

FY 2012 Abridged Federal Annual Monitoring and Evaluation (FAME) Report

State of Minnesota

Minnesota Department of Labor and Industry
Occupational Safety and Health Division



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I. Executive Summary

The purpose of this abridged Federal Annual Monitoring Evaluation (FAME) report is to assess the State's progress towards achieving performance goals established in their Federal Fiscal Year (FY) 2012 Annual Performance Plan, to review the effectiveness of programmatic areas related to enforcement activities, and to describe corrections made by the State in response to the FY 2011 FAME report findings and recommendations.

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 in the private and public sectors, adoption of standards, and operation of other related OSHA activities), and the Workplace Safety Consultation (WSC) Division, which provides free consultation services upon request to help employers prevent workplace accidents and diseases by identifying and correcting safety and health hazards.

As of January 1, 2011, Commissioner Ken Peterson is the head of the DLI. Ms. Cindy Valentine is the Workplace Safety Manager. Mr. James Krueger is the Director of the OSH Compliance Division and, since May 23, 2012, Ms. Roslyn Robertson is the Director of the WSC Division within Minnesota DLI. The FY 2012 grant included funding totaling \$8,942,087 and full-time equivalent (FTE) staffing of 88.03 positions. The State's required benchmarks are 31 safety investigators and 12 health investigators. MNOSHA allocated 41 safety and 18 health. At the beginning of FY 2012, there were 39 safety and 18 health investigators on staff. The remaining two safety positions were filled at the time of this report.

A detailed explanation of the findings and recommendations of the MNOSHA performance evaluation is found in Section IV, Assessment of FY 2012 State Performance of Mandated Activities. The FY 2011 FAME identified three findings and recommendations. MNOSHA responded to all three recommendations through updates to their directives. Two of the recommendations are completed, and one recommendation related to a discrimination program procedure remains open pending reconciliation with Federal OSHA's procedure. The summary of the findings and recommendations noted, as the result of OSHA's evaluation, is found below and in Appendix A, New and Continued Findings and Recommendations.

1. Finding 12-01: MNOSHA does not send a letter to the complainant at the conclusion of the nonformal complaint investigation to inform them of the outcome.

Recommendation 12-01: Send a letter to the complainant at the conclusion of the investigation, including a copy of the employer's response, to inform them of the outcome and provide an opportunity to request the matter be reviewed.

2. Finding 12-02: Following complaint inspections, complainants are mailed a letter informing them of the inspection and 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 orders. This is the result of a court decision called the Westrom decision. As a result of this court case, the Minnesota DLI is precluded from making public inspection results prior to citations becoming final orders. The statute also prohibits the complainant from receiving a copy of the citations when issued.

Recommendation 12-02: Modify Minnesota Statute § 13.39 subd. 2 to permit MNOSHA to provide a letter addressing each complaint item with reference to the citation(s) or a sufficiently detailed explanation for why a citation was not issued to the complainant. When citations are issued, a copy of the citations should be included with the letter to the complainant.

3. Finding 12-03, formerly 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.

Recommendation 12-03: Send letters to complainants that file complaints that are screened and closed.

4. Finding 12-04: MNOSHA does not currently enter administratively closed complaints into the WebIMIS system as required by Whistleblower Investigations Manual (WIM) CPL 02-03-003, effective September 20, 2011.

Recommendation 12-04: Ensure that MNOSHA ADM 3.6, Discrimination Complaint Handling Procedures includes the requirement to enter administratively closed complaints into WebIMIS.

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 2012 Performance Plan provided the framework for accomplishing the goals of the MNOSHA Strategic Plan by establishing specific performance goals for FY 2012.

Quarterly monitoring team meetings were held during FY 2012, at which time the State Activity Mandated Measures (SAMM) and State Information Report (SIR) were reviewed and discussed with OSH Compliance Division staff.

A thorough assessment of MNOSHA's progress in achieving their annual performance goals has been conducted, and the results are presented in this report. Noteworthy in the assessment are the following:

- Performance Goal 1.1, Reduction in Total Recordable Case (TRC) rate: MNOSHA achieved a 14% reduction in the TRC rate; from 4.40 recordable cases per 100 workers to 3.8.
- Performance Goal 1.2, Reduction in State Fatality rate: The FY 2012 target was a 1% reduction in the State's fatality rate from the previous five-year average for CY 2006 – 2010, which was 0.721 per 100,000 workers. For CY 2011, the most recent employment information from the Minnesota Department of Employment and Economic Development (DEED) data available, the fatality rate achieved was 0.883. Consequently, MNOSHA Compliance Division did not meet this goal with a 22% increase.
- Performance Goal 1.3a, Total Hazards Identified/ Establishments Visited: The FY 2012 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 8% as 4,505 hazards were identified within 2,667 establishments visited.

A detailed explanation of MNOSHA's progress in achieving their annual performance goals is found in Section V, State Progress in Achieving Annual Performance Goals.

