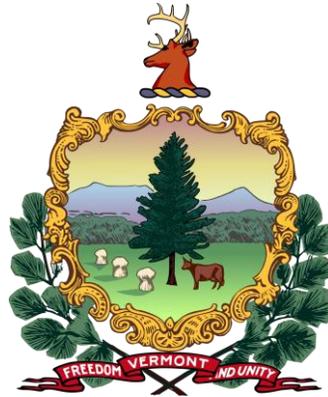


**FY 2018
Follow-up Federal Annual Monitoring Evaluation (FAME) Report**

Vermont Occupational Safety and Health Administration
(VOSHA)



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

**Initial Approval Date: October 17, 1973
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**Prepared by:
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I. Executive Summary

The primary purpose of this report is to assess the Vermont Occupational Safety and Health Administration's (VOSHA's) progress in resolving outstanding findings from the Fiscal Year (FY) 2017 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report.

For VOSHA, FY 2018 was a year marked by budgetary concerns and personnel changes. To illustrate, a vacancy created by the resignation of a health compliance officer in FY 2017 remained open throughout FY 2018 due to funding concerns. During FY 2018, the workplace retaliation investigator and a safety compliance officer also left the State Plan. Although the management team eventually filled these two positions, they were especially disheartened by the departure of the workplace retaliation investigator who had made great strides during his four years with the State Plan.

Despite the turbulence caused by these issues, VOSHA performed at a high level in FY 2018. Similar to the FY 2017 Comprehensive FAME Report, there are no findings in this report. The State Plan also successfully resolved two of the four observations from last year's report. These two observations pertained to performance monitoring and abatement tracking. The two remaining observations pertain to case file documentation and low penalty retention; however, the State Plan is already taking meaningful steps toward resolving both observations.

The fact that VOSHA has no new findings or observations in this report and managed to resolve half of the observations from last year is a credit to the two first-line supervisors who have been managing the State Plan since 2013. Prior to their arrival, personnel changes and budgetary concerns tended to steer the State Plan off course. This scenario is no longer the case, but adjustments still need to be made to improve performance in some areas.

II. State Plan Background

VOSHA has been administered by the Vermont Department of Labor, Division of Workers' Compensation and Safety since July 1, 2005. The Commissioner of Labor is the State Plan designee, and VOSHA is headquartered in Montpelier, Vermont.

VOSHA's statutory authority is contained in Title 21 of the Vermont Statutes Annotated (V.S.A.) §§201-232. Under these statutes, VOSHA conducts workplace inspections, issues citations and penalties, and provides administrative and judicial review processes for employers seeking to contest citations and/or penalties. Title 21 V.S.A. §231 prohibits employers from retaliating against workers who exercise their rights under VOSHA's occupational safety and health statutes and authorizes the investigation and prosecution of complaints of workplace retaliation. An express private right of action for workers who believe that workplace retaliation or discrimination has occurred is contained in 21 V.S.A. §232.

In 1978, the U.S. Court of Appeals, in *AFL-CIO v. Marshall*, ordered OSHA to create a formula to set enforcement staffing benchmark levels for each State Plan. Meeting these staffing benchmark levels is a requirement for a State Plan to attain final approval status. VOSHA does not have final

approval status and, due to a limited state budget, cannot allocate the amount of staff that is sufficient to meet its benchmark levels.

VOSHA began FY 2018 with seven compliance safety and health officers (CSHOs) and one workplace retaliation investigator, but during the course of the year, the investigator and one CSHO resigned. VOSHA transferred one of its own CSHOs into the workplace retaliation investigator position. Thus, as FY 2018 drew to a close, VOSHA still had two vacant CSHO positions but was able to fill both of them in early FY 2019. The State Plan's new hires have begun taking mandatory training courses, but it will be a while until they are entirely up to speed. VOSHA also has one full-time administrative support person and two full-time managers (the director and the compliance supervisor).

Most of the duties related to compliance assistance are performed by the VOSHA Director, with some assistance from CSHOs and the compliance supervisor. VOSHA's state and local government consultation program consists of two safety and health consultants who commit a portion of their time to providing on-site consultation services to state and local government workplaces.

VOSHA covers a total of 309,326 workers, which includes 256,295 private sector workers and 46,089 state and local government workers. There are approximately 24,000 private sector establishments and approximately 1,500 state and local government worksites in the state.

VOSHA's coverage of state and local government workers is identical to that of private sector workers, including citation issuance and first instance sanctions. VOSHA also administers the Green Mountain Voluntary Protection Program, Project WorkSAFE (consultation), and the Safety and Health Achievement Recognition Program.

VOSHA has two unique standards: one addressing permissible exposure limits (PELs) and one for electrical power generation, transmission, and distribution. The PELs enforced by VOSHA are those issued by OSHA in 1988 and subsequently overthrown in court. They are considerably stricter than OSHA's current PELs. Construction, manufacturing, transportation and warehousing, wholesale trade, and healthcare are VOSHA's high-hazard, targeted industries.

Based on financial close-out forms, VOSHA's federal funding award has remained constant at \$726,900 since FY 2015. As in past years, the State of Vermont matched—but did not exceed—the federal funding award. In recent State OSHA Annual Reports (SOARs), VOSHA has indicated that it does not have the funds needed to fill the CSHO vacancy that has been on the books since FY 2017. Thus, VOSHA reduced the goal for inspections from 300 in FY 2017 to 250 in FY 2018.

New Issues

None

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

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 Report. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent Comprehensive FAME Report. The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including:

- State Activity Mandated Measures (SAMM) Report (Appendix D)
- State Information Report (SIR)
- SOAR (Appendix E)
- State Plan Annual Performance Plan
- State Plan Grant Application
- OSHA Information System (OIS) Reports
- WebIMIS Reports
- Quarterly monitoring meetings between OSHA and the State Plan

B. Findings and Observations

The State Plan made progress in addressing the four observations that were in the FY 2017 Comprehensive FAME Report. Two of the four observations in the previous FAME Report have been closed, and two observations have been continued. Other than the continued observations, this report contains no new findings and no new observations. Appendix A, which describes the new and continued findings and recommendations, has been left blank. Appendix B describes the observations subject to continued monitoring and the related federal monitoring plans. Appendix C, which describes the status of each FY 2017 finding and recommendation in detail, has also been left blank.

OBSERVATIONS

Closed FY 2017 Observations

Observation FY 2017-OB-01: VOSHA did not use OIS reports to ensure proper monitoring of enforcement activities, as acknowledged by the State Plan's managers.

