

Appendix A
FY 2009 Alaska State Plan (AKOSH) Enhanced FAME Report prepared by Region X
Summary of Findings and Recommendations

Enforcement Findings		Enforcement Recommendations	
1	Documentation of employer knowledge [in fatality and accident case files] was deficient because AKOSH's compliance officers relied, in most cases, on the term "reasonable diligence" to establish that the employer knew the hazardous condition existed. In every instance, there was sufficient evidence to develop knowledge through demonstrated "actual", "imputed", or "constructive" actions on the part of the employer.	Factually document employer knowledge in case files with as much specificity as feasible (p.11).	
2	[Failure to document informal conference results] made it difficult, in some cases, to ascertain the employer's position with regard to the cited violations, and [AKOSH's] rationale for proposing settlement	Use a structured informal conference worksheet to document the employer's position with regard to cited violations as well as the Chief's rationale for proposing settlement (p.12).	
3	Four of [the] five fatality-related cases included the initial condolence letter from AKOSH to the victim's next of kin, and there were no indications in any of the files that the citation or a letter had been sent by AKOSH to the next of kin explaining the outcome of the investigation. In only one instance did the state include the family in communication after the citation was issued; this was achieved by a telephone call in lieu of a letter.	Ensure that condolence letters are sent in <i>every</i> fatality case. At the conclusion of fatality investigations, apprise next of kin, in writing, of investigation outcomes and provide copies of citations. Insert copies of all such correspondence in the case file (p.12).	
4	For the past three years, AKOSH did not meet its inspection goals [due to staffing problems]. The state conducted a total of 355 inspections in FY 2009, ...an increase of 24% compared to the 266 inspections it conducted in FY 2008, ...[but] the state still fell short of its FY 2009 goal of 465 inspections.	Ensure an effective presence in private and public sector workplaces by increasing the number of programmed enforcement inspections using targeting tools such as the High Hazard Targeting Plan, the Construction List, and Special Emphasis Programs (p.15).	
Discrimination Program Findings		Discrimination Program Recommendations	
5	Complainant filed concurrent 11(c) complaints with AKOSH and federal OSHA, and there was miscommunication between the agencies.	In cases where a complainant files a discrimination complaint concurrently with AKOSH and OSHA, AKOSH should coordinate with OSHA to determine, on a case-by-case basis, which agency should conduct the investigation. (Appendix E p.4).	
6	AKOSH's settlement agreements continue to allow for unemployment benefits to be deducted. The OSHA <i>Whistleblower Investigations Manual</i> states that "unemployment compensation benefits may never be considered as a back pay offset."	AKOSH should refrain from including provisions in its settlement agreements that allow for deducting unemployment benefits [repeat rec.] (Appendix E p.4).	
7	Closing letters to the parties [are not stating] that the complaint was settled and copies of the letters [are not being] maintained in the case file.	Closing letters to the parties should state that the complaint was settled and copies should be kept in the file (Appendix E p.4).	
8	AKOSH continues to use statements submitted by a complainant and/or a witness to substitute for an interview even after the complaint has been docketed and filed.	Discontinue the practices of using statements submitted by complainants and witnesses as substitutes for interviews [repeat rec.] (Appendix E p.4).	
9	[Witness interviews are not covering the four prima facie elements, and are not indicating if one element is missing.]	Ensure that witness interviews cover the four prima facie elements (Appendix E p.4).	
10	The Final Investigative Reports (FIR) do not state the date that the discrimination complaint was filed.	The FIR (Final Investigative Report) should include the date the complaint was filed with AKOSH. The date should be written on the first page of the FIR (App. E p.4).	
11	The state's FIRs include a section on coverage; however, they do not describe how the employer is covered by the Act in order to establish jurisdiction.	The coverage description in the FIR should include information that is similar to what is described in a safety and health inspection report, i.e., the number of employees, whether the employer is private or public, and union status (along with a brief description of the company) (Appendix E p.4).	