the State in a timely manner. Standards adopted by Indiana become effective 60 days after the effective date of Federal standards.

IC 22-8-1.1-16.2 reads:

Sec 16.2(a) A United States OSHA standard lawfully adopted by OSHA under federal law may be enforced by the department without further action by the commission.

(b) The commissioner or the commissioner's designee shall enforce the federal standards described in subsection (a) not earlier than sixty (60) days after the final standard by federal OSHA becomes effective.

FY2009 Federally Initiated Standards and IN Response

Federal Standard Number	Intent to Adopt	Adopt Identical	State Standard Number	Date Promulgated	Effective Date	FR Published Date
Longshoring and Marine Terminals; Vertical Tandem Lifts 1917,1918 2009 35	NO	N/A	N/A	N/A	N/A	N/A
Clarification of Employer Duty to Provide PPE and Train Employees 1910,1915,1917,1926 2009 36	YES	YES			03/12/2009	N/A
Updating OSHA Standards Based on National Consensus Standards; PPE ,1910,1915,1917,1918 2009 37	YES	YES			12/09/2009	N/A

Information from the Automated Tracking System

IV.B.ii.b. Federal Program/State Initiated Changes

The State continues to provide timely responses to OSHA regarding their intentions with regard to all federally initiated program changes, including those initiated during FY2009. There were no State initiated changes.

Federal Program Change Summary for IN Report 02/01/2010

Directive Number	Adoption Required	Intent Required	Intent to Adopt	Adopt Identical	State Adoption Date	State Submission Date	FR Published
CPL-03-00-006 2008 270	NO	YES	YES	YES	N/A	N/A	N/A
CPL-02-00-145 2008 287	NO	YES	YES	YES	N/A	N/A	N/A
STD-CSP0200002 2008 307	YES	YES	YES	YES	03/01/2008	----	N/A
CPL-03-00-007 2008 308	NO	YES	YES	YES	N/A	N/A	N/A
CPL-02-02-074 2008 309	NO	YES	YES	YES	N/A	N/A	N/A

CPL-02-00-147 2008 311	NO	YES	YES	YES	N/A	N/A	N/A
CPL-03-00-008 2008 312	NO	YES	YES	YES	N/A	N/A	N/A
CPL-02-00-146 2008 313	NO	YES	NO	N/A	N/A	N/A	N/A
CSP0301003 2008 314	NO	YES	YES	YES	N/A	N/A	N/A
CPL-02(08-03) 2008 327	NO	YES	YES	YES	N/A	N/A	N/A
CPL-02-01-045 2008 329	NO	YES	YES	YES	N/A	N/A	N/A
TED-01-00-018 2008 330	YES	YES	YES	YES	01/01/2009	----	N/A
CPL-03-00-009 2008 331	NO	YES	YES	YES	N/A	N/A	N/A
CPL-02-00-148 2009 332	YES	YES	YES	NO	09/01/2009	----	----
CPL-2(09-05) 2009 333	NO	YES	YES	YES	N/A	N/A	N/A
CPL-02(09-06) 2009 334	NO	YES	NO	N/A	N/A	N/A	N/A
CPL-03-00-010 2009 353	NO	YES	----	----	N/A	N/A	N/A
CPL-02-01-046 2010 354	NO	YES	YES	YES	N/A	N/A	N/A
CPL-02-09-08 2010 355	NO	YES	NO	N/A	N/A	N/A	N/A
CPL-0200148 2010 374	YES	YES	----	----	----	----	----
CPL-02-02-075 2010 375	NO	YES	----	----	N/A	N/A	N/A
CPL-03-00-011 2010 376	NO	YES	----	----	N/A	N/A	N/A

IV.B.iii. Variances

There were no variances granted during the review period. The Deputy Commissioner for IOSHA reported that one variance request was received; however, the agency recommended to the Standards Commission that it be denied. The request was subsequently denied by the Commission.

Indiana Code applicable to temporary and permanent variances may be found at IC 22-8-1.1-19.1 and 22-8-1.1-20.1.

IV.B.iv. Discrimination Program

The discrimination program consists of three employees that conduct investigations. The Team Leader works out of the Indianapolis office, and the other two employees work out of their homes. When investigations are completed, the case files are sent to the IOSHA office; however, documentation created electronically is not backed up on the employee's computer and is not sent to IOSHA with the case file.

Appropriateness of State findings and decisions

The Whistleblower Team Leader indicated that IOSHA Whistleblower Investigators use the federal directives, DIS 0-0.9, and 29 CFR Part 1977 for guidance during their investigations and for case file management. They do not appear to use any other directives related to their Whistleblower

program. Interviews were held with all three Whistleblower Investigators. The Team Leader's interview was held in person and the other investigators were interviewed via telephone.

Sixty four (64) cases were docketed during this period and 23% or fifteen (15) cases were reviewed. Of the 64 cases completed, 2% or one case was withdrawn, 61% or thirty nine (39) cases were dismissed, and 38% or twenty four (24) cases were merit. Of the 24 merit cases, 83% or twenty (20) cases were settled. The cases reviewed were selected at random based on case type and determination for each of the three (3) Whistleblower Investigators. Of the fifteen cases reviewed, three (3) were Settled, eight (8) were Dismissed/Non Merit, one (1) was Withdrawn, and three (3) were Litigation/Merit.

A review of the case files revealed that IOSHA's Whistleblower Protection Program has adopted their own forms rather than use the forms provided by the OSHA Whistleblower program. Case file organization does not follow DIS 0-0.9. Various cases were missing copies of administrative documents.

OSHA would likely not have come to the same conclusion as the determinations issued by IOSHA in two case files: 1) Case #09063 – a Litigation/Merit recommendation was made on this case based on Complainant's submissions and Respondent's defense was not tested; and 2) Case #09011 – this complaint was not timely filed. Tolling was applied in this case but the reason provided by Complainant was not one of the exceptions that justified tolling.

One other problem was noted. One case file, Case #09058 was docketed and dismissed as untimely. The WB IMIS shows the complaint was filed on May 21, 2009. However, a review of the case file shows that Complainant filed a Safety/Health Complaint on March 31, 2009, and in part of his S/H complaint he reported that he had been terminated on April 1, 2008. The case file does not explain why a referral was not made to the Whistleblower Protection Program or why the filing date was entered as May 21, 2009. In either instance, this complaint was untimely.

