

Appendix A
FY 2009 Virgin Islands State Plan (VIDOSH) Enhanced FAME Report prepared by Region II
Summary of Findings and Recommendations

Italics = paraphrase

Findings		Recommendations
Enforcement		
1	In 36% of the complaint case files reviewed, all of the complaint items were not addressed in the inspection <i>and/or</i> were not opened in a timely manner.	Implement internal control measures to ensure that complaint inspections are conducted in a timely manner and that all complaint items are addressed during the inspection.
2	In 42% of the cases reviewed, employer knowledge was not properly documented.	Provide additional training to all field staff, including supervisory staff, to ensure that all inspection case file documentation meets the minimum requirements of prima facie case as set forth by federal OSHA and VIDOSH policy (Field Inspection Reference Manual or Field Operations Manual).
3	In 57% of the cases reviewed, documentation of employee and/or union representative participation during the inspection was not present	Provide training to all field staff regarding the agency's policy of Union/Employee Representative involvement during and after inspections and the requirement to properly document compliance with this policy in case file.
4	Thirty-five cases underwent a comprehensive review, 20 (57%) of the case files lacked one or more of the following required documentation: employee interview notes, employee exposure and employer knowledge.	Provide additional training to all field staff, including supervisory staff, to ensure that all inspection case file documentation meets the minimum requirements of prima facie case as set forth by federal OSHA and VIDOSH policy (Field Inspection Reference Manual or Field Operations Manual)
5	In 75% of the cases reviewed, the violations were not classified correctly. All of the citations were classified as Medium/Lesser Serious citations with injury and illnesses ranging from cuts and bruises to death.	Provide additional training to all field staff to adequately classify violations with appropriate severity and probability of potential resulting injury.
6	<i>Case files did not include adequate documentation to support employee exposure and/or employer knowledge.</i>	Implement internal controls to ensure that all cases are reviewed on a supervisory level to make certain that all violations issued meet the prima facie requirements.
7	There were no willful citations issued during FY 2009. VIDOSH inspects the same government agencies (but at different locations) throughout the year. For example, the VI Department of Education may receive a dozen or more inspections a year. Similar hazards are found during each inspection but these are never issued as repeat violations.	Provide additional training to CSHOs and supervisors on the Willful and Repeat Violation Policy and Procedures.
8	In 80% of the cases reviewed, adequate abatement was not received or documented in the case file.	Provide additional training to all of the field staff, including supervisory staff, to ensure that abatement issues are handled in accordance with established policy including: <ol style="list-style-type: none"> 1. Ensure appropriate abatement periods are assigned for unabated violations. 2. Ensure that all abatement information satisfies the notice of violations prior to closing the case. 3. For cases with CDI, ensure that the file documents the method of abatement and that the CSHO observed the abatement. 4. Ensure that Failure To Abate notices are issued where appropriate.

	Findings	Recommendations
		5. Provide training to staff on the Petitions for Modification of Abatement (PMA) policies and procedures.
9	<i>The overwhelming majority of cases do not go through a settlement process (i.e. informal conference, post contest meetings, etc. Case file reviews indicated that when informal conferences are held, there is poor documentation of the informal conference notes. An item was withdrawn during the conference and there was no justification as to the reason why.</i>	Provide additional training to CSHOS and supervisory staff on the policies and procedures of informal and formal settlements, with the intent to promote abatement and settlement.
10	<i>Case File[s] involved with an informal conference had poor documentation of the information conference notes. An item was withdrawn during the conference and there was no justification as to the reason why.</i>	VIDOSH representatives must thoroughly document the following in the case file: The fact that notification to the parties of the date, time and location of the informal conference, was made; indicate the date of the informal conference was held in the diary sheet; at the conclusion of the conference, all main issues and potential courses of action must be summarized and documented.
	Information Management	
11	<i>VIDOSH is not using IMIS management reports to identify discrepancies in data entries and updates, resulting in uncorrected rejects, outdated draft forms, lack of abatement, citations not issued within six months, cases not closed in a timely fashion, and lack of employer responses to non-formal complaints.</i>	In order to improve the integrity of OSHA data and transparency to the public VIDOSH must improve its performance with IMIS data management. Additionally VIDOSH Management must use IMIS reports as a tool to effectively manage both the program and the work product of its staff.
	Progress on Developmental Steps	
12	VIDOSH amended legislation provides authority for Failure-to-abate daily penalties.	VIDOSH must ensure that their statutory authority to compel employers to abate hazards is exercised.
13	VIDOSH submitted their original five-year strategic plan and corresponding annual performance plans in July 2005 but it was never fully implemented because of difficulties in establishing the requisite baseline to measure the performance of the program. An updated five-year strategic plan is being developed by VIDOSH and should be in place for FY 2011.	VIDOSH should establish [a] baseline in FY 2010 and implement their new 5 year strategic plan.
14	Submission of a draft version of revised State Plan Narrative was due on December 31, 2005. This document has not yet been received by OSHA but VIDOSH reports that it will be submitted to OSHA for approval by the end of FY 2010.	VIDOSH must ensure that the State Plan narrative, with amendments reflecting the more limited public sector scope of the program, is completed and submitted to OSHA. This includes the narrative document as well as all relevant appendices.
15	As required by their 2003 developmental plan, the Virgin Islands has not developed nor maintained a public sector consultation program that can provide no cost safety and health services to public sector employers.	VIDOSH must ensure that a public-sector consultation program is fully operational and provides appropriate services to public-sector employers in the territory.
	Whistleblower	
16	There is a lack of structure for processing 11(c) complaints including no knowledge of the appeals process and what happens to a merit case after the Final Investigative Report ("FIR") is submitted.	VIDOSH needs to follow the Federal manual and to implement a structure for processing 11(c) complaints including an independent reviewer to examine appealed cases. VIDOSH needs to work with the Virgin Island's Attorney General's Office to create a clear system for processing and tracking meritorious investigations.

