



**United States Virgin Islands
Division of Occupational Safety and Health
(VIDOSH)**

***Enhanced Federal Annual Monitoring Evaluation (FAME) Baseline
Special Evaluation (BSE) Report
October 1, 2008 - September 30, 2009***

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FY 2009 Enhanced FAME & BSE Report for Virgin Islands

I. EXECUTIVE SUMMARY

Summary of the Report

This report assessed the Virgin Islands Department of Labor and Industry, Division of Occupational Safety and Health's (VIDOSH) progress towards achieving the performance goals established in their Federal Fiscal Year (FY) 2009 Annual Performance Plan and reviewed the effectiveness of programmatic areas related to enforcement activities during the period of October 1, 2008 to September 30, 2009.

Although technically long overdue in meeting the developmental requirements established for its July 2003 conversion to a Public Employee Only State Plan, VIDOSH continues to move forward with improvements to its enforcement program. Among the advances found during the evaluation were major improvements in case file documentation. In comparison to prior experience, the program is showing some improvement and absent the program there would be no formal protection for Virgin Islands public employees. However, there are significant structural and performance deficiencies in the program, and stakeholders question the effectiveness of the program. Continued close Federal monitoring and technical assistance will be necessary as a means for improving VIDOSH's performance.

VIDOSH faces major program challenges that will need to be addressed. These challenges include:

- Lack of a mechanism, in lieu of monetary penalties, for compelling public employers to abate cited hazards;
- Failure to take the necessary procedural steps to complete the automatic adoption of standards;
- Not addressing all complaint items during complaint inspections;
- Not identifying or citing hazards; incorrectly classifying violations;
- Inadequate case file documentation of the public employer's knowledge of hazards; and inadequate procedures for conducting follow-up inspections.
- Failure to develop a public sector consultation program
- Inadequate program for investigation of discrimination complaints;
- Public employees and/or employee representatives are not afforded the requisite opportunities to participate during enforcement activities.

The annual performance plan results, reported by VIDOSH in the territory's OSHA Annual Report (SOAR), indicate that the program has made advancements towards achieving its strategic goals. Evaluation of goal achievement or

significant progress toward goal accomplishment has been reviewed, and the results are identified in this report.

VIDOSH Plan Background

The Virgin Islands State Plan was converted to a public employee only occupational safety and health program on July 1, 2003. It is administered and enforced by the Virgin Islands Department of Labor, Division of Occupational Safety and Health (VIDOSH) throughout the U.S. Virgin Islands. The Virgin Islands Occupational Safety and Health Act (24 V.I.C. Chapter 2 - Act No. 6846) was amended on July 19, 2006 to reflect its limited public sector coverage in compliance with the revisions noted above. It extends full authority to the agency to enforce and administer all laws and rules protecting the safety and health of employees of the Government of the Virgin Islands, its departments, agencies and instrumentalities, including any political subdivisions. It covers all activities of public employers and employees and places of public employment.

The Territory has adopted all Federal standards applicable to the public sector in the Territory of the U.S. Virgin Islands, and has given assurances that it will continue to adopt and update all Federal standards, revisions and amendments. VIDOSH's staffing level for FY2008 was at their benchmark goal for health (2) but one below their goal for safety compliance officers (3).

Study Methodology

The Region II BSE study team, consisting of three members, conducted an on-site review of the 23(g) Public Employee Only State Plan in St. Croix from March 15, 2010 through March 19, 2010. The evaluation included a review of closed case files for FY 2009, covering the period from October 1, 2008 through September 30, 2009. This review included VIDOSH enforcement cases. The review included an examination of the entire state plan administration including a total of 59 case files were reviewed.

The BSE of the VIDOSH Program covered Fiscal Year 2009, the period of October 1, 2008 through September 30, 2009 (FY09). The OSHA team's evaluation consisted of case file reviews, interviews of VIDOSH staff, review of the discrimination investigation program files, review of the public sector consultation program files, VIDOSH's enforcement statistics and areas of interest identified by stakeholders. In addition the review focused on areas not recently reviewed, such as the outcome of VIDOSH contested cases and settlement procedures.

The special study of the VIDOSH program focused on mainly FY09 enforcement activities however, in certain instances, such as IMIS data evaluation, activities from more recent time frames were reviewed.

This report is also an assessment of the State's progress towards achieving their performance goals established in their 2009 Annual Performance Plan and a review of the effectiveness of programmatic areas related to enforcement and consultation activities.

Findings and Recommendations

The VIDOSH program has seen marked and notable improvements since its July 1, 2003 conversion from a comprehensive State plan covering both private and public sector employers and employees to a public employee only State plan, covering employers and employees of the Territory and its political subdivisions. However, the program remains deficient in many areas. Many of these issues stem from on-going problems that both led to and pre-date the 2003 State plan conversion.

Challenges

A number of significant challenge areas were identified during this evaluation and will need to be resolved by the Virgin Islands. These include:

Abatement issues: The Virgin Islands does not have appropriate legislative or administrative action to assure effective sanctions, either as monetary penalties, or an alternative mechanism for compelling abatement in the public sector as required by VI's developmental plan that was instituted in 2003.

Standards: The Virgin Islands has not exercised its statutory authority regarding standards adoption and taken appropriate legislative or administrative action to assure that it is consistent with 29 CFR Part 1953 and that all standards applicable to the public sector are promulgated within six months of the promulgation date of new Federal OSHA standards. VIDOSH's program provides for automatic adoption of standards and federal program changes. The VIOSH Act provides for the automatic adoption of federal standards applicable to public sector citations issuance on the effective date specified in the federal standard. The Commissioner for VI Department of Labor publishes adopted standards and procedures as rule or notice for a minimum of three days in local circulation written media and the Virgin Islands Register to notify all impacted stakeholders. VIDOSH does not have documentation that this has occurred for existing standards.

- Enforcement Program: In addition to the previously described issues

related to a lack of a mechanism for obtaining abatement for cited hazards, this special study also found other deficiencies with: addressing all complaint items during complaint inspections; incorrectly classified citation items; inadequate case file documentation such as for the employer's knowledge of the hazards; and inadequate procedures for conducting follow-up inspections. Additionally, unprogrammed inspections often are not opened within the required timeframe and complainants were not notified of the final results of the inspection. At the timeframe of the Baseline Special Evaluation, the Virgin Islands had ten (10) inspection cases that exceeded the statutory six month issuance date, invalidating the findings from these enforcement activities. Because of this oversight, employees at these worksites continue to be exposed to hazards that were originally identified during the original inspections.

- Public Sector Consultation: 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.
- Whistleblower Program: VIDOSH's discrimination program does not meet the 29 CFR Part 1977.23 standards. In general, the VIDOSH discrimination program is lacking the procedural knowledge, experience, and structure necessary to effectively execute investigations and meet program objectives.
- Union and Employee Involvement: VIDOSH's staff has not afforded employees and/or employee representatives the requisite opportunities to participate during its enforcement activities including: the ability to accompany the CSHO during physical inspections of the workplace for the purpose of aiding the inspection; and attendance at opening and closing conferences.

Findings:

- In 80% of the cases reviewed, adequate abatement was not received or documented in the case file.
- In 57% of the cases reviewed, documentation of employee and/or union representative participation during the inspection was not present
- Petition for Modification of Abatement (PMA) were not requested or obtained in 96% of the cases reviewed.
- In 36% of the complaint case files reviewed, all of the complaint items were not addressed in the inspection.

- 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.
- OSHA 300 logs were not obtained from employers and reviewed by compliance officers during on-site inspection activity
- In 42% of the cases reviewed, employer knowledge was not properly documented.
- In 27% of the complaint cases reviewed, a letter indicating inspection results was not sent to the complainant.
- In 36% of the complaint cases reviewed, the inspections were not opened in a timely manner.
- Follow Up inspection case files did not contain the original case file information, making it extremely difficult to determine if the previous hazards have been abated.

Recommendations:

The following represent OSHA's significant recommendations - Similar or grouped recommendations are described and the recommendation number for individual recommendations are noted.

BSE Enforcement (see Recommendations 1-8)

The recognition and correction of workplace hazards could be enhanced through increased management oversight and through improved staff training. VIDOSH needs to ensure that high hazard worksites are appropriately targeted and that serious hazards found in the workplace are properly identified and promptly corrected. 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.

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)
- 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.

- additional training is provided to all field staff to adequately classify violations with appropriate severity and probability of potential resulting injury.
- appropriate abatement periods are assigned for unabated violations, and that all abatement information satisfies the notice of violation prior to closing the case. For cases with Corrected During Inspection (CDI), ensuring that the file documents the method of abatement and that the CSHO observed the abatement.
- Failure To Abate notices are issued where appropriate.
- training is provided to CSHOs on the Petitions for Modification of Abatement (PMA) policies and procedures.
- training is provided to CSHOs and supervisors on the Willful and Repeat Violation Policy and Procedures.

Complaint Inspections (see **Recommendations 1-2**)

The supervisory review process for complaint investigations should be strengthened to ensure that complaint items are adequately addressed, complaints are handled in a timely manner, and to ensure that CSHOs review injury and illness records during inspections to identify injury or hazard trends.

Employee / Union Involvement (see **Recommendations 3-4**)

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 files.

Citations and Penalties (see **Recommendations 5-7**)

Training should be provided to CSHOs and supervisory staff to ensure that correct methodologies for citing hazards are being followed. This training should include classifying violations with appropriate severity and probability of potential of resulting injury and the Willful and Repeat Violation and Procedures. Improvements should be made in the case file review process to ensure that all issued violations meet prima facie requirements.

Abatement (see **Recommendation – 8**)

Internal controls need development to assign appropriate abatement timeframes for unabated violations which also will require supplementary staff training. Supervisory staff must ensure that all abatement information satisfies the notice of violations prior to closing the case, and that CSHOs properly observe and document CDI methods of abatement. Additionally, Petitions for Modification of Abatement (PMA) procedures must be strictly adhered to, requiring that additional internal controls be developed by VIDOSH.

Settlement and Review Procedures (see **Recommendations 9-10**)

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. Informal conference procedures and records should be improved to better document that proper settlement procedures are being followed.

Information Management (see **Recommendation 11**)

VIDOSH must ensure that all required data is entered into the IMIS system in an accurate and timely manner. Data that must be entered correctly includes: finalized OSHA data forms; time utilization data; abatement information; penalty collection information; and case settlement information. Additionally VIDOSH Management must use IMIS reports as a tool to effectively manage both the program and the work product of its staff.

Progress towards completing State Plan Developmental Steps (see **Recommendations 12 – 15, 21**)

VIDOSH should ensure that their statutory authority to compel employers to abate hazards is exercised. 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. VIDOSH should establish this baseline in FY 2010 and implement their new 5 year strategic plan. VIDOSH must ensure that the State Plan narrative and relevant appendices, with amendments reflecting the more limited public sector scope of the program, is completed and submitted to OSHA. VIDOSH must ensure that a public-sector consultation program is operational, utilizing currently available 23(g) Federal funds and/or additional State funds

Discrimination Program (see **Recommendations 16 – 19, 22**)

Protection provided to “whistleblowers” could be bolstered through better administrative procedures and through increased staff training on the subject. VIDOSH needs follow the Federal Manual and all Federal Manual templates or equivalent and to implement a structure for processing discrimination complaints, including an independent reviewer to examine appealed cases, and to create a process to settle cases. 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. Staff and investigators need to access to the IMIS Whistleblower Application so that they may track investigations and pertinent information such as Complainant and Respondent contact information, timeliness, and jurisdiction. VIDOSH needs to work with the Virgin Island’s Attorney General’s Office to create a clear system for processing and tracking meritorious investigations, and for settlement review and execution. Also, 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. It is suggested that VIDOSH continue to refer cases out of their jurisdiction to Federal OSHA and contact Federal OSHA with any questions.

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. Additionally, the assignment of discrimination staff would allow for greater efficiency, timeliness, and depth of understanding for the program.

Additional CSHO Training (see **Recommendation – 23**)

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

II. STATE’S PROGRESS TOWARD ACHIEVING ITS STRATEGIC PLAN PERFORMANCE GOALS

VIDOSH’s FY 2009 Annual Performance Plan consisted of two broad-based strategic goals with complementary performance goals.

During FY 2009, VIDOSH reports the following results as it relates to **Goal #1** – Improve workplace safety and health for all public employers in the U.S. Virgin Islands.

Performance Goal 1-1: *Reduce occupational hazard exposures in the public sector by conducting direct interventions in agencies with a history of Workers Compensation claims.*

Year One Performance Goal #1-1.1 *Reduce occupational hazards exposures in the public sector by focusing on public employees with frequent Workers Compensation claim over the past 3 years.*

The US Virgin Islands BLS data showed injuries/illnesses rate decreased on four (4) public agencies ranging from 1.4% to 3.3%. The public sector agencies whose data showed rate decrease were: Educational Services at 3.3%, Health Care and Social Assistance at 2.3%, and Justice/Public Order (such as VI Department of Justice, Superior and Territorial Courts and VI Police Department, VIPD) at 1.4 %, classified within SIC 9221. BLS rates reported for the other public agencies in the Virgin Islands show an increase of reported injuries and illnesses of an average of 3.4 % from the baseline CY 2006.

Performance Goal 1-2: *Performance*

Goal #1-2 *Reduce occupational hazards exposures in the public sector by ensuring that workplace receive direct intervention.*

Year One Performance Goal #1-1.2 *Reduce occupational hazards exposures in the public sector by conducting programmed inspections, focusing on establishments that have not been inspected in the past three years. Achieve 1% reduction using baseline data established in FY 06 data of 2.9 per 100,000 people.*

A total number of 286 violations were issued for all enforcement activities in FY 2009. A Local Emphasis program to target public sector agencies with high Workers Compensation claims was not fully completed and implemented. The violations issued in FY 2009 by VIDOSH, resulted from inspection reports which also included agencies with the higher quantity of workers compensation claims (such as VI Department of Education, VI Government Hospitals, and Public Administration agencies). VIDOSH planned and focused to complete a public sector Workers Compensation database. The final analysis stage is to summarize data and prepare a report for the VIDOL Commissioner to substantiate a request and the implementation of a Local Emphasis Programs (LEPs) on or before September 30, 2009. This goal was not met. Progress towards completion of the database was unexpectedly delayed and plans to be completed by September 30, 2010.