Timeliness of investigation and response

The case files reviewed ranged in age from 23 days to 93 days old. Complaints appear to be screened using the Region 5 Whistleblower Intake worksheet. Complainants are contacted timely for follow-up by the assigned Investigator and a signed statement is obtained. Complainants are informed of their right to dual-file with OSHA and that was evident by the correspondence in the case files. Screened out cases were not reviewed as IOSHA notes these cases in a steno log and does not utilize screen-out letters.

It is important to note that as a result of a statutory mandate, Whistleblower Investigations filed with IOSHA are required to be filed in State Court by the 120th day. After this date, IOSHA is barred from going forward with a merit complaint. Investigators are required to have their Final Investigative Reports to the Deputy Commissioner by day 60 and if not, an explanation is required. If the case file has not been referred to the Attorney General's office by day 90, it's likely they won't have time to review the complaint. Based on their 120 day rule, it is important that complaints are properly dual-filed.

Other Issues Noted

Data entered into the WB IMIS Web System was compared to the information contained in the case files. About 40% of the case files reviewed showed discrepancies between information in the case files and data entered into the WB IMIS Web System. The discrepancies were in the areas of filing date, FIR date, and disposition date. The audit also revealed minimal use of the case comment, tracking information, and adverse employment action sections.

Interviews, regardless of type i.e. Complainant Statement, management and labor witnesses utilized the same form. This form contains a standard confidentiality clause, which may not be

applicable to Complainant and the management witnesses. In most instances, Complainant Statement, management and labor interviews were conducted in-person and a signed statement obtained. The interviews appropriately addressed either the prima facie elements or tested Respondent's defense.

IOSHA hand-delivers Respondent's notification letters, explains the purpose of the investigation, and in most cases starts their investigation. Respondent's notification letters do not contain any verbiage on the complaint allegations nor are Respondents provided with a copy of a complaint (case activity worksheet, Form 87, or Complainant's signed complaint).

A review of the case files revealed that the Final Investigative Report (FIR) does not contain coverage data and they are not signed by an authorized employee. There appears to be some confusion on how to analyze the prima facie elements and test Respondent's defense. Many of the case files failed to properly test Respondent's defense or develop one or more of the prima facie elements. Further, it appears that complaints are recommended for litigation/merit for Complainants who present a prima facie complaint. However, with the exception of two complaints, the case files contained enough evidence to support the determination issued.

Comparison Discrimination Statistics

	Cases Received	Cases Completed	% Timely Completed	Average Days to Complete	Pending Cases	% Pending Cases Over Age
2006	78	74	80%	69	18	17%
2007	83	87	75%	68	14	0%
2008	62	66	92%	58	10	10%
2009	66	64	97%	58	12	0%
% Change	6% increase	3% decrease	5% increase	No change	20% increase	10% decrease

Findings and Recommendations

Finding 38: Review of the case files revealed that IOSHA's Whistleblower Protection Program has adopted their own forms rather than use the forms provided by the OSHA Whistleblower program. Case file organization does not follow DIS 0-0.9. Various cases were missing copies of administrative documents.

Recommendation 38: Follow DIS 0-0.9 for case file organization to ensure consistency with case file organization and contents.

Finding 39: OSHA would likely not have come to the same Finding as the determinations issued by IOSHA in two of the cases reviewed. Many of the case files failed to properly test Respondent's defense or develop one or more of the prima facie elements.

Recommendation 39: Ensure that when tolling a complaint that it is appropriate and based on the exceptions for tolling a complaint as indicated in DIS 0.0.9. Also ensure that all cases are adequately investigated which includes a full analysis of prima facie elements and testing the Respondent's defense.

Finding 40: As a result of statutory mandate, Indiana code requires that suit for Whistleblower complaints must be filed in state court within 120 day from date of complaint received.

Recommendation 40: Until Indiana is able to change the 120 day restriction, it is important that complaints are properly dual-filed.

IV.B.v. Complaints About State Program Administration (CASPA)

There were no Complaints About State Plan Administration (CASPA) received in FY2008; however, three CASPAs were received in FY2009. A total of six CASPAs were received for the three State Programs in Region V during FY2009. A review of the Indiana CASPAs follows:

1. CASPA 2009-15-IN: The Complainant alleged that IOSHA failed to properly investigate his 11(c) discrimination case and assess the evidence that was available. IOSHA had issued in its determination that the Complainant lacked protected activity or that a reprisal had occurred. IOSHA deemed that the case lacked merit.

The Indianapolis Area Office investigated the CASPA and determined that a protected activity did exist, and IOSHA had failed to adequately investigate the Respondent's defense. This resulted in the case being docketed and investigated by the Indianapolis Area Office.

Federal OSHA Recommendation: The final recommendation stemming from a CASPA was to retrain the Discrimination Investigators in the proper conduct of an 11(c) discrimination investigation using the Whistleblowers Discrimination Manual, DIS 0-0.9. While informal training was performed internally, formal follow-up was not provided by the State on this recommendation.

2. CASPA 2009-16-IN: The Complainant alleged that IOSHA failed to investigate his complaint items for over a year. Complainant also alleged filing a safety complaint as well as a discrimination complaint. Complainant also indicated that when he verbalized his disagreement with the outcome of his phone and fax complaint IOSHA failed to perform an onsite inspection.

The Indianapolis Area Office investigated the CASPA and determined that IOSHA failed to investigate the former employee's complaint for over a year. The state did rectify this situation and correctly initiated a non-formal complaint investigation. While the Complainant did want an inspection and refuted the outcome of the non-formal complaint, the Complainant failed to provide evidence that an investigation was warranted as the Complainant had not been at the facility for over a year. IOSHA did not take any action on the second complaint due to their belief that an ongoing inspection nullified their need to address the safety concerns alleged in a non-formal complaint. This resulted in IOSHA initially not addressing the Complainant's concerns and not being able to send a letter to the Complainant about his concerns. Additionally, there was no evidence supporting that a complaint of discrimination was ever filed. Had it been filed, the complaint would have been untimely.

Federal OSHA Recommendation: One of the complaint items concerned Legionnaires Disease. IOSHA improperly referred this complaint to another government agency. IOSHA had already rectified this situation prior to it being noted in the CASPA.

3. CASPA 2009-17-IN: The Complainant alleged that their employer was falsifying computer records and potentially falsifying safety and health compliance records. IOSHA elected not to investigate due to the lack evidence that an actual safety and health concern existed as the Complainant was unable to show that he had any knowledge of an actual safety and health hazard. The Indianapolis Area Office concurred with the State's decision on this case as the computer records were not

related to the safety records. However, IOSHA did fail to formally respond to the Complainant their determination in writing.

