

State of Tennessee
Department of Labor and Workforce Development
State Office Annual Report
October 1, 2008 – September 30, 2009

Table of Contents

Introduction	3
Mandated Activities.	5
Summary of Annual Performance Plan Results	11
Special Accomplishments	18

INTRODUCTION

The Tennessee Occupational Safety and Health Administration (TOSHA) was created by legislation in 1972 and became operational in July 1973. The program operated as a dual-designee with the health functions housed in the Tennessee Department of Health and the safety functions in the Department of Labor until July 1977. At that time the General Assembly enacted legislation to transfer the health function to the Department of Labor. The Tennessee Occupational Safety and Health Administration program was certified in May 1978 and final (18-E) determination was achieved in July 1985.

The General Assembly enacted legislation giving Tennessee OSHA the mission of ensuring that employers furnish a place of employment which is free of recognized hazards and provide a safe and healthful workplace. Tennessee OSHA's primary objective is to improve occupational safety and health in workplaces throughout the state. The worker population in Tennessee is approximately 3,080,000. There are approximately 140,000 employers in the state with a comparatively high percentage of construction work sites.

Tennessee OSHA achieves this objective through:

- Enforcement of the General Industry, Construction, Agricultural Occupational Safety and Health Standards and Tennessee Department of Labor and Workforce Development Rules for private and public sector employees.
- Delivering training programs designed to target the most prominent injuries and illnesses affecting Tennessee workers.
- Providing Tennessee Department of Labor and Workforce Development Rules and OSHA General Industry, Construction and Agriculture Standards at cost.
- Providing interpretations of Tennessee OSHA Standards.
- Providing assistance to employers, employees and the general public on controlling hazards in the workplace by answering technical questions on a daily basis.
- Administering the consultation program to advise and assist employers in the improvement of occupational safety and health in their work places.
- Maintaining employer recognition programs to promote safe and healthful workplaces.

Tennessee OSHA's program services are delivered through a central office in Nashville and field offices located in six strategic geographical areas with twenty IMIS Reporting IDs. Those areas are as follows:

- Nashville - 0454700, 0454712, 0454722 and 0454732
- Memphis - 0454711, 0454721 and 0454731
- Knoxville - 0454714, 0454724 and 0454734
- Chattanooga - 0454713, 0454723 and 0454733
- Jackson - 0454715, 0454725 and 0454735
- Kingsport - 0454716, 0454726 and 0454736
- Consultation – 0494701

The Tennessee OSHA website (Compliance and Consultation) is located at www.tn.gov/labor-wfd/tosha.html. All current directives, the Tennessee OSHA Act, and Tennessee OSHA state rules are accessible from the site.

MANDATED ACTIVITIES

Enforcement

During FY 2009, the compliance section conducted 2,379 inspections. Of these 1,818 were program-planned inspections, 304 were complaint inspections, 49 were accident or fatality inspections, and 255 were addressed using phone/fax procedures. As a result of these inspections 10,069 violations were cited and \$2,178,390 in penalties were assessed.

Complaints

During FY 2009, as indicated in the State Activity Mandated Measures (SAMM) complaint inspections were initiated in an average of 9.37 days following receipt of the complaint. Complaint investigations were initiated in an average of 4.30 days. Both were within the goal of 15 days for inspections and 5 days for investigations.

Fatalities

During FY 2009, 49 accident and fatality investigations were conducted. It is agency policy to conduct accident and fatality investigations as soon as possible and generally within one day of receiving notice of the incident. A letter is sent by the TOSHA Administrator notifying each victim's family that an investigation is underway and providing the family with contact information for the area supervisor overseeing the investigation.

Targeting & Special Emphasis Programs

Tennessee OSHA participated in the following national emphasis programs: Amputations, Petroleum Refinery Process Safety Management, Combustible Dust, and Lead.

In addition, Tennessee OSHA also maintained the following local emphasis programs: Trenching and Excavation, Carbon Monoxide, Workplace Noise, and Fall Protection.

Medical sharps injuries in hospitals and ambulatory surgical centers were targeted by TOSHA under a targeting initiative.

