**FY 2023 Comprehensive**

**Federal Annual Monitoring Evaluation (FAME) Report**

Virgin Islands Division of Occupational Safety and Health (VIDOSH)



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**Contents**

1. Executive Summary………………………………………...…………………….……3
2. State Plan Background…………………………………………………………………4
3. Background……………………………………………………………………….. 4
4. New Issues…………………………………………………………………………5
5. Assessment of State Plan Performance……………..……………………………….7
6. Data and Methodology……………………………………………………………..7
7. Review of State Plan Performance ………………………………………………...8
8. Program Administration………………………………………………………..8
9. Enforcement…………………………………………………………………….9
10. Review Procedures…………………………………………………………….13
11. Standards and Federal Program Changes Adoption…………………………...13
12. Variances………………………………………………………………………16
13. State and Local Government Worker Program………………………………..16
14. Whistleblower Program………………………………………………………..16
15. Complaint About State Program Administration (CASPA)……………….......17
16. Voluntary Compliance Program……………………………………………….17
17. State and Local Government 23(g) On-Site Consultation Program…………...17
18. Private Sector 23(g) On-Site Consultation Program…………………………..18

**Appendices**

Appendix A – New and Continued Findings and Recommendations…………......A-1

Appendix B – Observations and Federal Monitoring Plans……………….............B-1

Appendix C – Status of FY 2022 Findings and Recommendations………….........C-1

Appendix D – FY 2023 State Activity Mandated Measures (SAMM) Report…....D-1

1. **Executive Summary**

The purpose of this report is to assess the Virgin Islands Division of Occupational Safety and Health (VIDOSH) program’s activities for Fiscal Year (FY) 2023, and its progress in resolving outstanding findings from previous Federal Annual Monitoring Evaluation (FAME) reports. OSHA continues to have serious concerns with VIDOSH’s inability to address significant programmatic issues that have been outstanding for more than a decade. Despite OSHA’s continual efforts to assist and provide support to VIDOSH, the Virgin Islands (VI) State Plan failed to resolve its prior FAME findings and recommendations. Overall, OSHA is not satisfied with the lack of progress, responsiveness, and communication from VIDOSH.

VIDOSH’s ability to effectively address OSHA’s serious programmatic concerns has been exacerbated by constant turnover and the long-term lingering effects of the catastrophic hurricane damage to public buildings suffered in 2017 from hurricanes Irma and Maria which struck within two weeks of each other. During the evaluation period, the former director resigned in July 2023 and the assistant director who replaced him retired in November 2023. On January 29, 2024, VIDOSH appointed a new director. In February 2024, Region II arranged for a volunteer State Plan Monitoring Mentor to assist VIDOSH in addressing the FAME findings and observations contained in this report.

Over the past few years, OSHA’s New York Regional Office (Region 2) increased its monitoring of VIDOSH by including an addendum of mandatory grant activities with aligning deadlines in the grant approval letter and designating VIDOSH as a high-risk grantee in accordance with 2 Code of Federal Regulations (CFR) 200.207. However, OSHA did not withhold VIDOSH’s access to drawdown federal funding during the fall of FY 2020. OSHA developed mandatory program activities for VIDOSH to be completed during the first quarter of the FY 2020 performance period, and VIDOSH did not make any progress during the performance period to address the mandatory activities. The program administration’s autonomy also continued to be a concern.

Therefore, on March 2, 2020, VIDOSH was designated as a high-risk grantee and OSHA placed conditions on the FY 2020 grant. At the end of the FY 2020 performance period, VIDOSH did not meet all their mandatory grant activities and continued to be designated as a high-risk grantee in FY 2021. The designation continued in FY 2022 because VIDOSH did not to meet all of their mandatory grant activities in FY 2021. A fifth mandatory grant activity addressing lapse time for both safety and health was added in FY 2022 and continued into FY 2023. FY 2023’s five mandatory grant activities included the following:

* VIDOSH will conduct 45 enforcement inspections in FY 2022.
* VIDOSH will ensure that abatement is achieved, and the case files are closed.
* VIDOSH will conduct 12 consultation visits for FY 2022.
* VIDOSH program manager will address OSHA’s request for information in a timely manner.
* The average lapse time for safety and health will not be higher than 20% of the national reference level.

The State Plan met two of the five mandatory grant activities in FY 2023. The State Plan performed 39 enforcement inspections of the goal of 45 inspections (87%) and 100% met its goal of conducting 12 consultation visits (State Activity Mandated Measures [SAMM] Report). The high-risk grantee status continued into FY 2024.

VIDOSH continues to be ineffective in protecting the safety and health of Virgin Islands’ state and local government (SLG) workers. Findings from this FAME, as well as previous FAMEs, show that VIDOSH did not issue citations in a timely manner, secure timely abatement of hazards, close files timely, and establish an enforcement presence in VI. Although the State Plan made some progress to address the previous 14 findings and three observations from the FY 2022 Follow-up FAME Report, two new findings and two new observations were identified during this FAME.

Four findings and one observation were resolved. One finding was completed based on a review of the SAMM #11awhich showed average safety lapse time for FY 2023 was within the federal review level. Another finding was completed because the State Plan sent complaint letters to the complainants after the inspections were finished. The third finding was completed because a review of the seven closed files for FY 2023 did not show any hazards in the case files that were not addressed. The fourth finding was completed after the one consultation closed file showed adequate documentation was contained in the case file. The observation on health average lapse time was closed based on SAMM #11b which showed this value was within the federal review level. This FAME identified a total of 13 findings and four observations.

Appendix A describes the new and continued findings and recommendations. Appendix B describes the observations and the related federal monitoring plans. Appendix C describes the status of previous findings with associated completed corrective actions.

**II. State Plan Background**

1. **Background**

Historical Background

The Virgin Islands State Plan was initially approved on August 31, 1973, completed all the State Plan developmental steps, and was certified as structurally complete on September 22, 1981. Pursuant to Section 18(e) of the OSH Act and procedures at 29 CFR 1902, OSHA determined that the Virgin Islands program met all requirements and, in actual operation, was "at least as effective" as the federal program. The Virgin Islands State Plan was granted final approval on April 17, 1984, and OSHA relinquished federal enforcement authority (49 FR 16766). The Virgin Islands Department of Labor (VIDOL) is the designated agency for administering the OSHA funded enforcement program in the Virgin Islands through its Virgin Islands Division of Occupational Safety and Health (VIDOSH).

On November 13, 1995, OSHA announced that the Virgin Islands State Plan was no longer "at least as effective as" OSHA and other 18(e) requirements were no longer being met. In response to this finding, the Virgin Islands Commissioner of Labor agreed to voluntarily relinquish the State Plan's final approval status under Section 18(e), to the reassertion of concurrent OSHA enforcement authority and jurisdiction, and to undertake necessary corrective action to regain final approval status (60 FR 56950).

The 1995 decision to reinstate concurrent jurisdiction allowed OSHA to exercise concurrent enforcement authority to assure worker protection, while allowing the Virgin Islands time and assistance to improve its performance. However, between 1995 and 2003, VIDOSH was unable to institute improvements to

its staffing and operational performance. A series of meetings between the Region and then Virgin Islands Governor Charles W. Turnbull was initiated to discuss these outstanding performance issues and next steps.

