

VIRGINIA

Federal Annual Monitoring and Evaluation Report

on the

Virginia Occupational Safety and Health Program

FY 2007

Prepared by

Norfolk Area Office - OSHA

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EXECUTIVE SUMMARY

The FY 2007 Annual Performance plan for the Virginia Occupational Safety and Health Administration (VOSH) fully supports Virginia's long-term strategic goals while at the same time addressing state-specific issues and concerns. Changing workplace culture in order to improve workplace safety is the central theme of the VOSH strategic plan. The FY 2007 Annual Performance Plan recognized the interconnection and importance of the various program tools (enforcement, consultation, training, partnerships) available to the State, and the Annual Performance Plan was designed to make full use of these tools.

VOSH's approach for achieving its long-term strategic goals is to identify significant problems, determine the most effective ways to address them, use the best mix of available tools, and then measure the results. The VOSH program has adopted three interdependent strategic goals in their Annual Performance Plan which are identical to those adopted by the federal OSHA. These goals are to reduce occupational hazards through direct intervention in Virginia's workplaces, as evidenced by fewer hazards, reduced exposures, and fewer injuries, illnesses, and fatalities; promote a safety and health workplace culture, and secure public confidence through effectiveness & efficiency in the development and delivery of VOSH programs and services. In addition to these goals, VOSH utilized Worker's Compensation First Reports of Accidents to promptly investigate amputations and other serious accidents. Other emphasis programs on scaffolding, heavy equipment, overhead high voltage line safety, fall protection, lumber and wood products (Roanoke Regional office), public workshops, silicosis, tree felling and tree de-limbing operations (Richmond & Tidewater Regional Offices), wastewater treatments plants, and trenching resulted in increased awareness of safety and health in these related industries.

VOSH held the twelfth Virginia Occupational Safety and Health Conference. The annual conference was held in Roanoke, VA, with 378 attendees, and approximately 42 vendors. The conference was judged by all participants to be very successful.

In Virginia, there are over 3.6 million workers in approximately 209,000 companies (private and public sectors) covered by the Virginia Occupational Safety and Health Act. In FY 2007, VOSH directed all of its budgeted activities to support the Strategic Plan's goals and the Annual Performance Plan. One clear measure of the effectiveness of the VOSH program can be found in Goal 1 of the Commonwealth's Strategic Plan—the reduction of occupational hazards.

During this evaluation period, the VOSH program conducted 3758 inspections in the private and public sectors. These inspections resulted in 6670 violations being issued, of which 4180 were serious, for a serious rate of 63%.

The VOSH program added three additional STAR level sites to their Voluntary Protection Program (VPP) and three new sites to their Safety and Health Achievement Recognition Program (SHARP). The VOSH Program has a total of forty-three (43) VPP sites, and a total of fifty-three (53) SHARP sites at the end of this evaluation period.

In addition, the VOSH consultation program conducted one-hundred and one (101) formal training sessions throughout the Commonwealth, and five hundred fifty seven (557) informal training sessions during this evaluation period. Approximately 193 employers, and 1,337 employees participated in these training activities.

The following recommendations are proposed:

1. VOSH should work on restructuring its performance goals to include enforcement activities and to identify appropriate performance indicators and measures.
2. Continue efforts to ensure that all complaintants are notified with the specified time constraints
3. Review citation processing procedures to identify reasons for delays in the issuance of safety citations.
4. Continue efforts to ensure that all “whistleblower” cases are investigated in a timely manner within the 90 day mandate period.

The federal review found that VOSH continued to operate a fully effective private and public sector occupational safety and health program. During this evaluation period, VOSH made considerable progress toward achieving its three major strategic goals:

- reducing occupational hazards
- promoting workplace culture toward safety and health
- providing improved services and programs

INTRODUCTION

Virginia's Department of Labor and Industry is the State agency designated by the Governor to administer the Virginia Occupational Safety and Health Plan. The Virginia Occupational Safety and Health Plan was approved September 8, 1976, pursuant to Section 18 of the Occupational Safety and Health Act. The Plan achieved operational status on October 1, 1981. Since then, Virginia has had responsibility for safety and health enforcement with the exception of maritime, longshoring, mining, federal government employees and facilities, contractors working on federal property, and industries regulated by other federal agencies. On August 21, 1984, a Notice was published in the Federal Register certifying that the State had completed all developmental commitments contained in the Plan. Final approval of the Virginia State Plan was published in the Federal Register on November 30, 1988.

