

Federal Annual Monitoring and Evaluation (FAME) Report

State of Minnesota

**Minnesota Department of Labor and Industry
Occupational Safety and Health Division**

October 1, 2009 to September 30, 2010

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I. Executive Summary

The Fiscal Year 2010 State Plan Evaluation Report focused on the states' responses to the recommendations in the Fiscal Year (FY) 2009 Enhanced Federal Annual Monitoring and Evaluation Report (EFAME) and their progress in achieving the actions specified in their final approved Corrective Action Plan (CAP).

The FY 2010 EFAME follow-up report was not a comprehensive report due to the CAP being submitted and approved in December 2010.

On February 8 and 9, 2011, the Eau Claire Office conducted the FY 2010 FAME on-site review of the Minnesota Occupational Safety and Health Administration (MNOSHA) State Plan. The OSHA Team's evaluation consisted of case file reviews, including both fatality as well as non-fatality inspections and non-formally handled complaints. Additional effort was focused on documenting MNOSHA MNSTAR (Minnesota Voluntary Protection Program) program changes in response to several FY 2009 EFAME recommendations. The case file review included topics such as, but not limited to: classification of violations, assessment of penalty, abatement assurance and conduct of fatality investigations.

MNOSHA has taken significant action toward many of the issues found in the CAP. There were 11 issues identified during the 2009 EFAME and CAP. Four of the items were classified as being *closed*, five items were classified as being *on the right track*, and two items were classified as remaining *open* as a result of the FY 2010 EFAME follow-up. The MNOSHA corrective actions for the two items remaining open were found to be not consistent with federal requirements for the documentation of abatement and the application of Corrected During Inspection (CDI) abatement classification. A discussion of these issues can be found in Section III.

The report also assessed MNOSHA's progress towards achieving their annual performance goals established in their FY 2009 Annual Performance Plan (APP) and reviewed the effectiveness of the programmatic areas related to enforcement activities.

The annual performance plan results, reported by MNOSHA in the State OSHA Annual Report (SOAR), indicated that the program has made significant advancements towards achieving its three main strategic goals. Evaluation of goal achievement or significant progress toward goal accomplishment has been reviewed, and the results are identified in this report.

Noteworthy in assessment of MNOSHA's progress in achieving their annual performance goals are:

- Performance Goal 1.1, Reduction in Total Recordable Cases (TRC) rate. MNOSHA achieved a 22% reduction in the TRC rate compared to their goal (3.80 recordable cases per 100 workers achieved compared to the goal of 4.86).
- Performance Goal 1.2, Reduction in State Fatality rate. MNOSHA achieved a 15% reduction in worker fatality rate compared to their goal (0.700 fatalities per 100,000 workers compared to the goal of 0.828).
- Performance Goal 2.2, Increase the total number of people participating in outreach. Participants in outreach activities numbered 3,285. This was 18% above the goal of increasing the number of participants by 5% above the 2,785 participant baseline.

- Performance Goal 3.3, Monitor and improve systems and processes. MNOSHA focused on abatement verification, specifically the number of cases with violations more than 30 days past their original abatement date. After identifying an issue with the number of cases with violations exceeding past 30 days of their abatement in October, 2009, MNOSHA was able to reduce the number of cases exceeding this indicator by more than 50% for each of the last five months of FY 2010.

The federal OSHA final rule on Cranes and Derricks in Construction was published in the Federal Register on August 9, 2010. MNOSHA has enforced its own crane operation statute (Minn. Stat. 182.6525) since 2005. This Minnesota statute includes provisions for operator certification. MNOSHA chose to adopt the federal standard by reference. However, MNOSHA will also keep its current crane operation statute (Minn. Stat. 182.6525) until the federal standard's requirements for crane operator certification become fully effective on November 10, 2014.

MNOSHA conducted a workforce analysis and determined that reorganization was necessary to ensure that future MNSOHA management staff will be able to continue effective and consistent enforcement of safety and health standards. They also provided current staff members with leadership opportunities through additional responsibilities, special projects, and networking. The plan was implemented in early FY 2010 and staff was assigned into four territories – north, central, southeast, and southwest. The reorganization plan did not result in a reduction in investigative staff or in staff relocation.

Effective April 1, 2010, MNOSHA revised their Field Compliance Manual (FCM) to include the several penalty adjustment policies aimed to increase penalties for both higher gravity serious violations and serious/repeat/willful violations which result in employee injury and/or fatality. First quarter FY 2011 analysis shows significant improvement in the average penalty per serious violation.

As of January 1, 2011, Commissioner Ken Peterson became the head of the Minnesota Department of Labor and Industry (DLI), replacing outgoing Commissioner Steve Sviggum. Mr. James Krueger is the Director of the OSH Division and Ms. Patricia Todd is the Director of the WSC Division within Minnesota DLI.

Federal OSHA did not receive any Complaints About State Program Administration (CASPs) during FY 2010.

MNOSHA was able to report that their program had not been affected by state or federal budgetary issues.

The on-site review had the following recommendations: (See Section III for more information.)

Recommendation 10-01 formerly 09-01: 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.

Recommendation 010-02 formerly 09-02: 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.

Recommendation 010-03 formerly 09-04: Ensure the determination for violation classification as ‘non-serious’ is not more restrictive than that used by federal OSHA for “other-than-serious.” *This recommendation has been modified to clarify OSHA’s original intent.*

Recommendation 010-04 formerly 09-05: Ensure good faith credit is applied and documented appropriately in the case files.

Recommendation 010-05 formerly 09-06: Ensure, when required, that documented proof of abatement is received.

Recommendation 010-06 formerly 09-07: 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.

Recommendation 010-07 formerly 09-08: Ensure that Petition for Modification of Abatement (PMA) requests contains all the required information before accepting the requests and extending the abatement dates.

MNOSHA will respond in writing to the FY 2010 FAME’s findings and recommendations.

II. Introduction

Background and Profile

Section 18 of the Occupational Safety and Health Act of 1970 encourages states to develop and operate their own job safety and health programs. Federal OSHA approves and monitors State Plans and provides up to 50 percent of an approved Plan’s operating costs. Minnesota is one of 27 states and American Territories approved to operate its own safety and health enforcement program. Among other things, states that develop these plans must adopt standards and conduct inspections to enforce those standards.