Pursuant to Governor Turnbull’s May 12, 2003, letter, OSHA revised 29 CFR 1952 and 29 CFR 1956 in July 2013 to reflect the Virgin Islands decision to exclude private sector employment from coverage under the plan while retaining coverage of state and local government employment. The new plan applies to state and local government workers (SLG) only. State Plan coverage of all private sector employers and employees was terminated effective July 1, 2003, and OSHA resumed full jurisdiction over private sector employment in the Virgin Islands. This action made it possible for OSHA to devote its resources to providing safety and health protection in Virgin Islands workplaces, rather than expending its resources in a possibly lengthy and complex proceeding under 29 CFR 1955 to formally terminate State Plan approval.

The agreement allowed the Virgin Islands to qualify for enhanced funding under a provision of the Omnibus Insular Areas Act of 1977 (48 U.S.C. Section 1469 (d)), which authorizes OSHA to waive the requirement for Territorial matching funds for grant amounts under $200,000. A new subpart H to 29 CFR part 1956 was added and codified the Virgin Islands State Plan as a developmental plan under 29 CFR part 1956, to allow the Territory to make certain adjustments to its state and local government employee program structure, and to revise its State Plan document to reflect its more limited scope. This change also terminated the private sector consultation services that were provided under the 23(g) grant funding. To address this, OSHA provided funding for a new 21(d) private sector consultation program for the Virgin Islands.

Current Background

The Virgin Islands State Plan is currently administered by VIDOSH which is part of VIDOL. VIDOL Commissioner Gary Molloy oversees VIDOSH, which has offices on St. Croix and St. Thomas. These offices cover all safety and health enforcement and consultation activities for state and local government workers in the Virgin Islands. All private sector and federal government agency complaints are forwarded to OSHA’s Puerto Rico Area Office for appropriate action. At the end of FY 2023, VIDOSH was staffed with an acting director, two CSHOs and one consultant. The director left the program in July 2023 and the assistant director assumed this role until he retired in November 2023.

The Virgin Islands Occupational Safety and Health (VI-OSH) Act provides for the adoption of federal standards applicable to state and local government, with issuance on the effective date specified in the federal standard. The VI-OSH Act contains provisions for the issuance of failure-to-abate monetary penalties for those state and local government employers found not to be incompliance with applicable standards on a first instance basis. VIDOSH’s review procedures are handled through a hearing examiner with the right to appeal to the Commissioner of Labor and the Virgin Islands Superior Court in lieu of the Review Commission as is the case in the federal program.

1. **New Issues**

Deobligating and Lapsing of Federal Funds

Because VIDOSH failed to meet their mandatory grant activities in FY 2023 and submit a monthly deliverable for September 2023, $35,524 in funds lapsed. Additionally, in July 2023, the program returned $159,584 to the federal government because they could not meet their annual mandatory grant activities. OSHA released $99,092 in funding to VIDOSH during FY 2023. The original grant award was $294,200.

In FY 2022, the program lapsed $2,952 and deobligated $149,208 of the $294,200 in federal funding under Section 23(g) of the Occupational Safety and Health Act (OSH Act). VIDOSH did deobligate funds prior to the end of the fiscal year for FY 2022 and FY 2023 but because they failed to meet all their mandatory grant activities in both years, funds were lapsed as well. These lapsed funds were returned to the United States Treasury. When this occurs, this federal funding is not accessible to OSHA or any other State Plans to support worker safety and health. Lapsing funds is highly problematic as it sends an incorrect message to Congress that State Plans do not need all the appropriated federal funding. This message likely has a negative impact on State Plans and worker protection as Congress may be less inclined to provide increases to overall State Plan funding in the future.

Lapsing federal funds has become a consistent trend for VIDOSH over the last nine years and shows the program administration’s inability to manage federal funding received. The State Plan lapsed funds from FY 2015 through FY 2023. VIDOSH’s program administration lapsed federal funding seven of the last nine fiscal years. In FY 2015, VIDOSH lapsed $7,071; $5,605 in FY 2017; $76,517 in FY 2018; $19,787 in FY 2020; $11,767 in FY 2021; $2,952 in FY 2022 and $35,524 in FY 2023 – totaling $159,223 in federal funds.

As a result of lapsing of these funds, VIDOSH is subject to the new federal lapsing funds policy which was effective on August 8, 2019. Under this policy, State Plans who lapse or deobligate funds for three consecutive years will have a percentage of their base federal award reduced in year four. OSHA issued a formal notice to VIDOL on July 18, 2023, serving notice that VIDOSH has lapsed and/or de-obligated for three consecutive years as of FY 2022 totaling $152,160. However, the letter stated in light of the change to the management of VIDOSH’s program, the grant award for FY 2024 would not be reduced, to give the program an opportunity to improve in this area. If improvement is not made in this area, OSHA could permanently reduce VIDOSH’s base award by the smaller of the amounts lapsed and/or deobligated during the previous three-year period.

New Program Director

As of January 29, 2024, VIDOSH has appointed a new program director, Gregoreese Willocks, to oversee and manage enforcement, consultation, and whistleblower activities of the State Plan. She was formally employed as VIDOSH’s sole safety and health consultant with the program. This staffing change leaves no staff designated to perform consultation visits. VIDOSH has committed to filling the vacant consultation position as expeditiously as possible. VIDOSH also intends to fill the vacant assistant director position.

The former director resigned from his position in July 2023. The assistant director was placed in the acting director’s role until he retired in November 2023. The assistant director’s position remains vacant. With the resignation of both of these individuals, the State Plan has no staff trained to investigate whistleblower protection cases.

In February, 2024, Region II arranged for a volunteer State Plan Monitoring Mentor to assist VIDOSH in addressing the FAME findings and observations contained in this report. The mentor has committed to attending weekly VIDOSH team meetings and assisting in the areas of CSHO training, program administration training for the new director, state plan monitoring issues, whistleblower case backlog, open inspection backlog, and open violation abatement backlog, among other activities.

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

1. **Data and Methodology**

OSHA established a two-year cycle for the FAME process. FY 2023 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file reviews. An OSHA team consisting of the State Plan Program Manager and the Regional Supervisory Whistleblower Investigator conducted a remote full case file review of the enforcement and consultation files but a limited case file review of the whistleblower files.

OSHA Information System (OIS) reports and a review of the documents uploaded for the open whistleblower cases showed no new actions were taken since the full review of these files in February 2023. The State Plan Monitoring Mentor, who has extensive experience in managing a State Plan Whistleblower Protection Program, is assisting the new VIDOSH Director in addressing the whistleblower case backlog and will be providing training to VIDOSH CSHOs on whistleblower investigation procedures.

The enforcement and consultation case file review was conducted remotely during the timeframe of February 15-20, 2024. A total of 26 enforcement, consultation, and whistleblower inspection case files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period (October 1, 2022 through September 30, 2023). The consultation file selected to review was picked because it was the only file closed in FY 2023. The whistleblower inspection files selected represented all the open whistleblower files. The selected population included:

* Four (4) health enforcement closed files
* Three (3) safety enforcement closed files
* Ten (10) Unprogrammed Activities (UPA)
* One (1) consultation closed file
* Eight (8) whistleblower files

The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including the:

* State Activity Mandated Measures Report (Appendix D)
* State Information Report (SIR)
* OSHA Information System (OIS)
* Mandated Activities Report for Consultation (MARC)
* State OSHA Annual Report (SOAR)
* State Plan Annual Performance Plan
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan
* Limited *(or full)* case file review

Each State Activity Mandated Measures (SAMM) Report 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 falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2023 SAMM Report and includes the FRL for each measure.