Virginia's occupational safety and health regulations and standards are established by the Virginia Safety and Health Codes Board, a regulatory board whose members are appointed by the Governor. The Commissioner of the Department of Labor and Industry, Mr. C. Ray Davenport, is charged by statute with enforcing the regulations and standards of the Board. All VOSH functions are under the direct management of the Commissioner. In FY 2007, the VOSH program included 108 full-time and part-time positions and the State contributed \$3,319,800 in funding its program. Currently, the VOSH enforcement program has thirty-three (33) safety specialists, and nineteen (19) industrial hygienists, and anticipates current vacancies will be filled during the FY 2008 evaluation period, bringing them to the mandated benchmark level of thirty-eight (38) safety specialists, and twenty-one (21) industrial hygienists.

Under Virginia's State Plan, VOSH has jurisdiction over 3.6 million employees in approximately 200,900 establishments. The VOSH program consists of three major units: enforcement, consultation, training and education. VOSH makes use of the State's Worker's Compensation Employer Accident Reports to investigate amputations and other serious accidents.

The enforcement unit inspects places of work, issues citations and penalties for violations of established occupational standards, and responds to fatalities, accidents, and employee complaints about workplace safety and health hazards. The consultation unit provides assistance to Virginia employers to voluntarily comply with applicable requirements without the issuance of citations and penalties. The VOSH consultation program provides free on-site surveys and technical assistance to Virginia businesses, especially small ones. The VOSH program also provides free educational and training programs for employers and employees to assist them in achieving voluntary compliance.

ASSESSMENT OF STATE PERFORMANCE

ASSESSMENT OF STATE PROGRESS IN ACHIEVING ANNUAL PERFORMANCE GOALS

(See Appendix A, State OSHA Annual Report, for details)

GOAL 1

REDUCE OCCUPATIONAL HAZARDS THROUGH DIRECT INTERVENTION

Outcome Goal 1.1: Reduce Hazards by Intervening Effectively.

Performance Goal 1.1.A – Reduce three of the most significant types of workplace injuries and causes of illnesses by 3% in FY 2007.

VOSH used consultation surveys as the strategy to achieve this goal and exceeded the consultation survey activities set for this goal. However the percent change in the rate of amputations, silica and lead was too small to measure in order to determine if the performance goal was met.

VOSH conducted 2 amputation (NEP) inspections resulting in 1 serious violation, 5 silica inspections resulting in 9 serious violations, and 33 lead inspections resulting in 46 serious violations. VOSH also conducted 51 initial, training and assistance, follow-up consultation visits and non-visit related activities in targeted businesses issuing 47 serious hazards.

VOSH's goal was to reduce injuries/illnesses by 3% in FY 2007. However the percent of change for these industries was too small to measure.

Performance Goal 1.1.B – Reduce injuries and illnesses by 3% in FY 2007 in 5 industries characterized by high-hazard workplaces.

VOSH used consultation visits as the strategy to achieve this goal and exceeded the number of consultation visits planned. However VOSH did not completely meet this goal as evidenced below.

VOSH conducted 71 initial, training and assistance, follow-up consultation visits and non-visit activities issuing 118 serious hazards. VOSH exceeded its goal of 65 initial, training and assistance, follow-up consultation visits and non-visit activity.

There was 5.6% increase from the baseline in the food processing industry, a 15.4% increase from the baseline in metal fabrication industry for SIC 3300-3399, a 19.8%

reduction from the baseline in metal fabrication for SIC 3400-3499, a 2% reduction from the baseline in the construction industry and an 8% decrease from the baseline in the lumber and wood products.

VOSH conducted 56 Food Processing inspections resulting in 133 hazards being cited, 17 Metal Fabrication –Primary metal industry inspections resulting in 61 hazards being cited, 76 Metal Fabrication – Fabricated metal products inspections resulting in 306 hazards being cited, 92 Lumber and Wood Products inspections resulting in 332 hazards being cited and 2614 Construction inspections resulting in 3513 serious, willful or repeat citations.

Performance Goal 1.1.C – Decrease fatalities in the construction industry by 3% in FY 2007 by focusing on the four leading causes of fatalities: falls, struck-by, crushed-by, and electrocutions/electrical injuries (exclusive of overhead high voltage lines).

