

# **VIRGINIA**

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**Federal Annual Monitoring and Evaluation Report**

**on the**

**Virginia Occupational Safety and Health Program**

**FY 2008**

**Prepared by**

**Norfolk Area Office - OSHA**

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## **EXECUTIVE SUMMARY**

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The FY 2008 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 2008 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 13th Virginia Occupational Safety and Health Conference. The annual conference was held in Portsmouth, VA, with 333 attendees, and approximately 44 vendors. The conference was judged by all participants to be very successful.

In Virginia, there are over 3.1 million workers in approximately 214,877 companies (private and public sectors) covered by the Virginia Occupational Safety and Health Act. In FY 2008, 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 3468 inspections in the private and public sectors. These inspections resulted in 6361 violations being issued, of which 4008 were serious, for a serious rate of 63%.

The VOSH program added three additional STAR level sites to their Voluntary Protection Program (VPP) and two new sites to their Safety and Health Achievement Recognition Program (SHARP). The VOSH Program has a total of forty-six (46) 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 sixty-one (61) formal training sessions throughout the Commonwealth, and sixteen (16) informal training sessions during this evaluation period. Approximately 1,810 employees participated in these training activities.

The Following recommendations are proposed:

1. Continue efforts to ensure that all complainants are notified within the specified constraints.
2. Review citation processing procedures to identify reasons for delays in the issuance of safety citation.

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

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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 2008, the VOSH program included 103 full-time and part-time positions and the State contributed \$261,800 in funding its program. Currently, the VOSH enforcement program has thirty-two (32) safety specialists, and seventeen (17) industrial hygienists, and anticipates current vacancies will be filled during the FY 2009 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 3.1 million employees in approximately 217,877 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 2008.**

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 6 amputation (NEP) inspections resulting in 31 hazards identified, 4 silica identified resulting in 9 hazards identified, and 19 lead inspections resulting in 100 hazards identified. VOSH also conducted 54 initial, training and assistance, follow-up consultation visits and non-visit related activities in targeted businesses issuing 84 serious hazards.

VOSH's goal was to reduce injuries/illnesses by 3% in FY 2008. 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 2008 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. VOSH met this goal as evidenced below.

VOSH conducted 84 initial, training and assistance, follow-up consultation visits and non-visit activities identifying 269 serious hazards. VOSH exceeded its goal of 65 initial, training and assistance, follow-up consultation visits and non-visit activity.

There was 10.5% decrease from the baseline in the food processing industry, a 6.8% increase from the baseline in metal fabrication industry for SIC 3300-3399, a 18.6% reduction from the baseline in metal fabrication for SIC 3400-3499, a 16.4% reduction from the baseline in the construction industry and a 34.2 % decrease from the baseline in the lumber and wood products.

VOSH conducted 51 Food Processing inspections resulting in 343 hazards being cited, 13 Metal Fabrication –Primary metal industry inspections resulting in 153 hazards being cited, 71 Metal Fabrication – Fabricated metal products inspections resulting in 1,012 hazards being cited, 33 Lumber and Wood Products inspections resulting in 329 hazards being cited and 2,339 Construction inspections resulting in 3,213 violations being issued.

**Performance Goal 1.1.C – Decrease fatalities in the construction industry by 3% in FY 2008 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 number of fatalities for this evaluation period decreased less than 1% from the last evaluation report.

However, VOSH conducted 2,339 construction inspections resulting in 3,213 violations being issued. VOSH also conducted 272 construction consultation activities, which consisted of training, assistance and follow-up visits, issuing 987 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 240 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 46 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 788 complaints during this evaluation period. 99.3% of complaint investigations were initiated

within one working day and 98.6% on-site inspections were initiated within five working days.

**Performance Goal 1.1.G – Complete investigation of 100% of “whistleblower” cases within 90 days.**

VOSH did not meet this performance goal for this evaluation period. VOSH completed 92% of “whistleblower” cases within 90 days. All but five (5) were completed within the 90 days mandate. These five (5) cases went over the 90 days due to unresponsive parties.

**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 met this performance goal for this evaluation period. VOSH achieved 100% 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. One (1) case was settled within 365 days and 8 cases had bills of complaints filed within 365 days.

**Performance Goal 1.1.I – Reduce injuries and illnesses by 3% in FY 2008 in the Asbestos and Lead Abatement Industry.**

VOSH achieved results towards meeting this performance goal. 238 asbestos inspections resulting in 959 violations and 19 lead inspections resulting in 100 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 41 visits and non-visit related activities in program assistance which did not meet the number of planned visits in its strategy. Consultation also conducted 33 program assistance interventions from which 46% converted to initial visits with program assistance and training elements. While

VOSH successfully used its consultation activity to promote the SHARP program, it did 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 3,453 inspections conducted during this evaluation period. Inspections per 100 hours were 8.5% for safety and 4.2% for health.

**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 13<sup>th</sup> Annual VOSH Safety and Health Conference was held during this evaluation period attended by 333 participants. In addition 1,438 individuals were trained in 99 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 met this performance goal for this evaluation period. VOSH reviewed and updated more than 20% 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 2008 Interim State Indicator Report (**SIR**) and the State Activity Mandated Measures Report (SAMMs) for dates October 1, 2007 to September 30, 2008. VOSH conducted a total of 3262 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	2113	82.0	362	52.0
Un-programmed	455	18.0	332	48.0
TOTAL	2568		694	

In the public sector, VOSH conducted a total of 195 inspections. They were distributed as follows:

	<u>SAFETY</u>	<u>%</u>	<u>HEALTH</u>	<u>%</u>
Programmed	110	83.0	23	37.0
Un-programmed	23	17.0	39	63.0
TOTAL	133		62	

There were 259 less inspections conducted in the private sector and forty two (42) less public sector inspections conducted during this reporting period than those conducted during the last (2007) reporting period.

