

Federal Annual Monitoring and Evaluation (FAME)

Virginia Occupational Safety and Health Program

October 1, 2008 to September 30, 2009

Date of Report: April 30, 2010



**Occupational Safety
and Health Administration**

U. S. Department of Labor
Region III
Philadelphia, Pennsylvania

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I. Executive Summary

Introduction

Virginia's Department of Labor and Industry is the State agency designated by the Governor to administer the Virginia Occupational Safety and Health Plan. The Virginia Occupational Safety and Health Plan was approved on September 8, 1976, pursuant to Section 18 of the Occupational Safety and Health Act. The Plan achieved operational status on October 1, 1981. Under Virginia's State Plan, VOSH has jurisdiction over 3.5 million employees in approximately 225,918 establishments. The Virginia State Plan applies to all public and private sector places of employment in the state, with the exception of federal employees, the United States Postal Service, private sector maritime, federal military facilities, and other federal enclaves where the state has ceded jurisdiction to the federal government. On August 21, 1984, a Notice was published in the Federal Register certifying that the State had completed all developmental commitments contained in the Plan. Final approval of the Virginia State Plan was published in the Federal Register on November 30, 1988.

Study Methodology

This study concentrated on identifying areas needing improvement within the Commonwealth of Virginia's Occupational Safety and Health program (VOSH). An onsite review was conducted from January 25, 2010 to January 29, 2010. One-hundred and twenty-nine (129) safety and health inspection files, which included programmed inspections, complaints and all closed fatality investigations, were reviewed in detail and evaluated. In addition, 12 whistleblower investigation files were reviewed in detail and evaluated. All cases occurred during the period October 1, 2008 through September 30, 2009.

In addition to reviewing the case files mentioned above, the audit team reviewed various statistical information, complaint processing, and inspection targeting. Data contained in the Integrated Management Information System (IMIS), OSHA's database system used by the Commonwealth to administer its program, was also examined. Compliance with legislative requirements, contact with families of fatality victims, training and personnel retention was assessed. The audit team also conducted VOSH management interviews and stakeholder meetings and/or interviews with the Virginia Building Construction Trades Council, the United Food and Commercial Workers Union and the United Steelworkers.

Throughout the entire process, Virginia was cooperative, shared information and ensured staff was available to discuss cases, policies, and procedures and to answer questions of the audit team.

Special Study Findings

Highlights of the study findings are as follows:

- Written documentation was not contained in cases files indicating why a non-formal complaint resulted in an inspection.
- Families of fatality victims were not kept up-to-date about investigations and/or informed of the outcome of investigations.
- Interviews with employer representatives and employees were not always documented.
- Case file documentation is not in conformance with the requirements of VOSH's FOM.
- Employee exposure was not always adequately documented on OSHA 1B forms.
- Alleged violation descriptions (AVDs) on OSHA-2 forms were not specific enough to address hazardous condition.
- Bulk samples were not always taken when suspected combustible dust was identified in a work place.
- OSHA-300 logs were not always obtained from employers and reviewed by compliance officers during on-site inspection activity.
- Proper documentation to justify violation severity classification was not always contained in inspection files.
- OSHA-166 forms were not being entered into the database to track abatement verification.
- VOSH was not calling employers or sending abatement letters on all cases where abatement had not been received by VOSH.
- Case file diary sheets were not found in inspection files.
- Copies of signed informal settlement agreements were not always contained in case files.
- 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.
- OSHA 91 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.
- Not all Federal Program Changes are adopted within the six month period.
- 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.

Key Recommendations

As a result of the review, several recommendations and suggestions are being made for program improvement. Highlights of these recommendations are listed below.

A list of other recommendations and suggestions is included in the final section of this report. After review, the State will need to develop a response and/or plan of action where appropriate for each recommendation and submit a written response to Region 3 OSHA no later than 30 calendar days following receipt of this report.

Complaints:

Recommendation 1: Written documentation should be contained in case files to justify why a non-formal complaint resulted in an inspection (p. 24).

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 (p. 24).

Fatalities:

Recommendation 3: Families of fatality victims must be kept up-to date about investigations and informed of the outcome of VOSH investigations (p. 26).

Recommendation 4: Ensure that interviews with employer representatives and employees are documented in case files (p. 26).

Case File Documentation:

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 (p. 28).

Recommendation 6: 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 (p. 28).

Recommendation 7: Alleged violation descriptions should reflect specific hazards noted on OSHA-2 forms for each violation (p. 28).

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 (p. 28).

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 (p. 30).

Recommendation 15: Copies of signed settlement agreements must be maintained in case files (p. 33).

Recommendation 14: 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 (p. 32).

Sampling:

Recommendation 8: Bulk samples should be taken by industrial hygienists whenever suspected combustible dust is encountered in a work place (p. 28).

Abatement Verification:

Recommendation 11: Promptly enter OSHA-166 (particularly item 22) data into database (pp. 31, 38).

Recommendation 13: 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 (p. 31).

Case File Organization:

Recommendation 12: 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 (p. 31).

IMIS

Recommendation 16: OSHA 91 data should be entered into the IMIS system for all sampling (p. 38).

Federal Program Changes:

Recommendation 17: VOSH must VOSH adopt Federal Program Changes within the six month period (p. 40).

Whistleblower Investigations:

Recommendation 18: VOSH must update its current Discrimination directive (pp. 42-43).

VOSH's Progress in Achieving Annual Performance Goals

Through its annual performance report, the Commonwealth of Virginia has provided information that supports positive performance in the accomplishment of meeting their five-year strategic plan. Through effective resource utilization, partnership development, outreach activities, and an overall commitment to performance goal achievements, the majority of goals have been met or exceeded. The primary goal of VOSH's strategic plan is to reduce occupational injuries,

illnesses and fatalities through direct intervention. Review of BLS data indicated that VOSH achieved a 20% reduction in FY 2009 from the baseline rate of 4.4 total recordable injury and illness rates in 2006. VOSH was also able to achieve a reduction in workplace fatalities over the last 5 calendar years: 2005: 64; 2006: 55; 2007: 44; 2008: 39; and 2009: 33. Based on the statistics available to OSHA, it is evident that workplace fatalities have been steadily decreasing in Virginia over the last 4 years. In addition, workplace fatalities have declined in FY 2009 by 15% (39 fatalities investigated in FY 2008 and 33 investigated in FY 2009). VOSH was also able to successfully initiate inspections in 100% of fatalities and catastrophes within one working day of notification.

II. Overview

Section 18 of the Occupational Safety and Health Act of 1970 encourages states to develop and operate their own job safety and health programs. Federal OSHA approves and monitors state plans and provided up to 50 percent of an approved plan's operating costs. Virginia is one of 27 states and American territories approved to operate its own safety and health enforcement program. Among other things, states that develop these plans must adopt standards and conduct inspections to enforce those standards.¹

The FY 2009 Annual Performance plan for the Virginia Occupational Safety and Health Administration (VOSH) fully supports Virginia's long-term strategic goals while at the same time addressing state-specific issues and concerns. Promoting a safe and healthful workplace culture in order to improve workplace safety is the central theme of the VOSH strategic plan. The FY 2009 Annual Performance Plan recognized the interconnection and importance of the various program tools (enforcement, consultation, training, partnerships) available to the State, and the Annual Performance Plan was designed to make full use of these tools.

VOSH's approach for achieving its long-term strategic goals is to identify significant problems, determine the most effective ways to address them, use the best mix of available tools, and then measure the results. The VOSH program has adopted two interdependent strategic goals in their Annual Performance Plan. These goals are to reduce occupational injuries, illnesses and fatalities through direct intervention in Virginia's workplaces, as evidenced by fewer hazards, reduced exposures, and fewer injuries, illnesses, and fatalities and to promote a safe and healthy workplace culture. In addition to these goals, VOSH utilized Worker's Compensation First Reports of Accidents to promptly investigate amputations and other serious accidents. Other emphasis programs on scaffolding, heavy equipment, overhead high voltage line safety, fall protection, lumber and wood products, public workshops, silicosis, tree felling and tree de-limbing operations, wastewater treatments plants, lead, combustible dust, amputations, spray on

¹ Federal OSHA approves and monitors state plans and provides up to 50 percent of an approved plan's operating costs. To obtain federal approval, states must meet a number of criteria:

- Set job safety and health standards that are "at least as effective as" comparable federal standards.
- Conduct inspections to enforce its standards.
- Cover public (state and local government) employees.
- Operate occupational safety and health training and education programs.
- Provide free on-site consultation to help employers identify and correct workplace hazards.

States also have the option to promulgate standards covering hazards not addressed by federal standards.

truck bed lining and trenching resulted in increased awareness of safety and health in these related industries.

In Virginia, there are over 3.5 million workers in approximately 225,918 companies (private and public sector entities) covered by the Virginia Occupational Safety and Health Act. In FY 2009, VOSH directed all of its budgeted activities to support the Strategic Plan's goals and the Annual Performance Plan. One clear measure of the effectiveness of the VOSH program can be found in Goal 1 of the Commonwealth's Strategic Plan—the reduction of occupational injuries, illnesses and fatalities. Review of the BLS data shows an 11% reduction for 2008 in the total recordable injury and illness rate of 3.1 compared to 3.5 in 2007. Workplace fatalities declined in FY 2009 by 15% (39 fatalities investigated in FY 2008 and 33 fatalities investigated in FY 2009).

During this evaluation period, the VOSH program conducted 3,366 inspections in the private and public sectors. These inspections resulted in 5,627 violations being issued, of which 3,428 were serious, for a serious rate of 61%.

In the area of outreach and Cooperative Programs, the VOSH Program hosted the 14th Annual Virginia Safety and Health Conference which brings together hundreds of employees, employers and safety and health professionals from around the Commonwealth for a week of training and outreach opportunities. Virginia's Voluntary Protection Program currently has 44 STAR participants, including the only two State Correctional Institutions in the country. Virginia has also 46 SHARP participants.

During this evaluation period VOSH implemented a new standard that addressed reverse signal operation safety requirements for vehicles, machinery and equipment in general industry and construction. This new standard targets a reduction of fatal accidents involving reverse operation of construction and general industry vehicles.

Since 1992, Virginia has averaged two fatal accidents per year (4% of VOSH fatalities) involving reverse operation of construction and general industry vehicles, despite the presence of regulations to prevent such fatalities contained in 1926.601, Motor vehicles; 1926.602, Material Handling Equipment; 1926.952, Mechanical Equipment; and 1910.269, Electric power generation, transmission, and distribution. The purpose of this new regulation is to provide comprehensive protection to employees and employers exposed to reverse operation traffic of vehicles, machinery and equipment in construction and general industry work areas. Unless otherwise noted, all construction and general industry vehicles with an "obstructed view to the rear" are covered by the new regulation. The regulation is the result of over three years of work by the VOSH Program and valuable comments and input from employer and employee representatives and associations including: AFL-CIO; Associated General Contractors; Branscome Richmond; F. G. Pruitt, Inc.; Heavy Construction Contractor's Association; International Union of Operating Engineers; Plumbers and Pipefitters; Precon Construction Company; Precon Marine, Inc.; Precon Development Corporation; Slurry Pavers, Inc.; Virginia Asphalt Association; Virginia Department of Transportation; Virginia Forest Products Association; Virginia Paving Co.; Virginia Transportation Construction Alliance; Virginia Trucking Association, Virginia Utility & Heavy Contractors Council; and Whitehurst Paving Co.

Virginia is currently promulgating unique regulations in the areas of Tree Trimming and First Aid in Construction and General Industry. VOSH also proposed a revision to the Gravity Based Penalty which would increase penalty amounts. This proposal increases the gravity based penalty amount for all citations and became effective on October 1, 2009.

The Commonwealth continues to have some vacancies in both safety and health compliance staff positions. The Commonwealth has filled 87% of the safety benchmark and 81% of the health benchmark. The Commonwealth is currently recruiting to fill two vacant benchmark positions. However, funding through the Commonwealth continues to be a problem and the cause for vacancies that will be maintained in FY 2010.

The Commonwealth continues to strive for improvements in their program. While the State did not meet all their goals for Fiscal Year 2009, they made significant progress. They met or exceeded six of the eleven goals and did not meet three of the goals. In the other two goals containing two or more sub-goals, the Commonwealth met at least 50% of the goal. This is a significant improvement over past years performance.

Federal OSHA received two Complaints about the State Program Administration (CASPA) during FY 2009 and one in the first quarter of FY 2010. One of the CASPAs alleged that VOSH did not properly handle a complaint in 2006. Federal OSHA found that VOSH had conducted a proper inspection and had notified the complainant of the outcome of the inspection, although not in a timely manner, which did not have an effect on the outcome of the inspection.

The second CASPA alleged that VOSH did not properly handle a non-formal complaint in 2008. Federal OSHA found that VOSH properly handled the non-formal complaint and the complainant was timely provided with a copy of the investigation findings.

The CASPA/Congressional inquiry that was received in FY 2010 alleged that VOSH did not properly notify a complainant of the outcome of an inspection and also wanted an explanation on a discrepancy in asbestos sampling. This complaint was unusual in that the original complainant was properly notified but the three (3) add-on complainants were overlooked. VOSH regretted this oversight and has re-trained its employees to reinforce VOSH requirements. All complainants were eventually notified of the Consolidated Laboratories negative asbestos results.