Performance Goal 1-3: *Performance*

Goal #1-3 *Reduce occupational hazards exposures in the public sector by ensuring that workplace receive direct intervention.*

Year One Performance Goal #1-1.3 *Conduct health inspections, including being able to address indoor air quality (IAQ) issues.*

Thirty four (34) health inspections were performed, twenty (20) of them complaint inspections and thirteen (13) classified as indoor air quality issues. Based on VIDOSH FY2009 performance for IAQ complaint inspections, data will be used to develop a specific IAQ procedure applicable for this type of intervention. Workplace and establishment inspections performed, published OSHA references & guidelines, monitoring methodology procedures are to follow the OSHA Technical Manual, for which VIDOSH planned to fully develop and implement it by September 30, 2009. This goal was not met.

Goal #2 Promote a safety and health culture within the U.S. Virgin Islands Public Sector Workplaces

Performance Goal 2-1: *Performance*

Goal #2-1 *Promote a safety and health consultation and training, education, seminars, etc.*

Year One Performance Goal #2-1.1 *Increase training an education to public employers/employees to promote a systematic approaches to safety and health or deaths. Eight out nine fatality investigations were initiated within one day during FY 2009.*

The VIDOSH Director continued efforts to ensure that Territorial Government offices are educated about their responsibilities, and work toward creative avenues to achieve compliance with safety and health regulations. VIDOSH coordinated OSHA 10 hr. construction courses for the public sector construction entities. In addition, VIDOSH participated in the 4th annual VI Governor's Safety Health Conference as well as the VI Department of Labor Safety Month outreach activities.

Inspection Activities

VIDOSH conducted a total of 101 inspections during FY 2009. This is 12% above their annual goal of 90 inspections. Of the 101 inspections: 67 were safety inspections which was 12% above the planned goal of 60; and 34 were health inspections which was 13% above the planned goal of 30.

VIDOSH public-sector consultation did not conduct any public-sector consultation visits in FY 2009 and did not meet their projected goal of 25 visits.

III. VIRGIN ISLANDS STATE PLAN PROFILE

State Plan:

- Initial Plan Approval - August 31, 1973 - (38 FR 24896)
- Certification - September 10, 1981
- 18(e) Approval - April 17, 1984 - (49 FR 16766).
- 18(e) Withdrawal /18(b) Implementation - November 13, 1995 - (60 FR 56950)
- Conversion to a Public Employee Only (PEO) Plan – July 1, 2003

Excluded Coverage:

- Maritime Issues (private sector)
- Maritime Cargo Handling, Long shoring
- Shipbuilding and Ship Repairing
- Occupational safety and health issues in the private sector
- Federal facilities (military installations, etc.)

| REGION II VI State Plan 23(g) | Safety | | Health | |
|-------------------------------------|-----------|-----------|-----------|-----------|
| | Allocated | Benchmark | Allocated | Benchmark |
| VI FY2009 | 2 | 3 | 2 | 2 |
| VI FY2008 | 3 | 3 | 2 | 2 |
| VI FY2007 | 3 | 3 | 2 | 2 |
| VI FY2006 | 3 | 3 | 1 | 2 |

Opera
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Grant

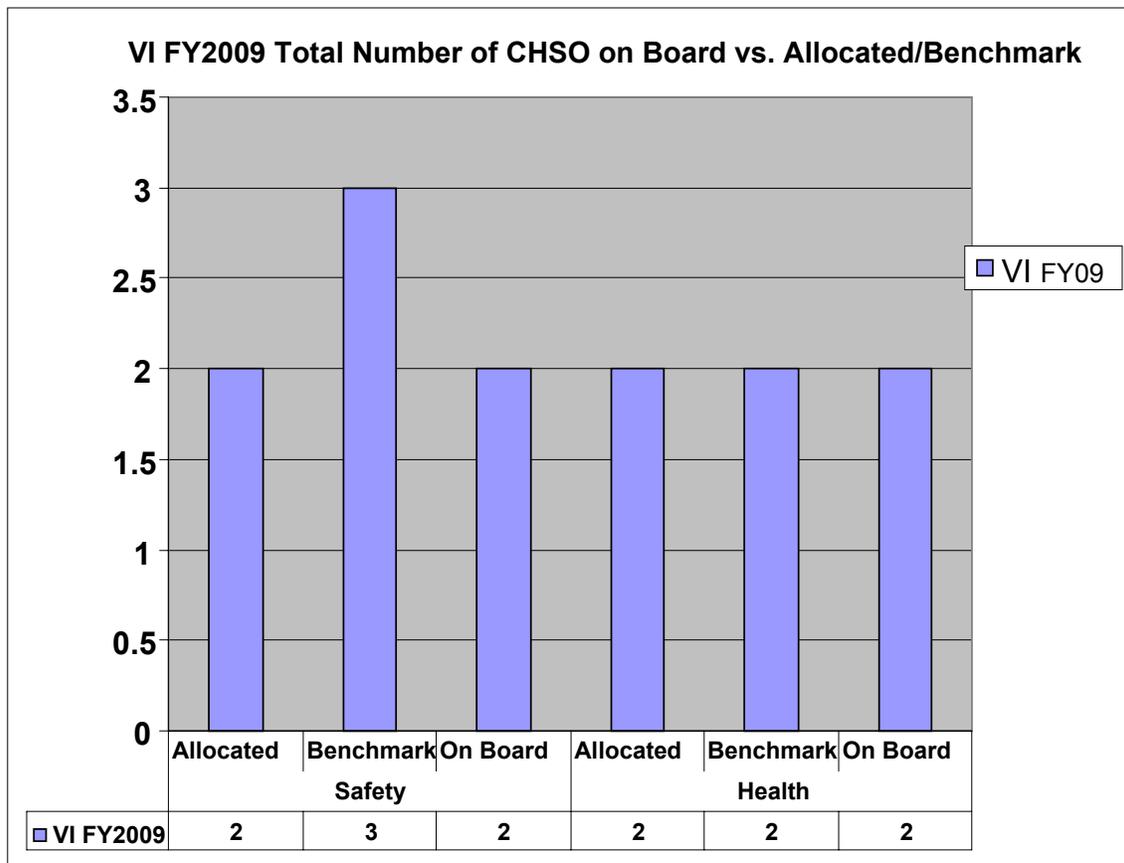
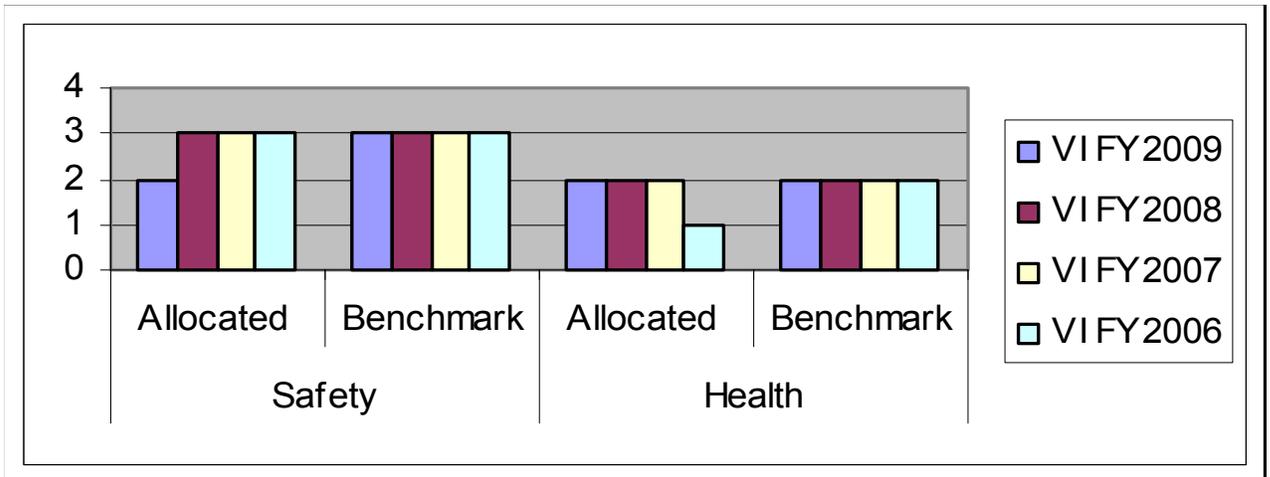
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009 Federal Share: \$197,500

- FY 2009 State Share: \$0
- FY 2009 100% State Funds: \$463,662
- FY 2009 Total Grant: \$661,162

Planned Benchmark Staffing (see charts below)

Allocated Staff vs. Benchmarks for FY 2009¹



Summary of Recommendations and State Actions from FY 2008 FAME

FY 2008 OSHA Recommendation #1: *VIDOSH must establish strategies to increase its enforcement presence in the territory with better targeting and improved data tracking methods.*

State Action/Response:

VIDOSH conducted a total of 101 enforcement activities exceeding their proposed goal of 90 inspections during FY 2009.

OSHA's Findings:

Despite exceeding their projected goals for numbers of inspections, VIDOSH has not established an effective enforcement presence in the territory because hazards found during inspections are not being corrected by employers. Without a mechanism to compel employers to abate hazards found during inspections (including hazards found during follow-up inspections), even a doubling of enforcement activity does not significantly increase VIDOSH's enforcement presence in the territory. VIDOSH has not established the necessary deterrent effect on employers who violate OSHA standards.

FY 2008 OSHA Recommendation #2: *VIDOSH must expedite its complaint inspection process in order to meet the established 5-day response time strategic goal.*

State Action Response:

VIDOSH has recognized its need to expedite its initiation of complaint inspections in order to meet the established 5 day response time goal and has a plan that it will implement in FY 2010.

OSHA Findings:

VIDOSH has not adequately addressed this recommendation that was contained in the VI FY 2008 FAME.

FY 2008 OSHA Recommendation #3: *VIDOSH must implement internal mechanisms (e.g., more timely follow-up's, review of management reports, IMIS retraining work closely with OSHA OMDS/DIT to resolve the IMIS issues etc.) to ensure timely abatement verification.*

State Action Response: VIDOSH has acknowledged that they need to make improvements in this area and plan to do so in FY 2010.

OSHA's Findings: VIDOSH has not adequately addressed this recommendation that was contained in the VI FY 2008 FAME.

FY 2008 OSHA Recommendation #4: VIDOSH has greatly improved from last years citation lapse time numbers of 84.04 for safety and 108.64 for health. VIDOSH must continue to implement internal mechanisms (e.g., expedited case file reviews, review of management reports), in order to improve its citation lapse times.

State Action Response: VIDOSH did not report on this recommendation.

OSHA's Findings: VIDOSH citation lapse time for FY 2009 was calculated at 68.67 days for safety and 115.60 days for health. VIDOSH is well above the national averages of 43.7 days for safety and 57.3 days for health.

FY 2008 OSHA Recommendation #5: VIDOSH needs to review their records and determine the status of these old discrimination cases. Any required data entry updates need to be made to the Integrated Management Information System (IMIS) Whistleblower Application accordingly. In the event it appears these cases need further investigation, VIDOSH needs to inform OSHA so that these cases can be re-investigated by Federal OSHA as they now fall under OSHA's jurisdiction, as these are private-sector workplaces and thus no longer under VIDOSH's jurisdiction. If the cases were appropriately investigated in accordance with established policy, VIDOSH needs to contact the Whistleblower Supervisory Investigator and inform status of the pending case files. VIDOSH also needs to send their employees the Whistleblower Basic Course (OTI #1420) training; presently VIDOSH does not have a trained 11(c) Discrimination Investigator to handle 11(c) Complaints. During FY2008 VIDOSH registered two employees to attend the OTI#1420 course and unfortunately were unable to send them for training due to Governors denial.

State Response Action:

All of these cases were researched by VIDOSH and sent to the regional office and forwarded to the national office and the cases were closed in the IMIS. The CSHO will review archived case files to ensure all legal due process has been fulfilled, case file will be submitted to VIDOL Commissioner for Legal Expert review along with OSHA Federal Offices.

OSHA's Findings: This recommendation was satisfactorily addressed.

FY 2008 OSHA Recommendation #6: *VIDOSH must conduct a thorough study of all OSHA standards that have been adopted since the inception of the State Plan and ensure all OSHA standards (or more restrictive standards) applicable to public sector employers in the US Virgin Islands have been adopted.*

State Response Action:

VIDOSH has not fully implemented this recommendation as of yet, there is an action plan to have this completed by the end of FY 2010.

OSHA's Findings:

VIDOSH has not adequately addressed this recommendation that was contained in the VI FY08 FAME. .

FY 2008 OSHA Recommendation #7: *VIDOSH must implement a viable consultation program covering public sector employers. VIDOSH must ensure that a public-sector consultation program is operational, utilizing currently available 23(g) Federal funds or additional State funds.*

State Response Action: VIDOSH began public sector consultation during May 2009. Despite having 33 formal written requests and 10 phone requests for consultation services, only 4 onsite consultation visits were initiated in FY 2009 but none of these 4 were actually completed and finalized.

OSHA's Findings:

VIDOSH has not adequately addressed this recommendation that was contained in the VI FY 2008 FAME.

FY 2008 OSHA Recommendation #8: *VIDOSH should send CSHO to OTI for the Basic Initial 11(c) Discrimination Course.*

State Response Action:

VIDOSH has sent one CSHO to the OTI 1420 Whistle Blower Investigator Initial Course who has completed the training to date.

OSHA's Findings: VIDOSH has adequately met this recommendation.

