

**Vermont 23(g) Program (VOSHA)
FY 2009 Enhanced FAME Report
Final Corrective Action Plan**

Note: The **Status** of all Action Plan items is subject to further Federal review and monitoring. Documentation of completion of training and of any policy changes must be submitted for Regional review.

***Finding #1.** Nine out of 19 State Activity Mandated Measures (SAMM) standards were not met – % of complaints/referrals responded to within one day (imminent danger); % of S/W/R violations verified (private and public); average no. of calendar days from opening conference to citation issuance; average violations per inspections with violations (S/W/R and other-than-serious); average initial penalty per serious violation-private sector only; % of total inspections in the public sector; and % of 11(c) investigations completed within 90 days.*

Note: % of S/W/R violations verified (private and public) is counted as two measures—one for the private sector and the other for the public sector. Average violations per inspections with violations is also counted as two measures (S/W/R and other-than-serious).

Recommendation #1: We strongly recommend that VOSHA improve its performance with respect to the nine standards of the SAMM report that have not been met.

STATE RESPONSE: VOSHA will work to improve its performance on the SAMM measures that it did not meet. Since The EFAME has been issued, VOSHA has developed a case file checklist for use by managers and CSHOs to ensure that case files are properly organized and that they contain all required information, documents, and forms.

(1) For SAMM #4 (Percent of complaints and referrals responded to in 1 day – Imminent Danger), VOSHA incorrectly classified some complaints as imminent danger in FY2009.

(2-3) For SAMM #6 (Percent of S/W/R violations verified), VOSHA will implement a system for tracking employer progress in abating violations by January 31, 2011. On a weekly basis, VOSHA managers (or CSHOs) will review case files with open abatements and contact the employers to remind them of their abatement due dates. If the employer indicates that the violations have been abated, VOSHA will remind them of their obligation to provide proper documentation of abatement (if they have not already done so). In addition, VOSHA will take the actions described under Action Plan.

(4) For SAMM #7 (Average number of calendar days from opening conference to citation issuance – health), VOSHA will take the actions described below under Action Plan.

(5-6) For SAMM # 9 (Average violations per inspection with violations S/W/R and OTS), VOSHA will take the actions described below under Action Plan.

(7) For SAMM #10 (Average initial penalty per serious violation – private sector), effective October 1, 2009, VOSHA implemented suggestions provided by the Region in

a previous audit. As a result, VOSHA's average serious penalty per serious violation has increased to \$1, 065. VOSHA will take the actions described below under Action Plan.

(8) For SAMM #11 (Percent of total inspections in the public sector), this measure fluctuates from year to year and is based on a running three year average. The SAMM for FY 2010 shows Vermont's percentage of Public Sector inspections is 9.32% with a reference/standard of 9.3%.

(9) For SAMM #13 (Percent of 11 (c) investigations completed in 90 days), VOSHA conducted five discrimination investigations in FY 2009 and they all were closed in less than 90 days. During this period of time, VOSHA was incorrectly using enforcement forms to open discrimination investigations. As a result, these cases were erroneously duplicated in the IMIS system.

In FY2009, VOSHA had only one CSHO who was qualified to conduct 11(c) investigations, and due to medical issues, this CSHO was available for only 6 months of the fiscal year. Another CSHO completed 11(c) training at OTI during FY2009, and worked with the more experienced CSHO, when available, to gain experience. However, this newly trained CSHO did not have the expertise too conduct these 11(c) investigations on his own.

ACTION PLAN:

VOSHA will run monthly IMIS reports, including the SAMM, to monitor its performance. If performance measures are not met, the manager will meet with CSHOs to analyze the data and take corrective measures immediately to resolve the issues that are causing SAMM deficiencies.

VOSHA conducted training on the FOM, Chapter 4 (Violations), at the mandatory staff meeting in November 2010, and will conduct training on Chapter 6 (Penalties and Debt Collection), at the mandatory staff meeting in January 2011. VOSHA has documented that all CSHOs completed the November 2010 training and will document that all CSHOs complete the January 2011 training.

VOSHA will use the case file checklist to ensure that CSHOs conduct inspections in accordance with FOM requirements and that all case files are properly organized and contain all required forms and documentation. On a quarterly basis, the VOSHA manager will randomly select and review 10 percent of each CSHO's inspection case files to ensure compliance with all inspection procedures and that case files are properly organized and contain all required documentation, etc. The VOSHA manager will discuss the outcome of the case file review with the Region during the quarterly meetings.

EXPECTED OUTCOME/DUE DATE: By the end of FY2011, VOSHA's performance on the nine SAMM measures that were not met will show improvement over FY2010 results.

Finding #2. State Indicator Report (SIR) standards were not met – private sector serious safety/health violations; private sector average penalty for other-than-serious safety/health violations; private sector safety inspections/100 hrs.; private sector penalty retention; % of violations reclassified; and % of penalty retention.

Recommendation #2. We strongly recommend that VOSHA improve its performance with respect to the eight standards of the SIR report that have not been met.

STATE RESPONSE: VOSHA will work to improve its performance on all SIR measures that it did not meet.

For the following SIR measures, VOSHA will take the action described below under Action Plan.

C.3.A. Private Sector Serious Safety Violations

C.3.B. Private Sector Serious Health Violations

C.5.A. Private Sector Average Penalty for Other-than-Serious Safety Violations

C.5.B. Private Sector Average Penalty for Other-than-Serious Health Violations

C.6.A Private Sector Safety Inspections Per 100 Hours: VOSHA is concerned with the accuracy of the data used in this measure, and is working with the OSHA IT Helpdesk to determine the cause of the inaccuracies. Once problems with the data are resolved, the SIR will reflect that VOSHA has met the standard. VOSHA anticipates resolving this issue with the OSHA Helpdesk by December 31, 2010. VOSHA will discuss the results of its efforts to resolve these data issues with the Region during the first quarterly meeting.

C.9. Private Sector Penalty Retention: VOSHA has implemented a policy to retain at least 60% of its assessed penalties at informal conferences, and will take the actions described below under Action Plan.