Status: To monitor abatement, citation issuance, and contested cases, the compliance supervisor now reviews the OIS Abatement Tracking and Open Inspection Reports on a regular basis. OIS reports reviewed by OSHA during the course of the year showed no significant abnormalities, such as violations long overdue for abatement or citations overdue for issuance, etc. The State Plan managers also discuss OIS reports with their staff and use the SAMM, Inspection Summary, and Standards Cited Reports to monitor each compliance officer's performance throughout the year. In FY 2018, VOSHA performed satisfactorily in terms of reviewing OIS reports and discussing them with the field staff. This observation is closed.

Observation FY 2017-03: An OIS Abatement Tracking Report run on December 7, 2017, showed 20 cases having a total of 36 uncontested violations that were unabated more than 30 days after the abatement due date. Many of these cases resulted from the State Plan not attempting to obtain abatement from the employer once the case was in debt collection. In addition, VOSHA did not follow the procedures in Chapter 7 of the VOSHA Field Operations Manual (FOM) to close the open abatement in OIS in cases where the employer did not respond to the citation and could no longer be contacted.

Status: VOSHA now reviews all enforcement cases for abatement completion before referring them to debt collection. For cases having violations that are overdue for abatement, including those that have been referred for debt collection, VOSHA follows the procedures in Chapter 7 of the VOSHA FOM to obtain abatement. This involves conducting follow-up inspections and/or contacting employers by telephone and mail to remind them that abatement is overdue. In instances where the employer fails to certify abatement and/or fails to respond to these reminders, VOSHA issues a citation for failure to abate; however, in FY 2018, the State Plan did not encounter any situations that warranted this action. In cases where the employer is unresponsive and can no longer be located, VOSHA stops further efforts to locate the employer and documents in the case file the reason for no abatement certification. OIS Abatement Tracking Reports now show no citations having violations long overdue for abatement. This observation is closed.

Continued FY 2017 Observations

Observation FY 2018-OB-01: (formerly Observation FY 2017-OB-02): In FY 2017, in 19 (47 percent) of the case files reviewed that were not in compliance, there was no documentation that the CSHO had either requested or reviewed the OSHA 300 Log.

Status: In FY 2018, VOSHA's managers conducted trainings for field staff on OSHA 300 Log documentation. Additionally, the managers now review all case files to ensure that OSHA 300 Log documentation is included, where appropriate. However, while OSHA acknowledges that VOSHA has implemented procedures to ensure that OSHA 300 Log documentation is included in the case files, a case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year's onsite case file review during the FY 2019 Comprehensive FAME and will be continued.

Observation FY 2018-OB-02: (formerly Observation FY 2017-OB-04 and Observation FY 2016-OB-01): In FY 2018, VOSHA's percent penalty retained (SAMM 12) of 48.09 was outside the acceptable range (or range of acceptable data not requiring further review) of 56.79 percent to 76.83 percent.

Status: Metrics in the SIR shed some light on specific factors contributing to VOSHA's low penalty retention. For example, during pre-contest settlement discussions, the State Plan may modify or withdraw (i.e., vacate) a penalty, a citation, or a citation item where evidence establishes that the changes are justified. However, VOSHA's percentage of violations vacated (pre-contest)

is 6.27, which is much higher than the national percent of 2.54 (SIR 5A). During informal conferences, VOSHA may also reclassify violations (e.g., willful to serious, serious to other-than-serious (OTS)); yet, VOSHA's percent of 9.79 for violations reclassified (pre-contest) for private sector inspections is three times higher than the national percent of 3.00 (SIR 6A). Finally, the amount of proposed penalties may be negotiated depending on the circumstances of the case, but it appears that VOSHA negotiates penalty reductions that are higher than normal. The State Plan's penalty retention percentage (pre-contest) for private sector inspections is 59.75, which is much lower than the national percent of 70.00 (SIR 7A).¹

VOSHA is aware of the need to monitor penalty reductions when settling penalties. The managers have also mentored the CSHOs on hazard identification, case file documentation, and violation classification to help reduce the number of violations that are vacated or reclassified. Nonetheless, VOSHA should continue its efforts to increase the percent penalty retained so that it meets the acceptable range for SAMM 12. This observation will be a focus of next year's onsite case file review during the FY 2019 Comprehensive FAME and will be continued.

C. State Activity Mandated Measures (SAMM) Highlights

Each SAMM has an agreed upon further review level (FRL) which can be either a single number or a range of numbers above and below the national average. State Plan SAMM data that fall outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2018 SAMM Report and includes the FRL for each measure. VOSHA was outside the FRL on the following SAMMs:

SAMM 2a - Average number of work days to initiate complaint investigations (state formula)

Discussion of State Plan data and FRL: The FRL of one work day is negotiated by OSHA and the State Plan. In FY 2018, VOSHA's result for SAMM 2a (state formula) was 0.57 work days. In FY 2017, VOSHA's average of 1.05 work days was slightly above the FRL of one work day for this SAMM.

Explanation: SAMM 2a (state formula) calculates the number of work days from the date the State Plan receives the complaint to the date the State Plan initiates the investigation by notifying the employer of the complaint. This SAMM pertains only to complaints that have no related inspection. In FY 2018, VOSHA's average was less than one work day, which is a positive outcome for this SAMM.

¹ Both SAMM 12 and SIR 7A calculate the percent penalty retained but use slightly different factors in their calculations. However, both metrics are based solely on inspections conducted in private sector establishments and exclude "No Inspections" and contested violations.

SAMM 5 - Average number of violations per inspection with violations by violation type

Discussion of State Plan data and FRL: In FY 2018, VOSHA's average of 1.52 serious, willful, repeat, or unclassified (SWRU) violations per inspection was within the FRL range of 1.46 to 2.18. However, for OTS violations, VOSHA's average of 0.74 was outside the FRL range of 0.78 to 1.18. Similarly, in FY 2017, VOSHA's average of 1.59 for SWRU violations met the FRL range of 1.46 to 2.20 while the State Plan's average of 0.47 for OTS violations was outside the FRL range of 0.79 to 1.19.

Explanation: OSHA is not concerned with VOSHA's FY 2018 average for OTS violations since it has improved over the FY 2017 average of 0.47 and was only slightly below the FRL range.

SAMM 6 - Percent of total inspections in state and local government workplaces

Discussion of State Plan data and FRL: In FY 2018, the FRL range for SAMM 6 was from 7.98 percent to 8.82 percent; VOSHA's percent of 9.41 was above the FRL range. In FY 2017, VOSHA's percent of 9.04 was within the FRL range of 8.23 percent to 9.10 percent.