Evaluation of Mandated Activities

Tennessee OSHA management reviews the State Activity Mandated Measures (SAMM) and the State Indicator Report (SIR), as well as other management reports periodically to assure the mandated activities are carried out effectively and efficiently. A review of the SAMM and SIR for FY 2009 indicated Tennessee OSHA generally met or exceeded federal activity results. Highlights include the following: Hazards were identified during 74.1% of programmed safety inspections (Federal data 65.8%) and during 76.5% of

programmed health inspections (Federal data 51.7%); Safety Compliance performed approximately 6.6 inspections per 100 hours (Federal data 5.5) and Health Compliance performed approximately 3.2 inspections per 100 hours (Federal data 1.6). Tennessee OSHA only vacated 1.9% of violations (Federal data 5.1) and reclassified 1.0% (Federal data 4.8). Penalties were retained on 88.5% of violations issued (Federal data 63.2).

Areas of concern include serious classification of safety violations 40.7% (Federal data 80.0) and of health violations 40.9% (Federal data 69.7). Tennessee OSHA management, including the area supervisor and section manager, review reports to assure violations are properly classified. Proper classification will continue to be an area of focus in the future.

Public Sector Activity

During FY 2009, Tennessee OSHA performed 23.86% of all inspections in the public sector. Public sector employers were given the opportunity to participate in the public sector program during the first 2 years following the formation of Tennessee OSHA and again, by statute, between July 1, 2004, and July 1, 2006. State law mandates that Tennessee OSHA inspect these entities bi-annually. Participants in the program must designate a safety and health director & establish a safety and health program. Participants are not issued monetary penalties, however the Governor can remove a participant from the program for failure to comply with the TOSH Act. All public employers not currently participating in the program are treated as private employers as mandated by state law.

Citation and Inspection Review

All inspection reports and citations are reviewed by the industrial hygiene or safety area supervisor and the section manager. All citations are reviewed and issued by the TOSHA Administrator, or in his absence, the Assistant Administrator. Informal conferences are held by the area supervisor and reviewed by the section manager. All changes to the penalty or citation are reviewed and issued by the TOSHA Administrator or Asst. Administrator.

During FY 2009, 36 citations were contested and 26 were resolved before the Tennessee Occupational Safety and Health Review Commission. As of September 30, 2009 of the 25 contested cases remaining, 10 settlements were scheduled to be resolved pending approvals. The remaining 15 are pending resolution by settlement or hearing.

During FY 2009, a review of the SAMM indicated 5.7% of violations were vacated (Federal data 23.4%), 9.4% were reclassified (Federal data 15.1%), and 84.5% of the penalties were retained (Federal data 58.5) by the Review Commission.

Review of Bureau of Labor Statistic Data

A review of the Bureau of Labor Statistic (BLS) data, over the last five years, reveals a downward trend in the Days Away, Restricted, Transferred (DART) and the Total Case Incident Rate (TCIR).

	DART		TCIR	
Year	TN Private	US Private	TN Private	US Private
2008	2.1	2.0	4.2	3.9
2007	2.2	2.1	4.5	4.2
2006	2.4	2.3	4.8	4.4
2005	2.5	2.4	4.8	4.6
2004	2.7	2.5	5.3	4.8

In 2008, the most recent BLS data available, Tennessee's TCIR of 4.2 for all industries including state and local governments is equivalent to that of the United State as a whole.

Training of TOSHA Compliance Personnel

Newly-hired TOSHA compliance officers are trained as outlined in the instruction "Initial Training Program for TOSHA Compliance Personnel" (TED-TN 001-00-018). The OSHA Training Institute (OTI) is used as the source of most of the training courses. As soon as possible upon hire, a new compliance officer is enrolled in the "Initial Compliance" course at OTI. Additional courses are scheduled as dictated in the instruction. Basic training is completed when the eight courses outlined in the instruction are completed. The training needs of all TOSHA compliance personnel are evaluated annually by the supervisors in each area office in conjunction with the section managers. Requests for individual OTI courses are submitted to the training and education office which schedules the approved courses. Compliance officers may be scheduled to attend two additional OTI courses each year based on the need of the CSHO or the local area office, more if a special need exists. OTI Education Centers and resources offering Council for Accreditation in Occupational Hearing Conservation (CAOHC)-approved courses, are utilized as needed.

