

Federal Annual Monitoring and Evaluation (FAME) Report

State of Minnesota

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

October 1, 2010 to September 30, 2011

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I. Executive Summary

A. Summary of Report

The purpose of this report is to assess the State's progress towards achieving their performance goals established in their Federal Fiscal Year (FY) 2011 Annual Performance Plan and to review the effectiveness of programmatic areas related to enforcement activities including a summary of an onsite evaluation. The guidance used in the development of this report was based on OSHA's collective experience in conducting the FY 2009 evaluations, the FY 2010 follow-ups, and feedback from Federal and State participants. This report fully assesses the current performance of Minnesota Department of Labor and Industry – Occupational Safety and Health Division (MNOSHA) 23(g) enforcement program and compares the State's program to Federal OSHA.

A four person Federal OSHA team was assembled to accomplish the evaluation onsite at MNOSHA in St. Paul, Minnesota, beginning on January 17, 2012. The OSHA team's evaluation consisted of case file reviews and review of MNOSHA's performance statistics in relation to Federal performance.

A detailed explanation of the findings and recommendations of the MNOSHA performance evaluation is found in Section IV, Assessment of State Performance. The summary of all the findings and recommendations noted, as the result of OSHA's audit, is found in Appendix A *Findings and Recommendations*.

Quarterly monitoring team meetings were held during FY 2011, at which time the State Activity Mandated Measures (SAMM) and State Information Report (SIR) were reviewed and discussed with MNOSHA compliance staff. Any identified discrepancies were analyzed and reported to the Office of Management Data Systems (OMDS) for correction to assure that the data is complete, accurate, and useful.

The Annual Performance Plan results, reported by Minnesota Department of Labor and Industry – Occupational Safety and Health Division (MNOSHA) in the State OSHA Annual Report (SOAR), indicate that the program has made advancements towards achieving its three strategic goals. Evaluation of goal achievement or significant progress toward goal accomplishment has been reviewed and the results are identified in this report. The mandated activities have also been reviewed and the results are presented in this report.

Noteworthy assessments of MNOSHA's progress in achieving their annual performance goals are as follows:

- Performance Goal 1.1, Reduction in Total Recordable Case (TRC) rate. MNOSHA achieved a 14% reduction in the TRC rate; from 4.56 recordable cases per 100 workers to 3.9.
- Performance Goal 1.2, Reduction in State Fatality rate. MNOSHA achieved a 25% reduction in worker fatality rate; from 0.784 fatalities per 100,000 workers to 0.586.

- Performance Goal 2.2, Increase the total number of people participating in outreach. MNOSHA set out to increase earlier participation of 2,785 individuals by 5%, and exceeded that by 53% with 4,478 participants.
- Performance Goal 1.3a, Total Hazards Identified/Establishments Visited. The goal was to increase hazard identification by 1% over a five-year average for FY 2003-2007 of 4,919 hazards identified in 2,619 establishments. This goal was not met. There was a State government shutdown in Minnesota from July 1, 2011 through July 20, 2011. Most agency activity was ceased, causing both a direct and indirect impact on the services normally provided to stakeholders. The result was a decrease in the number of inspections conducted and the number of hazards identified. In FY 2011, 4,363 hazards were identified in 2,325 establishments, which was an 11% decrease.

Most noteworthy is the fact that MNOSHA continues to focus on abatement verification, in particular, the number of cases more than 30 days past their abatement date. Following improvements made in the previous Fiscal Year, in October 2010 there were 15 cases exceeding 30 days past their abatement date. During the next six-month stretch, there were no more than eight cases exceeding 30 days. This number was reduced to four in May 2011.

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 Workplace Safety Consultation (WSC) Division within Minnesota DLI.

Federal OSHA received and investigated one Complaint About State Program Administration (CASPA) during FY 2011. It has been determined that MNOSHA followed the appropriate process and procedures which are at least as effective as federal OSHA's. Federal OSHA's review found that the State's action regarding this complaint was proper, timely, and appropriate.

B. State Plan Introduction

The Minnesota Department of Labor and Industry (DLI) administers the Minnesota Occupational Safety and Health (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 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.

MNOSHA's mission is "to ensure 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, which enables employers to maintain safe and healthful workplaces.

MNOSHA's vision is to be a leader in occupational safety and health and to make Minnesota's workplaces the safest in the nation. MNOSHA is striving for the elimination of workplace injuries, illnesses, and deaths to ensure 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.

The Minnesota Occupational Safety and Health Strategic Plan for FY 2009 to FY 2013 established three strategic goals: 1) Reduce occupational hazards through compliance inspections, 2) Promote a safety and health culture through compliance assistance, outreach, cooperative programs, and strong leadership, and 3) Strengthen and improve MNOSHA's infrastructure. The FY 2011 Performance Plan provided the framework for accomplishing the goals of the MNOSHA Strategic Plan by establishing specific performance goals for FY 2011.

Stakeholder interviews provided valuable insight into program performance during the FY 2009 review. OSHA again reached out to those individuals for updated feedback for the FY 2011 evaluation.

Minnesota Safety Council
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The partnership between the Minnesota Safety Council and MNOSHA is long and strong. As we toured the State earlier this year to talk with our members, which are employers and labor organizations, we heard at every stop that MNOSHA is assertive, but reasonable in enforcing workplace safety laws. We heard that MNOSHA's consultation services are helping to strengthen workplace safety programs. There is respect for MNOSHA and for the work of its staff. As you know, I have chaired the MNOSHA Advisory Council for the past several years. I continue in that role because the Minnesota Safety Council believes that our members are being well-served by an agency that understands its mission, is strategic in how it plans and delivers services, and operates with effectiveness, fairness, and integrity.

Associated General Contractors (AGC) of Minnesota
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St. Paul, MN 55103

MNOSHA has begun to cross-train their compliance inspection staff in an effort to achieve greater efficiency. Inspectors are now expected to have a broad knowledge of construction and general industry regulations in both Federal standards and MN rules. This has, in the opinion of AGC of Minnesota, created a "jack of all trades, master of none" product. Contractors are frustrated at the lack of construction-specific knowledge this model has created and are routinely cited on fairly trivial safety exposures while other more serious situations go unaddressed. It is the opinion of the AGC of Minnesota that both MNOSHA (regulator) and the construction industry (regulated) would benefit from greater

collaboration in stakeholder sessions where new rules are proposed or MNOSHA programs are undergoing a redesign that will affect the regulated community. This would provide a better understanding by MNOSHA staff of the impact that such changes would have on the construction industry. Some of the successes are certain MNOSHA programs are active and welcome the opportunity to assist in learning activities. AGC of Minnesota conducts monthly safety committee meetings where safety directors from member contractors show up to discuss compliance and regulatory issues. MNOSHA Compliance personnel attend and participate. Additionally, where OSHA safety programs such as 10 and 30-hour outreach sessions are delivered, MNOSHA staff routinely provides instructional assistance. Statewide education and compliance workshops in support of new standards, such as “cranes in construction” (Subpart CC), are in part lead by MNOSHA staff. Also, partnership programs such the Construction Health and Safety Excellence (CHASE) continue to improve with involvement from MNOSHA. Presently, a joint AGC/MNOSHA task force has been developed to address needed changes to the 10-year old CHASE program.

Associated Builders and Contractors, Inc.
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As the safety representative for MN ABC, I have worked with MNOSHA quite extensively through our safety committee here at MN ABC. We have found that our members enjoy the opportunity to work with MNOSHA representatives, and really appreciate getting to discuss safety issues of the day, as well as initiatives to make the construction industry safer. MNOSHA has been great about sending a representative to our safety committee meetings, which are held all over the State. This is something our organization values immensely, and hopes will continue. In addition, our partnership with MNOSHA Compliance has been a great method of opening the lines of communication and encouraging our members to get to know OSHA as best they can. Recently, MNOSHA has spearheaded an effort to improve the partnership for both OSHA and the partner members. While the end result isn't yet clear, we greatly appreciate the effort and drive by MNOSHA to make this program work for both parties. We want the partnership to be successful, and a worthwhile endeavor for our members, while reducing injuries and illnesses, and we believe MNOSHA wants the same. It's a great thing. MNOSHA has undergone some changes in the past few years and I do hear our members mention the inspectors' knowledge of construction jobsites as a “work in progress.” We believe MNOSHA recognizes this as a major challenge, and has been addressing it. We appreciate friendly, knowledgeable inspectors. Our members don't want to feel as if they are responsible for training inspectors on certain construction issues. That is the number one complaint we hear. We know MNOSHA is aware of this and is working to improve their training program for new inspectors crossing over from GI. All in all, we feel lucky to have a State program in Minnesota and a great relationship to go with it.

IBEW Local 160
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During the past several years while attending OSHA Advisory Council meetings, I have had the opportunity to review MNOSHA accident analysis reports. It has been obvious to me that the Commissioner's staff members are dedicated to the safety of Minnesota workers and work diligently to follow the standards of both Minnesota statutes and the Federal requirements. Several programs that direct emphasis toward specific industries have been implemented. I believe the logging industry program has been particularly beneficial. It has also assisted beyond the spectrum of workplace safety by benefitting volunteer groups, like the Boy Scouts, with training of their adult volunteers. I believe this type of activity has raised the public awareness of the positive impact that MNOSHA has on all aspects of safety.

C. Data and Methodology

A review of the MNOSHA workplace safety and health program was conducted onsite from January 17, 2012 to January 20, 2012. Ten fatality inspection case files were evaluated. Ninety-seven inspection cases (comprising of 67 safety files, 29 health files, and one combined safety and health file) were selected randomly for review. A total of 20 complaint files were evaluated, including non-formal complaints of seven safety, two health, and one safety/health as well, and formal complaints consisting of six safety and four health. Discrimination cases were selected from those with final determinations during the review period and the selections were based on type of determination and the investigator of record. Eleven of the 33 cases were reviewed, including those with settled, settled other, dismissed and withdrawn determinations. All cases occurred from October 1, 2010 through September 30, 2011.

In addition to reviewing the above cited case files, the audit team reviewed data gathered from MNOSHA inspections conducted from October 1, 2010 through September 30, 2011, including general statistical information, complaint processing, and inspection targeting. Minnesota data as contained in the Integrated Management Information System (IMIS), OSHA's database system used by the State to administer its program and by the State and OSHA to monitor the program, was examined. Compliance with legislative requirements regarding contact with families of fatality victims, training, and personnel retention was assessed. The review also included interviews with MNOSHA's management and compliance staff.

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.

D. Findings and Recommendations

As a result of the review, several findings are being made for program improvement. Highlights of the study findings are as follows. A list of all findings is included in Appendix A of this report.

1. Finding: 11-01 formerly 10-06: Abatement was classified as “Corrected During Inspection (CDI), No Abatement Documentation Required,” in the files reviewed where serious hazards were identified. The files reviewed where CDI was applied did not contain the specific information outlining the corrective action observed by the compliance officer.

Recommendation: 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.

2. Finding: 11-02: Discrimination complainants who filed complaints that were screened and closed are not sent letters explaining the reason(s) the complaint is not going to be investigated.

Recommendation: Send letters to complainants who filed complaints that were screened and closed.

3. Finding: 11-03: MNOSHA Instruction ADM 3.6C does not require docketing and dismissal of screened and closed discrimination complaints, when the complainant did not accept that determination.

Recommendation: Update the procedure to reflect that when the complainant refuses to accept the determination that his/her complaint is screened and closed, the case must be docketed and dismissed with appeal rights.