VOSH used consultation services with construction related associations as the strategy to meet this goal and exceeded the number of consultation visits planned. However VOSH was not able to meet this goal of reducing fatalities by 3%. The fatality statistics for this evaluation period were identical to the baseline.

However, VOSH conducted 2,614 construction inspections (a 2% increase from FY 06) resulting in 3,336 serious violations, 15 willful violations and 162 repeat violations. VOSH also conducted 284 construction consultation activities, which consisted of training, assistance and follow-up visits, issuing 1,085 serious hazards.

Performance Goal 1.1.D – Reduce injuries and illnesses (LWDII) by 20% in at least 200 workplaces where VOSH initiates an intervention.

The injury/illness data for the number of workplaces where VOSH had an intervention could not be measured so it could not be determined if this goal was met. VOSH conducted 264 initial follow-up, training, and assistance visits and other non-targeted activities, issuing 902 serious hazards. VOSH exceeded its goal of 264 initial, training and assistance, follow-up consultation visits and non-visit related activities in targeted businesses.

Performance Goal 1.1.E – Initiate inspections of 95% of fatalities and catastrophes within one working day of notification.

VOSH met this performance goal for this evaluation period. VOSH was notified of 58 fatalities during this evaluation period. 100% of the fatality and catastrophe inspections were conducted within one working day of notification.

Performance Goal 1.1.F – Initiate investigations of 95% of worker complaints within one working day or conduct an on-site inspection within five working days.

VOSH met this performance goal for this evaluation period. VOSH received 853 complaints during this evaluation period. 99% of complaint investigations were initiated within one working day or an on-site inspection was initiated within five working days.

Performance Goal 1.1.G – Complete investigation of 80% of “whistleblower” cases within 90 days.

VOSH met this performance goal for this evaluation period. VOSH completed 86% of “whistleblower” cases within 90 days. A total of 42 cases were handled during this evaluation period. All but six (6) were completed within the 90 days mandate. One (1) complaint is in litigation, three (3) went over the 90 day mandate during settlement negotiations and two (2) went over the 90 day mandate due to other factors.

Performance Goal 1.1.H – Settle or initiate litigation of 95% of contested cases sent to the Central Office within one year of citation issuance date.

VOSH did not meet this performance goal for this evaluation period. VOSH achieved 89% performance involving cases sent to the Central Office. Nine contested cases were sent to the Office of Legal Support with citations issued during the period where settlement or litigation occurred. Three of the cases were settled within 365 days and 5 cases had bills of complaints filed within 365 days. Only one case was not filed within the parameters.

Performance Goal 1.1.I – Reduce injuries and illnesses by 3% in FY 2007 in the Asbestos and Lead Abatement Industry.

VOSH achieved results towards meeting this performance goal. 132 asbestos inspections resulting in 132 violations and 33 lead inspections resulting in 46 violations were conducted during this evaluation period. Since there is no baseline data available, there is no way to determine if this goal was fully met. VOSH will continue emphasis in these two programs to ensure compliance continues.

**GOAL 2
PROMOTE A SAFETY AND HEALTH WORKPLACE CULTURE**

Outcome Goal 2.1: Promote a Systems Approach to Workplace Safety and Health.

Performance Goal 2.1.A – Fifteen percent (15%) of employers in general industry who are targeted for or request a VOSH intervention will implement an effective safety and health program.

VOSH used the consultation activity to promote employers to pursue SHARP status as a way to achieve this goal. The consultation division conducted 58 visits and non-visit related activities in program assistance which exceeded the number of planned visits in its strategy.. Consultation also conducted 49 program assistance interventions from which 22.4% converted to initial visits with program assistance and training elements. While VOSH successfully used its consultation activity to promote the SHARP program, it did not have a mechanism in place to measure the number of employers that implemented a safety and health program.

Outcome Goal 2.2: Enhance Worker Involvement in All Aspects of Safety and Health.

Performance Goal 2.2.A – One hundred percent (100%) of VOSH on-site activities (e.g. inspections, consultation visits) will include a worker involvement component. VOSH met this performance goal for this evaluation period. 100% of VOSH on-site activities included a worker involvement component. VOSH solicited employee input on all of its consultation surveys.

GOAL 3

SECURE PUBLIC CONFIDENCE THROUGH EFFECTIVENESS AND EFFICIENCY

Outcome Goal 3.1: Strategically manage human capital and share information.