The Minnesota Department of Labor and Industry (DLI) administers the MNOSHA program. The Program became effective on August 1, 1973, with final State Plan approval obtained on July 30, 1985. MNOSHA includes the Occupational Safety and Health (OSH) Compliance Division, which is responsible for compliance program administration (conducting enforcement inspections, adoption of standards, and operation of other related OSHA activities) and the Workplace Safety Consultation (WSC) Division which provides free consultation services, on request, to help employers prevent workplace accidents and diseases by identifying and correcting safety and health hazards. Both the OSH and WSC Divisions provide services to both private and public sector employers and employees.

Management and administration of the OSH Division is the responsibility of the OSH Division Management Team (OMT). The OMT is comprised of the OSH Compliance Director, two Area Directors, and five Supervisors. According to the FY 2010 grant applications, the total complement of the OSH Division was 89.65 FTEs and the total complement of the WSC Division was 17.15 FTEs.

MNOSHA’s mission is “to make sure every worker in the State of Minnesota has a safe and healthful workplace.” This mandate involves the application of a set of tools by MNOSHA, including standards development, enforcement, compliance assistance, and outreach to enable employers to maintain safe and healthful workplaces.

MNOSHA's vision is to be a leader in occupational safety and health and make Minnesota's workplaces the safest in the nation. MNOSHA is striving for the elimination of workplace injuries, illnesses, and deaths so that all of Minnesota's workers can return home safely. MNOSHA believes that to support this vision, the workplace must be characterized by a genuinely shared commitment to workplace safety by both employers and workers, with necessary training, resources, and support systems devoted to making this happen.

Budget

The federal share of the FY 2010 23(g) grant for MNOSHA was \$3,900,300. The state over matched the grant, 100% state funded money, with \$1,012,377 additional monies. The total budget for the FY 2010 23(g) program was \$8,812,977. The financial review of the budget agreement and supportive cost breakout in comparison to FY 09 shows a \$175,693 increase in total grant award.

Organization

The Minnesota Department of Labor and Industry (DLI) administers the MNOSHA program. Mr. James Krueger is the Director of the OSH Division and Ms. Patricia Todd is the Director of the WSC Division. The current head of Minnesota DLI is Commissioner Ken Peterson. Commissioner Peterson replaced outgoing Commissioner Steve Sviggum on January 1, 2011.

Differences from Federal OSHA

MNOSHA adopts most federal OSHA standards under Minnesota Rules Chapter 5205.0010. MNOSHA has additionally supplemented the OSHA standards with several requirements unique to Minnesota. The Minnesota-specific provisions are found in the 2010 Minnesota Statutes, Chapter 182, *Occupational Safety and Health* and various Minnesota Rules Chapters. In these instances, federal OSHA either does not have a comparable standard addressing the specific hazard or condition or, if it does, the federal standard differs substantially. Notable requirements above and beyond those of federal OSHA include employer requirements such as, but not limited to: workplace accident and injury reduction (AWAIR) programs, safe patient handling programs, establishing safety committees, confined space safety in construction, and adoption of the 1989 OSHA proposed permissible exposure limits (PELS) for air contaminants.

MNOSHA Statutes and Rules can be found on its webpage:

<http://www.dli.mn.gov/OSHA/Standards.asp>

- Minnesota Statutes Chapter 182 Occupational Safety and Health
- Minnesota Rules Chapter:
 - 5205 Occupational Safety and Health Standards
 - 5206 Hazardous Substances; Employee Right-to-know
 - 5207 Standards for Construction
 - 5208 Accident and Injury Reduction Program
 - 5210 Occupational Safety and Health Administration
 - 5215 Occupational Safety and Health Review

III. Assessment of State Actions and Performance Improvements in Response to Recommendations from the 2009 EFAME

MNOSHA had 11 recommendations from the 2009 EFAME report. Four items (09-03, 09-09, 09-10, and 09-11) have been abated in full. Seven remain pending with all abatement expected to conclude within FY 2011.

Open FY 2009 Findings and Recommendations

- **Finding 10-01 formerly 09-01:** 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.
- **Recommendation 10-01 formerly 09-01:** 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.
- **Update 10-01 formerly 09-01:** MNOSHA ADM 3.16 *Administrative Procedures for Handling Complaints and Information Requests* 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.
- **Finding 10-02 formerly 09-02:** For fatality investigations, the form OSHA-170 (Accident Investigation Summary) was not filled out in adequate detail.
- **Recommendation 10-02 formerly 09-02:** 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.
- **Update 10-02 formerly 09-02:** 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 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.
- **Finding 10-03 formerly 09-04:** 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.
- **Recommendation 10-03 formerly 09-04:** Ensure the determination for violation classification as “non-serious” is not more restrictive than that used by federal OSHA for “other-than-serious.” *This recommendation has been modified to clarify OSHA’s original intent.*
- **Update 10-03 formerly 09-04:** 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.

- **Finding 10-04 formerly 09-05:** In 41% of the cases reviewed, penalty reduction recommendations for good faith credit were applied at levels higher than warranted.
 - **Recommendation 10-04 formerly 09-05:** Ensure good faith credit is applied and documented appropriately in the case files.
 - **Update 10-04 formerly 09-05:** MNOSHA provided refresher training for all field staff on determining and documenting good faith credits in September 2010. The 2010 FAME on-site revealed three inspection 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.
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- **Finding 10-05 formerly 09-06:** Of the 57 cases reviewed, abatement documentation for corrective action following inspections was not requested by MNOSHA in any circumstance.
 - **Recommendation 10-05 formerly 09-06:** Ensure, when required, that documented proof of abatement is received.
 - **Updated 10-05 formerly 09-06:** MNOSHA ADM 3.4 *Abatement Verification* 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 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.
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- **Finding 10-06 formerly 09-07:** 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.
 - **Recommendation 10-06 formerly 09-07:** 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.
 - **Update 10-06 formerly 09-07:** 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 *Abatement Verification* was revised on August 20, 2010 to incorporate abatement 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) *Competent person did not remove employees from hazards* and 1926.652(a)(1) *No cave-in protection*). 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.