Federal OSHA Recommendation: Complaints should be handled in accordance with Complaint Policies and Procedures, CPL 02-00-140. Non-formal complaints should be handled using phone and fax procedures, or a letter should be sent stating why no investigation was performed. IOSHA addressed this by providing additional training for complaint Duty Officers.

While IOSHA did not always respond to Federal OSHA in a letter format, a verbal response was always noted, and the State's documentation was provided in a timely manner. IOSHA was very cooperative and always provided access to personnel and any requested information.

IV.B.vi. Voluntary compliance programs

A review was conducted of the agency's voluntary compliance program activities for FY2009, including Partnerships, Alliances, and Voluntary Protection Programs (VPP). The agency has adopted and follows federal OSHA's Directives associated with these programs.

There are no physical organized paper files for any of these programs. Electronic files are maintained primarily for all these programs. However, they are not accessible through the agency's shared drive, and therefore must be accessed through whoever is maintaining the files. At the time of this review, paper files were being maintained by the VPP manager at his home. The paper files included notes, copies of annual submissions, and information on 90-day items. The electronic files kept by the VPP manager included the initial application, the VPP evaluation reports (including descriptions of 90-day items), and documentation sent by the companies addressing the 90-day items. The electronic files did not contain copies of the final approval letter and report sent to the company after being signed by the Commissioner or any additional correspondence with the companies.

One Alliance and three Partnerships were reviewed that were signed in FY2009. The agreements were appropriate and signed copies were maintained in the electronic files. No records of meetings, inspection activity, or annual evaluations were maintained in these electronic files. A close-out letter and injury and illness records from a construction site Partnership that had ended in FY2009 were reviewed. The results were good, as they showed injury rates below the average for the construction industry.

The VPP Program is managed by a single individual (VPP Manager) who works out of his home. All the primary VPP files are maintained at this individual's home, including manual tracking systems for all the applications and approvals for each company. All onsite evaluations are coordinated by the VPP Manager, who assembles the teams and prepares the evaluation reports. The evaluation teams consist primarily of three to four individuals, including CSHOs and Special Government Employees (SGEs) as available. The VPP Manager has made efforts to increase the number of SGEs in the last few years, and more are being used on evaluations. The final draft reports are reviewed by the Deputy Commissioner and after approval are sent to the Commissioner for final approval letter signature.

At the end of FY2009, the agency had 53 total VPP sites, including ten (10) new sites approved in FY2009. These new sites included six (6) Star sites, and four (4) Merit sites. There were no fatalities at any VPP sites in FY2009; however, there was one explosion resulting in no injuries. This site has an ongoing investigation to determine if it should still be in VPP.

Twelve electronic VPP files were reviewed that had activity in FY2009. These included seven new Star approvals, two new Merit approvals, and three Star recertification approvals. The reports were all thorough and very well written and 90-Day items were appropriate and abatement was documented in the files. Merit approvals were appropriate and Merit goals were complete and documented in the reports. No Medical Access Orders (MAOs) were obtained or presented to the companies prior to conducting the onsite reviews as required by the VPP Policies and Procedures Manual – CSP 03-01-003.

Findings and Recommendations

Finding 41: Files for voluntary compliance programs are not organized and complete with required documentation maintained.

Recommendation 41: Create file retention systems for VPP sites to ensure that appropriate and complete documentation is organized and maintained.

Finding 42: Medical Access Orders were not obtained and presented to the companies prior to conducting VPP onsite reviews.

Recommendation 42: Obtain Medical Access Orders and present to companies prior to conducting VPP onsite reviews per CSP 03-01-003.

IV.B.vii. Program Administration

IV.B.vii.a. Training

CSHO Training Program

Indiana has committed to follow OSHA's directive for CSHO training, TED 01-00-018 *Initial Training Program for OSHA Compliance Personnel*. The agency reports however that budget constraints have limited their ability to travel to the OTI. New staff continued to attend the core courses listed in the directive but attendance at more advanced courses will be delayed until the state's financial situation improves. In addition to training at the OTI, the State is also working with the Heartland Safety and Health OSHA Education Center out of Bloomington and anticipates arranging training rooms for training courses conducted by Heartland in the Government Center Complex in Indianapolis.

The IDOL continues to encourage CSHOs to obtain advanced certifications by providing opportunities for coursework and cash incentives for successfully achieving such certifications. Currently, the IDOL has one CSHO with both a CSP and CIH, one with a CSP, and three with the OHST certification.

Findings and Recommendations

Finding 43: A comprehensive tracking mechanism/database is not maintained for CSHO training.

Recommendation 43: Develop a tracking mechanism such as a database so that training records/information may be reviewed in the form of usable reports. This will assist the State with determining and maintaining compliance with OSHA Instruction TED 01-00-018, Initial Training Program for OSHA Compliance Personnel.

Finding 44: Employees are assigned fatality investigations prior to completing the Accident Investigation course.

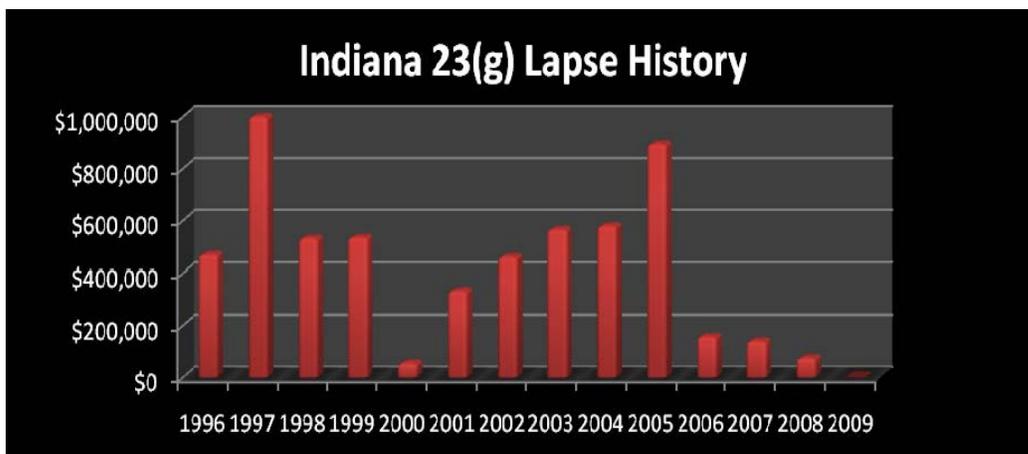
Recommendation 44: Ensure that all CSHOs assigned to conduct fatality/catastrophe inspections have attended the Accident Investigation course.