1. **Review of State Plan Performance**
2. **PROGRAM ADMINISTRATION**
3. Training

The enforcement and consultation staff attended courses at the OSHA Training Institute (OTI) in FY 2023. The courses that were completed by staff included the following:

1000 - Initial Compliance

1008 - Intro to OSHA for New Hires

1050 - Introduction to Safety Standards for Safety Officer

1081 - Health Hazard Awareness for Safety Officers

1241 - Introduction to Health Standards

1410 - Inspection Techniques and Legal Aspects

1501 - Introduction to On Site Consultation

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1. OSHA Information System

**Finding FY 2023-01 (FY 2022-01, FY 2021-01, FY 2019-01, FY 2018-01):** *OSHA Information System (OIS)*

VIDOSH conducted 39 inspections during FY 2023. Only seven of these 39 (18%) case files were closed in OIS and available for review when OSHA requested them in November 2023. The Open Inspection Report, run on February 19, 2024, identified 17 case files open more than 180 days (OIS Open Inspection Report). VIDOSH did not utilize OIS reports to ensure proper monitoring and closure of the case files.

**Recommendation FY 2023-01:** VIDOSH must utilize OIS reports as a tool to effectively manage both the program and work product of its staff. This ensures proper monitoring and closure of case files in accordance with the adopted policy in the Field Operations Manual (FOM).

**Observation FY 2023-OB-01 (FY 2022-OB-01, FY 2020-OB-01, FY 2019-OB-01):** *Inspection Coding*

Two out of seven (29%) inspection files reviewed were not coded under the state program strategic initiative in OIS for industries covered in the five-year strategic plan. All seven files reviewed were coded in OIS incorrectly for safety program development under the state program strategic initiative tab. The five-year strategic plan does not include safety program development as a target focus.

**Federal Monitoring Plan FY 2023-OB-01:**

During the next FAME year, a limited number of case files will be selected randomly and

reviewed to determine if these are isolated instances or if this represents a trend that requires further review.

**Observation Finding FY 2023-02:** *Unprogrammed Activity Auditing Report*

The OIS Unprogrammed Activity Auditing Report, run on November 8, 2023, showed two complaints received in FY 2023 assigned for an inspection that were not related to an inspection. There was no evidence in OIS that an inspection had been conducted to evaluate these complaints.

**Federal Monitoring Plan FY 2023-OB-02:** The Region will continue to monitor this issue quarterly with the SAMM Report.

1. State Internal Evaluation Program (SIEP) Report

VIDOSH did not draft SIEP reports for FY 2020 and 2021. However, the assistant director accompanied the two new CSHOs on training visits during FY 2023.

1. Staffing

At the end of FY 2023, VIDOSH was staffed with a consultant, a health and safety inspector, industrial hygiene technician, an administrative person, and an acting director. During FY 2023 VIDOSH experienced a turnover of staff members. The administrative supervisor retired in March of 2023, and the division director resigned in July of 2023. The division’s assistant director who previously stepped in to serve as acting director, subsequently retired in November of 2023. As of January 29, 2024, VIDOSH appointed a new director who was VIDOSH’s sole safety and health consultant.. This resulted in leaving no staff designated to perform consultation visits. VIDOSH has committed to filling the vacant consultation position as expeditiously as possible.

**2. ENFORCEMENT**

1. Complaints

Timeliness of State Plan Response

During this evaluation period, VIDOSH responded to 27 complaints with an average response time of 9.74 days from notification in FY 2023. In FY 2021, VIDOSH responded to 19 complaints with an average response time of 5.79 days (SAMM #1a). The FRL is five days. There were no complaint investigations for FY 2022 or FY 2023 documented (SAMM #2a). During FY 2022 and FY 2023, VIDOSH did not receive any imminent danger complaints or referrals (SAMM #3) and did not receive any denials of entry (SAMM #4).

**Observation FY 2023-OB-03 (FY 2022-OB-02, FY 2021-OB-01):** *Timeliness of State Plan Response*

In 2023, VIDOSH failed to respond to complaints within an average of five days from receipt.

**Federal Monitoring Plan FY 2023-OB-03:** The Region will continue to monitor the issue quarterly with the SAMM Report.

Addressing Complaint Items During Inspections

**Finding FY 2023-02:** *Addressing Complaint Items*

In three of the four (75%) of the complaint inspection files reviewed, the evaluation of the complaint items was not adequate. In one file, the complainant was forwarded a letter stating that the employer was taking corrective actions; however, there was no inspection conducted because the business was closed and undergoing mold remediation. A return to the site to evaluate conditions was not made to document correction of the hazards alleged in the complaint. The other two complaints alleged hazards related to odors and indoor air quality issues. In both cases, concerns were raised about the source of the odors being related to construction work taking place outside the building. These exposures were not evaluated with air sampling.

The State Plan did forward complaint letters to the complainants that had provided their information at the conclusion of the inspections.

**Recommendation FY 2023-02:** VIDOSH must ensure that all complaint items and other alleged hazards found during inspections are adequately evaluated. For example, VIDOSH should utilize air sampling to evaluate airborne hazards. VIDOSH should enroll staff in the OTI 2340 or 2341 Biohazards course because numerous complaints related to mold and indoor air quality issues were received. Due to the tropical storm and hurricane-related weather conditions on the islands, these issues are prevalent and will continue to be so in many buildings.

1. Fatalities

The State Plan did not have any work-related fatalities in FY 2023 according to SAMM #10.

OSHA learned through newspaper articles, months after the events, that two sanitation workers were shot and killed while working. VIDOSH did not conduct fatality investigations for these two deaths, nor could they provide an explanation why an investigation was not conducted.

**Finding FY 2023-03:**  *Investigating Fatalities*

Two sanitation workers were shot and killed while in work status in FY 2023. VIDOSH did not perform an investigation or inspection of these deaths. OSHA could not determine if VIDOSH was informed of these deaths by the employer, but the deaths received significant media coverage. One death occurred after the sanitation worker was street cleaning following the annual adult carnival parade in St. Thomas.

**Recommendation FY 2023-03:**

VIDOSH must ensure that all fatalities reported for state and local government workers whether by the employer or in the media are investigated.

c) Targeting and Programmed Inspection

VIDOSH conducted 39 inspections in FY 2023. There were 25 health and 14 safety

inspections conducted. VIDOSH was required to conduct 45 inspections as part of its mandatory activities.

VIDOSH’s five-year strategic plan targeted four state and local government areas for programmed enforcement activities:

• Electric and Other Utilities

• First Responders (Fire Department and Police Department)

• Hospitals

• Bureau of Corrections

1. Citations and Penalties

Lack of Case File Documentation

**Finding FY 2023-04 (FY 2022-04, 2021-05, FY 2020-04):** *Lack of Case File Documentation*

Six of seven (86%) of the files reviewed did not contain field notes. Three of the four (75%) complaint files were missing evidence that the OSHA 300 logs for the last three years and current year were reviewed or a statement that logs were not required.

**Recommendation FY 2023-04**:

VIDOSH must ensure the case files include the required documentation in accordance with the FOM.

Adequate Evidence to Support Violations

**Finding FY 2023-05 (FY 2022-05, FY 2021-06, FY 2020-05, FY 2019-05, FY18-OB-01):** *Adequate Evidence to Support Violations*

There were two sets of citations issued in the seven closed files that were reviewed. Both files lacked adequate employer knowledge documentation on the worksheets. The worksheets identified “exposing” as the evidence to support employer knowledge of the hazards. One of two (50%) had a worksheet in the case file that had no information for worksheet details.

**Recommendation FY 2023-05:**

VISOH must ensure the case files include the required documentation in accordance with its Field Operations Manual.