- **Finding 10-07 formerly 09-08:** Petition for Modification of Abatement (PMA) requests are granted without employers providing all the required information in the requests.
- **Recommendation 10-07 formerly 09-08:** Ensure that PMA requests contain all the required information before accepting the requests and extending the abatement dates.
- **Update 09-08:** MNOSHA ADM 3.5 *Extension of Abatement Dates – PMA Processing* 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 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.

Completed FY 2009 Findings and Recommendations

- **Finding 09-03:** Data Initiative inspections were conducted without information contained in the file to explain the Compliance Officer's discussions on-site as they 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.
- **Recommendation 09-03:** 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.
- **Update 09-03:** Completed

- **Finding 09-09:** Minnesota On-Site Consultation conducts consultation visits and VPP evaluation visits concurrently with MNSTAR staff funded with the 23(g) grant.
- **Recommendation 09-09:** Ensure Consultation functions are conducted by 21(d) funded employees, and conduct VPP evaluations separately with 23(g) employees.
- **Update 09-09:** Completed

- **Finding 09-10:** For corporate VPP applications, one application is being submitted for both the corporate and other locations.
- **Recommendation 09-10:** Ensure each worksite applying for MNSTAR participation submits an application applicable to each worksite.
- **Update 09-10:** Completed

- **Finding 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.
- **Recommendation 09-11:** 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.
- **Update 09-11:** Completed

IV. State Progress in Achieving Annual Performance Goals

In the FY 2010 State OSHA Annual Report (SOAR), MNOSHA provided information that outlines their accomplishment of meeting their five-year Strategic Plan. Through effective resource utilization, partnership development, outreach activities, and an overall commitment to performance goal achievements, the majority of goals have been met or exceeded. Information provided by MNOSHA has been reviewed and analyzed to assess their progress in meeting Performance Plan goals.

The following summarizes the activities and/or accomplishments for each of the FY 2010 performance goals.

Strategic Goal #1: Reduce occupational hazards through compliance inspections.

Performance Goal 1.1: Reduction in total recordable cases (TRC) rate.

Results: This goal was met.

Discussion: The FY 2010 target was a 2% reduction in the TRC rate from the previous five-year average for CY 2004 – 2008, which were 4.86 per 100 workers. The CY 2009 TRC rate achieved was 3.80, a 22% reduction. MNOSHA Compliance continues to review new information to redefine targeting to reduce injury and illness rates.

Performance Goal 1.2: Reduction in state fatality rate

Results: This goal was met.

Discussion: The FY 2010 target was a reduction in the state's fatality rate from the previous five-year average for CY 2004 – 2008, which was .828 per 100,000 workers. The CY 2009 state's fatality rate achieved was .700, a 15% reduction. There were 15 fatalities in CY 2010, and that number will be used to calculate the rate for FY 2011. MNOSHA Compliance continues to address workplace fatalities in its outreach materials and during construction seminars.

Performance Goal 1.3a: Total hazards identified / establishments visited

Results: This goal was met.

Discussion: The FY 2010 target was to increase hazard identification by 1% from the baseline five-year average for FY 2003-2007 of 4,919 hazards identified in 2,619 establishments visited. An 11.9% increase in hazard identification was achieved as 5,535 hazards were identified within 2,691 establishments visited. Seventy percent (70%) of the inspections conducted resulted in violations; 76% of violations were cited serious.

Performance Goal 1.3b: Conduct inspections in targeted emphasis industries.

Results: This goal was nearly met.

Discussion: MNOSHA focused its programmed inspections to reduce injuries, illnesses, and fatalities in certain emphasis industries. The FY 2010 goal was for 67% of all programmed inspections are conducted within the emphasis industries. MNOSHA conducted 64% of all programmed inspections within the emphasis industries. As part of an ergonomic focus, MNOSHA conducted 40 programmed inspections in the meat processing industry and nursing homes.

Performance Goal 1.4: Percent of designated program inspections

Results: This goal was met.

Discussion: The FY 2010 target was for 85% of all inspections to be conducted as programmed inspections. MNOSHA conducted 2,691 inspections with 87% opened as programmed inspections.

Strategic Goal #2: Promote a safety and health culture through compliance assistance, outreach, cooperative programs, and strong leadership.

Performance Goal 2.1a: Increase Partnerships.

Results: This goal was not met.

Discussion: The FY 2010 target was to increase the number of Partnerships by one. In FY 2010, MNOSHA did not enter into any Partnerships, but did meet and discuss possible options with stakeholders. Currently, MNOSHA has active Partnerships with the Associated General Contractors (AGC) of Minnesota and the Associated Building Contractors (ABC). MNOSHA added five new members to the ABC Partnership and one member to the AGC Partnership.

Performance Goal 2.1b: Increase Voluntary Protection Programs (MNSTAR) participation.

Results: This goal was met.

Discussion: The FY 2010 target was to increase the number of VPP MNSTAR participants by four. At the end of FY 2010, there were 52 employers in the MNSTAR program, with 16 sites granted new certification (15 Star employers and one Merit employer).

Performance Goal 2.1c: Continue to identify compliance assistance opportunities.

Results: This goal was met.

Discussion: MNOSHA continues to strive to improve communication with immigrant and “hard-to-reach” employers and employees. MNOSHA continues to hire investigators who are fluent in more than one language. MNOSHA also provides written materials to target populations in coordination with the Department’s Community Services Representative. This representative attended the 2010 National Action Summit for Latino Worker Health and Safety in Houston, TX.

Performance Goal 2.2: Increase the total number of people participating in outreach.

Results: This goal was met.

Discussion: The FY 2010 target was to increase the baseline five-year average for FY 2003 – 2007, of 2,785 participants in outreach training sessions by 5%. MNOSHA Compliance exceeded the goal for FY 2010 by conducting presentations to 3,285 participants, 18% above the baseline.

Performance Goal 2.3: Homeland Security – Participate in Homeland Security efforts at state and national levels.

Results: This goal was met.

Discussion: The FY 2010 target was to maintain the baseline. The MNOSHA Compliance Program continued to participate on the State Emergency Response Team. The Governor activated the State Emergency Operations Center on three occasions in 2010 following spring flooding in northwest Minnesota, state-wide tornadoes in June, and flooding in southern Minnesota in September. One Director attended 13 MN Department of Public Safety, Homeland Security and Emergency Management (HSEM) division meetings related to these events, four meetings of the Emergency Preparedness Committee, and five federal OSHA Homeland Security conference calls. Additionally, one Director and seven staff members completed multiple on-line, FEMA provided courses.