VII.B.vii.b. Benchmarks/Furloughs/Funding

Management of IOSHA is the responsibility of the Deputy Commissioner for IOSHA. The Deputy Commissioner is assisted by two Directors (General Industry and Construction) and multiple Supervisors that handle the day to day workload.

State Funding/ Fiscal Issues

Total state and federal funds allocated to the OSHA 23(g) program in FY2009 was \$4,299,600. As indicated in the chart below, in FY2009 and for the first time in over ten years, Indiana was able to utilize all funds associated with the 23(g) grant. In fact, the State reported overmatching by \$75,000 during FY2009.



Benchmarks/ Staffing

Indiana has expressed interest in reevaluating its existing benchmark staffing levels. The State believes that changes to its industrial base (fewer high hazard manufacturing jobs) along with improved inspection efficiency necessitate fewer resources to accomplish its goals. The State also points out that the Legislature's unwillingness to increase the program's budget continues to make increases in staffing levels impossible. The IDOL also indicated that the agency's budget for the last twenty years reflects that it has increased only 17.2%, which is an increase of less than 1% per year. The State is currently waiting on guidance from OSHA regarding their request to lower their benchmark staffing levels.

According to the *April 2009 AFL-CIO Death on the Job* report, based on the current benchmark staffing level of 71 Inspectors**, in Indiana it would take approximately 89 years to inspect all job sites. It is important to note that while the benchmark level is 70, at the time of this review, Indiana was operating its program with 41 Compliance Safety and Health Officers (CSHOs).

During FY2009, only two CSHOs left the Indiana Department of Labor and no changes in management occurred. The agency continues to struggle with meeting staffing benchmarks as a result of a poor economy and a reduction in state budget dollars. Although staffed well below benchmark levels, the Agency has retained a fairly experienced staff with 49% of CSHOs having ten or more years of experience, 20% have 3-10 years of experience, and 31% have less than three years of experience. In 2007, IOSHA increased pay for the Construction and Industrial Hygiene positions by \$6000 per year for recruiting and retention purposes and for the second year in a row, turnover in upper management positions has ceased to be an issue. Progress with regard

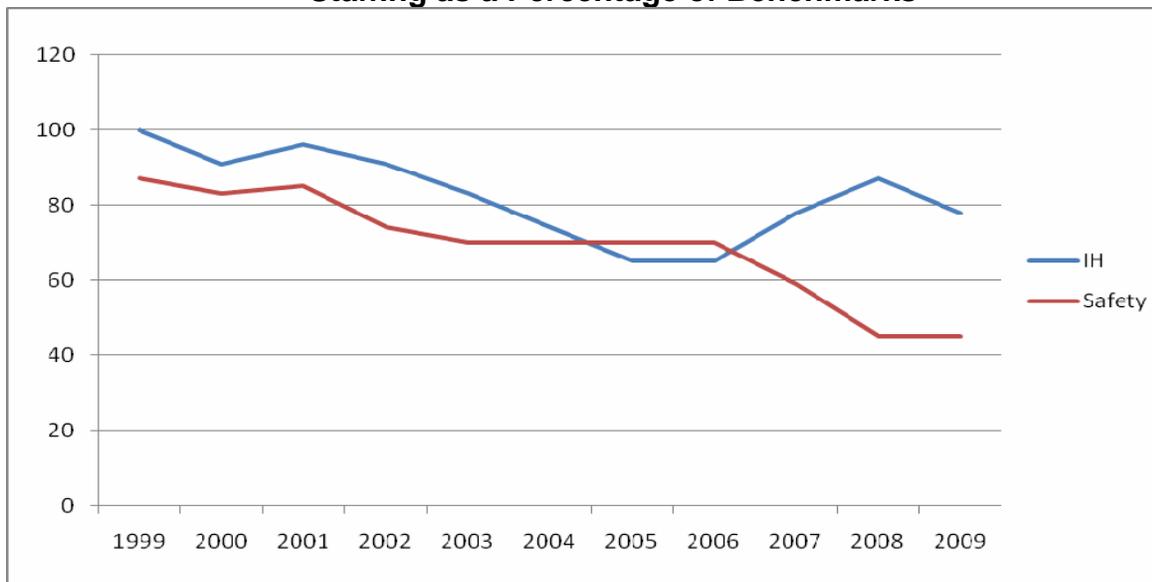
to meeting benchmark staffing levels remains an issue. The benchmark for safety is 47 positions and currently only 23 or 49% are filled. The benchmark for health is 23 positions and currently 18 or 78% are filled. Both the Indianapolis Area Office and the Region V Office have voiced and/ or written of their concerns about staffing levels to the IDOL Commissioner.

		FY 2006	FY 2007	FY 2008	FY 2009
Safety	Benchmark	47	47	47	47
	Positions Allocated	47	47	47	43
	Positions Filled	30	28	24	19
	Vacancies	17	19	23	24
	Percent of Benchmarks Filled	64%	60%	51%	40%
Health	Benchmark	23	23	23	23
	Positions Allocated	23	23	23	23
	Positions Filled	15	18	21	18
	Vacancies	8	5	3	4
	Percent of Benchmarks Filled	65%	78%	91%	78%

Numbers are from the respective FY Grant Application

****The AFL-CIO report indicates the current benchmark for Indiana is 71. The actual benchmark as indicated by 29CFR1910.320 is 47 safety and 23 health inspectors for a total of 70 inspectors.**

Staffing as a Percentage of Benchmarks



It is unlikely that there will be any significant improvement in staffing levels. During FY 2009, the IDOL reported that they received a 10% cut in their biannual budget passed on June 30, 2009. According to the FY2009 SIEP, the IDOL would like to conduct a special study and prepare a proposal for Federal OSHA to lower the benchmark staffing levels in FY2010.

Changes in Service/Operations

The IDOL reports that because of the budget crisis at the State, employees are being asked to voluntarily take unpaid leave if their circumstances allow. Only a couple of employees have opted to take unpaid leave and is only approved where it does not negatively impact the agency's operation.

Records Retention

The IDOL currently maintains records retention and disposition schedules for IOSHA, the Board of Safety Review, the Occupational Standards Commission, and all other records covered by General Records Retention.