Major New Issues

No major issues occurred in FY 2009.

IV. ASSESSMENT OF STATE PERFORMANCE

A. Assessment of State Progress in Achieving Annual Performance Goals.

Inspection Activity

VIDOSH conducted a total of 101 inspections during FY 2009. This is 12.22% above their FY 2009 annual goal of 90 inspections. Of the 101 inspections: 67 were safety inspections which was 12% above the planned goal of 60; and 34 were health inspections which were 13% above the planned goal of 30.

Of the 101 inspections, the program conducted 55 unprogrammed inspections of which: 0 were accidents; 20 were complaints; 5 were referrals; 2 monitoring, 0 variance, 30 were follow-up inspections; and 2 were unprogrammed-related. There were 46 programmed inspections of which: 46 were planned; 0 were programmed-related; and 0 were other. Inspections conducted by industry are as follows: 1 in construction; 0 maritime; 0 manufacturing and 100 in other.

Average case hours per safety inspection was 32.1 and health inspection was 35.5. A total of 413 violations were issued including: 0 Willful, 2 Repeat, 224 Serious, 0 unclassified, 57 Other-Than-Serious and 130 Failure To Abate. VIDOSH did not have any inspections with citations contested for FY2009 according to Inspection 8 Report. The number of average days from opening conference to citation issuance (Lapse days) was 24.8 days for safety inspections, and 81.7 days for health inspections, and 57.5 for the entire program. During FY 2009 VIDOSH violations per inspection averaged 4.1 as compared to the State Plan average of 3.3 and Federal average of 3.1.

Public Sector Consultation Activity

VIDOSH public-sector consultation initiated a total of 4 public-sector consultation visits in FY 2009 but never completed them. This goal was not met.

State Activity Mandated Measures¹ **Mandated Activities**

State Activity Mandated Measures (SAMM): VIDOSH has not performed satisfactorily relating to the majority of the fifteen established mandated enforcement measures discussed in this report.

¹ Source: State Activity Mandated Measures Report – 04/11/10

SAMM 1: Average number of days to initiate Complaint Inspections.

During this evaluation period, VIDOSH responded to 20 complaints with an average response time of 11.20 days.

SAMM 2: Average number of days to initiate Complaint Investigations (Phone & Fax).

During this evaluation period, VIDOSH responded to 18 complaint investigations with an average response time of 3 days.

SAMM 3: Percent of Complaints where Complainants were notified on time.

Ninety five percent (19 out of 20) of complainants were notified of the inspection results on time. However documentation of this actually occurring was not found in the complaint files reviewed as part of this Special Study. Please see Enforcement section (below). Reference point is 100%.

SAMM 4: Percent of Complaints and Referrals responded to within one day – Imminent Danger.

VIDOSH had three (3) imminent danger complaint/referrals during FY 2009 and responded to only one (1) within 1 day, a 33% rate. Reference point is 100%.

SAMM 5: Number of denials where entry not obtained.

VIDOSH Safety and Health had no denials of entry during the evaluation period.

SAMM 6: Percent of S/W/R Violations verified.

During FY 2009, the percentage of serious, willful, repeat violations cited was verified as abated within the abatement date plus 30 days was 0% (0 SWR out of 105). Reference point is 100%.

SAMM 7: Average number of calendar days from opening conference to Citation Issued.

VIDOSH citation lapse time for FY 2009 was calculated at 68.67 days for safety and 115.60 days for health. VIDOSH is well above the national averages of 43.7 days for safety and 57.3 days for health.

SAMM 8: Percent of Programmed Inspections with S/W/R Violations.

The percent of programmed inspections with S/W/R violations national averages are 87.5% for safety and 90.48% for health. Both of these are well above the national average of 58.5% for safety and 51.1% for health.

SAMM 9: Average Violations per Inspection with Violations.

The average violations per inspection with violations, performance indicators for FY 2009 showed an average of 3.42 S/W/R and .87 "other" VIDOSH's whole program for S/W/R average is well above the national average of 2.1 for S/W/R and slightly below the national average of 1.2 for "other".

SAMM 10: Average Initial Penalty per Serious Violation (Private Sector Only).

The average initial penalty per serious violation in the private sector is not applicable to VIDOSH.

SAMM 11: Percent of Total Inspections per Violations (Public Sector Only). All inspections conducted by VIDOSH are in the public sector (101 out of 101).

SAMM 12: Percent Lapse Time from receipt of Contest to first level decision.

No data is reflected in the report since there were no contested cases during FY 2009.

SAMMs 13, 14, 15: **13)** Percent of 11c Investigations completed within 90 days. **14)** Percent 11c Complaints that are meritorious. **15)** Percent of meritorious 11c complaints that are settled.

VIDOSH investigated 1 discrimination complaint case during FY 2009 and this was not completed in 90 days. Reference point is 100%.

The single 11(c) case was coded as not being meritorious and there is no settlement reflected in SAMM #15. The National Average for such cases is 20.8%.

Mandated Activities Report for Consultation (MARC): OSHA was not able to use this report to evaluate consultation activities since VIDOSH did not complete any on-site consultation visit in the public sector during FY 2009.

VIDOSH reported that the program had initiated four (4) consultation visits for public sector employers in FY 2009 which is well below their projected goal of 25 visits. However, these four visits were never finalized and the required "Written Report to the Employer" was never issued. The staff consultant was reassigned to the Acting Director position when the Director resigned during FY 2009. The consultant was not able to complete the consultations. The MARC report was not able to be run since there was no data to compile.

V. BSE FINDINGS AND RECOMMENDATIONS

Complaints

In FY2006, VIDOSH adopted federal OSHA policies and procedures on handling complaints. As per OSHA CPL - 02-00-140 (Complaint Policies and Procedures), inspections resulting from formal complaints of serious hazards will normally be

initiated within five working days. A total of 20 complaints were received by VIDOSH in FY 2009. The special study team reviewed a total of 11 complaints case files. Five (45%) of the case files were not opened in a timely manner.

Following complaint inspections, complainants are mailed a letter informing them of the inspection results indicating whether or not citations were issued. The letter addresses each complaint item with reference to the citation(s) or sufficiently detailed explanation for why a citation was not issued. In 3 (27%) of the case files reviewed, evidence was not provided indicating that the complainant was notified of the inspection results. In addition, in 4 (36%) of the complaint case files reviewed, all of the complaint items were not addressed during the inspection.

Three of the complaint case files were safety inspections. Two of the case files were opened an average of 20 days after the complaint was received. Two of the case files did not contain proof of abatement and 1 case did not contain a signed complaint letter by complainant or a post inspection letter to the complainant. All of the safety complaint cases did not have evidence or documentation stating that the CSHO reviewed the OSHA 300 log information.

In one case file, the description of an incident indicates that 5 to 6 employees were on a scaffold at the time of the accident and a note stating that a 2 day hospitalization occurred but it is not clear if this was for one employee or for several. This may have been a Fatality/Catastrophe inspection and not a complaint inspection.

Eight of the complaint cases were health inspections. Three of the health cases did not address all of the complaint items during the inspection. One case had a missed opportunity to refer a case to the Discrimination Investigator and two cases had missed opportunities to conduct air sampling during the inspection. All of the health cases reviewed did not have evidence or documentation stating the CSHO reviewed the OSHA 300 log information.

Other issues that are not specific to complaint inspections (such as lack of prima facie documentation) are covered later in this document.

Recommendation 1: Implement internal control measures to ensure that complaint inspections are conducted in a timely manner.

Recommendation 2: Implement supervisory oversight to ensure that all complaint items are addressed during the inspection.

Fatalities

In FY 2009, there were no fatalities which occurred during the time frame in which this special study focused on. However, the audit team felt strongly that it was important to review at least one fatality case file which was settled during the fiscal year prior to the period being audited.

The fatality involved an electrocution of a worker while conducting power line work. The case was thoroughly documented and the appropriate next of kin letters and copies of the citations were sent to the victim's family. The unions participated throughout the inspection and were also given copies of the citations when they became available.

A settlement was reached on this case following a settlement conference with a hearing examiner where most of the citation items were withdrawn. This case demonstrates that VIDOL does have review procedures in place and should be followed for future cases, but there is also a need for safety and health training for attorneys and the hearing examiner involved as well as the contest process. The review also revealed a problem with the standards adoption process as this employer alleged that the cited standard was never adopted and incorporated to the VI Code and the citation item was dropped. Please see Developmental Steps (above).

Targeting/Inspections

In FY2009, VIDOSH conducted a total of 101 inspections with 46 (46%) opened as program planned inspections. VIDOSH focused its programmed inspections to reduce injuries, illnesses, and fatalities in certain focus areas. VIDOSH developed a new Strategic Plan that focused on three hazardous areas within the public sector. These focus areas include establishments in the public sector which have frequent Workers Compensation claims over the past three years and other locations within the public sector which have not been inspected within the last three years. The final focus area involves health inspections and the ability to address indoor air quality (IAQ) issues. VIDOSH did not adopt any Local Emphasis Programs (LEPs) or National Emphasis Programs (NEPs).

VIDOSH developed a targeting list based on the 3 criteria mentioned above. The scheduling plan to conduct program planned inspections used the VI Establishment Random List to establish a fair systematic enforcement approach. The team reviewed a total of 19 program planned inspection case files. Of the 19 case files that were reviewed, 6 (32%) were health cases and 13 (68%) were safety cases. There was no documentation in the case files stating the reason that they were conducting the inspection. The targeted strategic goals were not mentioned in the case file.

Violations Per Inspection

During FY 2009, VIDOSH issued a total 413 violations with 224 (55%) classified as serious, 0 (0%) classified as willful, 2 (.004%) classified as repeat, 57(14%) classified as other than serious, and 130 (31%) classified as failure to abate. Comparatively, VIDOSH percentage of violations classified as serious is slightly lower than the average of 56% for all public-sector only state plans (NY, NJ, V.I., CT)

Hazard Identification

In FY 2009, VIDOSH investigators conducted a total of 101 inspections which resulted in 413 violations identified and cited. Of the 35 cases subject to a comprehensive review, it is apparent that 8 (23%) of the case files had instances where hazards were not recognized and violations were not issued. Examples of these instances are stated under the "All apparent violations cited" under the Citations and Penalties section of this report.

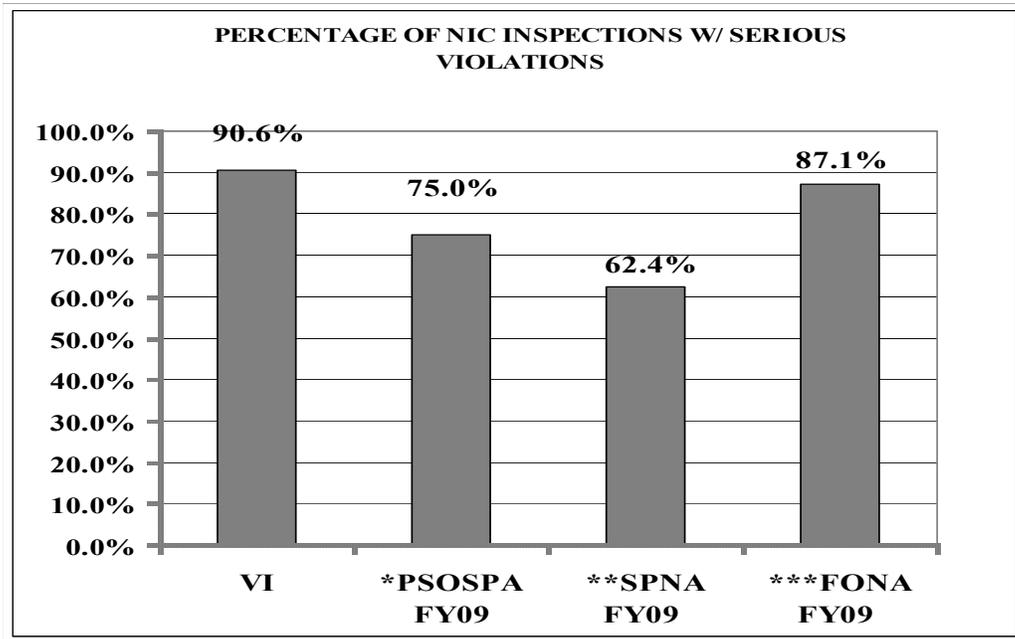
Violation Classification and Grouping

Reviewers determined that there were several instances where other-than-serious hazards were classified as serious. The majority of all serious violations cited were given the gravity and probability of Medium/Lesser. The most serious and likely injury to occur is not documented for each citation. The injuries and illness documented have a broad range of severity (i.e. cuts and bruises to entrapment and death). Specific examples of these items are located under the Citations and Penalties section under Appropriateness of Violation Classification portion of this report.

Documentation with the grouping of violations was appropriate and deemed similar to OSHA policy.

In-Compliance inspections

Six (4%) of the inspections conducted were in-compliance; fifty four percent of violations were cited serious. There are no in-compliance inspection areas of concern or recommendations requiring attention from the VIDOSH FY2009 activities evaluated.