II. Major New Issues

There was a State government shutdown in Minnesota from July 1, 2011 through July 20, 2011. Most agency activity was ceased, which caused both a direct and indirect impact on the services normally provided to stakeholders resulting in a decrease in the number of inspections conducted and number of hazards identified. The FY 2011 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. The number of hazards identified decreased by 11%, as 4363 hazards were identified within 2325 establishments visited.

MNOSHA initiated a Local Emphasis Program targeting window washing operations during FY 2011, which began on October 1, 2010. Currently, MNOSHA has a team of 12 investigators that have been trained in the recognition of hazards associated with window washing operations. MNOSHA has conducted 25 inspections under this new Local

Emphasis Program. During this time, MNOSHA has proposed 27 citations including four willful and 22 serious citations. MNOSHA investigators have identified and corrected many hazardous situations, which included: improper rigging of load lines, improper rigging of life lines, insufficient counterweights used on outrigger beams, improper selection and use of anchorage points, failure to inspect anchorage points, intermixing of integral components of suspension scaffolds, no use of fall protection for attendants when working on rooftops and near edges, and improper ladder usage. MNOSHA has plans to expand the Window Washing Local Emphasis Program to the rest of the MNOSHA investigators in FY 2012. MNOSHA is in the process of adopting a Minnesota rule that will further protect employees in the window washing industry. The rule, if adopted, would require window washers to provide the following information: a written plan discussing the hazards of each building they will be working on, a visual inspection of the building to identify hazardous areas, inspection data to be reviewed for all anchorage points in place prior to use, implementing new regulations similar to the ANSI Standard when using rope decent systems, and required training of window washing personnel.

III. State Response to FY 2010 FAME Recommendations

MNOSHA has taken significant action toward addressing the issues found in the FY 2010 Corrective Action Plan (CAP). There were seven issues identified as requiring correction through the OSHA review during the 2010 EFAME follow-up and CAP. Five items were classified as being on the right track, while two items were classified as remaining open. The FY 2011 evaluation revealed the MNOSHA corrective action for the one item remaining open was found to be inconsistent with Federal OSHA requirements for the application of Corrected During Inspection (CDI) abatement classification.

FY 2010 Findings and Recommendations

- Finding 10-01 formerly 09-01: Eighteen percent 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 and ensure the employer provides sufficient information to show abatement of the alleged hazard has occurred or the lack of any hazard.

- Update 10-01: Completed

- 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: Completed

- 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: Completed

- 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: Completed

- 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: Completed

- Finding 10-06 formerly 09-07: In 31% of the 13 fatality inspection files and 21% of the 25 files reviewed, 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 11-01 formerly 10-06: The appropriate use of the abatement method “Corrected During Inspection” was not well documented in MNOSHA’s policies and procedures and, at times, was used inappropriately. MNOSHA ADM 3.4 *Abatement Verification* was revised on September 16, 2011. A violation can be considered corrected during the inspection when the compliance officer witnesses the correction to the specific violation while onsite. Additionally, Federal OSHA requires that the OSHA-1B worksheet must contain information on how the violation was abated. This policy is outlined in the OSHA FOM and in the previous Compliance Directive Abatement Verification Regulation, 29 CFR 1903.19 - Enforcement Policies and Procedures (CPL 2-0.114). This item is ongoing and MNOSHA appears to be on the right track.

- Finding 10-07 formerly 09-08: Petition for Modification of Abatement (PMA) requests were 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 10-07: Completed

IV. Assessment of State Performance

Through its annual performance report, MNOSHA has provided information that supports positive performance in the 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. Challenges transpired because of rule, policy, and procedural changes, as well as technology improvements, resulting in positive achievements.

Information provided by MNOSHA has been reviewed and analyzed to assess its accuracy in meeting Performance Plan goals and the overall accomplishment of the third year of their Five-Year Strategic Plan.

A. Enforcement

1. Complaints

During FY 2011, MNOSHA received a total of 579 complaints, of which 270 (47%) were formal and 309 (53%) were non-formal. During the same period, Federal OSHA received a total of 28,709 complaints, of which 3,702 (13%) were formal and 25,007 (87%) were non-formal. The average number of days to initiate a complaint inspection in FY 2011 was 2.98, below the negotiated standard of nine days. The average number of days to initiate a complaint investigation was 0.64, well below the negotiated standard of two days. OSHA randomly selected 20 complaint investigations for review during this evaluation of the MNOSHA program.

MNOSHA has its own complaint process specified in its own administrative instruction, ADM 3.16A *Administrative Procedures for Handling Complaints and Information Requests*. It outlines the policies and procedures for processing formal and non-formal complaints. MNOSHA's complaint process for formal complaints is similar to Federal OSHA's process with one exception. MNOSHA considers electronic complaints obtained through the Federal OSHA 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 the issue, such as in sanitation complaints or complaints with low severity.

MNOSHA's non-formal complaint processing does differ from Federal OSHA's program in several areas. As with the Federal program, with the occurrence of a serious injury, 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*). However, non-formal complaints or information alleging hazards covered by a Local or National Emphasis Program are not scheduled for inspection, whereas, Area Directors in Federal OSHA offices can elevate these complaints for inspection. Though many of the complaints received by MNOSHA covered by Local or National Emphasis Programs are investigated, OSHA suggests that MNOSHA review its criteria for warranting inspections.

In addition, another difference between the Federal OSHA program and MNOSHA's complaint process deals with the outcome of non-formal complaint investigations. At the conclusion of the investigation, MNOSHA does not send a letter to the complainant to inform them of the outcome.

Following complaint inspections, complainants are mailed a letter informing them of the inspection indicating whether or not citations were issued. In the Federal program, the letter addresses each complaint item with reference to the citation(s) or a sufficiently detailed explanation for why a citation was not issued. MNOSHA is prohibited under State statute to provide detailed information in the letter for open cases (Minnesota Statute § 13.39 subd.2). MNOSHA is not able to share citations with the public until the citations are final order. This is the result of a court decision called the Westrom decision. In this court case, the Minnesota Department of Labor and Industry was prohibited from making public inspection results prior to citations becoming final order. The statute also prohibits the complainant from receiving a copy of the citations when issued.

There are no complaint process outliers of concern or recommendations requiring attention from the MNOSHA FY 2011 activities evaluated.

2. Fatalities

A total of 22 fatalities were reported to MNOSHA in FY 2011. The Serious/Fatality Log was reviewed and contained adequate documentation on why an inspection was not conducted when the jurisdictional determinations were made. A total of 10 fatality files were reviewed by the Federal OSHA team. The files reviewed contained excellent documentation and appropriate violations were issued related to the fatality. In the cases where citations were issued, the documentation was complete and supported the citations. In addition to the case file reviews, the evaluation process included interviews with MNOSHA management personnel. The interviews supported the evaluation team's case file review findings.

Fatality information is recorded in MNOSHA's information system, MOOSE (MNOSHA Operations System Exchange). All fatalities are entered into the Serious/Fatal Log. Each entry is reviewed by a supervisor who determines if the fatality falls within MNOSHA's jurisdiction. The supervisor can assign a fatality for inspection from the log, at which time

an OSHA-36 Fatality/Catastrophe form is generated. Generally, non-jurisdiction fatalities are not inspected and an OSHA-36 is not generated.

MNOSHA has statutory requirements and internal policies regarding notifying the next-of-kin for fatality investigations. MNOSHA has a statutory requirement (Minn. Stat.182.6545) to locate the next-of-kin and the next-of-kin has the right to request a consultation with MNOSHA regarding citations and notification of penalties issued as a result of an employee's death. Additionally, MNOSHA ADM 3.19F requires a condolence letter be sent to the next-of-kin. All fatality case files from FY 2011 indicated the letter was sent and the file contained a copy.

After the issuance of the initial next-of-kin letter, MNOSHA generally does not communicate with the next-of-kin unless MNOSHA is contacted by them. Contact with the next-of-kin is generally kept at the supervisory/management level. Compliance officers typically do not communicate with the next-of-kin.

During the 2000 session, the legislature amended the Minnesota Occupational Safety and Health Act by adding a new section which requires MNOSHA to send copies of specified documents related to a fatality investigation to the victim's next-of-kin. A copy of the following documents must be sent to the next-of-kin:

1. the Citations and Notification of Penalty
2. Notices of Hearings
3. Complaints and Answers
4. Settlement Agreements
5. Orders and Decisions
6. Notice of Appeals

The next-of-kin also have the right to request a consultation with the Department regarding citations and notifications of penalties issued as a result of the investigation of the employee's death.

There are no fatality process outliers of concern or recommendations requiring attention from the MNOSHA FY 2011 activities evaluated.

3. Targeting and Programmed Inspection

MNOSHA conducted 2,325 inspections, with 83% opened as programmed inspections. Seventy percent (70%) of the inspections conducted resulted in violations and 74% of those violations were cited serious. MNOSHA focused its programmed inspections to reduce injuries, illnesses, and fatalities in certain emphasis industries. MNOSHA has a specific administrative instruction that outlines its policies for inspection targeting, ADM 2.1-10A *Scheduling Plan for Programmed Inspections*.

MNOSHA has developed targeting lists to address Strategic Plan hazards and industries for programmed inspections. MNOSHA's Program Administration unit is responsible for

collecting data and developing targeting lists for inspection under the various National and Local Emphasis Programs.

MNOSHA participates in several National Emphasis Programs (NEPs), which include Amputations, Combustible Dust, Silica, Lead in General Industry and Construction, and Trenching.

Federal OSHA's Data Initiative information is also used by MNOSHA to develop its own Local Emphasis Program (LEP) to address employers with high injury and illness rates. MNOSHA also used data from Minnesota's Department of Employment and Economic Development and the Minnesota Department of Labor and Industry's Workers' Compensation unit. Employers with high compensation claims and SIC/NAICS codes identified in the State's Strategic Plan will also be scheduled for an inspection.

Other LEPs include, but are not limited to, Window Washing and Building Maintenance, Foundries, Nursing Homes, Meat Packing, Serious Injury, Hexavalent Chromium, and Asthma.

MNOSHA's procedures for scheduling construction inspections are outlined in Minnesota's Notice, *Scheduling Plan for Programmed Inspections* (ADM 2.1-12, 9/30/2011). The primary scheduling methods for construction inspections come from the University of Tennessee data and Activity Generated Inspections. Under the Activity Generated Inspections LEP, an inspection can be opened if the site has at least one of the following activities being conducted (safety or health): demolition and/or renovation work, visible airborne dust, lined dumpsters, use of torches for brazing, cutting, welding, soldering, applying open flame heat, use of internal combustion engines inside a structure, any removal of exterior materials using "dry methods," frequent use of saws, grinders, jackhammers, etc., bridge work, structures greater than 30 feet high, buildings equal to or greater than two stories or 20 feet in height, buildings equal to or greater than 7,500 square feet, multiple equipment operation, crushing hazard or struck-by hazard, or roofing work equal to or greater than 14 feet from the eave to a lower level.

Of the 1,932 programmed inspections, 1,923 were coded as programmed planned, while nine were coded as programmed related.

Of the 2,325 inspections conducted during the review period, 1,610 (70%) inspections resulted in citations. Of those, 88% resulted in the issuance of serious, willful, or repeat violations. Comparatively, Minnesota's percentage of inspections with citations is higher than the average for all State Plans, which was 46%, and lower than that of Federal OSHA, which was 77%. For FY 2011, Minnesota's performance was calculated at 68% of Not-in-Compliance (NIC) programmed safety and health inspections with S/W/R violations, which is above the national State data of 60%.

Violations per Inspection

During FY 2011, of inspections with serious, willful, or repeat violations cited, the average violation per inspection was 2.04.