Performance Goal 2.4: Maintain response time and/or service level to stakeholders.

Results: This goal was met.

Discussion: The FY 2010 target was to maintain the baseline as an on-going performance. MNOSHA has two safety and health professionals on duty to answer questions received primarily through phone calls and e-mails. During FY 2010, these two positions responded to approximately 4,540 phone calls and 1,363 written requests for assistance, primarily e-mails. During FY 2010, 41% of inquiries were received from employees calling to file a workplace safety and health complaint. Forty-four percent of the total complaints resulted in an on-site inspection with an average response time of 3.2 days. The remaining 56% of complaints were handled via MNOSHA's phone/fax (non-formal complaint) system within an average of one day.

Strategic Goal #3: Strengthen and improve MNOSHA's infrastructure.

Performance Goal 3.1: Review rules annually for effectiveness: ongoing evaluation, development of rules, standards, guidelines and procedures.

Results: This goal was met.

Discussion: FY 2010 directive revision schedule was developed to coincide with the FY 2009 - 2013 Five-Year Strategic Plan. The goal is to progress each year toward completing an annual review of the rules, standards, guidelines and procedures, with 100% of directives being updated in the five-year cycle. During FY 2010, 34 existing directives were revised. These included internal procedures for complaints, referrals, penalty collection, EISA (Expedited Informal Settlement Agreement), case file processing, training, and scheduling. In addition, four new directives on ARRA (American Recovery and Reinvestment Act), recordkeeping NEP, H1N1, and handling of laboratory samples were developed and issued. At the close of FY 2010, 98% of the directives on the previous five-year cycle were completed and 30% of the directives on the current five-year cycle were completed.

Performance Goal 3.2: Maintain workforce development and retention plan.

Results: This goal was met.

Discussion: The FY 2010 target was to maintain the baseline. MNOSHA developed a workplace plan in FY 2009 which included following an eight step process. In FY 2010, MNOSHA utilized the

plan to develop a strategy to maintain consistency and quality throughout the organization's field staff. Two goals were identified:

1. Assure that MNOSHA has an adequate workforce to ensure that construction worksites are complying with MNOSHA safety and health regulations; and
2. Assure that MNOSHA continues to be an organization that is recognized as a "best-in-class" State Plan state.

MNOSHA determined through workforce analysis, focusing on likely retirements, reorganization was necessary to ensure that future MNSOHA management staff will be able to continue effective and consistent enforcement of safety and health standards and to provide current staff members with leadership opportunities through additional responsibilities, special projects, and networking. The plan was implemented in early FY 2010 and reallocated staff into four assigned territories – north, central, southeast, and southwest. Each territory included a portion of the Twin Cities metropolitan area. Each unit was designed to have at least three Industrial Hygienists and nine Safety Investigators who conduct both construction and general industry inspections. Additionally, a fifth unit was developed consisting of team leaders that include both senior Safety Investigators and Industrial Hygienists. This unit will conduct informal conferences, mentoring, and case file review. The reorganization plan did not result in a reduction in investigative staff nor in staff relocation.

Performance Goal 3.3: Monitor and improve systems and processes to ensure the business needs of MNOSHA, the requirements of federal OSHA, and the services provided to stakeholders are met.

Results: This goal was met.

Discussion: The FY 2010 target was to maintain the baseline as an on-going performance. MNOSHA's continuing process improvement actions include:

1. Monthly meetings with solicitors (Assistant Attorney General) were established. The status of pending cases was discussed, litigation strategy was reviewed, and verification with records maintained by MNOSHA was completed.
2. The MNOSHA Director provides a weekly summary of open inspection files to each supervisor to reduce the number of outstanding unabated violations and to identify potential cases for follow-up inspection.
3. Video teleconferencing was established between all offices within the Department.
4. A post office box was established for mailing employer penalty payments, permitting separation of funds from routine mail and allowing for prompter processing.
5. A new e-mail address was created which allows employers to submit electronic progress reports. This will help assure prompt review of abatement should any individual staff member be temporarily unavailable.

6. Focus on improving abatement verification performance indicators, such as the number of cases more than 30 days past their abatement date. In October of 2009, MNOSHA identified 43 cases exceeding 30 days past their abatement date. MNOSHA took immediate corrective action through a variety of process changes, including weekly review of open inspection lists by supervisory staff, investigator contact with employers prior to an abatement due date, office staff meeting discussions, and the establishment of the central e-mail address for employer abatement submissions. As a result of their corrective action, MNOSHA reported that less than 20 cases exceeding 30 days past their abatement date were found during each of the past five months of FY10.

V. Monitoring Methodology

A review of the MNOSHA workplace safety and health program was conducted on February 8 and 9, 2011. Fourteen inspection and 10 non-formal complaint case files with closing dates occurring within the first quarter of FY 2011 were randomly selected and reviewed. The review team consisted of an Area Director and an Industrial Hygienist.

This case file audit review concentrated on areas consistently identified as issues in FY09 EFAME reports across the country. These areas of concern were penalty assessment, classification of violations, and abatement assurance. In addition, the review team focused on the recommendations originating from the MNOSHA FY09 EFAME.

The seven most recent fatality inspections were reviewed. Six of the seven had been classified by MNOSHA as in-compliance fatality inspections. These files were reviewed for completeness. The files documented support for the conclusion that no citations were justified. The fatality inspection resulting in a citation issued was reviewed for penalty, classification, and abatement. Of the seven fatality files reviewed, two dealt with non-work-related injuries/illnesses, two involved lack of an employer-employee relationship, and three involved work related injuries for which no apparent violative conditions were found. MNOSHA maintains a philosophy of conducting a fatality inspection for all received notifications of fatality unless there is enough evidence presented through notification that there is zero potential for MNOSHA jurisdiction.

In addition to reviewing the above cited case files, the Team focused on reviewing data gathered from all MNOSHA inspections conducted from January 1, 2010 through December 31, 2010. This included an assessment of MNOSHA's enforcement program based on Federal/State Integrated Management Information System (IMIS) comparison data for FY 2010, as well as the State Activities Mandated Measures (SAMM) and State Indicator Report (SIR).