TOSHA employees attended the 6 federal OSHA Webinars presented during FY 2009 for total of 156 hours of training. TOSHA employees also attend numerous presentations on subjects such as Reproductive and Developmental Health, Preventing and Mitigating Combustible Dust Fires and Explosions, H1N1 Flu, Heat Stress, and NFPA 70E. All TOSHA professional employees attended the 2009 Tennessee Safety and Health Congress.

In FY 2009, 20 compliance officers attended 14 different training courses, 13 of them OTI courses.

Standards

The Tennessee Commissioner of Labor and Workforce Development has the statutory authority to promulgate Tennessee Occupational Safety and Health (TOSHA) standards. Tennessee has generally adopted all federal standards that are applicable in Tennessee. Standards promulgated by federal OSHA are adopted by reference in Tennessee Department of Labor and Workforce Development rules. There were three (3) rule proposals submitted during this period that adopted all federal OSHA promulgated standards in FY 2009, timely. No state standards were adopted during this period; however, there were several rule changes dealing with non-standards-related issues. A new compliance officer training plan was formalized, changes to the Voluntary Protection Program (VPP) rules were made that incorporate the new TOSHA VPP Policies and Procedures Manual, and a change was made to adopt new state copy-cost rules.

On September 15, 2009, the Division adopted a new Field Operations Manual (FOM). The new FOM adopts all significant changes included in the federal FOM (CPL 02-00-148) dated March 26, 2009. The Tennessee State Occupational Safety and Health Plan was updated with four (4) plan changes during this period. The most significant plan change included the complete revision to Tennessee State Plan Part V - Field Operations Manual.

TOSHA adopted five (5) state specific program directives and six (6) federal program directives during this time period. All directives are listed on the Division's Web page.

TOSHA responded to 250 Open Records Act requests during this period. Of these requests there were 204 records releases that included 6,679 documents (pages) released. All Freedom of Information requests forwarded to the Division by federal OSHA were satisfied in a timely manner.

TOSHA received one request for a variance during FY 2009. Additional information was requested from the applicant to clarify the request. The additional information was not received and the variance was not granted.

Voluntary Protection Program (VPP) and Safety and Health Awards Programs

The TOSHA Volunteer STAR VPP Program is administered according to the TOSHA VPP Policy and Procedures Manual. Tennessee OSHA recognizes only the STAR level of achievement.

Tennessee OSHA currently has 31 sites participating in the Volunteer STAR program. During FY 2009, four new facilities obtained Volunteer STAR status.

The Tennessee Department of Labor and Workforce Development Safety Award Program is designed to stimulate interest in accident prevention & to promote safety and health programs. These awards recognize manufacturing and construction employers across the state that, together with their employees, achieve and maintain safe and healthful work sites based on worker-hours worked without a lost time or without a lost or restricted duty incident.

During FY 2009, TOSHA presented 18 Governor's Awards and 8 Commissioner's Awards. No exemption or other benefit, with the exception of recognition, is granted to the recipients.

Training and Education Outreach Program

A spring and fall schedule of training seminars is offered to the general public each year. The seminars focus on new regulations, basic requirements related to occupational safety and health, and current topics of interest. TOSHA works with many co-sponsors to offer seminars, including the University of Tennessee, The Tennessee Chamber of Commerce & Industry, and several state community colleges. The seminars are offered at various locations across the state.

TOSHA trainers also conduct short training programs and speeches for special events, meetings, and conferences upon request. The TOSHA training staff is currently comprised of 21 industrial hygienists and occupational safety specialists who are approved as trainers in addition to their compliance or consultative duties. In FY 2009, TOSHA trainers conducted 339 training sessions for 9,690 attendees. Of the responses the training program received from participants, 95% indicated the seminars help employers and employees provide a safe and healthful workplace

Tennessee OSHA publishes a free quarterly newsletter, "Together with TOSHA," mailed to approximately 18,000 persons/businesses and also distributed through TOSHA's Web site. The newsletter offers information, interpretations, best practices, and compliance recommendations on occupational safety & health topics.

Complaints About State Program Administration

During FY 2009, one complaint about state program administration was filed and is currently under review by federal OSHA.