1. Abatement

Adequate Verification or Evidence of Abatement

**Finding FY 2023-06 (FY 2022-07, FY 2021-07, FY 2020-07, FY 2019-07, 2018-03):** *Adequate Verification or Evidence of Abatement*

In three of three follow-up inspections or 100% reviewed, the follow-up either did not document how the hazards were abated or accepted abatement that was inadequate. In one inspection, the follow-up consisted of asking for a copy of the hospital’s written respirator program and then concluding the inspection. The citation issued was for development and implementation of a respiratory protection. The implementation of this program was not evaluated and confirmed through the inspection process.

**Recommendation FY 2023-06:**

VIDOSH must utilize strategies such as follow-up inspections, failure-to-abate (FTA) citations,

and 29 CFR 1903.19 provisions to ensure that abatement of cited hazards is achieved in a timely

manner and improve case file documentation of abatement.

Overdue Abatement

**Finding FY 2023-07 (FY 2022-05, FY 2021-09, FY 2020-08, FY 2019-08, FY 2018-04):** *Overdue Abatement*

The OIS Open Inspection Report run on February 19, 2024 showed that there were 22 inspection files with overdue abatement ranging from 28-917 days.

**Recommendation FY 2023-07:**

VIDOSH must utilize strategies such as follow-up inspections, FTA citations, and 29 CFR

1903.19 provisions to ensure that abatement of cited hazards is achieved in a timely manner.

Petition for Modification of Abatement (PMA)

**Finding 2023-08 (FY 2022-10 2021-10 (FY 2020-09, FY 2019-09):** *Petition for Modification of Abatement (PMA)*

One of the files reviewed in the 2021 FAME contained a PMA. This PMA was granted even though it lacked the steps taken to correct the hazard during the correction period and used future tense “will” to describe interim steps. No certification of posting was provided. There was no indication in the diary sheet or in the file that VIDOSH responded to the PMA request from the employer.

This PMA issued was based on previous inspection #1448354 where a citation was issued for this same hazard alleged and documented in inspection #1508132. The correction was noted in OIS for the same hazard that a PMA was being requested under inspection #1508132. Multiple attempts to obtain a copy of inspection #1448354 were made to VIDOSH with no success. This finding will remain open because there were no PMAs that were available to review during this evaluation period.

**Recommendation FY 2023-08:**

VIDOSH must ensure that procedures as stated in the Field Operations Manual (FOM) Chapter VII (1903.14(a)) are followed for any PMA requested.

1. Worker and Union Involvement

**Finding FY 2023-09 (FY 2022-10, FY 2021-11, FY 2020-OB-02, FY 2019-OB-04):** *Worker Involvement – Inspection Process*

Documentation was lacking in three of the six (50%) case files reviewed as to why union

representatives were not involved in the inspection process (opening conference, walkaround, and

closing conference).

In five of seven (71%) of the files reviewed, there was no documentation to show that workers were interviewed. SAMM #13 (percent of initial inspections with worker walk around representation or worker interview) was reported at 89.74%. The FRL is 100%.

**Recommendation FY 2023-09:**

Ensure employee representatives and workers are involved in the inspection process.

Worker Notification of Inspection Results

**Finding FY 2023-10 (FY 2022-11, FY 2021-12, FY 2020-10, FY 2019-10, FY 2018-OB-03):** *Worker Notification of Inspection Results*

In FY 2023, six of the seven case files reviewed had unions. Of those six case files, only one case file had citations issued. This file lacked documentation that the union was provided a copy of these citations.

**Recommendation FY 2023-10:**

VIDOSH must ensure that a copy of the citation is sent to the union representative as required in its FOM.

**3. REVIEW PROCEDURES**

1. Informal Conferences

There were no requests for informal conferences during FY 2023.

1. Formal Review of Citations

In FY 2023, VIDOSH did not have any cases that underwent the formal review process.

**4. Standards and Federal Program Change (FPC) Adoption**

In accordance with 29 CFR 1902, State Plans are required to adopt standards and Federal Program Changes (FPCs) within a six-month timeframe. State Plans that do not adopt identical standards and procedures must establish guidelines which are “at least as effective as” the federal rules. State Plans also have the option to promulgate standards covering hazards not addressed by federal standards. VIDOSH’s adoption of federal standards and FPCs continues to be untimely.

**Finding FY 2023-11 (FY 2021-13, FY 2020-11, FY 2019-11):** *Standards and Federal Program Changes*

VIDOSH’s adoption of federal standards and FPCs is not timely. There are 16 changes identified in the tables below that required a response. VIDOSH has not made an entry into the State Plan Application (SPA) module to indicate their intention on adoption of two federal standards and three federal program changes.

**Recommendation FY 2023-11:**

VIDOSH must respond to all standards and FPCs within the established timeframe. VIDOSH must maintain their account on the OSHA IT Support System so that they can update SPA timely.

The tables below provide a complete list of the federal directives and standards which required action in FY 2022 and FY 2023.

**Table A**

**Status of FY 2022 and FY 2023 Federal Standards Adoption**

***(May include any delinquent standards from earlier fiscal years)***

| **Standard** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910, 15, 17, 18, 26, 28  (11/5/2021) | 11/20/2021 | 4/20/2022 | N | N/A | 12/5/2021 | N/A |
| Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910  (11/5/2021) | 1/7/2022 | 11/8/2023 | N | N/A | 1/24/2022 | N/A |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2022  29 CFR 1903  (1/15/2022) | 3/15/2022 | 11/8/2023 | N | N/A | 7/15/2022 |  |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions  29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and I  (2/14/2022) | 4/14/2022 | 4/20/2022 | Y | Y | 8/14/2022 | 9/30/2022 |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2023  29 CFR 1903  (1/15/2023) | 3/15/2023 | No entry |  |  | 7/15/2023 |  |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses  29 CFR 1904  (7/21/2023) | 9/21/2023 | No entry |  |  | 1/21/2024 |  |

**Table B**

**Status of FY 2022 and FY 2023 Federal Program Change (FPC) Adoption**

***(May include any delinquent FPCs from earlier fiscal years)***

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| ***Adoption Required*** |  |  |  |  |  |  |
| Revised Combustible Dust National Emphasis Program  CPL 03-00-008  (1/30/2023) | 3/31/2023 | 3/10/2023 | Y | Y | 7/30/2023 | 2/15/2023 |
| National Emphasis Program on Warehousing and Distribution Center Operations  CPL 03-00-026  (7/13/2023) | 9/11/2023 | No entry |  |  | 1/9/2024 |  |
| ***Equivalency Required*** |  |  |  |  |  |  |
| Compliance Directive for Cranes and Derricks in Construction Standard  CPL 02-01-063  (2/11/2022) | 7/3/2022 | 3/10/2023 | N | N/A | 11/3/2022 |  |
| OSHA Whistleblower Investigations Manual  CPL 02-03-011  (4/29/2022) | 10/11/2022 | 3/10/2023 | Y | Y | 2/11/2023 | 10/15/2022 |
| Severe Violator Enforcement Program (SVEP)  CPL 02-00-169  (9/15/2022) | 11/15/2022 | 11/8/2023 | Y | Y | 3/15/2023 | 1/8/2024 |
| Site-Specific Targeting (SST)  CPL 02-01-064  (2/7/2023) | 4/8/2023 | 11/8/2023 | N | N/A | 8/6/2023 | N/A |
| National Emphasis Program – Falls  CPL 03-00-025  (5/1/2023) | 6/30/2023 | No entry |  |  | 10/28/2023 |  |
| Consultation Policies and Procedures Manual  CSP 02-00-005  (9/29/2023) | 11/28/2023 | No entry |  |  | 3/27/2024 |  |
| ***Adoption Encouraged*** |  |  |  |  |  |  |
| OSHA’s Use of Small Unmanned Aircraft Systems  CPL 02-01-169  (12/22/2021) | 2/22/2022 | 4/20/2022 | N | N/A | N/A | N/A |
| National Emphasis Program – Outdoor and Indoor Heat-Related Hazards  CPL 03-00-024  (4/8/2022) | 6/8/2022 | 4/20/2022 | Y | Y |  | 9/15/2022 |

**5. Variances**

There were no variances issued in FY 2022 and FY 2023.