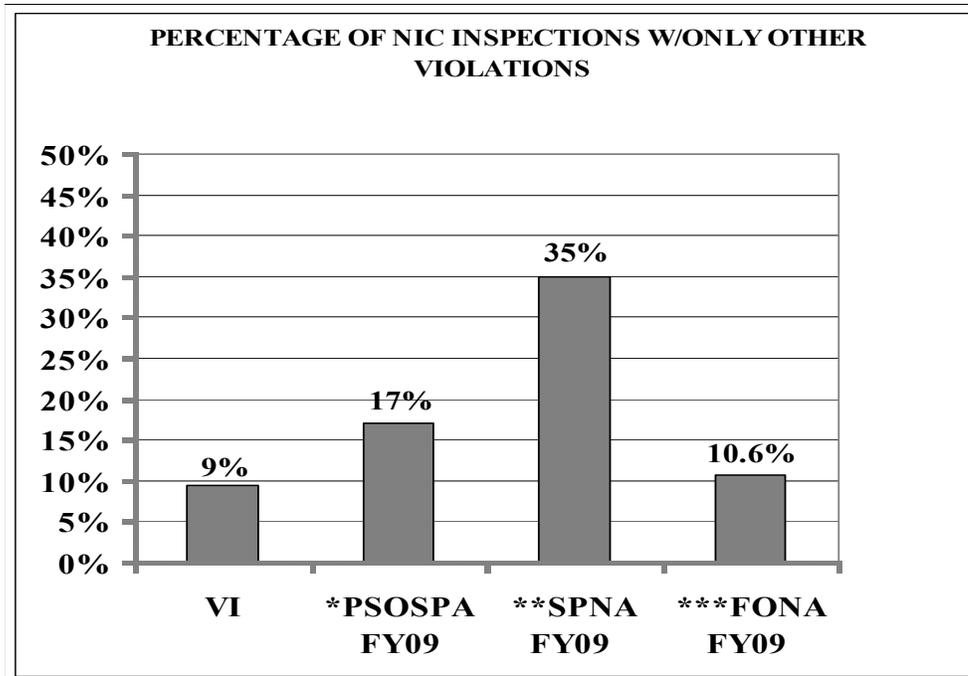


*Public Sector Only State Plans Average

**State Plan National Average

***Federal OSHA National Average

In FY 2009, VIDOSH had a percentage of Not In Compliance Inspections with serious violations of 90.6%. VIDOSH had a higher percentage when compared to PSOSPA at 75.0%, SPNA at 62.4% and FONA at 87.1%. VIDOSH has a high percent serious rate. This rate may be artificially high in that, case file review revealed that in many instances hazards not likely to result in serious injuries or illnesses were cited as serious violations.



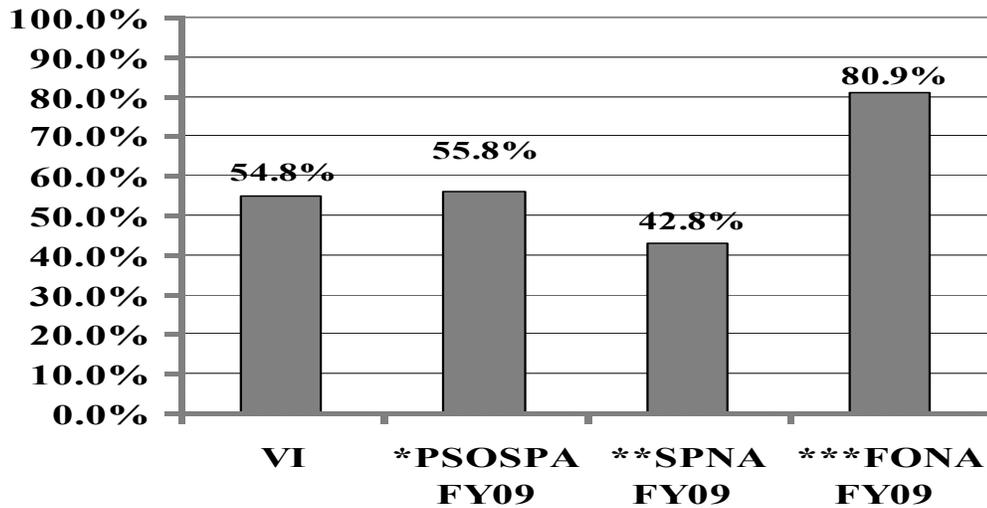
*Public Sector Only State Plans Average

**State Plan National Average

***Federal OSHA National Average

During FY 2009, VIDOSH had a percentage of Not In Compliance Inspections with only other than serious violations of 9%. VIDOSH had a lower percentage when compared to PSOSPA at 17.0%, SPNA at 35% and FONA at 10.6%. VIDOSH has a low percent of other than serious rate. This rate may be artificially low in that, case file review revealed that in many instances hazards not likely to result in serious injuries or illnesses were cited as serious violations.

**PERCENTAGE OF ALL VIOLATIONS
CITED SERIOUS, WILLFUL, REPEAT**



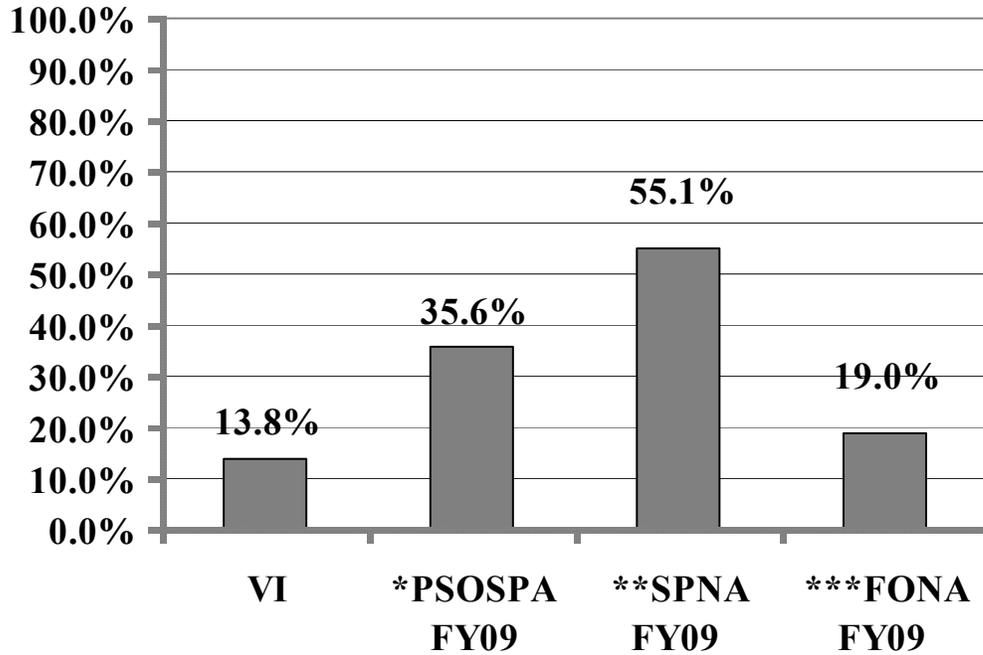
*Public Sector Only State Plans Average

**State Plan National Average

***Federal OSHA National Average

Throughout FY 2009, VIDOSH's percentage of all violations cited as serious willful, and repeat was 54.8%. VIDOSH had a percent slightly lower than PSOSPA at 55.8% and higher than SPNA at 42.8%. VIDOSH's percent was lower than the FONA at 80.9%. This rate is lower than FONA due to the fact that VIDOSH cited 0 willful and 2 repeats during FY09.

PERCENTAGE OF ALL VIOLATIONS CITED AS OTHER THAN SERIOUS

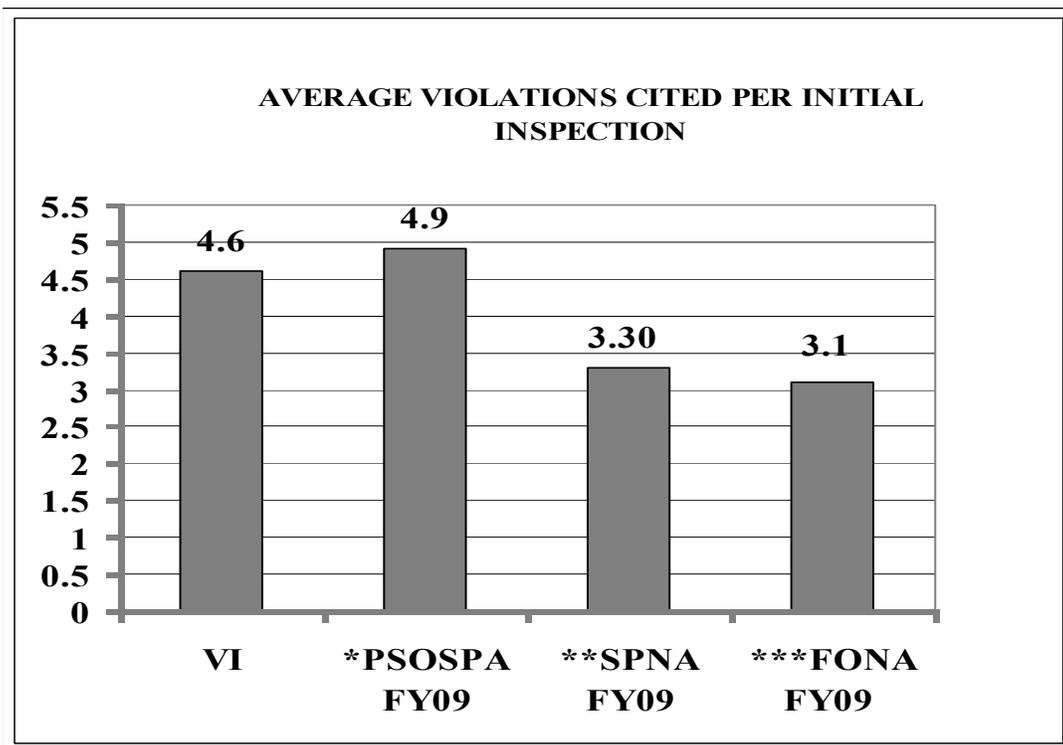


*Public Sector Only State Plans Average

**State Plan National Average

***Federal OSHA National Average

During FY 2009, VIDOSH's percentage of all violations cited as other than serious was 13.8%. VIDOSH had a rate lower than PSOSPA at 35.6%, SPNA at 55.1%, and FONA at 19.0%. This rate may be artificial in that, case file review revealed that in many instances hazards not likely to result in serious injuries or illnesses were cited as serious violations, thus falsely deflating the number of other than serious hazards cited.

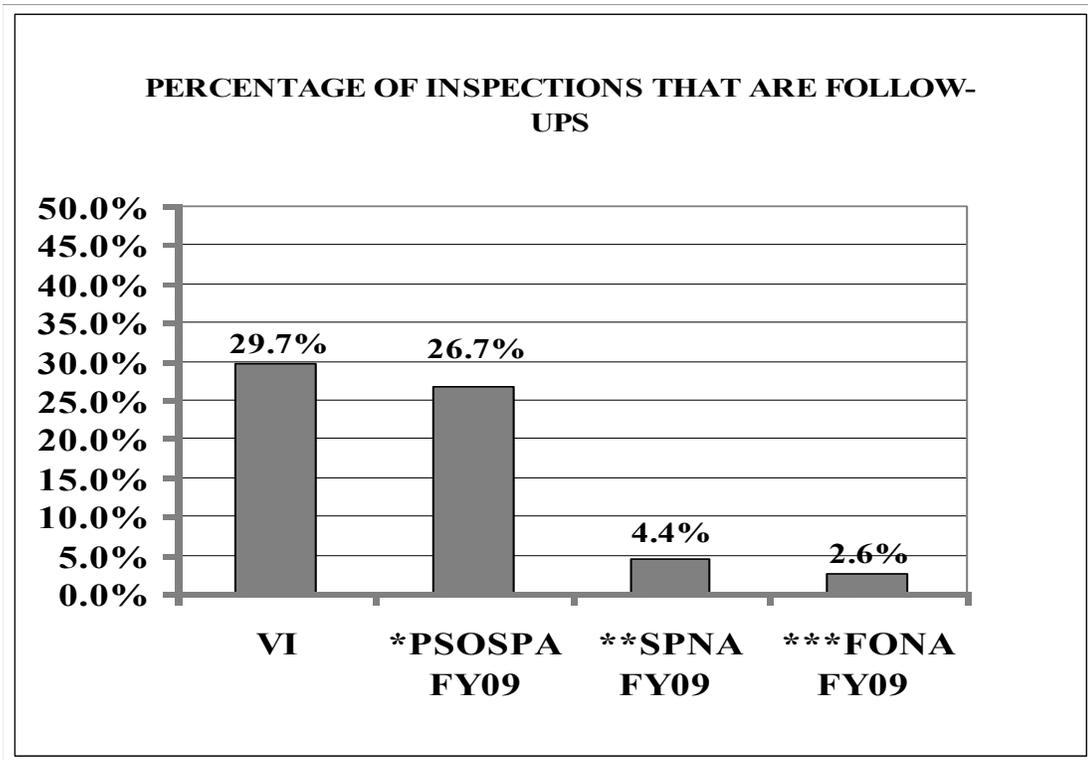


*Public Sector Only State Plans Average

**State Plan National Average

***Federal OSHA National Average

In FY 2009, VIDOSH's average violations cited per initial inspection was 4.6 violations per inspection. VIDOSH had a lower average than PSOSPA at 4.9 violations per inspection, but was higher than SPNA at 3.3 and FONA at 3.1 violations per inspection.



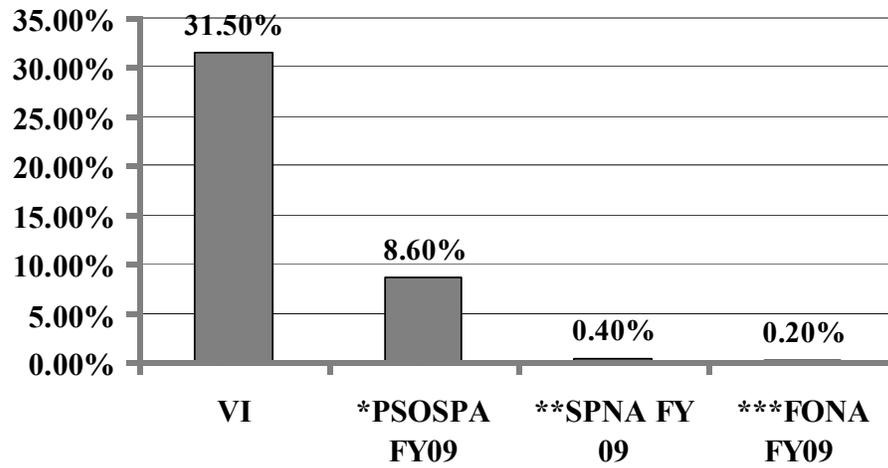
*Public Sector Only State Plans Average

**State Plan National Average

***Federal OSHA National Average

Throughout FY 2009, VIDOSH's percent inspections that were follow ups were 29.7%. As compared to SPNA 4.4% and FONA 2.6%, VIDOSH was significantly higher, whereas it was right in line with PSOSPA at 26.7%.