The State's current policy for retention is as follows:

Inspection Case Files-Fatalities-	Transfer to Records Center seven (7) years after the case is closed. Destroy file after an additional ten (10) years. Total retention is 17 years.
CASPA Files -	Transfer to Records Center three (3) calendar years after the final determination is received. File then transferred to the Commission on Public Records, State Archives division after an additional two (2) years. Total retention prior to transfer is five (5) years.
Variance Applications-	Transfer to Records Center after two (2) calendar years. Destroy after an additional three (3) years. Total retention is five (5) years.
Discrimination Case Files (Inactive) -	Transfer to Records Center after two (2) years. Destroy after an additional three (3) years. Total retention is five (5) years.
Inspection Case Files (Closed) –	Transfer to Records Center after three (3) calendar years. Destroy after an additional two (2) calendar years. Total retention is five (5) years.
Voluntary Protection Program Files –	Transfer to Records Center five (5) calendar years after the latest approval. Transfer to Commission on Public Records after an additional five (5) years in the Records Center. Total Retention prior to transfer is ten (10) calendar years.
Board of Safety Review Files -	Transfer to the Records Center two (2) years after the Board's decision. Transfer to the Commission on Public Records after an additional eighteen (18) years in the Records Center. Total retention is twenty (20) years.

The schedules above reflect current agency practice. The schedules for IOSHA and the Standards Commission are still in draft form and expected to be approved by the Oversight Committee in March of 2010.

The State's retention schedule does not differentiate between health and safety records and deviates from OSHA's in that records with exposure monitoring are not addressed. OSHA retains casefiles with sampling/exposure monitoring for 40 years following case closed date in accordance with ADM 12-0.5A OSHA Compliance Records.

Findings and Recommendations

Finding 45: Indiana OSHA is staffed well below current benchmarks for the State plan.

Recommendation 45: While the State believes that the current benchmark levels are not reflective of the resources necessary to be effective, it is recommended that the State continue to work with OSHA regarding benchmarks and continue to increase staffing levels to the extent feasible.

IV.B.viii. State Internal Evaluation Program (SIEP)

Indiana OSHA developed and completed a SIEP for FY2009 which focused on six areas of the program including:

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

The plan has identified areas for improvement and established corrective actions for FY2010. One area identified as needing improvement was abatement verification, which has been an outlier for years. The State's findings indicated that when abatement information was received, the data was not properly entered into the system and the case not closed. The State also indicated that no specific timelines had been developed for abatement verification or follow-up inspections and would address these issues in FY2010.

The State has also prepared an audit plan for its internal evaluation plan for FY2010 with various metrics to be reviewed on an annual basis, semiannual, quarterly and monthly basis. Indiana OSHA has also developed audit interview questions, an inspection review sheet, and use the Federal OSHA Area Office Audit Checklist as a supplementary tool to assist with audit strategies as they develop and implement their SIEP.

IV.B.ix. Other Issues

Combustible Dust Expertise

During FY2009, one of the State's Industrial Hygiene Compliance Officers was appointed to the NFPA 664 Wood and Cellulosic Materials Processing Technical Committee. This committee is in charge of maintaining and updating NFPA's *Standard for the Prevention of Fires and Explosions in Wood Processing and Woodworking Facilities* (NFPA 664). The Hygienist is the only person on this committee who works for OSHA (Federal or State). In December of 2009, the same Hygienist was asked by the NFPA to be on the NFPA 654 Technical Committee. This committee is in charge of maintaining and updating NFPA's *Standard for the Prevention of Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids* (NFPA 654). The CSHO will find out in March of 2010 if he has been officially appointed to this committee.

V. PUBLIC COMMENTS

As part of the special study review, several union entities and groups representing employers were solicited for comment regarding their satisfaction with the operation of the program. Representatives from four unions, United Steelworkers (USWA) Local 12775, Iron Workers Local 395, United Auto Workers (UAW) District 3 and Laborers International Union of North America were contacted. Three of the four unions were very satisfied with the operation of the

program and felt that Indiana OSHA was performing very positively. The dissenting union, Laborers International of North America, raised several issues about their dissatisfaction with the operation of the program. These issues were evaluated during the course of the review and addressed within the report findings.

Input from the employer representative groups (Indiana Chamber of Commerce and Indiana Manufacturers Association) supported that Indiana OSHA was performing in a positive and acceptable manner. It was viewed by each group that the program was on the right track, and enforcing safety and health issues with a fair and consistent approach. It was also indicated that the program was currently very well managed.

APPENDIX A

FY 2009 Indiana State Plan (IOSHA) Enhance FAME Report
prepared by Region V

Summary of Findings and Recommendations

Key Findings and Recommendations = **Bold**

	Findings	Recommendations
State Activity Mandated Measures (SAMMs) (p. 13-15)		
1	SAMM Measure # 4. Not all complaints and referrals coded as Imminent Danger were responded to within one day.	Ensure all complaints and referrals are appropriately coded, and those coded as imminent danger are responded to within one day.
Complaints (p. 15-18)		
2	<p>It was determined that the individual employees at OSHA who act as complaint Duty Officers do keep their own log of phone calls. There was no evidence that this was a tool to prevent unions from making or taking part in complaints. There was no evidence that supported IOSHA was not returning phone calls from any Complainant.</p> <p>Evidence in the files supported that when given a name and mailing address, IOSHA did provide results to all Complainants. Complainants were only asked to identify who they were as a part of classifying the complaint.</p>	A single log book of calls dedicated to the Complaint Duty Officer position should be utilized.
3	Complaint investigations and inspections were timely. However, the files did not always contain an updated OSHA-7 with all pertinent actions in it. Copies of all letters required to be sent by IOSHA were not found in the file. The missing letters were notification letters to Complainants and where appropriate, to Respondents, and inspection result letters specifically to the unions. The diary logs did indicate that the employer and union letters were sent. No diary log entries indicated that Complainant acknowledgement letters were sent. There was also no evidence that IOSHA sent the “certificate of posting” to the employer when appropriate.	<p>a) All appropriate entries should be made on the OSHA-7, and an updated OSHA-7 should be maintained in the file. These entries should be performed in accordance with OSHA Instruction 03-06 (IRT 01) (03-06 (ADM 01)), The IMIS Enforcement Data Processing Manual: Table of Contents and Chapters 1 through 7.</p> <p>b) All notification letters should be sent and when appropriate the “certificate of posting”.</p>
4	There was not always adequate documentation that supported that a complaint item did not exist. A note in the file is not normally adequate; however, IOSHA did frequently address complaint items through photos and interviews. Thirteen out of 15 files that were associated with exposure to hazardous substances did not contain any sampling information or justification as to why sampling was not necessary. Documentation of interviews and related safety and/or health programs were not in the files. Notes with a list of employees interviewed were in the files however, the files did not contain documentation of the interviews.	While the OSHA Field Inspection Reference Manual CPL 2.103 does provide for CSHOs to make their own decisions about what supporting documentation is needed to document a hazard and since documentation is not required to be present to support that a hazard does not exist, it is recommended that evidence be present in the file that supports that all complaint items have been evaluated. When addressing complaints about exposure to contaminants, an explanation should be provided when a contaminant is not sampled.
5	No emphasis inspections were found to have Complainants who left an address to which results could be mailed. There is no evidence that this purposefully occurred or occurred with every emphasis inspection.	Every effort should be made to obtain addresses from complainants.
6	Files were not maintained in an orderly manner. Not all file sections were tabbed with contents, files were not completely bound, and not all the files contained paper copies of digital records. Furthermore, staff that may need access to the files did not always have the software and hardware required to access the file information.	A paper copy of documents kept electronically should be placed in every file. Files should be orderly and all documents bound.
Fatalities (p. 18-22)		
7	Fatality inspections were not always initiated in a timely fashion, and the reasons for the delay were not documented in the case file.	Prioritize fatality inspections to ensure that CSHOs open the inspection as soon as possible after initial notification to the Indiana OSHA office. Ensure that CSHOs communicate and document reasons for any delays in the case file.

