

**Virginia FY 2009 Enhanced FAME Report – FINAL Corrective Action Plan
Prepared by Region III**

Finding 1 of 18

Finding # 1: Case files lacked written documentation of why a non-formal complaint resulted in an inspection.

Recommendation #1: Written documentation should be contained in case files to justify why a non-formal resulted in an inspection.

State Response: This recommendation generally corresponds to question 26 on OSHA's Case File Review Form, although that question deals with a whole list of possible forms (Narrative, OSHA-1, OSHA-1B, OSHA-170).

OSHA notes this is an error in 41 of 102 case files (40%), although only a subset of those errors concerned the issue of documenting why a non-formal complaint resulted in an inspection. From our review of the case files, it appears that most of the non-formal complaints that were "formalized" and/or assigned for an inspection were done in response to a VOSH directive (e.g., it is VOSH policy that all non-formal asbestos complaints will be responded to by an inspection; the same policy is found in certain special emphasis programs such as the one for Fall Protection in Construction). VOSH will review the applicable documentation requirements in the VOSH FOM and VOSH Directives with field personnel.

Corrective Action Plan: Remarks concerning changes in the status/classification of complaints will appear on the Case File Diary Sheet. The Compliance Manager will be responsible for this entry. In addition to this entry, the same or supporting information may also be found on the OSHA 167 (c) form and/or the inspection narrative.

Documentation to be submitted w. due date: Region and Program Directors received their refresher training on November 29-30, 2010. The deadline for refresher training for Compliance Managers and Engineers is December 15, 2010, and the deadline for training all available CSHOs/IHs is January 15, 2011. All CSHOs/IHs who miss the refresher training due to absence must receive the training when they return to work. VOSH will submit written notification to Federal OSHA after the training has been completed.

Anticipated Completion Date: January 20, 2011

Outcome Measure/Expectation: When future complaint files are reviewed by Federal OSHA, it is expected that any non-formal complaint converted to a formal complaint will contain written documentation of why such a conversion occurred.

Status: Subject to further federal monitoring.

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Finding #2: Standard language was not being used in response letters to complainants. For example, some letters gave a lot of detailed information to the complainant regarding the outcome of the inspection while others simply responded “complaint was confirmed.”

Recommendation #2: Response letters must include an appropriate response detailing the outcome of the inspection or investigation activity for each alleged complaint item as outlined in VOSH’s FOM.

State Response: This recommendation corresponds to question 22 on OSHA’s Case File Review Form.

OSHA noted this as an error in 6 of 40 complaint files (15%). Although VOSH has determined that at least 1 of the 6 is an incorrect finding (the complaint was anonymous, so there was no contact information for the complainant that could be used to send a letter), VOSH will review the applicable requirements in the VOSH FOM with field personnel.

Corrective Action Plan: In all response letters to complainants, the CSHO/IH will incorporate and the Compliance Manager will approve appropriate AVD language or other descriptive language into the letter to clarify the inspection’s findings for each complaint item.

Documentation to be submitted w. due date: Region and Program Directors received their refresher training on November 29-30, 2010. The deadline for refresher training for Compliance Managers and Engineers is December 15, 2010, and the deadline for training all available CSHOs/IHs is January 15, 2011. All CSHOs/IHs who miss the refresher training due to absence must receive the training when they return to work. VOSH will submit written notification to Federal OSHA after the training has been completed.

Anticipated Completion Date: January 20, 2011

Outcome Measure/Expectation: It is expected during additional complaint file reviews that all response letters to complainants will include appropriate response detailing the outcome of the inspection or investigation activity for each alleged complaint item as outlined in VOSH’s FOM.

Status: Subject to further federal monitoring.

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Finding #3: Families of fatality victims were not kept up-to-date about investigations and/or informed of the outcome of investigations.

Recommendation #3: Families of fatality victims must be kept up-to date about investigations and informed of the outcome of VOSH investigations.