**6. STATE AND LOCAL government WORKER Program**

SAMM #6 (percent of total inspections in state and local government workplaces) was noted as 100% in FY 2023. This State Plan does not issue penalties for first-instance citations. The VI-OSH Act contains provisions for the issuance of failure-to-abate monetary penalties for those state and local government employers found not to be following applicable standards on a first-instance basis. VIDOSH’s review procedures are managed through a hearing examiner with the right to appeal to the Commissioner of Labor and the Virgin Islands Superior Court in lieu of the Review Commission as is the case in the federal program.

**7. WHISTLEBLOWER Program** – *SAMMs 14, 15, 16*

**Finding FY 2023-12 (FY 2022-14):** *Whistleblower Complaints*

During FY 2022, VIDOSH received five whistleblower complaints for processing. These cases

still have not been processed and investigated per the federal Whistleblower Investigations

Manual which VIDOSH has agreed to adopt. OIS was not updated to reflect the status of these

cases and all documents were not uploaded onto the system. Electronic files were not

maintained per directive CPL 02-03-009, “Electronic Case File (ECF) System Procedures for

the Whistleblower Protection Program,” which was adopted by VIDOSH.

In FY 2023, VIDOSH received three new whistleblower complaints. As of February 14, 2024,

these complaints had not been entered into OIS. There is no evidence that these complaints

have been screened. VIDOSH has no qualified staff to perform screening of whistleblower

cases. VIDOSH is not operating a whistleblower protection program that is at least as effective (ALAE) as OSHA.

**Recommendation FY 2023-12:**

VIDOSH staff must review and become familiar with the Federal Whistleblower Investigations

Manual. VIDOSH staff assigned to investigating whistleblower cases must take the required

series of whistleblower courses offered at the OSHA Training Institute, review available

archived OSHA webinars, attend any WB training offered throughout the year, and create

electronic work folders per the directive. Until VIDOSH has trained staff to investigate

whistleblower complaints effectively, VIDOSH must consider other options available to

handle complaints, including referring them to the Virgin Islands Public Employee Relations Board.

**8. Complaint About State Program Administration (CASPA)**

A CASPA was received on May 3, 2023 alleging that the State Plan did not respond and investigate the whistleblower complaint that was submitted in March 2, 2022, alleging discrimination by the Virgin Islands Water and Power Authority. The CASPA remains open because VIDOSH has not begun an investigation of this whistleblower case.

**9. Voluntary Compliance Program**

This State Plan does not operate a voluntary protection program.

**10. STATE AND LOCAL GOVERNMENT 23(g) On-site CONSULTATION PROGRAM**

VIDOSH had one consultant in FY 2023 who conducted consultation visits. According to the MARC Report run on February 22, 2024, the consultant conducted 12 consultation visits. There were no consultation visits conducted in FY 2022.

The OIS Consultation Metrics Report, run on February 22, 2024, showed that there were seven initial, three follow-ups, and two training and education visits. Nine of these visits were identified as safety, and three were listed as addressing hazards related to both disciplines. The report noted that 58 serious hazards were identified with an average of 8.0 serious hazards per initial visit.

Only one consultation visit file was reviewed during the file review because this was the only file identified as closed. The other eleven consultation files from FY 2023 are still open.

This consultation follow-up inspection was conducted to address outstanding abatement from a July 24, 2018 consultation initial visit. The file contained field notes, a diary sheet, photos, an updated list of hazards, and evidence of abatement of all the hazards that were noted during the initial visit. The opening conference and closing conferences were held on March 1, 2023, and the report issued to the employer on August 17, 2023, which exceeded the 20 federal calendar days for issuance from the closing conference date.

**Observation FY 23-OB-04:** *Issuing Consultation Reports*

In the closed consultation file reviewed, the consultation report to the employer was not issued within 20 federal working days of the closing conference date in accordance with CSP 02-00-005, Consultation Policies and Procedures Manual.

**Federal Monitoring Plan FY 23-OB-04:** The Region will continue to monitor this issue by utilizing OIS reports.

**Finding FY 2023-13 (FY 2022-13, FY 2021-15, FY 2020-13, FY 2019-13):** *Correction of Serious Hazards*

The MARC Report that was run on February 22, 2024 for Measure #4A (percent of serious hazards corrected timely [<=14 days of latest correction due date]) was recorded at 57.14%. The reference standard is 100%. The report for Measure #5 identified 10 cases with overdue correction more than 90 days overdue.

**Recommendation FY 2023-13:** VIDOSH must ensure that the consultant follows procedures and completes case files in accordance with CSP 02-00-005, Consultation Policies and Procedures Manual.

**11. Private Sector 23(g) On-site Consultation Program**

Private sector consultation in the Virgin Islands is administered under a 21(d) grant.

