

**FY 2018**  
**Follow-up Federal Annual Monitoring Evaluation (FAME) Report**

**TENNESSEE**  
**DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT,**  
**DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**



**Evaluation Period: October 1, 2017 – September 30, 2018**

**Initial Approval Date: July 5, 1973**  
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## **I. Executive Summary**

The primary purpose of this report is to assess the Tennessee OSHA (TOSHA) State Plan's progress in Fiscal Year (FY) 2018, in resolving outstanding findings from the previous FY 2017 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report. Also, this report is based on the results of quarterly onsite monitoring visits, the FY 2018 State Office Annual Report (SOAR), and the FY 2018 State Activity Mandated Measures (SAMM) Report. A review of the SAMM data indicated that TOSHA generally met or exceeded federal activity results.

TOSHA's proactive approach to the management of the overall program contributes to its success. For example, following the FY 2017 FAME review, Tennessee officials identified two potential vulnerabilities in the draft report, regarding the documentation of actual knowledge and support related to General Duty Clause violations. As a result, TOSHA conducted formal training during their annual State training meeting to improve their performance in these two areas. OSHA did not identify any findings and recommendations or observations in FY 2018.

TOSHA participated in National Emphasis Programs (NEPs), including Trenching and Excavation, Amputations, Hexavalent Chromium, PSM Covered Facilities, Primary Metal Industries, Combustible Dust, and Lead. TOSHA has also implemented the following Special Emphasis Programs (SEP): carbon monoxide; fall protection; noise; as well as developing a targeting initiative for dental offices to address hazards such as bloodborne pathogens. During this review period, TOSHA impacted more than 838 workplaces and 7,000 high risk workers, through these emphasis programs and initiatives.

TOSHA published a free quarterly newsletter, "Together with TOSHA" posted on TOSHA's web site, through LISTSERV, serving more than 1,300 subscribers. Also, more than 40 employer and employee associations and other groups forward the newsletter to their members. The newsletter offers information, interpretations, best practices, and compliance recommendations on occupational safety and health topics such as reports on the Tennessee fatality rates and a review of "What Kills in Tennessee." The newsletter also promotes a variety of safety and health outreach campaigns and initiatives, e.g., the National Safety Stand-Down to prevent falls in Construction; Safe & Sound Week; National Ladder Safety Month; Heat Stress; State VPP and SHARP participant updates; and the Tennessee Safety and Health Conference.

TOSHA continues to experience compliance safety and health officer (CSHO) high turnover and inexperience. In FY 2018, 64% of the CSHOs had less than four years of experience and 14% had less than one year. In FY 2018, there were seven vacant CSHO positions. These challenges compelled TOSHA to increase the starting salary from \$3,199 per month to \$3,780 to attract and retain qualified candidates.

## **II. State Plan Background**

TOSHA was created by legislation in 1972 and became operational on July 5, 1973. The program operated as a dual-designee with the health functions housed in the Tennessee Department of Health and the safety functions in the Department of Labor until July 1977. At that time, the General Assembly enacted legislation to transfer the health functions to the Department of Labor.

The Tennessee Occupational Safety and Health Administration program was certified in May 1978, and received final 18(e) approval in July 22, 1985. During the review period, the Commissioner for the Tennessee State Plan was Burns Phillips, the Deputy Commissioner was Dustin Swayne, and the Administrator was Steve Hawkins.

TOSHA consists of three sections: the Compliance Section, the Consultative Section, and the Training and Education Section. The Compliance Section is responsible for enforcement of the Tennessee Occupational Safety and Health Act of 1972. The Consultative Services Section offers a free consulting program to smaller employers who seek safe and healthful working conditions for their workers. The Training and Education Section assists employers, workers, and their representatives in reducing safety and health hazards in their workplaces and in complying with the requirements of TOSHA standards and regulations.

A total of 83.75 positions were funded under the 23(g) grant. At the time of the follow-up evaluation, there were a total of 21 safety and 16 health compliance officers on staff, as well as four safety, three health, two safety supervisor and three industrial hygiene (IH) supervisor vacancies. TOSHA intends to fill all vacancies, as soon as possible.

The table below shows TOSHA’s funding levels from FY 2014 through FY 2018.

<b>FY 2012-2016 Funding History</b>					
<b>Fiscal Year</b>	<b>Federal Award (\$)</b>	<b>State Plan Match (\$)</b>	<b>100% State Funds (\$)</b>	<b>Total Funding (\$)</b>	<b>% of State Plan Contribution</b>
<b>2018</b>	3,850,300	3,850,300	606,546	8,307,146	53.65
<b>2017</b>	3,850,300	3,850,300	483,016	8,183,616	52.95
<b>2016</b>	3,850,300	3,850,300	483,014	8,183,614	52.95
<b>2015</b>	3,833,000	3,833,000	517,623	8,183,623	53.16
<b>2014</b>	3,833,000	3,883,000	517,615	8,183,615	53.77

TOSHA operates a State and Local Government Sector Program, which enforces workplace safety and health and extends on-site consultative support to the majority of state and local government employers. Additionally, Tennessee Code Annotated requires that state and local government agencies covered by TOSHA develop and provide TOSHA with its written program of compliance.

TOSHA continues to offer workplace safety and health educational seminars at various locations across the state. These seminars are open enrollment and a schedule is published in the spring and fall each year. TOSHA partners with co-sponsors, such as but not limited to, the Tennessee Chamber of Commerce and Industry, Tennessee Association of Utility Districts, Associated Builders and Contractors, State Community Colleges, and other State, County, & City Agencies to offer these seminars. The safety & health seminar topics include: Basic Safety, Maintenance-Related Standards, Recordkeeping, GHS & Hazard Communication, Silica, Health Hazards, and OSHA 30-Hour Courses. In FY 2018, Safety and Health training was provided to 12,617 attendees across the state.

## **New Issues**

In accordance with the Bipartisan Budget Bill passed on November 2, 2015, OSHA published a rule on July 1, 2016, raising its maximum penalties. As required by law, OSHA then increased maximum penalties annually, on January 1, 2017, January 1, 2018, and January 23, 2019, according to the Consumer Price Index (CPI). State Plans are required to adopt both the initial increase and subsequent annual increases within the corresponding six-month timeframe set by regulation.

December 2018 marked two full years since the first deadline passed for adoption and the Tennessee State Plan has not yet completed the legislative changes to increase maximum penalties. Therefore, if the State Plan does not take significant steps to adopt during FY 2019, this issue may be a finding in the FY 2019 Comprehensive FAME Report.