Discrimination

All allegations of discrimination were investigated by Tennessee OSHA in accordance with established policies and procedures. Allegations found to be of merit were settled or forwarded to the Attorney General's office for consideration for prosecution. During FY 2009, 43 complaints alleging discrimination in violation of T.C.A. 50-3-409 were filed. Of these, 9 were settled, 4 were withdrawn by the complainant, 14 were found to lack merit, 12 were closed because the complainant failed to cooperate, 2 were forwarded to the Attorney General's office for consideration for prosecution, and 2 are still under investigation.

Inspection Quality Assurance

Tennessee OSHA compliance officers are trained to perform the essential job functions in a professional and competent manner. Each compliance officer has a job plan and an annual evaluation with at least one interim evaluation during the year. Supervisors performing the annual evaluation accompany compliance officers on an inspection to assure inspection policies and procedures are followed. Newly hired compliance officers are trained as discussed in the training section.

Each inspection report and proposed citations are reviewed by the industrial hygiene or safety supervisor in the area office where the inspection was conducted. The inspection report and proposed citations are then forwarded to the industrial hygiene or safety section manager in the central office for additional review. All fatalities inspection reports are reviewed by the Assistant Administrator and all inspection reports and citations are reviewed by the TOSHA Administrator. All citations are issued by signature of the TOSHA Administrator, or in his absence by the Assistant Administrator, as required by state law.

The review of each inspection file and citations by each management level provides continuous assurance of quality work and consistency across all area offices.

Annual Performance Goals

The first five-year plan changed the focus of Tennessee OSHA by concentrating activities on affecting workplaces where high injuries and illnesses were occurring. The second five-year plan enhanced those activities through increased collaboration with the Workers' Compensation and Research & Statistics Divisions.

All goals were achieved or exceeded with the exception of the goal to reduce fall fatalities.

Performance Goal 1.1

Eliminate 7,000 serious violations/hazards in workplaces where interventions take place.

Summary - Tennessee OSHA met this goal.

	Compliance	Consultation	Total
Inspections/Visits	2,380	554	2,926
Serious Violations/Hazards	5,209	2,968	8,177
Non-Serious Violations/Hazards	3,118	359	3,477
Repeated Violations	37	N/A	37
Willful Violations	8	N/A	8
Regulatory Hazards	N/A	237	237
Total Violations/Hazards	8,372	3,564	11,936

Performance Goal 1.2 - Carbon Monoxide

Reduce carbon monoxide exposures for 300 employees.

Summary – Tennessee OSHA met this goal

CO levels have been documented as reduced through elimination and engineering controls as follows:

FISCAL YEAR	EMPLOYERS	EMPLOYEES
2004	35	1,977
2005	31	960
2006	37	1,935
2007	29	1,846
2008	35	689
2009	19	721

Compliance and Consultation documented the elimination of hazard communication

hazards and reduced employees' exposure to CO.

FISCAL YEAR	EMPLOYERS	EMPLOYEES	HAZARDS
2004	176	3,683	509
2005	166	3,515	474
2006	202	2,992	541
2007	202	3,321	588
2008	252	3,713	757
2009	273	6,295	753

Performance Goal 1.3 - Noise

Reduce noise exposures for 300 employees.

Summary - Tennessee OSHA met this goal.

Noise levels have been documented as reduced through engineering and hearing protection as follows:

FISCAL YEAR	EMPLOYERS	EMPLOYEES
2004	31	289
2005	33	232
2006	31	560
2007	45	566
2008	34	305
2009	28	1,017

Compliance and Consultation documented the elimination of hearing conservation program violations and reductions of employees' exposure to noise.

FISCAL YEAR	EMPLOYERS	EMPLOYEES	HAZARDS
2004	108	2,155	396
2005	118	1,573	425
2006	105	1,426	387
2007	119	1,458	502
2008	88	1,015	372
2009	118	1,741	379

Performance Goal 1.4 – Needlestick Reduction

Reduce the number of needlesticks in hospitals by 10% in five years.

Summary – TOSHA met this goal. TOSHA obtained 2005, 2006, 2007, & 2008 Sharps Injury Logs from Tennessee hospitals and ambulatory surgical centers. TOSHA trainers performed training sessions for these facilities in six areas of Tennessee.

A comparison of the 2005, 2006, 2007, and 2008 needlestick logs was made. The results indicate a reduction of 11.7 % in four years.