	Findings	Recommendations
8	Fatality case files were not maintained to ensure that all appropriate documentation (i.e. completed OSHA-170) and correspondence (i.e. Next of Kin Letters, Union letters) were included, organized, and adequately secured in the files.	Provide clear guidance to all enforcement personnel and administrative staff on the organization of fatality case files and what documentation needs to be completed and included in each fatality case file. Consider designing and implementing a tracking document for each file that ensures that all appropriate correspondence is completed and documented in each file. Ensure that all documents put into a case file are secured.
9	Families of victims are not always contacted when a fatality investigation is completed, and no additional communication is initiated by Indiana OSHA once the citations have been issued.	Consider implementing a tracking system to help ensure that all required correspondence with families of victims is completed and documented in each case file.
10	Inspection forms (i.e. OSHA-1, OSHA-1A, OSHA-36, OSHA-170) were not completed with the detail required and the latest versions were not maintained in the case file. This includes lack of IMMLANG documentation.	Instruct staff on the accurate completion of required inspection forms in each fatality inspection and the appropriate review of each file to ensure this is completed. Review the current procedures for IMMLANG to ensure that staff are familiar with the required documentation.
11	Violations were sometimes classified or grouped for reasons not apparent, or citations were not issued to address hazards identified during fatality inspections	Consider conducting training to staff on appropriate classification of violations to ensure consistency in issuing Willful (Knowing) and Serious citations. Review grouping policy with staff to ensure that appropriate rationale is applied and documented when grouping violations.
12	Informal conference documentation does not include sufficient justification and/or rationale for changing citation classification and reducing penalties.	Ensure that Directors adequately document informal conference narrative sheets to explain informal settlement rationale.
13	Fatality case files are closed without sufficient abatement documentation.	Ensure that supervisors use IMIS Abatement Tracking reports and follow-up letters to employers. Audit closed fatality files on occasion to ensure that appropriate abatement information is included in the file.
14	No follow-up inspections are scheduled or conducted for fatality inspections that have high gravity citations issued related to the fatality.	Implement a fatality inspection tracking system to ensure that appropriate follow-up inspections are scheduled and conducted.
Targeting and Inspections (p. 22-23)		
15	Violations cited on programmed inspections include a high percentage of other-than-serious citations for hazards that could be classified as serious, such as, but not limited to, electrical hazards.	Consider conducting training on hazard classification for CSHOs and Supervisors to ensure consistency with violation classification.
16	Programmed inspections conducted in the construction industry are not effectively targeting sites with serious hazards.	Consider revising the construction targeting system to maximize efficiency of inspections. Also consider implementing OSHA's National Emphasis Program on Trenching.
Employee and Union Involvement (p. 24-25)		
17	While employee interviews were always indicated as being performed, in eight out of 36 files nothing beyond contact information was listed in the file.	For support of citations, better support documentation proving exposure should have been provided. Due to the lack of this documentation, one file reviewed indicates that the all citations were deleted.
18	The final letter and citations were indicated as having been sent to the union; however, no letters were found in the file. Also there is no evidence in the file that the union was informed of the informal settlement conference by IOSHA.	Include union representation in every aspect of the inspection and keep them informed as required under the FIRM. This includes sending the union a copy of the Notification of Citation and Penalty and informing union representation of any informal conferences.

Findings		Recommendations
Citations and Penalties (p. 25-27)		
19	Most files had adequate documentation to support the violations with the exception of several files that did not contain employee interview statements to support exposure to a hazard.	Interviews should be documented in the file to support employee exposure to a hazard.
20	Three of twenty-eight Industrial Compliance case files were found to have repeat violations improperly classified as serious violations.	Supervisors should be instructed to use IMIS database to check for repeat violations.
21	It was discovered that in two of the Industrial Compliance files reviewed that the severity assigned was too low based on the potential injuries as a result of exposure to the hazard.	If an accident had occurred, it cannot be disregarded when assessing the severity of an injury and illness.
Abatement (p. 27-28)		
22	Although generated and distributed monthly, Supervisors are not utilizing IMIS reports to track abatement.	Supervisors must consistently review IMIS reports to track abatement and update the IMIS in a timely manner.
23	In some cases, abatement was not late as the employer had been informally granted extra time to submit abatement. One file was reviewed where the employer had petitioned for a modification of the abatement due date. The time requested was not noted. The Supervisor did not note any discussion with the employer; however, abatement was submitted at a much later date than the original due date.	Require employers to follow procedures for Petition to Modify Abatement (PMA) and ensure that IMIS is timely updated to reflect any extensions granted.
24	When a case is resolved through an EISA, the employer is not required to provide documentation of abatement or required to document the method of abatement. IOSHA only requires the employer to sign a Certificate of Correction which contains the inspection number, date of citation issuance, date of citation abatement, and date of posting of the certificate.	The Certificate of Correction does not contain a written explanation of the method of abatement the employer used to correct the citation. This written explanation is required to be present under 29 CFR 1903.19(c).
25	When viewing Industrial Compliance case files, two cases were reviewed with incorrect abatement; however, the Supervisors accepted the abatement and closed the cases.	All abatement documentation submitted must be reviewed.
Review Process (p. 29-31)		
26	IOSHA does not appear to be working from one detailed policy for EISA.	Provide to everyone the EISA policy, and train everyone on the elements of the policy.
27	No method exists for ensuring that abatement is completed by employers taking part in the EISA process.	Periodic follow up inspections should be initiated as a means of ensuring abatement is completed by employers taking part in the EISA process or requests for abatement documentation could be made.
28	The average lapse time from receipt of contest to a first level decision is approximately one and a half years.	Continue to identify ways to reduce the time for receiving a decision on contested cases.
Information Management (p. 32-38)		
29	Indiana OSHA has a significant number of draft records in the IMIS system.	Indiana OSHA must conduct a performance review and cleanup of the IMIS database records on a regular basis to ensure that all draft forms are finalized and transmitted to the host computer as soon as possible, with the exception of OSHA 1Bs that are less than six months old as modifications may be necessary prior to issuing safety orders. Procedures must be developed to ensure periodic reviews of draft IMIS forms are conducted to maintain a viable information system.
30	Although several IMIS management reports are being generated and distributed to the management team on a monthly basis, the majority of the reports are not being used effectively.	Indiana OSHA must establish a system for the proper handling and review of IMIS management reports. Consideration should be given to the importance of the report when determining the frequency with which it is generated and distributed(weekly, bi-weekly, or monthly).

