

**Appendix B**  
**Alaska State Plan**  
**FY 2010 Enhanced FAME Follow-up Report Prepared by Region X**  
**Status of FY 2009 Findings, Recommendations, and Corrective Actions**

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
<b>09-1</b>	Documentation of employer knowledge [in fatality and accident case files] 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.	AKOSH has instructed Enforcement Officers to work harder to collect and document available evidence, such as witness statements and/or documents, to demonstrate employer knowledge of an alleged hazardous condition. Enforcement Officers will be instructed to avoid reliance solely on the "reasonable diligence" standard to establish employer knowledge of an alleged hazardous condition. AKOSH has not experienced significant problems with adequate support for citations. The AKOSH contest rate is relatively low and AKOSH has a very high success rate with cases that go before the Alaska Occupational Safety and Health Review Board.	Credible employer knowledge documented on OSHA 1B forms.	Repeated in FY2010.
<b>09-2</b>	AKOSH did not adequately document settlement agreement decisions.	Use a structured informal conference worksheet to document the employer's position with regard to cited violations as well as the Chiefs rationale for proposing settlement	The need for a structured informal conference worksheet is unclear. OSHA's evaluation of AKOSH's informal conference process reflected that, "For cases where informal conferences were held, adequate notes were in the file to document the decision-making process behind violation deletions, abatement date revisions, or penalty reductions." The only issue appears to be that OSHA found it difficult, in some cases, to determine the employer's position with respect to the citation and the rationale for proposing settlement. This recommendation does not appear to produce a critical impact on the effectiveness of the AKOSH program in terms of the primary goal to reduce workplace illnesses, injuries and	State is using the informal conference worksheet provided by Region X.	Completed.

**Appendix B Alaska State Plan**

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
			fatalities, but is aimed more at improving the efficiency of OSHA’s ability to review AKOSH performance.		
09-03	Four of [the] five fatality-related cases included the initial condolence letter from AKOSH to the victim’s next of kin, and there were no indications in any of the files that the citation or a letter had been sent by AKOSH to the next of kin explaining the outcome of the investigation. In only one instance did the state include the family in communication after the citation was issued; this was achieved by a telephone call in lieu of a letter.	Ensure that condolence letters are sent in every fatality case. At the conclusion of fatality investigations, apprise next of kin, in writing, of investigation outcomes and provide copies of citations. Insert copies of all such correspondence in case file.	AKOSH has implemented this recommendation. In FY2010 the Regional Office sent Region X instructions to Area Directors for dealing with family members.	Condolence letters included in all FAT/CAT files.	Repeated in FY2010
09-04	For the past three years, AKOSH did not meet its inspection goals [due to staffing problems]. The state conducted a total of 355 inspections in FY 2009, ...an increase of 24% compared to the 266 inspections it conducted in FY 2008, ...[but] the state still fell short of its FY 2009 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.	AKOSH will strive to implement this recommendation. However, staff turnover and other issues with human resources or mandated changes in policies or procedures may have a negative impact on efforts to increase inspections in the future.	Monitor and discuss progress at each quarterly meeting.	Repeated in FY2010.
09-05	Complainant filed concurrent 11(c) complaints with AKOSH and federal OSHA, and there was miscommunication between the agencies.	In cases where a complainant files discrimination complaints concurrently with AKOSH and OSHA, the State and OSHA should communicate regularly and share information about their respective investigations.	AKOSH supports this recommendation. The State will communicate and share information with OSHA about its investigation when complaints are filed concurrently with both agencies.	Pending further discussion and Federal review.	Completed.
09-06	AKOSH’s settlement agreements continue to allow for unemployment benefits to be deducted. The OSHA Whistleblower Investigations Manual states that “unemployment compensation benefits may never be considered as a back pay offset.”	AKOSH should refrain from including provisions in its settlement agreements that allow for deducting unemployment benefits.	AKOSH has implemented this recommendation.	Improved settlement agreements.	Completed.
09-07	Closing letters to the parties [are not stating] that the complaint was settled and copies of the letters [are not being] maintained in the case file.	Closing letters to the parties should state that the complaint was settled and copies should be kept in the file.	AKOSH has implemented this recommendation.	Closing letters conform to policy.	Completed.

**Appendix B Alaska State Plan**

<b>Rec #</b>	<b>Findings</b>	<b>Recommendations</b>	<b>Corrective Action Plan</b>	<b>State Action Taken</b>	<b>Status</b>
<b>09-08</b>	AKOSH continues to use statements submitted by a complainant and/or a witness to substitute for an interview even after the complaint has been docketed and filed.	Discontinue the practices of using statements submitted by complainants and witnesses as substitutes for interviews.	AKOSH will vigorously pursue witness interviews in lieu of using statements submitted by complainants and witnesses. When conditions prohibit witness interviews, AKOSH will use statements submitted by complainants and/or witnesses as evidence.	Interview statements in investigative files.	Repeated in FY2010
<b>09-09</b>	[Witness interviews are not covering the four prima facie elements, and are not indicating if one element is missing.]	Ensure that witness interviews cover the four prima facie elements.	AKOSH has implemented this recommendation.	Interview statements in investigative files.	Completed.
<b>09-10</b>	The Final Investigative Reports (FIR) do not state the date that the discrimination complaint was filed.	The FIR should include the date the complaint was filed with AKOSH. The date should be written on the first page of the FIR.	AKOSH has included this date in the chronology in the past but will add the complaint date to the first page of the FIR in accordance with this recommendation.	Properly documented FIRs.	Completed.
<b>09-11</b>	The state's FIRs include a section on coverage; however, they do not describe how the employer is covered by the Act in order to establish jurisdiction.	The coverage description in the FIR should include information that is similar to what is described in a safety and health inspection report, i.e., the number of employees, whether the employer is private or public, and union status, (along with a brief description of the company.)	AKOSH will implement this recommendation and include background information about the respondent.	Properly documented FIRs.	Completed.