After one of the add-on complainants sent a letter to the National Office asking why Virginia's asbestos results were negative and previous testing by the employer was positive, VOSH had the original samples retested by Analytics Laboratory. After some of the samples tested positive for asbestos at Analytics Laboratory, an inspection was immediately opened and all complainants were properly notified. Federal OSHA's investigation into this matter revealed that, while some of the bulk samples provided to VOSH by the employer showed positive results, there were no positive samples in and around the area where the employees were working. Therefore, the actions taken by VOSH were proper and in accordance with current policies and procedures. In addition, VOSH staff provided us with sufficient evidence of what actions they have taken to correct the aforementioned deficiencies, and Federal OSHA closed its investigation into this matter. We will continue to monitor the issues identified through case file review, SAMM reports and quarterly meetings.

The Commonwealth continues to make changes where identified that support continued improvement in its program, and it has made significant progress in achieving program success during FY 2010. For example, an issue was identified with abatement verification data being timely entered into the Integrated Management Information System (IMIS). In response to the identification of this abatement verification issue, Virginia developed its own internal report to further monitor the progress of its offices timely entering all appropriate information into IMIS. This change in abatement verification has been added to the Field Operations Manual (FOM), effective January 1, 2010.

Key recommendations that have been identified involve abatement verification and proper data entry, case file documentation, hazard documentation, communication with families of fatality victims, notification to complainants concerning outcome of inspections, lack of data entry for sampling data, documentation of penalty reductions, and outdated Whistleblower policies and procedures. A comprehensive listing of specific conclusions and recommendations can be found in Section IX below.

While issues have been identified that need to be addressed, Virginia continues to work in a positive manner to improve their program.

III. Introduction

Virginia’s Department of Labor and Industry is the State agency designated by the Governor to administer the Virginia Occupational Safety and Health Plan. The Virginia Occupational Safety and Health Plan was approved on September 8, 1976, pursuant to Section 18 of the Occupational Safety and Health Act. The Plan achieved operational status on October 1, 1981. Under Virginia’s State Plan, VOSH has jurisdiction over 3.5 million employees in approximately 225,918 establishments. The Virginia State Plan applies to all public and private sector places of employment in the state, with the exception of federal employees, the United States Postal Service, private sector maritime, federal military facilities, and other federal enclaves where the state has ceded jurisdiction to the federal government. On August 21, 1984, a Notice was published in the Federal Register certifying that the State had completed all developmental commitments contained in the Plan. Final approval of the Virginia State Plan was published in the Federal Register on November 30, 1988.

PROFILE OF THE VIRGINIA STATE PLAN (FY 2009)	
Designee	Courtney Malveaux, Commissioner (as of 4/12/2010) Virginia Department of Labor and Industry Powers-Taylor Building 13 S. Thirteenth Street Richmond, Virginia 23219-4101
Plan Approved	September 8, 1976
Final Approval	November 30, 1988
Operational Status Agreement	October 1, 1981
Plan Certified	August 21, 1984

PROFILE OF THE VIRGINIA STATE PLAN (FY 2009)				
FY 2009 Funding	Federal		\$3,319,800	
	State		\$3,319,800	
	TOTAL		\$6,629,600	
Source of State Funding	General fund			
Compliance Officers	38 safety/19.88 health (allocated)			
	33 safety/17 health (on-board as of 9/30/2009)			
Public Sector Consultants	.28 safety/1.18 health (allocated)			
	.18 safety/.18 health (on board as of 9/30/2009)			
Compliance Assistance	1.0 CAS (allocated)			
	1.0 (on board as of 9/30/2009)			
FY 2009 Inspections		Goal	Actual	Percent Complete
	Safety	3150	2592	83%
	Health	750	771	103%
	TOTAL	3,900	3,363	87%
FY 2009 Public Sector Consultation Visits		Goal	Actual	Percent Complete
	Safety	10	7	70%
	Health	0	0	0
	TOTAL	10	7	70%
Covered workers	3.5 million			
Covered Establishments	225,918			
Coverage	Public and private sector places of employment in the state, with the exception of federal employees, the United States Postal Service, private sector maritime, federal military facilities, and other federal enclaves where the state has ceded jurisdiction to the federal government			

Virginia's occupational safety and health regulations and standards are established by the Virginia Safety and Health Codes Board, a regulatory board whose members are appointed by the Governor. The Commissioner of the Department of Labor and Industry is charged by statute with enforcing the regulations and standards of the Board. All VOSH functions are under the direct management of the Commissioner. In FY 2009, the VOSH program included 96 full-time and part-time positions and the Commonwealth contributed \$3,319,800 in funding its program. For FY 2011 and FY 2012, the Commonwealth expects its base budget to be reduced by \$44,615 to \$3,274,624 due to continuing budgetary struggles throughout the Commonwealth. Currently, the VOSH enforcement program has thirty-three (33) safety specialists and seventeen (17) industrial hygienists.

The Virginia Department of Labor and Industry, headquartered in Richmond, consists of separate program groups with representatives stationed in different regional and field offices located in Abingdon, Lynchburg, Manassas, Norfolk, Richmond, Roanoke, Verona, and Winchester. Each

group has been delegated certain powers by the Commissioner to carry out the specific statutory mandates of the Department.

The VOSH program consists of three major units: enforcement, consultation, training and education. The enforcement unit inspects places of work, issues citations and penalties for violations of established occupational standards, and responds to fatalities, accidents, and employee complaints about workplace safety and health hazards. The consultation unit provides assistance to Virginia public and private sector employers to voluntarily comply with applicable requirements without the issuance of citations and penalties. The VOSH consultation program provides free on-site surveys and technical assistance to Virginia businesses, especially small ones and to public sector employers under the State Plan grant. The VOSH program also provides free educational and training programs for employers and employees to assist them in achieving voluntary compliance.

The vast majority of VOSH standards are identical to federal OSHA standards. All standards adopted by the Board from 29 CFR Parts 1910, 1926, and 1928 shall apply by their own terms to all employers who have employees working at places of employment within the jurisdiction of the State Plan of the Commonwealth. Standards from Part 1910 apply to employers engaged in general industry; in addition, certain standards from Part 1910 determined by Federal OSHA and the Board to be applicable to the construction industry also apply to the construction industry in Virginia. Standards adopted from 29 CFR Part 1926 apply to the construction industry, and standards adopted from 29 CFR Part 1928 apply to agricultural operations within the jurisdiction of the Commonwealth. In addition, standards from 29 CFR Part 1915, Shipyard Employment; 29 CFR Part 1917, Marine Terminals; and 29 CFR Part 1918, Longshoring, have been adopted for State Plan use in the public sector only.

Any new or unique standard adopted by Virginia for which no Federal OSHA counterpart exists shall apply as specified by the terms of that standard. The VOSH Administrative Regulations, 16 VAC 25-60, et seq., set forth rules defining the applicability of occupational safety and health standards in Virginia. There are several standards that are unique to Virginia, e.g., reverse signal operation, confined space in construction and telecommunication, overhead high voltage line safety, approach distances in power transmission, distribution and telecommunications, field sanitation, construction industry sanitation, steel erection fall protection, and compliance with manufacturer's instructions and limitations for vehicles, machinery and equipment in the construction, general industry, agriculture and maritime industries. Virginia has also codified in regulation the Multi-Employer Worksite policy and Multi-Employer Worksite defense. The regulation provides that general contractors and prime subcontractors can be cited for certain hazards as "controlling employers". Virginia has also codified the Employee Misconduct Defense but provides that the defense does not apply to supervisory personnel having control of the worksite. In these instances, Federal OSHA either does not have a comparable standard addressing the specific hazard or condition or, if it does, the federal standard differs substantially.

The final determination on whether to appeal an adverse judicial decision will be made by the Commissioner after consultation with the Office of the State Attorney General and/or the applicable Commonwealth's Attorney. Appeals from circuit court may be heard by the Virginia

Court of Appeals. The Department has thirty days to file an appeal with the Virginia Court of Appeals.

The VOSH Administrative Regulations Manual also outlines the contest process for public sector employers. Section 16 VAC 25-290 provides that contested cases involving local government employers that are not resolved during the informal conference phase shall proceed to an informal fact finding hearing in accordance with Va. Code §§2.2.-4019 and 2.2-4021. Upon conclusion of the hearing the Commissioner notifies the employer of the case decision. Case decisions may be appealed in accordance with the procedures contained in Va. Code §§2.2-4025 and 2.2-4029. Section 16VAC 25-300 of the VOSH Administrative Regulations Manual provides that contested cases involving the Commonwealth or one of its agencies that are not resolved during the informal conference phase shall be referred to the Office of the Governor, whose written decision on the case shall become a final order of the Commissioner.

IV. Summary of Recommendations and State actions from the FY 2008 FAME

As a result of the review of VOSH's programs during FY 2008, it was recommended that VOSH continue its efforts to ensure that all complainants are notified of inspection results within the specified time periods. VOSH was successful in achieving this goal, increasing its notification to complainants from 91% to 95%. This has been accomplished by reiterating VOSH's policy to all Regional management staff and administrative staff on the time requirements for complainant response letters.

It was also recommended in the FY 2008 FAME that VOSH review its citation processing procedures to identify reasons for delays in the issuance of safety citations. VOSH was successful in reducing its lapse time significantly. A program was developed by the Assistant Commissioner which captured lapse time using a point-based system. Each Regional Director is responsible for reviewing the lapse time report on a weekly basis. The report is also shared with compliance officers as a tool to reduce the lapse time on a more individual basis. The safety case file lapse time was reduced from 65 to 38 days and the health lapse time was reduced from 59 to 44 days.

V. Major New Issues

Federal OSHA received two Complaints about the State Program Administration (CASPA) during FY 2009 and one in the first quarter of FY 2010. One of the CASPAs alleged that VOSH did not properly handle a complaint in 2006. Federal OSHA found that VOSH had conducted a proper inspection and had notified the complainant of the outcome of the inspection, although not in a timely manner, which did not have an effect on the outcome of the inspection.

The second CASPA alleged that VOSH did not properly handle a non-formal complaint in 2008. Federal OSHA found that VOSH properly handled the non-formal complaint and the complainant was timely provided with a copy of the investigation findings.

The CASPA that was received in FY 2010 alleged that VOSH did not properly notify add-on complainants of the outcome of an inspection. This complaint was unusual in that the original complainant was properly notified but the three (3) add-on complainants were overlooked. VOSH regretted this oversight and has re-trained its employees to reinforce VOSH requirements. All complainants were eventually notified of the Consolidated Laboratories negative asbestos results. In addition, VOSH staff provided us with sufficient evidence of what actions they have taken to correct the aforementioned deficiencies, and Federal OSHA closed its investigation into this matter. Federal OSHA will continue to monitor the issues identified through case file review, SAMM reports and quarterly meetings.

An issue arose in Region 3, in both Maryland and Virginia, which involved fatalities and/or injuries and/or accidents that involved employees of Washington Metropolitan Area Transit Authority. VOSH investigated two fatalities that occurred within its jurisdiction during 2009. One case involved a fatality that occurred in August 2009. This case resulted in one citation being issued in February 2010 with an assessed penalty of \$7,000 and is currently under contest. The employee in this case was working in close proximity to a ballast regulator machine during track/roadbed maintenance activities. It is believed that the victim was struck by the track mounted machine.

The second fatality occurred in September 2009 where the victim had been told by the crew leader to stay at street level due to a lack of required safety equipment. As a result of a detailed investigation into the circumstances surrounding this fatality, it was determined that it was not feasible to issue citations in this matter since the victim did not request, nor did he have, clearance from central communications to enter the tunnel.

Accidents involving the Washington Metropolitan Area Transit Authority have been occurring both in state plan states and the District of Columbia. Federal OSHA has had detailed conversations with the Washington Metropolitan Area Transit Authority to determine the causes of these accidents and to bring them into compliance with OSHA regulations and to change the workplace safety culture of this employer.

VOSH has taken steps to improve the quality of the data they receive for scheduling inspections by scrubbing employer addresses and omitting ones with incorrect addresses, which has reduced its number of “no inspections.”

The impact of compliance inspections was increased by support and strengthening relationships with public and private organizations that represent safety and health best practices. Some of these relationships are strengthened through the VOSH Conference which is held every year and has participants from numerous manufacturing, construction, and public sector employers. In addition, numerous speeches were given throughout the year by the Commissioner, Assistant Commissioner, VOSH Director and Regional Directors with many organizations to spread the word about workplace safety and health. For example, speeches were given at BAE Systems Apprenticeship Graduation, the Environmental Health and Safety Leadership Forum at Raytheon Corporate Safety Conference, the Multi-State Pipe Trades Meeting, the Virginia Asphalt Association General Conference and the Virginia Department of Transportation Conference. Meetings were also held with the Washington Metropolitan Area Construction Safety

Association, Associated Builders and Contractors, United Motorcoach Association Safety Seminar, and the Virginia Department of Transportation Residency Safety Day.

