

Appendix B
Minnesota State Plan
FY 2010 Enhanced FAME Follow-up Report Prepared by Region V
Status of Findings, Recommendations, and Corrective Actions

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-1	(18%) of non-formal complaint responses (from employers) were classified as “accurate” without sufficient information provided by the employer to show that abatement of the alleged hazard has occurred or that no hazard existed.	Ensure that an adequate response to a non-formal complaint is received by MNOSHA in which the employer provides sufficient information to show abatement of the alleged hazard has occurred or the lack of any hazard.	MNOSHA examined its documentation requirements. The employer’s responses have been considered an abatement certification, i.e., a signed notice that corrective actions have been completed or the necessary investigation has occurred. In most cases, the alleged hazards are of a non-serious nature and further documentation is not sought. In other cases, a follow-up call is made with the employer and staff may have omitted to note this in the file. The complainant is advised that the employer’s response to the alleged hazards must be posted in the workplace.	MNOSHA ADM 3.16 <i>Administrative Procedures for Handling Complaints and Information Requests</i> was revised on September 16, 2010 to require abatement documentation on complaint items where potential high gravity serious hazards are alleged. The 2010 FAME on-site revealed one instance, of the 10 non-formal complaint files reviewed, where abatement documentation was not sought where appropriate. MNOSHA is internally monitoring their performance in this area. This item is ongoing and MNOSHA appears to be on the right track.	Continuing
09-2	For fatality investigations, the form OSHA-170 was not filled out in adequate detail.	Ensure that the OSHA-170 narrative contains enough detail to provide a third party reader of the narrative with a mental picture of the fatal incident and the factual circumstances surrounding the event.	Federal OSHA requires that the OSHA-170 be submitted and saved as final as soon as MNOSHA becomes aware of a workplace fatality and determines that it is within its jurisdiction, even if most of the data fields are left blank. Often, the information that the OSHI has gathered at this time is not complete. MNOSHA enters the fatal incident details in the inspection file. MNOSHA uses the OSHA-1AC, Narrative, particularly Section F, Summary of Complaint, Referral, Accident or Follow-up Findings to document the details of the fatal incident and the	Updates to the Minnesota OSHA Operations System Exchange (MOOSE) Manual, specifying that the OSHA-170 narrative be updated later in the investigation and that it contain sufficient detail, have not been received. MNOSHA is currently revising the manual and will forward it to Federal OSHA with the next round of plan supplements. The 2010 FAME on-site revealed four instances, of the seven	Continuing

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			<p>factual circumstances surrounding the event. MNOSHA's MOOSE system allows users to access the incident details by simply opening the file and reading the narrative. Entering identical data into the 170 is redundant. However, MNOSHA will revise its MOOSE Manual to specify that the OSHA-170 narrative be updated later in the investigation and that it contain enough detail to provide a third party reader of the narrative with a mental picture of the fatal incident and the factual circumstances surrounding the event.</p>	<p>fatality inspection files reviewed, where the OSHA-170 was not completed with sufficient detail. MNOSHA is internally monitoring their performance in this area. This item is ongoing and MNOSHA appears to be on the right track.</p>	
09-3	<p>Data Initiative inspections were conducted without information contained in the file to explain the Compliance Officer's discussions on-site as it pertained to the injury and illness information reviewed during the inspections, including information showing the Compliance Officer's evaluation of the company's OSHA 300 logs.</p>	<p>Ensure that Compliance Officers discuss and document the company's LWDIR (lost workday injury rate) to determine if there are specific work areas to be included in the inspection and document the evaluation as it relates to the on-site activity.</p>	<p>MNOSHA disagrees. Each year MNOSHA uses Data Initiative Safety Inspections as a priority. MNOSHA completes all of its safety data initiative inspections each year throughout the state in accordance with ADM 2.1, Scheduling, and the FCM. The reference to the excerpt of the FCM quoted in this concern is incorrect. The language quoted is found in Chapter III, section F.3.c.(1). It should be noted that section F is titled "Opening Conference," 3. is titled, "Other Opening Conference Topics," and c. (1) is specific instructions for checking all records required by the Act. This excerpt of the FCM is not limited to or related to the scheduling of data initiative inspections. OSHIs are trained to discuss the 300 log data with the ER in order to obtain information or insights the ER may have and to answer any of the ER's 300 log related</p>	<p>MNOSHA's supervisors will continue to ensure OSHIs investigate the company's LWDIR to determine injury and hazard trends relating to the inspections.</p>	Completed

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			questions. However, OSHIs are not required to document every topic of discussion that occurs, as this would be an impractical and over-burdensome requirement of OSHIs.		
09-4	Non-serious (other-than-serious) violations are classified as situations where an accident or exposure, resulting from a violation of a standard, would normally cause only minor injury or illness requiring one-time-only first aid treatment and subsequent observation. Recordable injury or illness is not a criterion in determining if a violation is classified as serious or not.	Ensure the determinations for violation classification as "other-than-serious" are independent of OSHA recordability requirements.	MNOSHA disagrees. OSHA based this recommendation on a sentence in the FCM that states a serious violation is one which "would cause a recordable injury or illness." MNOSHA's determination of whether a violation is serious does not rely solely on whether or not an injury is recordable. MN Stat. § 182.651, subd. 12, defines a serious violation as "a violation of any standard, rule, or order other than a de minimis violation which is the proximate cause of the death of an employee. It also means a violation of any standard, rule, or order which creates a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such a place of employment, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation." OSHA's recommendation to separate classification from recordability is therefore unnecessary.	MNOSHA's citation system does not allow for classification of hazards that might normally result in minor injuries of a magnitude less than requiring one-time-only first aid treatment and subsequent observation. MNOSHA will change their definition of non-serious to align with Federal OSHA's definition of other-than-serious. This item is ongoing and MNOSHA appears to be on the right track.	Continuing
09-5	In 41% of the cases reviewed, penalty reduction recommendations for good faith credit were applied at levels higher than warranted.	Ensure good faith credit is applied and documented appropriately in the case files.	MNOSHA refutes federal OSHA's assertion that good faith credits were incorrectly applied in 15 of 37 inspection files. Chapter VI, Section B. 4.a.1 and 2 rely on the investigator's	MNOSHA provided refresher training for all field staff on determining and documenting good faith credits in September 2010. The 2010	Continuing

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			discretion to determine the difference between incidental deficiencies (30% credit), and more than incidental deficiencies (20% credit), of an employer's safety and health program. Investigator discretion is further relied upon to determine if an employer's safety and health program, either formal or informal, is not clearly implemented or effective or is a canned type program (10%). Zero percent credit is given where a FTA or willful citation is issued or the employer has no safety or health program. MNOSHA contends that in 10 of the 15 cases identified by federal OSHA, the investigator did document satisfactorily their justification of the good faith credits applied. However, MNOSHA does recognize that documentation was not satisfactory in 14% of the cases reviewed.	FAME on-site revealed three inspections files which contained good faith penalty reduction applications at one level higher than warranted. In one case, a 20% reduction was given where 10% was appropriate. In the other two cases, 10% penalty reductions were given where 0% reductions were appropriate. MNOSHA is internally monitoring their performance in this area. This item is ongoing and MNOSHA appears to be on the right track.	
09-6	Of the [57] cases reviewed, abatement documentation for corrective action following inspections was not requested in any circumstance.	Ensure, when required, the receipt of documented proof of abatement.	MNOSHA did not adopt & is not required to follow, 1903.19, but follows its own Abatement Verification rule, Minn. Rules 5210.0532. The rule requires documentation when the citation indicates it is necessary. MNOSHA OSHIs are instructed to discuss abatement methods with ERs during all CCs. The discussion includes feasibility, timeframe for completion, as well as the need to submit progress reports. The citation contains language describing the need for progress rpts & the citation package which the ER receives includes a Mandatory Progress Report form. MNOSHA has obtained	MNOSHA ADM 3.4 <i>Abatement Verification</i> was revised on August 20, 2010 to include definitions for Certification of Abatement and Documentation of Abatement, as well as guidance on when each type of abatement verification is required. MNOSHA ADM 3.4 revisions were not consistent with federal requirements for abatement documentation relating to Willful, Repeat, and, in certain situations, Moderate or	Continuing