E.2. Percent of Violations Reclassified (Review Procedures)

E.3. Percent of Penalty Retention (Review Procedures)

These two measures have been corrected in FY 2010. Results for FY2010 show that only 4.2% of the violations were reclassified and 59.6% of the penalties were retained. This compares to the Federal rate of 11.7% of violations reclassified and 58.1% of penalties retained. VOSHA will continue to monitor this measure using the quarterly SIR reports.

Action Plan:

VOSHA will review the SIR report on a quarterly basis. If performance measures are not met, the manager will meet with CSHOs to analyze the SIR data and take action immediately to correct problems that are causing SIR deficiencies.

VOSHA conducted training on the FOM, Chapter 4 (Violations), at the mandatory staff meeting in November 2010, and will conduct training on Chapter 6 (Penalties and Debt Collection), at the mandatory staff meeting in January 2011. VOSHA has documented that all CSHOs completed the November 2010 training and will document that all CSHOs complete the January 2011 training.

VOSHA will use the case file checklist to ensure that CSHOs conduct inspections in accordance with FOM requirements and that all case files are properly organized and

contain all required forms and documentation. On a quarterly basis, the VOSHA manager will randomly select and review 10 percent of each CSHO's inspection case files to ensure compliance with all inspection procedures and that case files are properly organized and contain all required documentation, etc. The manager will ensure that CSHOs correct any case file deficiencies identified during this review. The VOSHA manager will document his findings and discuss them with the Region during the quarterly meetings.

EXPECTED OUTCOME/DUE DATE: By the end of FY2011, VOSHA's performance on all SIR measures that were not met will show improvement over FY2010 results.

Finding #3. *Based on statistical comparison of enforcement performance with other State Plans and Federal OSHA, VT's average violations per initial inspection and average current penalty per serious violation marked below the data for all State Plans and Federal OSHA.*

Recommendation #3. We recommend that VOSHA improve its performance with respect to these averages in order to come more into line with the Federal system.

STATE RESPONSE: VOSHA will continue to work to bring the average number of violations closer to the reference standard. While this measure is below Federal OSHA's average, VOSHA's performance on SAMM 8 (Percent of Programmed Inspections with S/W/R Violations) is 18% higher for safety and 3% higher for health.

In response to a previous audit conducted by Region I, VOSHA has mandated that violation criteria be properly evaluated and assessed to address OSHA's concerns. The average initial penalty is now \$1,065. VOSHA managers will review the appropriate FOM chapters with staff and continue to review all penalty assessment to ensure compliance.

ACTION PLAN:

Since the EFAME was issued, VOSHA managers have been ensuring that all penalties are assessed in accordance with the FOM, Chapter 6, Penalties and Debt Collection. VOSHA managers closely review assessments of severity and probability before citations are issued.

VOSHA will also run IMIS reports to monitor its performance with respect to these averages on a monthly basis. If the averages are not in keeping with Federal OSHA's averages, the VOSHA manager will meet with the CSHOs to the correct problems that are causing the deficiencies.

VOSHA will use the case file checklist to ensure that CSHOs conduct inspections in accordance with FOM requirements and that all case files are properly organized and contain all required forms and documentation. On a quarterly basis, the VOSHA managers will randomly select and review 10 percent of each CSHO's inspection case files to ensure compliance with all inspection procedures and that case files are properly organized and contain all required documentation, etc. The VOSHA manager will also verify that all probability and severity assessments are accurate and that penalty adjustment factors are properly assessed. The manager will ensure that CSHOs correct any case file deficiencies identified during this review. The VOSHA manager will document his findings and discuss them with the Region during the quarterly meetings.

EXPECTED OUTCOME/DUE DATE: By 9/30/2011, VOSHA's averages for violations per initial inspection and current penalty per serious violation will be more closely aligned with the Federal system.

Finding #4. Case file deficiencies included absence of CSHOs' field notes; inadequate documentation of abatement verification; and failure to document labor organization notification of the informal conference. The CSHOs were not meeting the FOM diary sheet requirements. Documents were not in the order established by Appendix C of ADM 03-01-005.

Recommendation #4. We recommend that all VOSHA staff members review and follow Appendix C of ADM 03-01-005, which provides detailed information regarding "Inspection Case File Organization." This directive provides detailed instructions about which materials should appear on the left of the case file and which materials should appear on the right side of the file, and the specific order in which these documents should be placed.

STATE RESPONSE: VOSHA has developed an electronic diary sheet so that CSHOs can record all contacts with the employer, employees or their representatives. Copies of these electronic diary sheets are also maintained in the case files. Also, case files contain documentation of abatement, and all field notes are placed and maintained in the case files as well as documentation of union notification of informal conference proceedings.

ACTION PLAN:

VOSHA will use the case file checklist to ensure that all CSHOs conduct inspections in accordance with all FOM requirements and that all case files are properly organized and contain all required forms and documentation. On a quarterly basis, the VOSHA manager will randomly select and review 10 percent of each CSHO's inspection case files to ensure compliance with all inspection procedures and that case files are properly organized and contain all required documentation. For example, the VOSHA manager will verify that diary sheets are updated and contain all pertinent information; and that all case files contain proper documentation in the form of CSHO field notes, union notification of informal conferences and abatement of violations. The manager will ensure that CSHOs correct any case file deficiencies identified during this review. The VOSHA manager will document his findings and discuss them with the Region during the quarterly meetings.

EXPECTED OUTCOME/DUE DATE: Case file deficiencies have been rectified. Region I will review case file organization during the next case file review (January 2011).

Region I note on Finding #4: For many years, VOSHA has had its own system in place for organizing inspection case files. This system is very similar to ADM 03-01-005, but specifies somewhat of a different order for placing documents and forms in the case files. Since VOSHA has implemented a case file checklist to ensure that all required documents and forms are contained in the case file, Region I will accept VOSHA's ordering system for case file documents.

Finding #5. The case file review found that in several instances the OSHA-7 Complaint Form was not contained in the case files. A few files did not contain copies of the letter sent to the complainant advising of the outcome of the inspection.

Recommendation #5. VOSHA must send all response letters to complainants advising them of the results of the inspections or investigations resulting from their complaints. In accordance with the FOM, the letters must include an appropriate response detailing the outcome of the inspection or investigation for each alleged complaint item.

STATE RESPONSE: VOSHA will ensure that all VOSHA-7 Complaint forms and response letters are placed in the case files.

ACTION PLAN:

VOSHA will use the case file checklist to ensure that all CSHOs conduct inspections in accordance with FOM requirements and that all case files are properly organized and contain all required forms and documentation. On a quarterly basis, the VOSHA manager will randomly select and review 10 percent of each CSHO's inspection case files to ensure compliance with all inspection procedures and that case files are properly organized and contain all required documentation, etc. The manager will ensure that CSHOs correct any case file deficiencies identified during this review. The VOSHA manager will document his findings and discuss them with the Region during the quarterly meetings.

EXPECTED OUTCOME/DUE DATE: Case file deficiencies will be rectified by January 2011. Region I will review case file organization during the next case file review (January 2011).

Finding #6. Fatality investigation case file:

(A) Discussions between CSHOs and supervisors regarding investigations were not well documented.

Recommendation: VOSHA must ensure that important discussions between CSHO's and supervisors regarding fatality investigations are documented in the case file diary sheet.

(B) The CSHO did not reconstruct the scene of the accident.

Recommendation: In addition to discussions between CSHOs and their supervisors, all information relevant to the fatality investigation must be documented in the case file diary sheet in accordance with the Field Operations Manual (FOM) (Chapter 5, Section X), which states that: "All case files shall contain an activity diary sheet, which is designed to provide a ready record and summary of all actions relating to a case. It will be used to document important events or actions related to the case, especially those not noted elsewhere in the case file"

(C) There was no evidence that an initial letter and a copy of the citations had been sent to the victim's family.

Recommendation: VOSHA must adhere to the FOM, Chapter 11, Section II.G. that discusses the requirements to follow with regard to contact with families of victims during an inspection.

(Other finding: the CSHO assessed the probability “lesser” when it should have been rated “greater”)

ACTION PLAN:

The VOSHA managers, in addition to a compliance officer with experience in conducting fatality investigations, will conduct an extensive review of the FOM, Chapter 11, Imminent Danger, Fatality, Catastrophe and Emergency Response, by December 31, 2010. By this date, VOSHA managers will also thoroughly review CPL-02-00-137 (Fatality/Catastrophe Investigation Procedures—April 14, 2005).

VOSHA will conduct training for all CSHOs on the FOM, Chapter 11, Imminent Danger, Fatality, Catastrophe and Emergency Response, at the mandatory staff meeting in March 2011. This training will also include a discussion of the requirements of CPL-02-00-137 (Fatality/Catastrophe Investigation Procedures—April 14, 2005). VOSHA will record attendance.

VOSHA will use the case file checklist to ensure that all CSHOs conduct inspections in accordance with FOM requirements and that all case files are properly organized and contain all required forms and documentation. On a quarterly basis, the VOSHA manager will randomly select and review 10 percent of each CSHO’s inspection case files to ensure compliance with all inspection procedures and that case files are properly organized and contain all required documentation, etc. For all fatality investigations, the VOSHA manager will ensure that: all discussions between CSHOs and supervisors regarding investigations are documented; the CSHO made notes that reconstructed the scene of the accident and that these notes are contained in the case file; evidence of an initial letter and a copy of the citations that have been sent to the family are contained in the case file; and that the probability was properly assessed as “greater.” The manager will ensure that CSHOs correct any case file deficiencies identified during this review. The VOSHA manager will document his findings and discuss them with the Region during the quarterly meetings.

EXPECTED OUTCOME/DUE DATE: All case file deficiencies related to fatality investigations have been rectified. Region I will review fatality case files during next case file review (January 2011).

***Finding #7.** VOSHA cited the incorrect standard (cited 1910.26(c) (2) (iv) but should have cited 1910.26(c) (3) (i)), and the case file did not contain notes reconstructing the scene of the accident.*

Recommendation #7. We recommend that VOSHA review and follow the FOM, Chapter 11, Section II.E.2., which discusses potential items to be documented in the case file, such as how and why the incident occurred; the physical layout of the worksite; sketches/drawings; measurements; video/audio/photos to identify sources; and whether the accident was work-related.

ACTION PLAN:

The VOSHA managers will conduct an extensive review of the FOM, Chapter 11, Imminent Danger, Fatality, Catastrophe and Emergency Response, by December 31, 2010.

VOSHA will conduct training for all CSHOs on the FOM, Chapter 11, Imminent Danger, Fatality, Catastrophe and Emergency Response, at the mandatory staff meeting in March 2011. VOSHA will record attendance.

On a quarterly basis, the VOSHA manager will randomly select and review 10 percent of each CSHO's inspection case files to ensure that all standards are cited properly by the CSHO. The manager will discuss any improper citations that he identifies with CSHO who performed the inspection. The VOSHA manager will also review all fatality case files to ensure that they contain notes that reconstruct the scene of the accident. The VOSHA manager will document his findings and discuss them with the Region during the quarterly meetings.

EXPECTED OUTCOME/DUE DATE: During the case file reviewed scheduled for January 2011, Region I will evaluate VOSHA's effectiveness in identifying violations and citing appropriate standards. Region I will also review any fatality investigations that have occurred to ensure that all documentation is included in the case file in accordance with the FOM's requirements.

Finding #8. *VOSHA's average of 2.4 violations cited per initial inspection is below the Federal OSHA average of 3.1 violations.*

Recommendation #8: VOSHA's average violations cited per inspection should increase to align with Federal OSHA's average of 3.1 per initial inspection.

STATE RESPONSE: While this measure is below Federal OSHA's average, VOSHA's percentages for SAMM 8 (Percent of Programmed Inspections with S/W/R Violations) are 18% higher for safety and 3% higher for health.

ACTION PLAN:

VOSHA conducted training on the FOM, Chapter 4, Violations, at the mandatory staff meeting in November 2010. VOSHA recorded attendance and ensured that all CSHOs completed the training.

VOSHA will use the case file checklist to ensure that all CSHOs conduct inspections in accordance with FOM requirements and that all case files are properly organized and contain all required forms and documentation. On a quarterly basis, the VOSHA manager will randomly select and review 10 percent of each CSHO's inspection case files to ensure compliance with all inspection procedures and that case files are properly organized and contain all required documentation, etc. The manager will ensure that CSHOs correct any case file deficiencies identified during this review. The VOSHA manager will document his findings and discuss them with the Region during the quarterly meetings.

EXPECTED OUTCOME/DUE DATE: In FY2011, VOSHA's average for violations cited per initial inspection will show improvement over the FY2010 average.

Finding #9. Case file review revealed several hazard identification issues: all apparent violations were not cited or some [standards] were misclassified in the citations sent to the employer (p.28).

Recommendation #9. VOSHA should review the pictures taken by CSHOs more closely and do more research and also should train and network with appropriate staff throughout region to improve hazard recognition and referencing of the correct standards when hazards are identified.

STATE RESPONSE: The issue of reviewing case file photographs was raised in the Region I voluntary audit of FY 2008 case files. As of October 1, 2009, all photographs are closely reviewed for additional hazards by the CSHO and by the VOSHA Compliance Chief and the VOSHA Director.

ACTION PLAN:

VOSHA will devote a portion of monthly staff meetings to training on standards and hazard recognition.

On a quarterly basis, the VOSHA manager will randomly select and review 10 percent of each CSHO's inspection case files to ensure proper hazard recognition and that standards are cited appropriately. The manager will discuss any improper standard citations that he identifies with the CSHO who conducted the inspection. The VOSHA manager will document his findings and discuss them with the Region during the quarterly meetings.

EXPECTED OUTCOME/DUE DATE: Region I will evaluate VOSHA's progress toward improving hazard recognition during its review of the program's case files in January 2011.

Finding #10. We found that CSHOs grouped serious violations that should not have been grouped, which also reduces penalties. Nine out of 137 (6.5%) serious violations were grouped as serious. Of these nine grouped citations, we found that four were grouped incorrectly.

Recommendation #10. To group serious violations appropriately, CSHOs must adhere to the guidelines established in the FOM for grouping. Chapter 4, Section X of the FOM lists the situations that normally call for grouping violations.

STATE RESPONSE: Although 6.5% of the violations reviewed were grouped, only four (3.5%) were cited as incorrectly grouped. These violations involved bench grinders and a pedestal grinder, and the CSHO grouped the work rest and tongue guard violations. Since the FOM states that violations may be grouped when they are so closely related that they constitute a single hazardous condition, the CSHO may not have grouped them improperly.

However, VOSHA will follow the action plan below to ensure that all CSHOs group violations in accordance with the FOM's requirements.

ACTION PLAN:

VOSHA conducted training on the FOM, Chapter 4, Violations, at the mandatory staff meeting in November 2010. VOSHA recorded attendance and ensured that all CSHOs completed the training.

VOSHA will use the case file checklist to ensure that all CSHOs conduct inspections in accordance with FOM requirements and that all case files are properly organized and contain all required forms and documentation. On a quarterly basis, the VOSHA manager will randomly select and review 10 percent of each CSHO's inspection case files to ensure compliance with all inspection procedures and that case files are properly organized and contain all required documentation, etc. The manager will ensure that all violations that have been grouped have been done so in accordance with the FOM's requirements. The manager will ensure that CSHOs correct any case file deficiencies identified during this review. The VOSHA manager will also document his findings and discuss them with the Region during the quarterly meetings.

EXPECTED OUTCOME/DUE DATE: As of the next case file review, which is scheduled for January 2011, VOSHA's case files will indicate that the program is properly grouping violations.

***Finding #11.** The [case file] review revealed that, in a number of cases, the CSHOs did not correctly assess the gravity of the violation, and erred on the side of assessing lower probability and severity than warranted, thus reducing the overall penalties.*

Recommendation #11. VOSHA must ensure that CSHOs use penalty calculations that conform to the FOM. The minimum and maximum penalties are discussed in Chapter 6.II.C. and D, respectively. Section III discusses the four factors to take into consideration: 1) The gravity of the violation; 2) Size of the employer's business; 3) The good faith of the employer; and 4) The employer's history of previous violations. VOSHA staff should also review the Gravity-Based Penalty (GBP) section in the FOM, which is discussed in Chapter 6.III, sections 3, 4 and 5.

STATE RESPONSE: VOSHA's average serious penalty is currently \$1,065. As part of its ongoing training, VOSHA will have CSHOs and managers review the appropriate sections of the FOM regarding penalty calculations and specifically, the gravity of violations.

ACTION PLAN:

VOSHA conducted training on the FOM, Chapter 4 (Violations), at the mandatory staff meeting in November 2010, and will conduct training on Chapter 6 (Penalties and Debt Collection), at the mandatory staff meeting in January 2011. VOSHA will provide attendance records to Region I upon request.

VOSHA will use the case file checklist to ensure that CSHOs conduct inspections in accordance with the FOM and that all case files are properly organized and contain all required forms and documentation. On a quarterly basis, the VOSHA manager will randomly select and review 10 percent of each CSHO's inspection case files to ensure compliance with all inspection procedures and that case files are properly organized and

contain all required documentation, etc. The VOSHA manager will ensure that CSHOs use penalty calculations in accordance with the FOM, and that the gravity has been properly assessed for each violation cited. The VOSHA manager will document his findings and discuss them with the Region during the quarterly meetings.

EXPECTED OUTCOME/DUE DATE: As of the next case file review, which is scheduled for January 2011, VOSHA's case files should indicate that the program is properly assessing the gravity of violations.

Finding #12. *[Case file reviews found that] a few violations were incorrectly classified as "other" rather than "serious."*

Recommendation #12. We recommend that VOSHA staff review Chapter 4, Section II of the FOM, which discusses the factors that determine whether a violation is to be classified as serious, and also Chapter 4, Section IV of the FOM, which discusses the factors that determine whether violations should be classified as other-than-serious.

STATE RESPONSE: VOSHA has instructed CSHOs about the appropriate classification of violations. Any violation that would normally be classified as serious now requires a complete explanation if it is being cited as OTS. As part of its ongoing training, VOSHA will have CSHOs and managers review the appropriate sections of the FOM regarding violation classification.

ACTION PLAN:

VOSHA conducted training on the FOM, Chapter 4 (Violations), at the mandatory staff meeting in November 2010. VOSHA recorded attendance and ensured that all CSHOs completed the training.

VOSHA will use the case file checklist to ensure that CSHOs conduct inspections in accordance with the FOM and that all case files are properly organized and contain all required forms and documentation. On a quarterly basis, the VOSHA manager will randomly select and review 10 percent of each CSHO's inspection case files to ensure compliance with all inspection procedures and that case files are properly organized and contain all required documentation, etc. The VOSHA manager will also ensure that violations are properly classified. The manager will ensure that CSHOs correct any case file deficiencies identified during this review. The VOSHA manager will document his findings and discuss them with the Region during the quarterly meetings.

EXPECTED OUTCOME/DUE DATE: As of the next case file review, which is scheduled for January 2011, VOSHA's case files should indicate that the program is properly classifying violations.

Finding #13. *Six of the case files involving unions did not contain any documentation to indicate that the union had been sent a copy of the citations. In addition, field notes, which likely contained the information obtained from the employees during interviews, were not kept in the files.*

Recommendation #13. VOSHA should adhere to the FOM, Chapter 5, Section XI.B.2, by sending a notification to the unions of the citations sent to the employer and retaining a copy of such in the case file. In addition, VOSHA should review the FOM, Chapter 5, Section XII.A.2 regarding maintaining field notes in the official case files.

STATE RESPONSE: VOSHA is ensuring that all case files contain documentation of union notification of citations. CSHOs are required to ensure that case files contain field notes.

ACTION PLAN:

VOSHA will conduct training on the FOM, Chapter 5, Case File Preparation, at the mandatory staff meeting in February 2011. VOSHA will record attendance.

VOSHA will use the case file checklist to ensure that CSHOs conduct inspections in accordance with the FOM and that all case files are properly organized and contain all required forms and documentation. On a quarterly basis, the VOSHA program manager (or compliance chief) will randomly select and review 10 percent of each CSHO's inspection case files to ensure compliance with all inspection procedures and that case files are properly organized and contain all required documentation, etc. The VOSHA manager will also ensure that all required documentation of union notification is contained in the case files. The manager will ensure that CSHOs correct any case file deficiencies identified during this review. The VOSHA manager will document his findings and discuss them with the Region during the quarterly meetings.

EXPECTED OUTCOME/DUE DATE: During the next onsite review (scheduled for January 2011), Region I will verify that CSHO field notes and documentation of union notification of citations are contained in the inspection case files.

***Finding #14.** We found some cases which lacked sufficient evidence to legally support the standards cited or the actions taken by VOSHA to delete citations. In other cases, the CSHO cited the incorrect standard or assessed the penalties incorrectly*

Recommendation #14. VOSHA must review and follow the FOM, Chapter 4, which discusses the evidence necessary to support violations.

STATE RESPONSE: Case file diaries now reflect the reasoning for any changes to the cited standards at the informal conference.

ACTION PLAN:

VOSHA conducted training on the FOM, Chapter 4 (Violations), at the mandatory staff meeting in November 2010. VOSHA recorded attendance and ensured that all CSHOs completed the training.

VOSHA will use the case file checklist to ensure that CSHOs conduct inspections in accordance with FOM requirements and that all case files are properly organized and contain all required forms and documentation. On a quarterly basis, the VOSHA manager will randomly select and review 10 percent of each CSHO's inspection case files to ensure compliance with all inspection procedures and that case files are properly organized and contain all required documentation, etc. The VOSHA manager will ensure that case file diaries reflect the reasoning for any changes to the cited standards at the informal conference. The manager will ensure that CSHOs correct any case file deficiencies identified during this review. The VOSHA manager will document his findings and discuss them with the Region during the quarterly meetings.

EXPECTED OUTCOME/DUE DATE: During the case file review in January 2011, Region I will evaluate VOSHA's progress toward ensuring that inspection case files contain the evidence necessary to support citations.

Finding #15. *The data in SAMM #6 shows that VOSHA fell short of the goal of 100 percent for verifying S/W/R violations abated in a timely manner, with a year-end percentage of 93.81 in the private sector and 93.55 percent in the public sector.*

Recommendation #15. We strongly recommend that VOSHA work harder to ensure timely abatement of serious, willful or repeat violations which helps ensure that workers are protected from injuries and illnesses.

ACTION PLAN:

VOSHA will implement a system for tracking employer progress in abating violations by January 31, 2011. On a weekly basis, VOSHA management (and/or CSHOs) will review case files with open abatements and contact with the employers to remind them of their abatement due dates. If the employer indicates that the violations have been abated, the VOSHA manager or CSHO will also remind them of their obligation to provide VOSHA with proper documentation of abatement (if they have not already done so).

VOSHA will run monthly IMIS reports, including the SAMM, to monitor its performance with respect to abatement activity. On a bi-weekly basis, VOSHA will run standard reports on complaint and referral tracking, unsatisfied activity, open inspections, citations pending and default violation abatement. The manager will ensure that CSHOs correct any case file deficiencies identified during this review.

EXPECTED OUTCOME/DUE DATE: On a quarterly basis, Region I will evaluate VOSHA's progress toward meeting the 100 percent standard for SAMM #6. In FY2011, VOSHA's performance with respect to this standard will show significant improvement over FY2010 results.

Finding #16. *Some of the case files we reviewed lacked proper evidence of abatement. (A)- (B) We found that 13 out of the 76 cases (17%) we reviewed did not contain adequate documentation of abatement. Some of these case files had been closed without any documentation of adequate proof of abatement. (C) In addition to providing written verification of hazard abatement, employers must also provide relevant documents, plans and progress reports." In some cases, we noted that the file did not contain such documents, such as written hazard communication programs, evidence of training, and emergency action plans, that were required to be provided by the employer.*

Recommendation #16(A) VOSHA must adhere to the directives in Chapter 7 of the FOM, Section IV (b), which also states the "case file remains open throughout the inspection process and is not closed until the Agency is satisfied that abatement has occurred. If abatement was not completed, annotate the circumstances or reasons in the case file and enter the proper code in the IMIS."

Recommendation #16(B) VOSHA should also ensure that Chapter 7 of the FOM, Section XV is adhered to. This section states: "The closing of a case file without abatement certification(s) must be justified through a statement in the case file by the Area Director or his/her designee, addressing the reason for accepting each uncertified violation as an abated citation."

Recommendation #16(C) We recommend that VOSHA thoroughly review and adhere to Chapter 7 of OSHA's FOM on Abatement Documentation, particularly Section B, which relates to Adequacy of Abatement Documentation. As stated in that section, examples of documents that demonstrate that abatement is complete include "(a) copy of program documents if the citation was related to a missing or inadequate program, such as a deficiency in the employer's respirator or hazard communication program."

STATE RESPONSE: VOSHA sends abatement instructions to employers with their citations, and also includes the abatement template that OSHA sends to employers. VOSHA will strive to ensure that case files will not be closed until all violations have been adequately abated, and that all case files contain proper evidence of abatement as well as all other required information, documentation and forms. VOSHA management has reviewed Chapter 7 of the FOM to ensure that case files contain adequate documentation of abatement and that case files are not closed until all violations have been properly and adequately abated. VOSHA will, as required, issue a citation to employers who do not provide adequate documentation of abatement under 1903.19(c) (Abatement certification)

ACTION PLAN:

VOSHA will implement a system for tracking employer progress in abating violations by January 31, 2011. On a weekly basis, VOSHA management (and/or CSHOs) will review case files with open abatements and contact with the employers to remind them of their abatement due dates. If the employer indicates that the violations have been abated, the VOSHA manager or CSHO will also remind them of their obligation to provide proper documentation of abatement (if they have not already done so).

VOSHA will use the case file checklist to ensure that CSHOs conduct inspections in accordance with the FOM and that all case files are properly organized and contain all required forms and documentation. On a quarterly basis, the VOSHA manager will randomly select and review 10 percent of each CSHO's inspection case files to ensure compliance with all inspection procedures and that case files are properly organized and contain all required documentation, etc. The VOSHA manager will ensure that case files contain evidence of abatement, and that employers who do not provide adequate documentation of abatement are cited under 1903.19 (c). The manager will ensure that CSHOs correct any case file deficiencies identified during this review. The VOSHA manager will document his findings and discuss them with the Region during the quarterly meetings.

EXPECTED OUTCOME/DUE DATE: As of the next case file review, which is scheduled for January 2011, VOSHA's case files will contain adequate documentation of abatement. This case file review will also indicate that cases are not closed until all violations have been properly abated, and that this abatement has been adequately documented.

Finding #17. *Some of the case files we reviewed lacked proper evidence of abatement. Case files with Petitions for Modification of Abatement (PMA) were missing the abatement completion date or interim protections to be followed during the PMA.*

Recommendation #17. VOSHA must also ensure that all documentation related to Petitions for Modification of Abatement (PMA) are contained in the relevant case files, such as copies of the petition itself, as well as VOSHA's approval (or denial) of the PMA, and any written objections by employees to the PMA. See Chapter 7 of the FOM, Section III for more information on PMAs.

STATE RESPONSE: VOSHA has received two documents from Region I—the PMA tracking sheet and the PMA letter to employers. VOSHA has modified both documents for its own use. VOSHA management has thoroughly reviewed the Chapter 7 of the FOM, Section III, to ensure that all documentation related to PMAs is contained in the relevant case files. In addition, VOSHA sends abatement instructions to employers with their citations, and also includes the abatement template that OSHA sends to employers.

ACTION PLAN:

VOSHA managers will work with CSHOs to develop a system for tracking PMAs using Microsoft Outlook reminders by January 31, 2011. VOSHA will use the case file checklist to ensure that CSHOs conduct inspections in accordance with the FOM and that all case files are properly organized and contain all required forms and documentation.

On a quarterly basis, the VOSHA manager will randomly select and review 10 percent of each CSHO's inspection case files to ensure compliance with all inspection procedures and that case files are properly organized and contain all required documentation, etc. The VOSHA manager will ensure that all case files contain all documentation related to PMAs (where appropriate). The manager will ensure that CSHOs correct any case file deficiencies identified during this review. The VOSHA manager will document his findings and discuss them with the Region during the quarterly meetings.

EXPECTED OUTCOME/DUE DATE: As of the next case file review, which is scheduled for January 2011, VOSHA's case files should indicate that that all documentation related to PMAs is contained in the relevant case files.

Finding #18. *There were a few cases in which the proper [informal conference] procedures were not followed (e.g., missing original citation following violation reclassification; inadequate documentation on the reason for citation deletion, on the informal settlement agreement or abatement; or held after the 15-day period).*

Recommendation #18(A) VOSHA should review and follow the FOM, Chapter 7, which discusses the procedures to follow for informal conferences and informal settlement agreements. It states that the informal conference will be conducted within the 15 calendar day contest period. In addition, this section discusses the requirement that an affected employee or his representative shall be given the opportunity to participate, and VOSHA must be sure to follow this direction.

Recommendation #18(B) The VOSHA supervisor who conducts the informal conference must be sure to document reasons for granting penalty reductions (and extended abatement dates) on the case file diary sheet.

STATE RESPONSE/ACTION PLAN: VOSHA has already taken action to correct this deficiency as described below.

VOSHA management has thoroughly reviewed the sections of Chapter 7 of the FOM that pertain to informal conference procedures.

Based on the findings and recommendations contained in a previous audit conducted by Region I, the case file diary sheet reflects notes on the discussions that occur during informal conferences. The diaries also document VOSHA's reasoning for changes to standard citations, violation classifications, and penalties; requests for PMAs are documented in the diary sheet.

As part of the citation package, VOSHA includes a copy of the notice to affected employees, and instructions regarding the rights of affected employees and/or their representative.

VOSHA CSHOs have been instructed to notify employers of these rights at the closing conference. Any request for an informal conference must contain a statement from the employer that the employee notice has been posted.

EXPECTED OUTCOME/DUE DATE: Region I will verify that the VOSHA manager is fulfilling his responsibility to provide informal conference notes and documentation in all appropriate case files during the next onsite review.

***Finding #19.** When we conducted the on-site review, VOSHA was in the process of having legal counsel establish a formal policy on debt collection procedures, and provided us with the draft "VOSHA Penalty Collection Protocol," currently being formalized.*

Recommendation #19. We advise VOSHA to follow through in establishing formal debt collection procedures based on those set forth in Chapter 6 of the FOM. State Plan programs must have "an effective debt collection mechanism in place" in accordance with the State Plan grant requirements established in OSHA Directive 09-02 (CSP-02). This debt collection mechanism must also be documented in the State Plan. VOSHA procedures, once finalized, should be sent to the regional office for approval and then will become part of VOSHA's State Plan.

STATE RESPONSE: VOSHA's debt collection procedure was formalized in April 2010 and its State Plan document has been updated accordingly

EXPECTED OUTCOME/DUE DATE: VOSHA has implemented this recommendation.

***Finding #20.** VOSHA has fallen behind in promulgation and adoption of new and revised Federal OSHA standards, due to the State's time-consuming rulemaking procedures. One of the effects of severe budgetary constraints has been to hold off on advertising some federal program changes (\$2,500 per advertisement), which is a factor for the delay in some FPCs.*

Recommendation #20. We urge VOSHA to respond in a timely manner to FPCs and Federal Standard Actions.

STATE RESPONSE: VOSHA agrees with this finding and recognizes the importance of adopting federal standards in a timely manner. Recent amendments to the Vermont Administrative Procedures rules will reduce some of the advertising costs associated with rulemaking, but will not change the time frames set for rulemaking.

ACTION PLAN:

The VOSHA Director will begin the rulemaking process upon notification that a final rule has been promulgated by OSHA. However, it is important to point out that the first committee to review the rule meets only once a month. VOSHA will notify the Regional Office within three days of when the rule has been submitted to the Secretary of State.

EXPECTED OUTCOME/DUE DATE: On a quarterly basis, Region I will evaluate VOSHA's timeliness in responding to FPCs and Federal Standard Actions.

***Finding #21. GMVPP** - Two SGEs participated on the IBM onsite on April 2-10, 2008 without having received approval from the SGE Coordinator.*

Recommendation #21. VOSHA must request prior approval from the SGE Coordinator at the National Office to use SGE's on *Green Mountain (GM) VPP* onsite reviews.

STATE RESPONSE: VOSHA now requests prior approval from the SGE Coordinator at the National Office to use SGEs on GMVPP onsite reviews. The GMVPP manager has already requested and received approval to utilize an SGE in an upcoming recertification.

EXPECTED OUTCOME/DUE DATE: VOSHA has implemented this recommendation.

***Finding #22.** The GMVPP onsite evaluation that involved the PSM standard was conducted on September 17-20, 2007, although none of the seven team members had received PSM Level 1 auditor training.*

Recommendation #22. VOSHA must have at least one CSHO trained in PSM to ensure compliance with the PSM Standard.

STATE RESPONSE/ACTION PLAN: VOSHA will schedule a safety or health CSHO for the PSM course series beginning in FY2011. By November 30, 2010 VOSHA will have a CSHO enrolled in the OSHA 3300 PSM course.

EXPECTED OUTCOME/DUE DATE: During the first quarterly meeting, Region I will verify enrollment of the CSHO in the 3300 PSM Course.

***Finding #23.** Our review found that the PSM questionnaire was not sent to the VOSHA GMVPP site covered under the PSM standard.*

Recommendation #23. VOSHA must send the PSM questionnaires for completion by the VPP site covered under PSM for completion and must be included in the site's 2009 annual self-evaluation.

STATE RESPONSE: The PSM questionnaire was forwarded to the site and the completed form has been sent to the PSM qualified person in the Regional Office. This

company is scheduled for a recertification audit in November 2010 and Region I has agreed to provide a PSM qualified person to assist in the evaluation.

EXPECTED OUTCOME/DUE DATE: VOSHA has implemented this recommendation.

***Finding #24.** Effective April 18, 2008, CSP 03-01-003 modifies procedures for VPP onsite evaluations. Review of the GMVPP files we found discrepancies related to Medical Access Orders (MAOs), final reports containing 90-day items, abatement verification or documentation.*

Recommendation #24. VOSHA should use the revised report format for initial and recertification VPP onsite evaluations.

STATE RESPONSE/ACTION PLAN: VOSHA will use CSP 03-01-003 when performing all activities associated with GMVPP. Each file will have a copy of the MAO and the State will require that all 90 day items are corrected before approval is granted.

EXPECTED OUTCOME/DUE DATE: Region I will verify that VOSHA is fulfilling the requirements of CSP 03-01-003 during the next case file review in January 2011.

***Finding #25.** VOSHA CSHOs are required to enter an OSHA 55 intervention form for each GMVPP onsite evaluation that is conducted. Staff must also enter the OSHA form 31 timesheet into IMIS. We found that the team leader has entered a 55 intervention for each of the sites evaluated.*

Recommendation #25. VOSHA must ensure that all CSHOs enter their weekly activity on the OSHA form 31 timesheets. The OSHA 55 intervention form should be incorporated into the OSHA form 31 when appropriate.

STATE RESPONSE/ACTION PLAN: CSHOs are now required to complete their OSHA 31 forms on a biweekly basis. Since this is one of their required duties, their compliance with this requirement will be reviewed during their annual evaluation. At monthly staff meetings, the issue of timely and accurate completion of OSHA 31s is discussed.

EXPECTED OUTCOME/DUE DATE: During the next case file review in January 2011, Region I will verify that CSHOs are completing their OSHA 31s on a biweekly basis.

***Finding #26.** The GMVPP manager verbally accepts the application and schedules the onsite within two months at the convenience of the applicant. Files were lacking in that they did not contain the dates the applications were received and accepted.*

Recommendation #26. VOSHA should ensure that GMVPP files contain the date the application was received and the date the application was accepted. In addition, VOSHA should send a letter to the applicant acknowledging receipt of the VPP application.

STATE RESPONSE/ACTION PLAN: VOSHA will ensure that GMVPP applications are stamped with the date they were received and that a letter to the applicant acknowledging receipt is sent within 15 days.

EXPECTED OUTCOME/DUE DATE: During the next case file review in January 2011, Region I will verify that GMVPP applications are properly date stamped and that the letter to the applicant acknowledging receipt is sent within 15 days.

Finding #27. *The GMVPP records are located on the GMVPP program manager's personal drive.*

Recommendation #27. All of the GMVPP electronic documents must be placed on the "S" (public) drive to allow access to management in the Montpelier office in the event of a public request.

STATE RESPONSE/ACTION PLAN: VOSHA has completed this recommendation. A folder has been established on the "S" drive and all electronic GMVPP files have been copied to the folder.

EXPECTED OUTCOME/DUE DATE: VOSHA has implemented this recommendation.

Finding #28. *Some [discrimination] files had detailed phone logs, and others did not contain any phone log. The OSHA Form 87 (or the IMIS Case Activity Worksheet) was not found in some of the files. In addition, copies of notification letters and closing letters to the complainant and respondent were not included in some of the case files.*

Recommendation #28. OSHA must assemble discrimination case files in an orderly fashion and in accordance with OSHA's Discrimination Manual, Chapter 5.III.B.1, which includes a Case Activity Worksheet, or OSHA 87 and notification and closing letters to the parties. In addition, an activity/telephone log must be accurately documented with telephone calls and significant events that occur with respect to the case.

STATE RESPONSE/ACTION PLAN: VOSHA management will complete a review of Chapter 5.III.B.1 of the Discrimination Manual by February 1, 2011 (or at an earlier date should there be a discrimination complaint in the interim) with the discrimination investigators and will follow the requirements in the section. Discrimination case files will be organized per the instructions in the Discrimination Manual and will include a case file activity/telephone log to track all case file activity.

EXPECTED OUTCOME/DUE DATE: All discrimination case files will be properly organized in FY2011. Region I will verify this by reviewing the case file(s) during the quarterly meetings.

Finding #29. *Some CSHOs have exceeded the time frame of three years from date of hire to complete all courses required under TED 01-00-018.*

Recommendation #29. Since some of the program's CSHOs have not met this timeframe, the VOSHA director should ensure that all CSHOs complete their remaining courses as soon as possible.

STATE RESPONSE/ACTION PLAN: VOSHA staff members will be scheduled to attend the #1310 Investigative Interviewing Techniques by January 14, 2011. One CSHO just completed the 2450 course.

In the spring of 2010, VOSHA requested permission to host course 2450 (Evaluation of Safety and Health Management Systems) in Vermont. However, OTI was unable to honor VOSHA's request. On December 1, 2010, VOSHA re-submitted its request to the Regional Administrator to hold course 2450 in Vermont. Region I wholeheartedly endorsed VOSHA's request and forwarded it to OTI.

EXPECTED OUTCOME/DUE DATE: All CSHOs who are required to complete course 2450 and course 1310 will have done so by the end of FY2011. Region I will review training records to determine if this training has been completed.

ISSUES IDENTIFIED WITH INFORMAL SUGGESTIONS

Finding #1. VOSHA did not adopt the longshoring and marine terminal standard because there is no maritime industry in the state. However, according to the IMIS and as a result of further research on Maritime enforcement, we found that Vermont may in fact have sites subject to Section 29 CFR 1915 and 1917 (p. 48).

Recommendation #1. VOSHA must reevaluate the need to adopt the longshoring and marine terminal standard and advise the region of its findings.

STATE RESPON/ACTION PLAN: VOSHA has reviewed this recommendation and has agreed to adopt 29 CFR PART 1915 - Occupational Safety and Health Standards for Shipyard Employment per the following e-mail sent to the Regional Office on August 24, 2010. VOSHA estimates that the adoption of this standard can be accomplished by May 1, 2011.

EXPECTED OUTCOME/DUE DATE: Region I will verify that the standard adoption has occurred by May 1, 2011.

Finding #2. VOSHA was using OSHA-1 inspection numbers to assign a case number to **11(c) cases** and also was filing the 11(c) complaint on an OSHA-7 complaint form (p. 61).

Recommendation #2. VOSHA management and investigators were informed that safety and health inspection forms have a separate purpose from 11(c) forms, and were instructed not to use the OSHA-1 and the OSHA-7 forms for 11(c) complaints. Following this practice will avoid duplication of files. In addition, in writing up the final analysis in a case, listing the elements separately will help ensure that all required elements are covered

STATE RESPONSE/ACTION PLAN: VOSHA has discontinued using safety and health inspection forms for Discrimination cases and will follow the directions in the Discrimination Manual.

EXPECTED OUTCOME/DUE DATE: Region I will verify that VOSHA is using the proper forms by reviewing the discrimination case file(s) during the quarterly meetings.