State Response: This recommendation corresponds to question 25 on OSHA's Case File Review Form.

OSHA noted this as an error in 7 of 16 fatality files (44%), and the finding was primarily directed at a failure of VOSH to send follow-up letters on whether the inspection resulted in citations or not. In one of the 7 cases, the victim was from another country and repeated attempts to track down a family member were unsuccessful.

VOSH maintains that there is a distinction between notification of families of fatality victims and the next-of-kin, as only legal descendents are able to be notified in accordance with the law. VOSH will address their procedures to ensure that next-of-kin are kept up-to-date on the investigations and/or outcome for all fatalities.

Corrective Action Plan: VOSH will continue to contact victims' next-of-kin and will also maintain follow-up contact with the next-of-kin to inform and provide copies of citations and settlement agreements. Compliance Managers and Region Directors will be responsible for establishing and maintaining contact, providing copies, etc.

Documentation to be submitted w. due date: Region and Program Directors received their refresher training on November 29-30, 2010. The deadline for refresher training for Compliance Managers is December 15, 2010. VOSH will submit written notification to Federal OSHA after the training has been completed.

Anticipated Completion Date: January 20, 2011

Outcome Measure/Expectation: It is expected that families of fatality victims will receive timely information from VOSH concerning the outcome of inspections.

Status: Subject to further federal monitoring.

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Finding #4: Interviews with employer representatives and employees were not always documented.

Recommendation #4: Ensure that interviews with employer representatives and employees are documented in case files.

State Response: This recommendation corresponds to questions 10 and 12 on OSHA's Case File Review Form.

OSHA noted this as an error in 5 of 102 complaint files or approximately 5%. VOSH does not consider an error this low to be judged a serious problem. The Director of DLS always addresses the issue of employee and supervisory interviews at the annual VOSH training conference for CSHOs/IHs and will do so again at the next conference in 2011.

Corrective Action Plan: CSHOs/IHs will receive refresher training on documenting employee and employer interviews in all cases and at all times.

Documentation to be submitted w. due date: Memorandum from VOSH that training has been completed by January 15, 2011.

Anticipated Completion Date: January 20, 2011

Outcome Measure/Expectation: When future case file reviews are conducted by Federal OSHA, it is expected that all employee and employer interviews will be documented in the case files.

Status: Subject to further federal monitoring.

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Finding #5: Case file documentation is not in conformance with the requirements of VOSH's FOM.

Recommendation #5: The requirements for case file documentation are outlined in Chapter III of VOSH's FOM. These policies and procedures should be reviewed with all management and compliance staff to assure that all employees are following these procedures and understand what specifically is required to be contained in a case file.

State Response: This recommendation does not provide enough detail for VOSH to determine what course of action is needed. In the EFAME narrative section dealing with this recommendation, OSHA referenced the following items:

1. lack of documentation of employer knowledge, which is referenced in Recommendation 6;
2. failure to document strategic plan activity codes on the OSHA-1; and
3. lack of documented interviews with employer representatives.

The second and third issues will be addressed at the annual VOSH training conference for CSHOs/IHs in 2011. The first issue is addressed under Recommendation 6 below.

Corrective Action Plan: CSHOs/IHs will receive refresher training on the VOSH FOM Chapter III and the proper use of the OSHA 1-B form as they pertain to the documentation required.

Documentation to be submitted w. due date: Memorandum from VOSH that training has been completed by January 15, 2011.

Anticipated Completion Date: January 20, 2011

Outcome Measure/Expectation: Consistent case file documentation across all regional offices within VOSH.

Status: Subject to further federal monitoring.

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Finding #6: Case file diary sheets were not found in inspection files.

Recommendation #6: Case file diary sheets must be used in accordance with VOSH's FOM procedures. This form needs to be kept at the top of the case file so that a reviewer can tell at first glance the status of that case.

State Response: This recommendation corresponds to questions 27 and 28 on OSHA's Case File Review Form.