Number and Percentage of Serious, Willful, Repeat Violations

During FY 2011, Minnesota issued a total of 4,347 violations with 3,076 (71%) classified as serious, 15 (0.3%) classified as willful, 17 (0.4%) classified as repeat, and 1,211 (28%) classified as other-than-serious. Comparatively, Minnesota's percentage of violations classified as serious is higher than the average of 44% for all State Plans and in line with that of Federal OSHA's 73%.

Hazard Identification

In FY 2011, MNOSHA investigators conducted 2,325 inspections where 4,363 hazards were identified and cited. The 97 inspection files audited contained sufficient information documenting the hazards identified during the inspections.

Violation Classification and Grouping

Documentation of the violation classifications along with the grouping of violations were appropriate and deemed similar to OSHA.

In-Compliance Inspections

Seventy percent (70%) of the inspections conducted resulted in violations and 71% of those violations were cited serious. There are no in-compliance inspection outliers of concern or recommendations requiring attention from the MNOSHA FY 2011 activities evaluated.

There are no targeting and programmed inspection outliers of concern or recommendations requiring attention from the MNOSHA FY 2011 activities evaluated.

4. Citations and Penalties

In MNOSHA's Field Compliance Manual (FCM), Chapters 5 and 6 contain the requirements and policies for citations and penalties. There is adequate evidence in the 97 case files reviewed to support the violations cited. Appropriate classification of the violations is applied. The apparent violations identified in the case files are cited appropriately. Appropriate uses of willful and repeat violation classifications were utilized. The citations and penalties proposed for issuance are reviewed at multiple levels in MNOSHA's management system prior to issuance. The average initial penalty per serious violation in the private sector during FY 2011 was \$936, below the national average of \$2,132. Penalty reduction recommendations for good faith credit were applied at levels warranted, meaning documentation of the company's safety and health management system in the case files did

contain the evidence to support the proposals for the good faith credits applied to the penalties.

There are no citation and penalty outliers of concern or recommendations requiring attention from the MNOSHA FY 2011 activities evaluated.

5. Abatement

Most noteworthy is the fact that MNOSHA continues to focus on abatement verification, in particular, the number of cases more than 30 days past their abatement date. Following improvements made in the previous Fiscal Year, in October 2010 there were 15 cases exceeding 30 days past their abatement date. During the next six-month stretch, there were no more than eight cases exceeding 30 days. This number was reduced to four in May 2011.

At the time of the FY 2009 Baseline Special Evaluation of the MNOSHA program, the past due abatement was being aggressively addressed by MNOSHA. In October 2009, MNOSHA completed a reorganization of compliance and management personnel. At the end of December 2009, MNOSHA implemented a management system to control abatement past due issues. 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. Identical to OSHA, MNOSHA's abatement documentation standard (5210.0532 subp. 3) and ADM 3.4 require abatement documentation such as written, video graphic or photographic evidence of abatement in circumstances. When abatement documentation is necessary, MNOSHA identifies this requirement in the citations. MNOSHA trained field staff on correct application of abatement documentation in September 2010. There is adequate evidence in the 97 case files reviewed during the FY 2011 Federal OSHA onsite evaluation to show that the updated procedures effectively addressed the requirement for abatement verification by MNOSHA.

MNOSHA's regulations and written procedures for Petitions for Modification of Abatement Dates (PMA) are equivalent to Federal regulations and procedures. There is adequate evidence in the files in which a PMA was requested that MNOSHA's actions addressed the requests appropriately.

MNOSHA's follow-up inspection policy is slightly different than OSHA's. In addition to follow-ups being scheduled for inspection as the result of an employer's failure to submit timely progress reports outlining abatement or when the compliance officer recommends a follow-up inspection, MNOSHA identifies specific citation outliers which will prompt a follow-up inspection. In Minnesota, a follow-up inspection is scheduled when an inspection results in at least five citations that are serious, willful, or repeat and are not immediately abated with at least one citation rated in greater severity and probability. During the FY 2011 review, MNOSHA was scheduling and conducting follow-up visits according to its current policy.

The appropriate use of the abatement method “Corrected During Inspection” was not well documented in MNOSHA’s policies and procedures and at times was used inappropriately. MNOSHA ADM 3.4 *Abatement Verification* was revised on September 16, 2011. A violation can be considered corrected during the inspection when the compliance officer witnesses and observes the correction to the specific violation while onsite. Additionally, Federal OSHA requires that the OSHA-1B worksheet must contain information on how the violation was abated. This policy is outlined in the OSHA FOM and in the previous Compliance Directive Abatement Verification Regulation, 29 CFR 1903.19 and *Enforcement Policies and Procedures* (CPL 2-0.114). In the files reviewed where serious hazards were identified and the abatement was classified as Corrected During Inspection (CDI), the files did not contain the specific information outlining the corrective action observed by the compliance officer.

Findings and Recommendations

11-01 formerly 10-06: Abatement was classified as Corrected During Inspection (CDI), “No Abatement Documentation Required,” in the files reviewed where serious hazards were identified did not contain the specific information outlining the corrective action observed by the compliance officer, contrary to CPL 02-00-114 *Abatement Verification Regulation* and 29 CFR 1903.19 – *Enforcement Policies and Procedures* section VII E.

Recommendation 01: Ensure “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.

6. Employee and Union Involvement

Minnesota Statute 182.659 and Chapter 3 of the Field Compliance Manual (FCM) contain requirements and policies for the compliance officer to involve employees and employee representatives during the course of the inspection. This includes the opening conference, walk around, and closing conference. This has been sufficiently documented in the case files reviewed. In cases where citations are issued, the authorized employee representatives are also mailed a copy of the citation.

In accordance with MN Stat.182.661 and Minnesota Rules Chapter 5210, employers, employees, and authorized employee representatives have 20 calendar days from the date of receipt of citations within which to file a notice of contest regarding the citation, type of violation, penalty, and/or abatement date. The statute further requires that the notice be filed on a form provided by the Commissioner and that the contesting parties serve a copy of the notice on affected employees.

Additionally, Minnesota Rule 5210.0573 permits an employer, affected employees or authorized representatives to request party status if one of the other parties contests the citation. Employees and authorized representatives are informed of this process on the

Employee Notice of Contest form. By obtaining party status, affected employees or authorized representatives are involved in informal and formal settlements and formal hearings.

There are no employee and union involvement outliers of concern or recommendations requiring attention from the MNOSHA FY 2011 activities evaluated.

B. Review Procedures

During FY 2011, MNOSHA vacated 2.0% of violations, while OSHA vacated 7%. MNOSHA also reclassified 10.9% of violations, while OSHA reclassified 4.8% of violations. With regard to penalties, MNOSHA retained approximately 75%, while OSHA retained 57.1% of penalties. During FY 2011, five cases went to hearing that resulted in formal settlements, none of which the companies filed appeals.

1. Informal Conferences

MNOSHA's review procedures are organized slightly different than the Federal OSHA program. Instead of conducting an informal conference before the expiration of the contest period, a citation must be contested before an informal conference is held. In accordance with MN Stat. 182.661 and Minnesota Rules Chapter 5210, employers, employees, and authorized employee representatives have 20 calendar days from the date of receipt of citations within which to file a notice of contest regarding the citation, type of violation, penalty, and/or abatement date. The statute further requires that the notice be filed on a form provided by the Commissioner and that the contesting parties serve a copy of the notice on affected employees.

MNOSHA has developed three official forms for an employer or employee to use when filing a notice of contest. The employer forms are mailed to the employer with the citation package when the citation notice is issued. The Employee Notice of Contest form is sent to the employer when an employee contest letter is received. The employee contest date is considered to be the date the original letter of contest is received by MNOSHA from an employee.

2. Formal Review of Citations

After receiving the properly filed notice of contest, MNOSHA will attempt to meet with the contesting party to discuss relevant matters pertaining to the conduct of the inspection, citations, means of correction, penalties, abatement dates, and safety and health programs. After the informal conference, recommended changes to the original citation will be accomplished through a Settlement Agreement and Order (SA&O) prepared by MNOSHA's legal counsel or the matter may be referred for hearing.

MNOSHA management discusses interim employee protection measures with employers during settlement conferences prior to entering into an agreement where abatement dates are extended. MNOSHA does not have a policy developed to document interim protection

measures when the dates are extended. Although not required by any OSHA directive, documenting the interim employee protective measures when employers enter into the agreements will assist MNOSHA, the employer, and employees during the extension period.

MNOSHA management discusses penalty reduction and reclassification reasoning with employers during settlement conferences; however, they do not document the reason for the changes in the agreement or in management’s notes from the meetings. Although not required by any OSHA directive, documenting the justifications for the changes will ensure consistency within the program when the changes are made.

There are no review process outliers of concern or recommendations requiring attention from the MNOSHA FY 2011 activities evaluated.

C. Standards Adoption and Plan Changes

1. Standards Adoption

A total of three applicable standards were required to be adopted during FY 2011. All five were dealt with by the State of Minnesota in a timely manner. The standards adopted by Minnesota became effective in the appropriate timeframe, within 60 days after the effective date of the Federal standards.

Federally Initiated Standards Log Summary for MN Report

02/15/2012

| Federal Standard Number | Subject | Intent to Adopt | Adopt Identical | Date Promulgated | Effective Date |
|--------------------------------|---------------------------------|-----------------|-----------------|------------------|----------------|
| ,1910,1926,1915 2010 39 | Hexavalent Chromium | YES | YES | 10/04/2010 | 11/29/2010 |
| ,1926.754 2010 40 | Personal Protective Equipment | YES | YES | 10/04/2010 | 11/29/2010 |
| ,1926(various) 2010 41 | Cranes and Derricks | YES | YES | 12/20/2010 | 02/07/2011 |
| 1910, 1915, 2011 | Working Conditions in Shipyards | YES | YES | 11/14/2011 | 11/14/2011 |
| 1910, 15, 18, 19, 26, 28, 2011 | Standards Improvement Project | YES | YES | 11/14/2011 | 11/14/2011 |

2. Federal Program Changes (FPC)

All Federal Program Changes were submitted timely, along with plan change information and any State initiated changes, with no outliers of concern or recommendations requiring attention for the MNOSHA FY 2011 activities.

Federal Program/MN Response

Federal Program Change Summary for MN Report 02/15/2012

| Directive Number | Title | Adoption Required | Intent Required | Intent to Adopt | State Adoption Date |
|------------------------|--|-------------------|-----------------|-----------------|---------------------|
| CPL-02(10-06) 2011 400 | SST-10 | NO | YES | NO | N/A |
| CPL-02(10-07) 2011 401 | Recordkeeping NEP | NO | YES | NO | N/A |
| CPL-02-01-049 2011 402 | PPE in Shipyard Employment | NO | YES | NO | N/A |
| STD-03-11-002 2011 403 | Compliance Guidance for Residential Construction | NO | YES | NO | N/A |
| CPL-02-01-050 2011 422 | PPE in General Industry | NO | YES | NO | N/A |
| CPL-03(11-01) 2011 423 | NEP Microwave Popcorn Processing | YES | YES | YES | 9/30/11 |
| CPL-02-00-150 2011 442 | Revisions to Field Operations Manual | YES | YES | YES | 7/22/11 |
| CPL-02-01-051 2011 443 | Confined Spaces in Shipyards | NO | YES | NO | N/A |
| CPL-03-00-013 2011 444 | NEP Primary Metals | YES | YES | NO | N/A |
| CPL-02-00-151 2011 445 | Commercial diving Operations | NO | YES | NO | N/A |
| CPL-02-01-052 2011 462 | Enforcement Procedures for Incidents of Workplace Violence | NO | YES | NO | N/A |
| CPL-02-11-03 2011 463 | Site Specific Targeting – 2011 | NO | YES | NO | N/A |
| CPL-02-03-003 2011 464 | Whistleblower Investigation Manual | YES | YES | YES | Pending 5/17/12 |

The State continues to provide timely responses to OSHA regarding their intentions with regard to all Federally Initiated Program Changes, including those initiated during FY2011. For those Federal Program Changes that the State did not adopt, these items were not adopted due to the State having a pre-existing standard or directive that addressed these issues. To access these documents, please visit http://www.osha.gov/dcsp/osp/std_fpc.html. For specific information on the State's policy as it relates to these items, please contact MNOSHA Compliance at 651-284-5050.