VOSH conducted an analysis of fatalities that were occurring from vehicles with obstructed rear views. As a result of the data accumulated during this analysis and the identification of reverse signal alarm accidents resulting in 29 employee deaths since 1992, VOSH drafted a Reserve Signal regulation that requires both a back-up alarm audible above the surrounding noise level and a spotter. VOSH began the regulatory process in 2006 and promulgated the final regulation in September 2009. As a result of this new regulation, VOSH also implemented a local emphasis program to increase VOSH presence and heighten awareness of this hazardous condition in general industry and construction.

VOSH was able to reduce its contest rate from 12% to 4.3% over a four (4) year period. Contested cases are inspections that employers have legally challenged. This reduction was due to prompt scheduling of informal conferences and Regional Directors' initial contact with employers who have expressed a desire to contest citations and encouraging them to proceed through the informal conference process.

VOSH has also been successful in reducing its whistleblower case backlog since 2003 when it had 112 cases that were unresolved. These cases are mandated by Federal OSHA to be completed in 90 days or less from the date the complaint is received. VOSH has been able to significantly change its workplace culture and no cases are currently over 90 days old. This was achieved by direct management oversight and close monitoring to ensure that cases were settled or adjudicated within established timeframes.

The Commonwealth of Virginia elected a new governor in November 2009. All state agencies were included in furlough actions taken by the previous governor to ease the current deficits facing the Commonwealth. During FY 2010, all state employees will be furloughed one day as a cost saving measure for overall expenditures throughout the Commonwealth. The Assistant Commissioner indicated that the VOSH Safety and Health Program will continue to provide safety and health coverage for the Commonwealth, responding to all fatalities and complaints as required by VOSH's policies and procedures. Additionally, there have been no pay increases for state employees since November 2007, and there are none forecasted for the next two years. This has had an effect on the retention rate of some benchmark positions, particularly in the Northern Virginia Regional Offices which are in close proximity to Washington D.C. Budget constraints have also impacted funding available for training and conferences and the travel expenses associated with each.

VI. Assessment of State Performance

Through its annual performance report, the Commonwealth of Virginia has provided information that supports positive performance in the accomplishment of meeting their five-year strategic plan. Through effective resource utilization, partnership development, outreach activities, and an overall commitment to performance goal achievements, the majority of goals have been met or exceeded.

Information provided by the Commonwealth has been reviewed and analyzed, as well as SAMM, SIR, Inspection and Enforcement Reports, to assess its accuracy in meeting performance plan goals and the overall accomplishment of the third year of their five year strategic plan.

A. Assessment of Progress in Achieving Annual Performance Goals

The following summarizes the activities and/or accomplishments for each of the FY 2009 performance goals.

Strategic Goal 1: Reduce occupational injuries, illnesses and fatalities through direct intervention.

Performance Goal 1.1A: By 2011, decrease injuries and illnesses per 100 workers in the workplace by 5%.

Result: This goal was met.

Discussion: Review of the BLS data shows that a 20% reduction from the baseline rate of 4.4 total recordable injury and illness rates in 2006 and the rates for 2007 (3.5 total recordable cases) and a 11% reduction for 2008 (3.1 total recordable cases). The total reduction since the baseline rate of 4.4 is 30%.

Performance Goal 1.1B: Annually initiate investigations of 100% of worker complaints within one working day or conduct an on-site inspection within five working days.

Result: VOSH partially met this goal.

Discussion: VOSH received 373 complaints in FY 2009 and 372 were investigated within one day for a response rate of 99.73%. VOSH conducted on-site inspections within five working days for all 381 worker complaints for a response rate of 100%.

Performance Goal 1.2A: By 2011 decrease fatalities in the workplace per 100,000 workers by 5%.

Result: The performance data for this particular measure has not yet been released by BLS. However, workplace fatalities have decreased in Virginia over the last 5 calendar years: 2005: 64; 2006: 55; 2007: 44; 2008: 39; and 2009: 33. Based on the statistics available to OSHA, it is evident that workplace fatalities have been steadily decreasing in Virginia over the last 4 years. In addition, workplace fatalities have declined in FY 2009 by 15% (39 fatalities investigated in FY 2008 and 33 investigated in FY 2009). The number of fatalities has decreased 48% since 2005. Therefore, VOSH has met the goal.

Discussion: The baseline for this measure was 4.2 fatalities per 100,000 workers in 2007. The data for 2005 was released in 2007. Again, based on the statistics available

to OSHA, the fatalities in Virginia have been steadily decreasing. The impact of VOSH's compliance inspections has had a positive effect through its increased support in strengthening its relationships with both public and private organizations that represent safety and health best practices. One way that VOSH has been able to strengthen its relationships is through its Annual Occupational Safety and Health Conference, the goal of which is to help educate employers and employees in developing safe and healthy work environments and to provide affordable safety and health training opportunities to employers, employees and safety and health professional.

Performance Goal 1.2B: Annually initiate inspections of 100% of fatalities and catastrophes within one working day of notification.

Result: VOSH met this goal.

Discussion: VOSH has been successful over the last 4 years in increasing its fatality response rate from 96% in 2004 to 100% in the following years.

Performance Goal 1.3: Reduce the rate of workplace injuries and illness in worksites through participation in the VPP Programs.

Result: VOSH has added 4 new VPP sites for a total of 41 VPP sites in FY 2009. Three additional sites were pending approval in late January 2010. VOSH also recertified 12 sites during FY 2009. VOSH met this goal.

Discussion: The Virginia Voluntary Protection Program is designed to recognize and promote exceptional safety and health management programs. VOSH verifies that employer programs meet VPP criteria and also reassesses employer programs periodically to confirm that the site continues to meet VPP criteria. A detailed analysis of employer injury and illness rates is performed annually to confirm that rates are in compliance with program requirements. Any employer whose rates are increasing will be removed from the VOSH VPP program.

Performance Goal 2.1: One-hundred percent (100%) of VOSH on-site activities (e.g., inspections or consultation visits) will include a worker involvement component annually, such as interviews, informal conferences, and walk-around inspections.

Result: One-hundred percent (100%) of public sector consultation visits contained a worker involvement component. In addition, a representative number of inspection files were reviewed during Federal OSHA's on-site evaluation and these files contained a worker involvement component, either during walk-around inspections, interviews and/or informal conferences.

Discussion: VOSH has been monitoring this aspect of its public sector consultation visits and its inspection activities for a number of years to ensure that employees are involved during all aspects of VOSH on-site activities. VOSH solicited employee

in-put on all its consultation surveys. The consultation project manager is reviewing public sector reports and compliance managers are reviewing inspection data on a regular basis to ensure that this goal continues to enhance worker involvement in all aspects of VOSH's safety and health activities. Therefore, this goal was met.

Performance Goal 2.2: Increase consultant time during consultation activities while reducing request lag time and issuance of employer reports.

Result: Consultation activity time during on-site evaluations increased from 23.34% to 25.42% during this evaluation period, while reducing lag time from 3.12 days to 2.26 days. The report issuance time increased from 10.95 days to 12.62 days.

Discussion: VOSH did not meet this goal in its entirety. However, it has made great strides in increasing its consultation on-site activity and reducing its lag time from receipt of consultation request to actual visit. The increase in report issuance was the result of a change of the consultation application on new computers which created installation difficulties relating to increased time in getting reports issued to employers in a shorter period of time. While VOSH did not meet the goal of reducing its report issuance time, it is within the 20 calendar days after the closing conference permitted for report issuance.

B. Assessment of State Performance of Mandated Activities

Appendix D is the State Activity Mandated measures Report (SAMM) for Virginia 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. Three of fifteen measures were not met.

Measure	State Data FY 2009	Reference Data	Comment
1. Average number of days to initiate complaint inspections	2.20	5	Goal is met.
2. Average number of days to initiate complaint investigations.	.21	1	Goal is met.
3. Percent of complaints where complainants were notified on time.	94.71	100%	Goal is not met.
4. Percent of complaints and	100%	100%	Goal is met.

referrals responded to within 1 day- Imminent Danger				
5. Number of denials where entry was not obtained.		0	0	Not applicable.
6. Percent of S/W/R violations verified.	Private	86.66%	100%	Goal is not met. Private sector violations verified improved by 1% over FY 2008 and public sector verification improved by 3%. Both are below the reference of 100%.
	Public	83.95%		
7. Average number of calendar days from opening conference to citation issuance.	Safety	38.83	43.8	Goal is met. There has been a 40% reduction in lapse time from FY 2008.
	Health	44.23	57.4	Goal is met. There has been a 25% reduction in lapse time from FY 2008.
8. Percent of programmed inspections with S/W/R violations – safety.	Safety	55.87%	58.6%	Goal is met.
	Health	46.60%	51.2%	Goal is met.
9. Average violations per inspection with violations.	S/W/R	2.00	2.1	Goal is considered met. It is just slightly under the reference.
	Other	.86	1.2	Goal is considered met. It is slightly under the reference.
10. Average initial penalty per serious violation – private sector only.		\$927.26	\$1335.2	Goal is met.
11. Percent of total inspections in public sector.		6.57%	5.9%	Goal is met.
12. Average lapse time from receipt of contest to first level of decision.		102.55	246.1	Goal is met.
13. Percent of 11C investigations completed within 90 days.		96%	100%	Goal is not met. Accomplishment is viewed as positive.
14. Percent of 11C complaints that are meritorious.		8%	20.8%	Goal is met. Accomplishment is viewed as positive.
15. Percent of meritorious 11C complaints that are settled.		100%	86.1%	Goal is met.

Appendix E is the Interim State Indicator Report (SIR) for Virginia covering the period October 1, 2008 through September 30, 2009. The following is a summary of State performance on these measures. Fifteen (15) of the twenty-one (21) measures outlined below were met (four measures have no comparison measure to Federal OSHA because they are in the public sector where OSHA has no jurisdiction).

Measure	State Data FY 2009	Federal Data FY 2009	Comment
Private Sector Programmed Inspections Safety	80%	66.0%	Standard set by Federal OSHA is met.
Private Sector Programmed Inspections Health	49%	51.7%	Standard set by Federal OSHA is met.
Private Sector Programmed Inspections with Safety Violations	52.2%	65.8%	Standard set by Federal OSHA is met.
Private Sector Programmed Inspections with Health Violations	48.9%	51.7%	Standard set by Federal OSHA is not met.
Private Sector Serious Safety Violations	65.1%	80%	Standard set by Federal OSHA is met.
Private Sector Serious Health Violations	46.6%	69.7%	Standard set by Federal OSHA is not met.
Private Sector Abatement Greater Than 30 Days for Safety Violations	22.2%	17.6%	Standard set by Federal OSHA is met.
Private Sector Abatement Greater Than 30 Days for Health Violations	8.6%	10%	Standard set by Federal OSHA is met.
Private Sector Average Penalty for Serious Safety Violations	\$889.00	\$1,030.00	Standard set by Federal OSHA is met.
Private Sector Average Penalty for Serious Health Violations	\$691.50	\$855.00	Standard set by Federal OSHA is met.
Private Sector Safety Inspections Per 100 Hours	8.7	5.5	Standard set by Federal OSHA is met.
Private Sector Health Inspections Per 100 Hours	4.6	1.6	Standard set by Federal OSHA is met.
Private Sector Violations Vacated	5.3	5.1	Standard set by Federal OSHA is met.
Private Sector Violations Reclassified	4.9%	4.8%	Standard set by Federal OSHA is met.

Private Sector Penalty Retention	64.8%	63.2%	Standard set by Federal OSHA is met.
Public Sector Programmed Safety Inspections	80.9%	Not Applicable	Standard set by Federal OSHA is met.
Public Sector Programmed Health Inspections	28.3%	Not Applicable	Standard set by Federal OSHA is met.
Public Sector Serious Safety Violations	71.9%	Not Applicable	Standard set by Federal OSHA is met.
Public Sector Serious Health Violations	65.3%	Not Applicable	Standard set by Federal OSHA is met.
Percent of Violations Vacated After Contest	30.5	23.4	Standard set by Federal OSHA is met.
Percent of Violations Reclassified After Contest	18.5%	15.1%	Standard set by Federal OSHA is met.
Percent of Penalty Retention After Contest	54.3%	58.5%	Standard set by Federal OSHA is met.

i. Enforcement

A statistical review of Virginia OSHA Program was conducted using the IMIS Micro-to-Host Inspection and Enforcement Reports and a comparison was made against several monitoring measures from the State Activities Mandated Measures (SAMM) Report and the State Interim Report (SIR). During the evaluation period of this study (October 1, 2008 through September 30, 2009), the Virginia OSHA Program conducted 3,366 inspections of its projected inspection goal of 3,900. There were several factors which impacted VOSH's inability to meet its inspection goal in FY 2009. These factors included several senior compliance officers who were on extended medical absences, several new compliance officers who were still in training, and the promotion of two compliance officers to management positions. During FY 2008, the Virginia OSHA Program conducted 3,468 exceeding its goal of 3,255.

