

Appendix A
FY 2010 Alaska State Plan (AKOSH) Enhanced FAME Follow-up Report
Summary of New and Continuing Findings and Recommendations

Rec #	Findings	Recommendations	Related FY 09 Rec #
10-1	Case file reviews of two fatal accidents revealed that AKOSH is not sending out the second letter of the investigation results to the families of the deceased victims.	Ensure that at the conclusion of fatality investigations, AKOSH apprises the next of kin, in writing, of investigation outcomes and provide copies of citations. Insert copies of all such correspondence in the case file.	Repeated. 09-03
10-2	The state conducted a total of 375 inspections in FY 2010, representing an increase of five percent compared to the 355 inspections it conducted in FY 2009. Of the 375 inspections, 176 (47%) were programmed and 199 (53%) were unprogrammed. Although these numbers reflect an increase in enforcement activity in comparison to the previous year, the state fell short of its FY 2010 goal of 465 inspections.	Ensure an effective presence in private and public sector workplaces by increasing the number of programmed enforcement inspections using targeting tools such as the High Hazard Targeting plan, the Construction List, and Special Emphasis Programs.	Repeated. 09-04
10-03	Documentation of employer knowledge was deficient because AKOSH's compliance officers relied, in most cases, on the term "reasonable diligence" to establish that the employer knew the hazardous condition existed. In every instance, there was sufficient evidence to develop knowledge through demonstrated "actual," "imputed," or "constructive" actions on the part of the employer.	Factually document employer knowledge in case files with as much specificity as feasible.	Repeated. 09-01
10-04	OSHA determined that in 24 of the 39 reviewed case files, there were violations that were classified as "Other than Serious", where information in the case file indicated the hazard should have been classified as "Serious". Examples of hazards identified in the case files were fall hazards in general industry of up to 16 feet, chemical exposures where the hazard was listed as cancer, amputation hazards, and electrical shock where it would have been appropriate to group similar "Other than Serious" conditions into a "Serious" Violation.	Review case files and classify conditions as "serious" based on the hazard and in accordance with the FOM.	New.
10-05	Severity and probability were consistently not completed for "Other than Serious" violations in a majority of the reviewed cases.	Require complete documentation of probability and Severity on the OSHA 1-B to include "Other than Serious" violations.	New.
10-06	Timely hazard abatement verification (within 14 days of the abatement date) for the state was 49% for private industries and 27% for Public Industries.	Ensure that citation abatement verification is completed and updated in a timely manner.	New.

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10-07	<p>The alleged violation description (AVD) for numerous citations listed the hazards on the AVD as “safety hazards” or “health hazards”. The appropriate terminology should reflect the direct hazard such as “burns”, “fire hazards”, or “amputations”. In addition, the AVD’s in several case files did not include measurements of fall hazards or voltage of electrical hazards where the information was readily available in the case file.</p>	<p>Document measurements if appropriate and accurately describe the safety or health hazard in the alleged violation description.</p>	<p>New.</p>
10-08	<p>In two reviewed health case files it was noted that the Compliance Officer did not conduct sampling where it would have been appropriate. One case involved noise citations where the employer was cited for not providing sampling for noise where work conditions created a change in noise, but no sampling was conducted by AKOSH to document an alleged violation. In another case, the Compliance Officer did not conduct air sampling for formaldehyde on a complaint involving a funeral home. Citations were proposed for exposure to formaldehyde but no sampling was conducted to show if there were overexposures.</p>	<p>Conduct health sampling to confirm violations of health standards.</p>	<p>New.</p>
10-09	<p>On one case file reviewed, a complaint inspection was initiated on an AKOSH VPP site. The inspection was conducted without coordination between the VPP manager and the Chief of Enforcement to ensure they were both aware of the complaint and the resultant inspection. Citations were issued in the case involving amputation hazards. There was no follow up between the VPP manager and the Enforcement section regarding trends identified in the inspection process. OSHA interviewed both the AKOSH Enforcement and Consultation Chiefs and it was apparent that no formal communication exists to ensure coordination between the Consultation and Enforcement branches. In addition, after the notice is made of an enforcement inspection, the results of the inspection are required to be forwarded to the VPP Program Manager for review. Upon receipt of the final enforcement report, the VPP Manager must determine if there are deficiencies within the safety and health management system that might affect the status of the VPP site.</p>	<p>Ensure that inspection information of enforcement activities and resultant citations, if any, is shared with the consultation manager for VPP approved worksites and then a determination made as to that worksite’s existing status in VPP.</p>	<p>New.</p>