Explanation: VOSHA's FY 2018 percent is the result of the State Plan conducting eight more inspections in state and local government workplaces than the 21 that were projected in the FY 2018 Annual Performance Plan. The fact the VOSHA exceeded the goal for inspections in state and local government workplaces is a positive outcome and not cause for concern.

SAMM 7- Planned v. actual inspections—safety/health

Discussion of State Plan data and FRL: The FRL for this SAMM is based on a number negotiated by OSHA and the State Plan through the grant application. In FY 2018, VOSHA's total of 202 safety inspections was within the FRL range of 194.75 to 215.25; for health, the State Plan's total of 85 inspections was substantially outside (above) the FRL range of 42.75 to 47.25. Similarly, in FY 2017, the State Plan's total of 284 safety inspections was outside (above) the FRL range of 216.60 to 239.40 inspections, and VOSHA's total of 92 health inspections was outside (above) the FRL range of 68.40 to 75.60 inspections.

Explanation: As FY 2018 progressed, VOSHA determined that it could conduct more health inspections than the 45 that were originally projected. The FY 2018 total of 85 health inspections is a positive outcome and not cause for concern.

SAMM 14 - Percent of 11(c) investigations completed within 90 days

Discussion of State Plan data and FRL: The FRL of 100 percent is fixed for all State Plans. In FY 2018, VOSHA's result for this SAMM was 35 percent, which was higher than the State Plan's FY 2017 result of 17 percent.

Explanation: OSHA is not concerned with VOSHA's FY 2018 result of 35 percent for this SAMM because it is more than double the percent of the previous year, which is an improvement.

SAMM 15 - Percent of 11(c) complaints that are meritorious

Discussion of State Plan data and FRL: In FY 2018, the FRL range for SAMM 15 was from 19.20 percent to 28.80 percent. VOSHA's percent of 11(c) complaints that were meritorious was six percent, which is outside (below) the FRL range. This result was much lower than VOSHA's FY 2017 percent of 28, which met the FRL range of 20 percent to 30 percent.

Explanation: VOSHA has a new workplace retaliation investigator who began working in this position in the fourth quarter of FY 2018. So far, this new investigator has not had any training on settlement negotiations but is scheduled to take Course 2720, Whistleblower Complaint Resolution and Settlement Negotiations, at the OSHA Training Institute in 2019. OSHA is not concerned with VOSHA's result for this SAMM because the State Plan's percent of 11(c) complaints that are meritorious should meet the FRL as the new investigator becomes more experienced in settlement negotiations.

SAMM 16 – Average number of calendar days to complete an 11(c) investigation

Discussion of State Plan data and FRL: The FRL of 90 calendar days is fixed for all State Plans. In FY 2018, VOSHA's average of 118 days was well above the FRL; however, it is an improvement over the previous year's average of 139 calendar days.

Explanation: Although VOSHA's average is above the FRL, it is lower than the average for the previous year. Therefore, OSHA is not concerned with VOSHA's performance on this SAMM.

SAMM 17- Percent of enforcement presence

Discussion of State Plan data and FRL: In FY 2018, the FRL range for SAMM 17 was from 0.93 percent to 1.55 percent. VOSHA's percent of enforcement presence was 1.68, which was above the FRL range. In FY 2017, VOSHA's percent of enforcement presence was 2.20.

Explanation: This SAMM calculates the percent of total enforcement presence as the total number of inspections divided by the total number of establishments. Total establishments do not include state and local government establishments or establishments in low-hazard private sector industries. VOSHA's percent was above the FRL range, which indicates that the State Plan has a strong enforcement presence. The decrease in percent of enforcement presence from FY 2017 to FY 2018 corresponds to the decrease in the State Plan's inspection totals during the same time period; VOSHA conducted 376 inspections in FY 2017, compared to 287 in FY 2018. Since VOSHA's percent of enforcement presence remained well above the FRL range for SAMM 17 in FY 2018, OSHA is not concerned with this decrease. Also, the staffing turnovers—which are the main cause of the State Plan's downturn in inspections—seem to have subsided.

Appendix A – New and Continued Findings and Recommendations

FY 2018 VOSHA Follow-up FAME Report

FY 2018-#	Finding	Recommendation	FY 2017-# or FY 2017-OB-#
	None		

Appendix B – Observations and Federal Monitoring Plans

FY 2018 VOSHA Follow-up FAME Report

Observation # FY 2018-OB-#	Observation# FY 2017-OB-# or FY 2017-#	Observation	Federal Monitoring Plan	Current Status
FY 2018-OB-01	FY 2017-OB-02	In FY 2017, in 19 (47 percent) of the case files reviewed that were not in compliance, there was no documentation that the CSHO had either requested or reviewed the OSHA 300 Log.	On a quarterly basis, OSHA will emphasize the importance of case file documentation with VOSHA and monitor the State Plan’s progress in requesting and reviewing the OSHA 300 Log.	Continued
FY 2018-OB-02	FY 2017-OB-04, FY 2016-OB-01	In FY 2018, VOSHA’s percent penalty retained (SAMM 12) of 48.09 was outside the acceptable range, or range of acceptable data not requiring further review, of 56.79 percent to 76.83 percent.	On a quarterly basis, OSHA will monitor VOSHA’s performance on SAMM 12 to help ensure that the State Plan increases the percent penalty retained.	Continued
	FY 2017-OB-01	VOSHA did not use OSHA Information System (OIS) reports to ensure proper monitoring of enforcement activities, as acknowledged by the State Plan’s managers.		Closed
	FY 2017-OB-03	An OIS Abatement Tracking Report run on December 7, 2017, showed 20 cases having a total of 36 uncontested violations that were unabated more than 30 days after the abatement due date. Many of these cases were the result of the State Plan not attempting to obtain abatement from the employer once the case was in debt collection. In addition, VOSHA did not follow the procedures in Chapter 7 of the VOSHA Field Operations Manual (FOM) to close the open abatement in OIS in cases where the employer did not respond to the citation and could no longer be contacted.		Closed

Appendix C - Status of FY 2017 Findings and Recommendations

FY 2018 VOSHA Follow-up FAME Report

FY 2018-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status and Date
	None				

Appendix D – FY 2018 State Activity Mandated Measures (SAMM) Report

FY 2018 VOSHA Follow-up FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Vermont - VOSHA			FY 2018	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	2.34	5	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	1.46	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	0.57	1	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	0.06	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.