	Findings	Recommendations
31	The IMIS is not kept up-to-date and contains information which does not allow for effective internal evaluation of the Indiana program.	Indiana OSHA must ensure that the IMIS system is kept up to date and is accurate. All Supervisors and Administrative staff responsible for IMIS data entry must utilize available management reports and follow through with timely updates to the system for all forms and changes in case status (abatement, penalties, extensions, etc.) Additional IMIS Training for staff is recommended to effectively maintain and utilize the system. <i>OSHA Instruction ADM 1-1.31 IMIS Enforcement Data Processing Manual</i>
32	The State has not been entering health sampling information into the IMIS.	The State will need to start entering health sampling data into the IMIS.
33	Complaint information is not entered into the IMIS when received. The OSHA-7 for Signature report is not utilized. Staff interviews revealed that Complainant's are allowed up to ten days to formalize a complaint.	Indiana OSHA should enter complaints into the IMIS when received. The OSHA-7 for Signature report should be generated and reviewed periodically to ensure the system reflects current status of complaints. The FOM indicates that Complainants are given up to five working days to formalize nonformal complaints.
General Inspection Statistics (p. 38-43)		
34	Only 21.22% of programmed safety inspections resulted in S/W/R citations. Of the 1,437 programmed inspections, 575 were coded as programmed planned while 852 were coded as programmed-related. This is consistent with the large number of construction inspections and associated multi-employer worksites.	Indiana OSHA must evaluate its Construction targeting system and make modifications to ensure that its limited resources are inspecting sites/locations where serious hazards are likely to be present. Indiana OSHA must also ensure that violations are being classified in accordance with the IN FOM.
35	Indiana did not issue any willful (knowing) violations during FY2009.	Indiana OSHA should conduct an internal review of its willful (knowing) citation policy.
36	Indiana OSHA conducted one Follow-up inspection during FY2009. IMIS reports are not utilized to identify cases requiring follow-up inspections.	Indiana OSHA must begin using IMIS reports to identify and assign establishments requiring follow-up inspections.
37	Electrical hazards cited were classified as serious only 48% of the time and Fire Protection in construction was classified as serious two times while being cited 71 times.	Review classification of electrical and fire hazard violations in both Construction and General Industry to ensure consistency with the Field Operations Manual and throughout IOSHA.
Discrimination (p. 46-48)		
38	Review of the case files revealed that IOSHA's Whistleblower Protection Program has adopted their own forms rather than use the forms provided by the OSHA Whistleblower program. Case file organization does not follow DIS 0-0.9. Various cases were missing copies of administrative documents.	Follow DIS 0-0.9 for case file organization to ensure consistency with case file organization and contents.
39	OSHA would likely not have come to the same conclusion as the determinations issued by IOSHA in two of the cases reviewed. Many of the case files failed to properly test Respondent's defense or develop one or more of the prima facie elements.	Ensure that when tolling a complaint that it is appropriate and based on the exceptions for tolling a complaint as indicated in DIS 0.0.9. Also ensure that all cases are adequately investigated which includes a full analysis of prima facie elements and testing the Respondent's defense.
40	As a result of statutory mandate, Indiana code requires that suit for Whistleblower complaints must be filed in state court within 120 day from date of complaint received.	Until Indiana is able to change the 120 day restriction, it is important that complaints are properly dual-filed.
Voluntary Compliance Program (p. 50-51)		
41	Files for voluntary compliance programs are not organized and complete with required documentation maintained.	Create file retention systems for VPP sites to ensure that appropriate and complete documentation is organized and maintained.
42	Medical Access Orders were not obtained and presented to the companies prior to conducting VPP onsite reviews.	Obtain Medical Access Orders and present to companies prior to conducting VPP onsite reviews per CSP 03-01-003.

	Findings	Recommendations
Training (p. 51-52)		
43	A comprehensive tracking mechanism/database is not maintained for CSHO training.	Develop a tracking mechanism such as a database so that training records/information may be reviewed in the form of usable reports. This will assist the State with determining and maintaining compliance with OSHA Instruction TED 01-00-018, Initial Training Program for OSHA Compliance Personnel.
44	Employees are assigned fatality investigations prior to completing the Accident Investigation course.	Ensure that all CSHOs assigned to conduct fatality/catastrophe inspections have attended the Accident Investigation course.
Benchmarks/Furloughs/Funding (p. 52-55)		
45	Indiana OSHA is staffed well below current benchmarks for the State plan.	While the State believes that the current benchmark levels are not reflective of the resources necessary to be effective, it is recommended that the State continue to work with OSHA regarding benchmarks and continue to increase staffing levels to the extent feasible.