VOSH conducted forty-six (46) fatality/catastrophe investigations during this evaluation period; nineteen (19) were in the construction industry, twenty-five (25) in general industry. 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 1.83 days and 0.19 days to initiate complaint investigations.</p> <p>Complainants were notified of actions taken within the prescribed time constraints in over 91.48% of the complaints received. This is 8.52% 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>The two (2) complaints and referrals alleging imminent danger were responded to within 1 day which met the 100% performance standard.</p>
Denial of Entry	There were no denials of entry during this evaluation period where entry was not obtained.
Abatement Verification	<p>VOSH issued citations for 6734 alleged violations during this evaluation period. Of these violations, 4839 were classified as serious, willful, or repeated.</p> <p>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.</p> <p>From case file reviews, it was determined some violations classified as ‘immediately abated during an inspection’, wherein abatement documentation was, or wasn’t</p>

<u>Mandated Activities</u>	<u>Measures Related to Mandated Activities</u>
	required, were not coded correctly, in that an abatement verification date was not being entered into the IMIS, OSHA 1B, Item 22. The State has implemented corrective action for this activity.
Citation Processing	<p>The average number of calendar days from opening conference to the issuance of citations was 65.38 days for safety citations and 59.53 days for health citations. Processing safety citations to issuance took 19.88 days longer than the National average of 45.5 days. Processing health citations to issuance took only 0.83 days less than the National average of 58.7 days. Compliance managers should review safety citation processing procedures to identify and address any delays.</p>
Effective Sanctions	<p>Serious, willful, or repeated violations were found in 60.69% of the programmed safety inspections conducted by VOSH. This is slightly above the national average of 59.0%. On the health side, serious, willful, or repeated violations were found in 46.68% of the programmed inspections conducted. This is slightly below the national average of 51.4%.</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 2.05, slightly less than the national average of 2.1. The average number of other-than-serious violations per inspection was 0.80, slightly less than the national average of 1.2.</p> <p>The average initial penalty of \$873.56 was less than the federal average of \$1329.00.</p>

<u>Mandated Activities</u>	<u>Measures Related to Mandated Activities</u>
	This was attributed to a large number of inspections conducted in small employer establishments for which higher penalty adjustments are given.

<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 an average of the last three (3) years. VOSH conducted 5.63% of their inspections in the public section during this evaluation period. The average data for Virginia for the last three (3) years is 5.2.
Review Procedures	The average lapse time from receipt of a contested case to the first level of decision

<u>Mandated Activities</u>	<u>Measures Related to Mandated Activities</u>
	making was 111.53 days. This is below the national average of 258.1 days. There were ninety-six (96) 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 during this evaluation period. The State utilizes the Automated Tracking System's (ATS) Notice of Intent Required when responding to federal program changes. The ATS system does not include updated information submitted by the State for federal program changes that were adopted prior to the utilization of the ATS for tracking State adoption of federal program changes.
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.
Variances	There were no variances requested during this evaluation period.
CASPA	There were no complaints filed about the State's program during this evaluation period.
Discrimination	During this evaluation period, fifty-six (56) discrimination complaints were filed. Forty-eight (48) complaints were closed within the 90 day mandate which resulted in 85.71 percent (~86%) completion rate.

<u>Mandated Activities</u>	<u>Measures Related to Mandated Activities</u>
	Cases sent forward for litigation were not being closed which accounted for the 90 day criteria for investigation completion not being met. All eight (8) complaints filed were found to be meritorious. Three (3) complaints were settled, one (1) is pending litigation.

## **ASSESSMENT OF STATE PERFORMANCE OF MANDATED ACTIVITIES FOR PUBLIC SECTOR CONSULTATION (MARC)**

### **1. Total Visits:**

During this evaluation period VOSH received 12 requests for consultation visits from the public sector and conducted 12 visits. 100% of the requests resulted in initial visits.

### **2. Percent of Initial Visits in High Hazard Establishments:**

VOSH conducted 92.31% of its visits in high hazard establishments.

### **3. Percent of Initial Visits to Smaller Businesses:**

VOSH conducted 92.31% of its initial visits in establishments with 250 employees or less.

### **4. Percent of Visits Where Consultation Conferred with Employees:**

On 100% of the initial visits the consultant held employee conferences.

### **5. Percent of Serious Hazards Verified Corrected in a Timely Manner:**

VOSH identified thirty-eight (38) serious hazards during the initial visits. In 97.37% of these serious hazards, correction was verified in a timely manner. Further review found that 100% of the corrections were verified but due to a data entry error a correction for one (1) serious hazard was not entered. Correction was verified on 89.47% of these serious hazards either on-site or within the original time frame. Eight (8) were verified on-site, twenty-six (26) were verified within the original time frame and three (3) were verified within fourteen (14) days of the latest correction due date.

APPENDIX A

**STATE OSHA ANNUAL (SOAR) REPORT**

APPENDIX B

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

**And**

**INTERIM STATE INDICATOR REPORT (SIR)**

APPENDIX C

**MANDATED ACTIVITIES FOR CONSULTATION  
(MARC) REPORT**