Throughout the entire process, MNOSHA was cooperative, shared information and ensured staff was available to discuss cases, policies, and procedures. Also, MNOSHA staff members were eager to work with the evaluation team.

VI. FY 2010 State Enforcement

The FY 2010 state/federal data comparisons (Appendix C) using the official agency closeout data and the end-of-year SAMM (Appendix D) and SIR (Appendix E) reports for each state are included in the

appendix of this report. The official closeout reports were used as the basis for the analysis to ensure consistency, to the extent possible, in all FAME reports.

Complaints

Instruction ADM 3.16 *Administrative Procedures for Handling Complaints and Information Requests* outlines the policies and procedures for processing formal and non-formal complaints. MNOSHA's complaint process for formal complaints is similar to the federal process with one exception. MNOSHA considers electronic complaints obtained through the federal complaint system as a formal complaint instead of a non-formal complaint. The reasoning behind considering them formal complaints is that the Complainant must select that they are a current employee. After the receipt of an electronic complaint, a follow-up call to the Complainant is usually made to clarify the complaint items. In some instances, the Complainant may elect to process the complaint non-formally to address their concerns.

MNOSHA's non-formal complaint processing does differ from the federal program in several areas. As with the federal program, when a serious injury occurs, information obtained by telephone, email, or fax will normally be scheduled for inspection. MNOSHA developed a specific administrative instruction outlining the process for these serious injury events (ADM 3.18 *Serious Injury Inspection Procedures*). Non-formal complaints or information alleging hazards covered by a local or national emphasis program are not scheduled for inspection. Though many of the complaints received by MNOSHA that were covered by local or national emphasis programs were investigated, OSHA recommends MNOSHA's review of their criteria for investigating inspections where injuries have occurred.

MNOSHA received 557 complaints during FY 2010. Of the 557 complaints, 251 (45%) were formalized and handled by inspection. There were 306 complaints which were initially handled by phone and fax investigations, however, 14 of those were ultimately handled by inspection.

Mandated Activities

Activities mandated under the Occupational Safety and Health Act are considered core elements of MNOSHA's program. The accomplishment of these core elements is tied to achievement of MNOSHA's strategic goals. Many mandated activities are "strategic tools" used to achieve outcome and performance goals.

"Mandated activities" include program assurances and state activity measures. Fundamental program requirements that are an integral part of the MNOSHA program are assured through an annual commitment included as part of the 23(g) grant application. Program assurances include:

- Unannounced targeted inspections including prohibition against advance notice;
- First instance sanctions;
- A system to adjudicate contestations;
- Ensuring abatement of potentially harmful or fatal conditions;
- Prompt and effective standards setting and allocation of sufficient resources;
- Counteraction of imminent dangers;
- Responses to complaints;
- Fatality/catastrophe investigations;
- Ensuring employees have:

- protection against and investigation of discrimination,
- access to health and safety information,
- information on their rights and obligations under the Act, and
- access to information on their exposure to toxic or harmful agents;
- Coverage of public employees;
- Recordkeeping and reporting; and
- Voluntary compliance activities.

Mandated activities are tracked on a quarterly basis using the SAMM (State Activity Mandated Measures) Report which compares state activity data to an established reference point. Additional activities are tracked using the Interim State Indicator Report (SIR).

Significant improvement was seen in these mandated activities in FY 2010:

- Complaint inspections were conducted within an average of 3.2 days, significantly lower than the goal of nine days.
- Complaint investigations were conducted within an average of 1.03 days, significantly lower than the goal of two days.
- MNOSHA safety programmed inspections resulted in 68% with serious/willful/repeat citations, an increase from 64% in FY 2009.
- MNOSHA health programmed inspections resulted in 58% with serious/willful/repeat citations, an increase from 45% in FY 2009.
- The average violations per inspection with serious/willful/repeat violations were 2.23, an increase from 1.94 in FY 2009.
- The average lapse time from receipt of contest to first level decision was 127.87 days, a decrease from 142.19 in FY 2009.
- The percent of programmed health inspections within the public sector was 30.0%.

Assessment of State Performance of Mandated Activities

State Activity Mandated Measure (SAMM)

Appendix D includes the SAMM for Minnesota covering the period October 1, 2009 through September 30, 2010. The following is a summary of state performance on the major issues covered in the SAMM.

Minnesota SAMM FY 2010

Measure		State Data	Reference Data	Comment
1. Average number of days to initiate complaint inspections		3.20	9	Acceptable
2. Average number of days to initiate complaint investigations		1.03	2	Acceptable
3. Percent of complaints where Complainants were notified on time		100%	100%	Acceptable
4. Percent of complaints and referrals responded to within one day		100%	100%	Acceptable
5. Number of denials where entry was not obtained		0	0	Acceptable
6. Percent of S/W/R violations verified	Private	71.20%	100%	This was an issue identified in the FY 2009 EFAME.
	Public	80.8%		
7. Average number of calendar days from opening conference to citation issuance	Safety	22.5	47.3	Acceptable
	Health	32.6	61.9	Acceptable
8. Percent of programmed inspections with S/W/R violations – safety	Safety	68.4%	58.4%	Acceptable
	Health	58.3%	50.9%	Acceptable
9. Average violations per inspection with violations	S/W/R	2.2	2.1	Acceptable
	Other	0.7	1.2	Acceptable
10. Average initial penalty per serious violation – private sector only		\$791.30	\$1,360.40	Acceptable - In FY 2010, MNOSHA addressed this issue through penalty increases. In first quarter FY 2011, MNOSHA was at \$988.18 in this category.
11. Percent of total inspection in public sector		7.6%	6.4%	Acceptable
12. Average lapse time from receipt of contest to first level of decision		127.9	217.8	Acceptable
13. Percent of 11c investigations completed within 90 days		91.5%	100%	Acceptable - In first quarter FY 2011, MNOSHA was at 100% in this category.
14. Percent of 11c complaints that are meritorious		12.8%	21.2%	Acceptable - In FY 09, MNOSHA experienced 11.5% in this category. The review of the cases during the EFAME on-site revealed that the determinations made by MNOSHA would not have been different than if federal OSHA was performing the investigations.
15. Percent of meritorious 11c complaints that are settled		83.3%	86.0%	Acceptable

State Information Report (SIR)

Appendix E includes the SIR for MNOSHA covering FY 2010. The following is a summary of state performance on the major issues covered in the SIR.

