

FY 2013 Comprehensive 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

A. Summary of the Report

The purpose of this comprehensive Federal Annual Monitoring Evaluation (FAME) report is to assess the State Plan's progress towards achieving performance goals established in their federal Fiscal Year (FY) 2013 Annual Performance Plan, to review the effectiveness of programmatic areas related to enforcement activities including a summary of an onsite evaluation, and to describe corrections made by the State Plan in response to the FY 2012 FAME report findings and recommendations. This report fully assesses the current performance of Minnesota Department of Labor and Industry – Occupational Safety and Health Division (MNOSHA) 23(g) compliance program and compares the State Plan's effectiveness to that of OSHA.

A four person OSHA team was assembled to accomplish the evaluation onsite at MNOSHA in St. Paul, Minnesota, beginning on February 3, 2014. The OSHA team's evaluation consisted of case file reviews, interviews of MNOSHA staff, and a special study of the State Plan's targeting programs.

A detailed explanation of the findings and recommendations of the MNOSHA performance evaluation is found in Section III, Assessment of State Plan Performance. A summary of all the findings and recommendations noted, as the result of OSHA's review, is found below and in Appendix A, *New and Continued Findings and Recommendations*.

The Minnesota Occupational Safety and Health Strategic Management 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 2013 Performance Plan provided the framework for accomplishing the goals of the MNOSHA Strategic Management Plan by establishing specific performance goals for FY 2013.

A thorough assessment of MNOSHA's progress in achieving their annual performance goals has been conducted, and the results are found in Section IV, Assessment of State Plan Progress in Achieving Annual Performance Goals. Noteworthy in the assessment are the following:

- Performance Goal 1.2, Reduction in State Fatality Rate. MNOSHA achieved a 9% reduction in worker fatality rate; from 0.710 fatalities per 100,000 workers to 0.643.
- Performance Goal 1.3a1, Total Hazards Identified/ Establishments Visited: The FY 2013 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 increased by 9% as 5,373 hazards were identified within 2,943 establishments visited.

- Performance Goal 2.2, Increase the total number of people participating in outreach: MNOSHA exceeded the goal of a 5% increase in outreach participation by conducting presentations to 3,101 participants, which was an 11% increase.
- Performance Goal 1.4, Percent of Designated Programmed Inspections: The FY 2013 target was for 85% of all inspections to be conducted as programmed inspections. MNOSHA conducted 2,943 inspections with 84% opened as programmed. MNOSHA narrowly missed meeting this goal, but met all other annual performance goals.

Quarterly monitoring team meetings were held during FY 2013, at which time the State Activity Mandated Measures (SAMM) and State Information Report (SIR) were reviewed and discussed with MNOSHA compliance staff. The FY 2013 SAMM is Appendix D of this report.

OSHA received and investigated two Complaints About State Program Administration (CASPA) during FY 2013. The first CASPA was received through congressional referral and concerned a fatality investigation resulting in no willful violations and the potential for penalties to be waived. The second CASPA alleged a whistleblower complaint was not properly investigated. After investigating the allegations, OSHA determined MNOSHA followed established policies and procedures with respect to the matters contained in the two complaints and those policies and procedures are at least as effective as OSHA's.

B. State Plan Introduction

The Minnesota Department of Labor and Industry (DLI) administers the MNOSHA program. The program became effective on August 1, 1973, with final State Plan approval obtained on July 30, 1985. MNOSHA includes the Occupational Safety and Health (OSH) Compliance Division, which is responsible for compliance program administration (conducting enforcement inspections 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.

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.

During FY 2013, there were no changes to the current administration. Commissioner Ken Peterson is the head of the DLI. Ms. Cindy Valentine is the Workplace Safety Manager reporting directly to the Commissioner. Mr. James Krueger is the Director of the OSH Compliance Division and Ms. Roslyn Robertson is the Director of the WSC Division within Minnesota DLI. The FY 2013 grant, reduced through sequestration, included funding totaling \$8,693,203 and full-time equivalent (FTE) staffing of 88.96 positions. The State Plan's required benchmarks are 31 safety investigators and 12 health investigators. MNOSHA allocated 42 safety and 16 health. At the beginning of FY 2013, there were 40 safety and 15 health investigators on staff. At the end of the fiscal year there were three safety vacancies.

C. Data and Methodology

A review of the MNOSHA workplace safety and health program was conducted onsite from February 3, 2014 to February 7, 2014. Eighty-six (86) inspection cases (comprising of seven fatality files, 50 safety files, and 29 health files) were selected randomly for review. A total of 50 complaint files were evaluated, including nonformal complaints consisting of seven safety and four health, and formal complaints consisting of 23 safety and 16 health. Additionally, five electronic complaints were randomly selected from those filed each month, for a total of 60 electronically filed complaints. 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. Thirty (30) of the 54 cases were reviewed, including those with settled, settled other, dismissed, and withdrawn determinations. All cases occurred from October 1, 2012 through September 30, 2013.

In addition to reviewing the above cited case files, the audit team reviewed data gathered from MNOSHA inspections conducted from October 1, 2012 through September 30, 2013, 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 Plan to administer its program and by the State Plan and OSHA to monitor the program, was examined.

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

D. Findings and Recommendations

A detailed explanation of the findings and recommendations of the MNOSHA performance evaluation is found in Section III, Assessment of State Plan Performance. The FY 2012 FAME identified four findings and recommendations. Three of the recommendations are completed, and one recommendation is being addressed with an anticipated completion date of September 30, 2015. A complete list of the FY 2012 findings and recommendations and MNOSHA's progress in addressing the findings is found in Appendix C, *Status of FY 2012 Findings and Recommendations*.

The summary of the findings and recommendations noted, as the result of OSHA's

evaluation for FY 2013, is found below and in Appendix A, *New and Continued Findings and Recommendations*.

1. Finding 13-01 (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 13-01 (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 13-02: Noise and Respiratory Hazards LEP case files did not contain documentation showing that a comprehensive evaluation of the employer's hearing conservation program and/or noise reduction efforts had been conducted.

Recommendation 13-02: Ensure that MNOSHA Instruction CPL 2-2.1A *Noise Measurements and Citations in General Industry* is followed when evaluating the employer's hearing conservation program and/or noise reduction efforts and the file is documented accordingly.

3. Finding 13-03: Documentation of noise exposures was not adequate to support a violation of 29 CFR 1910.95, as described in MNOSHA Instruction CPL 2-2.1A *Noise Measurements and Citations in General Industry*.

Recommendation 13-03: Ensure that MNOSHA Instruction CPL 2-2.1A *Noise Measurements and Citations in General Industry* is followed when determining and documenting noise exposures.

4. Finding 13-04: Abatement was classified as "Corrected During Inspection" where the workers had stopped working during the inspection and the employer indicated the hazards would be corrected prior to resuming work.