Appendix B

Enforcement Comparison Chart

	Indiana	State Plan Total	Federal OSHA
Total Inspections	2,060	61,016	39,004
Safety	1,797	48,002	33,221
% Safety	87%	79%	85%
Health	263	13,014	5,783
% Health	13%	21%	15%
Construction	1,362	26,103	23,935
% Construction	66%	43%	61%
Public Sector	37	7,749	N/A
% Public Sector	2%	13%	N/A
Programmed	1,390	39,538	24,316
% Programmed	67%	65%	62%
Complaint	416	8,573	6,661
% Complaint	20%	14%	17%
Accident	41	3,098	836
Insp w/ Viols Cited	897	37,978	27,165
% Insp w/ Viols Cited (NIC)	44%	62%	70%
% NIC w/ Serious Violations	74%	62%	87%
Total Violations	2,609	129,363	87,663
Serious	1,498	55,309	67,668
% Serious	57%	43%	77%
Willful	-	171	401
Repeat	13	2,040	2,762
Serious/Willful/Repeat	1,511	57,520	70,831
% S/W/R	58%	44%	81%
Failure to Abate	-	494	207
Other than Serious	1,098	71,336	16,615
% Other	42%	55%	19%
Avg # Violations/ Initial Inspection	3	3.3	3.1
Total Penalties	\$ 1,341,584	\$ 60,556,670	\$ 96,254,766
Avg Current Penalty / Serious Violation	\$ 821.00	\$ 800.40	\$ 970.20
Avg Current Penalty / Serious Viol- Private Sector Only	\$ 830.00	\$ 934.70	\$ 977.50
% Penalty Reduced	48.7%	51.9%	43.7%
% Insp w/ Contested Viols	3.6%	13.0%	7.0%
Avg Case Hrs/Insp- Safety	11.4	15.7	17.7
Avg Case Hrs/Insp- Health	32.6	26.6	33.1
Lapse Days Insp to Citation Issued- Safety	32.3	31.6	34.3
Lapse Days Insp to Citation Issued- Health	33.4	40.3	46.7
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	40	2,010	2,234

Source:

DOL-OSHA. State Plan INSP & ENFC Reports, 11-19-2009. Federal INSP & ENFC Reports, 11-9-2009. Private Sector ENFC- State Plans 12.4.09 & Federal 12.14.09

Appendix C

Acronyms

ADM	OSHA Instruction - Administrative
BLS	Bureau of Labor Statistics
BSR	Board of Safety Review
CAPR	Consultation Annual Project Report
CASPA	Complaint About State Program Administration
CPL	OSHA Instruction – Compliance
CSHO	Compliance Safety and Health Officer
EEP	Enhanced Enforcement Program
EISA	Expedited Informal Settlement Agreement
FAME	Federal Annual Monitoring Evaluation
FIRM	Field Inspection Reference Manual
FOM	Field Operations Manual
FY	Federal Fiscal Year
IDOL	Indiana Department of Labor
IH	Industrial Hygienist
IMIS	Integrated Management Information System
IMMLANG	Immigrant/Language
INSAFE	Indiana’s 21(d) Safety and Health Consultation Project
INSHARP	Indiana Safety and Health Achievement Recognition Program
IOSHA	Indiana Occupational Safety and Health Administration
NAICS	North American Industrial Classification System
NIC	Not In Compliance
OSHA	Occupational Safety and Health Administration
PMA	Petition for Modification of Abatement

SAMM	State Activity Mandated Measures
SIEP	State Internal Evaluation Program
SOAR	State OSHA Annual Report
SST	Site Specific Targeting
S/W/R	Serious/Willful/Repeat
VPP	Voluntary Protection Program

OSHA Forms

OSHA 1	Inspection Form
OSHA 1B	Violation Worksheet
OSHA-7	Complaint Form
OSHA 36	Accident Form
OSHA 170	Accident Investigation Summary
OSHA 90	Referral
OSHA 31	Weekly Activity Report

Appendix D

U. S. D E P A R T M E N T O F L A B O R

OCT 23, 2009

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

PAGE 1 OF 2

STATE ACTIVITY MANDATED MEASURES (SAMMs)

State: INDIANA

RID: 0551800

MEASURE	From: 10/01/2008		CURRENT	REFERENCE/STANDARD
	To: 09/30/2009		FY-TO-DATE	
1. Average number of days to initiate Complaint Inspections	3574		2	Negotiated fixed number for each State
	8.71		2.00	
	410		1	
2. Average number of days to initiate Complaint Investigations	1592		66	Negotiated fixed number for each State
	4.18		4.40	
	380		15	
3. Percent of Complaints where Complainants were notified on time	421		1	100%
	100.00		100.00	
	421		1	
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	28		0	100%
	84.85		0	
	33		0	
5. Number of Denials where entry not obtained	0		0	0
6. Percent of S/W/R Violations verified				
Private	1002		27	
	73.84		8.06	100%
	1357		335	
Public	13		0	
	52.00		.00	100%
	25		12	
7. Average number of calendar days from Opening Conference to Citation Issue				
Safety	34908		819	2489573
	46.98		27.30	43.8
	743		30	56880
Health	7371		167	692926
	46.65		55.66	57.4
	158		3	12071

*FY09IN

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

State: INDIANA

RID: 0551800

MEASURE	From: 10/01/2008 To: 09/30/2009	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
	289	11	92328
Safety	21.22	27.50	58.6
	1362	40	157566
			National Data (3 years)
Health	54	1	11007
	58.06	100.00	51.2
	93	1	21510
			National Data (3 years)
9. Average Violations per Inspection with Vioations			
S/W/R	1711	58	420601
	1.89	1.75	2.1
	901	33	201241
			National Data (3 years)
Other	1018	26	243346
	1.12	.78	1.2
	901	33	201241
			National Data (3 years)
10. Average Initial Penalty per Serious Violation (Private Sector Only)	2112906	63875	492362261
	1271.30	1120.61	1335.2
	1662	57	368756
			National Data (3 years)
11. Percent of Total Inspections in Public Sector	32	0	114
	1.62	.00	2.3
	1975	4	4918
			Data for State (3 years)
12. Average lapse time from receipt of Contest to first level decision	22261	0	4382038
	517.69		246.1
	43	0	17807
			National Data (3 years)
13. Percent of 11c Investigations Completed within 90 days	62	7	100%
	96.88	100.00	
	64	7	
14. Percent of 11c Complaints that are Meritorious	24	1	1466
	37.50	14.29	20.8
	64	7	7052
			National Data (3 years)
15. Percent of Meritorious 11c Complaints that are Settled	20	1	1263
	83.33	100.00	86.2
	24	1	1466
			National Data (3 years)

*FY09IN

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix E

Indiana SOAR (State OSHA Annual Report)

(Available Separately)