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			abatement certification from ERs, yet lacked documentation sought by OSHA. Certification includes a signed notice from the ER that corrective actions have been completed and the information in the progress rpt is accurate. In practice, this is not entirely inconsistent with OSHA, which does not require documentation on all items, just certain violations, such as willful, repeat and designated serious items.	Low Gravity Serious violations as outlined in OSHA's Field Operations Manual CPL 02-00-148 Chapter 7, Section VI.A and C. ADM 3.4 requires abatement documentation for all citations with a combined severity and probability rating of E5 or greater (high gravity serious). MNOSHA trained field staff on correct application of abatement documentation in September 2010. The limited sampling size of the 2010 FAME on-site activity did not allow federal OSHA to review the updated procedures in practice. MNOSHA is internally monitoring their performance in this area. This item remains open as it has not been effectively addressed by MNOSHA.	
09-7	In 31% of the 13 fatality inspection files and in 21% of the 25 files reviewed where serious hazards (violations) were identified and the abatement was classified as "Corrected During Inspection (CDI), No Abatement Documentation Required," the specific information outlining the corrective action observed by the Compliance Officer was not documented appropriately in the case file.	Ensure that] "Corrected During Inspection (CDI), No Abatement Documentation Required," is being applied appropriately, and the specific information outlining the corrective action observed by the Compliance Officer is documented in the case file.	MNOSHA did not adopt and is not required to follow, 1903.19, but rather follows its own Abatement Verification rule, Minn. Rules 5210.0532, which was adopted March 30, 1998. MNOSHA understands the importance of hazard abatement and its concurrent documentation needs. MNOSHA has obtained abatement certification from employers, yet lacked documentation sought by federal OSHA. MNOSHA developed new abatement	MNOSHA policies and procedures do not contain guidance on the application of and documentation practices for CDI as outlined in OSHA's Field Operations Manual CPL 02-00-148 Chapter 7, sections V and VI. MNOSHA ADM 3.4 <i>Abatement Verification</i> was revised on August 20, 2010 to incorporate abatement	Continuing

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			documentation guidelines for its staff. The guidelines outline which documents an employer must provide to show abatement as well as the case file documentation desired. MNOSHA addressed the case file documentation needed when hazards are abated while inspectors are on site.	documentation guidelines for the staff. MNOSHA trained field staff on correct application of abatement documentation in September 2010. Review of ADM 3.4 revealed that it did not contain any specific information on application of CDI. In the only inspection file within the sample set where CDI was used, CDI as abatement verification was applied when it was not appropriate to do so (Repeat violations of 1926.651(k)(2) <i>Competent person did not remove employees from hazards</i> and 1926.652(a)(1) <i>No cave-in protection</i>). The date of issuance was July 29, 2010 in this case, well before MNOSHA's dates of corrective action. This item remains open as it has not been effectively addressed by MNOSHA.	
09-8	Petition for Modification of Abatement (PMA) requests are granted without employers providing all the required information in the requests.	Ensure (that) PMA requests contain all the required information before accepting the requests and extending the (abatement) dates.	MNOSHA did not adopt and is not required to follow, 1903.19, but rather follows its own Abatement Verification rule, Minn. Rules 5210.0532, which was adopted March 30, 1998. MNOSHA accepts the finding that some PMAs were granted based on incomplete information, most often via the Mandatory Progress Report. However, in many cases the employer	MNOSHA ADM 3.5 <i>Extension of Abatement Dates – PMA Processing</i> was revised on August 20, 2010. A PMA form is included in the citation package mailed to the employer. MNOSHA no longer accepts PMA requests on employer progress reports. The limited sampling size of	Continuing

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			included information similar to what would be contained in a PMA request. MNOSHA notes that the Mandatory Progress Report form must be posted in the workplace for employees to see and a copy must be given to all affected employee representatives. In addition, Minn. Rules 5210.0542 requires MNOSHA to wait 10 days before responding in order to give employees the time to notify MNOSHA of any concerns.	the 2010 FAME on-site activity did not allow federal OSHA to review the updated procedures in practice. MNOSHA is internally monitoring their performance in this area. This item is ongoing and MNOSHA appears to be on the right track.	
09-9	Minnesota's On-Site Consultation conducts consultation visits and VPP evaluation visits concurrently with MNSTAR (VPP) staff funded with the 23(g) grant.	Ensure Consultation functions are conducted by 21(d) funded employees, and conduct VPP evaluations separately with 23(g) employees.	WSC reviewed and revised its prior practice.	MNSTAR evaluations are conducted by staff funded by 23g.	Completed
09-10	For corporate VPP applications, one application is being submitted for both the corporate and other locations.	Ensure each worksite applying for MNSTAR participation submits an application applicable to each worksite.	WSC will require corporate applications to VPP to include individual site applications, for each site within the corporation that wishes to apply for VPP.	One MNSTAR application must be received for each perspective MNSTAR site.	Completed
09-11	An employer working as a contractor at a worksite covered by the Process Safety Management standard did not submit an application with the appropriate VPP Process Safety Management (PSM) Application Supplement. The MNSTAR evaluation team did not have a PSM level one auditor participate in the on-site review.	Ensure all applications of contractors working at worksites covered by 29 CFR 1910.119 contain the PSM Application Supplement. Ensure the MNSTAR evaluation team consists of at least one PSM level one auditor.	Subsequent MNSTAR evaluations of contractors at PSM sites will include a level one auditor for PSM. VPP contractors at PSM covered sites have submitted the "Supplement B" as part of their annual self evaluation.	MNSTAR site applicants will submit the PSM Supplement with application and the on-site evaluation team will consist of at least one PSM level auditor.	Completed