During FY 2012, Federal OSHA received and investigated one Complaint About State Program Administration (CASPA) alleging MNOSHA determined a particular discrimination complaint was filed beyond the 30-day filing period and refused to accept the complaint for investigation. After investigating the allegation, Federal OSHA determined there was no evidence to show the discrimination complaint was timely filed; however, the untimely complaint was not docked and dismissed which would have provided the employee an opportunity to have the determination reviewed. The general concern was noted in the FY 2011 FAME as finding and recommendation 11-03 because MNOSHA's procedure was to not accept the complaint, without providing the complainant any recourse. In May 2012, MNOSHA revised their discrimination directive, so there is no longer a concern.

II. Major New Issues

During FY 2012, two referrals were made by employee advocacy groups in Minnesota involving multiple complaints against the same companies.

One referral involved Somali speaking workers from East Africa employed to clean commercial aircraft in-between flights. Thirty-three (33) workers completed complaint forms collected by the Service Employees International Union (SEIU). The workers complained about a lack of heat and air conditioning in the van they rode in to the aircraft and the practice of hauling collected garbage in the van. The workers also expressed concern about the brakes on the van. Although no OSHA standards apply to the alleged hazards, MNOSHA conducted safety and health inspections and found one violation of the bloodborne pathogen standard.

A second referral involved contract and temporary workers assigned to clean retail stores during the night while the stores are closed. The Centro de Trabajadores Unidos en Lucha (CTUL) collected 17 written complaints from workers claiming they did not know which of the locked exits to use in the case of an emergency, and they did not receive training on the chemicals they use. Great concern was expressed that the employees were being locked in at the stores. MNOSHA expended substantial resources to conduct numerous inspections at the various worksite locations. No instances of employees being locked in were found. Rather language barriers, coupled with an organization's enthusiastic representation of immigrant workers, led to a misunderstanding of the true nature and severity of the concerns.

III. State Progress in Addressing FY 2011 FAME Report Recommendations

An update of the State's progress addressing each of the Findings and Recommendations noted in the FY 2011 FAME are included below.

- **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 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.

Recommendation 11-01: 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.

State Action Plan 11-01: ADM 3.4, *Abatement Verification*, was updated August 20, 2010, March 24, 2011, and September 16, 2011, to address this recommendation. The directive was updated to include requirements for documenting CDI abatement.

Status Update 11-01: This item is completed.

- **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.

Recommendation 11-02: Send letters to complainants that file complaints that are screened and closed.

State Action Plan 11-02: On May 17, 2012, MNOSHA updated ADM 3.6 *Discrimination Complaint Handling Procedures* to reflect that letters will be sent to complainants when appropriate.

Status Update 11-02, now 12-03: MNOSHA's current policy is to offer a written confirmation be mailed to the complainant and document whether one was sent. This item remains open pending reconciliation with Federal OSHA's policy of sending a confirmation letter every time.

- **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.

Recommendation 11-03: 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.

State Action Plan 11-03: On May 17, 2012, MNOSHA updated ADM 3.6 *Discrimination Complaint Handling Procedures* to require that a complainant be sent a letter with review/appeal rights when the complainant does not accept the determination. The case will be entered in MNOSHA's MOOSE computer system and OSHA's WebIMIS.

Status Update 11-03: This item is completed.

IV. Assessment of FY 2012 State Performance of Mandated Activities

A. Enforcement

During FY 2012, MNOSHA conducted 2,667 inspections; 2,027 safety and 640 health. Of those 2,261 were programmed, 348 were complaints and referrals, and 24 were follow-ups. The total number of inspections was a 15% increase from FY 2011. This data was obtained from Enforcement and Inspection micro to host reports dated 10/30/12.

- Complaints

During FY 2012, MNOSHA received a total of 577 complaints, of which 282 (49%) were formal and 295 (51%) were non-formal. The average number of days to initiate a complaint inspection in FY 2012 was 2.79, well below the negotiated standard of nine days. The average number of days to initiate a complaint investigation was 2.18, slightly above the negotiated standard of two days. MNOSHA reported that the retirement of their long-term complaint clerk led to the increase.

MNOSHA has its own complaint process specified in its own administrative instruction, ADM 3.16 *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 the Federal process with one exception. MNOSHA considers electronic complaints obtained through the Federal complaint system as a formal complaint instead of a non-formal complaint. The reasoning behind considering them formal complaints is that the complainant must select that they are a current employee. After the receipt of an electronic complaint, a follow-up call to the complainant is usually made to clarify the complaint items. In some instances, the complainant may elect to process the complaint non-formally to address the issue, such as in sanitation complaints or complaints with low severity.

MNOSHA's non-formal complaint processing does differ from the Federal 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 offices can elevate these complaints for inspection. Though many of the complaints 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 program and MNOSHA's complaint process deals with the outcome of non-formal complaint investigations. MNOSHA does

not send a letter to the complainant at the conclusion of the investigation to inform them of the outcome.

Following complaint inspections, complainants are mailed a letter informing them of the inspection and 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 orders. This is the result of a court decision called the Westrom decision. As a result of this court case, the Minnesota DLI is precluded from making public inspection results prior to citations becoming final orders. The statute also prohibits the complainant from receiving a copy of the citations when issued.