OSHA noted this is an error in 23 of 102 case files or approximately 23%. VOSH will review the applicable requirements in the VOSH FOM with field personnel at its next annual training conference in 2011.

Corrective Action Plan: Case File Diary Sheets will be required in all case files. VOSH personnel will be required to make proper entries as required.

Documentation to be submitted w. due date: Memorandum from VOSH that training has been completed by January 15, 2011.

Anticipated Completion Date: January 20, 2011

Outcome Measure/Expectation: Consistent case file documentation across all regional offices within VOSH.

Status: Subject to further federal monitoring.

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Finding #7: Employee exposure was not always adequately documented on OSHA 1B forms.

Recommendation #7: VOSH must ensure that OSHA 1Bs are adequately documented. Provide additional training to investigators on case file documentation and the importance of having each OSHA 1B fully documented.

State Response: We assume that this recommendation relates to questions 31 and 32 on the OSHA Case File Review Form, which address documentation requirements for employee exposure and employer knowledge.

OSHA noted lack of employee exposure documentation as an error in 14 of 102 case files (14%), but we could find no explanation in most of the files identified for why the federal reviewer determined that documentation of employee exposure was lacking. VOSH does not believe that there is a lack of documentation of employee exposure in the case files we have reviewed, with perhaps only a few minor exceptions. If there is a problem, it is limited to one region where OSHA found 8 errors out of 22 cases (57% of the total of 14). That regional office has reviewed the 8 files and could find no significant omissions and asked if OSHA uses different criteria for documenting employee exposure than does Virginia. VOSH is not aware that it has any different criteria than OSHA on this issue. Nonetheless, the DLS Director will address the issue at our annual VOSH training conference in 2011.

With regard to documenting employer knowledge, OSHA noted inadequate documentation as an error in 9 of 102 case files (9%). Our review of case files confirms OSHA's finding that some CSHOs relied too much on phrases such as "due diligence" or "plain view." The Director of DLS will address the issue of documenting employer knowledge at the annual VOSH training conference for CSHOs in 2011.

Corrective Action Plan: CSHOs/IHs will receive refresher training on the proper use of the OSHA 1-B with emphasis on the documentation required to issue citations.

Documentation to be submitted w. due date: Memorandum from VOSH that training has been completed by January 15, 2011.

Anticipated Completion Date: January 20, 2011

Outcome Measure/Expectation: Consistent case file documentation across all regional offices within VOSH.

Status: Subject to further federal monitoring.

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Finding #8: Alleged violation descriptions (AVDs) on OSHA-2 forms were not specific enough to address hazardous conditions.

Recommendation #8: Alleged violation descriptions should reflect specific hazards noted on OSHA-2 forms for each violation.

State Response: VOSH agrees to retrain staff on completion of AVDs on the OSHA-2 forms.

Corrective Action Plan: CSHOs/IHs will receive refresher training on the proper use of the OSHA-1B worksheet and the OSHA-2 citation/penalty form

Documentation to be submitted w. due date: Memorandum from VOSH that training has been completed by January 15, 2011.

Anticipated Completion Date: January 20, 2011

Outcome Measure/Expectation: Specific violation descriptions on OSHA-2 forms as required for all violations.

Status: Subject to further federal monitoring.

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Finding #9: OSHA-300 logs were not always obtained from employers and reviewed by compliance officers during on-site inspection activity.

Recommendation #9: OSHA-300 logs for three years must be obtained from employer and reviewed by compliance officers, pursuant to VOSH's FOM, while on-site during inspection activity.

State Response: This recommendation corresponds to question 19 on OSHA's Case File Review Form.

VOSH agrees that certain files, primarily in one regional office, did not contain copies of the OSHA 300 logs as required by the VOSH FOM. In one region 22 case files were reviewed by OSHA staff, with 15 of the 22 case files (68%) identified as not containing the OSHA 300 logs as required. VOSH has determined that 10 of the 15 files (67%) were properly identified by OSHA as not having the required copy of the OSHA 300 logs.