Annual Needle Sticks

	2005	2006	2007	2008	Reduction
Hospitals	2,742	2,639	2,575	2,417	11.8%
Surgery Centers	222	209	200	198	10.8%
Total	2,964	2,848	2,775	2,615	11.7%

Inspection Results

FISCAL YEAR	EMPLOYERS	EMPLOYEES	HAZARDS
2006	8	79	26
2007	57	5,850	397
2008	132	19,078	926
2009	102	15,144	644

Performance Goal 1.5

Reduce the number of fatalities due to falls each year by 1.7% from a baseline of the average number of yearly fatalities (8.2) due to falls from 2003 – 2007. Tennessee OSHA continues to maintain a local emphasis program addressing fall hazards.

Summary – Tennessee OSHA did not meet this goal. However, the number of fatalities due to falls did decrease from 11 in FY 2008 to 10 in FY 2009.

FISCAL YEAR	FALL FATALITIES	FATALITIES
2004	9	46
2005	6	26
2006	9	47
2007	10	33
2008	11	35
2009	10	32

Compliance and Consultation documented the elimination of fall hazards and reduced employees' exposure to falls by issuing citations and identifying hazards as outlined in the chart below.

FISCAL YEAR	EMPLOYERS	EMPLOYEES	HAZARDS
2004	445	1,313	880
2005	378	1,031	879
2006	422	1,137	875
2007	469	1,476	1,049
2008	521	1,123	1,606
2009	544	1,216	1,458

TOSHA informs employers and employees about the Fall Hazard Special Emphasis Program during each inspection and visit. The goal is to increase employers and employees ability to identify fall hazards and reduce employee exposure to falls.

Performance Goal 1.6

Reduce the DART rate in Construction each year by 1.7%.

Summary – Tennessee OSHA met this goal. Injury rates in the Construction industry were lower in 2008.

CONSTRUCTION

Totals of TOSHA inspectional activity:

FISCAL YEAR	COMPANIES	HAZARDS
2004	641	1,487
2005	572	1,512
2006	568	1,552
2007	642	1,702
2008	783	2,029
2009	731	1,955

Construction

2004 DART	2.9
2005 DART	2.7
2006 DART	2.3
2007 DART	2.8
2008 DART	2.0
1-YR Change	-40.0 %
5-YR Change	- 45.0 %

Performance Goal 1.7

Reduce amputations by 1% each year using Tennessee Worker's Compensation data.

Summary – Tennessee OSHA met this goal. Amputations decreased to 132 this year. TOSHA documented a 69.7 % decrease in amputations since 2004 based on Tennessee Worker's Compensation Data.

Amputations

Totals of TOSHA inspection activity:

AMPUTATION VIOLATIONS		
	Companies	Violations/Hazards
2004	334	836
2005	374	1,004
2006	342	624
2007	386	750
2008	370	813
2009	334	681

Amputation information is obtained from CPL 2-1.33. Violations in standards General Machine Guarding - 1910.212, Woodworking Machinery - 1910.213, and Power Presses - 1910.217 are counted. The SIC codes in the CPL include: 2421, 2431, 2434, 2448, 2451, 2499, 2511, 2541, 2542, 3089, 3429, 3441, 3442, 3443, 3444, 3469, 3496, 3499, 3599, 3714, and 3732.

Year	Amputations
FY2004	436
FY 2005	372
FY 2006	326
FY 2007	352
FY 2008	173
FY 2009	132

Performance Goal 2.1

Train 9,000 people in occupational safety and health training classes.

Summary – Tennessee OSHA met this goal.

FISCAL YEAR	SESSIONS	TRAINED
2004	588	7,011
2005	744	11,890
2006	823	13,369
2007	552	12,602
2008	565	12,258
2009	839	12,393

Tennessee OSHA personnel performed seminar training for the public on the following subjects:

Accident Investigations	Basic Safety
Bloodborne Pathogens	10-hour Construction Course
Electrical Safety	Fall Protection
Fire Protection & Life Safety	Powered Industrial Trucks
Hazard Communication	Maintenance Related Standards
Noise	Laboratory Safety and Health
Lockout/Tagout	Machine Guarding
Respirator Requirements	Office Safety
Public Sector Update	Safer Needle Devices
TOSHA Overviews	Train the Trainer
Trenching	Walking and Working Surfaces

Performance Goal 2.2

TOSHA implemented significant improvements in employer occupational safety and health programs in 850 workplaces where Tennessee OSHA Compliance had an intervention.