Minnesota SIR FY 2010					
			12 months		Comments
			FED	State	
C. Enforcement Private Sector	1. Programmed Inspection	Safety	65.1	91.4	Acceptable
		Health	35	66	Acceptable
	2. Programmed Inspection with Violations %	Safety	69.1	73.1	Acceptable
		Health	55.4	62.5	Acceptable
	3. Serious Violations (%)	Safety	81	76.1	Acceptable
		Health	70.2	66.7	Acceptable
	4. Abatement Period for Viols %	Safety % > 30 Days	17.2	5.2	Acceptable
		Health % > 60 Days	70.2	6.8	Acceptable
	5. Average Penalty	Safety OTS	894.3	203.8	Acceptable
		Health OTS	835.8	174.9	Acceptable
	6. Inspections per 100 hours	Safety	5.5	3.5	Acceptable
		Health	1.9	2.3	Acceptable
	7. Violations Vacated %		4.7	0	Acceptable
8. Violations Reclassified %		4	0	Acceptable	
9. Penalty Retention %		63	79.9	Acceptable	
			Private	Public	
D. Enforcement Public Sector	1. Programmed Inspections %	Safety	91.6	95.6	Acceptable
		Health	66	30	Acceptable
	2. Serious Violations %	Safety	76.1	74.1	Acceptable
		Health	66.7	87.8	Acceptable
			12 months		
			FED	State	
E. Review Procedures	1. Violations Vacated %		21.9	9.2	Acceptable
	2. Violations Reclassified %		11.7	11	Acceptable
	3. Penalty Retention %		58.1	61.3	Acceptable

VII. Complaints About State Program Administration (CASPA)

There were no CASPAs received in FY 2010.

VIII. FY 2010 Findings and Recommendations

No additional findings and recommendations were documented during the FY 2010 FAME on-site review beyond those relating to the FY 2009 FAME.

IX. Major New Issues

The federal OSHA final rule on Cranes and Derricks in Construction was published in the Federal Register on August 9, 2010. The rule became effective on November 8, 2010. This final rule requires operators of most types of cranes to be qualified or certified under one of the options set forth in 1926.1427. Employers have up to four years from the effective date to ensure that their operators are qualified or certified, unless they are operating in a state or city that has operator requirements. MNOSHA has enforced its own crane operation statute (Minn. Stat. 182.6525) since 2005. This Minnesota statute includes provisions for operator certification. MNOSHA chose to adopt the federal standard by reference. However, MNOSHA will keep its current crane operation statute (Minn. Stat. 182.6525) until the federal standard's requirements for crane operator certification becomes fully effective on November 10, 2014.

MNOSHA determined through workforce analysis, focusing on likely retirements, reorganization was necessary to ensure that future MNSOHA management staff will be able to continue effective and consistent enforcement of safety and health standards and to provide current staff members with leadership opportunities through additional responsibilities, special projects, and networking. The plan was implemented in early FY 2010 and reallocated staff into four assigned territories – north, central, southeast, and southwest. Each territory included a portion of the Twin Cities metropolitan area. Each unit was designed to have at least three Industrial Hygienists and nine Safety Investigators who conduct both construction and general industry inspections. Additionally, a fifth unit was developed consisting of team leaders that include both senior Safety Investigators and Industrial Hygienists. This unit will conduct informal conferences, mentoring, and case file review. The reorganization plan did not result in a reduction in investigative staff nor in staff relocation.

Effective April 1, 2010 MNOSHA revised their Field Compliance Manual (FCM) to include the following penalty adjustment policies aimed to increase penalties for both higher gravity serious violations and serious/repeat/willful violations which result in employee injury and/or fatality:

1. MNOSHA has a multi-tiered gravity based assessment system which utilizes six categories of severity and two categories of probability. According to data contained within the SAMM and SIR reports for FY 2010 and FY2011, the average initial penalty per serious violation at the end of the first quarter of FY 2011 was \$988.18 compared to \$673.32 the end of the first quarter of FY 2010.
2. AWAIR citations are issued with a \$1,000 unadjusted penalty.

3. A Serious Injury Multiplier equal to the probability rating is applied to all violations that caused or contributed to the serious injury of an employee.
4. For repeat violations that cause or contribute to the serious injury or death of an employee, both the repeat multiplier and the serious injury or fatal factor are used to calculate the unadjusted penalty.
5. For willful violations that cause or contribute to the serious injury or death of an employee, both the willful multiplier and the serious injury or fatal factor are used to calculate the unadjusted penalty.
6. The “History” review period was extended from three years to five years.

X. Other

In addition to traditional compliance activities, MNOSHA also concentrates efforts in other areas aimed at assisting employers to make their workplaces safer and healthier. Some achievements for FY 2010 include:

Staff Training: MNOSHA hosted the OSHA Training Institute (OTI). The OTI conducted the OSHA 3010 Excavation, Trenching and Soil Mechanics course in June 2010.

Safe Patient Handling Act: The Safe Patient Handling Act (Minn. Stat. 182.6551 through 182.6553) requires licensed health care facilities in Minnesota to adopt a written safe patient handling policy and establish a safe patient handling committee by July 1, 2010. In 2009, the Safe Patient Handling in Clinical Settings Statute (Minn. Stat. 182.6554) was passed. The Statute requires every clinical setting that transfers patients to develop a written safe patient handling plan by July 1, 2010, with a goal of full plan implementation by January 1, 2012. MNOSHA WSC has been conducting on-site training on hazard recognition and safe patient handling programs, developing sample programs, and providing web-based outreach materials for employers and employees operating in the licensed health care facility and clinical setting sectors.