FY 2011 State Initiated Changes

The State of Minnesota continues to provide timely notification to OSHA regarding all State-initiated program changes. MNOSHA did not promulgate any State-initiated changes during FY 2011.

D. Variances

There were no variance requests received or variances granted during the review period.

A variance is an order issued by the Minnesota Department of Labor and Industry to allow an employer to deviate from the requirements of a MNOSHA standard. Variances can be temporary or permanent. Variances are to be written to cover future activity by the employer

and his or her employees. The department can refuse to accept an application for a variance regarding a contested citation.

A temporary variance allows an employer more time to come into compliance with an OSHA standard. An employer can apply to the department for a variance if the employer is unable to comply with a new standard by its effective date because the employer currently lacks the needed technical expertise, materials and equipment, or the needed construction work will not be completed by the effective date; the employer is taking all feasible precautions to protect employees from the hazards covered by the standard; and the employer has an effective plan to come into compliance with the new standard as soon as possible.

To apply for a temporary variance, an employer must submit an application to the department containing: the standard or the portion of the standard for which the employer is requesting the variance, a detailed statement describing why the employer cannot come into compliance by the standard's effective date, which is endorsed by employees who have first-hand knowledge of the process or hazard, a description of all the measures the employer will be taking to protect the employees from the hazards covered by the standard, a statement of when the employer expects to be in compliance with the standard, along with a description of the specific steps the employer has taken and will take to meet the requirements of the standard, including completion dates for all steps, and a certification that the employer has notified employees about the application by providing written copies to their union representative, and posting a summary of the application in the workplace.

A permanent variance recognizes there may be other ways to effectively protect employees from hazards other than those specified in a particular OSHA standard. In the application for the variance, the employer must provide detailed information about engineering controls, work practices, administrative controls and personal protective equipment that will be used, and demonstrate that these measures would protect employees from injury and illness at least as effectively as the measures required under the standard. Employees must be notified in writing of the application for a permanent variance and their right to request a hearing about the matter. The order granting the variance will contain the same information about the specific conditions and methods of compliance with the variance as that of a temporary variance. A permanent variance can be modified or revoked by the employer, the employees, or the department at any time after six months of the issuance date.

If a variance is denied, the department will issue an order denying the variance request. This order will contain the employer's name and address, the standard or portions of the standard applicable to the requested variance, the proposed extent and duration of the requested variance, and a concise statement of the reasons the request is being denied. The employer can file a written objection to the denial with the department. The objection must be postmarked within 15 days of receipt of the denial. The department then has seven days in which to send the objection with all the relevant documentation to an Administrative Law Judge, who will conduct a hearing into the matter. Affected employees must be notified by the employer about the hearing and given an opportunity to participate in the hearing.

When variances are granted by Federal OSHA covering several States, MNOSHA will honor a Federal variance, provided the employer has not applied to the department for a separate State variance, the Federal application included Minnesota, the Federal standard from which the variance was granted has been adopted by MNOSHA without change, and the department receives no objections to the variance.

There are no variance process outliers of concern or recommendations requiring attention from the MNOSHA FY 2011 activities evaluated.

E. Public Employee Programs

MNOSHA's Public Employee Program operates identically as the private sector. As with the private sector, public sector employers can be cited with monetary penalties. The penalty structure for both sectors is the same. In FY 2011, MNOSHA conducted 132 public sector inspections. This is about 6% of the total inspections conducted in Minnesota.

There are no public employee program outliers of concern or recommendations requiring attention from the MNOSHA FY 2011 activities evaluated.

F. Discrimination Program

MNOSHA's Whistleblower Protection Program consists of an OSHA Management Team (OMT) director, one team leader/investigator and one investigator. Procedurally, the MNOSHA Whistleblower Program adheres to MNOSHA INSTRUCTION ADM 3.6C, *Discrimination Complaint Handling Procedures*, which provides guidelines for the investigation and disposition of discrimination complaints filed with MNOSHA.

Accordingly, this review followed the guidelines, procedures, and instructions of the OSHA Whistleblower Investigations Manual DIS 0.0.9 effective August 22, 2003, and 29 CFR 1977. Both MNOSHA investigators were interviewed and MNOSHA management was consulted for information as necessary during the review.

This review was for the period 10/01/2010 through 09/30/2011. Reports utilized from WEB IMIS included the Whistleblower Case Listing, Length of Investigation, Activity Measures, and Investigation Data Report for the same period.

During FY2011, MNOSHA had 45 cases docketed for investigation and a total of 33 cases with determinations.

Investigative File Review

The cases reviewed were selected from those with final determinations during the review period and the selections were based on type of determination and the investigator of record. Eleven of the 33 cases (33%) were reviewed, including those with settled, settled other, dismissed and withdrawn determinations. During the review period, the program employed

two full-time whistleblower investigators. Investigators were responsible for assigning cases to themselves and assignment memorandums were not generated.

A review of the Case Listing Report for the review period indicated that of the 33 completed cases, two (6%) were withdrawn, 28 (85%) were dismissed, and three (9%) were merit, with all three merit cases (100%) resulting in settlement. Two of the three settled cases were coded as settled other. The percentage of cases timely completed was 82%, with an average completion time of 105 days. During the same period, the OSHA Region V Whistleblower Protection Program experienced 41 withdrawals, representing 13% of its 11c complaints, and dismissed 66% of 11c complaints, while 13% were found to be meritorious.

While there are some procedural and administrative differences between MNOSHA and Federal OSHA's Discrimination Programs, the determinations made by MNOSHA were consistent with the evidence and reasoning contained in each of the 11 case files reviewed.

Complaint Intake and Screening

MNOSHA follows MNOSHA INSTRUCTION 3.6C for complaint intake and screening. The instruction states that screened out complaints will only be confirmed by letter if the complainant does not understand why their complaint does not meet the criteria to docket the case. Complaints are screened by the investigators. All complaints that were docketed were timely filed, within the State of Minnesota's jurisdiction, and properly screened.

Complaints that are screened and closed are tracked in MOOSE. During the review period, MNOSHA had 61 complaints coded as screened and closed. Of the 61 complaints, 15 were selected for review. The review revealed that screened and closed complaints are documented in MOOSE. Notes, regarding the intake information and the reason the complaint is screened and closed, are entered into MOOSE. The investigators do not document whether or not the complainant was in agreement with the disposition of their complaint and a follow up letter is rarely sent. However, there was no indication during the review of screened and closed complaints that there was a complainant in disagreement with the decision to close their complaint. In addition, the instruction indicates that if a complainant does not wish to file at the time of initial contact with MNOSHA, they may leave their address to receive a letter confirming the 30-day filing time. The reviewed screened and closed complaints in which the complainant chose not to file did not indicate if the complainant was informed of their right to leave their name and address to receive a confirmation letter. However, once again, there was no information to suggest the complainant was not informed of their right.

The OSHA DIS.9 Manual provides that a memo to the file be created and a letter to the complainant be generated for screened and closed complaints. Additionally, where the complainant does not accept the determination, the complaint must be docketed and dismissed. MNOSHA's INSTRUCTION 3.6C, which MNOSHA follows, does not contain the same requirements.

Case Activity Worksheet

The MNOSHA Whistleblower Program does not use Case Activity Worksheets (OSHA 87s) generated by the Whistleblower IMIS system. The program determined that they did not need the information contained on the form. While the case activity worksheet is not provided to the respondent, a detailed allegation is incorporated into the respondent's notification letter.

Complainant Statement and Witness Interviews

MNOSHA utilizes a complainant questionnaire filled out by the investigator after the initial phone intake with the complainant. The complainant questionnaire includes a narrative of the allegation and is sent with the complainant's acknowledgement letter. The complainant is asked to fill in any incomplete sections of the complainant questionnaire, review the narrative of the allegation, provide any additional written documentation, and sign to verify it is accurate. Complainant's initial statements are not taken in person.

Additionally, MNOSHA does not require signed statements for witness interviews. Interviews are taped at the discretion of the investigator. Interviews are reduced to a memo to the file or transcribed at the discretion of the investigator. All transcription is done by the word processing unit in the department.

Docketing and Respondent Notification

Once a complaint has been determined to be appropriate for investigation, the investigator will docket the complaint and the docket and notification letters are sent to the complainant and respondent. In addition to the questionnaire, the complainant's letter includes dual filing rights and both letters are sent via certified mail.

Final Investigation Report

MNOSHA only prepares a Final Investigative Report (FIR) when the complaint resulted in a full field investigation. Complaints that are closed for lack of cooperation, settlement, or withdrawals are closed with a memorandum to the OMT Director. The FIR follows the criteria provided in the DIS.9 Manual. All files containing FIRs did include a proper analysis of the elements of a prima facie case and tested respondent's defense. In all cases, the evidence supported the resulting conclusion. One area where MNOSHA differed was how case files were organized. While the FIR and memorandums outlined the facts of the case, the files were not arranged in accordance with the Whistleblower Investigations Manual so that supporting exhibits were referenced and easily identified. While the contents of the files are also scanned into MOOSE, MNOSHA had not had to prepare any cases post-MOOSE for litigation review.

Secretary's Finding

MNOSHA does not utilize a Secretary's Finding as in the OSHA Whistleblower Program, though they were not required to do so by DIS .9. MNOSHA utilizes a written determination that adequately sets forth the determination and provides the respective party their right to review of the MNOSHA finding.

Settlements

Three cases were settled during the review period. Two of the cases were reviewed: one coded as "settled" and one coded as "settled other." Both files contained fully executed copies of the agreements as well as closing letters to the complainant and respondent. Neither case contained any back pay calculations or memorandums explaining the appropriateness of the terms of the agreements. One settlement was coded as "settled other"; however, MNOSHA was a party to the agreement. The appropriate code should be "settled" as it was not a third party agreement. Interviews revealed some confusion as to when to code cases as settled or settled other. The appropriateness of the terms of the agreement is not scrutinized unless a case is to the point of being potentially meritorious. Early resolution cases are usually approved if both the complainant and respondent are in agreement.

Case File Management

All documents are scanned into MOOSE. The program has not had the need to prepare a file for litigation since MOOSE was implemented. Although the contents were not tabbed, the majority were grouped together by type of document (i.e., witness interviews).

Timeliness

Three cases reviewed were completed outside of the 90-day time frame. Only one of the three cases did not contain documentation adequately explaining the reason for delay.

The percentage of cases timely completed was 82% with an average completion time of 105 days. OSHA Region V completed 41% of its 11c cases timely with an average of 148 days.

Discrimination Web System Information

Dates and information in the case files reviewed were also compared to the entries made into the whistleblower application, although the investigation manual does not address these entries.

MNOSHA entries into the WB application include party information and investigation information and do not utilize case comment, additional tracking, and the date of adverse action.

MNOSHA used the date of the FIR or memorandum to the OMT Director as the determination date.

One investigation was listed as withdrawn and the complaint was actually dismissed.

Data and procedural discrepancies were noted in several of the files reviewed. For example, it appears that the FIR and determination dates are often entered as the same date regardless of the date on the document in the case file.

Program Management

While there were a few discrepancies noted between the entries made into the WB application and the information contained in the investigation files, the entries made were timely, complete, and for the most part accurate. It should be noted that MNOSHA primarily relies on their MOOSE, not the WB application, for tracking and management of discrimination activity. The OSHA management team reviews discrimination activity reports from MOOSE on a monthly basis and does not utilize the report capability of the WB application. Effective procedures are also in place to review appealed cases. Requests for review must be submitted in writing. When a complainant requests an appeal (review), the file and appeal is reviewed by the MNOSHA Director and discussed with the investigator(s). During the review period, two of 28 dismissed cases were appealed. Neither request for review was sustained. If there is a dispute or question regarding complaints that are screened and closed, the OMT Director is involved and additional investigation is conducted if necessary. All screened and referred complaints are tracked in MOOSE.

Resources

Based on training records, investigator interviews, and investigation file reviews, training provided to MNOSHA investigators appears to be adequate. Both investigators have received the basic whistleblower course through the OTI and have had opportunities to attend a National Training Conference. Investigators are also provided with computers, digital recorders and personal protective equipment. Based on the current caseload of the investigators and timeliness of investigations, and the fact that steps have been taken to streamline the investigation process, staffing would appear to be adequate, although 18% of cases were untimely.

Conclusion

While investigation procedures and case file organization differs from those of Federal OSHA, it was concluded after review of the investigation files that the determination reached in each case was supported by the evidence and documentation contained in the files. Procedures are in place which provide for effective and timely investigations, subsequent review, as well as written communication of dual filing rights to private sector complainants.

Procedurally, the MNOSHA Whistleblower Program differs slightly from the OSHA DIS Manual, 29 CFR 1977, and the applicable directives, policies, etc. when using the MNOSHA Instruction 3.6C. MNOSHA's use of a questionnaire and not obtaining either a signed statement or recorded interview from the complainant is in opposition to the OSHA DIS.9 Manual, as is the lack of providing a letter to individuals whose files are screened and closed.

With these slight differences, the determinations made by MNOSHA would not have been different than if OSHA was performing the investigation.

Findings and Recommendations:

Finding 11-02: Discrimination complainants that file complaints that are screened and closed are not sent letters explaining the reason(s) the complaint is not going to be investigated. This is contrary to DIS .9, Ch. 2.III.B.

Recommendation: Send letters to complainants that file complaints that are screened and closed.

Finding 11-03: MNOSHA Instruction ADM 3.6C does not require docketing and dismissal of screened and closed discrimination complaints when the complainant does not accept that determination. This is contrary to DIS .9, Ch. 2.III.B.

Recommendation: Update procedure to reflect that when the complainant refuses to accept the determination that his/her complaint is screened and closed, the case must be docketed and dismissed with appeal rights.

G. CASPA

The following summarize CASPA investigations during FY 2011.

11-13-MN: The CASPA alleged that MNOSHA Compliance did not fully investigate the allegations contained within a complaint, in accordance with all applicable internal policies and procedures related to enforcement of MNOSHA regulations at the workplace. The complainant alleged that MNOSHA had failed to enforce all applicable rules, regulations, and laws; specifically, that several health and safety violations were overlooked and/or missed.

Findings: After a thorough review of the inspection case file, documents provided by MNOSHA, interviewing MNOSHA staff, and review of MNOSHA directives [MNOSHA Instruction ADM 3.16c (12/13/05) *Administrative Procedures for Handling Complaints and Information Requests*, MNOSHA Instruction CPL 2-2.38C CH-4 (8/20/02) *Enforcement Guidelines for Employee Right-to-Know Standard (Minnesota Rules, Chapter 5206) in General Industry and Construction*, and MNOSHA Field Compliance Manual (Rev. 1.03)], it has been determined that MNOSHA followed the appropriate process and procedures in response to the electronically filed complaint. Our review found that the State's action regarding the complaint was proper, timely, appropriate, and within the scope of the policies and procedures listed above and those policies and procedures are at least as effective as federal OSHA's.

H. Voluntary Compliance Programs

Voluntary Protection Program (MNSTAR)

There were 10 Voluntary Protection Program (MNSTAR) site evaluations conducted in Minnesota in FY 2011. Three of the 10 received the designation of MNSTAR sites, two received the designation as merit sites, and the remaining five were recertification evaluations. All 10 of the Minnesota MNSTAR site evaluations reports were reviewed during this FY 2011 evaluation. MNOSHA Instruction ADM 3.28J (06/07/11) *MNSTAR Voluntary Protection Program*, outlines how the State administers the program. MNOSHA's Instruction follows OSHA Voluntary Protection Programs (VPP): Policies and Procedures Manual CSP 03-01-003. Applicants must meet the criteria contained in the MNOSHA Voluntary Protection Program Instruction. In addition to requiring the company's injury and illness rate be below the national average for the industry, MNSTAR applicants' rates must also be below the State averages for the industry.

The original MNSTAR applications received by MNOSHA were retained appropriately and were reviewed by OSHA during this audit. Acknowledgment letters were sent to the companies applying for MNSTAR status within 15 working days of receipt of the applications as required by MNOSHA's Instruction. The information required was contained in the applications audited. In eight of the 10 MNSTAR files reviewed, the onsite evaluations were scheduled and conducted in the appropriate timeframes, within six months of the final approval of the application. Ninety-day items identified during the onsite evaluations were tracked until completion. The onsite teams were comprised of team members having safety and health expertise, as outlined in MNOSHA's Instruction. MNOSHA's Instruction does provide guidance for obtaining a Medical Access Order (MAO), prior to the onsite, when necessary. The OSHA audit team found that it was difficult to determine the dates the applications were originally received because the applications were not date stamped at the time of their receipt as required by MNOSHA Instruction ADM 3.28J Chapter 4 III.B.

There are no Voluntary Protection Program (MNSTAR) outliers of concern or recommendations requiring attention from the MNOSHA FY 2011 activities evaluated.

Partnerships

MNOSHA Directive, *MNOSHA Strategic Partnership Plan* ADM 3.27 (06/09/05) was reviewed and is consistent with OSHA Strategic Partnership Program for Worker Safety and Health CSP 03-02-002 (02/10/05). There were two active Partnerships in place during FY 2011. The two Partnerships were being administered appropriately by MNOSHA. MNOSHA's Partnerships are an extended voluntary cooperative relationship between MNOSHA and groups of employers, employees, employee representatives, and interested stakeholders designed to encourage, assist, and recognize efforts to eliminate serious hazards and achieve a high degree of worker safety and health.

There are no Partnership program outliers of concern or recommendations requiring attention from the MNOSHA FY 2011 activities evaluated.

Alliances

MNOSHA is not required to have an Alliance program similar to OSHA's Alliance Program CSP 04-01-001 (06/10/04). However, MNOSHA does have Alliances with associations in place. There were a total of 10 active Alliances during FY 2011. The audit of the 10 Alliances shows that eight of the 10 were signed. The Alliances were not being evaluated annually. Review of the Alliances revealed that MNOSHA and Alliance participants work together to reach out to, educate, and lead Minnesota's employers and their employees in advancing workplace safety and health.

There are no Alliance program outliers of concern or recommendations requiring attention from the MNOSHA FY 2011 activities evaluated.

I. Public Sector On-site Consultation Program

MNOSHA conducted 212 onsite consultation visits in the public sector during FY 2011. A total of 168 (79%) of the visits were coded as high hazard visits, as defined by MNOSHA's High Hazard Emphasis Program. During the consultation visits, 726 hazards were identified and corrected. All the hazards identified were verified and corrected in a timely manner within 14 days after the latest correction due date.

There are no Public Sector On-site Consultation Program outliers of concern or recommendations requiring attention from the MNOSHA FY 2011 activities evaluated.

J. Program Administration

The MNOSHA Program administration follows closely with Federal initiatives. The plan serves as a mechanism for communicating a shared set of expectations regarding the results that MNOSHA expects to achieve and the strategies that it will use to achieve them. MNOSHA will adjust the plan as circumstances necessitate, use it to develop the annual Performance Plan and grant application, report on progress in annual performance reports, and monitor program accountability for achieving the goals and outcomes.

1. Training

MNOSHA developed and implemented its own training program outlined in ADM 5.1 – *MNOSHA Investigator Training Plan*. This training plan is comprehensive in nature, covering not only the information needed to conduct enforcement activities, but the routine administrative function of the department. The equivalent of OSHA's Initial Compliance and Legal Aspects courses are covered at the State level. This facilitates and reinforces MNOSHA's policies and procedures for conducting an inspection and developing a legally sufficient case for the State. The training instruction identifies the responsible party for conducting various aspects of the training and the time frame in which the training is

completed. One administrative staff person coordinates the training program. Following the conclusion of MNOSHA's internal training program, compliance officers attend courses at OTI to obtain specific training based on discipline and need.

There are no training outliers of concern or recommendations requiring attention from the MNOSHA FY 2011 activities evaluated.

2. Funding

The total State and Federal funds allocated to the MNOSHA 23(g) program for FY 2011 was \$9,060,281. MNOSHA matched the Federal funding of \$4,123,300 and overmatched the Federal grant by \$813,681. MNOSHA did not apply for any one-time funding opportunities offered during the Fiscal Year. MNOSHA did not de-obligate any funds during FY 2011.

There was a State government shutdown in Minnesota from July 1, 2011 through July 20, 2011. Most agency activity was ceased, causing both a direct and indirect impact on the services normally provided to stakeholders.

There are no funding outliers of concern or recommendations requiring attention from the MNOSHA FY 2011 activities evaluated.

3. Staffing

Management and administration of the MNOSHA Compliance Division is the responsibility of the OSH Division Management Team (OMT). The OMT is comprised of the Compliance Director, two area directors, and five supervisors. The total complement of the OSH Division (compliance activity) was 86.67 full-time equivalents (FTE) for FY 2011. There was a State government shutdown in Minnesota from July 1, 2011 through July 20, 2011. Most agency activity was ceased, causing both a direct and indirect impact on the services normally provided to stakeholders. The result was a decrease in the number of inspections conducted and the number of hazards identified. In FY 2011, 4,363 hazards were identified in 2,325 establishments, which was an 11% decrease.

MNOSHA has two safety and health professionals on duty to answer questions received primarily through phone calls and e-mails. During FY 2011, these two positions responded to approximately 4,460 phone calls and 1,748 written requests for assistance, primarily e-mails. A majority of these inquiries are answered within one day. During FY 2011, 63% of phone calls, e-mails, and written responses were received from employers, consultants or other individuals requesting safety and health information. Most information is provided to callers during the initial phone call, while others are directed to the MNOSHA or Federal OSHA websites or another State agency for assistance. The information requested covers a wide variety of topics, which is why MNOSHA continues to use investigative staff to answer a majority of the calls.

During FY 2011, the benchmark for safety is 31 positions, with 42 positions or 126% filled. The benchmark for health is 12 positions, with 16 positions or 125% filled.

| | | FY 06 | FY 07 | FY 08 | FY 09 | FY 10 | FY 11 |
|--------|------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Safety | Benchmark | 31 | 31 | 31 | 31 | 31 | 31 |
| | Positions Allocated | 38 | 38 | 38 | 37 | 41 | 44 |
| | Positions Filled | 38 | 38 | 38 | 37 | 36 | 42 |
| | Vacancies | 0 | 0 | 0 | 0 | 5 | 2 |
| | % of Benchmarks Filled | 119% | 119% | 119% | 117% | 114% | 126% |
| Health | Benchmark | 12 | 12 | 12 | 12 | 12 | 12 |
| | Positions Allocated | 18 | 18 | 18 | 18 | 18 | 18 |
| | Positions Filled | 16 | 18 | 16 | 15 | 16 | 16 |
| | Vacancies | 3 | 0 | 2 | 3 | 2 | 2 |
| | % of Benchmarks Filled | 125% | 133% | 125% | 120% | 125% | 125% |

There are no staffing outliers of concern or recommendations requiring attention from the MNOSHA FY 2011 activities evaluated.

4. Information Management

Minnesota used Informix based software for enforcement information management and data processing, which is called MOOSE, for MNOSHA Operations System Exchange. It provides MNOSHA with real time information and data processing. The data entered into MOOSE is transmitted into OSHA's IMIS database on a daily basis. Management reports, equivalent to those available from IMIS, are used by the MNOSHA management to track complaints, accidents, assignments, inspections, abatement, debt collection, and other issues of interest.

MNOSHA operates as paperless as possible. The use of MOOSE is integral to the process. Complaint and fatality intake, assignments, case file processing, and many other operations are performed in MOOSE. Data is entered into the system in a timely manner.

There are no information management outliers of concern or recommendations requiring attention from the MNOSHA FY 2011 activities evaluated.

5. State Internal Evaluation Plan

MNOSHA established goal #3 in their FY 2009 to FY 2013 five-year plan as their workplace plans to address the State's SIEP. Projected Fiscal Year plans are identified in the program's annual grant applications. Summaries of the program's achievements in relations to their plan are provided in the State OSHA Annual Report (SOAR).

MNOSHA reviews the rules for effectiveness, which include ongoing evaluation and development of rules, standards, guidelines and procedures, including the following eight step process for workplace development and retention plan.

1. Environmental Scanning
2. Organizational Analysis

3. Identify Target Areas
4. Current Workforce Analysis
5. Future Workplace Analysis
6. Gap Analysis and Strategy Development
7. Develop and Implement an Action Plan and Communication Strategy
8. Monitor Plan and Evaluate Results

MNOSHA's Compliance Directives Coordination Team (DCT) is charged with coordinating and managing the MNOSHA internal information system. The DCT consists of one MNOSHA management analyst, two MNOSHA program analysts, and two MNOSHA management team directors. This group monitors Federal standard/policy activity and coordinates updates to all relevant MNOSHA standards, directives, and policies accordingly. MNOSHA adopts Federal standards by reference and/or develops Minnesota specific standards when necessary to support MNOSHA program goals.

At the close of FY 2011, 44% of the directives on the current five-year cycle were completed.

It is recommended that in addition to MNOSHA's established goal #3 where projected plans are identified in the program's annual grant applications and their ongoing review of the MNOSHA rules for effectiveness, MNOSHA should conduct internal audits to ensure the MNOSHA program continues to follow the requirements of the OSHA program.

V. Assessment of Progress in Achieving Annual Performance Goals

In the FY 2011 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 2011 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 2011 target was a 2% reduction in the TRC rate from the previous five-year average for CY 2005 – 2009, which were 4.56 per 100 workers. The CY 2010 TRC rate achieved was 3.90, with a 14% 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 2011 target was a 1% reduction in the State's fatality rate from the previous five-year average for CY 2005 – 2009, which was 0.784 per 100,000 workers. For CY 2010, the most recent employment information from the Minnesota Department of Employment and Economic Development (DEED) data available, the fatality rate achieved was 0.586. Consequently, MNOSHA Compliance met this goal with a 25% reduction. There were 22 fatalities in CY 2011, and that number will later be used to calculate the rate during the assessment for FY 2012. 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 not met.

Discussion: The FY 2011 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. The number of hazards identified decreased by 11%, as 4363 hazards were identified within 2325 establishments visited. Seventy percent (70%) of the inspections conducted resulted in violations; 74% of violations were cited serious. There was a State government shutdown in Minnesota from July 1, 2011 through July 20, 2011. Most agency activity was ceased, causing both a direct and indirect impact on the services normally provided to stakeholders, resulting in a decrease in the number of inspections conducted and number of hazards identified.

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

Results: This goal was not met.

Discussion: MNOSHA focused its programmed inspections to reduce injuries, illnesses, and fatalities in certain emphasis industries. The FY 2011 goal was 68% of all programmed inspections are conducted within the emphasis industries. MNOSHA conducted 58% of all programmed inspections within the emphasis industries. As part of an ergonomic focus, MNOSHA conducted 41 programmed inspections in the meat processing industry and nursing homes.

Performance Goal 1.4: Percent of designated program inspections

Results: This goal was not met.

Discussion: The FY 2011 target was for 85% of all inspections to be conducted as programmed inspections. MNOSHA conducted 2,325 inspections with 83% 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 2011 target was to increase the number of Partnerships by one. In FY 2011, 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 two new members to the ABC Partnership and two new members to the AGC Partnership.

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

Results: This goal was met.

Discussion: The FY 2011 target was to increase the number of VPP MNSTAR participants by four. At the end of FY 2011, there were 34 employers in the MNSTAR program, with five sites granted new certification (three Star employers and two Merit employers).

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 hired one investigator who is fluent in more than one language. MNOSHA also provides written materials to target populations in coordination with the Department’s Community Services Representative.

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

Results: This goal was met.

Discussion: The FY 2011 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 2011 by conducting presentations to 4,478 participants, 61% 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 2011 target was to maintain the baseline. The MNOSHA Compliance program continued to participate on the State Emergency Response Team. The Governor activated the State's Emergency Operations Center (EOC) from March 24 to April 19, 2011, following Statewide spring flooding. One director attended 35 MN Department of Public Safety, Homeland Security and Emergency Management (HSEM) division EOC meetings related to these events, two meetings of the Emergency Preparedness Committee, and one Federal OSHA Homeland Security conference call. One supervisor attended one EOC meeting related to spring flooding.

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

Results: This goal was met.

Discussion: The FY 2011 target was to maintain a reasonable response time and satisfactory service. MNOSHA has two safety and health professionals on duty to answer questions received primarily through phone calls and emails. During FY11, these two positions responded to approximately 4,460 phone calls and 1,748 written requests for assistance, primarily e-mails. MNOSHA received 572 employees calling to file a workplace safety and health complaint. Two hundred sixty-four (264) or 46% of the total complaints resulted in an onsite inspection with an average of three days response time. The remaining 54% of complaints were handled via MNOSHA's phone/fax system (non-formal complaint), 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: 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 2011, 21 existing directives were revised. These included internal procedures for fatalities, serious injuries, contestations and informal conferences, training, and scheduling. A new directive developed and issued was the Severe Violator Enforcement Program (SVEP). A total of 44% 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 2011 target was to maintain the baseline. During FY 2011, MNOSHA trained its staff on residential construction, grain handling, electrical, cranes, and silica. In addition, MNOSHA has been able to recruit two additional field employees that speak fluent

Spanish (giving MNOSHA a total of three). Additionally, MNOSHA added a construction staff person with experience with installation of wind turbines and added a staff person with significant construction background and crane experience.

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 2011 target was to maintain the baseline as an ongoing performance.

MNOSHA's continuing process improvement actions include weekly reporting to in-house counsel on the status of contested cases, which have been settled and submitted to them for final settlement agreement preparation. At the start of FY 2011, there were 61 files pending action. That was reduced to a low of four files, and all were awaiting the return of documents from the respective employers.

MNOSHA continues to focus on abatement verification, particularly a performance indicator of the number of cases more than 30 days past their abatement date. Following improvements made in the previous Fiscal Year, in October 2010, there were 15 cases exceeding 30 days past their abatement date. During the next six-month stretch, there were no more than eight cases exceeding 30 days. This number was reduced to just four in May 2011. The improvements were interrupted by a three week State government shutdown in July 2011, but the number of cases remains below 17.

The status of actual and potential follow-up inspections is discussed on a monthly basis. MNOSHA has increased the number of follow-up inspections from 18 in FY 2010 to 23 in FY 2011. Failure-to-abate penalties were proposed on approximately 25% of the citation items reviewed during these inspections.

Appendix A - FY 2011 Summary of Findings and Recommendations

| Rec # | Findings | Recommendations | FY 10 # |
|-------|---|--|---------|
| 11-01 | Abatement was classified as “Corrected During Inspection (CDI), No Abatement Documentation Required,” in the files reviewed where serious hazards were identified and the abatement was classified as Corrected During Inspection (CDI). The files reviewed where CDI was applied did not contain the specific information outlining the corrective action observed by the compliance officer. | 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. | 10-06 |
| 11-02 | Discrimination Complainants that file complaints that are screened and closed are not sent letters explaining the reason(s) the complaint is not going to be investigated. | Send letters to Complainants that file complaints that are screened and closed. | |
| 11-03 | MNOSHA Instruction ADM 3.6C does not require docketing and dismissal of screened and closed discrimination complaints when the Complainant does not accept that determination. | Update procedure to reflect that when the Complainant refuses to accept the determination that his/her complaint is screened and closed, the case must be docketed and dismissed with appeal rights. | |

Appendix B -State Actions Related to FY 2010 EFAME Follow-up Recommendations

| Rec # | Findings | Recommendations | Corrective Action Plan | State Action Taken | Status |
|-------|---|--|--|--|-----------|
| 10-01 | 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. | 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. | Completed |
| 10-02 | 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. | Updates to the MNOSHA 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 | Completed |

| | | | | | |
|--------------|--|--|---|---|-----------|
| | | | 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. | appears to be on the right track. | |
| 10-03 | 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. | Completed |
| 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. | 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% | 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 | Completed |

| | | | | | |
|-------|---|---|---|---|------------------|
| | | | <p>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>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> | |
| 10-05 | <p>Of the [57] cases reviewed, abatement documentation for corrective action following inspections was not requested in any circumstance.</p> | <p>Ensure, when required, the receipt of documented proof of abatement.</p> | <p>MNOSHA did not adopt and 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 employers during all closing conferences. The discussion includes feasibility, time frame for completion, as well as the need to submit progress reports. The citation contains language describing the need for progress reports & the citation package which the employer receives includes a Mandatory Progress Report form. MNOSHA has obtained abatement certification from employers, yet lacked documentation sought by OSHA. Certification includes a signed notice from the employer that corrective actions have been completed and the information in the progress report is accurate. In</p> | <p>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).</p> | <p>Completed</p> |

| | | | | | |
|---------------------|---|---|--|---|-------------|
| | | | <p>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.</p> | <p>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.</p> | |
| <p>10-06</p> | <p>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.</p> | <p>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.</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 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 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>The appropriate use of the abatement method “Corrected During Inspection” was not well documented in MNOSHA’s policies and procedures and at times was used inappropriately. MNOSHA ADM 3.4 Abatement Verification was revised on September 16, 2011. A violation can be considered corrected during the inspection when the compliance officer witnesses and observes the correction to the specific violation while onsite. Additionally, Federal OSHA requires that the OSHA-1B worksheet must contain information on how the violation was abated. This policy is outlined in the OSHA FOM and in the previous Compliance Directive Abatement Verification Regulation, 29 CFR 1903.19 - Enforcement Policies and Procedures (CPL 2-0.114). This item is ongoing and MNOSHA appears to be on the right track.</p> | <p>Open</p> |

| | | | | | |
|-------|---|---|---|---|-----------|
| 10-07 | Petition for Modification of Abatement (PMA) requests are granted without employers providing all the required information in the requests. | Ensure 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 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. | 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. MNOSHA is internally monitoring their performance in this area. This item is ongoing and MNOSHA appears to be on the right track. | Completed |
|-------|---|---|---|---|-----------|

Appendix C -Enforcement Comparison Chart

Minnesota State Plan FY 2011 Enforcement Activity

| | MN | State Plan Total | Federal OSHA |
|--|--------------------|----------------------|-----------------------|
| Total Inspections | 2,325 | 52,056 | 36,109 |
| Safety | 1,759 | 40,681 | 29,671 |
| % Safety | 76% | 78% | 82% |
| Health | 566 | 11,375 | 6,438 |
| % Health | 24% | 22% | 18% |
| Construction | 452 | 20,674 | 20,111 |
| % Construction | 19% | 40% | 56% |
| Public Sector | 132 | 7,682 | N/A |
| % Public Sector | 6% | 15% | N/A |
| Programmed | 1,932 | 29,985 | 20,908 |
| % Programmed | 83% | 58% | 58% |
| Complaint | 285 | 8,876 | 7,523 |
| % Complaint | 12% | 17% | 21% |
| Accident | 21 | 2,932 | 762 |
| Insp w/ Viols Cited | 1,585 | 31,181 | 25,796 |
| % Insp w/ Viols Cited (NIC) | 68% | 60% | 71% |
| % NIC w/ Serious Violations | 85.7% | 63.7% | 85.9% |
| Total Violations | 4,347 | 113,579 | 82,098 |
| Serious | 3,076 | 50,036 | 59,856 |
| % Serious | 71% | 44% | 73% |
| Willful | 15 | 295 | 585 |
| Repeat | 17 | 2,014 | 3,061 |
| Serious/Willful/Repeat | 3,108 | 52,345 | 63,502 |
| % S/W/R | 71% | 46% | 77% |
| Failure to Abate | 28 | 333 | 268 |
| Other than Serious | 1,211 | 60,896 | 18,326 |
| % Other | 28% | 54% | 22% |
| Avg # Violations/ Initial Inspection | 2.7 | 3.4 | 2.9 |
| Total Penalties | \$3,178,845 | \$ 75,271,600 | \$ 181,829,999 |
| Avg Current Penalty / Serious Violation | \$ 763.20 | \$ 963.40 | \$ 2,132.60 |
| % Penalty Reduced | 29.9% | 46.6% | 43.6% |
| % Insp w/ Contested Viols | 20.0% | 14.8% | 10.7% |
| Avg Case Hrs/Insp- Safety | 16.3 | 17.1 | 19.8 |
| Avg Case Hrs/Insp- Health | 22.1 | 26.8 | 33.1 |
| Lapse Days Insp to Citation Issued- Safety | 15.5 | 35.6 | 43.2 |
| Lapse Days Insp to Citation Issued- Health | 18 | 43.6 | 54.8 |
| Open, Non-Contested Cases w/ Incomplete Abatement >60 days | 6 | 1,387 | 2,436 |

Note: Federal OSHA does not include OIS data.
The total number of inspections for Federal OSHA is 40,684.

Appendix D - FY 2011 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

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

PAGE 1 OF 2

STATE ACTIVITY MANDATED MEASURES (SAMMs)

State: MINNESOTA

RID: 0552700

| MEASURE | From: 10/01/2010 To: 09/30/2011 | CURRENT FY-TO-DATE | REFERENCE/STANDARD |
|--|------------------------------------|-----------------------|---------------------------------------|
| 1. Average number of days to initiate for each State | 807 | 71 | Negotiated fixed number |
| Complaint Inspections | 2.98 270 | 2.95 24 | |
| 2. Average number of days to initiate for each State | 183 | 13 | Negotiated fixed number |
| Complaint Investigations | .64 283 | .50 26 | |
| 3. Percent of Complaints where Complainants were notified on time | 268 100.00 268 | 25 100.00 25 | 100% |
| 4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger | 5 100.00 5 | 2 100.00 2 | 100% |
| 5. Number of Denials where entry not obtained | 0 | 1 | 0 |
| 6. Percent of S/W/R Violations verified | | | |
| Private | 1802 81.91 2200 | 161 34.92 461 | 100% |
| Public | 102 88.70 115 | 15 60.00 25 | 100% |
| 7. Average number of calendar days from Opening Conference to Citation Issue | | | |
| Safety Data (1 year) | 26458 21.77 | 3051 22.43 | 2631708 51.9 National |
| Health Data (1 year) | 1215 9375 25.13 | 136 1083 23.04 | 50662 767959 64.8 National |
| | 373 | 47 | 11844 |

*MN FY11

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

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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)

State: MINNESOTA

RID: 0552700

| MEASURE | From: 10/01/2010 To: 09/30/2011 | CURRENT FY-TO-DATE | REFERENCE/STANDARD | |
|---|------------------------------------|------------------------|--------------------------|----------|
| 8. Percent of Programmed Inspections with S/W/R Violations | | | | |
| Safety | 976 64.64 | 121 67.22 | 90405 58.5 | National |
| Data (3 years) | | | | |
| Health | 1510 60.77 | 180 52.54 | 154606 51.7 | National |
| Data (3 years) | | | | |
| 9. Average Violations per Inspection with Violations | | | | |
| S/W/R | 390 2.04 | 59 1.74 | 21098 2.1 | National |
| Data (3 years) | | | | |
| Other | 1588 1117 .70 | 183 104 .56 | 198933 236745 1.2 | National |
| Data (3 years) | | | | |
| 10. Average Initial Penalty per Serious Violation (Private Sector Only) | | | | |
| Data (3 years) | 2879350 936.06 | 286275 944.80 | 611105829 1679.6 | National |
| 11. Percent of Total Inspections in Public Sector | | | | |
| this State (3 years) | 3076 132 5.68 | 303 2 .74 | 363838 431 5.6 | Data for |
| 12. Average lapse time from receipt of Contest to first level decision | | | | |
| Data (3 years) | 2325 40199 141.54 | 271 3211 160.55 | 7758 3533348 199.7 | National |
| 13. Percent of 11c Investigations Completed within 90 days | | | | |
| 14. Percent of 11c Complaints that are Meritorious | | | | |
| Data (3 years) | 284 27 81.82 33 | 20 1 100.00 1 | 17693 100% | |
| 15. Percent of Meritorious 11c Complaints that are Settled | | | | |
| Data (3 years) | 3 9.09 | 0 .00 | 1517 23.0 | National |
| | 33 | 1 | 6591 | |
| | 3 100.00 | 0 | 1327 87.5 | National |
| | 3 | 0 | 1517 | |

Appendix E – FY 2011 State Indicator Report (SIR)

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U. S. D E P A R T M E N T O F L A B O R
O C C U P A T I O N A L S A F E T Y A N D H E A L T H A D M I N I S T R A T I O N
I N T E R I M S T A T E I N D I C A T O R R E P O R T (S I R)

PAGE 1

CURRENT MONTH = SEPTEMBER 2011

STATE = MINNESOTA

| PERFORMANCE MEASURE | ----- 3 MONTHS----- | | ----- 6 MONTHS----- | | -----12 MONTHS----- | | -----24 MONTHS----- | |
|--|---------------------|-------|---------------------|-------|---------------------|-------|---------------------|-------|
| | FED | STATE | FED | STATE | FED | STATE | FED | STATE |
| C. ENFORCEMENT (PRIVATE SECTOR) | | | | | | | | |
| 1. PROGRAMMED INSPECTIONS (%) | | | | | | | | |
| A. SAFETY | 3694 | 355 | 8169 | 690 | 18137 | 1430 | 40070 | 3254 |
| | 61.3 | 85.7 | 61.4 | 86.7 | 62.5 | 87.0 | 63.7 | 89.5 |
| | 6026 | 414 | 13312 | 796 | 29042 | 1644 | 62876 | 3634 |
| B. HEALTH | 480 | 92 | 1020 | 209 | 2126 | 393 | 4357 | 723 |
| | 39.7 | 74.2 | 36.4 | 74.1 | 34.6 | 71.6 | 34.7 | 68.9 |
| | 1208 | 124 | 2806 | 282 | 6150 | 549 | 12569 | 1049 |
| 2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%) | | | | | | | | |
| A. SAFETY | 3378 | 205 | 7266 | 475 | 14959 | 1017 | 32614 | 2415 |
| | 73.7 | 70.2 | 72.4 | 67.9 | 70.1 | 69.1 | 69.1 | 71.3 |
| | 4583 | 292 | 10036 | 700 | 21330 | 1471 | 47196 | 3386 |
| B. HEALTH | 456 | 56 | 890 | 145 | 1723 | 284 | 3487 | 506 |
| | 57.0 | 73.7 | 57.2 | 65.6 | 56.2 | 67.8 | 55.3 | 65.4 |
| | 800 | 76 | 1555 | 221 | 3068 | 419 | 6309 | 774 |
| 3. SERIOUS VIOLATIONS (%) | | | | | | | | |
| A. SAFETY | 1703 | 542 | 23768 | 1202 | 48704 | 2341 | 109064 | 5541 |
| | 79.6 | 77.7 | 77.4 | 75.3 | 76.7 | 72.7 | 78.4 | 74.0 |
| | 14698 | 698 | 30703 | 1597 | 63528 | 3220 | 139117 | 7483 |
| B. HEALTH | 2634 | 113 | 5290 | 343 | 10266 | 613 | 21598 | 1205 |
| | 66.6 | 66.1 | 64.7 | 71.0 | 64.4 | 67.0 | 66.7 | 66.4 |
| | 3957 | 171 | 8180 | 483 | 15930 | 915 | 32380 | 1814 |
| 4. ABATEMENT PERIOD FOR VIOLS | | | | | | | | |
| A. SAFETY PERCENT >30 DAYS | 2394 | 15 | 4978 | 57 | 10776 | 148 | 23693 | 381 |
| | 16.6 | 2.7 | 16.8 | 4.5 | 17.9 | 6.0 | 17.9 | 6.5 |
| | 14465 | 563 | 29573 | 1262 | 60243 | 2477 | 132414 | 5894 |
| B. HEALTH PERCENT >60 DAYS | 259 | 0 | 711 | 11 | 1451 | 36 | 3159 | 119 |
| | 6.5 | .0 | 8.6 | 3.0 | 9.4 | 5.5 | 10.0 | 9.1 |
| | 4006 | 120 | 8234 | 369 | 15507 | 652 | 31619 | 1312 |

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U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 INTERIM STATE INDICATOR REPORT (SIR)

PAGE 2

CURRENT MONTH = SEPTEMBER 2011

STATE = MINNESOTA

| PERFORMANCE MEASURE | ----- 3 MONTHS----- | | ----- 6 MONTHS----- | | -----12 MONTHS----- | | -----24 MONTHS----- | |
|---------------------------------|---------------------|--------|---------------------|--------|---------------------|---------|---------------------|---------|
| | FED | STATE | FED | STATE | FED | STATE | FED | STATE |
| C. ENFORCEMENT (PRIVATE SECTOR) | | | | | | | | |
| 5. AVERAGE PENALTY | | | | | | | | |
| A. SAFETY | | | | | | | | |
| | 505479 | 23325 | 1258835 | 65950 | 2803637 | 144750 | 5086228 | 291575 |
| OTHER-THAN-SERIOUS | 1181.0 | 194.4 | 1195.5 | 229.8 | 1126.9 | 228.7 | 1055.2 | 215.7 |
| | 428 | 120 | 1053 | 287 | 2488 | 633 | 4820 | 1352 |
| B. HEALTH | | | | | | | | |
| | 219203 | 9350 | 441915 | 21500 | 853346 | 34675 | 1667151 | 65100 |
| OTHER-THAN-SERIOUS | 1184.9 | 252.7 | 1077.8 | 233.7 | 980.9 | 202.8 | 958.7 | 188.7 |
| | 185 | 37 | 410 | 92 | 870 | 171 | 1739 | 345 |
| 6. INSPECTIONS PER 100 HOURS | | | | | | | | |
| A. SAFETY | | | | | | | | |
| | 6874 | 450 | 15417 | 888 | 33850 | 1825 | 73070 | 4050 |
| | 6.0 | 4.4 | 5.6 | 3.8 | 5.5 | 3.6 | 5.4 | 3.5 |
| | 1138 | 102 | 2730 | 231 | 6145 | 501 | 13476 | 1142 |
| B. HEALTH | | | | | | | | |
| | 1458 | 143 | 3330 | 315 | 7311 | 604 | 14958 | 1150 |
| | 2.4 | 3.5 | 2.2 | 3.2 | 2.2 | 2.8 | 2.0 | 2.5 |
| | 615 | 41 | 1501 | 100 | 3390 | 219 | 7404 | 459 |
| 7. VIOLATIONS VACATED % | | | | | | | | |
| | 1270 | 0 | 3026 | 0 | 6577 | 0 | 12352 | 1 |
| | 5.6 | .0 | 6.6 | .0 | 7.0 | .0 | 6.2 | .0 |
| | 22608 | 702 | 46128 | 1618 | 93448 | 3215 | 200310 | 7012 |
| 8. VIOLATIONS RECLASSIFIED % | | | | | | | | |
| | 737 | 0 | 1997 | 0 | 4456 | 0 | 9147 | 1 |
| | 3.3 | .0 | 4.3 | .0 | 4.8 | .0 | 4.6 | .0 |
| | 22608 | 702 | 46128 | 1618 | 93448 | 3215 | 200310 | 7012 |
| 9. PENALTY RETENTION % | | | | | | | | |
| | 19478404 | 306900 | 40012395 | 675439 | 77322520 | 1446097 | 134938244 | 3160827 |
| | 61.0 | 80.4 | 61.6 | 77.8 | 62.8 | 78.2 | 62.8 | 79.2 |
| | 31918969 | 381525 | 65001782 | 868225 | 123124542 | 1849200 | 214845679 | 3991125 |

U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 INTERIM STATE INDICATOR REPORT

PAGE 3

CURRENT MONTH = SEPTEMBER 2011

STATE = MINNESOTA

| PERFORMANCE MEASURE D. ENFORCEMENT (PUBLIC SECTOR) | ----- 3 MONTHS----- | | ----- 6 MONTHS----- | | ----- 12 MONTHS----- | | ----- 24 MONTHS----- | |
|---|---------------------|------------------|----------------------|------------------|----------------------|--------------------|----------------------|--------------------|
| | PRIVATE | PUBLIC | PRIVATE | PUBLIC | PRIVATE | PUBLIC | PRIVATE | PUBLIC |
| 1. PROGRAMMED INSPECTIONS % | | | | | | | | |
| A. SAFETY | 355 85.7 414 | 14 93.3 15 | 690 86.7 796 | 38 86.4 44 | 1430 87.0 1644 | 107 92.2 116 | 3254 89.5 3634 | 282 94.3 299 |
| B. HEALTH | 92 74.2 124 | 1 12.5 8 | 209 74.1 282 | 1 10.0 10 | 393 71.6 549 | 1 6.3 16 | 723 68.9 1049 | 8 21.6 37 |
| 2. SERIOUS VIOLATIONS (%) | | | | | | | | |
| A. SAFETY | 542 77.7 698 | 15 75.0 20 | 1202 75.3 1597 | 56 73.7 76 | 2341 72.7 3220 | 128 73.1 175 | 5541 74.0 7483 | 364 73.5 495 |
| B. HEALTH | 113 66.1 171 | 4 66.7 6 | 343 71.0 483 | 4 57.1 7 | 613 67.0 915 | 9 64.3 14 | 1205 66.4 1814 | 45 81.8 55 |

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = MINNESOTA

| PERFORMANCE MEASURE | ----- 3 MONTHS----- | | ----- 6 MONTHS----- | | ----- 12 MONTHS----- | | ----- 24 MONTHS----- | |
|------------------------------|---------------------|--------|---------------------|--------|----------------------|---------|----------------------|---------|
| | FED | STATE | FED | STATE | FED | STATE | FED | STATE |
| E. REVIEW PROCEDURES | | | | | | | | |
| 1. VIOLATIONS VACATED % | 579 | 10 | 1131 | 33 | 2220 | 80 | 4270 | 225 |
| | 22.8 | 3.4 | 23.4 | 4.6 | 23.5 | 5.8 | 23.0 | 7.6 |
| | 2542 | 297 | 4834 | 712 | 9442 | 1378 | 18586 | 2950 |
| 2. VIOLATIONS RECLASSIFIED % | 328 | 27 | 620 | 72 | 1259 | 129 | 2360 | 300 |
| | 12.9 | 9.1 | 12.8 | 10.1 | 13.3 | 9.4 | 12.7 | 10.2 |
| | 2542 | 297 | 4834 | 712 | 9442 | 1378 | 18586 | 2950 |
| 3. PENALTY RETENTION % | 3616720 | 179891 | 9500018 | 403706 | 16062961 | 744957 | 28079915 | 1474851 |
| | 56.1 | 57.9 | 62.4 | 49.4 | 62.3 | 48.4 | 60.6 | 53.2 |
| | 6443756 | 310575 | 15212620 | 816575 | 25766759 | 1539050 | 46371522 | 2771800 |

Appendix F - FY 2011 23(g) Consultation Activity

| | MN Public Sector | Total State Plan Public Sector |
|--|------------------|--------------------------------|
| Requests | 192 | 1,328 |
| <i>Safety</i> | 145 | 576 |
| <i>Health</i> | 46 | 560 |
| <i>Both</i> | 1 | 192 |
| Backlog | 8 | 123 |
| <i>Safety</i> | 4 | 51 |
| <i>Health</i> | 3 | 58 |
| <i>Both</i> | 1 | 14 |
| Visits | 212 | 1,632 |
| <i>Initial</i> | 170 | 1,336 |
| <i>Training and Assistance</i> | 28 | 175 |
| <i>Follow-up</i> | 14 | 121 |
| <i>Percent of Program Assistance</i> | 99% | 67% |
| <i>Percent of Initial Visits with Employee Participation</i> | 100% | 96% |
| Employees Trained | 644 | 5,030 |
| <i>Initial</i> | 156 | 2,144 |
| <i>Training and Assistance</i> | 488 | 2,886 |
| Hazards | 776 | 6,063 |
| <i>Imminent Danger</i> | 1 | 3 |
| <i>Serious</i> | 625 | 4,804 |
| <i>Other than Serious</i> | 147 | 1,171 |
| <i>Regulatory</i> | 3 | 85 |
| <i>Referrals to Enforcement</i> | - | 6 |
| Workers Removed from Risk | 8,045 | 171,075 |
| <i>Imminent Danger</i> | 15 | 55 |
| <i>Serious</i> | 7,212 | 136,884 |
| <i>Other than Serious</i> | 537 | 26,046 |
| <i>Regulatory</i> | 281 | 8,090 |

Source: DOL-OSHA. 23(g) Public & Private Consultation Reports, 11.29.2011

Appendix G - Acronyms

| | |
|----------|---|
| ADM | Administrative Management Directive (Minnesota) |
| ADM | OSHA Instruction – Administrative |
| AGC | Associated General Contractors |
| APTA | American Physical Therapy Association (Minnesota) |
| AWAIR | A Workplace Accident and Injury Reduction (Minnesota) |
| | |
| BLS | Bureau of Labor Statistics |
| | |
| CAPR | Consolidation Annual Progress Report (Minnesota) |
| CASPA(s) | Complaint(s) about the State Program Administration |
| CA | Calendar Year |
| CDI | Corrected During Inspection |
| CFR | Code of Federal Regulations |
| CHASE | Construction Health and Safety Excellence Program. |
| CIH | Certified Industrial Hygienist |
| CPE | Certified Professional Ergonomist |
| CPL | Compliance Directive |
| CPPM | Consultation Policies and Procedures Manual (Minnesota) |
| CSP | Certified Safety Professional |
| | |
| DCT | Directives Coordination Team (Minnesota) |
| DLI | Department of Labor and Industry (Minnesota) |
| DIS | Whistleblower Investigations Manual, Discrimination Directive |
| | |
| FAME | Federal Annual Monitoring and Evaluation (Minnesota) |
| FCM | Field Compliance Manual (Minnesota) |
| FIR | Final Investigative Report (Minnesota) |
| FIRM | Field Inspection Reference Manual |
| FOM | Field Operations Manual |
| FPC | Federal Program Changes |
| FR | Federal Register |
| F-T-A | Failure-To-Abate |
| FTE | Full Time Equivalent |
| | |
| HSEM | Homeland Security and Emergency Management (Minnesota) |
| | |
| IBEM | International Brotherhood of Electrical Workers |
| IH | Industrial Hygienist |
| ILO | International Labor Organization |
| IMIS | Integrated Management Information System |
| ISA | Informal Settlement Agreement |
| | |
| LEP | Local Emphasis Program |
| LWDIR | Lost Workday Injury Related |

| | |
|------------|--|
| MARC | Mandated Activity Report for Consultation (Minnesota) |
| MN | Minnesota |
| MNOSHA | Minnesota Department of Labor and Industry – Occupational Safety and Health Division |
| MNOSHD 1-B | Minnesota Occupational Safety and Health Violation Worksheet |
| MNSTAR | Minnesota’s version of the Federal VPP Program |
| MNSHARP | Minnesota Safety and Health Achievement Recognition Program |
| MOOSE | MNOSHA Operations System Exchange |
| NAICS | North America Industry Classification System |
| NIC | Not in Compliance (Minnesota) |
| NCR | National Cash Register Company (Manufacturer of the IMIS Servers) |
| NEP | National Emphasis Program |
| OMDS | Office of Management Data Systems |
| OMT | Occupational Safety and Health Management Team (Minnesota) |
| OSH | Occupational Safety and Health |
| OSHA | Occupational Safety and Health Act |
| OSHI | Occupational Safety and Health Investigator (Minnesota) |
| OTI | Occupational Safety and Health Training Institute |
| PE | Professional Engineer |
| PMA | Petition for Modification of Abatement |
| PPE | Personal Protective Equipment |
| PSM | Process Safety Management of Highly Hazardous Chemicals |
| PVC | Thermoplastic Piping |
| RACER | Regional Annual Consultation Report (Minnesota) |
| SA&O | Settlement Agreement and Order |
| SAMM | State Activity Mandated Measures (Minnesota) |
| SFY | State Fiscal Year (Minnesota) |
| SIC | Standard Industrial Classification |
| SIEP | State Internal Evaluation Program |
| SIR | State Interim Indicators Report (Minnesota) |
| SOAR | State OSHA Annual Report (Minnesota) |
| STD | Standard Interpretation Directive |
| S/W/R | Serious, Willful, Repeat |
| TED | Training and Education Directive |
| TRC | Total Recordable Cases |
| VPP | Voluntary Protection Program |
| WB IMIS | Web Based Integrated Management Information System |

| | |
|--------------|---|
| 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) |

OSHA Forms

| | |
|-----------|--|
| OSHA 1 | Inspection Form |
| OSHA 1B | Violation Worksheet |
| OSHA 7 | Complaint Form |
| OSHA 31 | Weekly Activity Report |
| OSHA 36 | Accident Form |
| OSHA 90 | Referral |
| OSHA 170 | Accident Investigation Summary |
| OSHA 300 | Log of Work-Related Injuries and Illnesses |
| OSHA 300A | Summary of Work-Related Injuries and Illnesses |
| OSHA 301 | Injury and Illness Incident Report |

Appendix H - FY 2011 State OSHA Annual Report (SOAR)

(Available Separately)