Whistleblower		
17	VIDOSH Staff appeared to refer cases to Federal OSHA, PROSHA, and the U.S. Virgin Islands Department of Labor, Division of Labor Relations. Staff members understood that private Sector 11(c) complaints should be forwarded to Federal OSHA. Staff members stated that they contacted Federal OSHA Regional Supervisory Investigator for questions. One investigator has attended the Basic Discrimination Investigator's Course 1420 at OTI.	VIDOSH staff needs to forward all complainants that allege retaliation to the discrimination investigator for screening. All staff members should be trained to answer basic questions about jurisdiction, coverage, and discrimination complaints. All screenings should be documented according to the guidelines in the Federal Manual. It is suggested that VIDOSH continue to refer cases out of their jurisdiction to Federal OSHA and contact Federal OSHA with any questions. VIDOSH should develop a working relationship with the Virgin Islands Department of Labor, Division of Labor Relations, so that each agency may refer appropriate cases to each other as complainants may concurrently file.
18	Staff and investigator(s) have no access to IMIS Whistleblower Application. There is also no process for tracking case files.	Staff and investigators need to access to IMIS Whistleblower Application so that they may track investigations and pertinent information such as Complainant and Respondent contact information, timeliness, and jurisdiction.
19	VIDOSH's discrimination program currently not does not meet the § 1977.23 standards. In general, the VIDOSH discrimination program has not had any whistleblower cases since 1999, and is lacking the procedural knowledge, experience, and structure necessary to effectively execute investigations and meet program objectives.	VIDOSH needs to follow the Whistleblower Investigation Manual (CPL02-03-002 8/22/2003) to create a process to settle cases. VIDOSH should work with the Virgin Island's Attorney General's Office to create a clear path for settlement review and execution.
20	VIDOSH does not have templates prepares for docket letters, FIRS, and other necessary investigative documents and correspondence.	VIDOSH should adopt the Federal Manual templates for all investigative documents including but not limited to docket letters, FIRs, and Secretary's Findings. These documents should be created as soon as possible, so that they are available when investigations arise.
21	Four Federal standards were issued during FY 2009. VIDOSH responded with their intent to adopt for two of the four standards timely. VISOSH did not adopt any of the standards changes in a timely manner. (p.43)	VIDOSH should implement internal controls to ensure that all standards applicable to the public sector are promulgated within six months of the promulgation date of new Federal OSHA standards in accordance with the VI OSH Act.
22	VIDOSH does not have an 11(c) Health and Safety Poster, pamphlets, or fact sheet available for public sector agencies or complainants.	VIDOSH needs to create a Health and Safety Poster for 24 V.I.C. § 40 as well as pamphlets, or a fact sheet available for state agencies, businesses, and complainants. These media should be available in both English and Spanish.
23	VI covers employers in water and wastewater treatment activities, subject to PSM standard. VIDOSH does not have adequate trained staff to deal with these worksites.	Ensure that an adequate number of qualified VIDOSH staff are trained to the requirements of DIRECTIVE NUMBER: 09-06 (CPL 02), "PSM Covered Chemical Facilities National Emphasis Program"