## **III. Assessment of State Plan Progress and Performance**

### **A. Data and Methodology**

This report was compiled using information gained from the FY 2018 SOAR, interviews with the TOSHA staff, OSHA Information System reports, as well as the State Indicator and SAMM Reports for FY 2018. Also, information collected during the routine monitoring of the TOSHA program by OSHA's Regional and Nashville Area Offices was also used as a basis for this evaluation.

OSHA has established a two-year cycle for the FAME process. This is the follow-up year, and as such, OSHA did not perform an on-site case file review associated with a comprehensive FAME. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME. The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including:

- State Activity Mandated Measures Report (Appendix D)
- State Information Report
- Mandated Activities Report for Consultation
- State OSHA Annual Report (Appendix E)
- State Plan Annual Performance Plan
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan

### **B. Findings and Observations**

No new findings and or recommendations were identified in FY 2018, nor were there any findings and or recommendations identified in FY 2017 as outlined in Appendix C. No new observations were identified in FY 2018. There were no observations identified in FY 2017 as outlined in Appendix B. An observation is an item that has not proven to impact the effectiveness of the State's program but should continue to be monitored by the Region.

### **C. State Activity Mandated Measures (SAMM) Highlights**

Each State Activity Mandated Measure (SAMM) has an agreed upon (FRL) which can be either a single number, or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2018 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure. There were some deviations where Tennessee operated outside the FRLs for some of the SAMMs. OSHA closely monitors and discusses the data with TOSHA, when it identifies deviations or outliers. In FY 2018, Tennessee was outside the FRL on the following SAMMs:

#### **SAMM 8 – Average Current Penalty per Serious Violation**

Discussion of State Plan data and FRL: The FRL for total average current penalty per serious violation (1 to greater than 250 employees) is +/- 25% of the one year national average of \$3,066.48 which equals a range of \$2,299.98 to \$3,832.98.

Explanation: The Tennessee State Plan's low penalties are attributed to the significant increase in the federal penalties as a result of the Federal Civil Penalties Inflation Adjustment Act Improvements Act that was passed in 2015. Tennessee has not adopted the changes to the penalty to match OSHA. Penalties are one component of effective enforcement, and State Plans are required to adopt penalty policies and procedures that are "at least as effective" (ALAE) as those contained in OSHA's Field Operations Manual (FOM), which was revised on August 2, 2016, to include changes to the penalty structure in Chapter 6 – Penalty and Debt Collection. OSHA will continue to work with Tennessee on this issue.

#### **SAMM 9 – Percent in-compliance**

Discussion of State Plan data and FRL: The FRL for percent in-compliance for safety inspections is +/- 20% of the three-year national average of 29.56%, which equals a range of 23.08% to 35.47%. The Tennessee State Plan's percent in-compliance for safety is 7.99%, which is substantially lower than the FRL and the lowest of all State Plans. The FRL for percent in-compliance for health inspections is +/- 20% of the three-year national average of 35.56%, which equals a range of 28.45% to 42.67%. The Tennessee State Plan's percent in-compliance for health is 26.96%, which is also slightly below the FRL.

Explanation: TOSHA's low in-compliance rates, which are below the FRLs for both safety and health are attributed to the attention and efforts placed on this SAMM. Managers and supervisors have emphasized hazard identification resulting in the few cases that are in-compliance.

#### **SAMM 11 – Average Lapse Time**

Discussion of State Plan data and FRL: The FRL for Average Lapse Time for safety inspections is +/- 20% of the three-year national average of 48 days, which equals a range of 38.4 days to 57.6 days. The Tennessee State Plan's Average Lapse Time for safety inspections is 22.64 days, which is significantly lower than the FRL. The FRL for Average Lapse Time for health inspections is +/- 20% of the three year national average of 57.63 days, which equals a range of 46.1 days to 69.16

days. The Tennessee State Plan's Average Lapse Time for health is 43.42 days, which is also below the FRL.

Explanation: There is no cause for concern regarding the low average lapse time for safety or health. The Tennessee State Plan's low average lapse times are attributed to the significant emphasis TOSHA routinely places on keeping citation lapse times low. Tennessee has a goal to ensure effective service by maintaining average report turnaround time, or lapse times, within the following targets: less than 35 days for safety compliance and less than 55 days for health compliance. The shorter lapse time is better than the national average.

### **SAMM 12 - Percent penalty retained**

Discussion of State Plan data and FRL: The FRL for percent penalty retained is +/- the three-year national average of 66.81%, which equals a range of 56.79% to 76.83%. The Tennessee State Plan's percent penalty retained is 91.33%, which is above the FRL.

Explanation: The Tennessee State Plan provides average penalty reductions that are significantly less than the national average reflecting positively on TOSHA's program.

### **SAMM 13 – Percent of Initial Inspections with Worker Walk-around Representation or Worker Interview**

Discussion of State Plan data and FRL: The State Plan's percentage at 98.99% is just below the fixed FRL of 100%.

Explanation: This SAMM was not 100% because of one instance where an employer reported hospitalization was reported more than 24 hours after the worker was hospitalized. Tennessee opened an investigation and issued a citation for failure to report the accident timely, without interviewing workers. It was determined that Tennessee handled these investigations appropriately; therefore, this is not a cause for concern,

### **SAMM 14 - Percent of 11(c) Investigations Completed Within 90 Days**

Discussion of State Plan data and FRL: TOSHA completed 20% of their retaliation investigations within 90 days. Even though the State Plan is below the fixed FRL of 100%, they are close to the national average of 35% and it is not clear that the quality of the whistleblower protection program is impacted.

Explanation: TOSHA places emphasis on completing 11(c) investigations within 90 days; however as stated above, the State Plan's data is not significantly different from the national average.

### **SAMM 16 - Average Number of Calendar Days to Complete an 11(c) Investigation**

Discussion of State Plan data and FRL: TOSHA averaged 129 days to complete their retaliation investigations. Although the State Plan is above the fixed FRL of 90 days, they are well below the national average of 277 days. In addition, it is not clear that the quality of whistleblower protection program is impacted.

Explanation: TOSHA places emphasis on completing 11(c) investigations within 90 days; however, as stated above, the State Plan's data is not significantly different from the national average.



## Appendix A – New and Continued Findings and Recommendations

FY 2018 Tennessee Follow-up FAME Report

FY 20XX-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#
	None.		

Observation #	Observation#	Observation	Federal Monitoring Plan	Current
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## Appendix B – Observations Subject to Continued Monitoring

### FY 2018 Tennessee Follow-up FAME Report

FY 2018-OB-#	FY 2018-OB-# <i>or</i> FY 2018-#			Status
		None.		