**PERCENTAGE OF ALL VIOLATIONS CITED
FAILURE-TO-ABATE**



*Public Sector Only State Plans Average

**State Plan National Average

***Federal OSHA National Average

During FY09, VIDOSH had a significantly higher percentage of violations that were failure to abate, at 31.5%, when compared to PSOPA at 8.6%, SPNA at 0.4% and FONA at 0.2%. It is apparent that VIDOSH attempted to use this tool as a deterrent effect for employers who have not submitted abatement in a timely manner.

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

| | <i>Standard</i> | <i>Description</i> | <i>Total</i> |
|----|----------------------|--|--------------|
| 1 | 1910.022 <i>a</i> | <i>Housekeeping</i> | 42 |
| 2 | 1910.37 <i>b</i> | <i>Maintenance, safeguards and operational feature for exit routes</i> | 34 |
| 3 | 19101200 <i>e</i> | <i>Written Hazard Communication Program</i> | 33 |
| 4 | 19101200 <i>g</i> | <i>Material Safety Data Sheets</i> | 32 |
| 5 | 19101200 <i>h</i> | <i>Employee information and training</i> | 30 |
| 6 | 1910.303 <i>g</i> | <i>Guarding of live parts</i> | 29 |
| 7 | 1910.157 <i>c</i> | <i>Portable Fire Extinguishers</i> | 19 |
| 8 | 1910.157 <i>e</i> | <i>Inspection, maintenance and testing</i> | 19 |
| 9 | 1910.157 <i>g</i> | <i>Portable Fire Extinguishers training and education</i> | 19 |
| 10 | 1910.303 <i>f</i> | <i>Disconnecting means and surface</i> | 17 |

All State Plans Most Frequently Cited Standards – All Industries October 1, 2008 to September 30, 2009

| | <i>Standard</i> | <i>Description</i> | <i>Total</i> |
|---|--------------------|---|--------------|
| 1 | 1910.303 <i>b</i> | <i>Examination, installation and use of electrical equipment</i> | 575 |
| 2 | 1910.37 <i>b</i> | <i>Exit Routes - Lighting and marking must be adequate and appropriate.</i> | 451 |
| 3 | 1910.305 <i>b</i> | <i>Wiring methods, cabinets entering boxes, cabinets or fittings</i> | 416 |
| 4 | 1910.147 <i>c</i> | <i>Control of Hazardous Energy</i> | 395 |
| 5 | 1910.303 <i>g</i> | <i>Guarding of live parts</i> | 362 |
| 6 | 1910.1200 <i>e</i> | <i>Written Hazard Communication Program</i> | 342 |
| 7 | 1910.157 <i>e</i> | <i>Inspection, maintenance and testing</i> | 319 |
| 8 | 1910.132 <i>d</i> | <i>Hazard Assessment and Personal Protective Equipment selection</i> | 296 |

| | | | |
|----|------------|--|-----|
| 9 | 1910.37 a | Exit Routes - The danger to employees must be minimized. | 292 |
| 10 | 1910.303 f | Disconnecting means and surface | 279 |

In comparing the VIDOSH and State Plan Public Sector Only States (VI, NJ, NY, CT) top ten most frequently cited standards for all industries was 1910.37; maintenance, safeguards and operational feature for exit routes, are in the top two most cited for both. VIDOSH issued 34 violations for inadequate or inappropriate lighting or marking of exit signs or exit routes (1910.37(b)) with this also being the second most cited standard by Public Sector Only State Plans in FY 2009. VIDOSH most frequently cited standard is housekeeping (1910.22(a)), due in large part to mold issues being handled under this standard. The majority of the remaining VIDOSH most frequently cited standard included hazard communication and fire extinguisher violations which are also found in the Public Sector Only State Plan list as well. This comparison indicates overall VIDOSH and Public Sector Only State Plans are issuing citations for the top ten most frequently cited standards in all industries similarly.

Employee and Union Involvement.

VIDOSH's requirement for employee and union involvement refers to the adopted Federal OSHA's FIRM which references 1903.8(a). The 1903.8(a) standard states the following: Compliance Safety and Health Officers (CSHOs) shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Compliance Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Compliance Safety and Health Officer may permit additional employer representatives and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Compliance Safety and Health Officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.

A total of 35 inspections received a comprehensive review during this special study. Fourteen (40%) of these case files had either no mention of employee/union involvement or documentation of employee interview notes or both.

There were 19 health cases reviewed, in four (21%) of these case, evidence indicating that employees or union representatives that had involvement during the inspections was not present. Nine (47%) of the health cases had no documentation of employee interviews. There were other cases where CSHOs did an excellent job of obtaining signed statements from the employees. It is apparent that a training gap between CSHOs regarding documenting employee interviews and employee participation may exist.

There were 16 safety cases reviewed, in one (6%) of these cases, no evidence indicating that employees or union representatives were involved during the inspection. Six (38%) of the safety cases reviewed had no documentation of employee interviews. As with the health cases, there were other safety cases where CSHOs did an excellent job documenting employee interviews. It is apparent that the same training gap between safety CSHOs may exist.

Recommendation 3: 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.

Citations and Penalties

Adequate evidence to Support Violation

VIDOSH follows Federal OSHA's requirement for documenting violations which is found under Federal OSHA's FIRM in chapter III (Inspection Documentation). The CSHO is responsible for obtaining prima facie information in order to issue a legally defensible citation. Examples of prima facie information are as follows: documentation of an existing hazard, documentation of an employee exposed to said hazard, and documentation of employer knowledge of said hazard.

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. Nine (45%) cases lacked employee interview notes, 7 (35%) cases lacked documentation of employer knowledge, 2 (10%) cases lacked both employee interview notes and documentation of employee exposure and 2 (10%) cases lacked employee interview notes, and documentation of both employee exposure and employer knowledge. Without this documentation of employee exposure and employer knowledge it can not be determined whether (for example) other-than-serious violation should have been classified serious and or a violation should have been classified willful.

Five follow up inspections were reviewed during this audit. All of which did not have the previous inspection information contained in the case file. The previous inspections were filed under separate cover.

Recommendation 4: 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)

Appropriateness of Violation Classification

Thirty-one cases subject to comprehensive review had citations. In 19 (61%) of these cases, each violation was classified as Medium severity of injury. This seems to be highly unlikely due to the fact that the injuries and illnesses reported ranged from bruising (Low Severity or Other than serious) to death (High Severity injury).

Examples:

Health Cases:

A case in which violations were issued for dusty air conditioning units, dusty windows, musty odor, dusty wood, where the CSHO listed a wide range of injuries (i.e., smoke inhalation, cuts and bruises, hand injuries, broken bones and back injuries), and was cited as a serious violation. Typically, these conditions would be cited Other Than Serious, and documentation was not provided to support the Serious classification of the citation. Another citation within the same case file had a violation with an injury illness of an amputation and the severity of the serious violation was Medium. Typically, an amputation hazard should have a severity of High.

Two cases had recordkeeping violations which listed the most probable injury and illnesses as eye, respiratory, chemical burns, back injuries, broken bones, heat stress and dermatitis. This is not appropriate for a recordkeeping violation.

Housekeeping violations which involved blinds in disarray that may lead to unsanitary conditions and cause respiratory illnesses. These violations were classified as serious violations with a Medium severity, which stated injuries and illnesses ranging from cuts and bruises to death.

A case involved a citation for respirator protection against welding fumes which was classified as serious. There was no sampling information in the case file to support the cited item and the serious classification.

Safety Cases:

Three cases involved several serious violations classified with a Medium severity where entrapment and death were stated as the injury. Typically, these types of injuries would have a severity of High.

A case involved two citations that were issued for, a wet soggy hanging ceiling tile and a wet floor; both were classified as a serious violation with a Medium severity, with cuts and bruises stated for injuries.

All Apparent Violations Not Cited

In FY 2009, VIDOSH investigators conducted a total of 101 inspections which resulted in 413 violations identified and cited. Of the 35 cases subject to a comprehensive review, it is apparent that 8 (23%) of the case files had instances where hazards were not recognized and violations were not issued. The following are examples of the above:

One case file contained interviews where employees stated that they would use fire extinguishers in a fire situation and no training was provided by the employer. A potential fire extinguisher violation was missed.

Another case involved a CSHO who incorrectly cited several standards and missed some violations. The CSHO incorrectly cited a missing bench grinder guard under 1910.212 where it should have been cited under 1910.215 (abrasive wheel machinery standard.). Another incorrectly cited standard involves an aluminum extension ladder hazard being cited under the fixed ladder standard. The citation cited the 1910.27(d)(3) (fixed ladder standard) where it should have been cited under 1910.26 (portable metal ladders standard.). Employee interviews also indicated that hazard communication training was not provided and fork lifts were used to lift car engines out of vehicles instead of using a hoist. Citations were not issued in both of these instances.

A case involved a workplace, where blood borne pathogen hazards were likely, but there was no evidence in the field notes, narrative, etc. that any of the required elements of 1910.1030 were looked at by the CSHO. The field notes described "Hazardous waste 55 lb 2 boxes blood borne pathogens" without any additional mention of the hazard.

A case involved an accident which occurred on a scaffold of approximately 20 feet high. In the case file, there was a picture of the scaffold which was not fully planked and a top rail was missing. The field notes state that an employee was not wearing a harness. These conditions were not cited.

A separate case contained handwritten employee interview notes which were signed by the CSHO and exposed employee. The notes mention that the exposed employee is wearing a cartridge type respirator that he bought locally. There were no citations for lack of respirator program, medical surveillance, fit testing, training, proper selection of respirator, etc. issued.

Another case involved employees who were required to use fire extinguishers in the event of an incipient stage fire, according to the OSHA 1B. There is a lack of evidence in the case file indicating whether fire extinguisher training was conducted or even addressed, hence a possible missed violation.

Appropriate use of Willful and Repeat Violations

There were no willful citations issued during FY 2009. There was one case where the CSHO documented: "Employees have requested an eye wash station." The notes indicate that the employer was also aware of the need for an eye wash in the workplace. There are no signs that the CSHO asked why the employer did not provide the eye wash which could have led to a Willful violation.

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. Repeat violations are based on the inspection history of the employer and the similarity of violations that were issued during previous inspections. The repeat violation carries a stigma which acts as a deterrent. When conditions meet the repeat violation requirements and are not cited as such, the deterrent effect is lost.

Average Serious Penalties

VIDOSH has no first instance sanction penalty structure.

Recommendation 5: Provide additional training to all field staff to adequately classify violations with appropriate severity and probability of potential resulting injury.

Recommendation 6: 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.

Recommendation 7: Provide additional training to CSHOs and supervisors on the Willful and Repeat Violation Policy and Procedures.

Abatement

Federal OSHA's FIRM as adopted by VIDOSH, states that an abatement period shall be the shortest interval within which the employer can reasonably be expected to correct the violation. VIDOSH is responsible for obtaining abatement for all violations issued and documenting it in the case file.

A total of 59 total cases were reviewed for abatement, 48 (81%) of these cases did not have complete and adequate abatement. The review team noted major deficiencies related to VIDOSH obtaining abatement for cited hazards. It is apparent that VIDOSH does not obtain abatement verification and/or documentation from employers. When VIDOSH does get abatement information from employers, it does not address all cited items and often refers to action that will be taken in the future.

For basic violations that were found by CSHO (e.g. housekeeping, blocked exits), there was no attempt by the CSHO to get immediate abatement of these hazards. This is further compounded by long lapse times and lengthy abatement

periods on the citations (typically 60 days). For example, a case involved a serious citation for housekeeping which was issued approximately 3 ½ months after inspection was initiated with an abatement date of seven weeks after citation issuance. The abatement consisted of moving inappropriately stored boxes which could have been corrected during inspection.

Thirty-five additional case files were reviewed for sufficiency and timeliness of abatement; 15 (43%) of which had abatement dates which were excessive (in excess of 30 days).

One Petition of Modification of Abatement (PMA) was issued out of the 59 cases reviewed. The PMA was incomplete because it did not contain all the required information (i.e. addressing protection of employees in the interim and notification of employees). A separate case involved an employer who requested additional time and a PMA was not addressed in the case file.

Recommendation 8: 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:

- **Ensure appropriate abatement periods are assigned for unabated violations.**
- **Ensure that all abatement information satisfies the notice of violations prior to closing the case.**
- **For cases with CDI, ensure that the file documents the method of abatement and that the CSHO observed the abatement.**
- **Ensure that Failure To Abate notices are issued where appropriate.**
- **Provide training to staff on the Petitions for Modification of Abatement (PMA) policies and procedures.**

Settlement Review Procedures

Although no cases went through the review process in FY 2009 the study team did evaluate a fatality case which was settled in FY 2008. This case was appropriately handled and settled in front of a Hearing Examiner as per VIDOSH review procedures prior to litigation. The unions participated throughout the process. This demonstrates that VIDOSH does have review procedures in place that should also be followed for future cases. It was identified that there is a need for VODOL attorneys that are involved in this process to be provided safety and health training.

A small percentage of cases reviewed were settled through informal settlement process. There were 35 case files which underwent a comprehensive review; two (6%) of which were settled through informal conferences. One of the case files settled during an informal conference had sufficient documentation indicating the justification for amending the citation. Abatement dates were amended during the informal conference and were included as such in the Informal Settlement Agreement.