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10-10	During FY 2010, AKOSH’s citation lapse times was 56.3 days for safety inspections and 75.3 days for health. Compared to FY 2009, this represents a 12-day increase in the safety lapse time (43.88 days in FY 2009), and an increase of over twenty two (22) days in the health lapse time (53.58 in FY 2009). AKOSH’s FY 2010 lapse times compare unfavorably to the averages for state plans as a whole. Those lapse times were 47.3 and 61.9 days for safety and health cases, respectively.	Reduce citation issuance lapse times.	New.
10-11	AKOSH uses an 11c prima facie screening sheet in most cases. In at least five cases, however, no screening form could be located. That makes it difficult to know whether the complaint had been properly screened. AKOSH also does not send screen out letters. In one case, there may have been jurisdiction for the employee to file under the National Transit Systems Security Act (NTSSA).	Ensure that proper documentation is maintained to explain AKOSH’s reasons for screening out discrimination complaints especially since screen out letters are not provided to those who inquire about filing complaints.	New.
10-12	During 11c case file reviews, a complaint was identified as not timely filed. Although the case was dismissed, it should have been dismissed for being untimely or the reasons for tolling the statute of limitations should have been discussed in the Final Investigative Report (FIR).	Ensure that discrimination complaints are dismissed if they are not timely filed or that the FIR adequately explains the reason for tolling the statute of limitations, i.e., explains why AKOSH is accepting a late filing.	New.
10-13	AKOSH continues to allow written statements submitted by the parties to substitute for formal interviews in 11c cases. In one case, AKOSH relied on an unsigned written statement provided by the employer instead of interviewing a key witness. This situation is particularly troubling when complainant interviews are missing. The investigator sends correspondence between the parties as one rebuts what the other has submitted. The investigator should take more control of the investigation by cutting off the endless written rebuttals by scheduling interviews of the parties and witnesses.	Interview all relevant 11c witnesses, especially all complainants, and don’t accept written statements as a substitute for a formal interview. If it is impossible to interview a complainant or a key witness, an effort should be made to receive a signed affidavit. The situation should be documented in the file and an explanation should be included in the FIR. Once AKOSH receives the written complaint and written response from the employer, it should schedule interviews instead of allowing written rebuttals.	Repeated. 09-08
10-14	11c complaint FIRs sometimes did not explain the evidence clearly and specifically. In one case, the FIR failed to mention which individual fired the complainant and what incident directly led to the complainant’s termination to clearly show why the complaint lacked merit. In three cases, more information about employer knowledge	Ensure the most relevant evidence is documented in the 11c FIR with sufficient specificity (e.g., dates, times, individuals involved, etc.) instead of relying on general statements (e.g., “the complainant’s performance was lacking”).	New.

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10-15	<p>In three 11c cases, more information about employer knowledge was needed. A CASPA was filed in two of these cases. AKOSH should have discussed inferred employer knowledge, i.e., the Small Workplace Doctrine. Employer knowledge of one protected activity was discussed, but there were other protected activities. Also the case was dismissed even though the employer failed to follow its progressive disciplinary policy.</p>	<p>Document in the FIR that AKOSH considered evidence of inferred knowledge (i.e., Small Workplace Doctrine) if there is no evidence of actual employer knowledge.</p>	New.
10-16	<p>In three 11c cases, more information about employer knowledge was needed. A CASPA was filed in two of these cases. AKOSH should have discussed inferred employer knowledge, i.e., the Small Workplace Doctrine. Employer knowledge of one protected activity was discussed, but there were other protected activities. Also the case was dismissed even though the employer failed to follow its progressive disciplinary policy.</p>	<p>Analyze employer knowledge, nexus, and the employer's reasons for the adverse action for each protected activity in cases in which the complainant alleges more than one protected activity.</p>	New.
10-17	<p>In one 11c case, the settlement agreement included an employment waiver . This is contrary to OSHA's guidelines for approving settlement agreements.</p>	<p>Ensure that AKOSH follows OSHA's policy for approving settlement agreements that include waivers of future employment.</p>	New.