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

Rec #	Findings	Recommendations	Related FY 09 Rec #
10-1	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.	09-01
10-2	For fatality investigations, the form OSHA-170 (Accident Investigation Summary) 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.	09-02
10-3	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 determination for violation classification as “non-serious” is not more restrictive than that used by federal OSHA for “other-than-serious.” <i>This recommendation has been modified to clarify OSHA’s original intent.</i>	09-04
10-04	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.	09-05
10-05	Of the 57 cases reviewed, abatement documentation for corrective action following inspections was not requested by MNOSHA in any circumstance.	Ensure, when required, that documented proof of abatement is received.	09-06
10-06	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.	09-07
10-07	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.	09-08

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 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	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 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.	Continuing

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
			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.		
09-3	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.	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.	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 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.	MNOSHA's supervisors will continue to ensure OSHIs investigate the company's LWDIR to determine injury and hazard trends relating to the inspections.	Completed
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	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	Continuing

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
			<p>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." OSHAs recommendation to separate classification from recordability is therefore unnecessary.</p>	<p>MNOSHA appears to be on the right track.</p>	
09-5	<p>In 41% of the cases reviewed, penalty reduction recommendations for good faith credit were applied at levels higher than warranted.</p>	<p>Ensure good faith credit is applied and documented appropriately in the case files.</p>	<p>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 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.</p>	<p>MNOSHA provided refresher training for all field staff on determining and documenting good faith credits in September 2010. The 2010 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.</p>	Continuing

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
09-6	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 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.	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 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.	Continuing
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	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	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	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.	Continuing

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
	<p>information outlining the corrective action observed by the Compliance Officer was not documented appropriately in the case file.</p>	<p>Officer is documented in the case file.</p>	<p>documentation needs. MNOSHA has obtained abatement certification from employers, yet lacked documentation sought by federal OSHA. MNOSHA developed new abatement 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.</p>	<p>MNOSHA ADM 3.4 <i>Abatement Verification</i> was revised on August 20, 2010 to incorporate abatement 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.</p>	
09-8	<p>Petition for Modification of Abatement (PMA) requests are granted without employers providing all the required information in the requests.</p>	<p>Ensure (that) PMA requests contain all the required information before accepting the requests and extending the (abatement) dates.</p>	<p>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 included information similar to what would be contained in a PMA request. MNOSHA notes that the Mandatory Progress Report form must be</p>	<p>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 the 2010 FAME on-site activity did not allow federal OSHA to review the updated procedures in practice.</p>	Continuing

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
			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.	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

Appendix C
Minnesota State Plan
FY 2010 Enforcement Activity

	MN	State Plan Total	Federal OSHA
Total Inspections	2,695	57,124	40,993
Safety	2,174	45,023	34,337
% Safety	81%	79%	84%
Health	521	12,101	6,656
% Health	19%	21%	16%
Construction	842	22,993	24,430
% Construction	31%	40%	60%
Public Sector	204	8,031	N/A
% Public Sector	8%	14%	N/A
Programmed	2,336	35,085	24,759
% Programmed	87%	61%	60%
Complaint	265	8,986	8,027
% Complaint	10%	16%	20%
Accident	20	2,967	830
Inspections w/ Violations Cited	1,889	34,109	29,136
% Insp w/ Viols Cited (NIC)	70%	60%	71%
% NIC w/ Serious Violations	87.8%	62.3%	88.2%
Total Violations	5,580	120,417	96,742
Serious	4,127	52,593	74,885
% Serious	74%	44%	77%
Willful	7	278	1,519
Repeat	31	2,054	2,758
Serious/Willful/Repeat	4,165	54,925	79,162
% S/W/R	75%	46%	82%
Failure to Abate	35	460	334
Other than Serious	1,380	65,031	17,244
% Other	25%	54%	18%
Avg # Violations/ Initial Inspection	2.9	3.4	3.2
Total Penalties	\$3,341,927	\$72,233,480	\$183,594,060
Avg Current Penalty / Serious Violation	\$653.50	\$870.90	\$1,052.80
Avg Current Penalty / Serious Viol- Private Sector Only	\$655.90	\$1,018.80	\$1,068.70
% Penalty Reduced	29.9%	47.7%	40.9%
% Insp w/ Contested Viols	23.6%	14.4%	8.0%
Avg Case Hrs/Insp- Safety	14.5	16.2	18.6
Avg Case Hrs/Insp- Health	25.9	26.1	33
Lapse Days Insp to Citation Issued- Safety	16.5	33.6	37.9
Lapse Days Insp to Citation Issued- Health	22.7	42.6	50.9
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	4	1,715	2,510

Appendix D - FY 2010 State Activity Mandated Measures (SAMM) Report

U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

NOV 12, 2010
 PAGE 1 OF 2

State: MINNESOTA

RID: 0552700

MEASURE	From: 10/01/2009 To: 09/30/2010	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate State Complaint Inspections	796 3.20 248	83 2.96 28	Negotiated fixed number for each
2. Average number of days to initiate State Complaint Investigations	297 1.03 286	13 .44 29	Negotiated fixed number for each
3. Percent of Complaints where Complainants were notified on time	240 100.00 240	30 100.00 30	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	10 100.00 10	1 100.00 1	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	2017 71.20 2833	216 25.41 850	100%
Public	132 80.98 163	10 25.00 40	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	36376 22.50 1616	2963 21.01 141	2624646 47.3 55472
Health	10371 32.61 318	856 24.45 35	750805 61.9 12129
			National Data (1 year)
			National Data (1 year)

*MN 11.12

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

NOV 12, 2010
 PAGE 2 OF 2

State: MINNESOTA

RID: 0552700

MEASURE	From: 10/01/2009 To: 09/30/2010	CURRENT FY-TO-DATE	REFERENCE/STANDARD	
8. Percent of Programmed Inspections with S/W/R Violations				
Safety	1385 68.43	121 65.76	93201 58.4	National Data (3
years)	2024	184	159705	
Health	197 58.28	25 64.10	10916 50.9	National Data (3
years)	338	39	21459	
9. Average Violations per Inspection with Vioations				
S/W/R	4331 2.23	390 2.21	428293 2.1	National Data (3
years)	1938	176	201768	
Other	1286 .66	133 .75	240266 1.2	National Data (3
years)	1938	176	201768	
10. Average Initial Penalty per Serious Violation (Private Sector Only)	3176275 791.29	359375 963.47	509912690 1360.4	National Data (3
years)	4014	373	374823	
11. Percent of Total Inspections in Public Sector	204 7.57	15 6.55	510 6.4	MN State Data (3
years)	2695	229	7925	
12. Average lapse time from receipt of Contest to first level decision	42582 127.87	3896 134.34	3826802 217.8	National Data (3
years)	333	29	17571	
13. Percent of 11c Investigations Completed within 90 days	43 91.49 47	4 100.00 4	100%	
14. Percent of 11c Complaints that are Meritorious	6 12.77	0 .00	1461 21.2	National Data (3
years)	47	4	6902	
15. Percent of Meritorious 11c Complaints that are Settled	5 83.33	0	1256 86.0	National Data (3
years)	6	0	1461	

*MN 11.12

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix E - State Information Report (SIR)

Minnesota SIR FY 2010

			3 months		6 months		12 months		24 months	
			FED	State	FED	State	FED	State	FED	State
C - Enforcement Private Sector	1. Programmed Inspection %	Safety	62.4	92	63.8	91.4	65.1	91.4	65.9	92.6
		Health	30.6	61.1	33.7	66.5	35	66	35.1	67.9
	2. Programmed Inspection with Violations %	Safety	72.7	73.7	71.2	73.9	69.1	73.1	67.1	73.3
		Health	57.8	67	53.9	69.6	55.4	62.5	53.4	63.4
	3. Serious Violations (%)	Safety	81.6	78.6	81.5	76.7	81	76.1	80.1	76.1
		Health	69.6	71.4	70.5	68.7	70.2	66.7	69.6	63.8
	4. Abatement Period for Violations %	Safety % > 30 Days	15	2.2	16.3	5.1	17.2	5.2	17.7	5.1
		Health % > 60 Days	69.6	1.4	70.5	3.2	70.2	6.8	69.6	10.5
	5. Average Penalty	Safety OTS	838.5	187.2	803.1	192.6	894.3	203.8	967.6	205
Health OTS		817	185	801.6	175.8	835.8	174.9	842.2	180.2	
6. Inspections per 100 hours	Safety	5.8	3.4	5.7	3.4	5.5	3.5	5.5	3.6	
	Health	2.1	2.3	2	2.4	1.9	2.3	1.8	2.2	
7. Violations Vacated %		3.7	0	4.3	0	4.7	0	5	0.1	
8. Violations Reclassified %		2.8	0	3.4	0	4	0	4.4	0	
9. Penalty Retention %		64.5	79.5	63.9	79.4	63	79.9	62.8	79	
			Private	Public	Private	Public	Private	Public	Private	Public
D. Enforcement Public Sector	1. Programmed Inspections %	Safety	92	92.9	91.4	88.1	91.6	95.6	92.6	93.9
		Health	61.1	28.6	66.5	25	66	30	67.9	20
	2. Serious Violations %	Safety	78.6	78.6	76.6	74.5	76.1	74.1	76.1	74.6
		Health	71.4	100	68.7	54.5	66.7	87.8	63.8	84.5
			3 months		6 months		12 months		24 months	
			FED	State	FED	State	FED	State	FED	State
E. Review Procedures	1. Violations Vacated %		22.5	10	23.2	9.7	21.9	9.2	23	8.9
	2. Violations Reclassified %		11.3	10.7	12	10.4	11.7	11	13.3	11.9
	3. Penalty Retention %		65.3	63.7	62.3	61.7	58.1	61.3	58.4	60.4

Appendix F – Acronyms

ABC	Associated Building Contractors
ADM	Administrative Management Directive (Minnesota)
ADM	OSHA Instruction – Administrative
AGC	Associated General Contractors
ARRA	American Recovery and Reinvestment Act
AWAIR	A Workplace Accident and Injury Reduction (Minnesota)
CAP	Corrective Action Plan
CASPA(s)	Complaint(s) about the State Program Administration
CY	Calendar Year
CDI	Corrected During Inspection
CPE	Certified Professional Ergonomist
CPL	Compliance Directive
CPR	Cardiopulmonary Resuscitation
DART	Days Away Restricted or Transferred
DLI	Department of Labor and Industry (Minnesota)
EFAME	Enhanced Federal Annual Monitoring and Evaluation (Minnesota, FY 2009)
EISA	Expedited Informal Settlement Agreement
FAME	Federal Annual Monitoring and Evaluation (Minnesota)
FCM	Field Compliance Manual (Minnesota)
FEMA	Federal Emergency Management Agency
FOM	Field Operations Manual
FTA	Failure-To-Abate
FTE	Full Time Equivalent
FY	Fiscal Year
H1N1	2009 H1N1 Influenza
HSEM	Homeland Security and Emergency Management (Minnesota)
IMIS	Integrated Management Information System
IH	Industrial Hygienist
LEP	Local Emphasis Program
LWDIR	Lost Workday Injury Related
MN	Minnesota
MNOSHA	Minnesota Department of Labor and Industry – Occupational Safety and Health Division
MNSTAR	Minnesota’s version of the Federal VPP Program
MNSHARP	Minnesota Safety and Health Achievement Recognition Program
MOOSE	Minnesota OSHA Operations System Exchange
NEP	National Emphasis Program

OMT	Occupational Safety and Health Management Team (Minnesota)
OSH	Occupational Safety and Health
OSHA	Occupational Safety and Health Act
OSHA-170	Accident Investigation Summary
OSHA-300	Log of Work-Related Injuries and Illnesses
OSHI	Occupational Safety and Health Investigator (Minnesota)
OTI	Occupational Safety and Health Training Institute
PE	Professional Engineer
PEL	Permissible Exposure Limit
PMA	Petition for Modification of Abatement
PPE	Personal Protective Equipment
PSM	Process Safety Management of Highly Hazardous Chemicals
SAMM	State Activity Mandated Measures (Minnesota)
SFY	State Fiscal Year
SIR	State Interim Indicators Report (Minnesota)
SOAR	State OSHA Annual Report (Minnesota)
S/W/R	Serious, Willful, Repeat
TRC	Total Recordable Cases
VPP	Voluntary Protection Program
WMSD	Work-Related Musculoskeletal Disorder
WSC	Workplace Safety Consultation (Minnesota)
23 (g) grant	Grant Agreement of the OSHA 23(g) Operational Program (MN Compliance Program)
21(d) grant	Grant Agreement (MN Workplace Safety Consultation Program)

Appendix G – State OSHA Annual Report (SOAR)