The other case which was involved with an informal conference had poor documentation of the informal conference notes. An item was withdrawn during the conference and there was no justification as to the reason why.

It is apparent that the overwhelming majority of cases do not go through a settlement process (i.e. informal conference, post contest meetings, etc.).

Recommendation 9: 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.

Recommendation 10: Relating to informal conferences, 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

Integrated Management Information System (IMIS) is the computer system used by the Occupational Safety and Health Administration (OSHA). IMIS was created to satisfy the automated data processing resources requirements of OSHA in accordance with the OSH Act of 1970. This system provides OSHA with information to monitor, assess, evaluate, and track the level and effectiveness of OSHA's enforcement, consultation, discrimination programs, and operations of the State Plan States and other Federal OSHA programs and initiatives.

IMIS is an on-line data entry and information retrieval system designed to collect, process, retrieve, and communicate penalty assessment, arbitration, and collection information regarding OSHA's inspections. This system is used to track penalties levied against employers who have violated the statutes of the Occupational Safety and Health Act of 1970.

As part of this Special Study, OSHA ran the numerous IMIS management reports on the Virgin Islands' NCR on March 16, 2010 and the findings are summarized below.

Rejected IMIS Forms:

At the time of the evaluation, 10 rejected IMIS forms were found (out of a total of 160 transmitted to the host computer). Some of these date from 2009. The VIDOSH staff is not correcting reject forms in a prompt fashion.

Draft IMIS Forms:

A total of 58 draft forms were found. The result of these conditions is that case data does not appear in standard reports and establishment searches (both internal and public)

NCR Maintenance:

Routine maintenance is being performed uniformly on the NCR. End-of-Day and Start-of-Day transmissions, as well as system backups, are being performed according to schedule.

Reports Management:

Major vulnerabilities/deficiencies were found in the management of IMIS reports, as follows:

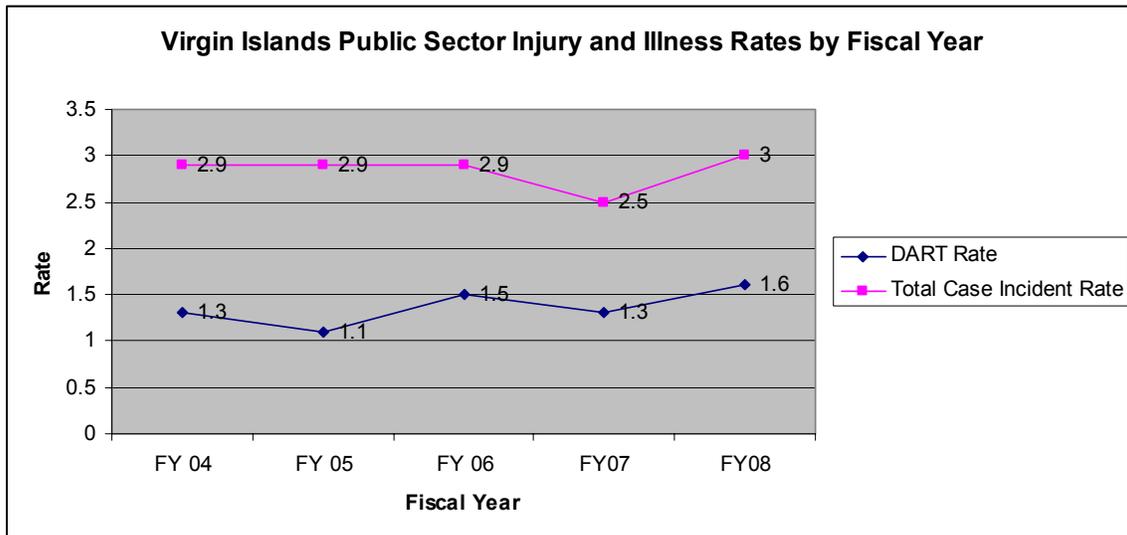
1. ***Debt Collection Report*** - A total of 26 cases are listed in which penalties were proposed, but not collected. VIDOSH does not have a system in place to collect penalties from employers who refuse to pay.
2. ***Violation Abatement Report*** - This report shows that there are 98 open cases with violation abatement pending. The 98 inspections represents a total of 792 cited hazards of which only 214 are showing as having been abated by the employer. This means 73% of the hazards cited in these open cases (dating from 2007 to present) remain uncorrected.
3. ***Citations Pending Report*** - A total of 12 inspections are listed as being open over 90 days without citations issued *yet (another 4 inspections were listed without an opening conference date)*. Three cases over 90 days were greater than the statutory limitation of 6-months in order to issue a citation. There are 7 cases that are close to this deadline when this report was run and exceeded 180 days at the conclusion of the Special

Study on-site visit in March 2010. Four of the cases have violations being proposed, according to the IMIS system.

4. **Open Inspection Report** - A total of 127 open cases are listed in this report. There was 95 open cases with abatement dates over two weeks past due.
5. **Employer Response Due (Non formal complaints)** – There were 12 complaints on this list with some dating back to February 18, 2009. This implies that the hazards being investigated in the non-formal complaint have not been corrected.

Recommendation 11: 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.

BLS Rates (Illness/Injury/Fatality)



During FY04 through FY08, VIDOSH's DART and Total Case Incident Rate has fluctuated.

Progress towards completing State Plan Developmental Steps

The established three-year developmental period expired in July 2006 and most of the steps have yet to be completed. All steps are required to be completed and submitted to OSHA prior to expiration of the developmental period.

The status of VIDOSH's developmental steps, as outlined in 29 CFR 1956.71, follows:

Developmental Step (a): Review and amend legislation and regulations to ensure proper statutory authority for "at least as effective" coverage of all public sectors employers and employees. The Plan will be revised to include a legal opinion that the converted plan meets the requirements of the OSH Act of 1970 and is consistent with the laws of the Virgin Islands. These actions are to be completed within one year of plan conversion approval.

Status: Submission of the proposed VIDOSH Act and VI's Code of Rules and Regulations (VIRR) was due on December 31, 2005. On June 28, 2008 in a regular session, the Legislature of the US Virgin Islands passed Bill 26-0243 to amend existent 24 V.I.C. Chapter 2, VI Occupational Safety and Health for a Public Employee Only State Plan under section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 667.

OSHA Findings: *This developmental step has been satisfactorily completed.*

Developmental Step (b): Review and amend legislation and regulations to reflect the more limited coverage and to be consistent with formal withdrawal of federal approval of the private sector portion of the State Plan, within one year of plan conversion approval.

Status: This developmental step has been satisfactorily completed. See Step (a) - above.

Developmental Step (c): Review statutory authority regarding standards adoption and take appropriate legislative or administrative action to assure consistency with 29 CFR Part 1953 and that all standards applicable to the public sector will be promulgated within six months of the promulgation date of new Federal OSHA Standards, within one year of plan conversion approval.

Status: The VI OSH Act 6846, as amended on July 19, 2006, provides statutes within the power and duties of the Commissioner of Labor for standards adoption, appropriate legislative and/or administrative actions. This is detailed in 24 V.I. C. Chapter 2, §36.

Developmental Step (d): Take appropriate legislative or administrative action to assure effective sanctions, either as monetary penalties, or an alternative mechanism for compelling abatement in the public sector, within one year of plan conversion approval.

Status: The VI OSH Act 6846 as amended on July 19, 2006, limited its applicability to public sector agencies only, and provided monetary penalties for Failure to Abate violations.. The post citation issuance review proceedings are handled through a Hearing Examiner with the right to appeal to the Commissioner of Labor and the V.I. Superior Court in lieu of the Review Commissioner as in the Federal Program, for appropriate legislative or administrative action alternative mechanism for compelling abatement statutes.

Recommendation 12: VIDOSH should ensure that their statutory authority to compel employers to abate hazards is exercised.

Developmental Step (e): Develop a five-year strategic plan and corresponding annual performance plan, within two years of plan conversion approval.

Status: 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.

Recommendation 13: VIDOSH should establish this baseline in FY 2010 and implement their new 5 year strategic plan.

Developmental Step (f): Develop and distribute a new State poster reflecting coverage of the public sector only, within one year of plan conversion approval.

Status: VIDOSH prepared, and has been using, the new state poster reflecting coverage of public-sector completed.

Developmental Step (g): Submit a revised state plan, in electronic format to the extent possible, reflecting coverage of the V.I. public employers and employees only, in accordance with 29 CFR 1956, within one year of plan conversion approval.

Status: 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.

Recommendation 14: 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.

Developmental Step (h): *Hire and provide appropriate training for public sector compliance staff, within one year of plan conversion approval.*

Status: This item has been completed satisfactorily. VIDOSH staff now attended approximately three OTI trainings per each fiscal year.

Developmental Step (i): *Develop a public sector consultation program, within two years of plan conversion approval.*

Status: VIDOSH has indicated that it plans to initiate the development of their public sector consultation program and attempted to start this program in FY 2009 without success. VIDOSH's Consultation position is currently frozen due to economic constraints. Also, the public-sector consultant was temporarily assigned to be the Acting Director of the Program. A permanent VIDOSH Director has been recently named and the estimated start date for this person is June 2010. This will allow for the consultant to return to this activity and resume efforts to provide these services to employers.

Recommendation 15: VIDOSH must ensure that a public-sector consultation program is operational, utilizing currently available 23(g) Federal funds and/or additional State funds.

Federal Program/State Initiated Changes Standards and Plan Changes

During FY 2009, Federal Standards were promulgated which required state intent. All responses by VIDOSH were received in a timely manner, as required.

Federal Program/State Initiated Changes and VI Response

Federal Program Change Summary for VI Report

During FY 2009 a total of six Federal Program Changes, (FPC) were issued. VIDOSH did not respond timely with their intent to adopt three of the six FPC's (see table below).

Federal Program Change Log (Excluding Standards)

| Date of Directive | Date of Intent due | Date of State Response | Directive Number | Display Title |
|--------------------------|---------------------------|-------------------------------|-----------------------------------|--|
| 09/30/2009 | 11/30/2009 | 11/09/2009 | CPL-02-09-08 2010 355 | Injury and Illness Recordkeeping National Emphasis Program |
| 09/30/2009 | 11/30/2009 | 11/09/2009 | CPL-02-01-046 2010 354 | Rescission of OSHAs de minimis policies relating to floors/nets and shear connectors |
| 08/18/2009 | 10/30/2009 | *11/09/2009 | CPL-03-00-010 2009 353 | NEP Petroleum Refineries - Extension of Time |
| 07/27/2009 | 09/28/2009 | *11/09/2009 | CPL-02(09-06) 2009 334 | NEP-PSM Covered Chemical Facilities |
| 07/20/2009 | 09/21/2009 | *11/09/2009 | CPL-2(09-05) 2009 333 | Site-Specific Targeting 2009 (SST-09) |
| 03/26/2009 | 06/01/2009 | 04/08/2009 | CPL-02-00-148 2009 332 | Field Operations Manual |

- Untimely Response

Standards Adoption

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.

- Final Rule - Updating OSHA Standards based on National Consensus Standards; Personal Protective Equipment 74 FR No. 173 (46350-46361), September 9, 2009, Parts: 4 OSH 1910, 12 OSH 1915-18.

Notice of Intent due date: 11/20/2009

Notice of Intent received: 11/09/2009

Adoption due date: 03/09/2010

Adoption Completed: 12/01/2009

- Final Rule - Electrical Standard; Clarifications; Corrections; 73FR, No. 210 (64202-64205) -October 29, 2008 Part: 4 OSH 1910.

Notice of Intent due date: 11/20/2009

Notice of Intent received: 11/09/2009

Adoption due date: 04/29/2009

Adoption Completed: 11/09/2009

- Final Rule - Longshoring and Maritime Terminals; Vertical Tandem Lifts; 73 FR, No. 238 (75246-75290), December 10, 2008 Parts 12 OSH 1915-18.

Notice of Intent due date: 02/17/2009

Notice of Intent received: 06/10/2009

Adoption due date: 06/10/2010

Adoption Completed: 12/01/2009

- Final Rule - Clarification of Employer Duty to Provide Personal Protective Equipment and Train Each Employee; 73 FR, No. 240 (75568-75589), December 12, 2008 Parts 4 OSH 1910, 10 OSH 1926, 12 OSH 1915-18.

Notice of Intent due date: 02/17/2009

Notice of Intent received: 11/09/2009

Adoption due date: 06/12/2009

Adoption Completed: 12/01/2009

Variiances

No permanent or temporary variance requests were received or granted by VIDOSH during FY2009.

Public Sector Consultation Activities

VIDOSH did not complete any public sector consultation visits during FY 2009 even though their FY 2009 Annual Performance Plan indicated that 25 were planned.

Discrimination Program:

VIDOSH operates its discrimination program pursuant to 24 V.I.C. § 40, Virgin Islands Code Annotated Title 24, Labor, Chapter 2, Occupational Safety and Health. VIDOSH has jurisdiction on whistleblower discrimination cases arising from public sector employees in the Virgin Islands.²

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 Staff appeared to refer cases to Federal OSHA, PROSHA, and the U.S. Virgin Islands Department of Labor, Division of Labor Relations.³ 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.

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.

Although VIDOSH covers all Public sector 11(c) complaints, there have been no cases since 1999. This shows a lack of understanding on jurisdiction, coverage, and basic screening requirements by staff.

Staff and investigator(s) have no access to IMIS Whistleblower Application. There is also no process for tracking case files. VIDOSH does not have a process for settlement. VIDOSH does not have templates prepared for docket letters,

² For the purposes of this report, we refer to 24 V.I.C. §40 complaints as "11(c)" since that is how VIDOSH refers to them.

³ The U.S. Virgin Islands is not an "at will" employment state and has robust employee protections contained at Title 24 Virgin Islands Code Sections 76 and 77. An employee may file a complaint for wrongful discharge if an employer discharges them for any reason other than reasons specifically allowed by law.