## Appendix C - Status of FY 2017 Findings and Recommendations

FY 2018 Tennessee Follow-up FAME Report

FY 20XX-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status and Date
	None.				

## Appendix E- FY 2018 State OSHA Annual Report (SOAR)

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Tennessee – TOSHA			FY 2018	
SAMM Number	SAMM Name	State Plan Data	Further Review Level (FRL)	Notes
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	7.19	15	The FRL is negotiated by OSHA and the State Plan.
<b>1b</b>	Average number of work days to initiate complaint inspections (federal formula)	4.10	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	1.11	5	The FRL is negotiated by OSHA and the State Plan.
<b>2b</b>	Average number of work days to initiate complaint investigations (federal formula)	0.61	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>3</b>	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The FRL is fixed for all State Plans.
<b>4</b>	Number of denials where entry not obtained	0	0	The FRL is fixed for all State Plans.

## Appendix E- FY 2018 State OSHA Annual Report (SOAR)

<b>5</b>	Average number of violations per inspection with violations by violation type	SWRU: 3.37	+/- 20% of SWRU: 1.82	The FRL is based on a three-year national average. The range of acceptable data not requiring further review is from 1.46 to 2.18 for SWRU and from 0.78 to 1.18 for OTS.
		Other: 0.82	+/- 20% of Other: 0.98	
<b>6</b>	Percent of total inspections in state and local government workplaces	35.23%	+/- 5% of 39.87%	The FRL is based on a number negotiated by OSHA and TOSHA through the grant application. The range of acceptable data not requiring further review is from 37.88% to 41.86%.
<b>7</b>	Planned v. actual inspections – safety/health	S: 1,453	+/- 5% of S: 1,200	The FRL is based on a number negotiated by OSHA and TOSHA through the grant application. The range of acceptable data not requiring further review is from 1,140 to 1,260 for safety and from 313.50 to 346.50 for health.
		H: 324	+/- 5% of H: 330	
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,499.10	+/- 25% of \$2,603.32	The FRL is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,952.49 to \$3,254.15.
	a. Average current serious penalty in private sector (1-25 workers)	\$1,136.59	+/- 25% of \$1,765.19	The FRL is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,323.89 to \$2,206.49.
	b. Average current serious penalty in private sector (26-100 workers)	\$1,521.84	+/- 25% of \$3,005.17	The FRL is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,253.88 to \$3,756.46.
	c. Average current serious penalty in private sector (101-250 workers)	\$2,292.11	+/- 25% of \$4,203.40	The FRL is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,152.55 to \$5,254.25.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$2,637.42	+/- 25% of \$5,272.40	The FRL is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,954.30 to \$6,590.50.

## Appendix E- FY 2018 State OSHA Annual Report (SOAR)

<b>9</b>	Percent in compliance	S: 7.99%	+/- 20% of S: 29.90%	The FRL is based on a three-year national average. The range of acceptable data not requiring further review is from 23.92% to 35.88% for safety and from 28.88% to 43.32% for health.
		H: 26.96%	+/- 20% of H: 36.10%	
<b>10</b>	Percent of work-related fatalities responded to in one workday	100%	100%	The FRL is fixed for all State Plans.
<b>11</b>	Average lapse time	S: 22.64	+/- 20% of S: 46.20	The FRL is based on a three-year national average. The range of acceptable data not requiring further review is from 36.96 to 55.44 for safety and from 45.25 to 67.87 for health.
		H: 43.42	+/- 20% of H: 56.56	
<b>12</b>	Percent penalty retained	91.33%	+/- 15% of 66.81%	The FRL is based on a three-year national average. The range of acceptable data not requiring further review is from 56.79% to 76.83%.
<b>13</b>	Percent of initial inspections with worker walk around representation or worker interview	98.99%	100%	The FRL is fixed for all State Plans.
<b>14</b>	Percent of 11(c) investigations completed within 90 days	20%	100%	The FRL is fixed for all State Plans.
<b>15</b>	Percent of 11(c) complaints that are meritorious	24%	+/- 20% of 24%	The FRL is based on a three-year national average. The range of acceptable data not requiring further review is from 19.20% to 28.80%.
<b>16</b>	Average number of calendar days to complete an 11(c) investigation	129	90	The FRL is fixed for all State Plans.
<b>17</b>	Percent of enforcement presence	1.64%	+/- 25% of 1.24%	The FRL is based on a three-year national average. The range of acceptable data not requiring further review is from 0.93% to 1.55%.

## Appendix E- FY 2018 State OSHA Annual Report (SOAR)

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State of Tennessee  
Department of Labor and Workforce Development State Office Annual Report  
October 1, 2017 – September 30, 2018



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## *Introduction*

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The Tennessee Occupational Safety and Health Administration (TOSHA) was created by legislation in 1972 and became operational in July 1973. The program operated as a dual-designee with the health functions housed in the Tennessee Department of Health and the safety functions in the Department of Labor (now the Tennessee Department of Labor and Workforce Development) until July 1977. At that time the General Assembly enacted legislation to transfer the health function to the Department of Labor. The Tennessee Occupational Safety and Health Administration program was certified in May 1978 and final determination (18-E) was achieved in July 1985.

The General Assembly enacted legislation giving Tennessee OSHA the mission of ensuring that employers furnish a place of employment which is free of recognized hazards and provide a safe and healthful workplace. Tennessee OSHA's primary objective is to improve occupational safety and health in workplaces throughout the state. The worker population in Tennessee is approximately 2,820,198. There are approximately 150,237 employers in the state.

Tennessee OSHA achieves this objective through:

Enforcement of the general industry, construction, and agricultural occupational safety and health standards, as well as the Tennessee Department of Labor and Workforce Development rules for private and public sector employees.

Delivering training programs designed to target the most prominent injuries and illnesses affecting Tennessee workers.

Providing free online access to Tennessee Department of Labor and Workforce Development rules and OSHA general industry, construction and agriculture standards.

Providing interpretations of Tennessee OSHA standards and rules.

Providing assistance to employers, employees and the general public on controlling hazards in the workplace by answering technical questions on a daily basis.

Administering the consultation program to advise and assist employers in the improvement of occupational safety and health in the workplace.

Maintaining employer recognition programs to promote workplace safety and health.

Tennessee OSHA's program services are delivered through a central office in Nashville and field offices located in six strategic geographical areas with 20 Reporting IDs. Those areas are as follows:

Nashville - 0454700, 0454712, 0454722 and 0454732

Memphis - 0454711, 0454721 and 0454731

Knoxville - 0454714, 0454724 and 0454734

Chattanooga - 0454713, 0454723 and 0454733

Jackson - 0454715, 0454725 and 0454735

Gray - 0454716, 0454726 and 0454736

Consultation – 0494701

The Tennessee OSHA website (Compliance and Consultation) is <http://tn.gov/workforce/section/tosha>. All current directives, the Tennessee OSHA Act, and Tennessee OSHA state rules are accessible from the site.