Finding 12-01: MNOSHA does not send a letter to the complainant at the conclusion of the nonformal complaint investigation to inform them of the outcome.

Recommendation 12-01: Send a letter to the complainant at the conclusion of the investigation, including a copy of the employer's response, to inform them of the outcome and provide an opportunity to request the matter be reviewed.

Finding 12-02: Following complaint inspections, complainants are mailed a letter informing them of the inspection and 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 orders. This is the result of a court decision called the Westrom decision. As a result of this court case, the Minnesota DLI is precluded from making public inspection results prior to citations becoming final orders. The statute also prohibits the complainant from receiving a copy of the citations when issued.

Recommendation 12-02: Modify Minnesota Statute § 13.39 subd. 2 to permit MNOSHA to provide a letter addressing each complaint item with reference to the citation(s) or a sufficiently detailed explanation for why a citation was not issued to the complainant. When citations are issued, a copy of the citations should be included with the letter to the complainant.

- Fatalities

A total of 17 fatalities were reported to MNOSHA in CY 2012, down from 22 the previous year. DLI's Injury Notification Template is provided to Federal OSHA for information and tracking of all fatalities.

Fatality information is recorded in MNOSHA's information system, MOOSE (Minnesota OSHA 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 Accident/Event form (formerly the OSHA-36) is generated. Generally, non-jurisdiction fatalities are not inspected and an Accident/Event form 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. Additionally, MNOSHA ADM 3.19 *Fatality Investigation Procedures* requires a condolence letter be sent to the next-of-kin.

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 has 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 observations or findings of concern requiring attention from the MNOSHA FY 2012 activities evaluated.

- Targeting and Programmed Inspections

MNOSHA conducted 2,667 inspections, with 85% 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 *Scheduling Plan for Programmed Inspections*. Seventy-five percent (75%) of all programmed inspections were conducted in the emphasis industries.

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, PSM Ammonia, 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 DLI'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 Noise and Respiratory Hazards.

MNOSHA's procedures for scheduling construction inspections are also outlined in Minnesota's Notice, *Scheduling Plan for Programmed Inspections* (ADM 2.1). The primary scheduling methods for construction inspections are a Dodge list of the major projects in the state 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, or 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 5,000 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 or a potential fall of 20 feet.

Of the 2,261 programmed inspections, 2,237 were coded as programmed planned, while 24 were coded as programmed related.

There are no targeting and programmed inspection observations or findings of concern requiring attention from the MNOSHA FY 2012 activities evaluated.

- Citations and Penalties

In MNOSHA's *Field Compliance Manual* (FCM), Chapters 5 and 6 contain the requirements and policies for citations and penalties. The citations and penalties

proposed for issuance are reviewed at multiple levels in MNOSHA's management system prior to issuance.

During FY 2012, 4,505 hazards were identified and cited. Although MNOSHA did not meet their goal of increasing hazard identification by 1% over a five-year average, the identification of construction hazards more than doubled. Sixty-nine percent (69%) of the inspections resulted in violations and 76% of those violations were classified as serious. The average number of serious/willful/repeat violations per inspection decreased from 2.04 to 1.90. The average initial penalty per serious violation in the private sector during FY 2012 was \$1082, an increase of 16% from FY 2011. MNOSHA retained 80% of those penalties, which is far above Federal OSHA's average of 59.1%.

There are no citation and penalty observations or findings of concern requiring attention from the MNOSHA FY 2012 activities evaluated.

- Abatement

MNOSHA continues to focus on abatement verification, in particular, the number of cases more than 30 days past their abatement date.

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 certain 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.

MNOSHA's regulations and written procedures for Petitions for Modification of Abatement Dates (PMA) are equivalent to Federal regulations and procedures.

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.

In past years, 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. 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 *Field Operations Manual* (FOM) and in the previous compliance directive *Abatement Verification Regulation, 29 CFR 1903.19 - Enforcement Policies and Procedures* (CPL 2-0.114). In the 2011 files previously 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. This item was included in previous FAME reports as finding and recommendation 10-06 and 11-01. MNOSHA ADM 3.4 *Abatement Verification* was revised on September 16, 2011, addressing this concern. Consequently, this item has been completed.

There are no abatement observations or findings of concern requiring attention from the MNOSHA FY 2012 activities evaluated.

- Employee and Union Involvement

Minnesota Statute 182.659 and Chapter 3 of the 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. 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 observations or findings of concern requiring attention from the MNOSHA FY 2012 activities evaluated.

B. Review Procedures

During FY 2012, MNOSHA vacated 0.1% of private sector violations, while OSHA vacated 7.1%. MNOSHA also reclassified 0.0% of violations, while OSHA reclassified 4.9% of violations. With regard to penalties, MNOSHA retained 80%, while OSHA retained 59.1%. In the public sector, MNOSHA vacated 5.9% of violations, reclassified 9.0% of violations, and retained 47.4% of penalties.