Of the 3,366 inspections conducted by Virginia during FY 2009, 2,089 were safety-related (77%) while 772 (23%) were health-related. Total programmed inspections were 2,474 (74%) and 892 (26%) were unprogrammed inspections, which represented fatality investigations, complaints, referrals, follow-up inspections, monitoring inspections and other unprogrammed related activities. A total of 3,144 inspections were conducted at private establishments while 222 were conducted at public sector agencies. The following is a statistical comparison of Virginia to other state plans and Federal OSHA during FY 2009:

COMPARISON OF VIRGINIA TO OTHER STATE PLANS AND FEDERAL OSHA

	Virginia	State Plans	Federal OSHA
Total Inspections	3,366	61,016	39,044
Safety	2,594	48,002	33,221

% Safety	77%	79%	85%
Health	772	13,014	5,783
% Health	23%	21%	15%
Programmed	2,474	39,538	24,316
% Programmed	73%	65%	62%
Accident	38	3,098	836
Complaint	392	8,573	6,661
% Complaint	12%	14%	17%
Construction	2,089	26,103	23,935
% Construction	62%	43%	61%
Total Violations	5,627	129,363	87,663
Serious	3,428	55,309	67,688
% Serious	61%	43%	77%
Willful	37	171	401
Repeat	96	2,040	2,761
% S/W/R	65%	44%	81%
Other-than-serious	2,034	71,336	16,615
% Other-than-serious	36%	55%	19%
Failure to Abate	32	494	207
Average Violations Per Initial Inspection	2.9	3.3	3.1
Total FY 2009 Penalties	\$3,489,819	\$60,556,670	\$96,254,766
Average Current Penalty Per Serious Violation	\$519.80	\$800.40	\$970.20
% Penalty Reduced	48.4%	51.9%	43.7%
Percent of Inspections with Violation Cited	60%	62%	69%
Average Case Hours/Safety	13.7	15.7	17.7
Average Case Hours/Health	22.3	26.6	33.1
Lapse Days to Citation Issued – Safety	28.3	31.6	34.3

Lapse Days to Citation Issued – Health	31.9	40.3	46.7
Open, Non-Contested Cases with Incomplete Abatement >60 days	3	2,010	2,234

The VOSH Enforcement program derives its targeted inspection lists from a High Hazard Industry listing. It also participates in the Federal OSHA exempted SIC/NAICS industry list as provided in the current Appropriations Act. The VOSH Enforcement program also participates in the University of Tennessee Dodge Report for randomly selected construction sites to be inspected.

The VOSH Safety Program has developed and implemented ten (10) local emphasis programs (LEPs). These programs include various industries and activities – falls, wastewater treatment facilities (public & private), first report of injury, public sector workshops, heavy equipment – reverse signal, scaffolding, overhead high voltage, lumber and wood products – sawmills, tree felling & tree delimiting, and spray-on bed liners are covered by these LEPs throughout the Regional Offices. There were 890 LEP inspections conducted during this evaluation period. The VOSH Program also participated in the National Emphasis Programs (NEPs) for lead, silica, combustible dust, amputations and trenching, which were established by Federal OSHA. There were 175 NEP inspections conducted during this evaluation period. VOSH has not implemented a method to evaluate the efficacy of each LEP to determine the need to cancel or continue each LEP on an annual basis. It was suggested to VOSH to establish an annual evaluation method for its LEPs in order to make a determination if it is feasible to continue each LEP from one year to the next.

The following is a discussion of Virginia’s program performance during FY 2009:

Complaints and Referrals

Complaints and referrals are evaluated by the Compliance Manager in each Regional Office according to type of violations being alleged. Virginia’s response to a complaint will take a variety of forms, ranging from an inspection to a response by letter, depending upon the complaint, the nature of the hazard and the abatement response of the employer. Complaints or referrals which alleged an imminent danger or serious hazard are scheduled for inspection. Complaints and referrals which do not fall into these categories are investigated by telephone and fax contact with the employer. A referral is a notice of an alleged hazard or violation given to Virginia from a source such as a compliance officer referral or a media referral.

When essential information is not provided by the complainant or the complaint is too vague to evaluate, Virginia attempts to clarify or supplement the information by contacting the complainant.

Complaints and referrals were timely responded to by Virginia. Complainants were timely notified of the results of inspection activity in 95% of the inspections. This response time is in accordance with the procedures outlined in the Field Operations Manual (FOM). However, observations made

during case file reviews indicate that some complaint inspections were performed without proper justification documented in the case file. Complaints taken by telephone were entered on the OSHA-7 form as “formal”, even though no signed complaint existed in the case file, and were assigned for inspection. No justification was provided in the case file as to why an on-site inspection was warranted.

During the period October 1, 2008 through September 30, 2009, Virginia received 373 complaints and 372 were investigated within one day for a response rate of 99.73%. VOSH conducted on-site inspections within five working days for all 381 worker complaints for a response rate of 100%. Thirty-two complaint files which resulted in on-site inspections were randomly selected for review during this evaluation period. The evaluation process included interviews with the VOSH program director and detailed analyses of the case files. VOSH is doing a good job in timely responding to complaints and timely initiating either an inspection or an investigation.

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

Response letters to complainants involving inspections and investigations were found in the case files that were reviewed. However, it does not appear that there is any standard language used when responding 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.

Fatalities

During this evaluation period, Virginia experienced 37 fatalities which were investigated by Virginia OSHA. Twenty (20) fatality files were extensively reviewed during this evaluation. Seventeen (17) fatality files were not available for review because they were open cases and thus not subject to review.

All job-related fatalities are investigated as thoroughly and promptly as possible by VOSH, including during times that are normally non-working hours for Department staff, such as evenings, weekends, and holidays. Employers are required under the Code of Virginia to orally report to the nearest Department Office within eight hours, any occurrence of an employment accident which is fatal to one or more employees or which results in the hospitalization of three or more employees. If an employer fails to notify VOSH a citation is issued for failure to report such an occurrence.

The Compliance Manager in each Regional Office notifies the Regional Director and the Program Director of all job-related fatalities and catastrophes as soon as they become aware of them. Other regional staff who receive reports of job-related fatalities and catastrophes which may result in high media attention or have statewide implications immediately notify the Compliance Manager,

who immediately notifies the Regional Director and the Program Manager. The Program Director informs the Commissioner of all fatalities and catastrophes and provides all pertinent information. The compliance officer or the Compliance Manager are responsible for ensuring that all required IMIS forms and accident narrative are completed. The Compliance Manager exercises his own discretion in dispatching the most appropriately trained compliance officer to respond as soon as possible to a fatality or catastrophe. The compliance officer assigned to the fatality or catastrophe is responsible for completing the VOSH-1, Inspection Report and the OSHA-170, Investigation Summary.

Family members of employees involved in fatal accidents are required to be contacted at an early point in the investigation and to be kept apprised of the status of the investigation and the outcome of the matter.

Response time to fatality investigations was found to be at one day or less. Case file reviews revealed that an initial letter to the next-of-kin was sent at the initiation of the inspection. However, a trend observed during fatality case file review was that little or no communication existed with families at the conclusion of inspections to inform the next-of-kin of inspection findings.

All of the fatality files reviewed were thoroughly investigated and documented and proper internal procedures followed by VOSH. Three (3) of the twenty (20) fatality files reviewed were in compliance and properly closed by VOSH. These inspections were properly documented and rationale provided for not issuing citations. These cases are reviewed by the Compliance Manager, the Regional Director, the Program Director and the Division of Legal Support to determine legal sufficiency for each alleged violation.

If the Program Director determines that additional investigation or information is needed to substantiate case findings or conclusions, the file is returned to the Compliance Manager for action. After all appropriate documentation is obtained and reviewed by the Compliance Manager, the Regional Director and the Program Director, the case is referred to the Division of Legal Support for review and analysis. The Division of Legal Support reviews each violation to determine that all of the elements of a prima facie case are sufficiently documented and classified by the compliance officer.

The seventeen (17) files in which citations were issued were well organized and the documents were properly maintained and secured in the case files. The majority of the cases contained excellent documentation and appropriate violations were issued related to the fatality. Documentation was generally complete and supported the violations and contained witness statements. However, there were some files that lacked documented statements of employer representatives and employees.

A review of the OSHA-170 forms revealed some of the forms contained inappropriate information, e.g., name of compliance officer who conducted the inspection and/or the names of decedents and/or injured employees. The files did include IMMLANG (the code designed to allow OSHA to track fatalities among Hispanic and immigrant workers) documentation.

Recommendation 3: Continued contact with families of fatality victims is recommended in addition to advising families of fatality victims of the outcome of the VOSH investigation.

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

Targeting/Inspection

Virginia targets various industries each year and develops local emphasis programs to achieve most of its programmed inspection activities but also participates in National Emphasis Programs developed by Federal OSHA. Most of Virginia's local emphasis programs are directly related to strategic areas of emphasis that Federal OSHA has developed. As indicated above, Virginia conducted 2,474 programmed inspections during FY 2009 with an average of 2.9 violations per inspection compared to Federal OSHA's 3.1 violations per inspection. Virginia's serious/willful/repeat rate was 65% compared to Federal OSHA's rate of 81%. While there appears to be a significant difference between Virginia's rate and Federal OSHA, the total state plan rate is 44% so Virginia appears to be performing an adequate job in the classification of its violations.

VOSH Program Directive, 14-005B, First Report of Injuries and Illnesses (FRI) Local Emphasis Program (LEP), issued February 1, 2005, provides guidance to the Regional Offices for the implementation of this local emphasis program. This LEP was formally established in 1993, and has been implemented each year since that time. During this evaluation period, 119 inspections were conducted; 56% of the inspections had citations issued, with a serious, willful, and repeat rate of 77% for the violations observed. This LEP continues to be a viable enforcement tool within industries not covered by the general inspection scheduling program.

The Program Director for Safety Compliance and Regional Office Administration ensures each Regional Director is provided copies of the FRI reports, provided by Virginia's Worker's Compensation Commission. The Regional Directors compile an establishment list based on these FRI reports received. Each FRI report is reviewed by the Regional Office to determine which reports meet the following criteria:

1. Fatalities;
2. In-patient hospitalization of three (3) or more employees;
3. Loss of limb(s) or loss of sight (total or partial), including loss of one or more joints of a finger;
4. Numerous injuries of the same type at the same establishment within a short period of time (e.g., six (6) months);
5. Accident sites reported by the media, other government agencies or healthcare workers; and
6. Any injury directly related to an objective in VOSH's Strategic Plan.

A comprehensive inspection will be conducted of each of the reported accidents that meet the above criteria.

VOSH Program Directive 02-051A, Scheduling System for Programmed General Schedule Inspection, dated February 22, 1990, describes the procedures used to compile the VOSH General schedules for safety and health enforcement programmed inspections.

VOSH utilizes information compiled from several sources for their safety and health general industry programmed inspections. Federal Occupational Safety & Health Administration provides a Statewide Industry Rank Report (standard industrial classification (SIC) list); these industries are listed by their four-digit SIC code. The Safety SIC List is a statewide listing of manufacturing industries within SIC does with lost workday injury (LWDI) rates equal to or higher than the lowest BLS national average rate for all private sector industry for the last five (5) years. Industries are then ranked in order of their LWDI rate (the High Rate SIC list); with establishments within a ranking listed in descending order of the highest number of employees.

The Health SIC List is a statewide listing of industries within SIC codes with a previous history of serious OSHA health violations; ranking is listed in descending order of the highest number of employees.

The VOSH Program Directive, 02-003I, VOSH Procedures to comply with OSHA Enforcement Exemptions and Limitations under the Federal Appropriations Act, OSHA Instruction CPL 2-0.51J, (when inspecting employers with ten or fewer employees), issued July 15, 2009, provides guidance for inspections under these circumstances. Regional Directors and Compliance Managers ensure that enforcement activities are scheduled and conducted as set forth in the OSHA Instruction.

The federal Appropriations Act contains limits for OSHA activities where 23(g) grant funds are used on a year-by-year basis. Since these 23(g) grant funds are passed through from OSHA to the State Program, VOSH is held to the same restrictions and limits imposed on federal OSHA for the use of federal funds. The Appropriations Act limitations do not apply to 100% state funds.

To the extent this VOSH directive limits or prohibits the use of Federal funds for certain VOSH activities, VOSH reserved the right to conduct activities limited or prohibited under this directive by paying for these activities with 100% state funds (i.e., VOSH will conduct and pay for, with 100% state funds, fatal accident investigations on farms with 10 or fewer employees and no temporary labor camp activity within the previous twelve months). Approval to conduct and pay for such activities must be received in advance from the VOSH Program Director, Safety Compliance and Regional Office Administration.

Compliance officers who are approved to perform such 100% state funded inspections keep a record of their time spent on such activities.

It should be noted there were many files that were reviewed that did not contain entries on the OSHA-1 for Strategic Plan Activity. In general, employer knowledge was found to be less than adequate for prima facie evidence requirements to prove violations. Statements such as “due diligence” and “employer was on-site” were common on the OSHA-1B worksheets but nothing in the case file to explain further. The compliance officers seem to be relying on concepts such as due diligence as employer knowledge without asking questions and documenting how and why the

employer knew or should have known of the conditions that existed at the worksite. Very few documented interviews with employer representatives were observed in the case files.

Overall, hazards were found to be identified and cited correctly. However, adequate evidence to support violations was not always contained in the inspection file. Employer knowledge, employee exposure to hazard, and specific hazard locations were not documented in case files. Also, alleged violation descriptions (AVDs) did not reflect the specific hazards on OSHA-2 forms for each violation.

VOSH has an in-compliance rate of 40% compared to Federal OSHA's rate of 32% and an overall state plan rate of 62%. While Virginia's difference in rate does not deviate too far from Federal OSHA, it may want to consider evaluating some of its targeting procedures to reduce its in-compliance rate. This could be done, for example, through an evaluation process for all of the local emphasis programs administered in Virginia.