As of November 14, 2017, three industrial hygienist supervisor, three industrial hygienist, two occupational safety specialist supervisor positions, and four occupational safety specialist positions were vacant (23g). TOSHA intends to fill seven of the eight vacancies prior to December 31, 2018.

## *Mandated Activities*

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### Enforcement

During FY 2018, Tennessee OSHA performed 1,780 workplace inspections (*source: Inspection One Liner*). During these inspections 8,360 hazards (*source: Violation Detail Data Report*) were identified and penalties of \$4,128,829 (*source: Violation Detail Data Report*) were assessed. Unpaid penalties are assessed a late fee of 10% at 30, 60, and 90 days and statutory interest is assessed until the penalty is paid. Unpaid penalties are forwarded to the state attorney general's office for collection. During the pre-contest period, TOSHA retained 92.68% of the penalties assessed, compared to 70.01% retained by combined federal and state programs nationwide. (*Source: SIR Report*)

### Complaints

During FY 2018, complaint inspections were initiated an average of 4.09 days following receipt of the complaint, as indicated in the State Activity Mandated Measures (*Source: SAMM*). Complaint investigations were initiated in an average of 0.61 days. Both were within the goal of 15 days for inspections and 5 days for investigations. During FY 2018 TOSHA processed 1,456 complaints (*Source: UPA One Liner*).

### Fatalities

During FY 2018, TOSHA received 42 reports of fatal injury or illness (*source: State Accident Fat/Cat Log*). TOSHA evaluated each report and in response, conducted 42 on site investigations. Of the reported fatalities, 39 were work related. It is agency policy to conduct fatal accident investigations as soon as possible and generally within one day of receiving notice of the incident. A letter is sent by the TOSHA Administrator notifying each victim's family that an investigation is underway and providing the family with contact information for the area supervisor overseeing the investigation. Follow-up letters are sent to the victim's family as the investigation, citation, and contest processes progress.

### Targeting and Special Emphasis Programs

Tennessee OSHA participated in the following national emphasis programs: Trenching and Excavation, Amputations, Hexavalent Chromium, PSM Covered Facilities, Primary Metal Industries, Combustible Dust, and Lead.

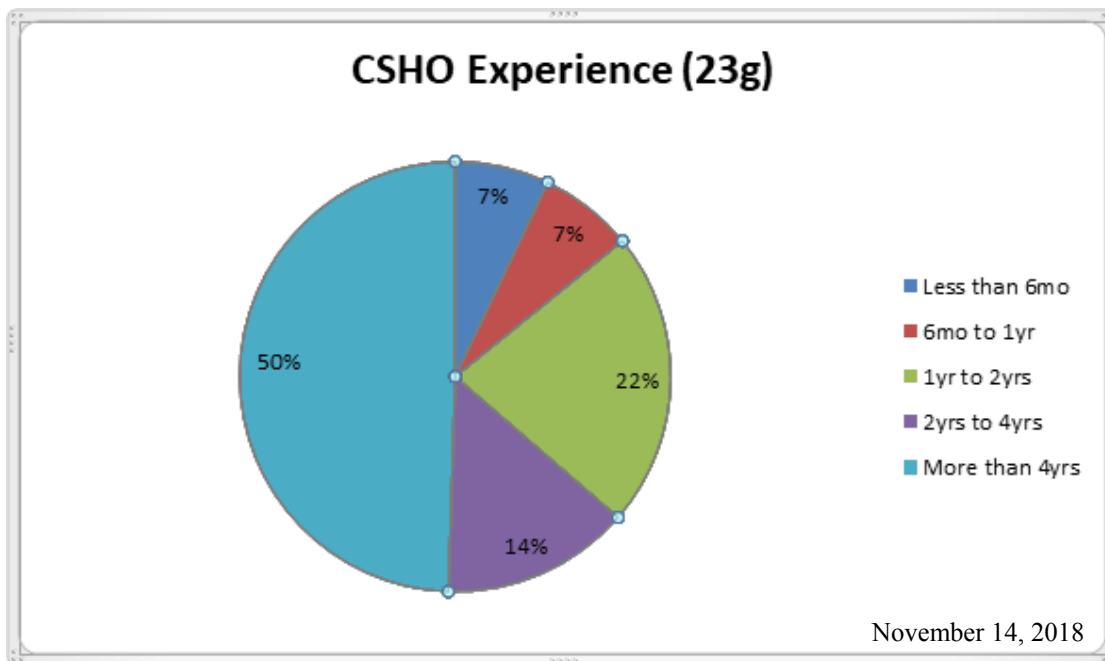
In addition, Tennessee OSHA also maintained the following local emphasis programs: carbon monoxide, fall protection, noise, and a targeting initiative for dental offices.

Evaluation of Mandated Activities

Tennessee OSHA management reviews the State Activity Mandated Measures (SAMM) as well as other management reports periodically to assure the mandated activities are carried out effectively and efficiently. A review of the SAMM FY 2018, Violation Detail Data Report, Inspection Summary, Inspection One-Liner, and UPA One-Liner reports indicated Tennessee OSHA performed at a high level of competency and productivity.

Highlights include the following: serious hazards were identified during 89.9% of programmed safety inspections. Serious hazards were identified during 58.8% of programmed health inspections (*source: Inspection Summary, Inspections with Violations tab*). Tennessee OSHA reclassified 1.52% of violations (*source: SIR Report*) and 94.75% (*source: Inspection Summary, Penalty Metrics tab*) of penalties assessed were retained. The average time to initiate a complaint inspection was 4.09 days (*source: SAMM*). The average time to initiate a complaint investigation was 0.61 days (*source: SAMM*). The average lapse time in days to issue citations for safety and health violations was 22.59 days and 43.28 days, respectively (*source: SAMM*).

As of November 14, 2017, 64% of compliance officers (not including supervisors or managers) have less than four years of experience and 14% of compliance officers have less than one year of experience. As of November 14, 2017 there were seven vacant compliance officer positions. TOSHA intends to fill six of those seven positions prior to December 31, 2018. New personnel are in training and TOSHA will continue to aggressively fill all vacancies. Effective November 11, 2018, TOSHA increased the starting salary from \$3,199, per month, to \$3,780 in an attempt to attract qualified candidates.