Appendix D – FY 2018 State Activity Mandated Measures (SAMM) Report

FY 2018 VOSHA Follow-up FAME Report

5	Average number of violations per inspection with violations by violation type	SWRU: 1.52	+/- 20% of SWRU: 1.82	The further review level 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: 0.74	+/- 20% of Other: 0.98	
6	Percent of total inspections in state and local government workplaces	9.41%	+/- 5% of 8.40%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 7.98% to 8.82%.
7	Planned v. actual inspections – safety/health	S: 202	+/- 5% of S: 205	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 194.75 to 215.25 for safety and from 42.75 to 47.25 for health.
		H: 85	+/- 5% of H: 45	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$2,626.68	+/- 25% of \$2,603.32	The further review level 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)	\$1,725.01	+/- 25% of \$1,765.19	The further review level 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)	\$2,413.47	+/- 25% of \$3,005.17	The further review level 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)	\$4,375.41	+/- 25% of \$4,203.40	The further review level 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)	\$4,671.00	+/- 25% of \$5,272.40	The further review level 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 D – FY 2018 State Activity Mandated Measures (SAMM) Report

FY 2018 VOSHA Follow-up FAME Report

9	Percent in compliance	S: 25.54%	+/- 20% of S: 29.90%	The further review level 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: 41.89%	+/- 20% of H: 36.10%	
10	Percent of work-related fatalities responded to in one workday	100%	100%	The further review level is fixed for all State Plans.
11	Average lapse time	S: 49.29	+/- 20% of S: 46.20	The further review level 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: 59.56	+/- 20% of H: 56.56	
12	Percent penalty retained	48.09%	+/- 15% of 66.81%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 56.79% to 76.83%.
13	Percent of initial inspections with worker walk around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	35%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	6%	+/- 20% of 24%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 19.20% to 28.80%.
16	Average number of calendar days to complete an 11(c) investigation	118	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	1.68%	+/- 25% of 1.24%	The further review level 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)
FY 2018 VOSHA Follow-up FAME Report

STATE OF VERMONT
STATE OSHA ANNUAL REPORT
(SOAR)

October 1, 2017 through September 30, 2018



Prepared By:

State of Vermont
Department of Labor

Division of Workers' Compensation and Safety
VOSHA

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I. Executive Summary:

The Vermont Occupational Safety and Health Administration (VOSHA) submits this State OSHA Annual Report (SOAR) to the Federal Occupational Safety and Health Administration (OSHA) for evaluation of the Vermont State program. The SOAR covers the time period of October 1, 2017 through September 30, 2018.

VOSHA, and Project WorkSAFE, the state's OSHA 21(d) consultation program, are administered by the Vermont Department of Labor, Division of Worker's Compensation and Safety.

In FY 2018, VOSHA had to deal with budgetary difficulties as well as staff turnovers. In an unexpected series of departures in the fourth quarter, the workplace retaliation investigator and a compliance officer left the State Plan. Thus, at the beginning of FY 2019, VOSHA had two vacant positions to fill. By the end of October 2018, VOSHA replaced the workplace retaliation investigator with a compliance officer (CSHO) who was already working for the State Plan. This resulted in a vacant CSHO position which was also filled in early FY 2019.

However, VOSHA continues to operate with one less health CSHO than it had on board at the beginning of FY 2017. Prior to FY 2017—when a series of staff turnovers began—VOSHA typically operated with nine field staff, which included eight CSHOs and one workplace retaliation investigator. Currently, VOSHA is operating with only eight field staff (one workplace retaliation investigator and seven CSHOs).

The staff turnovers that occurred in the fourth quarter of FY 2018 affected VOSHA's ability to perform programmed inspections. However, the State Plan was able to maintain its priorities in terms of investigating complaints, severe incidents, and referrals. In all VOSHA exceeded - though ever so slightly - its previously stated performance objectives. The following table reflects the fact that by the beginning of FY 2019, VOSHA was able to fill the two positions as discussed in the above paragraph. It should also be noted that the table below does not reflect that the VOSHA Program Manager also performs the function of the compliance assistance specialist (CAS), conducting training and outreach throughout the state.

- The following is VOSHA's staffing after the first month of FY 2019:
 - Director of Workers Compensation and Safety; 1
 - VOSHA Program Manager; 1
 - VOSHA Compliance Supervisor; 1
 - VOSHA Administrative Assistant; 1
 - VOSHA Safety Compliance Officers; 4
 - VOSHA Health Compliance Officers; 2
 - VOSHA Health/Safety Compliance Officer; 1
 - VOSHA 11(c) Whistleblower Investigator; 1
 - Total; 11 *NOTE; Director of Workers Compensation and Safety is not a dedicated VOSHA FTE.

The consultation and enforcement programs continue to operate with no structural changes. Although the consultation and enforcement programs do not share personnel and maintain separate officers in different locations, the two programs share common goals to ensure workplace safety and health in the State of Vermont. Therefore, the VOSHA and Project WorkSAFE managers continue to work closely together to develop strategies for achieving these goals.

VOSHA continues to ensure that training is provided to CSHOs from both the OSHA Training Institute (OTI) as well as other training sources. Below is a list of the training that was completed in FY 2018 by the staff who are currently on board.

- Senior Industrial Hygienist;
 - Course 2359 – Expanded Health Standards

- 11(c) Whistleblower Investigator;
 - Course 1000 – Initial Compliance
 - Course 1310 – Investigative Interviewing Techniques
 - Course 3070 – Safety and Health in Logging and Sawmill Operations

- Senior Safety Compliance Officer;
 - Course 3070 – Safety and Health in Logging and Sawmill Operations

- Industrial Hygiene/Safety Compliance Officer;
 - Course 3070 – Safety and Health in Logging and Sawmill Operations
 - Course 1310 – Investigative Interviewing Techniques
 - Course 2359 – Expanded Health Standards

- Senior Industrial Hygienist;
 - Course 2359 – Expanded Health Standards

- Safety Compliance Officer;
 - Course 3070 – Safety and Health in Logging and Sawmill Operations
 - Course 1310 – Investigative Interviewing Techniques

VOSHA will continue to explore training opportunities for all staff in 2019 and will ensure that new hires take the training courses required by OSHA's Mandatory Training Program for Compliance Personnel (TED: 01-00-019).

Compliance Assistance Activities:

In June 2018, VOSHA hosted OTI Course 1310, Investigative Interviewing Techniques. The course was opened nationally and attendees from New Jersey, Maine, Tennessee, etc. participated in the training. By all accounts the course and facilities were well received.