It was also noted in some of the health files that bulk samples were not taken and analyzed for combustible dust.

OSHA-300 logs were not always obtained from the employer and reviewed, and if they were, only for one year.

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.

Recommendation 6: 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.

Recommendation 7: Alleged violation descriptions should reflect specific hazards noted and the standard alleged violation elements on OSHA-2 forms for each violation.

Recommendation 8: Bulk samples should be taken by industrial hygienists whenever suspected combustible dust is encountered in a work place.

Recommendation 9: OSHA-300 logs for three years should be obtained from employer and reviewed by compliance officers while on-site during inspection activity.

Employee and Union Involvement

Union contacts were found to be made where appropriate and participation by union in opening and closing conferences was documented. Case files in general lacked sufficient documented employee interviews to support the alleged exposures in citations. Exposure information was unclear in a majority of the cases, with little or nothing in the case file to support that an exposure had existed to the condition alleged within the past six months.

Employees in Virginia are afforded the right of review of alleged violations, abatement periods, and proposed penalties through VOSH procedures which can be found in the VOSH FOM Chapter IIA. The procedures also provide employees or their representatives an opportunity to participate in review proceedings and to contest abatement dates.

Stakeholder Meetings and Discussions

Region 3's labor liaison met with representatives of the Virginia Building Construction Trades Council, the United Food and Commercial Workers Union and the United Steelworkers and provided these groups with an opportunity to discuss Federal OSHA's oversight responsibility for its state plan partners and to entertain any issues that these labor organizations wanted to discuss about the Virginia State Plan. For the most part, the majority of these groups had positive things to say about the Virginia State Plan and its employees. One of the issues that arose during these meetings was a belief that the state plan lacked resources, manpower and funding but was doing a good job with the available resources.

An isolated issue arose where the United Food and Commercial Workers Union alleged that an inspection was not properly conducted in June of 2009. Contact was made to the Virginia Governor's Office and Federal OSHA's National Office. Ultimately, the union was satisfied with the citations that were issued to the employer. The union was also advised of its right to file a CASPA about VOSH.

Citations and Penalties

Employer knowledge and employee exposure information was generally inadequate in many of the case files that were reviewed during this evaluation. Citation classification, severity/probability, and penalty amounts were found to be generally proper. Hazards were found to be identified correctly and cited correctly overall. For willful violations, the evidence in the file supported an intentional violation of Virginia law or plain indifference to its requirements. Repeat violations were also properly cited and there was evidence that the employer had been cited previously for a substantially similar condition within the previous three years. In order to ensure uniformity, consistency and the legal adequacy of a limited category of citations, including willful and repeat violations, VOSH compliance managers, program directors and the Division of Legal Support engage in pre-citation consultation in order to determine if additional investigative work needs to be performed prior to the issuance of citations.

For the most part, VOSH effectively gave due consideration to the gravity of violations, the size of the business being inspected, good faith of the employer, the employer's previous inspection history, the type, gravity and severity of the violation when initially assessing penalties. There were a few isolated instances of improper standards being cited. The language on the OSHA-2 forms, for a majority of the case files, was not specific enough regarding pieces of machinery and did not demonstrate employee exposure. There were instances where serious citations were cited without accurate explanations of employee exposure and/or employer knowledge. In addition, numerous cases reviewed could have been high gravity serious but the case file

documentation was lacking to justify this classification, which could have resulted in higher gravity based penalties.

Overall, the average penalty reduction was 35-40% which can be given by Regional Directors during informal conferences. The average current penalty per serious violation is \$519.80 compared to \$970.20 for Federal OSHA. The difference in the penalty amounts between the Federal and Virginia programs is due to in part to the large number of small employers inspected by the VOSH Enforcement program and improper classification of high gravity serious violations that are a result of inadequate documentation.

As indicated above, VOSH proposed a revision to the Gravity Based Penalty which will increase penalty amounts. This increased gravity based penalty amounts for all citations became effective on October 1, 2009.

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.

The Interim State Indicator Report (SIR) for 2009 indicates that Virginia continues to have a serious violation rate of approximately 61% compared to Federal OSHA's rate of 77% over a 12 month period. The SIR also indicates that over a 12 month period, Virginia vacated 5.3% of its cited violations compared to the Federal rate of 5.1%, reclassified 4.9% of its violations compared to the Federal rate of 4.8% and had a penalty retention rate of 64.8% compared to the Federal rate of 63.2%.

Abatement

Abatement certification and documentation for each violation was generally found to be present in the case files and filled out completely by the employer. However, abatement completion was not always known to the reviewer of the case file because the handwritten OSHA-166 forms were not entered into the NCR system as evident from a review of the case file audit report. Discussions with the Director, Safety Compliance provided information as to the large number of cases that did not have complete abatement verification during this evaluation period. This was also noted in the FY 2008 FAME report. The Director indicated there are a couple of elements contributing to this issue. First, there is an apparent data entry issue at the Regional Office level. Second, the VOSH Program requires not only abatement certification (i.e., the employer's statement that abatement has occurred), but VOSH also requires the employers to provide photographs, receipts, purchase orders, etc. as 'verification' that the hazard was abated. During the case file audits, many cases were reviewed where the employer's statement had been received in a timely manner, but no photos or additional information was received to verify the item was abated. The Regional Office then contacts the employer to obtain this information regarding their 'failure to provide' additional information. This often occurs more than thirty days after the abatement was due; therefore, even though the item was abated, the abatement cannot be verified, which ultimately results in this outlier. The Director indicated that it will be reiterated to all Regional Directors that they are required to carefully review the abatement tracker report to identify outstanding abatement.

Another issue contributing to numerous outliers in the abatement certification measure is that case file diary sheets are not used to track phone calls to employers, so it was not clear from file reviews whether VOSH staff was calling employers for abatement documents. Some case files did contain letters from VOSH to employers formally requesting abatement documentation, and this was done within a reasonable amount of time after the failure of the employer to provide the documentation to VOSH. Where follow-up inspections were indicated when an employer failed to provide abatement documentation, VOSH was properly scheduling follow-up inspections.

It should be noted that Virginia does not accept abatement certification from employers in any case where the violation is classified as serious, willful or repeat. This is far more stringent than Federal OSHA requirements. Virginia requires certification and verification for abatement. Therefore, data entry cannot be made until both the certification and the verification evidence is received by Virginia.

There is some relation between this indicator, which measures violations verified, and the timeliness of abatement. More often than not, if the abatement verification is overdue, the abatement is overdue. If extensions are given for the date of abatement, the dates must be updated in the database. This indicator indirectly denotes the timeliness of abatement and the use of the extension process for abatement. Virginia should continue to focus on improving their performance in abatement verification and to properly update the database to reflect that abatement evidence has been received from employers or update the database if extensions have been properly granted to employers and document the case.

VOSH has also issued Program Directive 02-006B, dated January 1, 2010, which revised enforcement policy and procedures for the Abatement Verification Regulation found in the Administrative Regulations Manual (ARM), Section 307. This revised directive codifies, simplifies and streamlines the abatement certification procedures, which will reduce both employer's and VOSH's administrative and paperwork burdens, enhance employee participation in the abatement process, increase the number of cited hazards that are quickly abated, and standardize VOSH's abatement procedures.

Recommendation 11: Promptly enter OSHA-166 (particularly item 22) data into database.

Recommendation 12: Enforce all offices' use of a case file diary sheet 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.

Recommendation 13: VOSH should also, 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.

Review Process

Informal conferences almost universally resulted in a 40% reduction in penalties. Following the penalty reduction justification sheet, which is part of the informal conference notes, some of the cases where a 40% reduction was given to an employer had not been justified in the case file. Specifically, for example, the reduction justification was that extensive abatement was needed which would require a large investment of capital; however, the real abatement for the case may

have involved little cost. The required abatement for some of these cases was minimal, yet they were given a maximum penalty reduction of 40% based on the premise that extensive abatement costs would be incurred.

Overall, the average penalty reduction was 35-40% which can be given by Regional Directors during informal conferences. Approval to reduce a penalty greater than 40% during the informal conference process must be approved by the Central Office. All Regional Directors attempt to settle cases on a local level rather than have employers contest, which requires the case to be forwarded to the Division of Legal Support. The Division of Legal Support reviews all contested cases and provides guidance to all Regional Offices for significant cases.

A review of contested cases before the Virginia Courts arising under the Virginia Occupational Safety and Health Act was conducted. The average lapse time from receipt of contest to first level decision was significantly lower in Virginia than the nationwide average (102.55 days versus 246.1 days) during FY 2009. One case was heard before the Virginia Courts during the evaluation period. One case was appealed to the Virginia Court of Appeals where VOSH prevailed and had an additional citation reinstated that was vacated at the lower court. Another case heard in the Circuit Court affirmed the citations issued by VOSH. A total of eighteen (18) cases were filed in the Circuit Court and 50% were settled after they were filed in court. Another seven (7) cases were nonsuits, which is a withdrawal of the case from litigation. A nonsuit could be, for example, a case that is eventually settled between VOSH and an employer and is subsequently withdrawn from formal litigation or is not suitable for litigation for other reasons.

No specific issues were identified with the method of VOSH's reclassification and/or vacation of violations during this evaluation period.

Copies of signed informal conference settlement agreements were not always contained in case files. This was also observed in some cases with expedited settlement agreements.

VOSH Regional Offices operate in a similar manner to Federal OSHA Area Offices. Guidelines for all aspects of the Enforcement Program are found in their FOM, which is patterned after the Federal OSHA FOM issued in September 1994. State specific changes were incorporated into this program guideline to reflect the state program elements. The Regional Director and/or the Compliance Manager conduct Informal Conferences and assign inspections. Weekly IMIS reports are utilized by the Regional Directors to manage all aspects of the VOSH Program. Inspection case files are reviewed by the Compliance Managers prior to citation issuance. All significant cases are also reviewed by the Office of Legal Support prior to citation issuance.

Compliance officers input case file information via the CSHO application. Weekly computer backups are performed to ensure inspection data is updated and retained.

Recommendation 14: Case files should be documented by Regional Directors officers 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 compliance officers.

Recommendation 15: Copies of signed informal conference settlement agreements must be maintained in case files.

General Inspection Statistics

23(g) Compliance & Consultation	Projected FY 2009		Actual FY 2009		Percent of Goal -vs- Actual FY 2009	
	Safety	Health	Safety	Health	Safety	Health
Private Sector Inspections	3000	700	2430	711	81%	102%
Public Sector Inspections	150	50	162	60	108%	120%
Total Inspections	3150	750	2592	771	83%	103%
Public Sector Consultation Visits	10		7		70%	
Total Consultation Visits	10	0	7	0	70%	

Most Frequently Cited Standards

A review was conducted of the most frequently cited standards by Virginia OSHA. The top cited standard in general industry was Control of Hazardous Energy with 127 serious, 45 other-than-serious, and 2 repeat violations. Seventy-three percent (73%) of the violations were classified as serious compared to 81% for Federal OSHA. The second most frequently cited standard was Hazard Communication with 48 serious, 117 other-than-serious and 2 repeat violations. This indicates that 29% of these violations were classified as serious compared to Federal OSHA's serious rate of 58%.

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

	Standard		Serious	Other	Repeat	Total	% Serious
1	1910.147c	Control of Hazardous Energy	127	45	2	174	73%
2	1910.1200e	Hazard Communication	48	117	2	167	29%
3	1910.305b	Electrical cabinets, boxes and fittings	126	27	0	153	83%
4	1910.305g	Flexible cords	99	31	0	130	77%
5	1910.037b	Lighting and marking of exit routes	35	91	0	126	28%
6	1910.212	Machine guarding	109	11	4	121	90%
7	1910.303	Electrical-General	78	41	0	119	66%
8	1910.1200f	Labeling hazardous chemicals	14	102	0	116	12%

9	1910.134	Respiratory protection program	42	71	2	115	37%
10	1910.178l	Powered Industrial Vehicle training	55	44	0	99	56%

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%
	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%
6	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 Virginia OSHA's and Federal OSHA's top ten cited standards for general industry reveals that Virginia OSHA shared seven standards with Federal OSHA. These included hazard communication, control of hazardous energy, electrical cabinets, boxes and fittings, flexible cords, respiratory protection and power industrial vehicle training.

An overall statistical analysis of the general industry tables revealed that Virginia OSHA issued 733 (56%) 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 21%.