### Public Sector Activity

During FY 2018, Tennessee OSHA performed 35.22% of all inspections in the public sector (*source: SAMM*). Public sector employers were given the opportunity to participate in the public sector program during the first two years following the formation of Tennessee OSHA and again, by statute, between July 1, 2004, and July 1, 2006. State law mandates that Tennessee OSHA inspect these entities every two years. Participants in the program must designate a safety and health director and establish a safety and health program. Participants are not issued monetary penalties for violations; however the governor can remove a participant from the program for failure to comply with the TOSH Act. All public employers not currently participating in the program are treated as private employers as mandated by state law. The 2017 total case incident rate (TCIR) for state and local government in Tennessee was 4.2 which is significantly lower than the national average of 4.6.

### Citation and Inspection Review

All inspection reports and citations are reviewed by the industrial hygiene or safety area supervisor and the section manager. All citations are reviewed and issued by the TOSHA Administrator or Assistant Administrator. Informal conferences are held by the appropriate area supervisor and reviewed by the section manager. All changes to the penalty or citation are reviewed and issued by the TOSHA Administrator or Assistant Administrator.

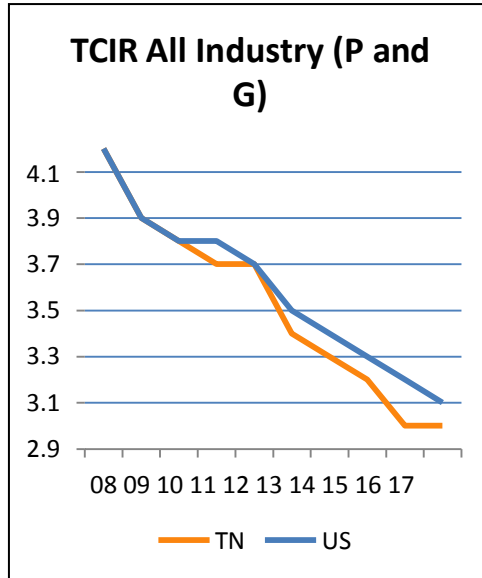
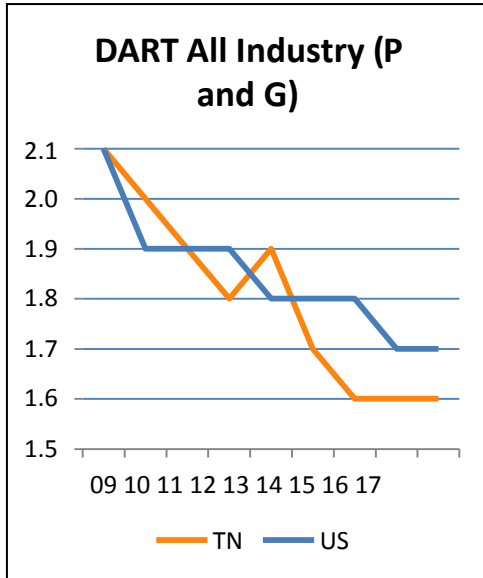
During FY 2018, 41 citations were contested. Of these, 15 were resolved by settlement agreement, a default judgment was obtained in 2 cases, and 1 case withdrew their notice of contest prior to a hearing before the Tennessee Occupational Safety and Health Review Commission. As of September 30, 2018, of the 23 contested cases remaining, 3 settlements are scheduled to be resolved pending approval. The remaining 20 are pending resolution by settlement or hearing. All penalty reductions associated with contested citations must be approved by the Attorney General, the Comptroller, and the Governor.

Review of Bureau of Labor Statistic Data

A review of the Bureau of Labor Statistic (BLS) data, over the last ten years, reveals a decline in the Days Away, Restricted, Transferred (DART) and the Total Case Incident Rate (TCIR).

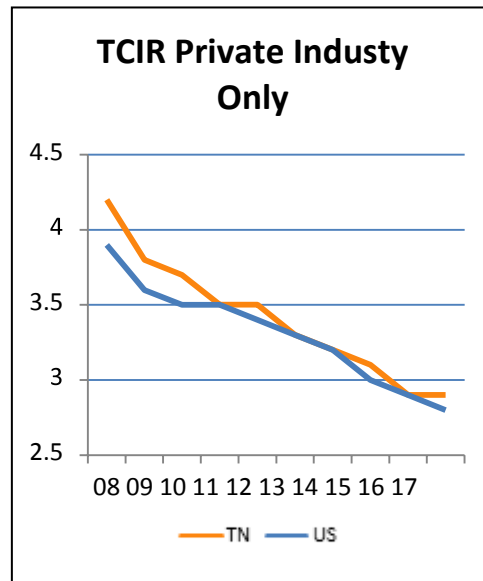
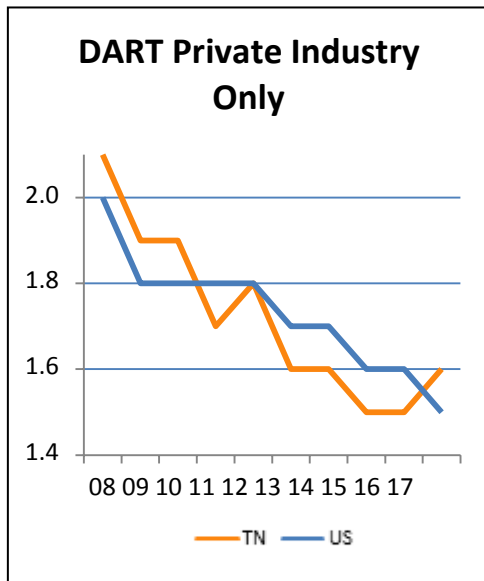
All Industries Public and Private

DART			TCIR	
YEAR	TN	US	TN	US
2017	1.6	1.6	3	3.1
2016	1.6	1.7	3.0	3.2
2015	1.6	1.7	3.2	3.3
2014	1.6	1.8	3.3	3.4
2013	1.7	1.8	3.4	3.5
2012	1.9	1.8	3.7	3.7
2011	1.8	1.9	3.7	3.8
2010	1.9	1.9	3.8	3.8
2009	2.0	1.9	3.9	3.9
2008	2.1	2.1	4.2	4.2



Private Sector Only

DART			TCIR	
YEAR	TN	US	TN	US
2017	1.6	1.5	2.9	2.8
2016	1.5	1.6	2.9	2.9
2015	1.5	1.6	3.1	3
2014	1.6	1.7	3.2	3.2
2013	1.6	1.7	3.3	3.3
2012	1.8	1.8	3.5	3.4
2011	1.7	1.8	3.5	3.5
2010	1.9	1.8	3.7	3.5
2009	1.9	1.8	3.8	3.6
2008	2.1	2.0	4.2	3.9



### Training of TOSHA Compliance Personnel

#### Training of TOSHA Compliance Personnel

Newly-hired TOSHA compliance officers are trained as outlined in the instruction “Initial Training Program for TOSHA Compliance Personnel” (TED-TN 001- 00- 019). The OSHA Training Institute (OTI) is used as the primary source for most of the training courses. As soon as OTI course enrollments become available, a new compliance officer is enrolled in the “Initial Compliance” course. Additional courses are scheduled as detailed in the instruction. Basic training consists of the eight courses outlined in Phase 1 and are completed within the first three years of employment. After the three-year period, the training needs of all TOSHA compliance personnel are evaluated annually by the supervisor in conjunction with the section manager, and follow Phase 2 & 3 of the training plan.