VOSHA remains committed to its responsibilities at the Vermont Department of Emergency Management and Homeland Security (DEMHS). In late 2018, VOSHA learned that a large-scale emergency response drill would be planned for fall 2019. Though no large-scale drills were planned for FY 2018, VOSHA will be active in planning and preparing for the drill proposed for late FY 2019. Regarding the Green Mountain Voluntary Protections Program (GMVPP), VOSHA conducted two site visits in FY 2018. One of these visits was a scheduled recertification and one was a new site visit. VOSHA has no recertifications scheduled for 2019 but expects to receive at least one new application. This application would most likely be in the construction (mobile worksite) category. VOSHA's total GMVPP sites stand at seven at the start of FY 2019.

In FY 2018 VOSHA remained committed to servicing three key state agency committees as a legislatively appointed entity or as a representative of the Vermont Department of Labor.

- 1) State Emergency Response Committee (SERC): This is a statewide committee that meets bi-monthly at the State Emergency Operations Center (SEOC) in Waterbury. This bi-monthly meeting encompasses the Vermont Department of Public Safety and Homeland Security, VOSHA, Agency of Natural Resources, Vermont Department of Agriculture and Health, among others, and the various Local Emergency Planning Commissions (LEPC's) from around the state. This meeting is usually attended by the VOSHA Manager
- 2) State Elevator Board: This committee consists of the Vermont Department of Public Safety, Fire Prevention Division, various elevator inspection and regulatory entities as well as VOSHA. These monthly meetings are usually attended by the VOSHA Compliance Supervisor
- 3) Vermont Fire Service Training Council: This committee, which meets quarterly, concentrates on fire service training for volunteers as well as professional fire fighters. The meetings usually include the Director of Fire Service Training, The Vermont Agency of Natural Resources, VOSHA and representatives of local volunteer and professional fire services.

Participation in the above committees is important as it fulfills VOSHA's role in statewide safety and health as compelled by the State Legislature. VOSHA still maintains two active Alliances.

Outreaches: In FY 2018 VOSHA conducted 68 outreaches. Of this total, two were for GMVPP site visits. The VOSHA Manager carried out 48 outreaches and the Compliance Supervisor was responsible for seven outreaches, with the remaining 13 outreaches being conducted by VOSHA staff who were involved in GMVPP site visits and GMVPP related meetings. VOSHA estimates that in FY 2018, there was total of 3,864 attendees and affected employees in formal outreaches (including the two GMVPP site visits and related GMVPP activities).

For additional compliance assistance specialist (CAS) activities, VOSHA uses the services of the Project WorkSAFE administrative assistant for disseminating information to stakeholders, organizing training and outreach materials, and organizing information on the VOSHA website. VOSHA accounts for this staff member's time conducting CAS activities at a .1 FTE.

The GMVPP is still the only formal partnership program that VOSHA recognizes. As such, VOSHA places a high value on maintaining the integrity of this program. The VOSHA Program Manager continues to manage this program with the help of a CSHO, who serves as coordinator.

In FY 2014 VOSHA submitted a five-year strategic plan. FY 2018 reflects the fourth year of performance in that plan. VOSHA will submit a new plan in FY 2019.

New Equipment

VOSHA remains committed to maintaining technology in the equipment (both PPE as well as inspection equipment) used by CSHOs in the performance of their duties. In FY 2018, VOSHA upgraded the CSHOs' and the manager's cellular phones. In addition, VOSHA purchased upgraded computers/printers/scanners to replace older units. Furthermore, VOSHA purchased controlled descent systems for the safety CSHOs. These units are integrated in the personal fall arrest systems of the user. If a fall into the harness occurs, the user can deploy a controlled descent to the lower level. These units make self-rescue a possibility. VOSHA also upgraded key health sampling equipment by purchasing, a new set of five noise dosimeters to replace an aging set.

Rulemaking

In FY 2018, VOSHA initiated rulemaking for two rules and adopted one. During the rulemaking process for Beryllium in General Industry, a Federal Change to the rule came out in a notice of proposed rulemaking (NPR). This delayed VOSHA's ability to continue with that particular rulemaking process. However, VOSHA has since continued with the adoption of this rule. A much more comprehensive change to the Maritime and Construction versions of the Beryllium Rule forced VOSHA to withdraw the rulemaking in these two industry specific areas.

Below is a summary of VOSHA's action on rulemaking in FY 2018 and anticipated action in FY 2019.

Standards that were completed in FY 2018:

- Walking Working Surfaces - 03/13/2018

Rules not currently adopted but expected to be completed in FY 2019, are as follows:

- Beryllium - 1/30/2019

Staffing

VOSHA started FY 2018 with the need to replace one safety CSHO and was able to accomplish this task early in the second quarter. As discussed previously, the workplace retaliation investigator and a safety CSHO left the State Plan in the fourth quarter of FY 2018. As it turned out, a safety CSHO who was interested in becoming the new workplace retaliation investigator position was hired for this position. VOSHA believes it has filled the open positions with exceptionally qualified candidates that will benefit the State Plan for some time to come.

Inspections

VOSHA was able to conduct 286 inspections in FY 2018. Of this total, 202 were classified as safety and 84 were classified as health. VOSHA conducted 27 inspections in state and local government, and 120 inspections in construction. Of a total of 452 violations issued in FY 2018, 305 were classified as serious and 147 were classified as other than serious.

An interesting statistic that bears observation is the increase in inspections focused in the amputation emphasis program. Where a total of 20 inspections targeting amputations had planned, VOSHA actually conducted 30 inspections. VOSHA has not analyzed the reasons for this increase, but suspects that it could be the result of mandatory reporting of amputations. This rule continues to be important in our targeting efforts and the increase in the number of inspections related to amputations is evidence of that.