Virginia OSHA Most Frequently Cited Standards – Construction
October 1, 2008 to September 30, 2009

	Standard		Serious	Other	Repeat	Total	% Serious
1	1926.501	Unprotected edges and sides	268	24	20	317	85%
2	1926.050c	Medical services and first aid	152	46	4	202	75%
3	1926.100a	Head Protection	129	6	5	140	93%
4	1926.451g	Fall protection	106	2	9	117	91%
5	1926.1053b	Use of ladders	84	17	0	101	84%
6	1926.1101k	Asbestos	56	14	0	70	80%
7	1926.150c	Portable Firefighting Equipment	38	25	2	64	60%
8	1926.404f	Electrical grounding	40	17	2	59	68%
9	1926.652a	Protection of employees in excavations	47	4	6	58	81%
10	1926.453b	Aerial lift equipment	53	2	1	56	95%

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

	Standard		Serious	Other	Repeat	Total	% Serious
1	1926.501	Unprotected sides and edges	6036	312	450	6838	88%
2	1926.1053	Use of ladders	2763	256	65	3088	89%
3	1926.451g	Fall protection	2651	57	193	2915	91%
4	1926.503	Training	1672	107	8	1861	90%
5	1926.020	Accident prevention responsibilities	1451	334	40	1825	80%
6	1926.451b	Scaffold platform	1654	49	79	1790	92%
7	1926.453	Aerial lift requirement	1521	79	94	1697	90%
8	1926.100	Head protection	1492	98	63	1653	90%
9	1926.451e	Scaffold access	1239	35	87	1372	90%
10	1926.451c	Criteria for support scaffold.	1210	58	32	1301	93%

Comparison of the Virginia OSHA's and Federal OSHA's top ten cited standards for construction reveals that Virginia OSHA shared five standards with Federal OSHA. Those standards included scaffolds, fall protection, use of ladders, head protection and aerial lift equipment.

An overall statistical analysis of the tables revealed that Virginia OSHA issued 973 (83%) serious violations out of 1,184 total violations. Federal OSHA issued 21,689 (89%) serious violations out of 24,340 total violations. This represents a percentage difference of 6%.

Debt Collection

Cases with outstanding penalties of \$3,000 or less are sent to the Accounting Department for debt collection, first through debt collection letters sent by the Accounting Department and eventually being referred to a local debt collection service when payment is not forthcoming to the Commonwealth. Cases with penalties in excess of \$3,000 are sent to the Attorney General's Office for collection. Before issuing any refunds to taxpayers, Virginia law requires a check of any person or entity to determine if they owe the state any money. If any such debt is found, regardless of the type of tax return filed, all or part of the refund may be withheld to satisfy that debt to the Commonwealth. Legal action may also be filed against persons or entities who owe debts to the Commonwealth. Interest is assessed by VOSH on all unpaid penalties. In the past, debt collection was not a high priority for the Attorney General's Office due to lack of staff resources. However, staff has been increased and this office is being much more aggressive in its collection efforts. As with Federal OSHA, debts which are determined to be uncollectible, either through a company's bankruptcy or the amount is not large enough to refer for legal action, are written off and the case is closed in IMIS.

Public Employee Programs

VOSH conducted 222 inspections in the public sector, 7% of its total inspection activity for FY 2009. The three-year VOSH average is 5.9%, and VOSH exceeded its goal of 200 public sector inspections for FY 2009. The average number of violations cited per initial inspection in the public sector was 4.8 and 70% of the violations were cited as serious compared to other state plans which issued serious citations in 59% of its total violations and had an average violation per initial inspection of 4.3. Although no penalties are assessed against public agencies, VOSH has worked successfully with these agencies to bring them into compliance with current safety and health standards.

IMIS/Program Management

All transmissions to the host computer (e.g., End-of Day (EOD) and Start-of-Day (SOD)) are conducted on a daily basis by administrative staff. Daily back-ups of local databases are also performed on a daily basis by administrative staff. A detailed review was made of various management reports to determine if VOSH was timely processing data and updating the system appropriately. Forms rejected by the host computer in Washington, D.C. are handled as expeditiously as possible by administrative staff. In addition, there were no open draft forms noted in VOSH's local database system. Discussions with Regional Directors and the VOSH Program Director and a review of reports revealed that the following local reports were run on a weekly basis:

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.

Referral Tracking Report: The Referral tracking report is used to determine if referrals 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.

Complaint – VOSH-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.

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. These reports are run on a weekly basis and distributed to supervisors for review and action. All coding issues are immediately identified and eliminated by the system administrator.

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. 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 weekly basis, abatement verification (SAMM Measure #8) has been an outlier for years.

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.

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.

Fatality/Catastrophe Report: The fatality/catastrophe report lists all inspections in which an OSHA-170 has not yet been entered into the system. This report is reviewed on a weekly basis by management.

Most data is timely updated in the NCR either by compliance officers, administrative staff or Regional Directors. However, it has been determined that there are coding issues with regard to abatement verification as mentioned above in section B.i. Abatement completion was not always known to the reviewer of the case file because the handwritten OSHA-166 forms were not entered into the database as evident from a review of the case file audit report. This has been stressed to VOSH management as a problem and that appropriate action in accordance with VOSH internal procedures need to be taken to remedy this situation.

(See Recommendation 11: OSHA-166 forms need to be entered into the database to track abatement verification.)

Another issue identified during Federal OSHA’s on-site review was a lack of OSHA 91 data being entered into the IMIS system. The forms were contained in the 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.

BLS Rates

The Survey of Occupational Injuries and Illnesses, conducted in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics (BLS), produces estimated work-related injury and illness rates and numbers for Virginia. The survey is a statistically valid sample of incidents reported by Virginia employers from the OSHA 300 Form. The survey also produces case and demographic data in Virginia on injury and illness cases involving days away from work. The information collected includes the employee’s age, length of service, occupation, as well as, the nature and sources of the injury and illness, events and types of exposures, and the part of the body affected. The results are published annually. Based on the results for Virginia and a review of the local emphasis programs developed for FY 2009, it appears that VOSH is properly directing its inspection activities to industries that have high incidences of injuries, illnesses and/or fatalities.

Occupational injury and illness rates for Virginia have declined steadily over the last five years. The trend for fatalities is similar.

VIRGINIA (INJURIES, ILLNESSES AND FATALITIES) PRIVATE SECTOR

YEAR	2008	2007	2006	2005	2004
INJURY/ ILLNESS *	3.1	3.2	3.5	4.0	3.8
FATALITY NUMBERS**	137	120	148	163	159

Source: Bureau of Labor Statistics

* TCIR

**Census of Fatal Occupational Injuries Data. These numbers include all fatalities in Virginia, including fatalities that are not within the jurisdiction of VOSH.

VIRGINIA (INJURIES, ILLNESSES AND FATALITIES) PUBLIC SECTOR

YEAR	2008	2007	2006	2005	2004
INJURY/ ILLNESS *	4.9	5.2	3.1		
FATALITY NUMBERS**	14	15	15	16	6

Source: Bureau of Labor Statistics

* TCIR

**Census of Fatal Occupational Injuries Data. These numbers include all fatalities in Virginia, including fatalities that are not within the jurisdiction of VOSH.

ii. Standards Adoption and Plan Changes

Federal Initiated Standard Changes

Virginia agreed to adopt the following 2008 and 2009 Federal Initiated Standard Changes. These changes were timely adopted:

- Longshoring and Marine Terminals; Vertical Tandem Lifts
- Clarification of Employer Duty to Provide Personal Protective Equipment and Train Each Employee

Federal Program Changes

Virginia agreed to and adopted the following 2008 Federal Program Changes:

- NEP – Combustible Dust
- NEP – Lead

Virginia agreed to adopt the following 2009 Federal Program Changes:

- Initial Training Program for OSHA Compliance Personnel
- NEP –Injury and Illness Recordkeeping

VOSH Planning & Evaluation participates in the Automated Tracking System (ATS) regarding federal program and state program changes. According to the Program Manager, e-mail responses regarding the State’s intent to adopt federal program changes have not always been recorded in the ATS. This may have been as a result of the State Plan Coordinator position changes at the Regional Office within this evaluation period. The ATS is currently up-to-date on all VOSH required submissions.

The Program Manager has maintained a chronological Federal Program Change Log and Federal Standards Log since 1994 which reflects all federal program changes the VOSH program has adopted as required, or has developed a more stringent State regulation.

Virginia timely responded to all Federal Initiated Standard Changes and Federal Program Changes indicating their intention to adopt or not adopt. Actual adoption dates and submission of adoption

documents were not always timely submitted by Virginia but when contacted Federal OSHA was promptly provided with the required information.

The State has twelve (12) unique standards which are more stringent than the Federal OSHA regulations. During this evaluation period, VOSH adopted 16 VAC 25-97 – RVSG.0010 – Reverse Signal, RVSG.0050 – Operation Safety Requirements for Vehicles, Machinery and Equipment for General Industry and the Construction Industry. Virginia is currently promulgating unique regulations in the areas of Tree Trimming and First Aid in Construction and General Industry.

The Safety and Health Codes Board is authorized to adopt, alter, amend or repeal rules and regulations to further protect and promote the safety and health of employees in places of employment over which the Commonwealth has jurisdiction and to effect compliance with the Federal OSHA statute. The Board is also authorized to formulate regulations which are designed for the protection of human life and property from the unsafe or dangerous construction, installation, inspection, operation, maintenance and repair of boilers and pressure vessels. The Board is also responsible for the promulgation of regulations to ensure the proper conduct of demolition and renovation of asbestos facilities projects and the proper conduct of lead related projects. The Safety and Health Codes Board is required to meet twice annually with additional meetings as necessary to fulfill statutory or federal regulatory requirements.

VOSH has not yet adopted the Federal Program Change for the Field Operations Manual (FOM) but has indicated that it will be adopting this change after it has made appropriate state-specific changes to the document. VOSH will at that time submit a detailed comparison document identifying differing state policies.

Recommendation 17: It is recommended that VOSH adopt Federal Program Changes within the six month period.

State Initiated Changes

Virginia revised Section C.2.e.4(g) of Chapter IV of the VOSH FOM to increase the Gravity Based Penalty unadjusted amounts that are listed in the FOM. These increases in penalty amounts range from \$2,100 for a low gravity violation to \$7,000 for a high gravity violation.

Virginia also implemented a new standard that addressed reverse signal operation safety requirements for vehicles, machinery and equipment in general industry and the construction industry. This new standard targets reduction of fatal accidents involving reverse operation of construction and general industry vehicles.

iii. Variances

No variances have been requested during FY 2009.

iv. Public Sector Consultation

The Virginia FY 2009 MARC report for the public sector is attached hereto at Appendix F. Virginia Consultants conducted 7 public sector consultation visits in FY 2009. MARC measures 1 and 2 do not apply to the public sector, although data is included in the printout in Appendix F.

MARC 3 Percent of Visits where Consultant Conferred with Employees.

Consultants conferred with employees during 100% (7/7) of initial visits.

MARC 4.A Percent of Serious Hazards Verified Corrected in a Timely Manner (within 14 days of latest correction due date).

All of the 6 serious hazards identified during the period (100%) were verified corrected within 14 days of the latest correction due date. This is outstanding performance on ensuring employees are removed from exposure to serious hazards.

MARC 4.B Percent of Serious Hazards Not Verified Corrected in a Timely Manner (within 14 days of latest correction due date).

All of the 6 serious hazards identified during the period (100%) were verified corrected within 14 days of the latest correction due date.

MARC 4.C Percent of Serious Hazards Referred to Enforcement.

No serious hazards identified during the period were referred to enforcement.

MARC 5 Number of Uncorrected Serious Hazards with Correction Date more than 90 Days Past Due.

There were no serious hazards with correction due date more than 90 days past due.

v. Discrimination Program

Administrative Issues

During the opening conference of the on-site review, the auditor was advised by the Whistleblower program manager that VOSH was currently not using the current Federal Discrimination Manual as their reference guide.

During the period of evaluation, there were two Whistleblower investigators. VOSH's primary investigator, who had numerous years of experience, became ill and eventually passed away. The last investigator was on temporary assignment to fill in for the primary investigator until a replacement could be hired.

A review of the case files was performed as well as a review of the Web IMIS system. There were currently nine (9) open cases in the system, forty-six (46) cases received during this evaluation period and fifty-one (51) cases completed during this evaluation period, which included some cases from the previous fiscal year. Of these fifty-one completed cases, fifty (50) were non-merit and one (1) was settled. Of the fifty non-merit cases, forty-one (41) cases were dismissed and nine (9) cases were withdrawn.

The on-site review of the current VOSH discrimination program revealed that VOSH's current program directive for its whistleblower program, Program Directive 04-001A, issued on December 1, 1994 is outdated since it references the Federal Discrimination Manual from August 29, 1998. The current Federal Discrimination Manual was issued August 22, 2003. VOSH has indicated that it will be revising its current Whistleblower manual when time permits.

Chapter Three, Section B of VOSH's Discrimination manual does not delineate how a discrimination file will be organized.

Chapter Three, Section E 2 of VOSH's Discrimination manual states the investigator will notify respondent in person of the complaint. However, VOSH is currently notifying respondents by letter and not in person.

VOSH currently keeps a screen out log of all complaints that do not make a prima facie complaint. The log's last entry was March 23, 2009, at which time there were twenty-three (23) screenings accomplished. The log had been maintained by a part-time administrative person. This person indicated to the auditor that the interim investigator was going to maintain a log since he was located in another part of the state. The interim investigator indicated that he had not maintained a log, primarily because he was performing two jobs at the same time and did not have sufficient resources to maintain the log. Federal OSHA requires that after the complaint is screened out, the complainant should be sent a letter verifying the administrative closure of the case. It does not appear that VOSH sent any letters out to complainants advising them that their complaints had been administratively closed.

Recommendation 18: It is recommended that when VOSH updates its current directive, that Chapter Two 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): It is recommended that VOSH use Chapter 5 of the Federal Whistleblower manual to describe the organization of its investigation files.