FIRS, and other necessary investigative documents and correspondence. VIDOSH does not have an 11(c) Health and Safety Poster, pamphlets, or fact sheet available for public sector agencies or complainants.

Staff stated that they had referred many cases to the Virgin Islands Department of Labor, Division of Labor Relations that should have been docketed as whistleblower complaints. Staff also stated that they did not understand that discrimination complaints could not be anonymous tips such as the CSHOs receive in health and safety cases.

Recommendation 16: VIDOSH needs 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.

Recommendation 17: 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.

Recommendation 18: 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.

Recommendation 19: 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.

Recommendation 20: 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.

Recommendation 21: 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.

Recommendation 22: 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.

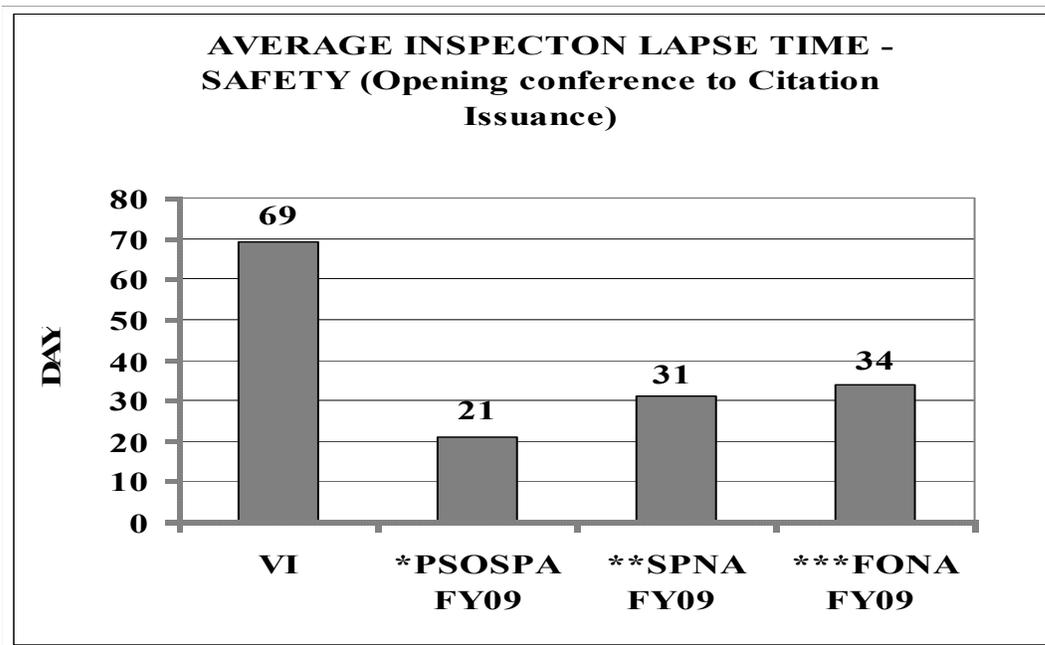
CASPAs:

No CASPAs were received relating to VIDOSH’s program during FY2009

Voluntary Compliance Programs:

VIDOSH does not have either a Voluntary Protection Program or a Safety and Health Achievement Recognition Program.

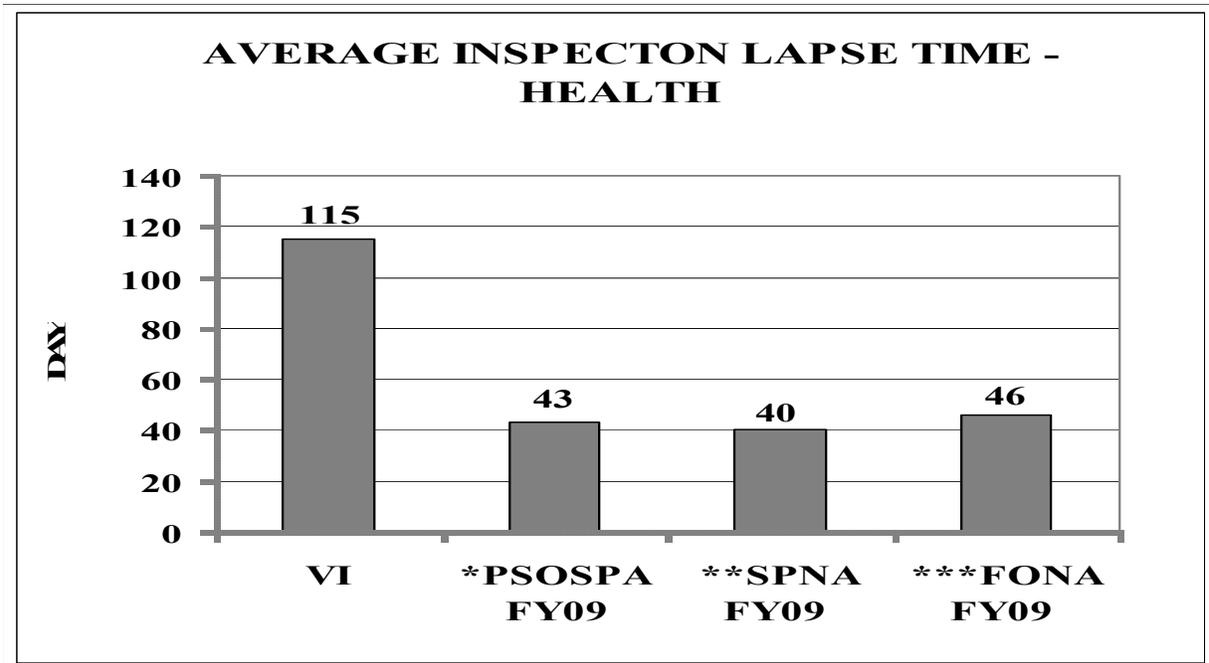
Program Administration



*Public Sector Only State Plans Average

**State Plan National Average

***Federal OSHA National Average



In comparison, VIDOSH safety lapse time for FY09 at 69 days is 228% above the PSOSPA of 21 days. 123% above the SPNA of 31 days and 103% above the FONA of 34 days.

- *Public Sector Only State Plans Average
- **State Plan National Average
- ***Federal OSHA National Average

In comparison, VIDOSH health lapse time for FY09 at 115 days is 167% above the PSOSPA of 43 days. In addition, the lapse time is 188% above the SPNA of 40 days and 150% above the FONA of 46 days.

Staffing Changes

In August 2009, the Director of the VIDOSH Program resigned to take another position. The Industrial Hygienist/Consultant has been serving as Acting Director since the former Director's departure.

CSHO Training

Training is essential for the VIDOSH program so they may continue to develop and improve their case file documentation. VIDOSH adopted the Initial Training Program for OSHA Compliance Personnel OSHA Instruction TED-01-00-018 effective date 08/06/08 and the VIDOSH document is still in the process of being finalized.

This instruction provides guidance and direction to those entities who adopt it concerning OSHA's policies and procedures for training of Compliance Safety and

Health Officers (CSHOs). It is essential that CSHOs have the requisite knowledge, skills, capability and varied professional backgrounds to accomplish OSHA's mission of protecting America's working men and women. In the instruction OSHA provided detailed guidance relating to mandatory training requirements for CSHOs. Under 29 CFR 1902.3(h) and 1956.10(g), States must have a sufficient number of adequately trained and qualified personnel for the enforcement of standards. States must have a formal training program for their compliance personnel which must be documented in their State plans and revised as necessary to reflect current practices. The training program must be at least as effective as that set out in this instruction and must be available for review.

Each newly-hired CSHO will be required to complete a minimum of eight courses offered by the OSHA Training Institute (OTI) during the first three years of his/her career as a CSHO. The order and sequence of these courses are as prescribed in this instruction.

The following findings were developed as a result of a detailed training records review.

VIDOSH and OSHA Requirement

During the first year of employment, each CSHO must take the OSHA Initial Compliance Course (#1000) and at least one OSHA Standards Courses (#1050, #1250 or #2000) delivered by the OSHA Training Institute as described below:

- a. #1050 Introduction to Safety Standards for Safety Officers (safety career path/safety specialists).
- b. #1250 Introduction to Health Standards for Industrial Hygienists (health career path/industrial hygienists).
- c. #2000 Construction Standards (construction career path/construction specialists).

B. The following courses are required to be taken after the CSHO has completed one of the Standards courses.

1. #1310 Investigative Interviewing Techniques.
2. #1410 Inspection Techniques and Legal Aspects.
3. #2450 Evaluation of Safety and Health Management Systems.
4. #1230 Accident Investigation.

C. At least one of the following courses is required to be taken during a CSHO's initial three year period to enhance multi-disciplinary competence.

1. Safety career path CSHOs will take at least one of the following:

- a. #1080 Health Hazard Awareness for Safety Officers
 - b. #1250 Introduction to Health Standards for Industrial Hygienists
 - c. #2000 Construction Standards
2. Health career path CSHOs will take at least one of the following:
- a. #1280 Safety Hazard Awareness for Industrial Hygienists
 - b. #1050 Introduction to Safety Standards for Safety Officers
 - c. #2000 Construction Standards
3. Construction career path CSHOs will take at least one of the following:
- a. #1280 Safety Hazard Awareness for Industrial Hygienists
 - b. #1050 Introduction to Safety Standards for Safety Officers
 - c. #1080 Health Hazard Awareness for Safety Officers
 - d. #1250 Introduction to Health Standards for Industrial Hygienists

D. The #8200 Incident Command System I-200 courses or equivalent training (i.e., course conducted by other governmental agencies or web-based course) must be taken during the initial three years of training; however, the specific sequence is not critical.

Status

VIDOSH is ensuring that its staff is being trained in accordance with TED 01-00-018 and the training that each CSHO has received is consistent with their longevity in the VIDOSH program.

| Course | Title | CSHO 1 | CSHO 2 | CSHO 3 | CSHO 4 | CSHO 5 |
|--------|--|--------|--------|--------|--------|--------|
| 1000 | Initial Compliance | X | X | X | X | X |
| 1050 | Safety Standards for Safety Specialist | | X | X | | X |
| 1080 | Health Hazards for Safety | | | X | | |
| 1230 | Accident Investigation | | X | X | | |
| 1250 | Health Standards for Industrial Hygienists | X | | | X | |
| 1280 | Safety Hazard Awareness | X | | | | |
| 1310 | Investigative Interviewing Techniques | X | X | | | |
| 1410 | Legal Aspects | X | X | X | | X |
| 1420 | Whistleblower | | | X | | |
| 2030 | Electrical | | X | | | |
| 2040 | Machine Guarding | | X | | | |
| 2360 | HVAC | | X | | | |
| 3370 | OSHA Instrumentation | | X | | | |

OSHA also notes that the public sector in the U.S. Virgin Islands includes employers involved in water and wastewater treatment activities at their worksites. These worksites can have highly hazardous chemicals in sufficient quantity to invoke the requirements of OSHA Standard 29 CFR 1910.119, "Process safety management of highly hazardous chemicals". On November 9, 2009, the USVI adopted OSHA DIRECTIVE NUMBER: 09-06 (CPL 02), "PSM Covered Chemical Facilities National Emphasis Program" which stipulates that inspections under this directive be lead by a Level 1 PSM specialist that has completed OSHA Training Institute's (OTI) Course 3300, Safety and Health in the Chemical Processing Industries, Course 3400, Hazard Analysis in the Chemical Processing Industries, and advanced training such as OTI Course 3430, Advanced PSM in the Chemical Industries or Course 3410, Advanced Process Safety Management. Currently VIDOSH does not have adequate trained staff to deal with these worksites.

Recommendation 23: 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"

Stakeholder and Public Contact

While developing this Federal Annual Monitoring and Evaluation (FAME) report and Baseline Special Evaluation of the VIDOSH Program, Federal OSHA took the opportunity to contact and interview key labor contacts in the Virgin Islands. The overall impressions following these interviews were that the VIDOSH program is not an effective program and does not meet the needs and expectations of the key players in the safety and health community. The following is a summary of the feedback received during these interviews.

**United Industrial, Service, Transportation, Professional & Government Workers of North America; SEAFARERS INTERNATIONAL UNION, AGLIWD/NMU
P.O. Box 7630
Sunny Isle
ST. CROIX, USVI 00823
TEL: 773-6055**

The Seafarers International local, representing public sector workers in several agencies, described the VIDOSH run program as being dysfunctional, non-functioning, and not effective. The Seafarer's have concerns that since VIDOSH inspects all government facilities, that the government is in essence inspecting

themselves, an obvious conflict of interest. This conflict of interest was described to be a situation "*like the rat guarding the cheese or the fox guarding the hen house*".

One example, provided to OSHA, related to a serious mold problem where VIDOSH cited the public employer for this issue but that the problem was never corrected. It was stated that VIDOSH does not even begin to touch the surface of the health and safety problems that their members are facing and that the system is not working. They believe that the employees at VIDOSH can't do the job. This view was not a criticism of the employees themselves but rather pointing out that the structure of the program is the underlying problem.

American Federation of Teachers - Local 1826
P.O. BOX 1530 - KINGSHILL, ST. CROIX
UNITED STATES VIRGIN ISLANDS 00851-1530
TEL: (340) 778-4414

The American Federation of Teachers Local 1826 stated that VIDOSH could do a lot more with their inspections, especially with the findings, conclusion, and correction (of hazards).

An incident that occurred about a year ago was described to OSHA. Hazardous conditions were cited and AFT asked VIDOSH for the information contained in the case file. The inspector told them that the VIDOSH supervisor would not allow the information to be released. AFT's perception was that because the incident involved the Department of Education, VIDOSH did not want to release it, since VIDOSH supports the Department of Education.

The AFT further stated that when the Union requests an inspection, VIDOSH is not responsive or timely. They indicated also that sometimes they get no response from VIDOSH. AFT is generally not happy with the way the program functions indicating that there are recurring issues and problems in the workplace that are not being addressed.