However, in 5 of the 15 case files (33%) identified by OSHA as not having the required copy of the OSHA 300 log, VOSH determined that those employers were not required by regulation to have an OSHA 300 log because of the number of employees in the company or because the employer had been in business for less than one year.

This issue did not appear to be a significant problem in any of the other regional offices. In fact, one other region noted that the only inspection case file identified as not having a copy of the OSHA 300 log did not have one because the employer had failed to fill one out and that a citation was issued to the employer. This issue will also be addressed at the annual VOSH training conference for CSHOs in 2011.

Corrective Action Plan: CSHOs/IHs will receive refresher training on the proper collection of OSHA 300 forms.

Documentation to be submitted w. due date: Memorandum from VOSH that training has been completed by January 15, 2011.

Anticipated Completion Date: January 20, 2011

Outcome Measure/Expectation: VOSH staff will review and maintain copies of OSHA 300 logs in inspection files when appropriate.

Status: Subject to further federal monitoring.

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Finding #10: Proper documentation to justify violation severity classification was not always contained in inspection files.

Recommendation #10: VOSH must retrain compliance staff in the proper type of documentation needed to justify violation severity classification in accordance with VOSH FOM procedures.

State Response: This recommendation corresponds to questions 29 on OSHA's Case File Review Form.

OSHA noted this as an error in 10 of 102 case files or approximately 10%. Several of those 10 case file reviews questioned severity classification on more than 1 violation, which brings the total violations in question to approximately 15. In the 102 case files reviewed by OSHA, 631 violations were issued. Although VOSH disputes several of the classification errors cited by OSHA, if we assume that the 15 errors found are valid, that still means that VOSH had an error rate of approximately 2.4% (15/631). VOSH does not believe an error rate this low indicates a deficiency in CSHO training. Nonetheless, VOSH will review the applicable requirements in the VOSH FOM with field personnel at its next annual training conference in 2011.

Corrective Action Plan: CSHOs/IHs will receive refresher training on the proper assessment of severity on the 1-B form.

Documentation to be submitted w. due date: Memorandum from VOSH that training has been completed by January 15, 2011.

Anticipated Completion Date: January 20, 2011

Outcome Measure/Expectation: During future on-site reviews by Federal OSHA proper documentation will be found in case files which justifies violation severity classification.

Status: Subject to further federal monitoring.

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Finding #11: Copies of signed informal settlement agreements were not always contained in case files.

Recommendation #11: Copies of signed settlement agreements must be maintained in case files.

State Response: This recommendation and the finding that supported it were not found to be justified by a review of the actual VOSH case file documents. Of the case files identified by OSHA as not having a copy of the signed settlement agreement when one was required, VOSH did not find a single example to support OSHA's finding. In the cases identified by OSHA, citations were issued and not contested by the employer, so no changes were made to the violations or penalties and no settlement agreement was required or entered into. VOSH will take no further action with regard to this recommendation.

Corrective Action Plan: None. This item is deleted.

Documentation to be submitted w. due date:

Anticipated Completion Date:

Outcome Measure/Expectation:

Status: Deleted

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Finding #12: Case files did not always contain documentation of how penalty reduction factors were granted to employers where minimal abatement was required to come into compliance.

Recommendation #12: Case files must be documented by Regional Directors to explain why the maximum penalty reduction of 40% was granted to employers where minimal abatement was required to come into compliance. Penalty reduction factors should be reviewed in detail with Regional Directors.

State Response: This recommendation corresponds to question 39 on OSHA's Case File Review Form.

OSHA noted this as an error in 13 of 102 case files or approximately 13%. The errors were noted primarily in two of the four VOSH regions. Although VOSH has determined that at least 1 of the 13 errors is an incorrect finding, in that the file contained an EISA which was signed by the employer – criteria for when to use an EISA is contained in the VOSH FOM and does not need to be repeated in the case file, VOSH will review the applicable requirements in the VOSH FOM with Regional Directors and Compliance Managers at the next managers' meeting.