Recommendation 13-04: Ensure that "Corrected During Inspection" is being applied appropriately in that abatement of the hazard is achieved and documented during the inspection.

5. Finding 13-05: Union participation was not documented in accordance with MNOSHA ADM 3.9 *Case File Processing* and Chapter 4 of the MOOSE manual to assure involvement in all necessary aspects of the inspection; i.e., opening conference, walkaround, closing conference, and mailing of the citation.

Recommendation 13-05: Ensure that MNOSHA ADM 3.9 *Case File Processing* and Chapter 4 of the MOOSE manual are followed by documenting union representative involvement for all necessary aspects of the inspection and citation issuance and/or the representative's declination to be involved.

6. Finding 13-06: MNOSHA does not follow the procedures in MNOSHA ADM 2.3B *Local Emphasis Programs (LEPs)* when a new LEP is developed and implemented and to evaluate each LEP's role in meeting goals of MNOSHA's Strategic Management Plan using the identified metrics such as: the number of employees covered by the specific LEP, reduction in the number of injuries and illnesses relating to a specific LEP, the number of workers removed from hazards, and the number of violations related to specific targeted hazards.

Recommendation 13-06: Ensure that MNOSHA ADM 2.3B *Local Emphasis Programs (LEPs)* is followed in the development, implementation, and evaluation of each LEP.

II. Major New Issues

MNOSHA Compliance Division reported their budget is insufficient to maintain program activity levels. Although staffing costs (salary, fringe benefits, and indirect costs) have increased 23% from FY 2008 to FY 2014, their total budget including State Plan matching and overmatching funds has increased 6.9%. The federal base grant awarded to the State Plan increased only 1.9% over the same six-year time period.

	FY 2008	FY 2014
Federal Grant	\$3,900,300	\$3,973,900
Total Budget	\$8,598,645	\$9,196,011
Staffing (FTE)	95.56	85.32

MNOSHA has consistently met or exceeded goals or objectives set by OSHA, allowing the State Plan to work steadily to eliminate workplace injuries and illnesses as indicated in their five-year Strategic Management Plan. MNOSHA informed OSHA during this audit that static or reduced budgets will result in fewer safety and health inspections being performed. For FY 2014, the goal for safety and health inspections has been reduced from 2,500 to 2,400. Currently, positions vacated through attrition are not being filled. MNOSHA projects that a reduction in staffing levels from 85.32 FTE in FY 2014 to 76.93 FTE in FY 2015 will be required to meet budget limitations. MNOSHA anticipates the ultimate outcome is that Minnesota's workplaces will become less safe.

III. Assessment of State Plan Performance

A. Enforcement

During FY 2013, MNOSHA conducted 2,943 inspections; 2,266 safety and 677 health. Of those 2,479 were programmed, 400 were complaints and referrals, and 25 were follow-ups. The total number of inspections was a 10% increase from FY 2012. This data was obtained from the inspection micro-to-host report dated November 4, 2013.

1. Complaints

During FY 2013, MNOSHA received a total of 659 complaints, of which 327 (50%) were formal and 332 (50%) were nonformal. The average number of days to initiate a complaint inspection in FY 2013 was 3.22, well below the negotiated standard of nine days. The average number of days to initiate a complaint investigation was 1.92, below the negotiated standard of two days. OSHA randomly selected 11 complaint investigations for review during this evaluation of the MNOSHA program.

MNOSHA has its own complaint process specified in its own administrative instruction, *ADM 3.16 Administrative Procedures for Handling Complaints and Information Requests*. It outlines the policies and procedures for processing formal and nonformal 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 nonformal complaint if the individual indicates 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 nonformally to address the issue, such as in sanitation complaints or complaints with low severity.

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 enclosed citation(s) or a sufficiently detailed explanation for why a citation was not issued. The difference in procedure was noted in the FY 2012 FAME as finding and recommendation 12-02. However, 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 Supreme Court of Minnesota decision known as 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 and court decision prohibit the complainant from receiving a copy of the citations when issued. On December 12, 2013, MNOSHA modified their letter to the complainant to include OSHA's website where citation item information may be found. Therefore, finding and recommendation 12-02 is considered completed.

MNOSHA's nonformal 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*. 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 nonformal complaint process deals with the outcome of nonformal complaint investigations.

Chapter 9 of *OSHA's Field Operations Manual* (FOM) contains the requirement to advise the complainant of the employer's response, as well as the complainant's right to dispute that response, and if the alleged hazard persists, of the right to request an inspection. MNOSHA does not send a letter to the complainant at the conclusion of the investigation to inform them of the outcome. This was noted in the FY 2012 FAME as finding and recommendation 12-01, and remains open in this report as finding and recommendation 13-01.

Finding 13-01 (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 13-01 (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. Fatalities

A total of 20 fatalities were reported to MNOSHA in CY 2013, up from 17 the previous year. DLI's Injury Notification Template is provided to OSHA for information and tracking of all fatalities. All seven of the fatality cases reviewed were responded to within one day. One case was coded no inspection due to a coroner's determination of natural causes.

Fatality information is recorded in MNOSHA's information system, Minnesota OSHA Operations System Exchange (MOOSE). All fatalities are entered into the Fatality/Serious Injury 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 record is generated. Generally, non-jurisdiction fatalities are not inspected and an Accident/Event record is not generated.

During the 2000 session, the legislature amended the Minnesota Occupational Safety and Health Act by adding a new section (Minn. Stat. 182.6545) which requires MNOSHA to make reasonable efforts to locate a deceased employee's next of kin and to mail them copies of the following documents related to the investigation:

- Citations and notification of penalty
- Notices of hearings
- Complaints and answers
- Settlement agreements
- Orders and decisions
- Notice of appeals

Under the statute, 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.

MNOSHA Instruction ADM 3.19 *Fatality Investigation Procedures* requires a

condolence letter be sent to the next of kin. After issuance of the initial letter, MNOSHA generally does not attempt to communicate with the next of kin unless MNOSHA is contacted by them. Contact is kept at the supervisory/management level.

During FY 2013, CASPA 2013-15 was filed concerning MNOSHA's handling of a fatality investigation. The complainant alleged that MNOSHA did not classify the violation as willful, investigated and documented the case indicating victim error, and may waive the penalty. After thoroughly reviewing documents provided by the complainant and MNOSHA, interviewing MNOSHA staff, reviewing MNOSHA's *Field Compliance Manual (FCM)*, and reviewing the applicable MNOSHA directive (ADM 3.19 *Fatality Investigation Procedures*); it was determined that MNOSHA followed the appropriate processes and procedures with regard to classification of violations, documentation, and assessment of penalties, but did not follow a requirement in ADM 3.19 for an in-person response within 24 hours. As a result of OSHA's investigation, MNOSHA updated ADM 3.19 to state an in-person response to the site is required within one workday. The modification is consistent with instructions contained in MNOSHA's FCM and OSHA's FOM.

There are no fatality process observations or findings of concern requiring attention from the MNOSHA FY 2013 activities evaluated.

3. Targeting and Programmed Inspections

A special study of the development and evaluation of the effectiveness of the State Plan's targeting programs has been conducted, and the results are found below in Subsection G, Special Study – State Plan Targeting Programs.

MNOSHA conducted 2,943 inspections, with 84% opened as programmed inspections. Sixty-nine percent (69%) of the inspections conducted resulted in violations and 73.2% 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-three percent (73%) of all programmed inspections were conducted in the emphasis industries.

MNOSHA has developed targeting lists to address Strategic Management 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 Ethanol, Isocyanates, and Trenching.

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 Plan's Strategic Management Plan, will also be scheduled for an inspection.

Other LEPs include, but are not limited to, Window Washing, Foundries, Healthcare, Meat Packing, Serious Injury, Grain Facilities, Hexavalent Chromium, and Noise and Respiratory Hazards.

MNOSHA's procedures for scheduling construction inspections are also outlined in MNOSHA's ADM 2.1 *Scheduling Plan for Programmed Inspections*. 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 (at least one earth moving) 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 2,479 programmed inspections, 2,470 were coded as programmed planned, while 9 were coded as programmed related.

During the FY 2013 onsite review, 13 of the 40 programmed planned cases evaluated were coded as health. Three of those inspections were conducted under the Noise and Respiratory Hazards LEP. In two of the cases, monitoring was not conducted to determine the workers' exposure to noise. In all three of the cases, documentation contained in the file does not support that a comprehensive evaluation of the employer's hearing conservation program and/or noise reduction efforts had been conducted.

Finding 13-02: Noise and Respiratory Hazards LEP case files did not contain documentation showing that a comprehensive evaluation of the employer's hearing conservation program and/or noise reduction efforts had been conducted.

Recommendation 13-02: Ensure that MNOSHA Instruction CPL 2-2.1A *Noise Measurements and Citations in General Industry* is followed when evaluating the employer's hearing conservation program and/or noise reduction efforts and the file is documented accordingly.

4. Citations and Penalties

In MNOSHA's 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 2013, MNOSHA investigators conducted 2,943 inspections where 5,263 hazards were identified and cited. 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 increased from 1.9 to 2.

The average initial penalty per serious violation in the private sector during FY 2013 was \$956, a decrease of 12% from FY 2012. MNOSHA retained 87% of those penalties, which is far above OSHA's average of 66%. This data was obtained from the SAMM dated November 12, 2013.

During the FY 2013 audit, 15 of the 29 health cases reviewed contained industrial hygiene sampling. MNOSHA Instruction CPL 2-2.1A *Noise Measurements and Citations in General Industry* contains direction for the documentation of employee noise exposure in order to sustain violations of 29 CFR 1910.95 Occupational Noise Exposure. In three cases reviewed, the employer's history of sampling results or MNOSHA's dosimetry results of less than 66% dose were relied upon to cite the employer. Similarly, in six of the cases reviewed, exposure monitoring for air contaminants was not conducted during the inspection in order to evaluate the workers' exposure, address complaint items, and/or support serious citations.

Finding 13-03: Documentation of noise exposures was not adequate to support a violation of 29 CFR 1910.95, as described in MNOSHA Instruction CPL 2-2.1A *Noise Measurements and Citations in General Industry*.

Recommendation 13-03: Ensure that MNOSHA Instruction CPL 2-2.1A *Noise Measurements and Citations in General Industry* is followed when determining and documenting noise exposures.

Observation FY13-OB-1: Potential opportunities have not been taken to perform worker exposure monitoring for the purpose of documenting worker exposure for the complete evaluation of a condition discovered during the inspection and where violations were issued under vertical health standards for a failure to monitor.

Observation FY13-OB-2: Exposure monitoring was not conducted when likely necessary to adequately address concerns brought forth through complaint items.

Observation FY13-OB-3: An employer's own exposure monitoring data has been relied upon to support a violation.

5. 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 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. Of the case files reviewed, 17 contained a PMA. MNOSHA's actions addressed the requests appropriately in each case.

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" (CDI) 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, OSHA requires that the violation worksheet must contain information on how the violation was abated. This policy is outlined in the FOM and in the previous compliance directive, CPL 2-0.114 *Abatement Verification Regulation*, 29 CFR 1903.19 - *Enforcement Policies and Procedures*. In the 2011 files previously reviewed where serious hazards were identified and the abatement was classified as 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.

Adequate evidence of abatement was not found in four of five case files reviewed during the FY 2013 OSHA onsite evaluation which contained CDI violations. The violations were for serious hazards involving falls from roofs and scaffolds, and a trench. During the inspections, the workers stopped working and were therefore temporarily removed from the hazard. The investigator in each case noted the employer's intention to correct the violation(s) prior to resuming work. However, the investigator left the site without

any true assurance that the hazards would be abated. In one case, the employer did not accept delivery of the resulting citation, could not be located by MNOSHA, and did not pay any of the penalties.

Finding 13-04: Abatement was classified as “Corrected During Inspection” where the workers had stopped working during the inspection and the employer indicated the hazards would be corrected prior to resuming work.

Recommendation 13-04: Ensure that “Corrected During Inspection” is being applied appropriately in that abatement of the hazard is achieved and documented during the inspection.

6. Worker and Union Involvement

Minnesota Statute 182.659 and Chapter 3 of the FCM contain requirements and policies for the investigator to involve employees and employee representatives during the course of the inspection. This includes the opening conference, walk around, and closing conference. Chapter 4 of the MOOSE manual contains instruction to indicate contact with the union representative(s) or explain their absence. In cases where citations are issued, the authorized employee representatives are also mailed a copy of the citation.

The requirement to provide employee representatives the opportunity to participate during the various stages of an inspection is stated in Section 8(e) of the OSH Act and Chapter 3 of OSHA’s FOM. Chapter 5 of the FOM contains the minimum level of documentation required including identification of employee representatives and those who accompanied the CSHO on the inspection, a written narrative, and any other relevant comments/information. Additionally as an index of effectiveness, 29 CFR 1902.4(c)(2) requires OSHA to determine whether the State Plan provides an opportunity for employees and their representatives, before, during, and after inspections, to bring possible violations to the attention of the state agency. The method OSHA uses to make this determination is established procedure and case file review. OSHA utilizes this same method internally. Therefore, it is important that the investigator document the opportunity has been provided. One way this can be accomplished is to explain why an employee representative is not shown as having participated such as when they have declined to participate.

Chapter 5 of the FOM also contains the requirements to mail a copy of the citation to the union and complete a diary sheet chronologically listing all actions taken. A copy of all written correspondence is to be placed in the file per OSHA’s ADM 03-01-005 *OSHA Compliance Records*.

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 workers or authorized representatives are involved in informal and formal settlements and formal hearings.

During FY 2013, MNOSHA's internal quality control group noted inconsistent documentation of union involvement during the inspection. MNOSHA Instruction ADM 3.9 *Case File Processing* was amended on May 7, 2013, to include mailing of citations to the unions, and the requirement was discussed with administrative support staff at that time. The need for documentation was discussed with all MNOSHA staff on October 23, 2013.

In eight of the 16 cases included in the FY 2013 onsite review where workers were represented by a union, a union representative was not involved during the inspection process and the case did not contain information indicating participation had been offered and declined. Additionally, mailing of the citation to the union was not documented in the files.

Finding 13-05: Union participation was not documented in accordance with MNOSHA ADM 3.9 *Case File Processing* and Chapter 4 of the MOOSE manual to assure involvement in all necessary aspects of the inspection; i.e., opening conference, walkaround, closing conference, and mailing of the citation.

Recommendation 13-05: Ensure that MNOSHA ADM 3.9 *Case File Processing* and Chapter 4 of the MOOSE manual are followed by documenting union representative involvement for all necessary aspects of the inspection and citation issuance and/or the representative's declination to be involved.

B. Review Procedures

During FY 2013, MNOSHA vacated 0.0% of private sector violations, while OSHA vacated 7.1%. MNOSHA also reclassified 0.0% of violations, while OSHA reclassified 5.6% of violations. With regard to penalties, MNOSHA retained 82%, while OSHA retained 60.7%. In the public sector, MNOSHA vacated 8.3% of violations, reclassified 11.1% of violations, and retained 53.2% of penalties. This data was obtained from the SIR for FY 2013.

1. Informal Conferences

MNOSHA's review procedures are organized slightly different than the 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's management discusses interim worker 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 worker protection 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, and prepares a memorandum documenting the reasons for the changes in the agreement. In the cases reviewed during the FY 2013 audit, a majority of the changes were penalty reductions for settlement purposes.

There are no review procedure observations or findings of concern requiring attention from the MNOSHA FY 2013 activities evaluated.

C. Standards and Federal Program Changes (FPC) Adoption

1. Standards Adoption

A total of two applicable standards were required to be adopted during FY 2013. Both were dealt with by the State of Minnesota in a timely manner. The standards adopted by Minnesota became effective in the appropriate timeframe.

**Federally Initiated Standards Log
Summary for MN Report
02/26/2014**

Subject	Intent to Adopt	Adopt Identical	Date Promulgated	Effective Date
Updating OSHA Standards Based on National Consensus Standards; Head Protection	YES	YES	06/17/2013	06/17/2013
Cranes and Derricks in Construction: Underground Construction and Demolition	YES	YES	11/12/2013	11/12/2013

The State of Minnesota continues to provide timely notification to OSHA regarding all State-Initiated Standard Changes. On June 17, 2013, MNOSHA repealed one state-initiated rule as duplicative in light of the new cranes and derricks standard, Minnesota Rule 5207.0410, *Personnel Platforms Suspended from Cranes and Derricks*.

2. OSHA/State Plan Initiated Changes

All Federal Program Change (FPC) responses were submitted timely, as well as plan change information and any state initiated changes. For those Federal Program Changes that the State Plan did not adopt, these items were not adopted due to the State Plan 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 Plan's policy as it relates to these items, please contact MNOSHA Compliance at 651-284-5050.

One state initiated change submitted at the beginning of FY 2013 provides employers in the MNSHARP/STAR program an exemption from unprogrammed referral inspections. OSHA does not provide such an exemption and is in the process of obtaining documentation of MNOSHA's cancellation of the change.

**Federal Program Change
Summary for MN Report
02/26/2014**

Directive Number	Title	Adoption Required, Equivalency Required or Adoption Encouraged/Not Required	Intent to Adopt	Adopt Identical	State Adoption Date
CPL-02-01-054 2013 545	Inspection and Citation Guidance for Roadway and Highway Construction Work Zones	Equivalency Required	YES	NO	02/24/2014
CPI-02-13-01 2013	Site-Specific Targeting 2012	Equivalency Required	NO	N/A	N/A

564	(SST-12)				
CPL-03-00-017 2013 585	National Emphasis Program – Occupational Exposure to Isocyanates	Adoption Required	YES	YES	10/08/2013
CPL-02-00-155 2013 604	Inspection Scheduling for Construction	Equivalency Required	NO	N/A	N/A
CPL-02-01-055 2014 624	Maritime Cargo Gear Standards and 29 CFR Part 1919 Certification	Equivalency Required	NO	N/A	N/A

There are no standards and federal program changes adoption observations or findings of concern requiring attention from the MNOSHA FY 2013 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 workers 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 workers who have first-hand knowledge of the process or hazard; a description of all the measures the employer will be taking to protect the workers 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 workers 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 workers 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 workers from injury and illness at least as effectively as the measures required under the standard. Workers 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 workers, 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 workers must be notified by the employer about the hearing and given an opportunity to participate in the hearing.

When variances are granted by OSHA covering several states, MNOSHA will honor a federal variance, provided the employer has not applied to the Department for a separate State Plan 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 2013 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 2013, MNOSHA conducted 147 public sector inspections. This is approximately 5% of the total inspections conducted in Minnesota.

There are no public employee program observations or findings of concern requiring attention from the MNOSHA FY 2013 activities evaluated.

F. Discrimination Program

MNOSHA's Whistleblower Protection Program consists of an OSHA Management Team (OMT) Director, one lead 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 OSHA's revision of its *Whistleblower Investigations Manual* (WIM) CPL 02-03-003, effective September 20, 2011. MNOSHA further revised their directive on October 23, 2013, in response to OSHA's concern that certain policies and procedures were not as effective as OSHA's.

Accordingly, this review followed the guidelines, procedures, and instructions of OSHA's WIM, and 29 CFR 1977. MNOSHA investigators were interviewed and MNOSHA management was consulted for information as necessary during the review.

During FY 2013, MNOSHA docketed 44 cases for investigation and issued determinations in a total of 54 cases.

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. Thirty (30) of the 54 cases (55%) were reviewed, including those with settled, settled other, dismissed, and withdrawn determinations. During the review period, the program employed three full-time whistleblower investigators. Investigators meet monthly with the OMT Director who assigns cases directly to the Investigators based on workload. An assignment memorandum is not produced but the assignment is tracked in MOOSE.

A review of the Case Listing Report for the review period indicated that of the 54 completed, four (7%) were withdrawn, 40 (74%) were dismissed, two (4%) were merit, six (11%) were settled, and two (4%) were settled other. The percentage of cases completed timely was 37%.

While there are some procedural and administrative differences between MNOSHA and OSHA's discrimination programs, the determinations made by MNOSHA were consistent with the evidence and reasoning contained in each of the 30 case files reviewed.

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 28 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. Of the 28 screened and closed cases reviewed, 16 were sent closing letters and their responses were noted.

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. 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 period.

Case Activity Worksheet

The MNOSHA Whistleblower Program does not use Case Activity Worksheets generated by the Whistleblower WebIMIS system. The program determined that they do 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. Complainants' 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 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 OSHA's WIM. 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.

Settlements

Eight cases were settled during the review period. Five of the cases were reviewed with four coded as "settled" and one coded as "settled other." All five files contained fully executed copies of the agreements as well as closing letters to the complainant and respondent. All the settlements contained sufficient calculations or memorandums explaining the appropriateness of the terms of the agreements. One case not counted under the code "settled" was found to be coded as "withdrawn" but should have been coded as "settled". The case was included in a settlement that resolved a total of three cases.

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 2011, 82% of the discrimination cases were completed by MNOSHA within 90 days. MNOSHA hired a new investigator midway into FY 2012. Overall that year, 42% of the cases were completed timely, with an average completion time of 189 days. In FY 2013, the percentage of cases completed within 90 days was 37%, with an average completion time of 222 days. The rise in the average days to completion time is explained by a reduction in back logged cases with 34 cases being closed out with a completion day range of 98 days to 733 days. The topic has been discussed during quarterly monitoring meetings throughout the year. During FY 2013, the program diligently worked to clear up their backlog of cases, while simultaneously completing new cases. For the first year since FY 2010, more cases were closed than were opened.

Whistleblower WebIMIS System Information

MNOSHA entries into the Whistleblower Application for docketed cases 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, which was noted as a finding in the FY 2012 FAME and revisited during the FY 2013 onsite review.

All information is retained in MOOSE and is available to OSHA upon request. This is supported by the data that was provided to OSHA for this audit. MNOSHA has offered to enter administratively closed case information into WebIMIS, with OSHA's help, since MNOSHA would be entering the same data into both systems creating a duplication of work. As an alternative, MNOSHA and OSHA have signed a memorandum of understanding affirming MNOSHA's agreement to provide OSHA data related to administratively closed cases entered into MOOSE, upon request.

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). 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

Investigators are 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.

During FY 2013, CASPA 2013-16 was filed concerning MNOSHA's handling of a discrimination complaint investigation. The complaint alleged MNOSHA did not follow their own policies and procedures in multiple areas including timeliness, qualifications of the investigator, and management involvement in the case. After thoroughly reviewing documents provided by the complainant and MNOSHA, interviewing MNOSHA staff, and reviewing the applicable MNOSHA directive (MNOSHA Instruction ADM 3.6 *Discrimination Complaint Handling Procedures*); it was determined that MNOSHA followed the appropriate processes and procedures to the best of their ability and had done so in a manner at least as effective as OSHA.

There are no discrimination program observations or findings of concern requiring attention from the MNOSHA FY 2013 activities evaluated.

G. Special Study – State Plan Targeting Programs

Development of Targeting Programs

MNOSHA's OMT, comprised of managers from both the 23(g) enforcement and 21(d)

consultation programs, is responsible for the development and implementation of targeting programs in the state. MNOSHA has a targeting program in place for both general industry and construction, ADM 2.1-13 *Scheduling Plan for Programmed Inspections*. Referenced in the program is a written policy containing procedures for the approval and evaluation of LEPs, ADM 2.3B *Local Emphasis Programs (LEPs)*. MNOSHA had eight general industry, seven health-related, and three construction LEPs in place during FY 2013. MNOSHA's ADM 2.3B outlines the references used for the development of the ADM which includes OSHA Instruction CPL 04-00-001 *Procedures for Approval of Local Emphasis Programs (LEPs)*. The program relies on data from the Bureau of Labor Statistics (BLS), OSHA fatality statistics, Minnesota Worker Compensation (WC) data, and the Department of Employment and Economic Development (DEED) when evaluating trends and identifying emerging hazards to determine the need to develop an LEP. MNOSHA also obtains stakeholder input for the development and implementation of the LEPs through information sharing with OSHA, various associations, trade/union groups, safety councils, and similar avenues throughout the state.

Evaluation of the Targeting Program

MNOSHA evaluates the effectiveness of its targeting program by using the data received from BLS, OSHA, WC, and DEED to evaluate the effectiveness of the LEPs and to determine if there are downward trends in the illness and injury rates in the targeted industries.

MNOSHA ADM 2.3B outlines the procedures for approval and evaluation of LEPs. Paragraph A of the Instruction explains the specific procedures to follow to notify OSHA of the development and implementation of new LEPs and to request approval from the Regional Administrator. Paragraph B of the Instruction outlines the specific requirements for evaluating the LEPs and for determining whether to continue the LEPs for another strategic planning and/or scheduling cycle. In addition, the Instruction identifies the requirement for reporting the evaluations to OSHA. MNOSHA does not follow procedures contained in ADM 2.3B. On an annual basis, MNOSHA reviews ADM 2.1, which includes a summary of each NEP and LEP in place for the coming year. The revised ADM 2.1 is provided for approval to OSHA in November or December with the biannual submission of plan supplements.

Finding 13-06: MNOSHA does not follow the procedures in MNOSHA ADM 2.3B *Local Emphasis Programs (LEPs)* when a new LEP is developed and implemented and to evaluate each LEP's role in meeting goals of MNOSHA's Strategic Management Plan using the identified metrics such as: the number of employees covered by the specific LEP, reduction in the number of injuries and illnesses relating to a specific LEP, the number of workers removed from hazards, and the number of violations related to specific targeted hazards.

Recommendation 13-06: Ensure that MNOSHA ADM 2.3B *Local Emphasis Programs (LEPs)* is followed in the development, implementation, and evaluation of each LEP.

H. CASPAs

OSHA received and investigated two CASPAs during FY 2013. As requested, MNOSHA provided a written response to each of the allegations within 30 days. MNOSHA's responses included an explanation of the actions taken and/or the procedures in place with respect to each complaint item. Onsite reviews were conducted by OSHA during which time staff was interviewed and cases were reviewed. In both instances it was determined that MNOSHA followed the appropriate processes and procedures which are at least as effective as OSHA's.

There are no CASPA observations or findings of concern requiring attention from the MNOSHA FY 2013 activities evaluated.

I. Voluntary Compliance Program

Voluntary Protection Program (MNSTAR)

There were 11 Voluntary Protection Program (MNSTAR) site evaluations conducted in Minnesota in FY 2013. Four of the 11 received the designation of MNSTAR sites, and the remaining seven were recertification evaluations. MNOSHA Instruction ADM 3.28 *MNSTAR Voluntary Protection Program* outlines how the State Plan administers the program. MNOSHA's instruction follows OSHA's CSP 03-01-003 *Voluntary Protection Programs (VPP): Policies and Procedures Manual*. 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 2013 activities evaluated.

Partnerships

MNOSHA Directive ADM 3.27 *MNOSHA Strategic Partnership Plan* 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 and one new partnership was signed during FY 2013. The three 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 observations or findings of concern requiring attention from the MNOSHA FY 2013 activities evaluated.

Alliances

MNOSHA is not required to have an Alliance program similar to the *OSHA Alliance Program* CSP 04-01-001. However, MNOSHA does have alliances with associations in place. During FY 2013, one new alliance was established in the public sector concerning workplace violence prevention and program development. 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 2013 activities evaluated.

J. Public Sector On-site Consultation Program

MNOSHA conducted 137 onsite consultation visits in the public sector during FY 2013, which exceeded the grant projection of 100 visits. A total of 63 (79%) of the initial visits were coded as high hazard visits, as defined by MNOSHA's High Hazard Emphasis Program. As a result of the consultation visits, 356 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 observations or findings of concern requiring attention from the MNOSHA FY 2013 activities evaluated.

K. State Plan 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 2013 activities evaluated.

Funding

The total state and federal funds allocated to the MNOSHA 23(g) program for FY 2013 were

\$8,719,503, which is approximately 2.5% less than in FY 2012. MNOSHA overmatched the federal base award level of \$3,951,300 by \$790,603. MNOSHA applied for a one-time funding opportunity offered during the fiscal year and was approved twice; in the amounts of \$18,800 and \$7,500. MNOSHA did not de-obligate any funds during FY 2013.

There are no funding observations or findings of concern requiring attention from the MNOSHA FY 2013 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 four supervisors. The total complement of the OSH Compliance Division (compliance activity) was 88.96 FTE for FY 2013.

MNOSHA has two safety and health professionals on duty to answer questions received primarily through phone calls and e-mails. During FY 2013, these two positions responded to approximately 4,165 phone calls and 1,778 written requests for assistance, primarily e-mails. A majority of these inquiries are answered within one day. During FY 2013, 80% of phone calls were received from employers, workers, 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 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.

For FY 2013, the benchmark for safety was 31 positions, with 40 positions, or 129% filled. The benchmark for health was 12 positions, with 15 positions, or 125% filled.

		FY 08	FY 09	FY 10	FY 11	FY 12	FY 13
Safety	Benchmark	31	31	31	31	31	31
	Positions Allocated	38	37	41	44	41	42
	Positions Filled	38	37	36	42	39	40
	Vacancies	0	0	5	2	2	2
	% of Benchmarks Filled	123%	119%	116%	135%	126%	129%
Health	Benchmark	12	12	12	12	12	12
	Positions Allocated	18	18	18	18	18	16
	Positions Filled	16	15	16	16	18	15
	Vacancies	2	3	2	2	0	1
	% of Benchmarks Filled	133%	125%	133%	133%	150%	125%

There are no staffing observations or findings of concern requiring attention from the MNOSHA FY 2013 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. 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 2013 activities evaluated.

State Internal Evaluation Plan (SIEP)

MNOSHA established goal #3 in their FY 2009 to FY 2013 five-year Strategic Management Plan as their workplace plans to address the State Plan'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 management analyst, two program analysts, and two OMT 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 2013, 90% of the directives on the current five-year cycle were completed and 10% were in process.

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 2013 activities evaluated.

IV. Assessment of State Plan Progress in Achieving Annual Performance Goals

In the FY 2013 SOAR, MNOSHA provided information that outlines their accomplishment of meeting their five-year Strategic Management Plan. Through effective resource utilization, partnership development, outreach activities, and an overall commitment to performance goal achievements, all but one of the annual performance 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 2013 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 2013 target was a 2% reduction in the TRC rate from the previous five-year average for CY 2007 – 2011, which was 4.1 per 100 workers. The CY 2012 TRC rate achieved was 3.9, a 5% 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 2013 target was a reduction in the state's fatality rate from the previous five-year average for CY 2007 – 2011, which was 0.710 per 100,000 workers. For CY 2012, the most recent employment information from DEED available, the fatality rate achieved was 0.643. Consequently, MNOSHA Compliance met this goal with a 9% reduction. There were 20 fatalities in CY 2013. MNOSHA Compliance continues to address workplace fatalities in its outreach materials, and during construction seminars. Beginning with FY 2014, fatalities will be counted and compared on a fiscal year basis.

Performance Goal 1.3a1: Total hazards identified / establishments visited

Results: This goal was met.

Discussion: The FY 2013 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 increased by 9% as 5,373 hazards were identified within 2,943 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 2013 goal was for 70% of programmed inspections be conducted within the emphasis industries. MNOSHA conducted 73% of all programmed inspections within the emphasis industries. As part of an ergonomic focus, MNOSHA conducted 48 programmed inspections in the meat processing industry and in nursing homes.

Performance Goal 1.4: Percent of designated programmed inspections

Results: This goal was not met.

Discussion: The FY 2013 target was for 85% of all inspections to be conducted as programmed inspections. MNOSHA conducted 2,943 inspections with 84% 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 met.

Discussion: The FY 2013 target was to add one new partnership. In FY 2013, MNOSHA entered into a new partnership with Minnesota Department of Transportation and a contractor during the construction of piers for the St. Croix Bridge Crossing Project. The agreement was designed to ensure safety and maintain an open line of communication.

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

Results: This goal was met.

Discussion: The FY 2013 target was to add four new VPP MNSTAR participants. There are currently 36 employers in the MNSTAR program, with four sites granted initial STAR certification during FY 2013.

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 workers. MNOSHA employs two investigators who are fluent in both English and Spanish. MNOSHA held its first seminar in Spanish and translated 16 Minnesota specific documents into 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 related outreach sessions was 41 participants.

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

Results: This goal was met.

Discussion: The FY 2013 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 2013 by conducting presentations to 3,101 participants, 11% above the baseline.

Performance Goal 2.3: Participate in homeland security efforts at state and national levels.

Results: This goal was met.

Discussion: The FY 2013 target was to continue with the current practice. The MNOSHA Compliance program continued to participate on the State Emergency Response Plan. One director attended three meetings of the Emergency Preparedness and Response Committee and two federal Homeland Security conference calls. The Minnesota Emergency Operations Plan was reviewed in March 2013 with no edits this year.

One director completed two seminars, PDS 241, Decision Making and Problem Solving, and PDS 242, Effective Communication, as part of the Governor's annual Homeland Security Conference. One director attended the NORA symposium at the University of Minnesota entitled, Gun Violence Prevention with Implications for Occupational Health, and completed four on-line FEMA courses: IS-00029, Public Information Officer Awareness; IS-00247, Integrated Public Alert and Warning System; IS-00559, Local Damage Assessment; and IS-00703, NIMS Resource Management.

One staff member completed two on-line courses, Decontamination, Public Health Emergency Training, and Preparing Employees for a Disaster in the Workplace, and attended two seminars at the University of Minnesota, Minnesota Disaster Response Lessons Learned in 2007, and Implementing Incident Management in Your Health Care Facility. Two staff members 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 2013 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 2013, these two positions responded to 4,165 phone calls and 1,778 written requests for assistance, primarily e-mails. A majority of these inquiries are answered within one day. During FY 2013, 80% of phone calls were received from employers, workers, 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 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 2013, MNOSHA received 658 workplace safety and health complaints, and 327 or 50% of the total complaints resulted in an on-site inspection with an average response time of 3.1 days. The remaining complaints were handled via MNOSHA's phone/fax process (nonformal 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 91,941 hits to the MNOSHA web page; an increase of 93% over FY 2012.

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 2013, 16 existing directives were revised. They included internal procedures for fatalities, serious injuries, abatement verification, outreach, fall protection in construction, and safe patient handling. At the close of FY 2013, 90% of the directives on the current five-year cycle were completed and 10% were in progress.

Performance Goal 3.2: Maintain workforce development and retention plan.

Results: This goal was met.

Discussion: The FY 2013 target was to monitor the plan and evaluate results. During FY 2013, MNOSHA trained its staff on Right-to-Know including the Globally Harmonized System, general contractors and multi-employer worksites, violence in the workplace prevention, customer service, window washing, and residential construction. In addition, MNOSHA has been able to retain field staff that have significant safety and health consulting experience. MNOSHA has also been able to retain two investigators that speak fluent Spanish. MNOSHA's dedicated and experienced staff includes five industrial hygienists with 15 years of experience (three are CIHs) and ten safety investigators with over ten years of experience. The Workforce Development Plan is being updated and will be used as staff retires in the next few years.

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

Results: This goal was met.

Discussion: The FY 2013 target was to develop workflow analysis of case file citation issuance. MNOSHA's continuing process improvement actions included reviewing contest, informal conference, and settlement procedures in an attempt to reduce the time involved and the number of files that require a Complaint to be issued. MNOSHA reported a 38% reduction in the number of issued Summonses, compared to FY 2012, due to changes that were implemented. A team of three temporary work-out-of-class positions were created to review files from OSHA's FY 2011 onsite audit along with recent files. Areas for improvement were identified and a top ten list was developed for the investigators. Improvements to instruction manuals were also recommended and

addressed during the year.

V. Other Special Measures of Effectiveness and Areas of Note

Electronic Complaints

Complaints alleging both safety and health concerns and whistleblower discrimination may be filed electronically through OSHA's website. Approximately 40 to 60 complaints are filed through this method relating to worksites in Minnesota every month. The complaints are then forwarded by email to MNOSHA. A management system is in place to ensure that all filed complaints have been received by MNOSHA. On a monthly basis, a list of complaints is provided to the State Plan. MNOSHA in turn responds that all complaints have been received or on a rare occasion requests any that are missing. During the FY 2013 review, a random selection of five complaints per month was checked to verify MNOSHA processed the complaints. MNOSHA has an internal tracking procedure to ensure every complaint is addressed either as a formal or nonformal complaint entered in MOOSE or through documentation of actions taken which led to the complaint not being pursued. Of the 60 complaints checked, all 60 had been processed.

There are no electronic complaint observations or findings of concern requiring attention from the MNOSHA FY 2013 activities evaluated.

Appendix A – New and Continued Findings and Recommendations
 FY 2013 Minnesota State Plan Comprehensive FAME Report

Rec #	Findings	Recommendations	FY 2012
13-01	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.	12-01
13-02	Noise and Respiratory Hazards LEP case files did not contain documentation showing that a comprehensive evaluation of the employer’s hearing conservation program and/or noise reduction efforts had been conducted.	Ensure that MNOSHA Instruction CPL 2-2.1A <i>Noise Measurements and Citations in General Industry</i> is followed when evaluating the employer’s hearing conservation program and/or noise reduction efforts and the file is documented accordingly.	
13-03	Documentation of noise exposures was not adequate to support a violation of 29 CFR 1910.95, as described in MNOSHA Instruction CPL 2-2.1A <i>Noise Measurements and Citations in General Industry</i> .	Ensure that MNOSHA Instruction CPL 2-2.1A <i>Noise Measurements and Citations in General Industry</i> is followed when determining and documenting noise exposures.	
13-04	Abatement was classified as “Corrected During Inspection” where the workers had stopped working during the inspection and the employer indicated the hazards would be corrected prior to resuming work.	Ensure that “Corrected During Inspection” is being applied appropriately in that abatement of the hazard is achieved and documented during the inspection.	
13-05	Union participation was not documented in accordance with MNOSHA ADM 3.9 <i>Case File Processing</i> and Chapter 4 of the MOOSE manual to assure involvement in all necessary aspects of the inspection; i.e., opening conference, walkaround, closing conference, and mailing of the citation.	Ensure that MNOSHA ADM 3.9 <i>Case File Processing</i> and Chapter 4 of the MOOSE manual are followed by documenting union representative involvement for all necessary aspects of the inspection and citation issuance and/or the representative’s declination to be involved.	
13-06	MNOSHA does not follow the procedures in MNOSHA ADM 2.3B <i>Local Emphasis Programs (LEPs)</i> when a new LEP is developed and implemented and to evaluate each LEP’s role in meeting goals of MNOSHA’s Strategic Management Plan using the identified metrics such as: the number of employees covered by the specific LEP, reduction in the number of injuries and illnesses relating to a specific LEP, the number of workers removed from hazards, and the number of violations related to specific targeted hazards.	Ensure that MNOSHA ADM 2.3B <i>Local Emphasis Programs (LEPs)</i> is followed in the development, implementation, and evaluation of each LEP.	

Appendix B – Observations Subject to New and Continued Monitoring
FY 2013 Minnesota State Plan Comprehensive FAME Report

Observation # [FY13-OB-1]	Observation# [FY12-OB-1]	Observation	Federal Monitoring Plan	Current Status
FY13-OB-1		Potential opportunities have not been taken to perform worker exposure monitoring for the purpose of documenting worker exposure for the complete evaluation of a condition discovered during the inspection and where violations were issued under vertical health standards for a failure to monitor.	Industrial hygiene sampling will be discussed and evaluated during quarterly monitoring meetings including, but not limited to, sampling and citation data.	New
FY13-OB-2		Exposure monitoring was not conducted when likely necessary to adequately address concerns brought forth through complaint items.	Industrial hygiene sampling will be discussed and evaluated during quarterly monitoring meetings including, but not limited to, sampling and complaint data.	New
FY13-OB-3		An employer's own exposure monitoring data has been relied upon to support a violation.	Industrial hygiene sampling will be discussed and evaluated during quarterly monitoring meetings including, but not limited to, sampling and citation data.	New

Appendix C - Status of FY 2012 Findings and Recommendations
 FY 2013 Minnesota State Plan Comprehensive FAME Report

FY 2013 Minnesota State Plan Comprehensive FAME Report					
FY 12- Rec #	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status
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.	Minn. Rules 5210.0420, subp. 2, requires employers to post a copy of the letter from MNOSHA and the employer's response in the workplace for 15 days and to provide copies to the union representative. Employees have access to the MNOSHA letter and employer's response in the workplace. If the information is not posted or the items are not corrected MNOSHA would do an on-site enforcement inspection. MNOSHA policy is to provide a copy of the report in accordance with Minn. Stat. 13.02, subd 7 and MNOSHA Instruction ADM 3.7.	By 09/30/15	Open
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	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.	In MN Supreme Court case Westrom v. Minnesota Department of Labor and Industry 686 N. W.2d 27 (Minn. 2004), the Court ruled that data that qualifies as civil investigative data is classified as "protected nonpublic" or "confidential" data under Minn. Stat § 13.39, subd. 2(a). The Court also determined that administrative orders, such as citations, are civil investigative data until the citations are a final order of the commissioner. MNOSHA updated its letter to the complainant to include a statement that the complainant may access the citation information via OSHA's website. A link to the establishment search feature is provided in the letter.	12/12/13	Completed

	<p>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.</p>				
12-03	<p>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.</p>	<p>Send letters to complainants that file complaints that are screened and closed.</p>	<p>MNOSHA's priority in discrimination is to get all of its cases completed in 90 days. MNOSHA asks each person interviewed if they would like a letter stating why their discrimination case is screened and closed. If the complainant would like a letter, MNOSHA sends one. If they do not want a letter, MNOSHA enters the response into its database.</p>	02/07/14	Completed
12-04	<p>MNOSHA does not currently enter administratively closed complaints into the WebIMIS system as required by <i>Whistleblower Investigations Manual</i> (WIM) CPL 02-03-003, effective September 20, 2011.</p>	<p>Ensure that MNOSHA ADM 3.6, <i>Discrimination Complaint Handling Procedures</i> includes the requirement to enter administratively closed complaints into WebIMIS.</p>	<p>MNOSHA's priority in discrimination is to get all cases completed in 90 days. All information is retained in the MNOSHA computer system (MOOSE) and available to OSHA upon request. MNOSHA would be entering the same data into WebIMIS and the MOOSE systems. OSHA and MNOSHA have a memorandum of understanding affirming MNOSHA's agreement to provide the related data, upon request, until such time as the information can transfer electronically.</p>	02/13/14	Completed

Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report FY 2013 Minnesota State Plan Comprehensive FAME Report

OSHA is in the process of moving operations from a legacy data system (IMIS) to a modern data system (OIS). During FY 2013, OSHA case files were captured on OIS, while State Plan case files continue to be processed through IMIS. The SAMM, which is native to IMIS, is not able to access data in OIS, which impacts OSHA's ability to process SAMM standards pinned to national averages (the collective experience of State Plans and OSHA). As a result, OSHA has not been able to provide an accurate reference standard for SAMM 18, which has experienced fluctuation in recent years due to changes in OSHA's penalty calculation formula. Additionally, OSHA is including FY 2011 national averages (collective experiences of State Plan and OSHA from FY 2009-2011) as reference data for SAMM 20, 23 and 24. OSHA believes these metrics are relatively stable year-over-year, and while not exact calculations of FY 2013 national averages, they should provide an approximate reference standard acceptable for the FY 2013 evaluation. Finally, while SAMM 22 was an agreed upon metric for FY 2013, OSHA was unable to implement the metric in the IMIS system. OSHA expects to be able to implement SAMM 22 upon the State Plan's migration into OIS.

U.S. Department of Labor				
Occupational Safety and Health Administration State Activity Mandated Measures (SAMMs)				
State: Minnesota			FY 2013	
SAMM Number	SAMM Name	State Plan Data	Reference/Standard	Notes
1	Average number of work days to initiate complaint inspections	3.22	(Negotiated fixed number for each state) - 9	State data taken directly from SAMM report generated through IMIS.
2	Average number of work days to initiate complaint investigations	1.92	(Negotiated fixed number for each state) - 2	State data taken directly from SAMM report generated through IMIS.
4	Percent of complaints and referrals responded to within 1 work day (imminent danger)	100%	100%	State data taken directly from SAMM report generated through IMIS.
5	Number of denials where entry not obtained	1	0	State data taken directly from SAMM report generated through IMIS.
9a	Average number of violations per inspection with violations by violation type	2	SWR: 2.04	State data taken directly from SAMM report generated through IMIS; national data was manually calculated from data pulled from both IMIS and OIS for Fiscal Years (FY) 2011-2013.
9b	Average number of violations per inspection with violations by violation type	0.6	Other: .88	

11	Percent of total inspections in the public sector	4.99	(Negotiated fixed number for each state) - 3%	State data taken directly from SAMP report generated through IMIS.
13	Percent of 11c Investigations completed within 90 calendar days	37.04	100%	State data taken directly from SAMP report generated through IMIS.
14	Percent of 11c complaints that are meritorious	18.52	24.8% meritorious	State data taken directly from SAMP report generated through IMIS; National data was pulled from webIMIS for FY 2011-2013.
16	Average number of calendar days to complete an 11c investigation	49.51	90 Days	State data taken directly from SAMP report generated through IMIS.
17	Planned vs. actual inspections - safety/health	2266/677	(Negotiated fixed number for each state) - 1980/520	State data taken directly from SAMP report generated through IMIS; the reference standard number is taken from the FY 2013 grant application.
18a	Average current serious penalty - 1 - 25 Employees	a. 584.46		State data taken directly from SAMP report generated through IMIS; national data is not available.
18b	Average current serious penalty - 26-100 Employees	b. 536.71		
18c	Average current serious penalty - 101-250 Employees	c. 930.10		
18d	Average current serious penalty - 251+ Employees	d. 1798.14		
18e	Average current serious penalty - Total 1 - 250+ Employees	e. 754.14		
19	Percent of enforcement presence	2.33%	National Average 1.5%	Data is pulled and manually calculated based on FY 2013 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.
20a	20a) Percent In Compliance – Safety	Safety - 28.19	Safety - 29.1	State data taken directly from SAMP report generated through IMIS;

20b	20b) Percent In Compliance – Health	Health - 37.09	Health - 34.1	current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
21	Percent of fatalities responded to in 1 work day	100%	100%	State data is manually pulled directly from IMIS for FY 2013
22	Open, Non-Contested Cases with Abatement Incomplete > 60 Days			Data not available
23a	Average Lapse Time - Safety	16.2	43.4	State data taken directly from SMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
23b	Average Lapse Time - Health	19.47	57.05	
24	Percent penalty retained	86.85	66	State data taken directly from SMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
25	Percent of initial inspections with employee walk around representation or employee interview	100%	100%	State data taken directly from SMM report generated through IMIS.