(b): It is recommended that VOSH 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): It is recommend that VOSH 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.

Cases Reviewed

A review of case files revealed that some cases were not timely processed, e.g., case was opened in early October 2008 but no activity began on the file until mid-December 2008. Some files did not contain a Final Investigation Report.

Some cases in the Web IMIS determination tab were coded as withdrawals, but the case file and the Final Investigation Report indicated that the cases were dismissed due to lack of cooperation of the complainant.

Some cases indicated that witnesses were contacted and interviewed telephonically. However, the only documentation in the case file was handwritten notes.

Recommendation 18(d): It is recommended that VOSH 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.

Some Final Investigation Reports and files did not contain evidence that proves or disproves respondents' position.

Recommendation 18(e): It is recommended that VOSH 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.

A review of a case file indicated that there were no formal interviews conducted and the case was dismissed based solely on the respondent's position paper with that defense not being tested by VOSH.

Recommendation 18(f): Files should 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.

vi. Complaints About State Program Administration (CASPA)

The Region received three CASPAs during FY 2009 and during the first quarter of FY 2010. Of the three CASPAs that have been received, only one was determined to have valid allegations. VOSH followed its own procedures for the two CASPAs that were received in FY

2009 and no issues were identified that affected the effectiveness of its program. A minor issue that was uncovered for one of the CASPAs received in FY 2009 was an untimely response to a complainant providing outcome of inspection activity.

The CASPA that was received during the first quarter of FY 2010 has been determined by Federal OSHA to raise valid allegations of program deficiencies. These issues have been discussed in detail with VOSH and our written findings have been sent to VOSH requiring corrective action and continued monitoring of the issues identified by Federal OSHA.

VOSH staff has been cooperative with Federal OSHA throughout the investigation of all CASPA complaints and provided prompt response to any inquiries made by Federal OSHA. VOSH has also been willing to work with Federal OSHA to improve its program and determine root causes of any identified deficiency. As noted throughout this report, the issues identified in the CASPA in FY 2010 have also been identified during Federal OSHA's on-site evaluation of the VOSH program. There are recommendations for improvement described in more detail throughout this report and specifically addressed in Section VI below.

vii. Voluntary Compliance Programs/Outreach

The Virginia Voluntary Protection Program (VPP) is designed to recognize and promote exceptional safety and health management programs. In VPP, the Department of Labor and Industry's Occupational Safety and Health Program, management and labor establish a cooperative relationship at a general industry or public sector workplace that has implemented a strong safety and health program. VOSH's VPP program and its guidance follow the procedures set out in the Federal VPP program.

The VOSH program added four additional STAR level sites to their Voluntary Protection Program (VPP) and one new site to their Safety and Health Achievement Recognition Program (SHARP). The VOSH Program has a total of 41 VPP sites and a total of 51 SHARP sites at the end of this evaluation period.

VOSH held the 14th Annual Virginia Occupational Safety and Health Conference in FY 2009. The annual conference was attended by 217 attendees, and approximately 42 vendors. There were 48 breakout sessions and two general audience sessions. During this conference, VOSH offered the Construction and General Industry 10-hour OSHA classes, providing certificates to all who participated in the classes. The conference was judged by all participants to be very successful.

In addition, the VOSH consultation program conducted 48 formal training sessions throughout the Commonwealth, and 398 informal training sessions during this evaluation period. Approximately 3,986 employees participated in these training activities.

viii. Program Administration

The VOSH program is allocated fifty-nine (59) benchmark positions in accordance with their State Plan. They are allocated thirty-eight (38) safety specialist positions and twenty-one (21) industrial hygienist positions. Currently, they are staffed with thirty-three (33) safety specialists and seventeen (17) industrial hygienists. VOSH is recruiting to fill two (2) vacancies at the present time. However, funding through the Commonwealth continues to be a problem and the cause for vacancies that will be maintained in FY 2010.

During FY 2010, all state employees will be furloughed one day as a cost saving measure for overall expenditures throughout the Commonwealth. The Assistant Commissioner indicated that the VOSH Safety and Health Program will continue to provide safety and health coverage for the Commonwealth, responding to all fatalities and complaints as required by VOSH's policies and procedures. Additionally, there have been no pay increases for state employees since November 2007, and there are none forecasted for the next two years. This has had an effect on the retention rate of some benchmark positions, particularly in the Northern Virginia Regional Offices which are in close proximity to Washington D.C. Budget constraints have also impacted funding available for training and conferences and the travel expenses associated with each.

VOSH established an Apprentice Program for Safety Compliance Officers in April 2005. The first graduate of this program was in August 2006, and a total of thirteen (13) have graduated since that time. There are currently ten (10) apprentices in this program. This formal training program includes extensive on-the-job training as well as excellent classroom training, preparing compliance officers in all aspects of hazard recognition and abatement verification. Additionally, this helps to improve the overall safety and health of the State's workforce and also reduces the bottom line business costs by helping to reduce injuries and illnesses to persons, equipment, and property. VOSH also established an Apprentice Program for Industrial Hygienists in September 2005, and the first graduate of this program was in January 2007; a total of seven (7) have graduated since that time. There are currently five (5) apprentices in this program.

VOSH gained approval through the United States Department of Veterans' Affairs and the Virginia Department of Veterans' Services for its Apprentice Program as an authorizing agency for benefits under the Montgomery and Webb GI bills. This approval was granted in April 2006. Seven (7) of VOSH's apprentices have enjoyed the GI bill benefits.

VOSH currently has a program directive that outlines its professional development training for compliance personnel, which is in addition to its apprenticeship program mentioned above. VOSH is in the process of adopting Federal OSHA's directive, TED 01-00-018, Initial Training Program for OSHA Compliance Personnel.

ix. State Internal Evaluation Program

VOSH Regional Directors perform mandatory random case file audits annually. A total of 1,117 files were randomly selected throughout the Commonwealth for review and audit in FY 2009. As a result of these audits, VOSH identified the following issues and required corrective actions in each of its Regional Offices:

Issues: Insufficient narratives, unclear AVDs, inadequate case file documentation, evidence indicating a violation but no item cited, administrative errors in case file format as defined in the FOM.

Corrective Action: Issues were discussed with compliance officers and their supervisors to specify that narratives need to be detailed, case files need to be documented, including photographs of potential violations and witness statements, and counseling of compliance officers.

Issues: Grammatical errors, lack of employer knowledge and duration/frequency of exposure information on OSHA 1B forms, classification of some violations, grouping of similar hazards.

Corrective Action: These issues are returned to the compliance officers for correction and discussion with compliance manager.

Issues: Use of non-standard forms, improper labeling of case files (e.g., naming conventions such as VDOT and VA DOT), violations noted in photographs but not addressed by appropriate citation or explanation why violation was not cited, incomplete field notes, and inconsistent penalty calculation.

Corrective Action: Case files are being reviewed by compliance managers and Regional Directors to discuss these issues in detail and to resolve them directly with the compliance officer. In addition, weekly accountability meetings are also held with all compliance staff to address these issues and to ensure that errors and/or inconsistencies are corrected and to not continue to occur.

VOSH has identified areas for improvement and established corrective actions for FY 2010. One area identified as needing improvement was abatement verification, which has been an outlier for years. VOSH's findings indicated that when abatement information was received, the data was not properly entered into the system and the case not closed. VOSH prepared an audit plan for its internal evaluation plan for FY 2010 with various metrics to be reviewed on an annual basis, semiannual, quarterly and monthly basis.

VI. Conclusions and Recommendations

Complaints:

Conclusion 1: 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 complaint resulted in an inspection.

Conclusion 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.

Fatalities:

Conclusion 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.

Conclusion 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.

Case File Documentation:

Conclusion 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.

Conclusion 6: Employee exposure was not always adequately documented on OSHA 1B forms.

Recommendation 6: 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.

Conclusion 7: Alleged violation descriptions (AVDs) on OSHA-2 forms were not specific enough to address hazardous condition.

Recommendation 7: Alleged violation descriptions should reflect specific hazards noted on OSHA-2 forms for each violation.

Conclusion 8: OSHA-300 logs were not always obtained from employers and reviewed by compliance officers during on-site inspection activity.

Recommendation 8: 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.

Conclusion 9: Proper documentation to justify violation severity classification was not always contained in inspection files.

Recommendation 9: VOSH must retrain compliance staff in the proper type of documentation needed to justify violation severity classification in accordance with VOSH FOM procedures.

Conclusion 10: Copies of signed informal settlement agreements were not always contained in case files.

Recommendation 10: Copies of signed settlement agreements must be maintained in case files.

Conclusion 11: 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 11: 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.

Sampling:

Conclusion 12: Bulk samples were not always taken when suspected combustible dust was identified in a work place.

Recommendation 12: Bulk samples should be taken by industrial hygienists whenever suspected combustible dust is encountered in a work place.

Abatement Verification:

Conclusion 13: OSHA-166 forms were not being entered into the database to track abatement verification.

Recommendation 13: Promptly enter OSHA-166 (particularly item 22) data into database.

Conclusion 14: VOSH was not calling employers or sending abatement letters on all cases where abatement had not been received by VOSH.

Recommendation 14: 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.

Case File Organization:

Conclusion 15: Case file diary sheets were not found in inspection files.

Recommendation 15: 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.

IMIS

Conclusion 16: OSHA 91 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.

Federal Program Changes:

Conclusion 17: Not all Federal Program Changes are adopted within the six month period.

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

Whistleblower Investigations:

Conclusion 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.

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

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

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.

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.

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.

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.

Appendix A

FY 2009 Virginia State Plan (VOSH) Enhanced FAME Report

Findings and Recommendations Summary Chart

**FY 2009 Virginia State Plan (VOSH) Enhanced FAME Report
prepared by Region III**

Findings and Recommendations

Special Study Findings – Complaints		Recommendations
1	Case files lacked written documentation of why a non-formal complaint resulted in an inspection.	Written documentation should be contained in case files to justify why a non-formal complaint resulted in an inspection.
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.”	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.
Special Study Findings – Victim Rights		Recommendations
3	Families of fatality victims were not kept up-to-date about investigations and/or informed of the outcome of investigations.	Families of fatality victims must be kept up-to-date about investigations and informed of the outcome of VOSH investigations.
Special Study Findings – Fatalities		Recommendations
4	Interviews with employer representatives and employees were not always documented.	Ensure that interviews with employer representatives and employees are documented in case files.
Special Study Findings – Case File Documentation		Recommendations
5	Case file documentation is not in conformance with the requirements of VOSH’s FOM.	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.
6	Case file diary sheets were not found in inspection files.	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.
Special Study Findings – Hazard Identification		Recommendations
7	Employee exposure was not always adequately documented on OSHA 1B forms.	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.
8	Alleged violation descriptions (AVDs) on OSHA-2 forms were not specific enough to address hazardous condition.	Alleged violation descriptions should reflect specific hazards noted on OSHA-2 forms for each violation.

	Special Study Findings – Records Review	Recommendations
9	OSHA-300 logs were not always obtained from employers and reviewed by compliance officers during on-site inspection activity.	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.
	Special Study Findings – Violation Classification	Recommendations
10	Proper documentation to justify violation severity classification was not always contained in inspection files.	VOSH must retrain compliance staff in the proper type of documentation needed to justify violation severity classification in accordance with VOSH FOM procedures.
	Special Study Findings – Settlement Agreement	Recommendations
11	Copies of signed informal settlement agreements were not always contained in case files.	Copies of signed settlement agreements must be maintained in case files.
	Special Study Findings – Penalties	Recommendations
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.	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.
	Special Study Findings – Sampling	Recommendations
13	Bulk samples were not always taken when suspected combustible dust was identified in a work place.	Bulk samples should be taken by industrial hygienists whenever suspected combustible dust is encountered in a work place.
	Special Study Findings – Abatement Verification	Recommendations
14	OSHA-166 forms were not being entered into the database to track abatement verification.	Promptly enter OSHA-166 (particularly item 22) data into database.
15	VOSH was not calling employers or sending abatement letters on all cases where abatement had not been received by VOSH.	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.
	Special Study Findings – Data Entry	Recommendations
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.	OSHA 91 data should be entered into the IMIS system for all sampling.