- 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.

- 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's 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's 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 procedure observations or findings of concern requiring attention from the MNOSHA FY 2012 activities evaluated.

C. Standards and Federal Program Changes Adoption

- Standards Adoption

A total of two applicable standards were required to be adopted during FY 2012. Both were dealt with by the State of Minnesota in a timely manner. The standards adopted by Minnesota became effective in the appropriate timeframe; within six months after the publication of the Federal standards.

**Federally Initiated Standards Log
Summary for MN Report
02/19/2013**

Subject	Intent to Adopt	Adopt Identical	Date Promulgated	Effective Date
<i>Revising Standards Referenced in the Acetylene Standard</i>	YES	YES	09/10/2012	09/10/2012
<i>Hazard Communication – Globally Harmonized System of Classification</i>	YES	NO	09/10/2012	09/10/2012

- Federal Programs/State Initiated Changes

All Federal Program Change (FPC) responses were submitted timely, along with plan change information and any State initiated changes. One FPC initiated at the end of FY 2011 was a substantial re-write of the Whistleblower Investigations Manual. Federal OSHA is in the process of determining if MNOSHA’s alternative procedures are at least as effective as Federal OSHA’s procedures.

**Federal Program Change
Summary for MN Report
02/19/2013**

Directive Number	Title	Adoption Required, Equivalency Required or Adoption Encouraged/Not Required	Intent to Adopt	Adopt Identical	State Adoption Date
CPL-02-01-053 2012 482	<i>Compliance Policy for Manufacture, Storage, Sale, Handling, Use and Display of Pyrotechnics</i>	<i>Equivalency Required</i>	YES	YES	12/14/2011
CPL-03-00-014 2012 483	<i>National Emphasis Program - PSM Covered Chemical Facilities</i>	<i>Adoption Required</i>	YES	NO	06/19/2012
CPL-03-00-016 2012 484	<i>Nursing Home NEP</i>	<i>Adoption Required</i>	YES	NO	06/19/2012
CPL-02-00-153 2012 504	<i>Communicating OSHA Fatality Inspection Procedures to a Victim's Family</i>	<i>Adoption encouraged, but not required</i>	NO	N/A	N/A
CPL-02-00-154 2012 524	<i>Longshoring and Marine Terminals Tool Shed Directive</i>	<i>Equivalency Required</i>	YES	NO	N/A
CPL-02-03-004 2012 544	<i>Section 11(c) Appeals Program</i>	<i>Equivalency Required</i>	NO	N/A	N/A

The State continues to provide timely responses to OSHA regarding their intentions with regard to all Federal Program Changes, including those initiated during FY 2012. 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.

The State of Minnesota continues to provide timely notification to OSHA regarding all State-Initiated Program Changes. MNOSHA adopted two state-initiated rules: new Minnesota Rule 5205.0730, Window Washing, Building Maintenance; and amended Minnesota Rule 5205.0650, Scope of Maintenance and Repair of Buildings and Equipment. Both rules became effective on March 1, 2012.

There are no standards and Federal program changes adoption observations or findings of concern requiring attention from the MNOSHA FY 2012 activities evaluated.

D. Variances

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

A variance is an order issued by the Minnesota DLI 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 observations or findings of concern requiring attention from the MNOSHA FY 2012 activities evaluated.

E. Public Employee Program

MNOSHA's Public Employee Program operates identically as the private sector program. 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 2012, MNOSHA conducted 167 public sector inspections. This is about 6% of the total inspections conducted in Minnesota.

MNOSHA conducted 149 on-site consultation visits in the public sector during FY 2012. A total of 78 (78.79%) of the initial visits were coded as high hazard visits, as defined by MNOSHA's High Hazard Emphasis Program. During the consultation visits, 404 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 employee program observations or findings of concern requiring attention from the MNOSHA FY 2012 activities evaluated.

F. Discrimination Program

MNOSHA's Whistleblower Protection Program consists of an OSHA Management Team (OMT) Director, one team leader/investigator, and two investigators. Procedurally, the MNOSHA Whistleblower Protection Program adheres to MNOSHA ADM 3.6, *Discrimination Complaint Handling Procedures*, which provides guidelines for the investigation and disposition of discrimination complaints filed with MNOSHA. MNOSHA revised the directive on May 17, 2012, in response to Federal OSHA's revision of its *Whistleblower Investigations Manual* (WIM) CPL 02-03-003, effective September 20, 2011. Federal OSHA is in the process of reviewing MNOSHA's revised directive to determine if their procedures are at least as effective as Federal OSHA's procedures.

During FY 2012, MNOSHA had 41 cases docketed for investigation and a total of 26 cases with determinations. Of the closed cases: 15 were dismissed, eight were withdrawn, two were settled, and one was found to have merit.

Complaint Intake and Screening

MNOSHA follows ADM 3.6 for complaint intake and screening. All complaints are screened by the investigators and are tracked in MOOSE. During the review period, MNOSHA had 52 complaints coded as screened and closed. Their previous instruction stated 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. This was included in the FY 2011 FAME as finding and recommendation 11-02. In response, MNOSHA's revised policy is to offer to send the complainant a letter confirming that the case is inappropriate for investigation and to document the complainant's response to the offer. The revised policy remains contrary to the OSHA WIM, which requires that a letter to the complainant be generated for all screened and closed complaints.

Notes, regarding the intake information and the reason the complaint is screened and closed, are entered into MOOSE. The investigators now document whether or not the complainant was in agreement with the disposition of their complaint and whether a follow up letter is sent. On occasion, a complainant may disagree with the investigator's determination that the complaint is inappropriate for investigation. In the past, the complainant was not able to appeal that determination. Federal OSHA's long-standing policy has been to docket and dismiss those complaints so that the complainant has the right to appeal. The difference in procedure was noted in the FY 2011 FAME as finding and recommendation 11-03. MNOSHA's revision of their ADM 3.6 on May 17, 2012 incorporated this change.

Lastly, 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.

Finding 12-03, formerly 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 was contrary to DIS 0-0.9, Ch. 2.III.B, and is contrary to CPL 02-03-003, Ch. 2.III.A.2.b.

Recommendation 12-03: Send letters to complainants that file complaints that are screened and closed.

Case Activity Worksheet

The MNOSHA Whistleblower Program does not use Case Activity Worksheets (OSHA 87s) generated by the Whistleblower WebIMIS 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's Statement form filled out by the investigator after the initial phone intake with the complainant. The Complainant's Statement form 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 form, 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 Complainant's Statement form, the complainant's letter includes dual filing rights and both letters are sent via certified mail.

Final Investigation Report

MNOSHA has declined to change the name of the report to Report of Investigation as Federal OSHA has done in order to be consistent with other Federal agencies. MNOSHA only prepares a Final Investigation 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 Federal OSHA's previous manual, DIS 0-0.9. One area where MNOSHA differs is how case files are organized. While the FIR and memorandums outline the facts of the case, the files are not arranged in accordance with the WIM so that supporting exhibits are referenced and easily identified. Contents of the files are scanned into MOOSE.

Secretary's Findings

MNOSHA does not utilize a detailed Secretary's Findings as described in the OSHA WIM. MNOSHA utilizes a written determination that adequately sets forth the determination and provides the respective party their right to review of the MNOSHA finding.

Timeliness

The Occupational Safety and Health Act of 1970 (OSH Act) requires the complainant be notified of the case determination within 90 days. Although 29 CFR 1977 indicates the timeframe is directory in nature and delays will occur, every effort will be made to meet the deadline.

In FY 2012, the percentage of cases completed by MNOSHA within 90 days was 42%, with an average completion time of 189 days. In FY 2011, MNOSHA timely completed 82% of the cases, with an average completion time of 105 days. In FY 2010, 88.2% of cases were completed timely. There appears to be a downward trend that needs to be monitored by MNOSHA.

The topic has been discussed during quarterly monitoring meetings throughout the year. MNOSHA's complaint intake peaked during FY 2010, but has declined every year since then. MNOSHA hired a new investigator midway into FY 2012, and reports their backlog of cases will be cleared up by the end of FY 2013.

Discrimination WebIMIS System Information

MNOSHA entries into the Whistleblower Application include party information and investigation information and do not utilize case comment, additional tracking, and the date of adverse action. MNOSHA does not currently enter administratively closed complaints into the WebIMIS system.

Finding 12-04: MNOSHA does not currently enter administratively closed complaints into the WebIMIS system as required by Whistleblower Investigations Manual (WIM) CPL 02-03-003, effective September 20, 2011.

Recommendation 12-04: Ensure that MNOSHA ADM 3.6, Discrimination Complaint Handling Procedures includes the requirement to enter administratively closed complaints into WebIMIS.

Program Management

MNOSHA primarily relies on their MOOSE, not the Whistleblower Application, for tracking and management of discrimination activity. The MNOSHA management team reviews discrimination activity reports from MOOSE on a monthly basis and does not utilize the report capability of the Whistleblower 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 are reviewed by the MNOSHA Director and discussed with the investigator(s). During the review period, none of the 15 dismissed cases were appealed. 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

One new investigator began on April 25, 2012 and attended the basic whistleblower course through the OSHA Training Institute (OTI) in July 2012. Investigators are also provided with computers, digital recorders, and personal protective equipment. Based on the current new caseload, staffing of three investigators appears to be adequate. As previously noted, MNOSHA

needs to continue to focus on reducing the backlog, while completing new cases in a timely manner, in order to raise the percentage of cases completed within 90 days.

G. Voluntary Compliance Program

Voluntary Protection Program (MNSTAR)

There were nine Voluntary Protection Program (MNSTAR) site evaluations conducted in Minnesota in FY 2012. Two of the nine received the designation of MNSTAR sites, one received the designation as a merit site, and the remaining six were recertification evaluations. 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.

There are no Voluntary Protection Program (MNSTAR) observations or findings of concern requiring attention from the MNOSHA FY 2012 activities evaluated.

Partnerships

MNOSHA Directive, *MNOSHA Strategic Partnership Plan* ADM 3.27 (06/09/05) is consistent with OSHA *Strategic Partnership Program for Worker Safety and Health* CSP 03-02-002 (02/10/05). There were two active partnerships that were revised and signed during FY 2012. 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 observations or findings of concern requiring attention from the MNOSHA FY 2012 activities evaluated.

Alliances

MNOSHA is not required to have an Alliance program similar to *OSHA Alliance Program* CSP 04-01-001 (06/10/04). However, MNOSHA does have alliances with associations in place. 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 observations or findings of concern requiring attention from the MNOSHA FY 2012 activities evaluated.

H. 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 Grant Application and Performance Plan, report on progress in annual performance reports, and monitor program accountability for achieving the goals and outcomes.

Training

MNOSHA developed and implemented its own training program outlined in ADM 5.1 *MNOSHA Investigator and Consultant Training Plan*. This training plan is comprehensive in nature, covering not only the information needed to conduct enforcement activities, but the routine administrative functions 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 program observations or findings of concern requiring attention from the MNOSHA FY 2012 activities evaluated.

Funding

The total State and Federal funds allocated to the MNOSHA 23(g) program for FY 2012 was \$8,942,087. MNOSHA matched the Federal funding of \$4,123,300, and overmatched the Federal grant by \$695,487. MNOSHA did not apply for any one-time funding opportunities offered during the Fiscal Year. MNOSHA did not de-obligate any funds during FY 2012.

There are no funding observations or findings of concern requiring attention from the MNOSHA FY 2012 activities evaluated.

Staffing

Management and administration of the OSH Compliance Division is the responsibility of the OMT. The OMT is comprised of the Compliance Director, two area directors, and five supervisors. The total complement of the OSH Compliance Division (compliance activity) was 88.03 full-time equivalents (FTE) for FY 2012.

MNOSHA has two safety and health professionals on duty to answer questions received primarily through phone calls and e-mails. During FY 2012, these two positions responded to approximately 4,261 phone calls and 1,795 written requests for assistance, primarily e-mails. A

majority of these inquiries are answered within one day. During FY 2012, 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 2012, the benchmark for safety is 31 positions, with 39 positions, or 126% filled. The benchmark for health is 12 positions, with 18 positions, or 150% filled.

		FY 07	FY 08	FY 09	FY 10	FY 11	FY 12
Safety	Benchmark	31	31	31	31	31	31
	Positions Allocated	38	38	37	41	44	41
	Positions Filled	38	38	37	36	42	39
	Vacancies	0	0	0	5	2	2
	% of Benchmarks Filled	119%	119%	117%	114%	126%	126%
Health	Benchmark	12	12	12	12	12	12
	Positions Allocated	18	18	18	18	18	18
	Positions Filled	18	16	15	16	16	18
	Vacancies	0	2	3	2	2	0
	% of Benchmarks Filled	133%	125%	120%	125%	125%	150%

There are no staffing observations or findings of concern requiring attention from the MNOSHA FY 2012 activities evaluated.

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 observations or findings of concern requiring attention from the MNOSHA FY 2012 activities evaluated.

State Internal Evaluation Plan (SIEP)

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 relation 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 2012, 73% of the directives on the current five-year cycle were completed.

MNOSHA conducts internal reviews to ensure the MNOSHA program continues to follow the requirements of the OSHA program. Internal performance is a monthly agenda item at OMT meetings, whereby reports are generated to facilitate review of the internal program components. The program currently has three positions with responsibility for quality control and assurance of inspection case files.

There are no State Internal Evaluation Plan observations or findings of concern requiring attention from the MNOSHA FY 2012 activities evaluated.

V. State Progress in Achieving Annual Performance Goals

In the FY 2012 State OSHA Annual Report (SOAR), MNOSHA provided information that outlines their accomplishments toward 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 2012 performance goals.

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

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

Results: This goal was met.

Discussion: The FY 2012 target was a 2% reduction in the TRC rate from the previous five-year average for CY 2006 – 2010, which was 4.40 per 100 workers. The CY 2011 TRC rate achieved was 3.80, 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 not met.

Discussion: The FY 2012 target was a 1% reduction in the State's fatality rate from the previous five-year average for CY 2006 – 2010, which was 0.721 per 100,000 workers. For CY 2011, the most recent employment information from the Minnesota Department of Employment and Economic Development (DEED) data available, the fatality rate achieved was 0.883. Consequently, MNOSHA Compliance did not meet this goal with a 22% increase. There were 17 fatalities in CY 2012, and that number will later be used to calculate the rate during the assessment for FY 2013. 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 2012 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 8% as 4,505

hazards were identified within 2,667 establishments visited. Sixty-nine percent (69%) of the inspections conducted resulted in violations; 76% of violations were cited serious.

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

Results: This goal was met.

Discussion: MNOSHA focused its programmed inspections to reduce injuries, illnesses, and fatalities in certain emphasis industries. The FY 2012 goal was for 69% of programmed inspections be conducted within the emphasis industries. MNOSHA conducted 75% of all programmed inspections within the emphasis industries. As part of an ergonomic focus, MNOSHA conducted 44 programmed inspections in the meat processing industry and nursing homes.

Performance Goal 1.4: Percent of designated program inspections

Results: This goal was met.

Discussion: The FY 2012 target was for 85% of all inspections to be conducted as programmed inspections. MNOSHA conducted 2,667 inspections with 85% 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 2012 target was to increase the number of partnerships by one. In FY 2012, MNOSHA did not enter into any new partnerships. MNOSHA did sign a newly-revised construction safety and health partnerships with the Minnesota Chapter of Associated Builders and Contractors (MN ABC) and with Associated General Contractors (AGC) of Minnesota. The partnerships are designed to help reduce the number of injuries, illnesses and fatalities at participating construction industry employers.

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

Results: This goal was not met.

Discussion: The FY 2012 target was to increase the number of VPP MNSTAR participants by four. There are currently 34 employers in the MNSTAR program, with three sites granted initial certification (two Star employers and one Merit employer) during FY 2012.

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 employs two investigators who are fluent in both English and Spanish. MNOSHA has also updated its A Workplace Accident and Injury Reduction (AWAIR) program handout and progress report forms in Spanish. In addition, MNOSHA provides written materials to immigrant and other hard-to-reach employers in coordination with the Department’s Community Services Representative, and attendance at a related MNOSHA outreach session was 112 participants.

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

Results: This goal was met.

Discussion: The FY 2012 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 2012 by conducting presentations to 4,341 participants, 59% 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 2012 target was to maintain the baseline. The MNOSHA Compliance program continued to participate on the State Emergency Response Plan. The Governor activated the State Emergency Operations Center (EOC) from June 20 to 28, 2012, following localized flooding in four counties in northeastern Minnesota and three counties in southern Minnesota. One director attended 18 Minnesota 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 three Federal OSHA Homeland Security conference calls.

The Minnesota Emergency Operations Plan was reviewed in March 2012 with no edits this year. One director completed one seminar: PDS 240, Leadership and Influence, as

part of the Governor's annual Homeland Security Conference. Eleven (11) staff completed the two-hour Introduction to Incident Command on-line FEMA course (IS100) and the two-hour Single Resources and Initial Action Incidents on-line FEMA course (IS200).

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

Results: This goal was met.

Discussion: The FY 2012 target was to maintain the baseline as an on-going performance. MNOSHA has two safety and health professionals on duty to answer questions received primarily through phone calls and emails. During FY 2012, these two positions responded to approximately 4,261 phone calls and 1,795 written requests for assistance, primarily e-mails. A majority of these inquiries are answered within one day. During FY 2012, 63% of phone calls, emails, 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 2012, MNOSHA received 577 workplace safety and health employee complaints, and 282 or 49% of the total complaints resulted in an on-site inspection with an average response time of 2.7 days. The remaining complaints were handled via MNOSHA's phone/fax system (non-formal complaint).

MNOSHA also provides a variety of safety and health information on its website, including printable handouts and information about its audio visual library, which offers a selection of safety and health videos and DVDs available for a free two-week loan. The MNOSHA website also provides links to other websites where safety and health regulations can be accessed. In total, there were 47,745 hits to the MNOSHA web page.

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 2012, 18 existing directives were revised. They included internal procedures for fatalities, serious injuries, complaint handling, training, and

scheduling. At the close of FY 2012, 73% 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 2012 target was to maintain the baseline. During FY 2012, MNOSHA trained its staff on window washing, residential construction, grain handling, cranes, and silica. In addition, MNOSHA has been able to recruit two additional field staff that have significant safety and health consulting experience. MNOSHA has also been able to retain two investigators that speak fluent Spanish.

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 2012 target was to maintain the baseline as an on-going performance. MNOSHA's continuing process improvement actions included reviewing the complaint process and its description and it was determined to be current except for a concern with categorization of incoming phone calls. The phone system was upgraded in March 2012, allowing for additional reports to be generated, summarizing the volume of calls to the Division.

VI. Other Areas of Note

Complaint About State Program Administration (CASPA)

12-14-MN: The CASPA alleged MNOSHA determined a discrimination complaint was filed beyond the 30-day filing period and refused to accept the complaint for investigation. The complainant claimed the complaint was filed within a few days of the termination and was in fact filed timely.

Findings: After investigating the allegation, Federal OSHA determined there was no evidence to show the discrimination complaint was timely filed; however, the untimely complaint was not docketed and dismissed, which would have provided the complainant an opportunity to have the determination reviewed. The general concern was noted in the FY 2011 FAME as finding and recommendation 11-03 because MNOSHA's procedure was to not accept the complaint, without providing the complainant any recourse. The CASPA provided an example of an actual, affected case for the first time. In May 2012, MNOSHA revised their discrimination directive, so there is no longer a concern.

Appendix A – New and Continued Findings and Recommendations

FY 2012 Minnesota State Plan Abridged FAME Report

Rec #	Findings	Recommendations	FY 11
12-01	MNOSHA does not send a letter to the complainant at the conclusion of the nonformal complaint investigation to inform them of the outcome.	Send a letter to the complainant at the conclusion of the investigation, including a copy of the employer’s response, to inform them of the outcome and provide an opportunity to request the matter be reviewed.	
12-02	Following complaint inspections, complainants are mailed a letter informing them of the inspection and 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 orders. This is the result of a court decision called the Westrom decision. As a result of this court case, the Minnesota DLI is precluded from making public inspection results prior to citations becoming final orders. The statute also prohibits the complainant from receiving a copy of the citations when issued.	Modify Minnesota Statute § 13.39 subd. 2 to permit MNOSHA to provide a letter addressing each complaint item with reference to the citation(s) or a sufficiently detailed explanation for why a citation was not issued to the complainant. When citations are issued, a copy of the citations should be included with the letter to the complainant.	
12-03	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.	11-02
12-04	MNOSHA does not currently enter administratively closed complaints into the WebIMIS system as required by Whistleblower Investigations Manual (WIM) CPL 02-03-003, effective September 20, 2011.	Ensure that MNOSHA ADM 3.6, Discrimination Complaint Handling Procedures includes the requirement to enter administratively closed complaints into WebIMIS.	

Appendix B – Observations Subject to Continued Monitoring
FY 2012 Minnesota State Plan Abridged FAME Report

Minnesota does not have any new or continued observations.

Appendix C - Status of FY 2011 Findings and Recommendations

FY 2012 Minnesota State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
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.	ADM 3.4, <i>Abatement Verification</i> , was updated August 20, 2010, March 24, 2011, and September 16, 2011, to address this recommendation.	MNOSHA updated their directive and considers this item completed. The Directive was updated to include requirements for documenting CDI abatement.	Completed
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.	On May 17, 2012, MNOSHA updated ADM 3.6 <i>Discrimination Complaint Handling Procedures</i> to reflect that letters will be sent to Complainants when appropriate.	MNOSHA’s current policy is to offer a written confirmation be mailed to the Complainant and document whether one was sent. This item remains open pending reconciliation with Federal OSHA’s policy of sending a confirmation letter every time.	Open
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.	On May 17, 2012, MNOSHA updated ADM 3.6 <i>Discrimination Complaint Handling Procedures</i> to require that a Complainant be sent a letter with review/appeal rights when the Complainant does not accept the determination. The case will be entered in MNOSHA’s MOOSE computer system and OSHA’s WebIMIS.	MNOSHA updated their directive and considers this item completed.	Completed

Appendix D - FY 2012 State Activity Mandated Measures (SAMM) Report

FY 2012 Minnesota State Plan Abridged FAME Report

NOV 09, 2012
RID: 0552700

MEASURE	From: 10/01/2011 To: 09/30/2012	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	794 2.79 284	71 3.73 19	Negotiated fixed number for each state
2. Average number of days to initiate Complaint Investigations	596 2.18 273	145 3.62 40	Negotiated fixed number for each state
3. Percent of Complaints where Complainants were notified on time	275 100.00 275	21 100.00 21	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	9 100.00 9	1 100.00 1	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	1615 70.31 2297	117 16.91 692	100%
Public	124 82.67 150	5 20.83 24	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	35606 25.19 1413	3955 26.01 152	2032800 55.9 36336
Health	10078 25.84 390	908 21.61 42	647235 67.9 9527

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NOV 09, 2012
RID: 0552700

MEASURE	From: 10/01/2011 To: 09/30/2012	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
	1172	136	76860
Safety	65.73	68.69	58.5
	1783	198	131301
	243	26	9901
Health	54.98	55.32	53.0
	442	47	18679
9. Average Violations per Inspection with Violations			
	3434	378	367338
S/W/R	1.90	1.94	2.1
	1804	194	175950
	1056	98	216389
Other	.58	.50	1.2
	1804	194	175950
10. Average Initial Penalty per Serious Violation (Private Sector Only)	3478075	402600	624678547
	1082.16	1103.01	1990.5
	3214	365	313826
11. Percent of Total Inspections in Public Sector	167	4	503
	6.26	1.50	6.5
	2667	266	7686
12. Average lapse time from receipt of Contest to first level decision	41199	2362	3197720
	140.61	90.84	187.0
	293	26	17104
13. Percent of 11c Investigations Completed within 90 days*	11	6	
	42.31	31.58	100%
	26	19	
14. Percent of 11c Complaints that are Meritorious*	3	4	1619
	11.54	21.05	23.4
	26	19	6921
15. Percent of Meritorious 11c Complaints that are Settled*	2	4	1444
	66.67	100.00	89.2
	3	4	1619

*Note: Discrimination measures have been updated with data from SAMM reports run on 1/3/2013

Appendix E - State OSHA Annual Report (SOAR)
FY 2012 Minnesota State Plan Abridged FAME Report

[Available Upon Request]