Performance Goal 3.1.A – Improve recruitment, development, diversity and retention of talent through a strong apprenticeship program.

VOSH is continually striving to meet this performance goal. CSHOs attend in-house and outside training in safety and health subjects. The effect of this training is shown by the increase of 14% in inspection output during this evaluation period. Inspections per 100 hours increased 9% for safety and 18% for health from FY-05.

Performance Goal 3.1.B – Improve collaboration and information sharing with other state agencies, Federal OSHA and other safety and health organizations.

VOSH met this performance goal for this evaluation period. Fifteen speaking engagements were conducted by the Commissioner, VOSH Director and Regional Directors. VOSH worked closely with Federal OSHA, VDOT, MSHA and DEQ on several issues. The 12th Annual VOSH Safety and Health Conference was held during this

evaluation period attended by 378 participants. In addition 1332 individuals were trained in 13 different programs by VOSH.

Outcome Goal 3.2: Improve intelligence gathering and performance measurement capabilities.

Performance Goal 3.2.A – Improve VOSH’s access to timely and accurate safety and health data, including identification of alternative data sources.

VOSH met this performance goal for this evaluation period. VOSH is constantly improving its employee’s access to a diverse range of data and information as evidence by the implementation of the on-line Harris Directory to cross check employer information.

Performance Goal 3.2B – Develop and update effective standards and program instructions.

VOSH did not meet this performance goal for this evaluation period. VOSH reviewed and updated approximately 14.2% of its 204 instructions during this evaluation period with the goal of completing 20% of its instructions annually until all directives and instructions have been updated.

ASSESSMENT OF STATE PERFORMANCE OF MANDATED ACTIVITIES

VOSH maintained an occupational safety and health program which effectively complied with all mandatory requirements. With few exceptions, procedures have been established to assure all federally-mandated activities were carried out effectively.

The statistical data contained in this section was derived from the September 2007 Interim State Indicator Report (SIR) and the State Activity Mandated Measures Report (SAMMs) for dates October 1, 2006 to September 30, 2007. VOSH conducted a total of 3521 inspections in the private sector during this evaluation period. They were distributed as follows:

	<u>SAFETY</u>	<u>%</u>	<u>HEALTH</u>	<u>%</u>
Programmed	2335	83.0	376	53.0
Un-programmed	477	17.0	333	47.0
TOTAL	2812		709	

In the public sector, VOSH conducted a total of 237 inspections. They were distributed as follows:

	<u>SAFETY</u>	<u>%</u>	<u>HEALTH</u>	<u>%</u>
Programmed	147	85.5	36	55.4
Un-programmed	25	14.5	29	44.6
TOTAL	172		65	

There were 63 less inspections conducted in the private sector and seventy five (75) more public sector inspections conducted during this reporting period than those conducted during the last (2006) reporting period.

VOSH conducted fifty-eight (58) fatality/catastrophe investigations during this evaluation period; twenty-five (25) were in the construction industry, twenty-six (26) in general industry, and seven (7) occurred in agriculture. All fatality investigations are considered significant.

<u>Mandated Activities</u>	<u>Measures Related to Mandated Activities</u>
Response to Complaints	<p>VOSH adopted the federal goal of initiating complaint inspections within 5 days and complaint investigations within 1 day. Activity measures for this evaluation period indicated the average number of days VOSH took to initiate complaint inspections were 2.69 days and 0.34 days to initiate complaint investigations. A more detailed review of a micro-to-host complaint activity report was completed which showed that 853 complaints were received and that 99% of those complaints were investigated or inspected within the required time frames.</p> <p>Complainants were notified of actions taken within the prescribed time constraints in over 92.36% of the complaints received. This is 7.6% below the goal of 100%. Compliance managers in each of the Regional Offices should continue efforts to assure that all complainants are notified within specified time constraints.</p> <p>Eleven (11) of the thirteen (13) complaints and referrals alleging imminent danger were responded to within 1 day which met 84.62% of the performance standard of 100%. A more detailed study of referral and complaint activity was conducted. VOSH received ten (10) complaints and referrals alleging imminent danger and all ten (10) were responded to within the one day required time frame. VOSH procedures require immediate response to imminent danger complaints and referrals. VOSH will continue to monitor the awareness of time constraints to complaints, referrals, and imminent danger situations.</p>