Corrective Action Plan: VOSH personnel will document the allowance of all penalty relief offers in Informal Conferences, Post-Conference litigation, etc.

Documentation to be submitted w. due date: Memorandum from VOSH that training has been completed by January 15, 2011.

Anticipated Completion Date: January 20, 2011

Outcome Measure/Expectation: When additional case file reviews are conducted by Federal OSHA, it is anticipated that the files will contain appropriate documentation of why the maximum penalty reductions were granted to employers.

Status: Subject to further federal monitoring.

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Finding #13: Bulk samples were not always taken when suspected combustible dust was identified in a work place.

Recommendation #13: Bulk samples should be taken by industrial hygienists whenever suspected combustible dust is encountered in a work place.

State Response: This recommendation corresponds to question 18 on OSHA's Case File Review Form.

This error was found in 1 of 102 case files. VOSH does not consider a less than one percent error rate to rise to the level of a serious problem. This issue will be addressed at the annual VOSH training conference for CSHOs in 2011.

Corrective Action Plan: None. This item is deleted.

Documentation to be submitted w. due date:

Anticipated Completion Date:

Outcome Measure/Expectation:

Status: Deleted

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Finding #14: OSHA-166 forms were not being entered into the database to track abatement verification.

Recommendation #14: Promptly enter OSHA-166 (particularly item 22) data into database.

State Response: This recommendation generally corresponds to question 26 on OSHA's Case File Review Form, although that question deals with a whole list of possible forms (Narrative, OSHA-1, OSHA-1B, OSHA-170).

OSHA noted this as an error in 41 of 102 case files or approximately 40%. VOSH will address this OSHA-166 issue with field personnel at its next annual training conference in 2011.

Corrective Action Plan: OSHA 166 forms (or equivalent) will be kept in all files in which cited items are not corrected onsite during an inspection.

Documentation to be submitted w. due date: Memorandum from VOSH that training has been completed by January 15, 2011.

Anticipated Completion Date: January 20, 2011

Outcome Measure/Expectation: Federal OSHA monitors will review abatement tracker reports and SAMM data to determine if this data is being entered into IMIS.

Status: Subject to further federal monitoring.

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Finding #15: VOSH was not calling employers or sending abatement letters on all cases where abatement had not been received by VOSH.

Recommendation #15: VOSH must, in accordance with its own procedures as outlined in its FOM, call employers for outstanding abatement documentation and/or send abatement letters on all cases where abatement documentation has not been received by VOSH.

State Response: This recommendation corresponds to question 44 on OSHA's Case File Review Form.

OSHA noted this as an error in 4 of 102 case files or approximately 4%. VOSH takes abatement tracking and certification very seriously and considers anything below 100% abatement to be unacceptable. VOSH will review the applicable requirements in the VOSH FOM with Regional Directors and Compliance Managers at its next manager's meeting.

Corrective Action Plan: Region Directors and Compliance Managers will receive refresher training in the requirements of the VOSH Abatement Verification Directive and will adhere to its requirements in verifying abatement.

Documentation to be submitted w. due date: Memorandum from VOSH that training has been completed by January 15, 2011.

Anticipated Completion Date: January 20, 2011

Outcome Measure/Expectation: When additional case file reviews are conducted by Federal OSHA, it is anticipated that the files will contain documentation of telephone calls to employers regarding outstanding abatement and/or letters to employers requesting immediate abatement documentation.

Status: Subject to further federal monitoring.

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Finding #16: OSHA 91 sampling data is not being entered into the IMIS system. The forms were contained in case files; however, the forms were never entered into the database and could therefore not be tracked by running a report from the IMIS system.

Recommendation #16: OSHA 91 data should be entered into the IMIS system for all sampling.