	Projected FY2018				Actual FY2018			
	Safety	Health	Total			Safety	Health	Total
TOTAL INSPECTIONS	208	42	250			202	84	286
Private Sector	196	33	229			185	74	259
Public Sector	12	9	21			17	10	27
TOTAL CONSTRUCTION INSPECTIONS	141	14	155			107	13	120
Residential and Commercial Construction	66	4	70			50	3	53
Highway, Street, Bridge and Work Zones	20		20			10	2	12
Roofing	25		25			16	0	16
Residential Construction	30		30			14	0	14
Noise/Silica/Chrome VI/lead		10	10			1	15	16

TOTAL NON-CONSTRUCTION INSPECTIONS	67	28	95			95	71	166
Food Processing	2	3	5			2	1	3
Lumber and Wood Products	5	2	7			4	1	5
Targeted NAICS/SICs	16	11	27			32	5	37
Amputations	20		20			30	0	30
Combustible Dust		1	1			0	2	2
PSM						0	0	0
PIT	10		10			26	2	28
Public Sector	12	9	21			13	10	23
Granite/Concrete	2	1	3			2	1	3
Nursing Homes		1	1			0	2	2

II. Summary of Annual Performance Plan Results:

In the tables below, VOSHA compares Calendar Year (CY) 2017 Total Reportable Case Rate (TRC) to CY 2012 baseline DART rates. It should be noted that FY 2018 represents the fourth year in VOSHA's five-year strategic plan. As such, goals and objectives listed below will reflect those stated in this plan.

STRATEGIC GOAL #1: Insure Workplaces are Safe and Healthy		
GOAL	FY2016 OUTCOME	COMMENT
Compliance Inspection Activities (Construction)		
Performance Goal 1.1—By 2019 reduce the rate of workplace injuries and illnesses in construction by 15%, from 7.9 as recorded in baseline year 2012, to 6.7 by year 2019	Goal still to be decided	
Performance Goal 1.1a—Reduce workplace injuries and illnesses in construction by 12% in construction by (From 7.9 to 6.95 by the close of FY 2017, over 2012 BLS baseline)	Goal was exceeded	The Total Reportable Case Rate (TRC) for all of construction in Vermont for 2017 was at 4.6.
Conduct 70 residential and commercial building inspections	Goal was not met	VOSHA conducted 50 safety and three health inspections in this area for a total 53 inspections.
Conduct 20 highway, street and bridge construction and work zone inspections	Goal was not met	VOSHA conducted 10 safety and two health inspections in this area for a total of 12 inspections.
Conduct 25 roofing inspections	Goal was not met	VOSHA conducted a total- related inspections.
Conduct 30 inspections at worksites in Residential Construction	Goal was not met	VOSHA conducted 14 safety-related inspections in residential construction.
Conduct 10 inspections for health related exposures in construction including	Goal was exceeded	VOSHA conducted one safety and 15 health related inspections related to noise, silica, Chromium VI, or lead.

Noise/Silica/Chromium VI/Lead		
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STRATEGIC GOAL #1: Insure Workplaces are Safe and Healthy CONTINUED		
GOAL	FY2016 OUTCOME	COMMENT
Compliance Inspection Activities (General Industry)		
Performance Goal 1.2—By 2019, reduce the rate of workplace injuries and illnesses in general industry by 15%, from 6.4 as recorded in baseline year 2012, to 5.4 by year 2019	Goal still to be decided	
Performance Goal 1.2a—Reduce workplace injuries and illnesses in general industry by 12% (over 2012 BLS baseline of 6.4 to 5.63)	Goal was exceeded	The TRC for General Industry in Vermont for 2017 was 4.6
Conduct 5 food processing inspections	Goal was not met	IVOSHA conducted two safety and one health inspection, for a total of three inspections related to food processing.
Conduct 7 lumber and wood products manufacturing inspections	Goal was not met	VOSHA conducted four safety and one health inspection for a total of five inspections, related to lumber and wood products manufacturing.
Conduct 20 inspections where there are amputation hazards	Goal was exceeded	VOSHA conducted 30 safety inspections related to amputation hazards.
Conduct 3 inspections in	Goal was met	VOSHA conducted two safety and one health inspection related to concrete and granite for a

the granite and concrete industry		total of three inspections in this area.
Conduct 27 inspections establishments in targeted NAIC's/SIC's	Goal was exceeded	VOSHA conducted 32 safety and five health inspections in Targeted NAICS codes, for a total of 37 inspections
Conduct 21 Inspections of public sector worksites	Goal was exceeded	VOSHA conducted 13 safety and 10 health inspections in public sector, for a total of 23 inspections
Conduct 10 inspections in workplaces where Powered Industrial Trucks (PIT's) are in use	Goal was exceeded	VOSHA conducted 26 safety and two health inspections, for a total of 28 inspections in work places where PIT's were in use.
Conduct 1 inspections of Nursing Homes	Goal was exceeded	VOSHA conducted two inspections of nursing homes.
Conduct 1 inspections in workplaces with combustible dust hazards.	Goal was exceeded	VOSHA conducted two health-related inspections in work areas covered under the combustible dust standard
Strategic Goal #2: Improve workplace Safety and Health through compliance Assistance, Alliances and Partnerships		
Goal	FY 2016 Outcome	Comment
Performance Goal 2.1- Maintain recognition of excellence in safety and health management through the Green Mountain VPP	Goal was met	VOSHA continued to be active in supporting the current GMVPP sites, including conducting meetings with the perspective sites, reviewing annual reports and conducting onsite visits. In FY 2018, VOSHA conducted two GMVPP onsite visits, including one recertification and one new site. VOSHA expects to conduct one initial certification visit in FY 2019.
Performance Goal 2.2- Maintain relationships	Goal was met	VOSHA continued to service two active Alliances. VOSHA continues an active and rewarding relationship with these two organizations, including a number of outreaches. One of these Alliances is

with organizations that cover targeted, high hazard areas, through the VOSHA Alliance Program		due for renewal in FY 2019. VOSHA anticipates that this renewal will be accomplished without difficulty.
Performance Goal 2.3- Maintain a reduced schedule of service to Participants in VOSHA's outreach and training programs	Goal was met	VOSHA conducted 68 outreaches affecting more than 3,864 employees/stakeholders. This number represents approximately 100% of the outreach [11] when VOSHA employed a full time CAS.

Green Mountain Voluntary Protection Program

Company	Status	Last Approval Date	New Renewal Date	Original Approval Date
Company #1	STAR	04/28/2017	10/31/2022	10/22/2007
Company #2	STAR	4/18/2017	10/10/2022	8/22/2007
Company #3	STAR	1/22/2015	01/22/2020	5/16/2006
Company #4	STAR	4/30/2018	4/30/2023	7/14/2008
Company #5	STAR	05/03/2017	05/03/2022	12/27/2013
Company #6	STAR	12/14/2017	9/11/2020	9/11/2017
Company #7	STAR	10/08/2018	10/08/2021	10/08/2018
Challenge Company #1				

Alliances

Company or organization	Status	Date signed
Alliance #1	Active	12/12/2018
Alliance #2	Active	06/29/2015

III. Progress toward Strategic Plan Accomplishments:

Vermont BLS TCIR rates for the period 2015 – 2019 have been reduced for all NAICS divisions as follows:

Year	All	Private sector	Manufacturing	Construction	Public sector
2012	5.1	5.0	6.4	7.9	5.6

(baseline)					
2015	5.1	5.0	6.0	5.9	5.3
2016	4.6	4.6	5.4	5.9	5.0
2017	4.7	4.6	5.1	4.2	4.8
2018	4.5	4.6	4.8	4.6	5.3
2019					
Percent reduction from baseline year 2012					
	-12%	-8%	-25%	-42%	-6.4%

Despite having to operate at a reduced level of staffing in FY 2018, VOSHA was able to slightly exceed the FY 2018 goal for inspections. However, as the results for Strategic Goal #1 indicate, VOSHA did not meet all of the goals. Now that the period of instability caused by the staffing changes has subsided, VOSHA will be able to focus more intently on accomplishing its FY 2019 goals.

In late FY 2018, VOSHA was informed that there would be another statewide emergency exercise by The Department of Emergency Management and Homeland Security (DHMS). The exercise is actually scheduled for the first month of FY 2020. However, VOSHA will spend a significant amount of time this year preparing for our role. This will require extra training for staff as well as mock “Table Top” exercises. We hope that this will help us be able to integrate our services in the event of a real emergency.

In FY 2018, VOSHA’s workplace retaliation program screened 99 complaints, docketed 17 new cases, and closed 78 cases (of those closed, eight docketed cases were dismissed, and one case was settled). VOSHA currently has 27 open workplace retaliation cases.

In FY 2018, the number of participants in VOSHA’s GMVPP increased. As a result, the VOSHA Manager transferred some of his responsibilities for coordinating the program to the safety and health CSHO. This arrangement has worked well and has enabled communication between sites and VOSHA to be handled in a timely fashion. VOSHA increased by one the number of sites in Vermont and expects to conduct another initial onsite visit in FY 2019. This initial visit could be for a construction site. VOSHA believes that there will be continued interest in the program and subsequent chances to increase participation in the near future.

IV. Mandated Activities:

In FY 2018, VOSHA performed satisfactorily on all State Activity Mandated Measures (SAMM), with the exception of SAMM 12, Percent Penalty Retained. However, VOSHA has determined that high penalty reductions granted to small local governments is a factor in driving down the percent penalty retained. To discontinue these high penalty reductions, VOSHA is currently working on a new penalty policy that would apply to local government employers.

V. Special Measures of Effectiveness/Special Accomplishments:

Special measures of effectiveness are covered in the SIEP. Due to the professionalism and dedication of VOSHA’s staff, the State Plan was able to meet the goal for inspections in FY 2018, despite having to operate at a reduced staffing level for most of the fiscal year.

VI. Adjustments or Other Issues:

VOSHA has significantly improved its procedures for tracking overdue abatements, as detailed in the SIEP.

VII. State Internal Evaluation Program (SIEP) Report:

VOSHA includes the SIEP for FY 2018 along with this report.

**State of Vermont VOSHA
State Internal Evaluation Plan
(SIEP)**



The State of Vermont, Vermont Occupational Safety and Health Administration (VOSHA), continues its efforts to improve measurable performance of the VOSHA compliance program. The State Internal Evaluation Plan (SIEP) is a self-evaluation tool, initiated to determine if program operations conform to state policies and procedures established by the state plan. Through the SIEP, VOSHA identifies and evaluates program functions that may need to be improved, in response to the demands of the program.

VOSHA's FY 2018 SIEP includes an analysis of an important issue that was evaluated in the FY 2017 SIEP. In that SIEP, VOSHA evaluated abatement tracking and documenting abatement for settled cases.

For the FY 2017 SIEP, VOSHA evaluated the following areas:

- 1) Abatement tracking report from the OSHA information System (OIS).
- 2) Five randomly selected casefiles for the purpose of evaluating the documentation of abatement completion.

In the FY 2017 SIEP, VOSHA produced the following findings:

OIS Tracking Reports (from FY 2017)

In running the tracking report, VOSHA found that there was a large number of cases listed as overdue for abatement (32) including, and, more concerning, a large number of cases over 100 days (24). However, when investigated further, it was found that virtually all of the cases over 100 days were "no-responders" who had been placed into debt collection process. In many of these cases, the employers did not respond to the citations, and VOSHA did not follow-up with these employers on abatement. Most of the cases reviewed did not have late abatement letters in the file because VOSHA was not tracking the overdue abatement.

A review of these cases revealed that VOSHA still needs to track abatement for cases that it has referred to debt collection. More specifically, VOSHA needs to follow the procedures in the VOSHA Field Operations Manual (FOM) for debt collection (Chapter 6) and employer failure to submit required abatement (Chapter 7).

Findings from the Review of Case Files (from FY 2017)

The FY 2017 casefile review revealed that there seemed to be a relatively trackable way to both acknowledge abatements when they have been completed prior to or evidence of abatement submitted at the informal conference. However an error was uncovered when a letter acknowledging abatement was sent to the employer in a case where the employer did not engage and simply paid their penalty. This seems to be an issue with the form letter that is sent to employers. The letter lists both payment in full and recognition that abatements were completed in the same letter. Also there were inconsistencies in how abatements were documented at the informal conference level.

In choosing to revisit this issue for the FY 2018 SIEP, VOSHA used the same evaluation

techniques as was used in FY 2017. Therefore, we ran an abatement tracking report to get information in real time. Additionally, we randomly selected five cases that were completed in FY 2018 and evaluated the abatement documentation within those cases.

Findings related to the FY 2018 SIEP Review

OIS Tracking report

A review of the OIS Tracking report showed a marked improvement over the performance identified in 2017. There was a total 12 cases that had one or more violations overdue for abatement, and only one case had one or more violations that was overdue for abatement for 100 days or more. In this particular case, VOSHA engaged in a contest proceeding with the employer. VOSHA won the case by default as the employer did not properly engage the review board and the board subsequently found in VOSHA's favor. This employer has since closed the business and moved out of state.

In another case, a follow up inspection was conducted, but the results of the inspection had not been entered in the OIS as of the date the report was run. In some other cases, it appears that abatement dates were not accurately recorded in OIS. For example, in a case where the employer was past the abatement due date, the VOSHA manager recalled that an abatement extension was granted as part of a negotiated settlement. This extension was not properly recorded and resulted in the employer appearing as overdue for abatement on the OIS Abatement Tracking Report. In some other cases, employers who did not have informal conferences appeared on the abatement report as having violations that were overdue for abatement. These are two areas that VOSHA will work to address in FY 2019.

Evaluation of OIS Report Action Items From 2017

- a. VOSHA will immediately start working on the legacy cases in the report, specifically assigning follow-up inspections where needed and closing those inspections (construction) where verification cannot be ascertained as the job site no longer exists.
Follow up: This item has been successfully completed.
- b. Before referring any case to debt collection, VOSHA will review the case all cases that will be sent to debt collection to make sure that abatement has been completed or to make sure that VOSHA is current with the notification of abatement.
Follow up: This item has been completed
- c. If VOSHA identifies a case that it intends to send to debt collection and determines that the employer has failed to submit abatement certification for one or more violations, VOSHA will follow the procedures in the VOSHA FOM, Chapter 7, for Employer Failure to Submit Required Abatement Certification.
Follow Up: The VOSHA program manager reviews the status of abatement in all case files before they are sent to debt collection. If the proper abatement has verification has not been submitted, VOSHA will follow Chapter 7 of the FOM to insure that abatement

has been obtained. VOSHA believes this item has been completed.

Randomly Selected Cases

Case #1:

In this case there was no settlement agreement, as the employer chose not to request an informal conference or contest the citations. The employer subsequently sent an abatement letter with documentation of abatement which was approved. A notation in the case file as to the approval of abatement was included.

Case #2:

This case was settled via informal conference by the compliance chief. The employer provided sufficient documentation of abatement of the cited violations. However, the compliance chief added a notation that OSHA 10-hour training was required for an employee. A review of the case file revealed no documentation of such training. However, when the compliance chief reviewed his email history, he found an email from the employer providing such a certificate. The certificate was added to complete abatement documentation. Nonetheless, this case was prematurely closed without insuring documentation of all abatements.

Case #3:

This case was settled via informal conference by the chief compliance officer. In this case, the employer was directed to provide an abatement letter outlining various abatements agreed to in the informal conference. The employer did in fact send the letter of abatement. The chief compliance officer reviewed and signed off on the abatement.

Case #4:

This case was settled via informal conference by the VOSHA Program Manager. In this case, the program manager acknowledged that proof of abatement was brought to the informal conference by the employer. Because the abatements were embedded in programmatic citations, it was not easy to take copies. Therefore the abatement was reviewed by the Program Manager, then a note to that extent was placed in the case file and documentation was included in the informal settlement agreement (ISA). The program manager noted on the case file activity sheet that abatement was complete.

Case #5:

The employer did not request an informal conference or contest the citations or penalties. Instead, the employer chose to pay the penalty in full. The employer did return the abatement verification form. In the narrative, the employer explained the abatement was performed while the inspection was still ongoing and "in the presence of the inspector prior to his departure from the site." A review of the case file did revealed acknowledgement of that statement by the

CSHO. The case was closed after payment was received.

Findings Related to the Random Casefile Review

In all cases reviewed, abatement seemed to have been formally acknowledged. However, in one case acknowledgement and signoff affirming abatement was clearly done prior to all of the abatement items having been received. This was clearly a mistake and was corrected when identified. Abatements were not always affirmed by the chief compliance officer or the VOSHA Program Manager. In fact, two of the five cases revealed that the note to affirm abatement was authored by the VOSHA Administrative Assistant (though she did not affirm abatement until she spoke with the chief compliance officer. However, the person reviewing the abatement should be the person to affirm abatement. Because this was an action item in last year's SIEP, more work needs to be done on this issue. It is VOSHA's intent that abatement must be affirmed and signed off by either the chief compliance officer or the VOSHA Program Manager.

Evaluation of Case File Action Items from 2017 SEIP

VOSHA will take the following measures to improve a process that is strong but could be better.

- a. VOSHA will start using a version of the "Certification of Corrective Action Worksheet" used by OSHA. This sheet will be modified to include VOSHA's policy and will be printed from the OIS.

Follow up: This item has been completed.

- b. The VOSHA Manager and compliance chief will insure that in addition to a notation in the case files regarding status of abatement at the informal conference, any future abatement agreements and actions, including dates of expected completion, will be added to the informal settlement agreement, compelling the employer as well as VOSHA to sign off on them.

Follow up: This item has been partially completed. Though abatements are formally addressed in informal settlement agreements and notations are made in the case file activity sheets, personal signoff from the chief compliance officer or VOSHA Program Manager needs to be maintained.

- c. The VOSHA manager will start a weekly routine of running the Open Inspection and Abatement tracking reports. This responsibility was previously done by the compliance supervisor

Follow up: This item has not been completed. The VOSHA Manager does not perform a routine Open Inspection Report. This will be a priority in the upcoming year.

- d. VOSHA will follow the procedures in Chapter 7 of the FOM, for Employer Failure to Submit Required Abatement Certification, which entails contacting the employer by telephone and mailing a letter the same day.

Follow up: Though none of the case files reviewed had overdue abatements, this has been an issue VOSHA has actively worked on. We believe we have completed this action item.

Action Items to Be Completed in FY 2019

Action Items Related to Documentation of Abatement in Casefiles

- a. VOSHA Program Manager as well as chief compliance officer shall establish and affirm abatement at the informal conference. If abatement has not been completed, a new abatement date shall be established for those items not abated. This new date shall be documented to more accurately reflect true abatement dates and extensions.
- b. The VOSHA Program Manager shall review abatement tracking reports at least biweekly to maintain a better knowledge of abatement status of employers in more current terms.
- c. Abatement shall be affirmed and noted in the case file by the chief compliance officer or VOSHA Program Manager only.

Action Items Related to OIS Tracking Report Review

- a. VOSHA will explore a means to indicate on the abatement tracking report those cases currently under a contest proceeding, thereby indicating that abatement will not be followed up on until after a decision by the review board, or other resolution is completed.
- b. VOSHA will document those abatements not affirmed at the informal conference, with new dates by which the abatements shall be due.
- c. VOSHA will be active in insuring that legacy cases are treated with top priority and followed up appropriately to get assurances of abatement as required by the OSHA FOM Chapter 7.

Overall comments on the review of FY 2017 SIEP Items: While a review of the abatement tracking and disposition of employer required abatements showed that a considerable improvement was achieved, VOSHA recognizes that there are still areas that can be improved upon. Action items outlined in the FY 2018 SIEP are intended to achieve these improvements.