While they feel the VIDOSH staff is knowledgeable, they are not satisfied with the enforcement program overall. OSHA was told, "*They are not enforcing. The employer should follow and comply with standards. They don't pressure the employer to get correction.*" One example raised with OSHA relates to a school with ceiling tiles that were moldy and black where there was a related leak over electrical wires (and an accompanying terrible odor). The same issue went on for years without correction.

OSHA Comment – The comments made by the stakeholders are not inconsistent with what OSHA found during this Special Study. AFT raised the issue that VIDOSH did not provide information contained in an inspection case

file after they specifically requested it. Given the large number of open VIDOSH case files found during this Special Study, OSHA believes that the reason the requested information was not released to AFT was because the case was likely not closed out and therefore not releasable at the time of the AFT request.

Appendix A
FY 2009 Virgin Islands State Plan (VIDOSH)
Enhanced FAME Report

Findings and Recommendations Summary Chart

FY 2009 Virgin Islands State Plan (VIDOSH) Enhanced FAME Report prepared by Region II

Findings and Recommendations

Italics = paraphrase

| Findings - Enforcement | Recommendations |
|---|--|
| 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 - Enforcement | | 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 | 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. | 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. |
| Findings - Information Management | | Recommendations |
| 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. |
| Findings - Progress on Developmental Steps | | Recommendations |
| 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. |
| Findings - Whistleblower | | Recommendations |
| 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. |
| 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 | 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 |

| | Findings - Enforcement | Recommendations |
|----|--|--|
| | questions. One investigator has attended the Basic Discrimination Investigator's Course 1420 at OTI. | 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" |

Appendix B
FY 2009 Virgin Islands State Plan (VIDOSH)
Enhanced FAME Report

Enforcement Comparison Summary Chart

Virgin Islands (VIDOSH) FY 2009 Enforcement Activity

| | Virgin Islands (PEO) | State Plan Total | Federal OSHA |
|--|-------------------------|----------------------|----------------------|
| Total Inspections | 66 | 61,016 | 39,004 |
| Safety | 43 | 48,002 | 33,221 |
| % Safety | 65% | 79% | 85% |
| Health | 23 | 13,014 | 5,783 |
| % Health | 35% | 21% | 15% |
| Construction | 1 | 26,103 | 23,935 |
| % Construction | 2% | 43% | 61% |
| Public Sector | 66 | 7,749 | N/A |
| % Public Sector | 100% | 13% | N/A |
| Programmed | 28 | 39,538 | 24,316 |
| % Programmed | 42% | 65% | 62% |
| Complaint | 17 | 8,573 | 6,661 |
| % Complaint | 26% | 14% | 17% |
| Accident | - | 3,098 | 836 |
| Insp w/ Viols Cited | 30 | 37,978 | 27,165 |
| % Insp w/ Viols Cited (NIC) | 45% | 62% | 70% |
| % NIC w/ Serious Violations | 90% | 62% | 87% |
| Total Violations | 346 | 129,363 | 87,663 |
| Serious | 183 | 55,309 | 67,668 |
| % Serious | 53% | 43% | 77% |
| Willful | - | 171 | 401 |
| Repeat | 2 | 2,040 | 2,762 |
| Serious/Willful/Repeat | 185 | 57,520 | 70,831 |
| % S/W/R | 54% | 44% | 81% |
| Failure to Abate | 110 | 494 | 207 |
| Other than Serious | 51 | 71,336 | 16,615 |
| % Other | 15% | 55% | 19% |
| Avg # Violations/ Initial Inspection | 5.4 | 3.3 | 3.1 |
| Total Penalties | \$ 72,830 | \$ 60,556,670 | \$ 96,254,766 |
| Avg Current Penalty / Serious Violation | \$ 30.10 | \$ 800.40 | \$ 970.20 |
| Avg Current Penalty / Serious Viol- Private Sector Only | - | \$ 934.70 | \$ 977.50 |
| % Penalty Reduced | 0.0% | 51.9% | 43.7% |
| % Insp w/ Contested Viols | 0.0% | 13.0% | 7.0% |
| Avg Case Hrs/Insp- Safety | 30.5 | 15.7 | 17.7 |
| Avg Case Hrs/Insp- Health | 20.0 | 26.6 | 33.1 |
| Lapse Days Insp to Citation Issued- Safety | 23.5 | 31.6 | 34.3 |
| Lapse Days Insp to Citation Issued- Health | 84.9 | 40.3 | 46.7 |
| Open, Non-Contested Cases w/ Incomplete Abatement >60 days | 49 | 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 Virgin Islands State Plan (VIDOSH)
Enhanced FAME Report

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

Appendix D
FY 2009 Virgin Islands State Plan (VIDOSH)
Enhanced FAME Report

FY 2009 State Inspection Report (SIR)

OSHA REPORT
(RSOCOVERT)

U. S. D E P A R T M E N T O F L A B O R
O C C U P A T I O N A L S A F E T Y A N D H E A L T H A D M I N I S T R A T I O N

2009-03-24

IMIS REPORT
KEEP THIS PAGE WITH THIS REPORT
IT CONTAINS IMPORTANT INFORMATION ABOUT
THE WAY DATA WERE SELECTED

TYPE OF REPORT: INSPECTION

USER SELECTION NAME: VIDOSH8

DATE OF REPORT: 2009-03-24

REQUESTOR: OSH311

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

REPORTING LEVEL(S): 08 - STATE BY DIVISION FOR 18(B) STATE (ONLY)

OPENING CONFERENCE DATE: 01 OCT 2007 THRU 30 SEP 2008

REGION: 02 - V. ISLANDS CENTRAL

REGION 2 STATE 78 - VI

| (18B) STATE DATA ONLY | DIVISION DIVISION | | STATE TOTAL |
|--------------------------|-------------------|-------|----------------|
| | VI 10 | VI 20 | |
| TOTAL INSPECTIONS | 76 | 20 | 96 |
| RECORDS INSPECTIONS | 0 | 0 | 0 |
| INSPECTIONS BY CATEGORY | | | |
| SAFETY INSPECTIONS | 33 | 16 | 49 |
| HEALTH INSPECTIONS | 43 | 4 | 47 |
| INSPECTIONS BY TYPE | | | |
| UNPROGRAMMED | 29 | 18 | 47 |
| ACCIDENT | 0 | 0 | 0 |
| COMPLAINT | 16 | 8 | 24 |
| REFERRAL | 0 | 0 | 0 |
| MONITORING | 0 | 0 | 0 |
| VARIANCE | 0 | 0 | 0 |
| FOLLOW-UP | 13 | 10 | 23 |
| UNPROGRAMMED RELATED | 0 | 0 | 0 |
| OTHER | 0 | 0 | 0 |
| PROGRAMMED | 47 | 2 | 49 |
| PLANNED | 47 | 2 | 49 |
| PROGRAMMED RELATED | 0 | 0 | 0 |
| OTHER | 0 | 0 | 0 |
| OTHER | 0 | 0 | 0 |
| INSPECTIONS BY INDUSTRY | | | |
| CONSTRUCTION | 1 | 0 | 1 |
| MARITIME | 0 | 0 | 0 |
| MANUFACTURING | 0 | 0 | 0 |
| OTHER | 75 | 20 | 95 |
| INSPECTIONS BY OWNERSHIP | | | |
| PRIVATE SECTOR | 0 | 0 | 0 |
| PUBLIC SECTOR | 76 | 20 | 96 |
| FEDERAL AGENCY | 0 | 0 | 0 |

REGION 2 STATE 78 - VI

| (18B) STATE DATA ONLY | DIVISION DIVISION | | STATE TOTAL |
|--------------------------------|-------------------|-------|----------------|
| | VI 10 | VI 20 | |
| INSPECTION CLASSIFICATION | | | |
| SAFETY PLANNING GUIDE | 16 | 16 | 32 |
| HEALTH PLANNING GUIDE | 8 | 4 | 12 |
| LOCAL EMPHASIS PROGRAM | 0 | 0 | 0 |
| NATIONAL EMPHASIS PROGRAM | 0 | 0 | 0 |
| MIGRANT FARMWORKER CAMP | 0 | 0 | 0 |
| EMPLOYEE INFORMATION | | | |
| EMPLOYED IN ESTABLISHMENT | 6112 | 1114 | 7226 |
| COVERED BY INSPECTION | 3047 | 323 | 3370 |
| AVG CASE HRS PER INSP | | | |
| SAFETY | 35.2 | 27.1 | 32.1 |
| HEALTH | 25.0 | 11.6 | 23.7 |
| VIOLATIONS | | | |
| WILLFUL | 0 | 0 | 0 |
| REPEAT | 2 | 0 | 2 |
| SERIOUS | 219 | 16 | 235 |
| UNCLASSIFIED | 0 | 0 | 0 |
| OTHER | 65 | 15 | 80 |
| F-T-A | 56 | 15 | 71 |
| TOTAL | 342 | 46 | 388 |
| PENALTIES | | | |
| WILLFUL | 0 | 0 | 0 |
| REPEAT | 0 | 0 | 0 |
| SERIOUS | 0 | 10000 | 10000 |
| UNCLASSIFIED | 0 | 0 | 0 |
| OTHER | 0 | 0 | 0 |
| F-T-A | 23000 | 7000 | 30000 |
| TOTAL | 23000 | 17000 | 40000 |
| CONTESTED CASES | | | |
| INSPECTIONS CONTESTED | 1 | 0 | 1 |
| INSP W/CITATIONS CONTESTED (%) | 2.3 | 0.0 | 2.0 |

Appendix E
FY 2009 Virgin Islands State Plan (VIDOSH)
Enhanced FAME Report

FY 2009 State Activity Mandated Measures (SAMM)

U. S. DEPARTMENT OF LABOR
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMS)

MAR 23, 2009
 PAGE 1 OF 2

State: VIRGIN ISLANDS

RID: 0257800

| MEASURE | From: 10/01/2007 | | CURRENT | REFERENCE/STANDARD |
|---|------------------|--|------------|--|
| | To: 09/30/2008 | | FY-TO-DATE | |
| 1. Average number of days to initiate Complaint Inspections | 480 | | 73 | Negotiated fixed number for each State |
| | 22.85 | | 10.42 | |
| | 21 | | 7 | |
| 2. Average number of days to initiate Complaint Investigations | 41 | | 25 | Negotiated fixed number for each State |
| | 1.95 | | 4.16 | |
| | 21 | | 6 | |
| 3. Percent of Complaints where Complainants were notified on time | 20 | | 7 | 100% |
| | 100.00 | | 100.00 | |
| | 20 | | 7 | |
| 4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger | 0 | | 0 | 100% |
| | 0 | | 0 | |
| | 0 | | 0 | |
| 5. Number of Denials where entry not obtained | 0 | | 0 | 0 |
| | | | | |
| | | | | |
| 6. Percent of S/W/R Violations verified | | | | |
| | 0 | | 0 | |
| | 0 | | 0 | |
| Private | | | | 100% |
| | 0 | | 0 | |
| | 0 | | 0 | |
| Public | .00 | | .00 | 100% |
| | 104 | | 104 | |
| | | | | |
| 7. Average number of calendar days from Opening Conference to Citation Issue | | | | |

| | | | | |
|--------|-------|--------|---------|------------------------|
| | 783 | 1141 | 2468275 | |
| Safety | 27.00 | 142.62 | 45.5 | National Data (1 year) |
| | 29 | 8 | 54228 | |
| | 1216 | 2390 | 672153 | |
| Health | 60.80 | 132.77 | 58.7 | National Data (1 year) |
| | 20 | 18 | 11454 | |

*DOSH

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

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

MAR 23, 2009
 PAGE 2 OF 2

State: VIRGIN ISLANDS

RID: 0257800

From: 10/01/2007 CURRENT
 To: 09/30/2008 FY-TO-DATE REFERENCE/STANDARD

| MEASURE | From: 10/01/2007 | CURRENT | REFERENCE/STANDARD |
|---|------------------|------------|--|
| | To: 09/30/2008 | FY-TO-DATE | |
| 8. Percent of Programmed Inspections with S/W/R Violations | | | |
| | 19 | 2 | 88730 |
| Safety | 82.61 | 100.00 | 58.9 National Data (3 years) |
| | 23 | 2 | 150679 |
| | 8 | 13 | 10934 |
| Health | 100.00 | 92.86 | 51.3 National Data (3 years) |
| | 8 | 14 | 21297 |
| 9. Average Violations per Inspection with Vioations | | | |
| | 237 | 89 | 415902 |
| S/W/R | 4.83 | 3.42 | 2.1 National Data (3 years) |
| | 49 | 26 | 198063 |
| | 80 | 13 | 242376 |
| Other | 1.63 | .50 | 1.2 National Data (3 years) |
| | 49 | 26 | 198063 |
| 10. Average Initial Penalty per Serious Violation (Private Sector Only) | | | |
| | 0 | 0 | 485459743 |
| | | | 1330.6 National Data (3 years) |
| | 0 | 0 | 364854 |
| 11. Percent of Total Inspections in Public Sector | | | |
| | 96 | 20 | 198 |
| | 100.00 | 100.00 | 100.0 Data for this State (3 years) |
| | 96 | 20 | 198 |
| 12. Average lapse time from receipt of Contest to first level decision | | | |
| | 0 | 0 | 4432495 |
| | | | 247.0 National Data (3 years) |
| | 0 | 0 | 17942 |
| 13. Percent of 11c Investigations | | | |
| | 0 | 0 | 100% |

| | | | | |
|--|---|---|------|-------------------------|
| Completed within 90 days | 0 | 0 | | |
| 14. Percent of 11c Complaints that are Meritorious | 0 | 0 | 1507 | |
| | | | 20.7 | National Data (3 years) |
| | 0 | 0 | 7277 | |
| 15. Percent of Meritorious 11c Complaints that are Settled | 0 | 0 | 1296 | |
| | | | 86.0 | National Data (3 years) |
| | 0 | 0 | 1507 | |

*DOSH

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION