

**STATE OF WASHINGTON**

**DEPARTMENT OF LABOR AND INDUSTRIES**

**Division of Occupational Safety and Health  
(DOSH)**

**Enhanced Federal Annual Monitoring and Evaluation (FAME) Report  
on the Washington Safety and Health Program**

FY 2009 Report Period  
October 1, 2008, through September 30, 2009

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## Executive Summary

OSHA conducted a baseline special evaluation of Washington's occupational safety and health agency, commonly known as DOSH. The evaluation covered federal fiscal year 2009 and focused primarily on the effectiveness of the state's enforcement program. A special study of DOSH's fatality inspections was included in the evaluation.

### Summary of the Report and Recommendations

Overall, OSHA found that DOSH is operating an effective enforcement program. The state's performance with respect to activities mandated by the Occupational Safety and Health Act and its implementing regulations is good. Nevertheless, OSHA identified the need for DOSH to take remedial actions in several areas, including fatality case documentation, penalty calculation and obtaining employers' injury and illness log information.

OSHA's recommendations are as follows:

1. Discontinue entering fatalities that are not work-related into the IMIS data system. This is a repeat recommendation (p.13).
2. Develop a clear policy identifying what documents must be maintained with the case file. When discussions regarding the case file are held, key information should be reduced to a memorandum and maintained in the case file, especially if it involves decisions on the disposition of the case (p.14).
3. Closely monitor the use of probability when calculating penalties for violations directly related to a fatality, and use higher values where appropriate (p.14).
4. Ensure that Related Event Codes are properly applied to violations related to fatalities (p.15).
5. Ensure that injury and illness logs are reviewed and copied for case files on all inspections where logs are required. Document findings in the file (p.16).
6. Revise the DOSH compliance manual to require that injury and illness logs be obtained from the employer, where appropriate, and that a copy be maintained in the case file (p.16).
7. Increase penalty amounts significantly in order to encourage voluntary compliance and to serve as a strong deterrent. Policy adjustments should be made to impose higher penalties for serious violations (p.17).
8. Revise DOSH's WIN data system code(s) so that public sector consultation visit

information can be entered into OSHA's IMIS data system (p.22).

OSHA audited DOSH's 23(g) private sector consultation program in FY 2009 which resulted in the following recommendations aimed at enhancing program quality. They were communicated in a March 12, 2009, letter from OSHA's regional administrator to the director of the state's program (Appendix F). Also included in Appendix F is the state's response. (Washington administers its private sector on-site consultation program as part of its State Plan, rather than through a separate Section 21(d) program.)

9. If a company is not keeping the OSHA 300 injury and illness logs and is required to, an item should be included in the list of hazards for recordkeeping or training on recordkeeping noted in the case file. Copies of 300 logs should be collected from businesses and put into the case file for the previous three years.
10. Assure that all case files have a completed form 33 or equivalent on the employer's safety and health program and the evidence or rationale for the score awarded is evident.
11. If the employer does not respond to requests for abatement certification and will not ask for an extension, the case should be turned over to enforcement for follow-up.
12. Enter the correct number of employees interviewed in the OSHA form 30 box requesting the information.
13. Assure that the abatement language provided by the employer abates the hazard. A statement such as "Complied" does not abate the hazard. If the language does not abate the hazard, the consultation project should consider if an extension of time is necessary and the employer should be advised to either abate the hazard or ask for an extension.
14. Require consultants to use recognized practices to determine employee exposure to air contaminants and noise before making statements or recommendations about employee exposures.
15. Review industrial hygiene instrumentation requirements with the industrial hygienists as this sampling instrument calibration requirement is designed to assure proper sampling techniques are used.

OSHA audited DOSH's discrimination program and identified areas needing improvement. The recommendations listed below were communicated in a December 9, 2009, letter from OSHA's regional administrator to the director of the state's program (Appendix E). Also included in Appendix E is the state's response.

16. For discrimination complaints that are withdrawn, DOSH's case files should include a written request for withdrawal from the complainant. The request to withdraw the complaint should be filed as a separate exhibit.
17. DOSH should not deduct unemployment compensation from settlement monies in its discrimination case settlement agreements.
18. DOSH should include a section in its investigative reports and/or memos for coverage and/or jurisdiction. This section should describe why the state has jurisdiction to investigate the discrimination complaint as well as include detail similar to what is written in DOSH safety inspection reports.

At the beginning of federal fiscal year 2006, DOSH implemented a five-year strategic plan which includes short and long-range objectives aimed at improving safety and health for Washington workers. During FY 2009, the fourth year of the strategic plan, DOSH achieved most of its annual performance plan goals. These annual goals are used by DOSH to accomplish its three five-year strategic goals. The following lists the state's three strategic goals and describes its progress toward meeting those goals.

1. *Improve workplace safety and health for Washington workers by reducing hazards, exposures, injuries, illnesses and fatalities.*

The state is making very good progress toward meeting its first strategic goal. All but one of the annual performance goals for which data were available were either met or exceeded. That is commendable performance.

2. *Promote values which foster workplace safety through education, consultation, and employer assistance.*

The state is making very good progress toward meeting its second strategic goal. DOSH met or exceeded all of the other annual performance goals relating to this strategic goal except one. DOSH's report on its Safety & Health Investment Projects (SHIP) is pending. That is commendable performance.

3. *Maximize DOSH's effectiveness and efficiency by strengthening our capabilities and infrastructure.*

The state is making very good progress toward meeting its third strategic goal. DOSH did not implement its plan for an electronic quality review system capable of preparing automated performance management reports. DOSH almost met its 100% discrimination timeliness goal with only 2 of its 77 cases extending past the 90-day benchmark. Among the several key program accomplishments were timely verification of serious hazard abatement by both compliance and consultative staff, and timely issuance of both safety and health citations.

## Introduction

The state of Washington, under an agreement with OSHA, operates an occupational safety and health program in accordance with Section 18 of the *Occupational Safety and Health Act of 1970*. The state's enabling legislation, the *Washington Industrial Safety and Health Act*, took effect in 1973, and the Secretary of Labor certified in 1982 that the state had completed all of the required developmental steps in the plan.

OSHA monitors state plans to ensure they operate programs that are at least as effective as the federal program, and prepares annual reports on state performance. Beginning in 1997, OSHA used strategic plans to establish five-year goals and objectives, and required state plan states to do likewise. As part of the process, states were asked to develop performance plans that would ultimately lead to the achievement of five-year goals, and to include such performance plans in annual 23(g) grant applications.

**Evaluation Methodology.** This Enhanced Federal Annual Monitoring and Evaluation (FAME) report is a Baseline Special Evaluation of the Washington State Plan. It evaluates state performance of required (mandated) performance areas and related enforcement activities. It also evaluates state performance at achieving its own performance goals as outlined in its grant application. The report represents the combined efforts of OSHA's Seattle Regional and Bellevue Area Offices, and covers federal fiscal year 2009, which is the period from October 1, 2008, through September 30, 2009.

The opinions, analyses, and conclusions described herein are based on information obtained from a variety of sources, including:

- State Activity Mandated Measures (SAMM) report data (Appendix B).
- State Information Report (SIR) data (also in Appendix B).
- Other statistical reports comparing state performance to federal performance.
- Quarterly monitoring meetings between OSHA and the state.
- A special study that examined DOSH's fatality inspection case files for the period of October 1, 2008, through October 31, 2009.
- The State OSHA Annual report (SOAR) prepared by Washington DOSH.

The SOAR (Appendix C) contains the details of the state's achievements with respect to its annual goals. In addition, the views and opinions of stakeholders were taken into consideration in preparing this report. For example, input was received from employers who deal with both Washington DOSH and federal OSHA; from organizations representing labor, such as the Operating Engineers and the Building Trades; from employer associations, such as the Associated General Contractors of Western Washington; and from stakeholder members during federal OSHA's regular attendance at various DOSH Advisory Committee meetings.

**Background.** The Washington State plan is administered by the Department of Labor and Industries, Division of Occupational Safety and Health, or DOSH. A director, appointed by the Governor, heads the department and serves as the state plan designee. The assistant director of DOSH, selected by the director, is in charge of industrial safety and health policy, and directs central office and regional operations. DOSH establishes policy and technical guidance, writes standards, develops internal and external training, monitors and evaluates programs, conducts inspections, and provides consultation services. With regard to inspections and consultation, DOSH conducts interventions at state and local government workplaces and private sector employers not covered by OSHA. OSHA’s jurisdiction is limited to establishments on Indian lands that are tribally-owned as well as employers who are enrolled tribal members working on reservations or on trust lands. OSHA also covers private employers at national parks, military installations, maritime activities on the water and federal government employers.

Two DOSH-related programs are housed in other departmental divisions. The Legal Services Program in the Administrative Services Division administers the public disclosure of DOSH’s records, while the Information Services Division (ISD) is responsible for technical development and maintenance of the computer systems and databases used by DOSH, including the local node of federal IMIS (Integrated Management Information System), and the state’s Web-based Consultation and Enforcement data systems in the WISHA Information Network (WIN). The IMIS/WIN core team is responsible for all functions necessary to keep the computerized information system running smoothly.

For FY 2009, the Washington state plan was staffed by 378 individuals, which included 114 compliance officers and 54 consultants. The program covered approximately 2.97 million workers employed in over 195,240 establishments statewide. In FY 2009, DOSH was funded at about \$45.7 million, \$7.07 million of which were federal funds. The staff included 194 positions that were funded entirely by the state.

<b>Washington DOSH Funding</b>				
<b>Program</b>	<b>Federal</b>	<b>State Match</b>	<b>100% State</b>	<b>Total</b>
DOSH 23(g)	\$7,074,900	\$7,074,900	\$31,537,988	\$45,687,788

## Status of Fiscal Year 2008 DOSH FAME Report Recommendations

There were nine recommendations for program improvement in the previous FAME report which covered October 1, 2007, through September 30, 2008. Each recommendation is listed below along with the state's responses and OSHA's assessment of the effect of the state's actions.

### Recommendation 1: Adopt required standards within the required time frame.

State's Response: We agree and will strive to adopt rules at-least-as-effective-as new or revised federal rules within the required time frame. Depending on the level of complexity and stakeholder involvement, there may be some instances when we are not able to meet the six-month adoption timeline. In these cases, we will keep OSHA apprised of any delays, the reason for the delay, and the anticipated adoption date.

Effect of State's Action(s): The state improved its standards adoption time interval significantly in FY 2009. In FY 2008, the state exceeded the six-month deadline by over nine months for both standards it was required to adopt. During this past year, the state missed the six-month deadline by an average of 49 days for the three required standards.

### Recommendation 2: Adopt OSHA's Electrical Standard Revisions (or equivalent standards that are at-least-as-effective).

State's Response: We are in the process of adopting equivalent rules. At our February quarterly monitoring meeting, Tracy Spencer, DOSH Standards Manager, explained that we initially submitted a "do not plan to adopt" response to the Automated Tracking System (ATS) notice, due to the belief by the previous senior manager and a safety technical specialist that these provisions were covered by L&I's Specialty Compliance Services Division instead of DOSH. We apologize again for the misinterpretation and will submit the final rule package as soon as it is filed.

Effect of State's Action(s): The state has kept OSHA informed on their progress toward adopting equivalent standards to OSHA's Electrical Standards Revisions. The state plans to adopt an equivalent rule on June 1, 2010.

Recommendation 3: Ensure compliance inspection goals are met. This is a repeat recommendation from both the FY 2006 and 2007 FAMEs.

State's Response: We have made measurable progress toward addressing this recommendation. Last year, we informed you that a significant contributing factor to not meeting our goal was the turnover in experienced inspectors and subsequent drop in production. This year, we faced the additional challenge of a statewide hiring freeze which at first slowed and eventually prevented us from being able to fill vacant positions. Due to the state budget shortfall, the agency is now working under a hiring cap for FY 2009-2011 which will reduce positions in all programs from the previous allotment level. DOSH will be required to reduce 11.8 positions. In order to meet this target, we have had to abolish several vacant inspector positions that are not funded for the 2009-2011 biennium.

Despite these challenges, due primarily to the significant efforts of our Statewide Compliance Manager and his staff, we have been meeting and may even exceed our FY 2009 goal of 6,600 inspections. In the second quarter, we conducted 1,994 inspections, the highest quarterly results we have ever posted. The tracking reports we developed following last year's FAME recommendation have helped ensure we meet our inspection goals.

Additionally, we are just beginning development of automated reports that all supervisors and managers will be able to run from the WIN data system, reducing the dependency on our central data analysis unit to produce and distribute reports. Our WIN Business Analyst will be leading this effort as a participant in the Washington Department of Labor and Industry's Leadership Capstone program, a six-month leadership development program that includes a project tied to strategic goals or business improvement processes. You may recall that last year, DOSH's IT Systems Manager, led the successful Citation Redesign project during her participation in the Capstone program.

Effect of State's Action(s): DOSH compliance inspection goals were exceeded in FY 2009.

Recommendation 4: Establish a written policy for phone/fax complaint response time. This is a repeat recommendation from both the FY 2006 and 2007 FAMEs.

State's Response: Our draft Compliance Manual update includes this policy. A copy is attached for your review. The timeline to complete and issue our revised manual was delayed to accommodate the additional changes that will be needed as a result of OSHA's issuance of a new Field Operations Manual. We plan to adopt our final Compliance manual within the required federal program change response time.

Effect of State's Action(s): DOSH implemented a written policy for phone/fax complaint response time. That policy is contained in the DOSH Compliance Manual as adopted on September 25, 2009.

Recommendation 5: Amend WIN data fields to ensure that non-work related fatality investigations are not counted as work-related in either the IMIS or WIN systems.

State's Response: DOSH had resolved this issue approximately two years ago when OSHA previously brought it to our attention. We will do some additional research and analysis to determine whether a new problem is occurring, or whether the original issue has reoccurred. We will provide you with a status report within 30 days.

Effect of State's Action(s): DOSH has identified a solution to this issue but reported that they cannot implement it yet due to timing of OSHA's implementation of the agency's new OSHA information system (OIS). As a result, DOSH is continuing to use a manual workaround until after the OIS conversion, at which time they will implement a permanent electronic system solution in WIN.

Recommendation 6: Ensure that hygiene citation lapse times are further reduced to ensure employees are not unnecessarily exposed to serious hazards.

State's Response: We have been working diligently to further reduce our hygiene citation lapse time to meet or exceed the national average. In the second quarter of FY 2009, we came within 1.3 days of the current national average of 59.9 days. Our FY 2009 year-to-date results are now just 3.7 days higher than the national average, down from 15 days over in FY 2007 and 9.5 days higher in FY 2008.

This accomplishment is due in part to the successful reengineering of our citation issuance process in WIN, which included elimination of dependency on the federal IMIS system to issue citations. Additionally, Region 2's Hygiene Compliance Supervisor will be leading a statewide project (also as a Capstone participant) to further analyze and focus efforts on reducing the field component of hygiene citation lapse time to the degree possible. We fully expect to meet this goal during FY 2009 and to sustain an average lapse time at or below the national average in future years.

Effect of State's Action(s): Average health citation lapse times improved significantly in FY 2009. In FY 2008, the average was 70.6 days. In FY 2009, the average decreased to 55.3 days which is below the national average of 57.4 days. OSHA commends DOSH on this significant reduction.

Recommendation 7: Complete DOSH's final response to the OSHA Consultation Policy and Procedures Manual, Hexavalent Chromium Inspection Procedures, Emergency Response Inspection Procedures, and the VPP Policy and Procedures Manual.

State's Response:

- Consultation Manual (state adoption required): The final draft is nearly complete and will be submitted for your review by June 5<sup>th</sup>. It will include a chapter on the new START program, DOSH's equivalent to the federal SHARP program. We expect to issue the manual within 30 days of receiving any comments you may have, and resolving any final issues.
- Hexavalent Chromium Inspection Procedures (state adoption not required): DOSH completed a directive which was issued February 23; however, a State Plan Change describing differences from the federal directive has yet to be submitted. We will submit SPC 09-04 by May 31.
- Emergency Response Inspection Procedures (state adoption not required): Technical staff have provided comments on the initial draft, and the directive is being prepared for management review. We expect to issue this directive in August.
- VPP Policy and Procedures Manual (state adoption not required): Due to resource shortages we had to postpone work on this manual to complete the final draft of the Consultation Manual. It is now undergoing final management review and will be issued in June.

Effect of State's Action(s): As of the end of this monitoring period, DOSH had not yet submitted a six-month final response to Federal Program Change Instruction CSP 03-01-003, OSHA's VPP Policy and Procedures Manual. Six-month final responses to both the Consultation Manual and the Hexavalent Chromium Inspection Procedures directive had not been properly submitted. Because DOSH chose not to adopt the two federal changes identically, each of those state responses must identify all substantive differences and offer DOSH's rationale for finding its alternative policies to be at least as effective as OSHA's federal program changes. After the close of this monitoring period, a draft of DOSH's proposed response to OSHA's emergency response inspection procedures was provided to the region for initial comment. Additionally, final responses to both the VPP Manual and the Consultation Manual were submitted in May of 2010.

Recommendation 8: Timely complete and return the ATS request e-mails for OSHA standards and federal program changes indicating whether or not DOSH intends to adopt the rules and other changes.

State's Response: We agree and have now developed a system to ensure we can review and provide timely notice of intent on all new federal program changes. We plan to submit our response timely on all future ATS notices barring any unusual circumstances. If we are delayed due to unavoidable circumstances, we will keep you informed of the response status.

Effect of State's Action(s): DOSH was more timely in FY 2009 in acknowledging ATS emails and in advising OSHA of its plans to adopt federal changes identically or to adopt an at least as effective alternative.

Recommendation 9: Enter state-initiated changes into the ATS system as each change is submitted and regularly update any data for which the state is responsible for inputting.

State's Response: We will add this requirement to our tracking log to ensure that we complete this step timely. Additionally, we will clear up any ATS backlog during the month of June.

Effect of State's Action(s): Two state-initiated changes were timely submitted in FY 2009 and both were entered into the ATS system.

## Major New Issues

**Special Study.** During portions of December 2009 and January 2010, OSHA's Bellevue Area Office conducted a special study to examine aspects of DOSH's response to fatalities. Discussion of the special study begins on page 12.

**Citation Lapse Time Improvements.** This year there was a significant reduction in average lapse time from inspection opening to the issuance of health-related citations. In FY 2009, the average health lapse time was 55.3 days, which was a vast improvement over the FY 2008 average of 70.6 days. DOSH's average safety citation lapse time also improved from 42.3 days in FY 2008 to 30.5 days in FY 2009.

**Legislation and Rules on Cranes.** In response to a number of crane-related accidents in Washington state, the state legislature directed DOSH to adopt rules and regulations to improve crane safety. The new rules are now in place and the state has hired and trained compliance officers accordingly. Crane certifier requirements, effective January 1, 2009, concerned examination and certification requirements for mobile, tower, articulating and overhead crane certifiers. Phase 2 of the project, effective January 1, 2010, covered crane certification requirements and crane operator qualifications and certification.

**Refinery National Emphasis Program.** In response to a federal program change, DOSH adopted OSHA's refinery national emphasis program (NEP). The national program began in 2007 following the 2005 explosion and fire at a refinery in Texas that killed 15 employees and injured another 170. During this evaluation period DOSH conducted one comprehensive PSM inspection and one follow-up inspection under the Refinery NEP. As of the end of the evaluation period DOSH had one refinery remaining to be inspected under the NEP. In April 2010, an explosion resulting in 7 fatalities occurred at one of the previously inspected refineries. The state is currently investigating.

DOSH's inspections focused on the refineries' development and implementation of systems to reduce or mitigate the potential for catastrophic releases of highly hazardous chemicals. As DOSH noted in its annual report, refineries are required to identify, evaluate and control process hazards; develop and implement mechanical integrity programs; and train operators who must monitor and respond to deviations in the process.

## ASSESSMENT OF DOSH PERFORMANCE IN FISCAL YEAR 2009

### A. ASSESSMENT OF DOSH PERFORMANCE IN MANDATED AND OTHER RELATED ACTIVITIES

As part of an approved state plan, each state must administer a program that meets its mandated responsibilities. The Occupational Safety and Health Act and regulations in 29 CFR 1902, 1953, 1954 and 1956 identify these core elements and responsibilities for an effective state occupational safety and health program. The DOSH program has the necessary authority and procedures in place to carry out those mandates and has adopted required federal program changes that were due during this monitoring period. The following is an assessment of Washington's performance under the mandated program areas. Monitoring data have come from grant assurances, statistical reports, case file reviews and interviews.

#### 1. Enforcement

***Complaints. Ensure that safety and health complaint processing is timely and effective, including notification of complainants and appropriateness of the State's responses.***

The state responded to a total of 1,368 complaints; 947 with on-site inspections and 421 by the phone/fax procedure. The average time to respond with an on-site inspection in FY 2009 was 8.9 days which is an improvement over last year's average of 10.7 days.

The average time for initiating phone/fax complaints was 4.07 days which is an improvement over last year's average of 7.02 days.

In responding to OSHA's Field Operations Manual program change, DOSH included a timeliness policy for phone and fax complaints. That addition satisfactorily addresses prior phone/fax timeliness concerns.

***Fatalities and Catastrophes. Ensure fatalities and catastrophes are investigated properly, including responding timely to incidents and making contact with the families of victims.***

The state conducted timely investigations in 52 out of 57 fatality/catastrophe inspections (91%). This performance is very similar to last year when 48 out of 53 fatality/catastrophe inspections were initiated timely.

As noted in the FY 2008 FAME, the number of untimely FAT/CAT investigations is inflated by the reporting of non-work related fatalities into the WIN system. This issue has been discussed in quarterly meetings but has not been resolved. Accordingly, OSHA repeats last year's recommendation that DOSH amend WIN data fields to ensure

that non-work related fatality investigations are not counted as work-related in either the IMIS or WIN systems.

**Recommendation 1** – Discontinue entering fatalities that are not work-related into the IMIS data system. This is a repeat recommendation.

This year, OSHA conducted a baseline special study to examine DOSH's fatality inspection case files for the period of October 1, 2008, through October 31, 2009. The files were reviewed for quality of documentation, violation classification, penalty assessment and several other factors. The OSHA Bellevue area director held an opening conference to discuss the audit plans with the Assistant Director for DOSH and his staff. The audit was performed during parts of December 2009 and January 2010.

After a list of all fatalities during this study's time frame was reviewed, many cases were excluded for such reasons as investigation still open, no violations cited or no DOSH jurisdiction. The remaining 18 case files were reviewed by OSHA personnel from the Bellevue Area Office. For consistency in review and documentation of OSHA's findings, a file review checklist was used to evaluate each case.

An initial informal on-site closing conference was held in December 2009, with the assistant director for DOSH and his staff. The initial closing conference covered overall findings and impressions of the team. A formal closing conference was held by telephone on January 2010, with the same individuals to review the completed analysis.

## **Review Topics and Findings**

### **a. The quality of case files documentation.**

In general, the quality of case file documentation was appropriate. Fatal incidents were well documented with narratives of the events that clearly identified the causal factors. Photos of sites were taken and greatly assisted in gaining an understanding of the event, especially when used in conjunction with drawings of the site.

In five of the cases, critical decisional information was not maintained in the case file. Although the case files were closed, documentation to explain why the files were closed without citations was not present. When brought to DOSH's attention, emails that were not copied to the case files were provided to the monitors. Those emails supported DOSH's case closure decisions. Two of these five case files did not have a narrative of the fatal event and the email information was the only explanation of what happened and why a citation was not issued. One case file stated that the employee died of a heart attack, but no supporting documentation, such as death certificate or medical examiner's report, was included in the file to document the cause of death. Also, OSHA found that in most cases, copies of next-of-kin notification letters were not maintained in case files. See paragraph A.1.g. for details.

**Recommendation 2** – Develop a clear policy identifying what documents must be maintained with the case file. When discussions regarding an inspection are held, key information should be reduced to a memorandum and maintained in the case file, especially if it involves decisions on the disposition of the case.

**b. The correctness of violation classifications.**

Thirteen of the 18 reviewed case files resulted in the issuance of citation(s). DOSH's decisions not to issue citations in the other cases were reasonable and correct. The numbers of violations in cases where citations were issued ranged from one through 13. A total of 36 serious violations and 17 general violations (DOSH's equivalent to other-than-serious) were issued. The average number of serious violations per investigated fatality was 2.1, and the average number of general violations per investigated fatality was 1.0 for a combined average of 3.1. OSHA determined that the state was correctly classifying violations as serious and general. Violations were well documented and supported by the facts in each case.

**c. The proper application of probability and severity in assessing violation penalties.**

DOSH did an excellent job of classifying the severity of violations. However, the state rated probability lower than what would be expected for violations that related to fatalities. The probability rating system that the state uses for penalty calculation is based on a three-tiered scale, with 1 and 2, low probability; 3 and 4, medium probability; and 5 and 6 classified as high probability. Of the 36 violations cited, the probability assigned to 25 of them was either a 1 or 2; eleven violations were classified as either 3 or 4; and none were classified with a probability of 5 or 6. Although OSHA acknowledges that the mere fact that an accident occurred is not enough to rate probability as high, the data suggest that DOSH is reluctant to use the high probability classification when developing fatality-related violations and penalties.

**Recommendation 3** – Closely monitor the use of probability when calculating penalties for violations directly related to a fatality, and use higher values where appropriate.

**d. Abatement certification.**

The state verified abatement of violations linked to fatalities; the majority of hazards were abated immediately. Of the 13 cases where citations were issued, 11 had abatement completed within the state's abatement period. The two cases where abatement had not been documented included an employer who went out of business and one whose initial abatement period had not yet expired.

**e. The appropriateness of penalty reductions and/or any violation reclassifications or citation dismissals after informal conferences (DOSH reassumption hearings).**

OSHA's review concluded that DOSH used the reassumption process appropriately. Of the 13 case files with citations, four employers elected the formal appeals process. The remaining nine cases were settled with penalties paid in full and no reclassification of violations.

**f. Whether the Related Event Code (REC) and the violations documented and cited in the case files are correct.**

The Related Event Code was properly marked in 11 of the 13 case files reviewed. Two case files did not have the REC code marked even though citations were issued and sustained for violations directly related to the fatality.

**Recommendation 4** – Ensure that REC codes are properly applied to violations related to fatalities.

**g. Notification of next of kin in fatality cases and providing an opportunity to communicate with DOSH about the fatality investigation.**

The state ensured that the victim's next of kin was notified of DOSH's investigation of the accident. However, in all but two files, a copy of next-of-kin notification letter (or documentation that the letter had been sent) was not in the files. Copies of all but one of those next-of-kin notification letters were later retrieved from the field offices and provided to the study team for its review. With respect to the one instance where the field office did not have the next-of-kin letter, the CSHO stated that the letter was sent but a copy was not retained for the file. Although next-of-kin notifications had been made in each case, DOSH should have a policy requiring that copies of such letters be kept in case files (see recommendation 2).

**h. Whether employer injury/illness data was collected.**

The state did not collect injury and illness data in every case file reviewed where it was required. Seventeen case files were reviewed of which five involved employers who were not required to maintain logs due to their size. Of the 12 cases where the employer was required to maintain injury and illness logs, none of the files contained a copy of the logs. Only one of the 12 case files showed that the employer's logs were checked.

The DOSH compliance manual states "*As appropriate, CSHOs must review injury and illness records to the extent necessary to determine compliance and identify trends.*" There is no mention of a requirement to obtain a copy of the injury and illness logs.

**Recommendation 5** – Ensure that injury and illness logs are reviewed and copied for the case file on all inspections where logs are required. Document findings in the case file.

**Recommendation 6** – Revise the DOSH compliance manual to require that injury and illness logs be obtained from the employer, where appropriate, and that a copy be maintained in the case file.

Special Study Conclusions.

OSHA’s study found that DOSH has been doing an effective job in most areas of investigating fatalities that occur within its jurisdiction. Case files reflected sufficient description of the fatality; citations were issued where appropriate; violations were properly classified; and, verification of abatement was made. As required, severity and probability were considered when calculating penalties. In many instances, however, CSHOs seemed reluctant to apply high probability to their penalty calculations. Also most CSHOs did not obtain copies of employer’s injury and illness logs during fatality investigations. After citation issuance and employer appeal, DOSH appropriately used its reassumption hearing process (similar to OSHA’s informal conference procedure). DOSH notified the victim’s next of kin of its investigation and provided next of kin an opportunity to communicate with DOSH.

***Imminent Danger. Ensure imminent danger situations are responded to promptly and appropriately.***

DOSH received 32 imminent danger complaints/referrals in FY 2009. All were responded to within one day. This is excellent performance.

***Compliance Inspections. Ensure an effective program is in place allowing the conduct of unannounced enforcement inspections (both programmed and unprogrammed).***

DOSH conducted 7,654 inspections in FY 2009. That number exceeded the state’s inspection goal by 1,054 inspections (16 percent increase). This is the first time since FY 2005 that DOSH has met or exceeded its inspection goal, and is the highest total number of inspections conducted in the last five fiscal years.

Inspections	FY 2009	FY 2008	FY 2007	FY 2006	FY 2005	FY 2004
<b>Goal</b>	<b>6,600</b>	<b>7,230</b>	7,230	8,880	7,400	7,400
<b>Conducted</b>	7,654	5,674	6,139	6,990	7,529	6,718
<b>Difference</b>	<b>1,054</b>	<b>(1,556)</b>	<b>(1,091)</b>	<b>(1,809)</b>	<b>129</b>	<b>(682)</b>

**Employee and Union Involvement. Ensure employees are allowed to participate in inspection activities.**

DOSH's policy on employee participation in the inspection process is the same as OSHA's. The state's compliance officers are required to determine, soon after arriving at the work site, whether employees are represented; if so, employee representatives are to be afforded the opportunity to participate in all phases of the inspection. OSHA's accompanied visits and its review of DOSH's inspection files did not identify problems with respect to employee participation during inspections.

**Citations. Ensure timely issuance of citations.**

For FY 2009, DOSH sought to reduce its average lapse times for issuing hygiene and safety citations. The actual reductions in hygiene and safety citation lapse times exceeded the state's goals by 4.6 and 15.1 days, respectively.

The following table shows average lapse time data from FY 2004 through FY 2009. The state is to be commended for the excellent improvement in lapse times.

IH Lapse Times (Days)	FY 2009	FY 2008	FY 2007	FY 2006	FY 2005	FY 2004
Goal	59.9	60.2	60.0	60.6	65	65
Actual	55.3	70.6	74.6	78.6	66	72
Difference	-4.6	+10.4	+14.6	+18.0	+1.0	+7.0

Safety Lapse Times (Days)	FY 2009	FY 2008	FY 2007	FY 2006	FY 2005	FY 2004
Goal	45.6	47.3	45.7	46.3	48	48
Actual	30.5	42.3	52.4	57.4	41	47
Difference	-15.1	-5.0	+6.7	+11.1	-7.0	-1.0

**Penalties. Ensure serious violations cited are assessed penalties.**

The state has written procedures for imposing first instance sanctions for violations of standards. The average penalty assessed per serious violation in FY 2009 was \$530. That average was \$143 (21%) less than DOSH's average in FY 2008. It is also \$805 less than the three-year national average (both state and federal data).

**Recommendation 7** – Increase penalty amounts significantly in order to encourage voluntary compliance and to serve as a strong deterrent. Policy adjustments should be made to impose higher penalties for serious violations.

Average penalty assessed per serious violation	FY 2009	FY 2008	FY 2007	FY 2006	FY 2005	FY 2004
	\$530	\$673	\$498	\$429	\$421	\$464

**Abatement. *Ensure an effective mechanism exists for assurance of hazard abatement.***

For FY 2009, abatement of serious, willful and repeat violations was timely 96% of the time. That exceeded DOSH's goal of 95% and is excellent performance.

**Recordkeeping and Reporting. *Ensure rules are in place requiring employer recordkeeping of workplace injuries and illness, and timely reporting of workplace fatalities and catastrophes.***

DOSH's regulations for maintaining records of workplace injuries and illnesses are comparable to OSHA's. DOSH requires employers to report work-related hospitalizations of one or more employees, whereas OSHA requires the reporting of hospitalizations of three or more. The state has the same fatality reporting requirement as OSHA.

**Denials of Entry. *Ensure an effective mechanism is in place to obtain inspection warrants when denials of entry occur.***

OSHA's Integrated Management Information System (IMIS) data for FY 2009 showed four instances of denial of entry where a warrant was not obtained by DOSH. In each of the four cases, the state's decision not to seek a warrant was appropriate.

In the first case, an industrial hygiene referral was already underway and it was determined that the referred safety-related activity was no longer being performed. In the second case, a follow-up inspection was attempted and the employer denied entry because the cited item was under appeal. In the third case, after the employer denied entry, DOSH determined that the employer should not have been on the targeting list in the first place. In the final instance, the state made the decision not to pursue a warrant because the employer had been inspected at two other locations with no violations; in addition, the employer had developed and implemented all required written programs and had an effective safety committee.

**Review Procedures. *Ensure effective mechanisms are in place to provide employers the right of review of alleged violations, abatement periods, and proposed penalties; that employees or their representatives have an opportunity to participate in the review proceedings and provide for contest of abatement dates.***

Washington's Administrative Rules and DOSH's Administrative Manual contain procedures that afford employers the right to administrative and judicial review of alleged violations, initial penalties and abatement periods. Those procedures also provide employees and their representatives the opportunity to participate in review proceedings and to contest citation abatement dates.

DOSH's reassumption process is similar to OSHA's informal conference process. Data in the Interim State Indicator Report (SIR) relating to reassumptions are suspect since they report that only one out of 12,541 violations was vacated in FY 2009. Similarly, the SIR shows that no violations were reclassified at the reassumption stage. The accuracy of data entered into the IMIS relating to review procedures will be evaluated during routine monitoring.

In Washington state, post-contest data reflect the outcomes of the second level appeals at the Board of Industrial Insurance Appeals (BIIA). A lower percentage of DOSH's violations (13.3%) were vacated in FY 2009 in comparison to the federal percentage (23.4%). DOSH's post-contest penalty retention for FY 2009 was 68.2%, compared to 58.5% retention federally. In the area of post-contest violation reclassification, DOSH reclassified 2.8%, compared to OSHA's reclassification rate of 15.1%.

OSHA's baseline review of DOSH fatality inspections from October 2008 through October 2009 concluded that DOSH was using the reassumption process appropriately. Of the 13 case files with citations, four employers chose to use the formal appeals process. The remaining nine cases were settled with the penalty paid in full and no reclassification of penalties.

***Public Employee Program. Ensure a representative share of safety and health enforcement inspections is conducted in the public sector.***

Approximately 3.3% of DOSH inspections were conducted in the public sector. This is consistent with previous years and is satisfactory.

***Information Management. Use of IMIS reports for program management; accuracy and integrity of data; timeliness of data entry and updates.***

Although OSHA, Region X, does not routinely audit DOSH's performance with regard to information management, other methods are used to ensure the integrity of the data. For example, OSHA meets quarterly with representatives of DOSH to review program performance. Prior to such meetings, IMIS reports are run by the Bellevue Area Office for purposes of gauging the state's performance with respect to mandated activities. Likewise, the state updates its report on performance against the goals in its annual plan. In order for such reports to be accurate, the data need to be properly entered in a timely fashion; if any issues or concerns about data integrity arise, they are discussed at quarterly meetings in order to achieve resolution.

In addition to the above, the Seattle Regional Office monitors the IMIS monthly to ensure that the state plans in Region X enter OSHA-170 information for fatalities they investigate. Also, responses are prepared for ad hoc requests for clarification or correction of state data in the IMIS.

DOSH enters data into the WIN system. That data is then electronically transferred to the OSHA IMIS system. Reports run from that system are used by DOSH for much of its management information needs.

**Bureau of Labor Statistics (BLS) Rates. Review state-specific rates to determine trends; compare to targeting and emphasis programs for correlation.**

An overview of Washington’s private industry TCIR<sup>1</sup> and DART<sup>2</sup> rates for calendar years 2004 through 2008, as well as for select industries, is provided in the table that follows. At the close of this monitoring period, 2008 was the most recent calendar year for which data were available. [Data source: [www.bls.gov](http://www.bls.gov)]

	CY 2004	CY 2005	CY 2006	CY 2007	CY 2008	% Change, 04-08	% Change, 06-08
<b>Private Industry</b>							
TCIR	6.9	6.1	6.6	6.1	5.6	-18.8%	-15.2%
DART	3.1	2.9	3.2	2.9	2.7	-13%	-15.6%
<b>Construction, NAICS<sup>3</sup> 23</b>							
TCIR	11.4	11.4	12.0	9.6	9.0	-21%	-25%
DART	4.7	4.8	6.0	4.7	4.3	-8.5%	-28.3%
<b>Manufacturing, NAICS 31-33</b>							
TCIR	9.0	8.4	8.2	8.3	7.0	-22.2%	-14.6%
DART	4.8	4.4	4.4	4.5	3.8	-21%	-13.6%
<b>State and local government</b>							
TCIR	7.1	7.8	6.3	6.7	6.4	-9.9%	-1.6%
DART	2.7	3.1	2.5	2.9	2.7	-0-%	+8%

**2. Standards, Variances, and Plan Changes**

**Standards Adoption and Variance Actions. Ensure new and revised standards are adopted within required time frames and variance applications are processed properly and decisions justified.**

Standards. DOSH has acceptable procedures for promulgating standards that are at least as effective as those issued by OSHA. During this evaluation period, four final

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<sup>1</sup> TCIR is the total case incident rate, which represents the number of recordable injuries and illnesses per 100 full-time workers, calculated as: (N/EH) x 200,000 where N = number of injuries and illnesses; EH = total hours worked by all employees during the calendar year; and 200,000 = base for 100 equivalent full-time workers (working 40 hours per week, 50 weeks per year).

<sup>2</sup> DART is the days away from work, job transfer, or restriction rate, which represents the number of such cases per 100 full-time workers. Calculation of the DART rate is similar to that of TCIR, as described in footnote 4 above.

<sup>3</sup> NAICS is the North American Industry Classification System.

rules were issued by OSHA - three of which were required to be adopted by the states. The “Clarification of Employer Duty to Provide Personal Protective Equipment and Train Each Employee,” the “Revising Standards Referenced in the Acetylene Standard,” and the “Longshoring and Marine Terminals; Vertical Tandem Lifts” rules were required to be adopted by the states. Adoption of the “Updating OSHA Standards Based on National Consensus Standards: PPE” rule was optional.

The state adopted the “Clarification of Employer Duty to Provide Personal Protective Equipment and Train Each Employee” and the “Longshoring and Marine Terminals; Vertical Tandem Lifts” standards. DOSH plans to adopt the other two in the third quarter of FY 2010.

Variations. DOSH granted 17 permanent variances during this evaluation period (two fewer than the 19 variances granted in FY 2008). During the previous three years of reporting, DOSH granted an average of twenty permanent variances a year. Nine interim variances were granted during this period which is one more than the number granted during the last period. During the previous three years of reporting, DOSH granted an average of eight interim variances a year. During the current period, fifty-three existing variances were revoked or withdrawn, thirty-seven variances were amended, and seven applications were denied.

The variance applications were handled properly and the decisions to grant the variances were justified.

**Federal Program Changes (FPCs) and State-Initiated Changes (SICs). Ensure timely adoption of program changes.**

Federal. DOSH timely acknowledged all four federal program changes that were issued by OSHA in FY 2009. DOSH’s response to OSHA’s Initial Training Program for Compliance Personnel (TED 01-00-018) was submitted on June 30, 2009. The six-month submission due date for that change was February 6, 2009.

Immediately before the close of this monitoring period, DOSH transmitted via email an electronic version of a revised compliance manual in response to OSHA Instruction CPL 02-00-148, the Field Operations Manual (FOM). DOSH submitted a state plan change response describing differences in its manual from the federal directive on December 9, 2009. All federal program change final responses except for DOSH’s FOM submission were approved by the region and submitted to the OSHA national office.

State-initiated. For state-initiated changes, DOSH timely submitted two state-initiated changes this period. The first change updated DOSH’s outdoor heat exposure enforcement procedures. The second change provided direction regarding compliance with construction crane certification and operator qualification. The quality of each

DOSH state-initiated change submission was satisfactory. These changes were approved by the region and forwarded to the OSHA national office.

### **3. Voluntary Compliance**

***Ensure the existence and implementation of an appropriate program to encourage voluntary compliance by employers through consultation and intervention.***

Consultation. DOSH's private sector consultation program is part of the Washington state plan. DOSH conducted a total of 2,707 consultation visits (both private and public sector visits) in FY 2009, which exceeded DOSH's goal of 2,600 visits by nearly 10%. This was a marked improvement over the 21% shortfall of last year.

OSHA, in conjunction with its stakeholders, developed a set of mandated activity measures or standards of acceptable performance for consultation programs. Quarterly data relating to each of those standards are reported in the Mandated Activities Report for Consultation (MARC). The MARC and supplemental monitoring data are typically used to assess states' performance.

Private Sector. In FY 2009, almost 90.5% (2,173 of 2,399) of Washington's private sector initial consultation visits occurred at high-hazard establishments. This exceeds the MARC reference standard of 90%. All of Washington's initial consultation visits were to smaller businesses which OSHA defines as having 250 or fewer employees. This performance also exceeds the MARC reference standard of 90%. In all 2,399 initial visits, as well as in all but two of the 83 follow-up visits, DOSH's consultants conferred with employees. The reference standard for those two measures is 100%.

For the year, 98.4% (6,638 of 6,745) of the serious hazards identified by consultants were verified as corrected in a timely manner. For the purposes of this measure, timely verification is verification in 14 days or fewer from the latest correction due date for each visit. The MARC reference standard is 100%. DOSH's FY 2009 annual performance plan goal was 95% or better, so this performance exceeded the state's performance plan goal. One employer was referred to enforcement for failing to verify correction.

Public Sector. According to the MARC, there were two initial consultation visits in the public sector in FY 2009. Further investigation revealed the MARC report is not accurately reflecting public sector data for Washington. The actual number of visits was 215 including both state and municipal employers.

**Recommendation 8** – Revise WIN system code(s) so that public sector consultation visit information can be entered into the IMIS.

Audit. OSHA conducted an on-site audit of DOSH's consultation program in FY 2009. The audit concluded that DOSH consultants were doing an excellent job of providing

consultative services to Washington’s public and private employers. Nevertheless, the report included a number of recommendations aimed at enhancing program quality. The audit report and the state’s formal response to OSHA’s recommendations are included as Appendix F to this FAME. (See **Recommendations 9 – 15** in the Executive Summary and Appendix A.)

#### 4. Discrimination Program

***Ensure the state provides necessary and appropriate protection against employee discharge or discrimination.***

In September 2009, OSHA conducted an on-site audit of DOSH’s discrimination program for the FY 2009 period. The audit report which contained several recommendations and the state’s formal response to OSHA’s recommendations are included as Appendix E to this FAME. (See **Recommendations 16-18** in the Executive Summary and Appendix A.)

Twenty-two case files were reviewed by OSHA. In addition to the 22 case files, the audit examined other records to determine whether the state abided by the policies and procedures established in its Whistleblower Investigations Manual. OSHA’s audit report was transmitted to the state and the state satisfactorily responded to that report. It should also be noted that DOSH addressed the whistleblower-related recommendations that were made in the FY 2008 DOSH FAME to OSHA’s satisfaction.

The following table summarizes discrimination activity during FY 2009.

Disposition	Totals
<b>Total cases from FY 2009</b>	91
<b>Cases completed FY 2009</b>	77
<b>Cases completed timely</b>	75
<b>Overage cases</b>	2
~ Withdrawn	27
~ Dismissed	26
~ Merit	31
~Settled	15
~Settled Other	8
~ Reinstatement (if any)	4
~ Litigated	1
<b>Investigators on staff</b>	5

In FY 2009, DOSH received the same number of discrimination complaints as it did in FY 2008. Six fewer investigations were completed this past year than the number completed in FY 2008. DOSH finished FY 2009 with two pending cases. The merit rate on completed DOSH cases decreased from 58% in FY 2008 to 40% in FY 2009. Nationwide, the state average merit rate for FY 2009 was 19%.

DOSH completed 97% of its cases within 90 days during this monitoring period. DOSH has consistently completed 95% or more of its cases within 90 days for the last several years, which is an impressive track record.

A presentation for DOSH's investigative staff will be scheduled in FY 2010. The presentation will include information about new whistleblower laws and referring complaints to OSHA.

## **5. Complaints About State Program Administration (CASPA's)**

***Ensure timely and thorough responses to CASPA allegations, investigative findings and recommendations for program improvement are provided by the state.***

Three CASPA's were filed, evaluated and closed in FY 2009. One CASPA complainant alleged that DOSH had failed to investigate his safety complaints. Upon review, the state determined that no safety and health complaint had been filed with DOSH. Thus, that CASPA was not valid. The second CASPA alleged that DOSH had failed to address the complainant's safety and health complaint items. DOSH's initial response detailed its actions in addressing that safety and health complaint. DOSH's actions had in fact thoroughly addressed the complaint issues. Thus, that CASPA was not valid. The third CASPA objected to an unfavorable decision on a discrimination complaint. OSHA determined that DOSH's investigation, analysis and disposition were proper and that the complainant's appeal of DOSH's decision to the Director of Labor and Industries had been appropriately denied.

## **6. Other Program Elements**

**Personnel-Benchmark Positions Authorized and Filled. Track the state's authorized field safety and health enforcement positions at or above benchmark levels and actual safety and health enforcement positions filled.**

As of September 30, on-board staffing was at 95% of the authorized enforcement positions and at 90% of consultation positions. The details are as follows:

- Authorized safety compliance program positions are above the prescribed enforcement staffing benchmark. Washington's safety enforcement benchmark is 55 with 83 positions authorized and 79 of those filled.
- For health enforcement, the benchmark is 74 with 38 authorized and 36 filled.
- The state's 23(g) consultation program is staffed at 43 consultants – 28 safety and 15 health professionals. Both of those figures are below the number of positions allocated (31 for safety and 17 for health).

**Laboratory. *Ensure the state's laboratory is accredited and participates in a quality assurance program.***

DOSH operates its own laboratory for analyzing industrial hygiene samples. The laboratory is accredited by the American Industrial Hygiene Association and is a participant in the Proficiency Analytical Testing (PAT) Program. The laboratory was rated as proficient for all contaminant categories of the PAT program and passed all but one field of testing for Rounds 175 through 178 covering the past year. The state has also been rated proficient for the Bulk Asbestos (BAPAT) program and has passed the previous three rounds of the program (Rounds A79-209, A78-109, and A77-408).

**Summary Assessment of DOSH's Performance of Mandated and Related Activities**

DOSH's performance with respect to activities that are mandated by the Occupational Safety and Health Act and its implementing regulations is quite good. OSHA's special study identified some concerns with DOSH's fatality case files, and recommendations have been made on those issues. It is important to note that the study also found that citations were issued where appropriate, that violations were correctly classified and verified as abated and next of kin were contacted, even though the letters were not maintained in the files that were reviewed.

In FY 2009, OSHA conducted audits of DOSH's whistleblower protection program and its consultation program. Those audit reports and DOSH's responses to the recommendations in each are provided as Appendix E and Appendix F, respectively.

## **B. FISCAL YEAR 2009 ASSESSMENT OF DOSH PERFORMANCE IN ACHIEVING ANNUAL GOALS AND PROGRESS TOWARD STRATEGIC GOALS**

**Introduction.** DOSH's five-year strategic plan covers the period of FY 2006 through FY 2010. The state develops annual performance plans which support the achievement of its strategic goals, and submits the plans to OSHA for review and approval. DOSH developed and submitted its FY 2009 annual performance plan in support of its strategic plan as part of its application for federal funds.

The following is OSHA's assessment of DOSH's performance against its FY 2009 annual goals, and the state's progress in achieving the three broad goals in its 2006-2010 Strategic Plan. Washington's more detailed report on its accomplishments with respect to its 2009 Annual Performance Plan goals is attached as Appendix C, the State OSHA Annual Report (SOAR).

***Strategic Goal 1. Improve workplace safety and health for Washington workers by reducing hazards, exposures, injuries, illnesses and fatalities.***

***Five-Year Performance Goal 1-A. By 2010, reduce deaths from work-related injuries to no more than 3.0 per 100,000 full-time workers.***

**2009 Annual Performance Goal 1-1. Reduce deaths from work-related injuries in support of the 2010 goal of no more than 3.0 deaths per 100,000 full-time workers.**

**Result** – BLS fatality data for calendar year 2009 is not yet available for this report. However, based on OSHA 170 and other data, DOSH is on track to exceed its five-year performance goal of having a fatality rate of no more than a 3.0 deaths per 100,000 full-time workers by 2010.

**OSHA Assessment** – When DOSH developed its five-year strategic plan for 2006 through 2010, the most current BLS fatality data available was the 2004 Census of Fatal Occupational Injuries (CFOI), and Washington's rate was 3.4 deaths per 100,000 full-time workers. DOSH selected as its goal a reduction to 3.0 by 2010, and as a base line for this goal, DOSH used the 2000-2004 Washington State CFOI average fatality rate of 3.2 deaths per 100,000 full-time workers. Subsequent Washington State CFOI fatality rates for 2006, 2007 and 2008 of 2.8, 2.8, and 2.5, respectively, make it likely that the 3.0 rate goal will be achieved in 2010.

***Five-Year Performance Goal 1-B. By 2010, reduce the rate of workplace injuries and illnesses in Washington workplaces by 20%.***

***2009 Annual Performance Goal 1-2. Reduce workplace injuries and illnesses by at least 10% as measured by the average time loss claims rate for employers with WISHA enforcement or consultation visits.***

**Result** – Fixed site employers inspected by DOSH had a rate decrease of 14.5% compared to a 4.3% decrease for employers not inspected. Non-fixed industry employers inspected by DOSH had a rate decrease of 11.9% compared to a 7.3% decrease for employers not inspected. Fixed site employers with a DOSH consultation visit had a rate decrease of 2% compared to a 4.3% decrease for employers with no visit. Non-fixed industry employers with a DOSH consultation visit had a rate decrease of 43.7% compared to a 7.3% decrease for employers with no visit.

**OSHA Assessment** – Although DOSH did not meet its goal for fixed site employers receiving a DOSH consultation visit, this goal was met in aggregate.

***Five-Year Performance Goal 1-B. By 2010, reduce the rate of workplace injuries and illnesses in Washington workplaces by 20%***

***2009 Annual Performance Goal 1-3. Conduct at least 2,600 on-site consultations. To help ensure this goal is met, provide weekly tracking reports to consultation supervisors and managers.***

**Result** – DOSH conducted 2,707 on-site consultations during FY 2009.

**OSHA Assessment** – The goal was exceeded by 107 consultation visits.

***Five-Year Performance Goal 1-B. By 2010, reduce the rate of workplace injuries and illnesses in Washington workplaces by 20%***

***Annual Performance Goal 1-4. Conduct at least 6,600 compliance inspections. To help ensure this goal is met, provide weekly tracking reports to compliance supervisors and managers.***

**Result** – DOSH conducted 7,690 inspections during FY 2009.

**OSHA Assessment** – The goal was exceeded by 1,090 inspections.

***Five-Year Performance Goal 1-C. Develop or continue at least two industry and hazard-based initiatives each year to provide additional attention to areas contributing to high fatality or high injury and illness rates, or emerging hazards.***

***Annual Performance Goal 1-5. Continue implementation of crane safety legislation including adopting all final regulations, implementing a data and correspondence system, and hiring at least five compliance inspectors.***

**Result** – Crane safety rules have been adopted. These rules cover examination and certification requirements for mobile, tower, articulating, and overhead crane certifiers.

**OSHA Assessment** – The goal was met. There will also be a Phase 2 to follow which will develop and implement requirements for certification of crane inspectors and operators and prescribe construction crane safety requirements for employers, effective January 1, 2010.

***Summary of Progress toward Strategic Goal 1 – Improve workplace safety and health for Washington workers by reducing hazards, exposures, injuries, illnesses and fatalities.***

The state is making very good progress toward meeting its first strategic goal. All but one of the annual performance goals for which data were available were either met or exceeded.

***Strategic Goal 2. Promote values which foster workplace safety through education, consultation, and employer assistance.***

***Five-Year Performance Goal 2-A. Greatly expand safety and health assistance tools for employers as evidenced by a 50% increase in online or downloadable employer assistance tools.***

***2009 Annual Performance Goal 2-1. Increase the number of safety presentations in Spanish.***

**Result** – DOSH performed 201 safety presentations in Spanish in FY 2009, with more than 4,600 people participating. It is estimated that an additional 400 people were contacted by the DOSH Hispanic Outreach Coordinator each month, and that almost 1,800 people attended two Hispanic/Latino safety and health fairs in King County. This level of outreach to the Hispanic/Latino worker community significantly exceeds what had been accomplished in previous years.

**OSHA Assessment** – This goal was met.

***Five-Year Performance Goal 2-B. Provide significant incentives and resources to foster workplace safety and health by developing and implementing a program to encourage and fund safety and health investment projects.***

***2009 Annual Performance Goal 2-2. By September 2009, develop a written report on safety and health investment projects (SHIP) that were funded, and results-to-date.***

**Result** – The SHIP program implemented a 2007 Washington State Legislature biennial budget proviso requiring establishment of a grants program that funds projects which promote employer/employee collaborative efforts to improve workplace safety programs. Since the program's inception, a total of 97 applications have been received, and 27 approved in the amount of \$3,406,706. Numerous SHIP projects are underway but it is too soon for DOSH to provide overall or specific results.

**OSHA Assessment** – Status of this goal is pending.

***Five-Year Performance Goal 2-C. Encourage voluntary efforts to improve occupational safety and health and expand worker protection systems by recognizing and encouraging positive models of successful employer programs, as evidenced by approval of at least ten additional VPP sites.***

***2009 Annual Performance Goal 2-3. Support the five-year goal to encourage voluntary compliance and expand worker protection systems through the approval of at least two new VPP sites.***

**Result** – Three new VPP sites were approved in FY 2009.

**OSHA Assessment** – The goal to approve new sites was exceeded. One previously approved site withdrew from VPP. The net gain of two VPP sites is on track to meet the five-year goal.

***Five-Year Performance Goal 2-D. Encourage voluntary efforts to improve occupational safety and health and expand worker protection systems by recognizing and encouraging positive models of successful employer programs, as evidenced by approval of at least ten additional VPP sites and four additional partnerships with business and labor organizations.***

***2009 Annual Performance Goal 2-4. Adopt and implement a small employer recognition and inspection exemption program equivalent to OSHA's SHARP program.***

**Result** – In 2009, DOSH adopted a small employer recognition and exemption program called Safety Through Achieving Recognition Together (START) and submitted it as a federal program change. OSHA has approved the DOSH START program as at least as effective as the comparable federal SHARP program.

**OSHA Assessment** – This goal was met.

***Summary of Progress toward Strategic Goal 2 – Promote values which foster workplace safety through education, consultation, and employer assistance.***

The state is making very good progress toward meeting its second strategic goal. DOSH met or exceeded all of the annual performance goals relating to this strategic goal except the one requiring a report on its Safety & Health Investment Projects (SHIP) program. That report will be completed in FY 2010.

***Strategic Goal 3. Maximize DOSH's effectiveness and efficiency by strengthening our capabilities and infrastructure.***

***Five-Year Performance Goal 3-A. Assure timely response in critical program areas defined in annual performance plan targets, including issuing results of onsite interventions, assuring correction of hazards, and investigating complaints of workplace safety and health related discrimination.***

***2009 Annual Performance Goal 3-1. Ensure that at least 95% of the time, consultants verify the correction of serious hazards within 14 days of the abatement date.***

**Result** – DOSH verified correction of serious hazards within 14 days of the abatement date 97.5% of the time.

**OSHA Assessment** – The goal was exceeded. Of the 6,816 serious hazards identified, DOSH verified that 6,649 of them were abated within 14 days of the abatement date.

***Five-Year Performance Goal 3-A. Assure timely response in critical program areas defined in annual performance plan targets, including issuing results of onsite interventions, assuring correction of hazards, and investigating complaints of workplace safety and health related discrimination.***

***2009 Annual Performance Goal 3-2. Ensure that at least 95% of the time, inspectors verify the correction of serious violations within 14 days of the abatement date.***

**Result** – 4,381 of 4,639 (95%) of serious violations cited by DOSH were verified as abated within 14 days of the abatement dates.

**OSHA Assessment** – The goal was met.

***Five-Year Performance Goal 3-A. Assure timely response in critical program areas defined in annual performance plan targets, including issuing results of onsite interventions, assuring correction of hazards, and investigating complaints of workplace safety and health related discrimination.***

***2009 Performance Goal 3-3. Maintain hygiene citation lapse time at or below the current national average of 59.9 calendar days (for citations with violations, from opening conference to issuance date).***

**Result** – Hygiene citation lapse time improved significantly from 70.6 days in FY 2008 to 55.3 days in FY 2009.

**OSHA Assessment** – The goal was exceeded. DOSH is commended for its improved industrial hygiene lapse time averages.

***Five-Year Performance Goal 3-A. Assure timely response in critical program areas defined in annual performance plan targets, including issuing results of onsite interventions, assuring correction of hazards, and investigating complaints of workplace safety and health related discrimination.***

***2009 Performance Goal 3-4. Maintain safety citation lapse time at or below the current national average of 45.6 calendar days (for citations with violations, from opening conference to issuance date).***

**Result** – Safety citation lapse time continued to improve from 42.3 days in FY 2008 to 30.5 days in FY 2009.

**OSHA Assessment** – The goal was exceeded. DOSH is also commended for its improved safety lapse time averages.

***Five-Year Performance Goal 3-A. Assure timely response in critical program areas defined in annual performance plan targets, including issuing results of onsite interventions, assuring correction of hazards, and investigating complaints of workplace safety and health related discrimination.***

***2009 Performance Goal 3-5. Complete the investigation of all discrimination complaints within 90 days.***

**Result** – Investigations were completed within 90 days in 75 of 77 cases.

**OSHA Assessment** – The goal was almost met. Timely completion of nearly 98% of safety and health related discrimination cases constitutes very good performance.

***Five-Year Performance Goal 3-A. Assure timely response in critical program areas defined in annual performance plan targets, including issuing results of onsite interventions, assuring correction of hazards, and investigating complaints of workplace safety and health related discrimination.***

***2009 Annual Performance Goal 3-6. Provide weekly reports to compliance managers showing complaint received date, create date and opening conference date in order to reduce the number of complaints taking longer than 30 days to initiate. Ensure that supervisors take appropriate actions to verify that complaint inspections are initiated timely.***

**Result** – Weekly reports were completed and distributed to Compliance Senior Program Managers and the regional Compliance Managers for their use in managing enforcement activities such as complaints.

**OSHA Assessment** – The goal was met.

***Five-Year Performance Goal 3-B. Continue to make WISHA rules, correspondence and other documents more accessible and understandable.***

***2009 Annual Performance Goal 3-7. Implement the redesigned citation and notice package.***

**Result** – A streamlined citation and notice package meeting DOSH legal requirements was implemented in FY 2009.

**OSHA Assessment** – The goal was met.

***Five-Year Performance Goal 3-C. Improve DOSH's ability to analyze and measure delivery and outcome of services as evidenced by improved staff capabilities, data systems and performance management reports.***

***2009 Annual Performance Goal 3-8. Develop a plan and schedule for designing and implementing an electronic quality review system with automated performance management reports.***

**Result** – DOSH reported at the FY 2009 second quarter meeting with OSHA that it could not accomplish this goal because of state funding restrictions and a hiring freeze.

**OSHA Assessment** – The goal was not met. However, it was carried over to the 2010 Annual Performance Plan and is on track to be implemented.

***Summary of Progress toward Strategic Goal 3 – Maximize DOSH's effectiveness and efficiency by strengthening our capabilities and infrastructure.***

The state is making very good progress toward meeting its third strategic goal. Due to resource constraints, DOSH was not able to implement its plan for an electronic quality review system capable of preparing automated performance management reports. DOSH almost met its 100% discrimination timeliness goal by having only two of its 77 cases extend past the 90-day benchmark. Among the several accomplished goals were such key program components as timely verification of serious hazard abatements for both enforcement and consultation and timely issuance of both safety and health citations.

## **Appendix A**

### **FY 2009 Findings and Recommendations**

FY 2009 Washington State Plan (DOSH) Enhanced FAME Report  
prepared by Region X

## Findings and Recommendations

[ ] = added text

	Findings	Recommendations
1	As noted in the FY 2008 FAME, the number of untimely FAT/CAT investigations is inflated by the reporting of non-work related fatalities into the WIN [state MIS] system. This issue has been discussed in quarterly meetings but has not been resolved.	Discontinue entering fatalities that are not work-related into the IMIS data system (p.13).
2	In five of the [18] fatality cases, critical decisional information was not maintained in the case file. Although the case files were closed, documentation to explain why the files were closed without citations was not present. When brought to DOSH's attention, emails that were not copied to the case files were provided...[that] supported DOSH's case closure decisions. Two of these five case files did not have a narrative of the fatal event and the email information was the only explanation of what happened and why a citation was not issued. One case file stated that the employee died of a heart attack, but no supporting documentation, such as [a] death certificate or medical examiner's report, was included in the file to document the cause of death.	Develop a clear policy identifying what documents must be maintained with the case file. When discussions regarding the case file are held, key information should be reduced to a memorandum and maintained in the case file, especially if it involves decisions on the disposition of the case (p. 14).
3	The state rated probability lower than would be expected for a violation that related to fatalities. Of the 36 violations issued, the probability assigned to 25 of them was classified as either a 1 or 2, or as a low on the state's probability system. Further, eleven violations were classified as either 3 or 4, or as a medium... Finally, none of the case files reviewed had any citations that were classified with a probability of 5 or 6, or high. ..The data suggest that DOSH was reluctant to use the high probability classification when developing fatality-related violations and penalties.	Closely monitor the use of probability when calculating penalties for violations directly related to a fatality (p.14).
4	The Related Event Code was properly marked on the documentation for 11 of the 13 case files reviewed [with citations]. Two case files did not have the REC code marked even though citations were issued and sustained for violations directly related to the fatality.	Ensure that REC codes [Related Event Codes] are properly applied to violations related to fatalities (p.15).
5	The state did not collect injury and illness data in every case file reviewed where it was required. 12 employers from the study files were required to maintain logs [but none of their case files included] a copy of the injury and illness logs. Only one of the 12 case files showed that the employer's logs were checked.	Ensure that injury and illness logs are reviewed and copied for the case file on all inspections where logs are required. Document findings in the case file (p.16).
6	The DOSH compliance manual...states "As	Revise the DOSH compliance manual to require that

	Findings	Recommendations
	appropriate, CSHOs must review injury and illness records to the extent necessary to determine compliance and identify trends.” There is no mention of a requirement to obtain a copy of the injury and illness logs.	injury and illness logs be obtained from the employer, where appropriate, and that a copy be maintained in the case file (p.16).
7	The average penalty assessed per serious violation in FY 2009 was \$530. That average was \$143 (21%) less than DOSH’s average in FY 2008. It is also \$805 less than the three-year national average (both state and federal data).	Increase penalty amounts significantly in order to encourage voluntary compliance and to serve as a strong deterrent. Policy adjustments should be made to impose higher penalties for serious violations (p17).
8	According to the MARC [Mandated Activities Report for Consultation], there were two initial consultation visits in the public sector in FY 2009. Further investigation revealed that the MARC report is not accurately reflecting public sector data for Washington. The actual number of visits was 215, including both state and municipal employers.	Revise WIN system [state MIS] code(s) so that public sector consultation visit information can be entered into the IMIS (p.22).
	<b>23(g) Private Sector Consultation Audit Findings</b>	<b>Consultation Audit Recommendations</b>
9	Nine case files were missing OSHA 300 [injury and illness] logs out of 31 [case files reviewed], resulting in 29% missing 300 logs and log information.	If a company is not keeping the [OSHA] 300 [injury and illness] logs and is required to, an item should be included in the case file. Copies of 300 logs should be collected from businesses and put into the case file for the previous three years (Appendix F p.1).
10	Fifteen of the 31 case files reviewed (48%) did not contain an evaluation of the employer’s safety and health management system. One of the case files had scores entered from the form but a copy of the form was not included. Some of the case files were partial visits and should have had partial evaluations completed.	Assure that all case files have a completed form 33 or equivalent [on the employer’s safety and health program] and the evidence or rationale for the score awarded is evident (Appendix F p.1).
11	Employers in three cases did not abate hazards in the agreed-upon time frame and did not ask for extensions. In some cases, the extensions were given without the employer submitting the required information of why the extension was needed, what was being done to protect employees in the interim and when the abatements would be complete.	If the employer does not respond to requests for abatement certification and will not ask for an extension, the case should be turned over to enforcement for follow-up (Appendix F p.2).
12	Most OSHA 30 forms stated that one employee was interviewed. The case file notes reflected more than one person was interviewed in most cases. It appears that the consultants are entering one in the box for the number of employees interviewed regardless of the number of employees they interviewed.	Enter the correct number of employees interviewed in the OSHA form 30 box requesting the information (Appendix F p.2).
13	Abatement procedures and certification were inadequate or missing in some case files. Abatement certifications in some case files were received up to six months later without [the employer] requesting extensions.	Assure that the abatement language provided by the employer abates the hazard. A statement such as “Complied” does not abate the hazard. If the language does not abate the hazard, the consultation project should consider if an extension of time is necessary and the employer should be advised to either abate the hazard or ask for an extension (Appendix F p.3).

	Findings	Recommendations
14	The consultant measured air contaminants with a direct reading instrument (PID) that produced data for area sampling and drew conclusions about 8 hour average exposures without calculating possible time weighted averages. A noise dosimeter was used for area surveys in two cases that resulted in conclusions being drawn about employees' overexposures to machine noise in a complex work environment. Employees moving between machine areas need to be monitored during the workday to quantify the exposure to noise or calculations can be done estimating the exposure to noise.	Require consultants to use recognized practices to determine employee exposure to air contaminants and noise before making statements or recommendations about employee exposures (Appendix F p.3).
15	Three of the five cases reviewed [had industrial hygiene sampling information that] did not include calibration logs, sampling forms or other instruments or results data.	Review industrial hygiene [instrumentation] requirements with the industrial hygienists as this [sampling instrument calibration] requirement is designed to assure proper [sampling] techniques are used (Appendix F p.4).
	Discrimination Audit Findings	Discrimination Audit Recommendations
16	Thirty-two percent of DOSH's [discrimination] complaints were withdrawn after they were filed. [This] was discussed with DOSH...and DOSH provided its rationale for them. When a complaint is withdrawn, the case file should include either a written request from the complainant or a withdrawal form signed by the complainant, filed as a separate exhibit.	For [discrimination] complaints that are withdrawn, DOSH's case files should include a written request for withdrawal from the complainant. The request to withdraw the complaint should be filed as a separate exhibit (Appendix E p.3).
17	DOSH's [discrimination] settlement agreements allow for unemployment compensation benefits to be deducted from settlement monies. This is not correct. The <i>Whistleblower Investigations Manual</i> states that "unemployment compensation benefits may never be considered as back pay offset."	DOSH should not deduct unemployment compensation from settlement monies in its [discrimination] settlement agreements (Appendix E p.3).
18	DOSH's [discrimination] investigative reports should include a section which describes how the employer is covered under the Act in order to establish jurisdiction. This will help to clarify why the agency accepted the complaint instead of referring it to federal OSHA or another government agency.	DOSH should include a section in its [discrimination] investigative reports and/or memos for coverage and/or jurisdiction. This section should describe why the state has jurisdiction to investigate a complaint as well as include detail similar to what is written in DOSH safety inspection reports (Appendix E p.3).

## **Appendix B**

### **FY 2009 Enforcement Activity**

**Washington State Plan (DOSH)  
FY 2009 Enforcement Activity**

	Washington	State Plan Total	Federal OSHA
<b>Total Inspections</b>	<b>7,659</b>	<b>61,016</b>	<b>39,004</b>
Safety	6,250	48,002	33,221
<i>% Safety</i>	82%	79%	85%
Health	1,409	13,014	5,783
<i>% Health</i>	18%	21%	15%
Construction	2,746	26,103	23,935
<i>% Construction</i>	36%	43%	61%
Public Sector	250	7,749	N/A
<i>% Public Sector</i>	3%	13%	N/A
Programmed	5,428	39,538	24,316
<i>% Programmed</i>	71%	65%	62%
Complaint	221	8,573	6,661
<i>% Complaint</i>	3%	14%	17%
Accident	31	3,098	836
Insp w/ Viols Cited	5,162	37,978	27,165
<i>% Insp w/ Viols Cited (NIC)</i>	67%	62%	70%
<i>% NIC w/ Serious Violations</i>	49%	62%	87%
<b>Total Violations</b>	<b>15,206</b>	<b>129,363</b>	<b>87,663</b>
Serious	5,113	55,309	67,668
<i>% Serious</i>	34%	43%	77%
Willful	15	171	401
Repeat	449	2,040	2,762
Serious/Willful/Repeat	5,577	57,520	70,831
<i>% S/W/R</i>	40%	44%	81%
Failure to Abate	92	494	207
Other than Serious	9,537	71,336	16,615
<i>% Other</i>	63%	55%	19%
Avg # Violations/ Initial Inspection	2.9	3.3	3.1
<b>Total Penalties</b>	<b>\$ 3,301,349</b>	<b>\$ 60,556,670</b>	<b>\$ 96,254,766</b>
Avg Current Penalty/ Serious Violation	\$ 479.20	\$ 800.40	\$ 970.20
Avg Current Penalty/ Serious Viol- Private Sector Only	\$ 466.70	\$ 934.70	\$ 977.50
<i>% Penalty Reduced</i>	45.0%	51.9%	43.7%
<b>% Insp w/ Contested Viols</b>	<b>15.5%</b>	<b>13.0%</b>	<b>7.0%</b>
Avg Case Hrs/Insp- Safety	11.6	15.7	17.7
Avg Case Hrs/Insp- Health	28.4	26.6	33.1
Lapse Days Insp to Citation Issued- Safety	23.1	31.6	34.3
Lapse Days Insp to Citation Issued- Health	43.4	40.3	46.7
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	213	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**

### **DOSH's FY 2009 State OSHA Annual Report (SOAR)**

(available separately)

**Appendix D**  
**State Performance Data**

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

OCT 23, 2009  
 PAGE 1 OF 2

State: WASHINGTON

RID: 1055300

MEASURE	From: 10/01/2008 To: 09/30/2009	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	2043 8.92 229	58 7.25 8	Negotiated fixed number for each State
2. Average number of days to initiate Complaint Investigations	114 4.07 28	6 6.00 1	Negotiated fixed number for each State
3. Percent of Complaints where Complainants were notified on time	225 97.83 230	2 100.00 2	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	32 100.00 32	3 100.00 3	100%
5. Number of Denials where entry not obtained	4	0	0
6. Percent of S/W/R Violations verified			
Private	3412 95.90 3558	46 85.19 54	100%
Public	92 97.87 94	0 0 0	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	128802 30.57 4213	7743 28.15 275	2489573 43.8 56880
Health	56899 55.34 1028	3634 62.65 58	692926 57.4 12071

\*FY09WA

\*\*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)

OCT 23, 2009  
 PAGE 2 OF 2

State: WASHINGTON

RID: 1055300

MEASURE	From: 10/01/2008 To: 09/30/2009	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
	1885	110	92328
Safety	39.84	45.27	58.6
	4731	243	157566
	236	14	11007
Health	38.82	60.87	51.2
	608	23	21510
9. Average Violations per Inspection with Vioations			
	5860	390	420601
S/W/R	1.11	1.17	2.1
	5253	333	201241
	9552	704	243346
Other	1.81	2.11	1.2
	5253	333	201241
10. Average Initial Penalty per Serious Violation (Private Sector Only)	2749157	185890	492362261
	530.11	541.95	1335.2
	5186	343	368756
11. Percent of Total Inspections in Public Sector	251	7	736
	3.28	2.66	3.8
	7654	263	19349
12. Average lapse time from receipt of Contest to first level decision	86531	961	4382038
	116.14	192.20	246.1
	745	5	17807
13. Percent of llc Investigations Completed within 90 days	75	4	100%
	97.40	57.14	
	77	7	
14. Percent of llc Complaints that are Meritorious	26	2	1466
	33.77	28.57	20.8
	77	7	7052
15. Percent of Meritorious llc Complaints that are Settled	21	1	1263
	80.77	50.00	86.2
	26	2	1466

\*FY09WA

\*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

## OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2009

INTERIM STATE INDICATOR REPORT (SIR)

STATE = WASHINGTON

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
1. PROGRAMMED INSPECTIONS (%)								
A. SAFETY	6212	1162	11892	2454	21855	4685	42572	7684
	67.3	75.1	67.5	77.3	66.8	77.3	65.2	74.0
	9230	1548	17617	3175	32713	6064	65304	10384
B. HEALTH	508	150	1004	361	1963	609	3678	958
	34.5	40.9	34.1	46.6	35.3	45.4	34.0	41.5
	1471	367	2946	775	5559	1341	10829	2311
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	4645	896	8997	1890	16745	3386	32019	5521
	67.7	73.7	65.9	73.9	65.8	70.2	65.9	68.7
	6860	1215	13654	2556	25453	4824	48603	8039
B. HEALTH	368	124	746	298	1486	482	2884	741
	52.2	80.0	50.8	77.8	51.7	76.8	55.6	74.5
	705	155	1468	383	2873	628	5187	995
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	15510	981	29490	1948	56535	3637	111717	6742
	81.8	32.9	81.1	32.1	80.0	33.9	79.4	37.1
	18952	2980	36371	6072	70692	10713	140747	18190
B. HEALTH	2802	336	5343	721	10035	1317	19393	2303
	70.1	31.2	69.9	30.7	69.7	32.6	67.7	32.9
	4000	1076	7645	2346	14395	4035	28659	6994
4. ABATEMENT PERIOD FOR VIOLS								
A. SAFETY PERCENT >30 DAYS	2938	127	5782	239	12109	457	25516	829
	15.9	11.5	16.2	11.0	17.6	11.3	18.7	11.1
	18492	1103	35597	2180	68607	4048	136812	7473
B. HEALTH PERCENT >60 DAYS	256	21	577	71	1452	153	3111	312
	6.3	5.4	7.5	8.4	10.0	10.1	10.9	11.6
	4078	386	7720	850	14561	1514	28488	2681

## OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2009

INTERIM STATE INDICATOR REPORT (SIR)

STATE = WASHINGTON

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
5. AVERAGE PENALTY								
A. SAFETY								
	280876	1400	628826	3450	1303857	6850	2663433	8350
OTHER-THAN-SERIOUS	923.9	175.0	998.1	127.8	1030.7	163.1	1049.4	154.6
	304	8	630	27	1265	42	2538	54
B. HEALTH								
	83100	750	142950	9450	294225	12350	654830	14090
OTHER-THAN-SERIOUS	799.0	250.0	803.1	787.5	855.3	494.0	867.3	427.0
	104	3	178	12	344	25	755	33
6. INSPECTIONS PER 100 HOURS								
A. SAFETY								
	10459	1651	19991	3355	37160	6490	73338	11162
	6.1	12.9	5.7	8.6	5.5	7.1	5.3	6.7
	1722	128	3533	388	6727	916	13759	1677
B. HEALTH								
	1764	394	3581	826	6701	1446	12705	2501
	1.8	6.5	1.7	4.2	1.6	3.2	1.5	3.0
	994	61	2112	196	4125	449	8503	828
7. VIOLATIONS VACATED %								
	1278	0	2561	0	5139	1	10097	6
	4.9	.0	5.0	.0	5.1	.0	5.0	.0
	26336	3547	51387	7347	100187	12541	201495	21167
8. VIOLATIONS RECLASSIFIED %								
	1130	0	2440	0	4798	0	9539	0
	4.3	.0	4.7	.0	4.8	.0	4.7	.0
	26336	3547	51387	7347	100187	12541	201495	21167
9. PENALTY RETENTION %								
	13523966	316245	27149245	835492	54889469	1677762	111585445	3222517
	63.4	100.4	62.9	100.6	63.2	99.9	62.9	99.5
	21315664	314845	43130384	830292	86796382	1679922	177346966	3237277

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2009

INTERIM STATE INDICATOR REPORT

STATE = WASHINGTON

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC
D. ENFORCEMENT (PUBLIC SECTOR)								
1. PROGRAMMED INSPECTIONS %								
A. SAFETY	1162	35	2454	56	4685	119	7684	232
	75.1	58.3	77.3	58.3	77.3	63.3	74.0	61.1
	1548	60	3175	96	6064	188	10384	380
B. HEALTH	150	5	361	8	609	14	958	20
	40.9	33.3	46.6	27.6	45.4	22.2	41.5	17.2
	367	15	775	29	1341	63	2311	116
2. SERIOUS VIOLATIONS (%)								
A. SAFETY	981	20	1948	50	3637	97	6742	187
	32.9	62.5	32.1	49.0	33.9	47.8	37.1	46.9
	2980	32	6072	102	10713	203	18190	399
B. HEALTH	336	12	721	37	1317	72	2303	111
	31.2	42.9	30.7	56.1	32.6	61.5	32.9	55.8
	1076	28	2346	66	4035	117	6994	199

## OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2009

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = WASHINGTON

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
E. REVIEW PROCEDURES								
1. VIOLATIONS VACATED %	446	115	875	240	1756	447	3749	774
	22.8	13.0	24.2	13.1	23.4	13.3	24.1	12.9
	1956	882	3609	1838	7506	3373	15528	6002
2. VIOLATIONS RECLASSIFIED %	282	20	563	53	1133	95	2274	171
	14.4	2.3	15.6	2.9	15.1	2.8	14.6	2.8
	1956	882	3609	1838	7506	3373	15528	6002
3. PENALTY RETENTION %	2319074	281510	4080249	693330	10792902	1365003	20045599	2306599
	54.1	68.9	51.5	71.0	58.5	68.2	55.9	69.5
	4286744	408835	7922126	977142	18457526	2002702	35865959	3320179

## **Appendix E**

### **On-Site Audit of the DOSH Whistleblower Protection Program and the State's Response**

**U.S. DEPARTMENT OF LABOR**

Occupational Safety & Health Administration  
 1111 Third Avenue, Suite 715  
 Seattle, Washington 98101 - 3212



Telephone No. 206-553-5930  
 Fax No. 206-553-6499

December 9, 2009

Mr. Michael Silverstein, Assistant Director  
 Dept. of Labor and Industries  
 Division of Occupational Safety and Health  
 P.O. Box 44600  
 Olympia, WA 98504-4600

Dear Mr. Silverstein:

In September 2009, OSHA conducted an on-site audit of DOSH's discrimination program covering the period of fiscal year 2009. Approximately 22 case files were reviewed by OSHA and a closing conference was held with the state on December 3 wherein the results were reviewed and discussed.

The following table is a summary of DOSH's discrimination activity during FY 2009.

Disposition	Totals
Total cases from FY 2009 <sup>1</sup>	91
Cases completed FY 2009 <sup>2</sup>	77
Cases completed timely <sup>3</sup>	75
Overage cases <sup>4</sup>	2
~ Withdrawn <sup>5</sup>	27
~ Dismissed <sup>6</sup>	26
~ Merit <sup>7</sup>	31
~ Settled <sup>8</sup>	15
~ Settled Other <sup>9</sup>	8
~ Reinstatement (if any)	4
~ Litigated <sup>10</sup>	1
Investigators on staff	5

<sup>1</sup> Use the IMIS Activity Measures report, case backlog, total cases

<sup>2</sup> Use the IMIS Activity Measures report, Timeliness, cases completed

<sup>3</sup> Use the IMIS Activity Measures report, case backlog, subtract overage cases from total cases

<sup>4</sup> Use the IMIS Activity Measures report, case backlog, overage cases

<sup>5</sup> Use the IMIS Investigation Data report, withdrawn number

<sup>6</sup> Use the IMIS Investigation Data report, dismissed number

<sup>7</sup> Use the IMIS Investigation Data report, merit findings

<sup>8</sup> Use the IMIS Investigation Data report, settled number

<sup>9</sup> Use the IMIS Investigation Data report, settled other number

(NOTE: Investigation Data report includes backlog cases filed from previous FY)

<sup>10</sup> Use the IMIS Case Listing report, count Litigation/Merit number

**Summary of findings with regard to *previous year's* recommendations:**

The previous year's recommendations appeared to have all been implemented by DOSH during fiscal year 2009.

**Summary of *current* findings and recommendations:**

Timeliness of Investigations

DOSH has consistently completed 95% or more of its cases within 90 days for the last several years. This year was no exception as DOSH completed 97% of its cases within 90 days. The consistent timely completion of cases is an impressive track record.

Thirty-two percent of DOSH's complaints were withdrawn after they were filed. This is four percent more withdrawals than the previous fiscal year. The high number of withdrawn complaints was discussed with DOSH during the closing, and DOSH provided its rationale for them. When a complaint is withdrawn, the case file should include either a written request from the complainant or a withdrawal form signed by the complainant, filed as a separate exhibit.

Settlement Agreements

DOSH's settlement agreements allow for unemployment compensation benefits to be deducted from settlement monies (Insta Fab, Inc./Messer/#1721174). This is not correct. The *Whistleblower Investigations Manual* states that "unemployment compensation benefits may never be considered as a back pay offset." In 1951, the U.S. Supreme Court determined that unemployment benefits cannot be deducted as part of labor related settlement agreements. See *Labor Board v. Gullett Gin Co.*, 340 U.S. 361 (1951).

DOSH is not responsible for managing unemployment benefits. Rather, resolution of those benefits should be left to the complainant, the state of Washington Employment Security Department (a different state agency), and the respondent.

Final Investigative Reports (WISHA Report of Investigation)

DOSH's investigators prepare well written, detailed investigative reports. However, the reports should include a section which describes how the employer is covered under the Act in order to establish jurisdiction<sup>4</sup>. For example, include information similar to what is provided in safety and health inspection reports, i.e., the number of employees, whether the employer is private or public, and union status (along with a brief description of the company). The coverage or jurisdiction section should be written on the first page of the report. This will help to clarify why the agency accepted the complaint instead of referring it to federal OSHA or another government agency.

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<sup>4</sup> See Chapter 5 of the *Whistleblower Investigations Manual*.

Letter to Michael Silverstein  
December 9, 2009  
Page 3 of 3

**Recommendations:**

1. For complaints that are withdrawn, DOSH's case files should include a written request for withdrawal from the complainant. The request to withdraw the complaint should be filed as a separate exhibit.
2. DOSH should not deduct unemployment compensation from settlement monies in its settlement agreements.
3. DOSH should include a section in its investigative reports and/or memos for coverage and/or jurisdiction. This section should describe why the state has jurisdiction to investigate the complaint as well as include detail similar to what is written in DOSH safety inspection reports.

Please provide responses to our recommendations by January 8, 2010. In summary, our audit this year found that DOSH's discrimination program has improved and, by all appearances, will continue to do so.

OSHA would like to make a presentation for DOSH investigative staff in either January or February 2010. The presentation would include the results of this year's audit, a review of whistleblower laws administered by federal OSHA, what types of whistleblower complaints to refer to OSHA, and any other issues which either agency believes is pertinent.

Enclosed for your information, is an IMIS Report entitled "Investigation Data" for fiscal year 2009, which contains 11(c) complaint statistics for all state plan programs in the system, including your state plan. It also includes information as to how many complaints were dismissed, how many were settled, the average days to complete and other data. Also enclosed is a report on comparable federal 11(c) data. We thought you might find this information useful. Please do not hesitate to contact me or my staff if you have questions.

Sincerely,  
/signed/

Richard S. Terrill  
Regional Administrator

Enclosures

cc: Janet Kenney



STATE OF WASHINGTON  
DEPARTMENT OF LABOR AND INDUSTRIES  
Division of Occupational Safety and Health

January 6, 2010

Richard S. Terrill, Regional Administrator  
U.S. Department of Labor, OSHA  
1111 Third Avenue, Suite 715  
Seattle, Washington 98101-3212

Re: FFY 2009 Audit of Washington Discrimination Program

Dear Mr. Terrill:

We have received your December 9th letter with the formal results of the September 2009 onsite audit of DOSH's discrimination program. Our response to your recommendations follows:

**Recommendations:**

- 1. For complaints that are withdrawn, DOSH's case files should include a written request for withdrawal from the complainant. The request to withdraw the complaint should be filed as a separate exhibit.**

**Response:** We concur with this recommendation. This process became a standard operating procedure in June 2007. A comprehensive review of all withdrawn case files within FFY 2009 confirmed that this policy is strictly adhered to. The inquiry also confirmed that the Request for Withdrawal forms were completed and signed by the Complainants who were required to document their reason/s for withdrawal. Review further determined that approximately ninety-percent of the explanations for withdrawal indicated that Complainants were pursuing a private right of action.

- 2. DOSH should not deduct unemployment compensation from settlement monies in its settlement agreements.**

**Response:** We agree with this recommendation in principal. However, when this recommendation was previously made by OSHA and addressed in FFY 2003, it was determined by the Assistant Commissioner of the Employment Security Department that state law requires that the UI benefit amount be withheld and reported to ESD. Since we have confirmed that a state legal requirement exists and we have no discretion in this matter, we will continue to deduct UI benefit amounts from affected settlement agreements.

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DEPARTMENT OF LABOR AND INDUSTRIES



Richard S. Terrill  
January 6, 2010  
Page 2

- 3. DOSH should include a section in its investigative reports and/or memos for coverage and or jurisdiction. This section should describe why the state has jurisdiction to investigate the complaint as well as include detail similar to what is written in DOSH safety inspection reports.**

**Response:** We agree and will adhere to this recommendation. When considering that all assigned discrimination investigations are screened by the investigations supervisor, all investigations relate to one discipline (11c) and all are dispatched to the field for investigations, it was assumed that cases assigned comply with the criteria for investigations pursuant to the statute (RCW 49.17.160) which includes jurisdictional authority. Additionally, a review of this recommendation revealed that three of the five dedicated investigative staff are already adhering to this recommendation.

DOSH would like to thank OSHA's Region 10 staff for identifying and providing positive comments regarding the Discrimination Program's accomplishments for FFY 2009. We would like to specifically acknowledge Vicky Coleman, Regional Supervisory Investigator, who has been a continual supporter and valuable resource over the years. Vicky has played an intricate part in making DOSH Discrimination Investigations a uniquely trained and focused enforcement program.

Thank you again for your efforts to ensure the success of our program. If you have any questions regarding our response, please call me at (360) 902-5430 or you may contact Don Butler, Investigations & State Plan Manager at (360) 902-5480. We look forward to our continuing partnership with you.

Sincerely,  
/signed/

Jahet Kenney  
Operations Manager

cc: Dean Ikeda, Deputy RA  
Dave Mahlum, ARA/FSO  
Bob Sjoberg, Program Analyst  
Vicky Coleman, Lead Investigator ✓  
Michael Silverstein, Assistant Director  
Steve Cant, Senior Programs & Policy Advisor  
Don Butler, Investigations & State Plan Manager

## **Appendix F**

### **On-Site Audit of the DOSH Consultation Program and the State's Response**

**U.S. DEPARTMENT OF LABOR**

Occupational Safety & Health Administration  
1111 Third Avenue, Suite 715  
Seattle, Washington 98101 - 3212



Telephone No. 206-553-5930  
Fax No. 206-553-6499

Refer to: FSO/sg  
CON

March 12, 2009

Ms. Judy Schurke, Director  
Department of Labor and Industries  
Labor and Industries Building  
P.O. Box 44001  
Olympia, Washington 98504-4001

Dear Ms. Schurke:

Enclosed are the results of the FY 2008 on-site review of the DOSH consultation project that was conducted by Steve Gossman. Steve wanted me to express his appreciation to you, Lynda Stoneberg and the entire staff for the excellent cooperation he received before and during the audit.

The audit found that the project manager and his staff are doing a good job providing consultative services and advice to the employers they serve. The report does, however, include recommendations for improvement in those areas that are of concern as well as some suggestions that could also enhance program quality. Please let me know within the next 30 days of your actions to address these recommendations.

If you have any questions, please let me know. I know that Steve Gossman looks forward to working with Lynda Stoneberg and the DOSH consultation staff on consultation program issues in the future.

Sincerely,  
/signed/

Richard S. Terrill  
Regional Administrator

Enclosure

cc: Steve Cant, Assistant Director, w/enclosure  
Janet Kenney, DOSH Operations Manager, w/enclosure  
Lynda Stoneberg, Consultation Program Manager, w/enclosure

## Fiscal Year 2008

### Division of Occupational Safety and Health Consultation Audit

#### EXECUTIVE SUMMARY:

An audit was conducted the week of January 12, 2009, of the Division of Occupational Safety and Health's (DOSH) Consultation Service. The audit examined the points found in Appendix I of the Consultation Policy and Procedures Manual (CPPM). Appendix I of the CPPM also contains the checklist for on-site review and was used to audit case files.

The audit indicated that the DOSH consultation field operations manager was doing an excellent job of managing the program, encouraging and evaluating the performance of the consultants, and providing service to Washington employers and employees. Case file reviews showed that most of the requirements in the CPPM and program directives had been met. There were, however, a few areas where changes are needed in order to meet OSHA's expectations. There were also some suggestions offered that would, in the auditor's opinion, help program performance.

The audit of case files generated recommendations that included more attention given to assurance of hazard abatement, more diligent review and collection of OSHA 300 log information and greater care taken to assure industrial hygiene sampling techniques follow recognized industrial hygiene methods. Please see pages 3-7 for the full discussion on recommendations.

#### DESCRIPTION/METHODS:

An on-site audit of Washington's consultation project was conducted to assess the effectiveness of the project in accordance with the Consultation Policies and Procedures Manual. The audit period covered fiscal year 2008. The auditor interviewed Lynda Stoneberg, consultation field program manager, and Patti Moller, policy and procedures coordinator. Approximately 10 percent of the case files generated in 2008 were reviewed. The policies and procedures in effect for project employees were evaluated. A closing conference was held with Lynda Stoneberg and Patti Moller on January 15, 2009.

Two checklists were used during the audit. The operational review check sheet is contained in the body of the report and reports the findings and recommendations associated with the audit point. A case file review checklist was filled out for each case file audited and it can be found as Appendix 1 to the report. Findings associated with the case file reviews follow the operational review checklist. In accordance with the

CPPM, recommendations require a response from the program within 30 days of receipt of the report; suggestions require no response.

OPERATIONAL REVIEW:

Operational Review of the Consultation Project	Finding
Progress in meeting annual training plans	OK
Annual training plans are devised for the consultants. The managers and supervisors are required to track the employees' progress on completing the required courses.	
On-the-job evaluations	OK
On-the-job evaluations are done by the supervisors.	
Lapse time from request to delivery of service	OK
Lapse times vary for requests depending on the type of business and the scope of the request; however, the visits are completed in a timely manner.	
Management Reports (written reports pending, pending hazard corrections, number of requests and visits pending)	OK
The program manager runs the MARC report to assure the required elements are in compliance with stated goals on the MARC. A monthly consultant report is run provided to the managers that contains information similar to the MARC report to aid planning and oversight.	
Hiring and vacancies	OK
There are currently three vacancies for industrial hygienists and two for safety professionals. One safety position is in the process of being filled and the other four are delayed due to budget constraints. The project is able to meet all basic requirements with the current staff.	
Project expenditures and budgetary issues	OK
The project expenditures and budgetary issues follow the assigned budget allotments.	
Monitoring of consultants' performance	OK
Performance appraisals are written annually by the employee's supervisor or manager using performance evaluation forms that cover evaluation points illustrating standardized job classification duties and responsibilities. The employee's manager uses on-the-job evaluations and evaluations of written reports to determine the consultant's success at meeting the key factors.	

Operational Review of the Consultation Project	Finding
Promotion of the project's recognition and exemption program (SHARP)	In Progress
Washington State does not have a program analogous to the federal SHARP program. The state has committed to establishing a SHARP program in FY 2009. They have submitted a draft SHARP program that is currently being reviewed by the regional office.	
Marketing initiatives	OK
Each of the six regional offices can target industry and interest groups to market their services. There is no budget line item for consultation marketing but they can use funds designated as outreach. The marketing initiatives include newspaper ads, press releases, workshops, and safety training days specific to businesses.	
The project's internal quality assurance program	OK
Each case file undergoes an internal audit conducted by the policy and procedures coordinator and the technical services program. Reports similar to the MARC are generated monthly for managers to evaluate the staff's production. Each case file is accompanied by a quality survey to be filled out by the customer.	
Performance issues carried over from previous review	OK
No issues were carried over from the last audit.	
Items requiring action to correct deficiencies	
None.	

**CASE FILE REVIEW FINDINGS AND RECOMMENDATIONS:**

The following provides a summary of the case file audit check sheet evaluation points for which there were audit findings. The audit point is restated in the "Requirement" section, followed by the observed problem and the auditor's recommendation for correction. The entire check sheet can be found in Appendix I of the CPPM. Recommendations require a response from the program manager on steps taken to satisfy the recommendation, as the program is not meeting the intent of the CPPM on that item. Suggestions require no response.

---

Requirement:

Are all field notes, observations, analyses, and other written documentation gathered prior to and during the hazard survey included in the case file?

Observation:

Nine case files were missing OSHA 300 logs out of 31 resulting in 29% missing 300 logs and log information.

Recommendations:

1. If a company is not keeping the 300 logs and is required to, an item should be included in the list of hazards for recordkeeping or training on recordkeeping noted in the case file.
2. Copies of 300 logs should be collected from businesses and put into the case file for the previous three years.

---

Requirement:

Does the file contain an evaluation of the employer's safety and health management system?

Observation:

Fifteen of the thirty-one case files reviewed (48%) did not contain an evaluation of the employer's safety and health management system. One of the case files had scores entered from the form but a copy of the form was not included. Some of the case files were partial visits and should have had partial evaluations completed.

Recommendation:

Assure that all case files have a completed Form 33 or equivalent and the evidence or rationale for the score awarded is evident.

---

Requirement:

Hazards that were not abated in the agreed upon time frame had extensions granted that followed established guidelines.

Observation:

Employers in three cases did not abate hazards in the agreed upon time frame and did not ask for extensions. In some cases, the extensions were given without the employer submitting the required information of why the extension was needed, what was being done to protect employees in the interim and when the abatements would be complete.

Recommendation:

If the employer does not respond to requests for abatement certification and will not ask for an extension, the case should be turned over to enforcement for follow-up.

---

Requirement:

Did the OSHA 30 form include the number of employees interviewed?

Observation:

Most OSHA 30 forms stated that one employee was interviewed. The case file notes reflected more than one person interviewed in most cases. It appears that the consultants are entering one in the box for the number of employees interviewed regardless of the number of employees they interviewed.

Recommendation:

Enter the correct number of employees interviewed in the OSHA form 30 box requesting the information.

---

Requirement:

Were all serious hazards abated and documentation of abatement procedures in the case file?

Observation:

Abatement procedures and certification were inadequate or missing in some case files. Abatement certifications in some cases were received up to six months late without requesting extensions.

Recommendation:

Assure that the abatement language provided by the employer abates the hazard. A statement such as "Complied" does not abate the hazard. If the language does not abate the hazard, the consultation project should consider if an extension of time is

necessary and the employer should be advised to either to abate the hazard or ask for an extension.

---

#### HEALTH FILES ONLY

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##### Requirement:

Does the case file reflect appropriate sampling technique?

##### Observation 1:

The consultant measured air contaminants with a direct reading instrument (PID) that produced data for area sampling and drew conclusions about eight hour average exposures without calculating possible time weighted averages.

##### Observation 2:

A noise dosimeter was used for area surveys in two cases that resulted in conclusions being drawn about employees' overexposures to machine noise in a complex work environment. Employees moving between machine areas need to be monitored during the workday to quantify the exposure to noise or calculations can be done estimating the exposure to noise.

##### Recommendation:

Require consultants to use recognized practices to determine employee exposure to air contaminants and noise before making statements or recommendations about employee exposures.

---

##### Requirement:

Was there evidence of proper sampling instrument calibration either on the CDS forms or a separate calibration log?

##### Observation:

Three of the five cases reviewed that samples using industrial hygiene methods or instruments did not include calibration logs, sampling forms or other instrument or results data.

Recommendation:

Review industrial hygiene instrumentation requirements with the industrial hygienists as this requirement is designed to assure proper techniques are used.

---

SUGGESTIONS:

Some health files lacked instructions to the employer that sampling results need to be communicated to the employee. It would be a more effective communication tool if the consultant mailed the sampling results directly to the employee. OSHA enforcement has a form letter available that could be modified by the consultant in mailing the information.

---

CONCLUSION:

Overall, the consultative staff has done a good job adhering to the procedural requirements established for consultation programs. The consultants' visits were initiated in a timely manner after the requests were received. The tracking of necessary work is also accurately done on a weekly basis. The case files were orderly and well-organized.



STATE OF WASHINGTON  
DEPARTMENT OF LABOR AND INDUSTRIES  
Division of Occupational Safety and Health  
P.O. Box 44600 • Olympia, Washington 98504-4600

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April 8, 2009

Mr. Richard S. Terrill, Regional Administrator  
U.S. Department of Labor, OSHA  
1111 Third Avenue, Suite 715  
Seattle, WA 98101-3212

Re: FY 2008 OSHA Audit of the DOSH Consultation Project

Dear Mr. Terrill:

This is in response to your March 12, 2009, letter to Judy Schurke, Director, regarding the recent OSHA audit of our Consultation Program.

A list of actions we intend to take in response to your recommendations in the audit report is enclosed. We believe these actions address the all areas of concern, will improve DOSH consultation performance, and will also aid in meeting OSHA's expectations.

Overall, the audit report findings were positive and support the continuing effective operation of the DOSH Consultation Program. Lynda Stoneberg, Field Consultation Manager, has expressed appreciation of Steve Gossman, OSHA, for his professional and courteous attitude throughout the audit process, and for his sharing a common goal of strengthening the DOSH Consultation Program. We look forward to continuing our work together on providing exemplary service to Washington's employers and employees.

If you have any questions, or need further clarification on the proposed actions, please contact Lynda Stoneberg directly at (360) 902-5545 or e-mail: [ston235@lni.wa.gov](mailto:ston235@lni.wa.gov).

Sincerely,

/signed/

Stephen M. Carr, CIH  
Assistant Director

Enclosure

cc: Judy Schurke, L&I Director  
Lynda Stoneberg, DOSH Statewide Field Consultation Manager



Richard S. Terrill  
April 8, 2009  
Page 2

Re: FY 2008 OSHA Audit of the DOSH Consultation Project

bcc: Janet Kenney, DOSH Operations Manager  
John Geppert, DOSH Consultation, Education and Outreach Manager

**DOSH ACTIONS IN RESPONSE TO THE FY2008 OSHA AUDIT  
OF THE CONSULTATION PROGRAM**

***Are all field notes, observations, analyses, and other written documentation gathered prior to and during the hazard survey included in the case file?***

**Observation:**

Nine case files were missing OSHA 300 logs out of 31 resulting in 29% missing 300 logs and log information.

**Recommendations:**

If a company is not keeping the 300 logs and is required to, an item should be included in the list of hazards for recordkeeping or training on recordkeeping noted in the case file. Copies of 300 logs should be collected from businesses and put into the case file for the previous three years.

**DOSH Response:**

Consultation policy requires consultants to address lack of 300 logs as a deficiency and list the deficiency in the list of hazards in their report. We have reinforced this policy with regional Consultation Managers and it will be communicated to all consultation staff. Regional consultation managers have been asked to monitor this item and ensure the policy is being appropriately followed by field staff. Additionally, we are completing an update of our DOSH Consultation Manual and when staff training is provided, we will include a segment on this issue.

Our current consultation policy does not require consultants to collect OSHA logs for the last three years, but rather only the last full year. During update of our manual, we will consider adding this additional requirement. As you may be aware, our agency is in a unique position of being able to directly access employer workers' compensation claims data prior to conducting an onsite consultation. This data provides our staff information that is often more useful than reviewing additional OSHA logs.

***Does the file contain an evaluation of the employer's safety and health management system?***

**Observation:**

Fifteen of the thirty-one case files reviewed (48%) did not contain an evaluation of the employer's safety and health management system. One of the case files had scores entered from the form but a copy of the form was not included. Some of the case files were partial visits and should have had partial evaluations completed.

**Recommendation:**

Assure that all case files have a completed form 33 or equivalent and the evidence or rationale for the score awarded is evident.

**DOSH Response:**

We found two of the missing forms in our Regional files, however, that still left 13 files without

a completed form 33. Most were for specific visits (nine of the 13).

Our current Consultation Manual includes the requirement for a Form 33 review on all comprehensive visits and, to the extent possible, on specific issue visits. It appears that the staff is having difficulty with the Form 33 with smaller-sized employers. The requirement for completion of the Form 33 on specific visits was a process change from our prior policy. We will identify if this is a staff awareness issue regarding the policy change or if the Form is not being used due to some unique circumstance during visits to very small employers. If it's an awareness issue, we will clarify the process for all consultants through the Regional Managers as well as reinforce the need to complete the form when we do training on our Consultation Manual. Additionally, we plan to have stand-alone training on the Form 33 to provide better guidance on using and completing it.

***Hazards that were not abated in the agreed upon time frame had extensions granted that followed established guidelines.***

**Observation:** Employers in three cases did not abate hazards in the agreed upon time frame and did not ask for extensions. In some cases, the extensions were given without the employer submitting the required information of why the extension was needed, what was being done to protect employees in the interim and when the abatements would be complete.

**Recommendation:**

If the employer does not respond to requests for abatement certification and will not ask for an extension, the case should be turned over to enforcement for follow-up.

**DOSH Response:**

We agree and will take the necessary steps to ensure all staff are knowledgeable regarding this policy. Regional managers will coach individual field staff where the problem was specifically identified.

***Did the OSHA 30 form include the number of employees interviewed?***

**Observation:** Most OSHA 30 forms stated that one employee was interviewed. The case file notes reflected more than one person was interviewed in most cases. It appears that the consultants are entering one in the box for the number of employees interviewed regardless of the number of employees they interviewed.

**Recommendation:**

Enter the correct number of employees interviewed in the OSHA form 30 box requesting the information.

**DOSH Response:**

We agree. Regional Consultation Managers have already been apprised of the deficiency and will share with staff. In addition, they will coach individual field staff where this problem was identified.

***Were all serious hazards abated and documentation of abatement procedures in the case file?***

**Observation:** Abatement procedures and certification were inadequate or missing in some case files. Abatement certifications in some cases were received up to six months late without requesting extensions.

**Recommendation:**

Assure that the abatement language provided by the employer abates the hazard. A statement such as "Complied" does not abate the hazard. If the language does not abate the hazard, the consultation project should consider if an extension of time is necessary and the employer should be advised to either abate the hazard or ask for an extension.

**DOSH Response:**

We agree. Regional Consultation Managers are aware of the problem and will ensure appropriate abatement procedures are followed.

***Does the case file reflect appropriate sampling technique?***

**Observation 1:**

The consultant measured air contaminants with a direct reading instrument (PID) that produced data for area sampling and drew conclusions about eight hour average exposures without calculating possible time weighted averages.

**Observation 2:**

A noise dosimeter was used for area surveys in two cases that resulted in conclusions being drawn about employees' overexposures to machine noise in a complex work environment. Employees moving between machine areas need to be monitored during the workday to quantify the exposure to noise or calculations can be done estimating the exposure to noise.

**Recommendations:**

Require consultants to use recognized practices to determine employee exposure to air contaminants and noise before making statements or recommendations about employee exposures.

**DOSH Response:**

We agree. We have shared OSHA's recommendation with our Regional Consultation Managers and they will ensure proper procedures are followed. In addition, regional management will coach specific IH staff where employee exposure was not documented and where time weighted averages were not calculated.

***Was there evidence of proper sampling instrument calibration either on the CDS forms or a separate calibration log?***

**Observations:**

Three of the five cases reviewed that samples using industrial hygiene methods or instruments did not include calibration logs, sampling forms or other instrument or results data.

**Recommendation:**

Review industrial hygiene requirements with the industrial hygienists as this requirement is designed to assure proper techniques are used.

**Suggestions:**

Some health files lacked instructions to the employer that sampling results need to be communicated to the employee. It would be a more effective communication tool if the consultant mailed the sampling results directly to the employee. OSHA enforcement has a form letter available that could be modified by the consultant in mailing the information.

**DOSH Response:**

This recommendation item has been shared with Regional Consultation Managers and they will instruct regional IH staff on the importance of documenting proper sampling instrument calibration. Sampling forms will also be reviewed for completeness before the case file is forwarded to Central Office. Concerning the suggestion about sharing sampling results with the employee, DOSH will ensure better communication is provided to the employer by IH field staff. This concern has been shared with Regional Consultation Managers, who will share with IH staff.