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 2022-# or**  **FY 2022-OB-#** |
| --- | --- | --- | --- |
| FY 2023-01 | *OSHA Information System (OIS)*  VIDOSH conducted 39 inspections during FY 2023. Only seven of these 39 (18%) case files were closed in OIS and available for review when OSHA requested them in November 2023. The Open Inspection Report, run on February 19, 2024, identified 17 case files open more than 180 days (OIS Open Inspection Report). VIDOSH did not utilize OIS reports to ensure proper monitoring and closure of the case files. | VIDOSH must utilize OIS reports as a tool to effectively manage both the program and work product of its staff. This ensures proper monitoring and closure of case files in accordance with the adopted policy in its Field Operations Manual (FOM). | FY 2022-01  FY 2021-01  FY 2019-01  FY 2018-01 |
| FY 2023-02 | *Addressing Complaint Items*  In three of the four (75%) of the complaint inspection files reviewed, the evaluation of the complaint items was not adequate. | VIDOSH must ensure that all complaint items and other alleged hazards found during inspections are adequately evaluated. For example, utilizing air sampling to evaluate airborne hazards. VIDOSH should enroll staff in the OTI 2340 or 2341 Biohazards course because numerous complaints related to mold and indoor air quality issues were received. Due to the weather conditions on the island, these issues are prevalent in many buildings. | New |
| FY 2023-03 | *Investigating Fatalities*  VIDOSH did not perform a fatality investigation after two sanitation workers were shot and killed while in work status. | VIDOSH must ensure that all state and local government workplace fatalities are investigated. | New |
| FY 2023-04 | *Lack of Case File Documentation*  In six of seven (86%) of the files reviewed, there were no field notes. Three of the four (75%) complaint files were missing evidence that the 300 logs for the last three years and current year were reviewed or a statement that logs were not required. | VIDOSH must ensure the case files include the required documentation in accordance with its FOM. | FY 2022-04  FY 2021-05  FY 2020-04 |
| FY 2023-05 | *Adequate Evidence to Support Violations*  Two sets of citations issued in the seven closed files were reviewed. Both files lacked adequate employer knowledge documentation on the worksheets. The worksheets identified “exposing” as the evidence to support employer knowledge of the hazards. One of two (50%) had a worksheet in the case file that had no information for worksheet details. | VIDOSH must ensure that case files include the required documentation in accordance with its FOM. | FY 2022-05  FY 2021-06  FY 2020-05  FY 2019-05 FY18-OB-01 |
| FY 2023-06 | *Adequate Verification or Evidence of Abatement*  In three of three (100%) follow-up inspections reviewed, the follow-up either did not document how the hazards were abated or accepted abatement that was inadequate. In one inspection, the follow-up consisted of asking for a copy of the hospital’s written respirator program and then concluding the inspection. The citation issued was for development and implementation of a respiratory protection. The implementation of this program was not evaluated and confirmed through the inspection process. | VIDOSH must utilize strategies such as follow-up inspections, failure to abate (FTA) citations,  and 29 CFR 1903.19 provisions to ensure that abatement of cited hazards is achieved in a timely manner and improve case file documentation of abatement. | FY 2022-07  FY 2021-07  FY 2020-07  FY 2019-07  FY 2018-03 |
| FY 2023-07 | *Overdue Abatement*  The OIS Open Inspection Report run on February 19, 2024 showed that there were 22 inspection files with overdue abatement ranging from 28-917 days. | VIDOSH must utilize strategies such as follow-up inspections, FTA citations, and 29 CFR  1903.19 provisions to ensure that abatement of cited hazards is achieved in a timely manner. | FY 2022-05  FY 2021-09  FY 2020-08  FY 2019-08  FY 2018-04 |
| FY 2023-08 | *Petition for Modification of Abatement*  One of the files reviewed in the 2021 FAME contained a PMA. This PMA was granted even though it lacked the steps taken to correct the hazard during the correction period and used future tense “will” to describe interim steps. No certification of posting was provided. There was no indication in the diary sheet or in the file that VIDOSH responded to the PMA request from the employer.  This PMA issued was based on previous inspection #1448354 where a citation was issued for this same hazard alleged and documented in inspection #1508132. Correction was noted in OIS for the same hazard that a PMA was being requested under inspection #1508132. Multiple attempts to obtain a copy of inspection #1448354 were made to VIDOSH with no success.  This finding will remain open because there were no PMAs that were available to review during this evaluation period. | VIDOSH must ensure that procedures as stated in FOM Chapter VII (1903.14(a)) are followed for any PMA requested. | FY 2022-10  FY 2021-10  FY 2020-09  FY 2019-09 |
| FY 2023-09 | *Worker Involvement – Inspection Process*  Documentation was lacking in three of the six (50%) case files reviewed as to why union  representatives were not involved in the inspection process (opening conference, walkaround, and closing conference).  In five of seven (71%) of the files reviewed, there was no documentation to show that workers were interviewed. SAMM #13 (percent of initial inspections with worker walk around representation or worker interview) was reported at 89.74%. The FRL is 100%. | VIDOSH must ensure employee representatives and workers are involved in the inspection process. | FY 2022-10  FY 2021-11  FY 2020-OB-02 FY 2019-OB-04 |
| FY 2023-10 | *Worker Notification of Inspection Results*  In FY 2023, six of the seven case files reviewed showed union representation. Of those six case files, only one case file had citations issued. This file lacked documentation that the union was provided a copy of these citations. | VIDOSH must ensure that a copy of the citation is sent to the union representative as required in its FOM. | FY 2022-11  FY 2021-12  FY 2020-10  FY 2019-10  FY 2018-OB-03 |
| FY 2023-11 | *Standards and Federal Program Changes*  VIDOSH’s adoption of federal standards and FPCs is not timely. There are 16 changes identified in the tables below that required a response. VIDOSH has not made an entry into the State Plan Application (SPA) module to indicate their intention on adoption of two federal standards and three federal program changes. | VIDOSH must respond to all standards and FPCs within the established timeframe. VIDOSH must maintain their account on the OSHA IT Support System so that they can update SPA timely. | FY 2021-11  FY 2020-11  FY 2019-11 |
| FY 2023-12 | *Whistleblower Complaints*  During FY 2022, VIDOSH received five whistleblower complaints for processing. These cases still have not been processed and investigated per the Federal Whistleblower Investigations Manual which VIDOSH agreed to adopt. OIS was not updated to reflect the status of these cases, and all documents were  not uploaded into the system*.* Electronic files were not maintained per directive CPL 02-03-009, “Electronic Case File (ECF) System Procedures for the Whistleblower Protection Program” which was adopted by VIDOSH.  In FY 2023, VIDOSH received three new whistleblower complaints. As of February 14, 2024, these complaints had not been entered into OIS. There is no evidence that these complaints have been screened. VIDOSH has no qualified staff to perform screening of whistleblower cases. VIDOSH is not operating a whistleblower protection program that is at least as effective (ALAE) as OSHA*.* | VIDOSH staff must review and become familiar with the federal Whistleblower Investigations Manual. VIDOSH staff assigned to investigating whistleblower cases must take the required series of whistleblower courses offered at the OSHA Training Institute, review available archived OSHA webinars, attend any WB training offered throughout the year, and create electronic work folders per the directive. Until VIDOSH has trained staff to investigate whistleblower complaints effectively,  VIDOSH must consider other options available to handle complaints, including referring them to the Virgin Islands Public Employee Relations Board. | FY 2022-14 |
| FY 2023-13 | *Correction of Serious Hazards*  The MARC Report, run on February 22, 2024 for Measure #4A (percent of serious hazards corrected timely [<=14 days of latest correction due date]), was recorded at 57.14%. The reference standard is 100%. The report for Measure #5 identified 10 cases with overdue correction more than 90 days overdue. | VIDOSH must ensure that the consultant follows procedures and completes case files in accordance with CSP 02-00-005, Consultation Policies and Procedures Manual. | FY 2022-13  FY 2021-15  FY 2020-13  FY 2019-13 |

| **Observation #**  **FY 2023-OB-#** | **Observation#**  **FY 2022-OB-# *or* FY 2021-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2023-OB-01 | FY 2022-OB-01  FY 2021-OB-01  FY 2020-OB-01 | *Inspection Coding*  Two out of seven (29%) of inspection files reviewed were not coded under the state program strategic initiative in OIS for industries covered in the five-year strategic plan. All seven files reviewed were coded in OIS incorrectly for safety program development under the state program strategic initiative tab. The five-year strategic plan does not include safety program development as a target focus. | During the next FAME year, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further review. | Continued |
| FY 2023-OB-02 |  | *Unprogrammed Activity Auditing Report*  The OIS Unprogrammed Activity Auditing Report run on November 8, 2023 showed two complaints received in FY 2023 assigned for an inspection that were not related to an inspection. There was no evidence in OIS that an inspection had been conducted to evaluate these complaints. | The Region will continue to monitor this issue by utilizing the SAMM Report quarterly. | New |
| FY 2023-OB-03 | FY 2022-OB-02  FY 2021-OB-02 | *Timeliness of State Plan Response*  In 2023, VIDOSH did not respond to complaints within an average of five workdays from receipt. | The Region will continue to monitor this issue by utilizing the SAMM Report quarterly. | Continued |
| FY 2023-OB-04 |  | *Issuing Consultation Reports*  In the closed consultation file reviewed, the consultation report to the employer was not issued within 20 federal working days of the closing conference in accordance with CSP 02-00-005, Consultation Policies and Procedures Manual. | The Region will continue to monitor this issue by utilizing OIS reports. | New |
|  | FY 2022-OB-03 | *Health Lapse Time*  The FRL for average lapse time for health was +/-20% of the FRL of 66.01 days which equals a range of 54.82 to 79.32 days for health. VIDOSH’s average lapse time for health in FY 2022 was 86.67 days which was above the FRL. | The Region will continue to monitor this issue by utilizing the SAMM Report quarterly. | Closed |

