

VDOL Highlight of a Program's Performance: VOSHA FY '11 to Today

In PY '11 (October 2010-September 2011), the Vermont Occupational Safety and Health Administration (VOSHA) Program was cited by federal compliance monitors in the "FAME" report (OSHA Federal Annual Monitoring and Evaluation report) for 41 "significant" findings in both the enforcement and whistleblower programs. This fact was widely covered by the Vermont media, including a WCAX evening news report. The federal compliance report was issued shortly after the new administration came to office, based upon the prior year's review.

Some of the problems resulted from downsizing 2 positions, but largely, it was a program that had not been held accountable for failing federal performance measures for more than four years. With significant assistance and oversight of the federal OSHA managers, and some key staff changes in the program, the VOSHA program's federal compliance review for this year has revealed positive results. The FY 2016 Compliance FAME was completed during the week of 11/31/15, and the 11(c) Whistleblower FAME was completed the week of 12/28/15. VDOL has been informed by the federal audit teams that of the original 41 significant findings, all but two findings in the compliance audit and one finding in the 11(c) audit have been successfully abated.

In a December 2015 letter to VDOL Commissioner Noonan, federal OSHA Regional Administrator Kimberly Stille, Region 1, wrote, "*It is apparent that VOSHA has made considerable improvement and is a more impactful program than it was a few years ago...VOSHA has shown significant improvement in areas that were cited as problematic in previous FAMEs, such as standard adoption, fatality investigations, debt collection, penalty payment processing and abatement tracking. There is no question that VOSHA plays a vital role in ensuring the health and safety of Vermont's workforce. I would like to personally thank the State of Vermont for providing VOSHA with the support needed to help the program move forward. I also wish to encourage the continued support for VOSHA, so that it may become even more effective in ensuring safe and healthy workplaces for all Vermonters-not only in 2016, but for many years to come*".

The Department, and specifically the WC & Safety Division Director and VOSHA managers and staff, truly rallied to transform the program, determined improve both its culture and service to Vermonters. Among the major program changes and improvements are:

Investigating Discrimination and Retaliation:

Among the 41 significant findings identified in the FY '11 FAME, 9 of them focused on VOSHA's deficiencies in appropriately investigating 11(c) Whistleblower discrimination. VOSHA identified the issue largely due to the fact that these investigations were assigned to compliance officers as "ancillary duty", with no focus or prioritization of these complaints. In response, the Commissioner and VOSHA managers converted an existing safety compliance position to a full time investigative position. The 11C Investigator was trained in the requirements and legalities of "11c investigations" and was mentored by the VOSHA Program manager. As a result, the backlog of 11c discrimination/retaliation cases was reduced from 30 to 7, and VOSHA met performance measures for consistency and timeliness.

Dual Discipline Health and Safety Compliance Position: VOSHA saw an opportunity to add flexibility to the compliance program, and converted an existing safety compliance position to a "dual discipline" (safety and industrial hygiene), created a new job specification, advertised and hired an individual that possessed the skill set for the dual discipline. This change added flexibility and timeliness to responding to health and safety cases.

Training:

At least four findings in the FY 2011 FAME dealt with VOSHA's deficiencies in staff training. VOSHA has adopted the Federal training requirements for its Compliance staff. In addition, VOSHA has developed opportunities with more local institutions, such as OSHA Training Institute at Keene State College to ensure that all staff receives technical training session each year.

Standards and Rules Adoption:

It was identified in the 2011 and subsequent FAME reports that VOSHA had fallen short of adopting new standards in a timely fashion, the result being that VOSHA was "overdue" in adopting 8 standards. VOSHA currently has completed adoption of 6 of the 8 standards and expects to complete adoption of the remaining two this year. In addition, VOSHA is now keeping pace with the current issuance of new rules and has completed adoption of 4 new standards.

Inspection/Investigation Performance:

At least 20 significant findings from the FAME focused on case file performance. Findings focused on legal sufficiency of violations, proper investigative procedures, lack of industrial hygiene sampling, lack of communication with the complainants, victims and/or their families during the case, and lack of efficiency by the VOSHA management when case files were sent in by compliance staff. VOSHA responded to these issues with a number of initiatives including case-writing training for staff, efficient tracking of cases, review by the VOSHA manager for significant cases and fatalities, 100% percent case review by the VOSHA management (with a nearly 60% return rate of cases for corrections), and increased accountability for lapse time in cases (the time from opening to issue of citations).

Debt Collection and Abatement Verification:

At least 2 findings focused on this area of case performance. These findings related directly to the ability of VOSHA management to hold Employers accountable to correct violations and pay the negotiated penalties. VOSHA instituted much more focused tracking of these cases, running these reports once per week. VOSHA also completed new procedures in prosecuting overdue debts and worked with VDOL attorney staff to move these into litigation. The result has been a dramatic improvement on collecting outstanding debt as well as getting employers to provide assurances that hazards have been abated in their worksites.

In summary, some of the VOSHA program improvements/successes included:

- VOSHA out-performed the stated inspection goal (projected to do 250 inspections and actually conducted over 300).
- VOSHA reduced the backlog of 11(c) whistleblower cases (down from 30 some to 7).
- VOSHA completed rules adoption for a total of 7 outstanding rules (these include old rules, as well as keeping up with new rules)
- VOSHA has improved our performance in both debt collection and abatement verification
- VOSHA has nearly completed an overhaul of our industrial hygiene and safety equipment.
- VOSHA has focused on increasing health sampling opportunities, the result of which is a dramatic increase in sampling for exposures such as noise, lead, silica, etc.
- VOSHA has been focused on staff training for required (and some elective) courses for the VOSHA staff.
- VOSHA hosted a 3-day Region 1 Compliance Summit in March of 2015. This summit provided the opportunity for VOSHA staff to meet and interact with federal OSHA Region 1 staff.
- VOSHA hosted a 3-day Region 1 11(c) Whistleblower Summit in August of 2015. As in the compliance summit, training opportunities for VOSHA and regional staff were provided, as well as the opportunity to interact and share strategies between state and regional plans.