Summary – Tennessee OSHA met this goal.

Inspection Results

FISCAL YEAR	EMPLOYERS	PROGRAM HAZARDS IDENTIFIED
2004	1,008	3,540
2005	965	3,832
2006	1,069	3,963
2007	1,123	4,440
2008	1,264	4,976
2009	1,303	4,760

These program violations include emergency action plans, noise, emergency response, personal protective equipment assessment, respirators, confined space, lockout/tagout, fire prevention, bloodborne pathogens, hazard communication, excavations, process safety management and construction training.

TOSHA consultation performed 493 visits with program assistance. These program assistance visits provide the company with evaluation of their safety and health program and provide recommendations on how those companies can improve their programs.

Performance Goal 2.3

Evaluate and approve three employers for the Voluntary Protection Program (Volunteer STAR).

Summary – TOSHA met this goal. Four new companies were approved in FY 2009.

Performance Goal 2.4

Evaluate and approve two new employers for the Safety and Health Achievement Recognition Program (SHARP).

Summary – Tennessee OSHA Consultation Services approved three new companies during FY 2009.

SPECIAL ACCOMPLISHMENTS

- In April 2009, Tennessee OSHA staff conducted an outreach effort in Murfreesboro, Tennessee, after tornados destroyed many homes and businesses. Approximately 25 Tennessee OSHA employees, in cooperation with the Tennessee Emergency Management Agency (TEMA), visited the affected areas and provided safety and health information and basic PPE to homeowners and clean-up personnel.
- Tennessee OSHA partnered with the Associated General Contractors, Associated Builders & Contractors, Tennessee Road Builders Association, American Society of Safety Engineers, Home Builders Association of Tennessee, and the Plumbing, Heating & Cooling Contractors Association for "Fall Protection Stand Down". The project stopped work and construction employees were trained on Fall Protection for 45-60 minutes on June 1, 2009.
- The Tennessee OSHA Advisory Council met twice with the Administrator and Assistant Administrator to discuss the progress of the Tennessee OSHA program and to seek input from the council members in November 2008 and June 2009. The six member Advisory Council is composed of business and labor representatives.
- The Administrator attended the OSHSPA meetings in Jackson Hole, Wyoming, Charleston, South Carolina, and Portland, Oregon.
- The Assistant Administrator was appointed to the Advisory Committee on Construction Safety and Health. He attended three meetings, during FY 2009, in Washington, D.C.
- Twenty-three Industrial Hygienists attended a two-day AIHA Fall Conference in Knoxville
- Tennessee OSHA maintains a list of engineering controls and engineered sharps injury prevention devices. This list was provided to the public at healthcare seminars, and was placed on Tennessee OSHA's Web site. It was updated on the Web site when changes are made.
- Tennessee OSHA co-sponsored, with the American Society of Safety Engineers, the 32nd annual Tennessee Safety and Health Congress. The Congress was attended by more than 600 delegates, including all TOSHA professional personnel. More than 60 individual workshops were presented.
- The Tennessee OSHA industrial hygiene laboratory was re-accredited by the American Industrial Hygiene Association (AIHA) in atomic absorption spectrometry, gas chromatography, UV-visible spectrometry, phase contrast microscopy, gravimetric analysis, inductively coupled plasma with mass spectrometry detection, ion chromatography, high performance liquid chromatography and ion selective electrode analysis.

- Tennessee OSHA presented a program on the hazard of combustible dust for the TVS-AIHA.
- Tennessee OSHA collaborated with the International Sharps Injury Prevention Society (ISIPS) to provide information on Tennessee OSHA's Sharps Injury Targeting Initiative to be published in Infection Control magazine.
- In conjunction with the Meharry Medical School Residency Program Partnership, TOSHA trained one occupational medicine resident in the use of industrial hygiene equipment and the interpretation of industrial hygiene data as well as the responsibilities of OSHA.
- Tennessee OSHA adopted the National Emphasis Program for Combustible Dust. As a result 23 compliance inspections that involved combustible dusts were performed.
- Tennessee OSHA adopted the National Emphasis Program for Process Safety Management in Refineries. There was only one refinery in Tennessee and an inspection was conducted at that facility. Citations were issued. A total of 247.5 hours were required to complete the inspection.