| **FY 2022-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date (if Applicable)** | **Current Status**  **(and Date if Item is Not Completed)** |
| --- | --- | --- | --- | --- | --- |
| FY 2022-01 | *OSHA Information System (OIS)*  VIDOSH conducted 30 inspections during FY 2021. Only nine of the 30 (30%) case files were closed in OIS and available for review when requested in October 2021. VIDOSH did not utilize OIS system reports to ensure proper monitoring and closure of case files. | VIDOSH must utilize OIS reports as a tool to effectively manage both the program and work products of its staff. This ensures proper monitoring and closure of case files in accordance with adopted policy in the Field Operations Manual (FOM). | For FY 2023, the VIDOSH staff has been utilizing OIS reports for the effective monitoring and closure of case files in accordance with the FOM. OIS reports are being run on a weekly basis to provide information that will allow VIDOSH to accomplish this goal. Starting the week of October 1st, open inspections with pending abatement will be scheduled for follow-up inspections. All open inspections with citations that were not previously issued will be issued. | Not Applicable | Open  (As of September 30, 2023) |
| FY 2022-02 | *Safety Lapse Time*  The FRL for average lapse time for safety was +/-20% of the FRL of 52.42 days which equals a range of 41.94 to 62.90 days for safety. VIDOSH’s average lapse time for safety in FY 2022 was 121.50 days which was above the FRL. | VIDOSH must utilize OIS reports as a tool to effectively manage both the program and work product of its staff. This ensures proper monitoring and closure of case files in accordance with policy adopted in the FOM. | For FY 2023, the VIDOSH staff has been utilizing OIS reports for the effective monitoring and closure of case files in accordance with the FOM. OIS reports are being run on a weekly basis to provide information that will allow VIDOSH to accomplish this goal. As of the 3rd quarter of FY 23, the information provided by the OIS report indicates the lapse time for safety is at 62.83 days. VIDOSH will continue to provide in-house training as well as utilize external training sources, including OTI and shadowing another State Plan to ensure that average lapse is within the FRL. | September 30, 2023 | Completed |
| FY 2022-03 | *Complaint Notification*  In FY 2019, four of eight (50%) formal complaint case files and the one available phone/fax complaint case file lacked documentation that notification of the results of the inspection and/or the employer’s response was sent to the complainant. This finding could not be evaluated during the FY 2021 Comprehensive FAME because all sources of the eight complaints that were reviewed had the source listed as anonymous. | VIDOSH must ensure case files include all required forms and all letters or communications related to the complaint in accordance with VIDOSH’s FOM. | For FY 23, VIDOSH is sending inspection results letters to the complainants who requested a response. A copy of the letter is uploaded to the OIS electronic documents tab of the inspection case file. Newly hired compliance officers have received in-house training regarding this matter. | September 30, 2023 | Completed |
| FY 2022-04 | *Case File Documentation*  One inspection file was received only with an Unprogrammed Activity (UPA) summary report in the file for a facility located in Seattle, Washington. For the other eight files, eight of these inspection files were received with only the OIS Inspection Summary Report, rather than the complete inspection report, two files were missing field notes, and eight had only the UPA Summary Report rather than the complete UPA report in the file. Three of the files were missing photos and/or supporting documentation that were requested by VIDOSH from the employer during the inspection. Additionally, there was no indication in the diary sheet that this requested information was received before the file was closed and marked as an in-compliance inspection.  Also, in nine of nine (100%) of the case files reviewed, there was no OSHA 300 logs in the files or a statement that logs were not required. CSHOs were not collecting/including nor were they documenting that the logs were reviewed for injury/illness trends. | VIDOSH must ensure case files include the required documentation in accordance with VIDOSH’s FOM. | VIDOSH is committed to improving case file documentation of conducted inspections. Newly hired compliance officers are receiving in-house training on the components of case file documentation. Also, CSHOs are utilizing the OIS training module’s training video for case file documentation. A list of what documents are required to complete a hard copy case file was given to assist CSHOs. VIDOSH will initiate a mentoring relationship with the Region and another state plan to further improve case file documentation and issue progress improvements. VIDOSH’s management will attend the OTI course 9450, Advanced Legal Aspects for OSHA Managers course in FY 24. The two new CSHOs have completed the Legal Aspects course at OTI in FY 23. | Not Applicable | Open  (As of September 30, 2023) |
| FY 2022-05 | *Adequate Evidence to Support Violations*  During the 2019 FAME, the case file review revealed that seven of the 15 (47%) case files with citations lacked evidence to support the specific citations issued. For example, in four of the case files (two health and two safety) the violation worksheet (OSHA 1b) was missing, and in the other three (all safety) case files the violation worksheet was incomplete. There were no citations in the files reviewed so this finding could not be evaluated and will continue. | VIDOSH must ensure case files include the required documentation in accordance with VIDOSH’s | VIDOSH is committed to improving case file documentation of conducted inspections. Newly hired compliance officers are receiving in-house training on the components of case file documentation. Also, CSHOs are utilizing the OIS training module’s training video for case file documentation. A list of what documents are required to complete a hard copy case file was given to assist CSHOs. CSHOs have completed the Legal Aspects course at OTI. VIDOSH will partner with another State Plan office to receive comprehensive training for CSHOs through mentoring. CSHOs will conduct accompanied inspections with another State Plan. | Not Applicable | Open  (As of September 30, 2023) |
| FY 2022-06 | *Citations for All Apparent Violations*  Two of the nine files reviewed had evidence of hazards that were not issued citations. In one file, there were housekeeping, and storage hazards noted but no citations were issued. The employer was allowed to correct the hazards. A verbal response via phone was accepted for abatement. | VIDOSH must ensure that all hazards documented are cited per the FOM. | VIDOSH has been providing in-house training to CSHOs to ensure all hazards observed are evaluated and cited, if appropriate. VIDOSH management will implement a comprehensive training plan for CSHOs utilizing internal and external resources to improve hazard recognition skills. | September 30, 2023 | Completed |
| FY 2022-07 | *Adequate Verification or Evidence of Abatement*  During the FY 2019 review, VIDOSH accepted abatement responses from employers and closed the cases without adequate evidence in seven of the 15 (47%) case files reviewed. Since none of the closed files reviewed had citations issued and required abatement, this finding could not be evaluated and will continue. | VIDOSH must utilize strategies such as follow-up inspections, FTA citations, and 29 CFR 1903.19 provisions to ensure that abatement of cited hazards is achieved in a timely manner and improve case file documentation of abatement. | Employers are required to fill out an abatement certification sheet and submit it to VIDOSH for abatement verification of cited hazards. This sheet is a part of the issued citation package. Verbal responses are not being accepted. For those cases with overdue abatement, VIDOSH is utilizing follow-ups, and the issuance of FTAs with penalty and verbal communication with employers to achieve timely abatement. | Not Applicable | Open  (As of September 30, 2023) |
| FY 2022-08 | *Overdue Abatement*  The OIS Open Inspection Report, run on February 10, 2023, showed six inspection files from FY 2022 with overdue abatement. | VIDOSH must utilize OIS reports as a tool to effectively manage abatement of cited hazards. | Of the six inspections, one has been addressed with an inspection based on a new complaint filed. VIDOSH plans to schedule the remaining outstanding cases with follow-up inspections by the start of the new fiscal year. | Not Applicable | Open  (As of September 30, 2023) |
| FY 2022-09 | *Petition for Modification of Abatement*  One of the files reviewed in the 2021 FAME contained a PMA. This PMA was granted even though it lacked the steps taken to correct the hazard during the correction period and used future tense "will" to describe interim steps. No certification of posting was provided.  This PMA issued was based on previous Inspection #1448354 where a citation was issued for this same hazard alleged and documented in Inspection #1508132. Correction was noted in OIS for the same hazard that a PMA was being requested under Inspection #1508132. Multiple attempts to obtain a copy of Inspection #1448354 were made to VIDOSH with no success. | VIDOSH must ensure that procedures as stated in the Field Operations Manual (FOM) Chapter VII (1903.14(a)) are followed for any PMA request. | VIDOSH will not issue PMAs to employers that do not meet the criteria in accordance with Chapter VII (1903.14a) of the Field Operations Manual. | Not Applicable | Awaiting Verification  (As of September 30, 2023) |
| FY 2022-10 | *Worker Involvement – Inspection Process*  Documentation was lacking in 4 of the 4 (100%) case files explaining why union representatives were not involved in the inspection process (opening conference, walkaround, and closing conference).  In eight of nine (88%) of the files reviewed, other than an employer representative, there was no documentation to show that workers were interviewed. | VIDOSH must ensure that employer representatives and workers are involved in the inspection process. | For FY 23, VIDOSH ensures that documentation of case file reflects the participation or non-participation of employer/employee representatives during the inspection. When arriving on site, a union representative is requested. When none is available, VIDOSH will contact the union office to alert them of the inspection being conducted. | Not Applicable | Open  (As of September 30, 2023) |
| FY 2022-11 | *Worker Notification of Inspection Results*  In FY 2019, 17 of the 29 case files reviewed had unions. Of those 17 case files, seven (41%) case files with citations, lacked documentation that the union was provided a copy of the citation. This finding will continue because none of the files reviewed that had a union representative had citations issued. | VIDOSH must ensure that a copy of the citation is sent to the union representative as required in Chapter V of VIDOSH’s FOM. | For FY 23, when citations packages are certified mailed to the employer, a copy of the citations is also certified mailed to the union(s). A copy of the letter is uploaded in the OIS case file, as well as the hard copy case file. Newly hired CSHOs have been in-house trained to ensure this area is addressed. | Not Applicable | Open  (As of September 30, 2023) |
| FY 2022-12 | *Consultation Case File Documentation*  Adequate documentation was lacking in the consultation case files reviewed during the FY 2019 FAME review. No consultation visits were conducted in FY 2021 or FY 2022. | VIDOSH must ensure that the consultant follows procedures and completes case files in accordance with CSP 02-00-004. | The newly hired consultant is utilizing the OIS consultation training module to assist in ensuring the proper procedures are followed and case files are completed in accordance with CSP 02-00-005. The consultant participated in the OTI training class 1501, Introduction to Onsite Consultation. VIDOSH will implement a comprehensive internal/external training program for the consultant to ensure proper documentation of consultation visits | September 30, 2023 | Completed |
| FY 2022-13 | *Correction of Serious Hazards*  Case files reviewed showed deficiencies in obtaining adequate correction of serious hazards. | VIDOSH must ensure that the consultant follows procedures and completes case files in accordance with CSP 02-00-004. | VIDOSH will create and implement an abatement form for employers to submit their abatement information for hazards documented in the visit. | Not Applicable | Open  (As of September 30, 2023) |
| FY 2022-14 | *Whistleblower (WB) Complaints*  During FY 2022, VIDOSH received five WB complaints for processing. These cases were not processed  VIDOSH staff must review and become familiar with the federal Whistleblower Investigations Manual which VIDOSH has agreed to adopt. OIS was not updated to reflect the status of these cases and all documents were not uploaded onto the system. Electronic files were not maintained per directive CPL 02-03-009, “Electronic Case File (ECF) System Procedures for the Whistleblower Protection Program” which was adopted by VIDOSH. VIDOSH is not operating a WB protection program that is at least as effective (ALAE) as OSHA. | VIDOSH staff must review and become familiar with the federal Whistleblower Investigations Manual. VIDOSH staff assigned to investigating whistleblower cases must retake the Basic 1420 Whistleblower Training Course, review available archived OSHA webinars, attend any WB training offered throughout the year, and create electronic work folders per the directive. Until VIDOSH has trained staff to investigate whistleblower complaints effectively, VIDOSH must consider other options available to complaints including referring them to the Virgin Islands Public Employee Relations Board. | VIDOSH will review the open WB complaints and contact each of the complainants to determine the status of the investigation. VIDOSH is consulting with the regional staff for guidance in handling these complaints. The WB investigator will enroll in WB classes at OTI and virtually on Blackboard. The investigator will shadow another State Plan office to review their investigative procedures. | Not Applicable | Open  (As of September 30, 2023) |