In FY 2018, TOSHA employees attended classes at the OSHA Training Institute (OTI), in addition to OTI LIVE webinars and Pre-Recorded webinars on various safety & health topics. TOSHA employees also attended training events sponsored by private entities including, Asbestos Inspector & Refresher training, Trenching Competent Person, and OSHA Requirements for Power Presses.

By virtue of these training opportunities, as well as attendance at the annual Tennessee Safety and Health Conference, Safety Fest TN, Tennessee Valley Section of AIHA, and TOSHA’s Professional Development Conference, 100% of the TOSHA staff received professional development training in FY 2018.

#### Standards

The Commissioner of the Tennessee Department of Labor and Workforce Development has the statutory authority to promulgate occupational safety and health standards. Tennessee has generally adopted all federal standards that are applicable in Tennessee. Standards promulgated by federal OSHA are adopted by reference in Tennessee Department of Labor and Workforce Development rules. There were two rule proposals submitted during this period that adopted all federal OSHA promulgated standards during FY 2018 in a timely manner. No unique state standards were adopted during this period. There were no new compliance directives posted by federal OSHA for state adoption in FY2018.

The Tennessee OSH Act has not been amended by the General Assembly to increase statutory maximum penalties as enacted by Congress in November 2015. The issue will be presented to the incoming Commissioner in 2019 following the change of administration.

All directives are listed on the division’s web page.

TOSHA responded to 276 Public Records Act requests during this period. All Freedom of Information requests forwarded to the division by federal OSHA were satisfied in a timely manner.

TOSHA received no requests for a variance during FY 2018.



### Volunteer STAR Program (VPP) and Safety and Health Awards Programs

The TOSHA Volunteer STAR (VPP) Program is administered according to the TOSHA VPP Policy and Procedures Manual (CSP-TN 03-01-003). Tennessee OSHA recognizes only the STAR level of achievement.

Tennessee OSHA currently has 37 sites and 23,172 employees, participating in the Volunteer STAR program. During FY 2018 two new applications were evaluated and approved. A review of the 2018 annual self-evaluation data for Volunteer STAR sites reveal total case incident rates 62% below and days away, restricted, and transfer rates 64% below their respective national industry averages.

The Tennessee Department of Labor and Workforce Development's Safety Award Program is designed to stimulate interest in accident prevention and to promote safety and health programs. These awards recognize manufacturing and construction employers across the state that, together with their employees, achieve and maintain safe and healthful work sites based on worker-hours worked without a lost time (Commissioner's Award) or without a lost or restricted duty incident (Governor's Award).

During FY 2018, TOSHA presented 16 Governor's Awards and 8 Commissioner's Awards. No exemption or other benefit, with the exception of recognition, is granted to the recipients.

### Training and Education Outreach Program

TOSHA offered Workplace Safety & Health educational seminars at various locations across the state. These seminars are open enrollment and a schedule is published in the spring and fall each year. TOSHA partners with co-sponsors to offer these seminars, including but not limited to, the Tennessee Chamber of Commerce and Industry, Tennessee Association of Utility Districts, Associated Builders and Contractors, State Community Colleges, and other State, County, & City Agencies. The safety & health seminar topics include: new regulations, basic requirements, and current topics of interest.

The TOSHA training staff is comprised of industrial hygienists, and occupational safety specialists who conduct the seminars in addition to their compliance or consultation duties. In FY 2018, TOSHA trainers conducted sessions on several topics including Basic Safety, Maintenance-Related Standards, Recordkeeping, GHS & Hazard Communication, Silica, Health Hazards, and OSHA 30-Hour Courses. Safety and Health training was provided to 12,617 attendees across the state.

TOSHA published a free quarterly newsletter, "Together with TOSHA". The newsletter is posted on TOSHA's web site and distributed through the LISTSERV account which currently contains 1,378 subscribers. In addition, more than 40 employer and employee associations and other groups forward the newsletter to their members. The electronic publication of the newsletter in portable document format (pdf) allows the reader to follow embedded web links to additional information or print the document for employees without electronic access. The newsletter offers information, interpretations,

best practices, and compliance recommendations on occupational safety and health topics. Topics covered in the newsletters in FY 2018 include:

Reports on the Tennessee fatality rates and a review of “What Kills in Tennessee” along with prevention and hazard control;

OSHA published documents for National Safety Stand Down to prevent Falls in Construction, Safe & Sound Week, National Ladder Safety Month, Silica, Beryllium, Recordkeeping, Heat Stress, Cold Stress, Tree Trimming, Storm Clean-up, Walking-Working Surfaces, Fall Protection, Disaster Response, Crane Operator Certification;

State VPP and SHARP participant updates, awards, and best practices;

Recent TOSHA outreach efforts with posting of seminar schedules;

Safety and Health educational efforts throughout Tennessee, including Safety Fest TN, Safe + Sound Week, Trench Safety Stand Down, Stand Down to prevent Falls in Construction, and the Tennessee Safety and Health Conference

### Complaints about State Program Administration

During FY 2018 no complaints were received regarding TOSHA program administration.

### Discrimination

All allegations of discrimination were investigated by Tennessee OSHA in accordance with established policies and procedures. Allegations found to be of merit were settled or forwarded to the Attorney General's office for consideration for prosecution. During FY 2018, 84 complaints alleging discrimination in violation of T.C.A. 50-3-409 were filed. Of these, 9 were settled, 6 were withdrawn by the complainant, 14 were found to lack merit, and 33 were closed because the complainant failed to cooperate, 3 were screened and closed, and 1 was outside the jurisdiction of the statute. The remaining complaints are still under investigation.

### Inspection Quality Assurance

Tennessee OSHA compliance officers are trained to perform the essential job functions in a professional and competent manner. Each compliance officer has a job plan and an annual evaluation with at least two interim evaluations during the year. Supervisors performing the annual evaluation accompany compliance officers on an inspection to assure inspection policies and procedures are followed. Newly hired compliance officers are trained as discussed in the training section.

Each inspection report and proposed citations are reviewed by the industrial hygiene or safety supervisor in the area office where the inspection was conducted. The inspection report and proposed citations are forwarded to the industrial hygiene or safety section manager in the central office for additional review. All citations are issued by signature of the TOSHA Administrator, or in his absence, by the Assistant Administrator, as required by state law.

The review of each inspection file and citations by each management level provides continuous assurance of quality work and consistency across all area offices.

A procedure (ADM-TN 03-00-011) has been developed and implemented to audit each area office to assure policies and procedures are being followed. The Nashville and Knoxville area offices were evaluated during FY 2018. The intent of the procedure is to evaluate two area offices each federal fiscal year on an ongoing basis.

*Annual Performance Goals*

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Performance Goal 1.1

Eliminate 6,000 serious violations/hazards in workplaces where interventions take place.

Summary - Tennessee OSHA exceeded this goal.

	Compliance	Consultation	Total
Inspections/Visits	1,780	428	2,208
Serious Violations/Hazards	6,359	3,739	10,098
Non-Serious Violations/Hazards	1,797	311	2,108
Repeated Violations	95	n/a	95
Willful Violations	2	n/a	2
Regulatory Hazards	n/a	417	417
Total Violations/Hazards	8,360	4,660	13,020

Performance Goal 1.2 - Carbon Monoxide

Reduce carbon monoxide exposures for 300 employees.

Summary – Tennessee OSHA exceeded this goal

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CO levels have been documented as reduced through elimination and engineering controls as follows:

FY	EMPLOYERS	EMPLOYEES
2014	22	975
2015	11	1,072
2016	9	923
2017	15	573
2018	9	621

Performance Goal 1.3 – Noise

Reduce noise exposures for 400 employees.

Summary - Tennessee OSHA exceeded this goal.

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Noise levels have been documented as reduced through improvements in hearing conservation programs as follows:

FY	EMPLOYERS	EMPLOYEES
2014	20	542
2015	13	673
2016	20	468
2017	12	876
2018	12	491

Performance Goal 1.4

Eliminate 500 fall hazards in the workplace.

Summary – Tennessee OSHA exceeded this goal.

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Compliance and consultation documented the elimination of fall hazards and reduced employees' exposure to falls by issuing citations and identifying hazards as outlined in the chart below.

FY	EMPLOYERS	HAZARDS
2014	301	707
2015	241	541
2016	246	450
2017	347	789
2018	474	1,135

TOSHA informs employers and employees about the fall hazard special emphasis program during each inspection and visit. The goal is to increase employers and employees ability to identify fall hazards and reduce employee exposure to falls.

**Performance Goal 1.5 – Bloodborne Pathogen Exposure Reduction**

Reduce the number of bloodborne pathogen exposures for 500 employees. Bloodborne pathogen exposures were documented as reduced through engineering/work practice controls and participation by employees in a formal training program.

Summary – Tennessee OSHA exceeded this goal.

**Bloodborne Pathogen Data**

	Inspections/Visits	Violations/Hazards	Employees
Compliance	161	558	2,317
Consultation	182	1,011	2,519
TOTAL	343	1,569	4,836

**Performance Goal 2.1**

Train 9,500 people in occupational safety and health training classes.

Summary – Tennessee OSHA exceeded this goal.

	Programs	Personnel
Formal Training	237	7,295
Consultation On-site	428	5,322
TOTAL	665	12,617

**Performance Goal 2.2**

Implement significant improvements in employer occupational safety and health programs in 850 workplaces where Tennessee OSHA compliance had an intervention.

Summary – Tennessee OSHA exceeded this goal.

**Inspection Results**

	Workplaces	Program Violations
Compliance	866	2,436
Consultation	333	2,543
TOTAL	1,199	4,979

Performance Goal 2.3

Increase employer/employee awareness of safety and health management systems through onsite outreach during 1,000 private sector compliance inspections, 500 public sector compliance inspections, and 365 consultation visits.

Summary – Tennessee OSHA exceeded this goal.

	Goal	Workplaces
Private Sector Compliance	1,000	1,152
Public Sector Compliance	500	628
Consultative Services	365	428
TOTAL	1,865	2,208

Performance Goal 2.4

Evaluate two applications for participation in the Voluntary Protection Program (Volunteer STAR).

Summary – Tennessee OSHA met this goal.

Tennessee OSHA evaluated two applications for participation in the Volunteer STAR program.

The following applications were evaluated:

Total Safety  
Occidental Chemical

Performance Goal 2.5

Evaluate two applications for the Safety and Health Achievement Recognition Program (SHARP).

Summary – Tennessee OSHA met this goal.

Tennessee OSHA consultation services evaluated two applications for participation in SHARP.

The following companies were evaluated:

Interstate Packaging  
Rolled Metal Products

**Performance Goal 3.1**

Ensure effective service by maintaining average report turnaround time within the following targets: less than 35 days (safety compliance), less than 55 days (health compliance), less than 20 days (consultation), less than 25 days (public sector compliance):

Summary – Tennessee OSHA exceeded this goal in 3 of 4 sections.

	Goal (days)	Average Turnaround (days)
Safety Compliance	35	45.4
Health Compliance	55	53.1
Public Sector Compliance	20	16.1
Consultation	25	14.1

**Performance Goal 3.2**

Ensure effective service by responding to complaints within the negotiated time frames, less than 15 days (inspections), less than 5 days (inquiries):

Summary – Tennessee OSHA exceeded this goal.

	Goal (days)	Average Days to Open
Inspections	15	4.09
Inquiries	5	0.61

**Performance Goal 3.3**

Ensure effective service by completing lab analysis within 14 days.

The TOSHA laboratory was decommissioned during this fiscal year. This item is no longer applicable.

**Performance Goal 3.4**

Ensure effective service by requiring at least 90% of staff to attend professional development training.

Summary – Tennessee OSHA exceeded this goal.

Number of Professional Staff	Number that Attended Training	Percentage Trained
63	63	100%



*Significant Inspections*

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Hankook Tire Manufacturing Tennessee LP. (\$55,000)

A complaint inspection was conducted on 6/20/18 at Hankook Tire Manufacturing Tennessee LP. located in Clarksville, TN. The facility is a tire manufacturer. The inspection resulted in 1 repeat serious citation concerning lack of using energy control procedures (i.e.- no lockout) when performing servicing and maintenance operations. The inspection also resulted in 1 repeat serious citation concerning lack of machine guarding on several machines.