<u>Mandated Activities</u>	<u>Measures Related to Mandated Activities</u>
Denial of Entry	There were no denials of entry during this evaluation period where entry was not obtained.
Abatement Verification	VOSH issued citations for 6670 alleged violations during this evaluation period. Of these violations, 4222 were classified as serious, willful, or repeated. Abatement verification was obtained within the specified abatement dates for most of the violations for which citations were issued in both the private and public sector. From case file reviews, it was found that several construction citations were being considered abated IMMEDIATELY because the employer merely removed his employees from the hazardous condition at the time of the inspection. However the employer did not take any action to completely abate the hazardous condition. Written abatement verification was never received from the employer in these instances. These findings were reviewed with VOSH management during a quarterly meeting and VOSH implemented the appropriate changes to ensure that proper abatement verification is received from the employer.
Citation Processing	The average number of calendar days from opening conference to the issuance of citations was 60.45 days for safety citations and 47.9 days for health citations. Processing safety citations to issuance took 14.85 days longer than the National average of 45.6 days. Processing health citations to issuance took 12 days less than the National average of 59.9 days. Compliance managers should review safety citation processing procedures to identify

<u>Mandated Activities</u>	<u>Measures Related to Mandated Activities</u>
	and address any delays.
Effective Sanctions	<p>Serious, willful, or repeated violations were found in 59.51% of the programmed safety inspections conducted by VOSH. This is slightly above the national average of 58.9%. On the health side, serious, willful, or repeated violations were found in 50.89% of the programmed inspections conducted. This is slightly below the national average of 51.5%.</p> <p>VOSH issued less serious violations per inspection than the national average during this evaluation period. The average number of serious, willful, or repeated violations per inspection with violations was 2.08, slightly less than the national average of 2.1. The average number of other-than-serious violations per inspection was 0.88, slightly less than the national average of 1.2.</p> <p>The average initial penalty of \$869.31 was less than the federal average of \$1302.4. This was attributed to a large number of inspections conducted in small employer establishments for which higher penalty adjustments are given.</p>

<u>Mandated Activities</u>	<u>Measures Related to Mandated Activities</u>
Public Employee Program	VOSH conducted a higher percentage of inspections in the public sector during this period than during the previous evaluation period. VOSH conducted 6.7 percent of their inspections in the public section during this evaluation period, versus 4.34 percent during the previous evaluation period.
Review Procedures	The average lapse time from receipt of a contested case to the first level of decision making was 163.40 days. This is below the national average of 246.4 days. There were sixty (60) contested cases either in debt collection, settlement, or active litigation at the end of this evaluation period. This evaluation period saw a continuing reduction in the number of contested cases and a significant increase in the settlement of cases during the contest period, due to Regional Directors settling these cases during informal conferences as well as the ongoing efforts of the Division of Legal Support.
Program Administration	All required federal program changes were adopted by VOSH within the established time limits.
Standards	All standards issued as a Final Rule in the Federal Register, resulting in a Federal Program change requiring State action, were adopted by VOSH within the required six month adoption period.

<u>Mandated Activities</u>	<u>Measures Related to Mandated Activities</u>
Variances	There were no variances requested during this evaluation period.
CASPA	There were two (2) complaints filed about the State's program during this evaluation period. Neither required an investigation into the allegations about the State's program.
Discrimination	<p>During this evaluation period according to the SAMM report, thirty (30) discrimination complaints were filed. One (1) complaint was a carry-over from the previous year. Twenty-nine (29) complaints were closed within the 90 day mandate which resulted in 96.5 percent (97%) completed during the 90 day period. The one (1) complaint exceeding the 90 day mandated period for investigation. There were no complaints filed which were found to be meritorious, therefore, none required settlement. However a review of VOSH's actual discrimination activity showed that forty-two (42) cases were handled during this evaluation period. Thirty-six (36) cases or 86% were completed within the 90 day mandate period. One (1) complaint is in litigation, three (3) went over the 90 day mandate during settlement negotiation and two (2) went over the 90 day mandate due to other factors.</p>

APPENDIX A

STATE OSHA ANNUAL (SOAR) REPORT

APPENDIX B

**STATE ACTIVITY MANDATED
MEASURES (SAMM) REPORT**

And

INTERIM STATE INDICATOR REPORT (SIR)