| State Plan: SAMM Number | State Plan: SAMM Name | State Plan: Data | FY 2023 Further Review Level | FY 2023 Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 9.74 | 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) | 7.67 | 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) | N/A | 1 | N/A – The State Plan did not conduct any complaint investigations in FY 2023.  The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of work days to initiate complaint investigations (federal formula) | N/A | 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) | 0% | 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. |
| 5a | Average number of violations per inspection with violations by violation type (SWRU) | 2.86 | +/- 20% of 1.75 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.40 to 2.10 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.19 | +/- 20% of 0.89 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.71 to 1.07 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 100% | 100% | Since this is a State and Local Government State Plan, all inspections are in state and local government workplaces. |
| 7a | Planned v. actual inspections (safety) | 14 | +/- 5% of  25 | 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 23.75 to 26.25 for safety. |
| 7b | Planned v. actual inspections (health) | 25 | +/- 5% of  20 | 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 19 to 21 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | N/A | +/- 25% of  $3,625.21 | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
| 8a | Average current serious penalty in private sector  (1-25 workers) | N/A | +/- 25% of  $2,348.03 | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
| 8b | Average current serious penalty in private sector  (26-100 workers**)** | N/A | +/- 25% of  $4,167.28 | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
| 8c | Average current serious penalty in private sector  (101-250 workers) | N/A | +/- 25% of  $6,052.04 | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
| 8d | Average current serious penalty in private sector  (greater than 250 workers) | N/A | +/- 25% of  $7,331.41 | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
| 9a | Percent in-compliance (safety) | 0% | **+/-**20% of 31.73% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.38% to 38.08% for safety. |
| 9b | Percent in-compliance (health) | 18.18% | +/- 20% of  43.82% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.06% to 52.58% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | N/A | 100% | N/A – The State Plan did not have any work-related fatalities in FY 2023.  The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 53.90 | +/- 20% of 55.23 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.18 to 66.28 for safety. |
| 11b | Average lapse time (health) | 64.82 | +/- 20% of 69.72 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.78 to 83.66 for health. |
| 12 | Percent penalty retained | N/A | **+/-**15% of 71.84% | N/A – This is a State and Local Government State Plan and is not held to this SAMM.  The further review level is based on a three-year national average. |
| 13 | Percent of initial inspections with worker walk around representation or worker interview | 89.74% | 100% | The further review level is fixed for all State Plans. |
| 14 | Percent of 11(c) investigations completed within 90 days | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 17 | Percent of enforcement presence | N/A\* | +/- 25% of  0.93% | N/A – This is a State and Local Government State Plan and is not held to this SAMM.  The further review level is based on a three-year national average. |

\*NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 14, 2023, as part of OSHA’s official end-of-year data run**.**