Lighting Resources LLC. (\$44,250)

A fatality inspection resulting from an explosion was conducted on 3/14/18 at Lighting Resources LLC. located in Johnson City, TN. The facility is a recyclable materials recovery facility. Citations ranged from exposure to fire and explosion hazards, inadequate PPE, respirator program issues, fire extinguisher training, to hazard communication violations.

QEP Co. Inc. (\$44,000)

A fatality inspection resulting from a confined space entry/dust collapse, was conducted on 3/10/18 at QEP Co. Inc. located in Johnson City, TN. The facility is a hardwood floor manufacturer. A fatality occurred while an employee was attempting to clean out a dust collection silo. A serious citation was issued for not wearing fall protection while working 21' above a lower level in an aerial lift. Serious citations were also issued for inadequacies in the employer's permit required confined space program.

PMC Biogenix, Inc. (\$36,900)

An unprogrammed inspection was conducted of PMC Biogenix, Inc., a chemical processing facility located in Memphis, TN. The inspection was conducted to investigate employee exposures to ammonia alleged in a complaint submitted to the TOSHA Office. The complaint described employee exposures to ammonia by means of chemical release and by means of work activities conducted in a reactor vessel. The TOSHA inspection identified 37 serious citation items relating to violations of standards for process safety management, confined space entry, hazard communication, personal protective equipment, emergency action plan, and walking-working surfaces. The citations had a total penalty of \$36,900.

### SMO, LLC dba Smoky Mountain Opry (\$22,300)

A fatal accident inspection was conducted of SMO, LLC dba Smoky Mountain Opry (SMO), a live theatre located in Pigeon Forge, TN. The inspection was conducted to investigate a carbon dioxide (CO<sub>2</sub>) release in the facility reported to TOSHA by Sevier County EMA. The CO<sub>2</sub> release created an oxygen-deficient atmosphere in an unventilated space. Three employees exposed to the hazardous atmosphere were transported to the hospital for medical treatment. One employee later passed-away at the hospital. The TOSHA inspection identified 9 serious citation items relating to violations of standards for emergency response, failure to control CO<sub>2</sub> hazards in the workplace (general duty), hazardous chemical training, and mechanical/electrical guarding hazards. The citations had a total penalty of \$22,300.

### Southeastern Provision, LLC (\$19,375)

An unprogrammed inspection was conducted of Southeastern Provision, LLC, a slaughter and meat processing facility located in Bean Station, TN. The inspection was scheduled to evaluate hazards alleged in a complaint submitted to the TOSHA Office. The complaint described employee exposure to numerous health hazards, including noise hazards, hazardous chemical exposure hazards, and inadequate access to restrooms. The TOSHA inspection identified 14 serious citation items relating to violations of standards for noise, personal protective equipment, medical services and first aid, and hazard communication. The citations had a total penalty of \$19,375.

### Memphis Light Gas and Water (No Monetary Penalty Assessed – Public Sector Employer)

An injury referral investigation was conducted at MLGW after an employee received serious burns while working on a transformer for underground utilities. The inspection resulted in 4 serious safety citation items that were related to insufficient job briefings, lack of lockout / tag out, and not installing protective electrical grounding when working on power transmission equipment.

### *Special Accomplishments*

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Tennessee OSHA, with the Tennessee chapters of ASSP, sponsored the 41st annual Tennessee Safety and Health Conference in partnership with the Voluntary Protection Program Participants Association. The collaborative event drew more than 3,500 attendees and more than 400 exhibitors.

TOSHA co-sponsored the Safety Fest TN 2018, presented by the Oak Ridge Business Safety Partnership, on September 10th– 14th, 2018. Over 3,200 class seats were filled by 1,385 people from 128 cities and 21 different states.

Tennessee OSHA produced and distributed the quarterly newsletter, *Together with TOSHA*. Several training videos including the 2013 Hazard Communication meeting the GHS requirements were maintained on the department's website.

Tennessee OSHA partnered with the following safety organizations to conduct training:

- Tennessee Chamber of Commerce and Industry
- University of Tennessee Center for Industrial Studies
- Bristol Chamber of Commerce
- Tennessee Safety and Health Conference
- Associated General Contractors
- Associated Builders and Contractors
- American Society of Safety Engineers
- American Industrial Hygiene Association
- Oak Ridge Safety Fest TN
- Tennessee Association of Utility Districts (TAUD)
- Tennessee Valley Public Power Association (TVPPA)
- Upper Cumberland Safety and Environmental Council (UCSEC)
- Pigeon Forge and Gatlinburg Hospitality Associations
- Tennessee Health Care Association
- Local Area Dental Associations
- Steel Manufacturing Association
- Tennessee Employment Relations Research
- City of Johnson City
- Oak Ridge Utility

TOSHA also partnered with the following institutions of higher learning

- Meharry Medical School
- Meharry Dental School
- Volunteer State Community College
- Walters State Community College
- Tennessee College of Applied Technology

TOSHA's Public Sector section partnered with the following for training

- Memphis Gas Light and Water (MLGW)
- Tennessee Gas Association Safety Summit

## **Appendix E – FY 2018 State OSHA Annual Report (SOAR)**

### **FY 2018 Tennessee Follow-up FAME Report**

The Administrator served on the federal Advisory Committee on Construction Safety and Health (ACCSH).

The TOSHA Administrator served on the board of directors of the Occupational Safety and Health State Plan Association. He is currently serving as the vice- chair.

The VPP manager attended the Annual Region IV VPPPA Conference and served as an ex-officio member of the Region IV chapter board of directors.

The TOSHA Consultation Program Manager was elected to serve as the President of the National Association of Occupational Safety and Health Consultation Programs (OSCHON).

TOSHA Consultation received an Onsite Consultation Achievement Recognition Award (OSCAR) from Federal OSHA at the Annual Consultation Conference in San Antonio, TX.

Tennessee OSHA has supported the training of occupational medicine residents at Meharry Medical College for more than two decades. As the only occupational medicine residency program in Tennessee, Meharry Medical College has played an important role in training qualified professional occupational health practitioners to serve the state and the nation. This partnership provides opportunities for practicum experience. As a result of the Meharry Medical School Residency Program Partnership, TOSHA trained three occupational medicine residents in FY2018.

The Training and Education Manager serves on the Residency Advisory Committee at Meharry Medical College, the state's only occupational medicine residency program.

Tennessee OSHA compliance officers and consultants answered approximately 1,000 technical assistance e-mail inquiries received from the public. In addition, consultants and compliance officers answered technical assistance calls daily.

The TOSHA Administrator attended all OSHSPA meetings held during FY2018.