State Response: VOSH has begun entered OSHA 91 data into IMIS for all sampling. An initiative has begun to enter OSHA 91 data retroactively for all files where sampling was conducted in FY 2010.

Corrective Action Plan: OSHA 91 data will continue to be entered into the IMIS system as required. FY 2010 cases with OSHA 91 data will be retroactively entered as begun in April, 2010.

Documentation to be submitted w. due date: Provide IMIS report to Federal OSHA that verifies that the OSHA 91 data has been entered into IMIS by February 1, 2011.

Anticipated Completion Date: February 15, 2011

Outcome Measure/Expectation: When additional case file reviews are conducted and IMIS reports are reviewed, it is anticipated that all sampling data will be properly tracked and entered into the IMIS system.

Status: Subject to further federal monitoring.

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Finding #17: Not all Federal Program Changes are adopted within the six month period. (The State has not yet adopted the new Federal FOM.)

Recommendation #17: VOSH must adopt Federal Program Changes within the six month period.

State Response: The only federal program change noted in the EFAME report that VOSH had not adopted in a timely manner is Federal OSHA's revised Field Operations Manual (FOM). VOSH is currently in the process of revising its FOM, but notes that Federal OSHA took several years to fully revise its FOM, while VOSH was only given six months to do so. VOSH does not believe that following our current FOM in any way means that the VOSH progress is not as effective as the OSHA program.

Corrective Action Plan: VOSH will adopt a new FOM using the new Federal OSHA FOM as a template by March 15, 2011. Chapters 1-4 have been written as of this date.

Documentation to be submitted w. due date: Side-by-side comparison of Federal OSHA FOM with VOSH FOM by March 15, 2011.

Anticipated Completion Date: March 30, 2011

Outcome Measure/Expectation: Timely adoption of Federal Program Changes.

Status: Subject to further federal monitoring.

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Finding #18: VOSH is using an outdated Discrimination manual that needs to be updated, which lacks guidance for proper organization of cases and documentation required to support actions taken by investigators.

Recommendation #18: VOSH must update its current directive. Chapter 2 should list all current whistleblower acts that are referred to Federal OSHA or reference Chapter 1 of Federal OSHA's Discrimination manual, which lists the current whistleblower acts to include ones that need to be referred to Federal OSHA for investigation:

(a) Use Chapter 5 of the Federal Whistleblower manual to describe the organization of its investigation files.

(b) Adopt Chapter 2, Section III – E of the Federal Whistleblower manual, which states that the notification to respondents can initially be done via letter.

(c) Adopt Chapter 2, Section III – B of the Federal Whistleblower manual which indicates that a memorandum will be prepared documenting the screening interview and sending a letter to the complainant verifying the administrative closure of the case.

(d) Adopt Chapter 3, Section IV, G-2 of the Federal Whistleblower manual which indicates that in the event that a signed statement cannot be obtained from a witness, interview notes should be taken and a memorandum to the file should be prepared by the investigator setting forth all of the pertinent information that was received from the witness.

(e) Adopt Chapter 3, Section IV, E and G of the Federal Whistleblower manual which indicates what evidence should be obtained during the course of the investigation.

(f) Files must be documented to demonstrate why a case is being dismissed and what the proper grounds are for that dismissal. It is recommended that VOSH adopt Chapter 3, Section IV, E and G of the Federal Whistleblower manual which outlines the basis for dismissing a complaint.

State Response: VOSH is currently in the process of updating its Discrimination directive.

Corrective Action Plan: VOSH's Discrimination manual has been rewritten using Federal OSHA's Discrimination manual as guidance. This new directive will be issued by December 15, 2010.

Documentation to be submitted w. due date: Updated discrimination directive will be provided to Federal OSHA by January 1, 2011.

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Anticipated Completion Date: January 1, 2011

Outcome Measure/Expectation: It is anticipated that VOSH discrimination investigation files will contain all appropriate documentation and proper organization required to support actions taken by investigators.

Status: Subject to further federal monitoring.