	Special Study Findings – Federal Program Changes	Recommendations
17	Not all Federal Program Changes are adopted within the six month period. (The State has not yet adopted the new Federal FOM.)	VOSH must adopt Federal Program Changes within the six month period.
	Special Study Findings – Whistleblower	Recommendations
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.	<p>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:</p> <p>(a) Use Chapter 5 of the Federal Whistleblower manual to describe the organization of its investigation files.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>

Appendix B

FY 2009 Virginia State Plan (VOSH) Enhanced FAME Report

Enforcement Comparison Summary Chart

**Virginia (VOSH)
FY 2009 Enforcement Activity**

	Virginia	State Plan Total	Federal OSHA
Total Inspections	3,366	61,016	39,004
Safety	2,594	48,002	33,221
% Safety	77%	79%	85%
Health	772	13,014	5,783
% Health	23%	21%	15%
Construction	2,089	26,103	23,935
% Construction	62%	43%	61%
Public Sector	222	7,749	N/A
% Public Sector	7%	13%	N/A
Programmed	2,474	39,538	24,316
% Programmed	73%	65%	62%
Complaint	392	8,573	6,661
% Complaint	12%	14%	17%
Accident	38	3,098	836
Insp w/ Viols Cited	1,992	37,978	27,165
% Insp w/ Viols Cited (NIC)	59%	62%	70%
% NIC w/ Serious Violations	81%	62%	87%
Total Violations	5,627	129,363	87,663
Serious	3,428	55,309	67,668
% Serious	61%	43%	77%
Willful	37	171	401
Repeat	96	2,040	2,762
Serious/Willful/Repeat	3,561	57,520	70,831
% S/W/R	65%	44%	81%
Failure to Abate	32	494	207
Other than Serious	2,034	71,336	16,615
% Other	36%	55%	19%
Avg # Violations/ Initial Inspection	2.9	3.3	3.1
Total Penalties	\$ 3,489,819	\$ 60,556,670	\$ 96,254,766
Avg Current Penalty / Serious Violation	\$ 519.80	\$ 800.40	\$ 970.20
Avg Current Penalty / Serious Viol- Private Sector Only	\$ 599.40	\$ 934.70	\$ 977.50
% Penalty Reduced	48.4%	51.9%	43.7%
% Insp w/ Contested Viols	8.4%	13.0%	7.0%
Avg Case Hrs/Insp- Safety	13.7	15.7	17.7
Avg Case Hrs/Insp- Health	22.3	26.6	33.1
Lapse Days Insp to Citation Issued- Safety	28.3	31.6	34.3
Lapse Days Insp to Citation Issued- Health	31.9	40.3	46.7
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	3	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

FY 2009 Virginia State Plan (VOSH) Enhanced FAME Report

FY 2009 State OSHA Annual Report (SOAR)
(Available Separately)

Appendix D

FY 2009 Virginia State Plan (VOSH) Enhanced FAME Report

FY 2009 State Activity Mandated Measures (SAMM)

State: VIRGINIA

RID: 0355100

MEASURE	From: 10/01/2008		CURRENT	REFERENCE/STANDARD
	To: 09/30/2009		FY-TO-DATE	
1. Average number of days to initiate Complaint Inspections	837	2.20	41	Negotiated fixed number for each State
	380		9	
2. Average number of days to initiate Complaint Investigations	82	.21	2	Negotiated fixed number for each State
	374		16	
3. Percent of Complaints where Complainants were notified on time	358	94.71	11	100%
	378		11	
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	1	100.00	0	100%
	1		0	
5. Number of Denials where entry not obtained	0		0	0
6. Percent of S/W/R Violations verified				
Private	2450	86.66	88	100%
	2827		130	
Public	361	83.95	25	100%
	430		25	
7. Average number of calendar days from Opening Conference to Citation Issue				
Safety	63799	38.83	2068	2489573
	1643		69	43.8
				56880
Health	19154	44.23	260	692926
	433		8	57.4
				12071

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)

OCT 23, 2009
 PAGE 2 OF 2

State: VIRGINIA

RID: 0355100

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			
Safety	1185 55.87 2121	47 54.02 87	92328 58.6 157566 National Data (3 years)
Health	178 46.60 382	7 50.00 14	11007 51.2 21510 National Data (3 years)
9. Average Violations per Inspection with Vioations			
S/W/R	4190 2.00 2085	171 2.13 80	420601 2.1 201241 National Data (3 years)
Other	1800 .86 2085	36 .45 80	243346 1.2 201241 National Data (3 years)
10. Average Initial Penalty per Serious Violation (Private Sector Only)	3280650 927.26 3538	131515 932.73 141	492362261 1335.2 368756 National Data (3 years)
11. Percent of Total Inspections in Public Sector	221 6.57 3363	5 4.59 109	632 5.9 10638 Data for this State (3 years)
12. Average lapse time from receipt of Contest to first level decision	11486 102.55 112	473 94.60 5	4382038 246.1 17807 National Data (3 years)
13. Percent of 11c Investigations Completed within 90 days	48 96.00 50	4 100.00 4	100%
14. Percent of 11c Complaints that are Meritorious	4 8.00 50	0 .00 4	1466 20.8 7052 National Data (3 years)
15. Percent of Meritorious 11c Complaints that are Settled	4 100.00 4	0 0 0	1263 86.2 1466 National Data (3 years)

*FY09VA

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix E

FY 2009 Virginia State Plan (VOSH) Enhanced FAME Report

FY 2009 State Indicator Report (SIR)

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2009

INTERIM STATE INDICATOR REPORT (SIR)

STATE = VIRGINIA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
1. PROGRAMMED INSPECTIONS (%)								
A. SAFETY	6212	508	11892	1001	21855	1957	42572	4076
	67.3	78.0	67.5	80.7	66.8	80.5	65.2	81.4
	9230	651	17617	1240	32713	2430	65304	5006
B. HEALTH	508	90	1004	181	1963	368	3678	730
	34.5	51.1	34.1	52.3	35.3	51.8	34.0	51.9
	1471	176	2946	346	5559	711	10829	1406
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	4645	339	8997	662	16745	1225	32019	2700
	67.7	53.4	65.9	55.0	65.8	52.2	65.9	55.5
	6860	635	13654	1204	25453	2345	48603	4869
B. HEALTH	368	59	746	107	1486	227	2884	453
	52.2	52.2	50.8	46.1	51.7	48.9	55.6	50.8
	705	113	1468	232	2873	464	5187	891
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	15510	669	29490	1250	56535	2354	111717	5185
	81.8	67.0	81.1	65.3	80.0	65.1	79.4	65.1
	18952	999	36371	1913	70692	3618	140747	7966
B. HEALTH	2802	176	5343	297	10035	614	19393	1322
	70.1	45.2	69.9	47.3	69.7	46.6	67.7	49.8
	4000	389	7645	628	14395	1318	28659	2655
4. ABATEMENT PERIOD FOR VIOLS								
A. SAFETY PERCENT >30 DAYS	2938	160	5782	323	12109	710	25516	1394
	15.9	17.1	16.2	18.4	17.6	22.2	18.7	19.8
	18492	937	35597	1752	68607	3200	136812	7025
B. HEALTH PERCENT >60 DAYS	256	3	577	12	1452	78	3111	132
	6.3	1.2	7.5	2.8	10.0	8.6	10.9	6.7
	4078	246	7720	424	14561	907	28488	1964

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2009

INTERIM STATE INDICATOR REPORT (SIR)

STATE = VIRGINIA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
5. AVERAGE PENALTY								
A. SAFETY								
	280876	23800	628826	32650	1303857	58725	2663433	137750
OTHER-THAN-SERIOUS	923.9	1190.0	998.1	989.4	1030.7	889.8	1049.4	866.4
	304	20	630	33	1265	66	2538	159
B. HEALTH								
	83100	2400	142950	3525	294225	17287	654830	28437
OTHER-THAN-SERIOUS	799.0	480.0	803.1	503.6	855.3	691.5	867.3	768.6
	104	5	178	7	344	25	755	37
6. INSPECTIONS PER 100 HOURS								
A. SAFETY								
	10459	797	19991	1488	37160	2915	73338	5850
	6.1	9.4	5.7	8.9	5.5	8.7	5.3	8.6
	1722	85	3533	168	6727	334	13759	678
B. HEALTH								
	1764	221	3581	435	6701	877	12705	1698
	1.8	5.3	1.7	4.6	1.6	4.6	1.5	4.4
	994	42	2112	94	4125	189	8503	383
7. VIOLATIONS VACATED %								
	1278	80	2561	171	5139	314	10097	677
	4.9	4.6	5.0	5.5	5.1	5.3	5.0	5.2
	26336	1742	51387	3121	100187	5918	201495	12908
8. VIOLATIONS RECLASSIFIED %								
	1130	84	2440	140	4798	288	9539	583
	4.3	4.8	4.7	4.5	4.8	4.9	4.7	4.5
	26336	1742	51387	3121	100187	5918	201495	12908
9. PENALTY RETENTION %								
	13523966	478621	27149245	794596	54889469	2054395	111585445	4677228
	63.4	65.3	62.9	64.8	63.2	64.8	62.9	65.9
	21315664	732425	43130384	1227175	86796382	3171892	177346966	7101682

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2009

INTERIM STATE INDICATOR REPORT

STATE = VIRGINIA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC
D. ENFORCEMENT (PUBLIC SECTOR)								
1. PROGRAMMED INSPECTIONS %								
A. SAFETY	508 78.0 651	53 85.5 62	1001 80.7 1240	72 77.4 93	1957 80.5 2430	131 80.9 162	4076 81.4 5006	240 81.4 295
B. HEALTH	90 51.1 176	8 38.1 21	181 52.3 346	14 35.9 39	368 51.8 711	17 28.3 60	730 51.9 1406	40 32.8 122
2. SERIOUS VIOLATIONS (%)								
A. SAFETY	669 67.0 999	137 71.7 191	1250 65.3 1913	194 70.8 274	2354 65.1 3618	387 71.9 538	5185 65.1 7966	694 70.5 984
B. HEALTH	176 45.2 389	64 65.3 98	297 47.3 628	70 65.4 107	614 46.6 1318	81 65.3 124	1322 49.8 2655	163 63.9 255

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2009

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = VIRGINIA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
E. REVIEW PROCEDURES								
1. VIOLATIONS VACATED %	446 22.8 1956	66 34.2 193	875 24.2 3609	88 28.3 311	1756 23.4 7506	186 30.5 610	3749 24.1 15528	346 29.7 1164
2. VIOLATIONS RECLASSIFIED %	282 14.4 1956	32 16.6 193	563 15.6 3609	46 14.8 311	1133 15.1 7506	113 18.5 610	2274 14.6 15528	215 18.5 1164
3. PENALTY RETENTION %	2319074 54.1 4286744	89904 28.0 321000	4080249 51.5 7922126	158574 33.0 480125	10792902 58.5 18457526	642916 54.3 1183625	20045599 55.9 35865959	969401 42.9 2261405

Appendix F

FY 2009 Virginia State Plan (VOSH) Enhanced FAME Report

FY 2009 Mandated Activities Report for Consultation (MARC)

CCNOMARC
DOL-OSHA-OMDS
(RSCCOVER)

U. S. D E P A R T M E N T O F L A B O R
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
CONSULTATION REPORT
KEEP THIS PAGE WITH THIS REPORT.
IT CONTAINS IMPORTANT INFORMATION ABOUT
THE WAY CASES WERE SELECTED

11/05/09

TYPE OF REPORT: MANDATE ACTIVITIES

USER SELECTION NAME: VA2

REQUESTOR: OSH090

***** SELECTION CRITERIA *****

FISCAL YEAR: 2009

QUARTER: 4

OWNERSHIP: PUBLIC

REGION: 03 AREA: 951 DISTRICT:

PROJECT NAME: Virginia PUBLIC SECTOR

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
TOTAL VISITS	2	7	
1. Percent of Initial Visits in High Hazard Establishments			Not Less than 90%
Number High Hazard Visits	2	4	
Percent	100.00	100.00	
Number of Initial Visits	2	4	
2. Percent of Initial Visits to Smaller Businesses			Not Less than 90%
Initial Visits	2	4	
Visits <= 250 Employees in Estab	2	3	
Percent	100.00	75.00	
Visits <= 500 Employees CB by Empr	2	4	
Percent	100.00	100.00	
3. Percent of Visits where Consultant Conferred with Employees			100%
Initial			
Number with Empe Conferences	2	4	
Percent	100.00	100.00	
Number of Initial Visits	2	4	
Follow-Up			
Number with Empe Conferences	0	0	

Percent		0			0	
Number of Follow-Up Visits						
Training & Assistance Visits with Compliance Assistance ONLY						
Number with Empe Conferences		0			0	
Percent						
Number of T&A Visits		0			0	

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

PROJECT NAME: Virginia PUBLIC SECTOR

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
4A Thru 4D based on Closed Cases ONLY			
4A. Percent of Serious Hazards Verified Corrected in a Timely Manner (<=14 Days of Latest Correction Due Date)			100%
Number Verified Timely	0	6	
Percent		100.00	
Total Serious Hazards	0	6	
Number of Serious Hazards Verified Corrected:	0	6	
On-Site	0	2	
Within Original Time Frame	0	4	
Within Extension Time Frame	0	0	
Within 14 Days of Latest Correction Due Date	0	0	
4B. Percent of Serious Hazards NOT Verified Corrected in a Timely Manner (> 14 days after Latest Correction Due Date)			
Number NOT Verified Timely	0	0	
Percent		.00	
Total Serious Hazards	0	6	
4C. Percent of Serious Hazards Referred			

to Enforcement			
Number Referred to Enforcement	0	0	
Percent		.00	
Total Serious Hazards	0	6	
4D. PERCENT OF SERIOUS HAZARDS VERIFIED CORRECTED (IN ORIGINAL TIME OR ONSITE)			65%
NUMBER VERIFIED	0	6	
Percent		100.00	
Total Serious Hazards	0	6	
Number of Serious Hazards Verified CORRECTED (IN ORIGINAL TIME OR ONSITE)	0	6	
On-Site	0	2	
Within Original Time Frame	0	4	
5. Number of Uncorrected Serious Hazards with Correction Date > 90 Days Past Due (Open Cases for last 3 Years, excluding Current Quarter)			0

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION