

Maryland FY 2009 Enhanced FAME - Final Corrective Action Plan
Prepared by Region III

Finding 1 of 26

Finding # 1: Formal complaint letters to employers and letters to complainants with inspection findings were maintained in separate files at the central office in Baltimore rather than in each Regional Office servicing the complaint.

Information from the complaint letter is often re-typed or re-worded on the OSHA-7 complaint form to maintain complainant anonymity. This practice is problematic in that complaint inspection files are incomplete without the supporting documentation of a signed complaint letter or OSHA-7. Additionally, specific information about a hazard or facility is sometimes omitted from a re-typed or re-worded complaint.

Recommendation #1: Letters received from complainants must be maintained in the inspection file.

State Response: **MOSH respectfully disagrees with this recommendation.**

This practice is consistent with our FOM and is done for the purposes of ensuring the anonymity so critical to employees who request it. By filing the complaints separately after the case is closed, we are assured that no accidental release of names occurs. For MOSH purposes the information that is maintained separately is considered to be an integral part of the files and our files are stored in a central location, not in regional offices. Our file storage system after a case is closed is a matter of office organization and in no way affects the servicing of a complaint. Any reference that it does affect a complainant's rights is erroneous.

Corrective Action Plan: *MOSH continues to believe that this process is more effective at protecting confidentiality. MOSH also explained that the CSHO does receive a copy of the original complaint and has access to the information during the investigation. In addition, the folders are filed in proximity to each other and have a log number that allows for cross-referencing. MOSH believes that the additional security that is provided to the complainant by assuring that their name is not inadvertently revealed more than compensates for the additional step of having to pull the additional file to review cases.*

Documentation to be submitted w. due date: None

Anticipated Completion Date: Completed

Outcome Measure/Expectation: All information necessary for review of complaint files will be readily available for review during future on-site reviews by Federal OSHA.

Status: Subject to further Federal monitoring.

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Finding 2 of 26

Finding #2: Response letters to complainants were found in files that are maintained in the Baltimore office as mentioned above. However, the response letters are not maintained in the inspection files after they are closed.

Recommendation #2: Response letters to complainants must be maintained in the inspection file.

State Response: **MOSH respectfully disagrees with this recommendation.**

As noted above, the inspector has in his/her possession the actual complaint letter during investigation and as instructed in our FOM, a form presented to the employer removes all personally identifiable information and just lists the basic facts to protect anonymity. We believe that ensuring anonymity for a claimant when requested is critical to a vibrant complaint system and in no way affects complaint inspections.

Corrective Action Plan: *As noted in Finding #1, MOSH continues to believe that this is a critical step in ensuring confidentiality. MOSH suggest that the differences are semantic; for MOSH complaints, the complaint file consists of two files that are cross-referenced.*

Documentation to be submitted w. due date: None

Anticipated Completion Date: Completed

Outcome Measure/Expectation: All information necessary for review of complaint files will be readily available for review during future on-site reviews by Federal OSHA.

Status: Subject to further Federal monitoring.

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Finding #3: During the period October 1, 2008 through September 30, 2009, Maryland received 110 serious complaints and 102 were inspected within five days for a response rate of 92%. MOSH's FOM outlines that formal complaints involving potentially serious hazards shall be investigated within 3 working days of assignment.

Recommendation #3: MOSH must respond to serious complaints within 3 days of assignment pursuant to its FOM or change its FOM.

State Response: **MOSH believes this finding is in error. Our FOM speaks of within 3 days of assignment, which means the time it is received in the regional office.** The agreed upon time frame with OSHA for response is 5 days from receipt. The number tracked in the audit involves original receipt and not assignment. This is simply a difference in terms and we achieved the goal contained in our strategic plan. This finding should be removed. We are willing to align our FOM to our Strategic Plan, but we were not in violation of our FOM.

Corrective Action Plan: *MOSH is reviewing and streamlining its complaint process and believes that there is value in tracking both the time it takes to assign a complaint and the time from assignment to inspection. However, MOSH has agreed to ensure that the language in its FOM is changed to 5 days from receipt and will begin to submit FOM chapters until the FOM is fully revised.*

Documentation to be submitted w. due date: Revised FOM due by March 15, 2011

Anticipated Completion Date: April 1, 2011

Outcome Measure/Expectation: It is anticipated that complaint inspections will be initiated within five days in at least 95% of cases, in accordance with MOSH's Strategic Goal 3-2.

Status: Pending further Federal monitoring.

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Finding #4: Case file review revealed that no next-of-kin letters were sent on fatality inspections. MOSH began to send next-of-kin letters in December 2009. Another trend observed was that there was little or no communication with families at the conclusion of the inspections to inform the next-of-kin of inspection findings.

Recommendation #4: Continue to send condolence letters to next-of-kin at start of investigation. Families of fatality victims must be kept up-to-date about investigations and informed of the outcome of MOSH investigations.

State Response: MOSH notes that this was a policy that the state had not adopted. However we believed it to be a good practice and had already implemented a communication system. We are initiating communication with the family, in English and in Spanish, when appropriate, at the beginning of fatality investigations and at the time of closure of the investigation.

Corrective Action Plan: *MOSH had not adopted this non-mandatory policy. However, they concur that correspondence with the families is a good practice and will continue the process of notifying families of MOSH activities in both English, and Spanish when appropriate. Copies of sample letters were submitted and additional examples are attached.*

Documentation to be submitted w. due date: Sample letters were submitted to Federal OSHA.

Anticipated Completion Date: Completed

Outcome Measure/Expectation: It is anticipated that during future on-site reviews, Federal OSHA will continue to observe copies of next-of-kin letters in investigation files.

Status: Pending further Federal monitoring.

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Finding #5: A number of OSHA-170 forms contained inappropriate information in the narrative, e.g., name of compliance officer who conducted the inspection and/or the names of decedents and/or injured employees.

Recommendation #5: Retrain compliance officers and supervisors in the proper completion of OSHA-170 forms to ensure that names of compliance officers, decedents and/or injured employees are not contained in narrative portion of the OSHA-170 forms.

State Response: **MOSH believes this to be a very limited problem, which has been addressed.** We have provided guidance on the completion of the forms and are working through the supervisors to ensure adherence to the guidance.

Corrective Action Plan: *MOSH addressed this issue by issuing additional guidance to staff and requiring supervisors to review the narrative portion of the OSHA – 170 forms. An additional instruction was sent to all Supervisors by Operations on 11/30/10.*

Documentation to be submitted w. due date: Completed

Anticipated Completion Date: Completed

Outcome Measure/Expectation: It is anticipated that future reviews by Federal OSHA of OSHA-170 forms completed by MOSH staff will not contain the names of compliance officers and/or decedents and/or injured employees.

Status: Subject to further Federal monitoring.

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Finding #6: Violations cited on programmed inspections include a high percentage of other-than-serious citations for hazards that should be classified as serious.

A number of files reviewed which had violations that were cited as other-than-serious and could have been classified as serious. Health compliance officers have a serious violation percentage of 28%, less than half the Federal rate of 70%.

Recommendation #6: Conduct training on hazard classification for compliance officers and supervisors to ensure consistency with violation classification.

State Response: We strongly disagree with these statements. There were no cases found by the audit team that “should” have been classified as serious. When cases were referenced in the first draft of this report, we worked with the auditors to explain the violations were cited and the cases were cleared up and reference to the cases removed from the report. The comments however were not removed. Our inspectors are trained and held accountable to identify and cite hazards based on their merits. They would be reprimanded/held accountable for not citing OTS that existed as well as citing something serious that is not supported as such. Again we request all references made to our inspectors of misclassifying hazards be removed in their entirety.

MOSH requested the removal of this finding because every case referenced during the audit and in follow up discussions was substantiated as cited correctly and discussed/documentated with the audit team. MOSH’s Industrial Hygienists cited nearly 25% more other than serious hazards than Federal OSHA did, and this will affect the percent serious hazards. Also, 65% of all health inspections done in FY09 had violations as compared to only 51% of OSHA health inspections having violations. We have noted some statistics at the end of this report that also need to be considered in assessing these rates.

Corrective Action Plan: *MOSH continues to disagree with this finding. A further review of the cases involved is on going and a special study focused on this issue is planned.*

Documentation to be submitted w. due date: This issue was resolved by Federal OSHA and MOSH agreeing to a special study being conducted during FY 2011, which will include a random selection of case files for review.

Anticipated Completion Date: April 30, 2011

Outcome Measure/Expectation: Federal OSHA will perform a special study during FY 2011, which will include a random selection of case files for review. It is anticipated that this review provide a final determination on this issue.

Status: Pending further Federal monitoring.

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Finding #7: MOSH does not assess penalties for first instance other-than-serious violations.

Recommendation #7: Revise MOSH Instruction 98-3 dated September 28, 1998 to eliminate Section C.3 that does not permit penalty assessment for first instance other-than-serious violations.

State Response: **MOSH will take this request under advisement and discuss it with the Governor's staff.** This procedure is in place due to a gubernatorial Executive Order and only applies to manufacturing.

Corrective Action Plan: *MOSH has had preliminary discussions with the Commissioner and found that there is no support for changing this policy which has been in place as the result of an Executive Order and the work of a Task Force.*

Documentation to be submitted w. due date: Documentation on actions taken to rescind Section C.3, and the revised MOSH Instruction 98-3 with Section C.3 rescinded, due by (90 days)

Anticipated Completion Date:

Outcome Measure/Expectation: MOSH will propose first-instance sanctions for those Other than serious violations warranting penalties in accordance with the instructions in the FOM.

Status: Pending further discussion and submission of a revised Corrective Action Plan for this item. OSHA does not agree with the State's response. Although the assessment of penalties for OTS violations is discretionary, State Plans are required to have statutory authority and penalty policies in place to do so. The MOSH Instruction effectively negates the MOSHAct provision for first-instance sanctions. Although the State policy is premised on the Gubernatorial Executive Order 01.01.1993.12 (EO), the EO includes an exception if the action is required by Federal or State law, as this is. Maryland procedures should provide for the proposal of first instance penalties for other-than-serious violations in accordance with State and Federal law, in circumstances comparable to Federal policy.

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Finding #8: MOSH offers penalty reductions of approximately 54% and has a penalty retention rate of 46% percent compared to Federal rate of 63.2%.

Recommendation #8: Rescind Memorandum 01-2 dated April 9, 2001 titled “Employer Incentive 50% Penalty Reduction,” which provides an automatic 50% penalty reduction in the proposed penalty to employers who immediately abate any hazards/violations prior to the compliance officer leaving the site on the day of observation. This incentive program does not apply to willful, repeat, failure to correct violations, or alleged violations/conditions relating to accidents.

State Response: **MOSH believes that this procedure is more effective than its federal counterpart and declines to rescind this memorandum.** Immediate abatement on site is more effective at reducing employee exposure to hazards and this penalty incentive is a tool to accomplish this shared goal.

Corrective Action Plan: *MOSH continues to believe that this procedure is more effective than its federal counterpart.*

Documentation to be submitted w. due date: Promulgation of the revised Memorandum 01-2 that meets the ALAE requirement.

Anticipated Completion Date:

Outcome Measure/Expectation:

Status: Pending further discussion and submission of a revised Corrective Action Plan for this item. OSHA does not agree with the State’s response. A 50% penalty reduction program for immediate on-site abatement is less stringent than the Federal-equivalent Quick Fix program which authorizes a 15% reduction.

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Finding #9: Abatement data was not being entered into the database.

Recommendation #9: Promptly enter abatement verification data into database.

State Response: **MOSH believes this to be a very limited problem, which has been addressed.** Abatement data was being entered, but not consistently- there were some instances such as collections and some regional offices that were not performing their data entry correctly. Steps have been taken to rectify this.

Corrective Action Plan: *MOSH has addressed this and verification data is now entered into the database by Operations instead of from the field. This process has been fully implemented since August 1, 2010. We are establishing written procedures for this to ensure the process remains corrected into the future.*

Documentation to be submitted w. due date: Written procedures outlining how staff should enter abatement information into IMIS with due date of February 1, 2011.

Anticipated Completion Date: February 15, 2011

Outcome Measure/Expectation: Federal OSHA monitors will review abatement tracker reports and SAMM data to determine if this data is being entered into IMIS.

Status: Pending further Federal monitoring.

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Finding 10 of 26

Finding #10: Case file diary sheets were not found in inspection files.

Recommendation #10: Institute the use of a case file diary sheet. This form needs to be kept at the top of the case file so that a reviewer can tell at first glance the status of that case.

State Response: MOSH disagrees with this finding in that a dairy sheet is not currently a part of our FOM or our practices. This is the first time in our monitoring history that this issue has been identified as a recommendation. We are currently assessing the value of having CSHOs start using diary sheets, but the characterization that we were doing this incorrectly is not accurate.

Corrective Action Plan: *Although MOSH disagrees with this being a mandatory issue, it is willing to begin to use these forms on a pilot basis. Forms will be provided and training will be done by December 1, 2010 with our Eastern Shore Region (Region I), the initial pilot region, with use of the log effective immediately.*

Documentation to be submitted w. due date: A sample case file diary sheet was provided to MOSH by Federal OSHA. An evaluation of this pilot program will be provided by MOSH to Federal OSHA by April 1, 2011.

Anticipated Completion Date: April 1, 2011

Outcome Measure/Expectation: It is anticipated that MOSH will begin to use a case file diary sheet and that when additional on-site reviews are conducted by Federal OSHA, that it is significantly easier to track actions and activities in each inspection file.

Status: Pending further Federal monitoring.

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Finding #11: MOSH was not calling employers or sending abatement letters on all cases where abatement had not been received by MOSH.

Recommendation #11: MOSH should, in accordance with its own procedures as outlined in its FOM, call employers for outstanding abatement documentation and/or send abatement letters on all cases where abatement documentation has not been received by MOSH.

State Response: During the audit there were no findings of unabated hazards. We are currently reviewing our FOM procedures concerning methods of contacting employers.

Corrective Action Plan: *Training was completed August 30 through September 2, 2010 with all personnel that conduct informal conferences and written procedures were provided for what is needed at the informal for abatement documentation. We are sending letters to employers to provide abatement documentation and the verification forms.*

Documentation to be submitted w. due date: MOSH's current FOM at Chapter III.E.4 contains direction on what steps should be taken to obtain abatement verification from employers. Training materials and a sample letter to employer requesting abatement documentation were provided to Federal OSHA by MOSH

Anticipated Completion Date: Completed

Outcome Measure/Expectation: When additional case file reviews are conducted by Federal OSHA, it is anticipated that the files will contain documentation of telephone calls to employers regarding outstanding abatement and/or letters to employers requesting immediate abatement documentation.

Status: Subject to further Federal monitoring.

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Finding #12: Abatement tracking reports are not routinely reviewed by management on a weekly basis.

Recommendation #12: Abatement tracker reports should be carefully reviewed weekly by all Regional Supervisors. If necessary, additional training should be provided to Regional Supervisors to ensure that this report is being properly utilized to track abatement.

State Response: During the audit there were no findings of unabated hazards. Review of abatement tracking is currently being conducted in the central office; please note our Regional offices are not the same as federal regional offices. The relatively small size of our state allows us to conduct critical operations more consistently in the central office compared to the set up for national offices.

Corrective Action Plan: *We are establishing written procedures for abatement tracking and attempting to establish tracking reports for abatement. At this time we are reviewing NCR on a daily basis for abatement tracking.*

Documentation to be submitted w. due date: Written procedures for abatement tracking due by February 15, 2011.

Anticipated Completion Date: March 15, 2011

Outcome Measure/Expectation: Federal OSHA monitors will review abatement tracker reports and SAMM data to determine if this data is being entered into IMIS.

Status: Pending further Federal monitoring.

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Finding 13 of 26

Finding #13: Contested case information was not being entered into the database.

Recommendation #13: Retrain staff in the proper database entries for contested cases. Supervisors should review these data entry issues on a weekly basis to ensure that coding is being completed.

State Response: Steps were being implemented before audit as this issue was identified internally and has been remedied with retraining of data entry for this small percentage of cases.

Corrective Action Plan: *Contested information is now entered into the NCR in Operations. This policy has been in place since August 1, 2010.*

Documentation to be submitted w. due date: Draft procedures have been provided to Federal OSHA but have not been finalized by MOSH with management. Federal OSHA ran a Micro-to-Host report on December 2, 2010 and determined that contested data is being entered into IMIS.

Anticipated Completion Date: February 1, 2011

Outcome Measure/Expectation: It is anticipated that when additional Micro-to-Host reports are reviewed and/or case file reviews are conducted by Federal OSHA that all appropriate contested case information will be accurately recorded in IMIS.

Status: Pending further Federal monitoring.

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Finding #14: Not all Federal Program Changes are adopted within the six month period.

Recommendation #14: It is recommended that MOSH adopt Federal Program Changes within the six month period. (New FOM not yet adopted.)

State Response: MOSH is working hard to adopt Federal Program changes within the six month period. However there are certain changes that require comprehensive review and evaluation by key enforcement and management personnel where the six month time frame is not attainable. We would suggest that the overall system would benefit from a more participatory method of adopting major changes and a discussion about time frames for certain types of changes. Sometimes the changes come at the program with such intensity that we have to prioritize them. Without involvement by state plans in the development of new changes states are at a disadvantage time-wise, for example if the federal government spends two or three years with vast resources developing a new procedure without state input or information sharing; states must have additional time to put through their regulatory system. We stress the need for state involvement from the beginning to avoid unnecessary state plan issues and avoid duplicative work.

Corrective Action Plan: *MOSH has agreed to begin to send the FOM chapters that it has reviewed and is ready to promulgate to begin the OSHA acceptance process. However MOSH notes that it is impossible for a state program to do the type of review that is required of the comprehensive documents being prepared by OSHA within a 6 month time frame. Additional involvement by State Plans in the beginning of a Federal Program change is a welcome practice we hope will help reduce the short turn around on large workloads. Attached for informational purposes only is our working draft copy of the FOM adoption. This is a work in progress, not a formal submission, and not to be released.*

Documentation to be submitted w. due date: Side-by-side FOM comparison due March 1, 2011 to Federal OSHA.

Anticipated Completion Date: April 1, 2011

Outcome Measure/Expectation: Timely adoption of Federal Program Changes.

Status: Pending further Federal monitoring.

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Finding #15: Abatement verification data was not being properly entered into the database for 23(g) public sector consultation.

Recommendation #15: Maryland should regularly monitor its hazard verifications and ensure that data is promptly entered into the database and any coding errors are corrected.

State Response: During the audit there were no findings of unabated hazards. This issue was not discussed during the investigation and we are unsure of which case this study is referring to. Despite the lack of supporting information we are currently reviewing our coding procedures in Consultation.

Corrective Action Plan: *MOSH has streamlined its coding procedures to ensure proper abatement tracking. The supervisor reviews the open hazard report with each consultant at the beginning of each week to ensure coding errors are caught timely. This new procedure has been in place since September 28, 2010.*

Documentation to be submitted w. due date: Draft procedures have been provided to Federal OSHA but have not been finalized by MOSH with management.

Anticipated Completion Date: February 1, 2011

Outcome Measure/Expectation: When additional case file reviews are conducted and MARC reports are reviewed, it is anticipated that all abatement verification will have been properly tracked and entered into the IMIS database.

Status: Pending further Federal monitoring.

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Finding 16 of 26

Finding #16: Files were not properly maintained in accordance with the Discrimination Manual, Chapter 2 through Chapter 5.

Recommendation #16: Files should be set up and maintained in accordance with the Discrimination Manual, Chapter 2 through Chapter 5.

State Response: MOSH concurs that major program improvements are warranted in its Discrimination Program and is actively engaged in a comprehensive review and rewrite of its Discrimination procedures.

We sincerely appreciate the assistance we are receiving from the Regional Office on our efforts to improve the program. The program is being strengthened by a number of steps:

Three additional staff are being trained through OTI and current staff are being evaluated.

Management staff is assessing all open cases and moving them to closure

All new cases are being more effectively tracked and appropriate procedures adopted and followed

All existing cases are being assessed and moved towards closure

All documentation is being assessed to ensure documentation of interviews, and settlements

Case logs are being established

 Investigation deadlines are being enforced

Corrective Action Plan: *All 2010 and 2011 discrimination case files will be organized in accordance with the Whistleblower Manual. A Right and Left Index will be included in each case file. See attachment.*

Documentation to be submitted w. due date: Documentation has been received by Federal OSHA of an improvement plan by MOSH. Three staff recently attended Whistleblower training at OTI.

Anticipated Completion Date: April 1, 2011

Outcome Measure/Expectation: It is anticipated that MOSH discrimination investigation files will contain all appropriate documentation and proper organization required to support actions taken by investigators.

Status: Pending further Federal monitoring.

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Finding #17: There were no opening (Docketing and Notification) letters to the complainants and respondents contained in the files.

Recommendation #17: Letters must be prepared, sent out and maintained in accordance with the Discrimination Manual, Chapter 2, § III(E) and Chapter 5, § III(B).

State Response: MOSH concurs that major program improvements are warranted in its Discrimination Program and is actively engaged in a comprehensive review and rewrite of its Discrimination procedures.

We sincerely appreciate the assistance we are receiving from the Regional Office on our efforts to improve the program. The program is being strengthened by a number of steps:

Three additional staff are being trained through OTI and current staff are being evaluated.

Management staff is assessing all open cases and moving them to closure

All new cases are being more effectively tracked and appropriate procedures adopted and followed

All existing cases are being assessed and moved towards closure

All documentation is being assessed to ensure documentation of interviews, and settlements

Case logs are being established

 Investigation deadlines are being enforced

Corrective Action Plan: *Complaint and Respondent Docketing/Notification Letters were contained in the case files. However, docketing of the complaints was often untimely. Discrimination cases will now be docketed within 5 work days of initial contact with the complainant.*

Documentation to be submitted w. due date: Documentation has been received by Federal OSHA of an improvement plan by MOSH. Three staff recently attended Whistleblower training at OTI.

Anticipated Completion Date: April 1, 2011

Outcome Measure/Expectation: It is anticipated that MOSH discrimination investigation files will contain all appropriate documentation and proper organization required to support actions taken by investigators.

Status: Pending further Federal monitoring.

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Finding #18: Case file documentation was inserted into the case file with no order and the files were not tabbed.

Recommendation #18: Case files be prepared and tabbed in accordance with the Discrimination Manual, Chapter 5, § III.

State Response: MOSH concurs that major program improvements are warranted in its Discrimination Program and is actively engaged in a comprehensive review and rewrite of its Discrimination procedures.

We sincerely appreciate the assistance we are receiving from the Regional Office on our efforts to improve the program. The program is being strengthened by a number of steps:

Three additional staff are being trained through OTI and current staff are being evaluated.

Management staff is assessing all open cases and moving them to closure

All new cases are being more effectively tracked and appropriate procedures adopted and followed

All existing cases are being assessed and moved towards closure

All documentation is being assessed to ensure documentation of interviews, and settlements

Case logs are being established

 Investigation deadlines are being enforced

Corrective Action Plan: *All new discrimination cases files will be maintained in accordance with the Whistleblower Manual. See attached R/L Index. Tabs will be used to identify documents.*

Documentation to be submitted w. due date: Documentation has been received by Federal OSHA of an improvement plan by MOSH. Three staff recently attended Whistleblower training at OTI.

Anticipated Completion Date: April 1, 2011

Outcome Measure/Expectation: It is anticipated that MOSH discrimination investigation files will contain all appropriate documentation and proper organization required to support actions taken by investigators.

Status: Pending further Federal monitoring.

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Finding #19: A recently closed case had no dismissal letters in the file.

Recommendation #19: Cases must be closed in accordance with the Discrimination Manual, Chapter 4, § IV.

State Response: **MOSH concurs that major program improvements are warranted in its Discrimination Program and is actively engaged in a comprehensive review and rewrite of its Discrimination procedures.**

We sincerely appreciate the assistance we are receiving from the Regional Office on our efforts to improve the program. The program is being strengthened by a number of steps:

Three additional staff are being trained through OTI and current staff are being evaluated.

Management staff is assessing all open cases and moving them to closure

All new cases are being more effectively tracked and appropriate procedures adopted and followed

All existing cases are being assessed and moved towards closure

All documentation is being assessed to ensure documentation of interviews, and settlements

Case logs are being established

✚ Investigation deadlines are being enforced

Corrective Action Plan: *The Program Manager is preparing the Field Investigation Reports and dismissal letters for all closed cases.*

Documentation to be submitted w. due date: Documentation has been received by Federal OSHA of an improvement plan by MOSH. Three staff recently attended Whistleblower training at OTI.

Anticipated Completion Date: April 1, 2011

Outcome Measure/Expectation: It is anticipated that MOSH discrimination investigation files will contain all appropriate documentation and proper organization required to support actions taken by investigators.

Status: Pending further Federal monitoring.

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Finding #20: Management and non-management interviews were not always conducted.

Recommendation #20: Interviews must be conducted and documented in accordance with the Discrimination Manual, Chapter 3, § IV.

State Response: **MOSH concurs that major program improvements are warranted in its Discrimination Program and is actively engaged in a comprehensive review and rewrite of its Discrimination procedures.**

We sincerely appreciate the assistance we are receiving from the Regional Office on our efforts to improve the program. The program is being strengthened by a number of steps:

Three additional staff are being trained through OTI and current staff are being evaluated.

Management staff is assessing all open cases and moving them to closure

All new cases are being more effectively tracked and appropriate procedures adopted and followed

All existing cases are being assessed and moved towards closure

All documentation is being assessed to ensure documentation of interviews, and settlements

Case logs are being established

✚ Investigation deadlines are being enforced

Corrective Action Plan: *Management and non-management interviews are being conducted and documented in accordance with the Manual for all new cases. Three staff members were trained in procedures to ensure proper case processing and documentation. Field investigations need to be conducted for 2010 and 2011 cases.*

Documentation to be submitted w. due date: Documentation has been received by Federal OSHA of an improvement plan by MOSH. Three staff recently attended Whistleblower training at OTI.

Anticipated Completion Date: April 1, 2011

Outcome Measure/Expectation: It is anticipated that MOSH discrimination investigation files will contain all appropriate documentation and proper organization required to support actions taken by investigators.

Status: Pending further Federal monitoring.

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Finding #21: There was incomplete case information in Web IMIS.

Recommendation #21: Input complete case information into the Web IMIS in accordance with the Web IMIS guide.

State Response: MOSH concurs that major program improvements are warranted in its Discrimination Program and is actively engaged in a comprehensive review and rewrite of its Discrimination procedures.

We sincerely appreciate the assistance we are receiving from the Regional Office on our efforts to improve the program. The program is being strengthened by a number of steps:

Three additional staff are being trained through OTI and current staff are being evaluated.

Management staff is assessing all open cases and moving them to closure

All new cases are being more effectively tracked and appropriate procedures adopted and followed

All existing cases are being assessed and moved towards closure

All documentation is being assessed to ensure documentation of interviews, and settlements

Case logs are being established

✚ Investigation deadlines are being enforced

Corrective Action Plan: *Information will be entered into Web IMIS for all old cases not yet entered and new 2011 cases. Discrimination cases and screen-out cases will be entered in Web IMIS within 30 calendar days of assignment.*

Documentation to be submitted w. due date: Documentation has been received by Federal OSHA of an improvement plan by MOSH. Three staff recently attended Whistleblower training at OTI.

Anticipated Completion Date: April 1, 2011

Outcome Measure/Expectation: It is anticipated that MOSH discrimination data will be timely entered in Web IMIS and that future reviews will reveal an accurate compilation of MOSH whistleblower cases.

Status Pending further Federal monitoring

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Finding #22: There was no documentation of settlement of Whistleblower cases.

Recommendation #22: Settlements must conform to and be documented in accordance with the Discrimination Manual, Chapter 6, § IV.

State Response: MOSH concurs that major program improvements are warranted in its Discrimination Program and is actively engaged in a comprehensive review and rewrite of its Discrimination procedures.

We sincerely appreciate the assistance we are receiving from the Regional Office on our efforts to improve the program. The program is being strengthened by a number of steps:

Three additional staff are being trained through OTI and current staff are being evaluated.

Management staff is assessing all open cases and moving them to closure

All new cases are being more effectively tracked and appropriate procedures adopted and followed

All existing cases are being assessed and moved towards closure

All documentation is being assessed to ensure documentation of interviews, and settlements

Case logs are being established

✚ Investigation deadlines are being enforced

Corrective Action Plan: *2010 and 2011 cases that are settled will contain a settlement document in accordance with the Whistleblower Manual.*

Documentation to be submitted w. due date: Documentation has been received by Federal OSHA of an improvement plan by MOSH. Three staff recently attended Whistleblower training at OTI.

Anticipated Completion Date: April 1, 2011

Outcome Measure/Expectation: It is anticipated that MOSH discrimination investigation files will contain all appropriate documentation and proper organization required to support actions taken by investigators.

Status: Pending further Federal monitoring

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Finding #23: Investigations were not completed in accordance with MOSH FOM, Chapter X, § A3(b), which requires investigations to be completed with 90 days of filing. Section 5-604(d)(3) of the MOSH Act requires that "within 90 days after the Commissioner receives a complaint, the Commissioner shall notify the employee of the determination under this subsection."

Recommendation #23: Investigations must be completed within 90 days in accordance with MOSH FOM and the MOSH Act.

State Response: **MOSH concurs that major program improvements are warranted in its Discrimination Program and is actively engaged in a comprehensive review and rewrite of its Discrimination procedures.**

We sincerely appreciate the assistance we are receiving from the Regional Office on our efforts to improve the program. The program is being strengthened by a number of steps:

- Three additional staff are being trained through OTI and current staff are being evaluated.

- Management staff is assessing all open cases and moving them to closure

- All new cases are being more effectively tracked and appropriate procedures adopted and followed

- All existing cases are being assessed and moved towards closure

- All documentation is being assessed to ensure documentation of interviews, and settlements

- Case logs are being established

-  Investigation deadlines are being enforced

Corrective Action Plan: *By assigning and training three new investigators, MOSH will meet the 90 day investigation time line on new cases. Procedures are being implemented to ensure the 90 day requirement will be met for 90% of 2011 discrimination cases. The discrimination manager is tracking the timely conduct of investigations. See attachment.*

Documentation to be submitted w. due date: Documentation has been received by Federal OSHA of an improvement plan by MOSH. Three staff recently attended Whistleblower training at OTI.

Anticipated Completion Date: April 1, 2011

Outcome Measure/Expectation: It is anticipated that MOSH discrimination investigations will be processed in a timely manner.

Status: Pending further Federal monitoring

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Finding #24: Numerous case files were open for extended periods of time with no current activity documented in the case files.

Recommendation #24: The Whistleblower program manager should monitor the Web IMIS system to determine what cases are open and determine what appropriate action is required in accordance with the Discrimination Manual and MOSH FOM.

State Response: MOSH concurs that major program improvements are warranted in its Discrimination Program and is actively engaged in a comprehensive review and rewrite of its Discrimination procedures.

We sincerely appreciate the assistance we are receiving from the Regional Office on our efforts to improve the program. The program is being strengthened by a number of steps:

Three additional staff are being trained through OTI and current staff are being evaluated.

Management staff is assessing all open cases and moving them to closure

All new cases are being more effectively tracked and appropriate procedures adopted and followed

All existing cases are being assessed and moved towards closure

All documentation is being assessed to ensure documentation of interviews, and settlements

Case logs are being established

 Investigation deadlines are being enforced

Corrective Action Plan: *By assigning and training three new investigators and implementing new procedures for the conduct of discrimination complaints, 2011 cases will not become inactive.*

Documentation to be submitted w. due date: Documentation has been received by Federal OSHA of an improvement plan by MOSH. Three staff recently attended Whistleblower training at OTI.

Anticipated Completion Date: April 1, 2011

Outcome Measure/Expectation: It is anticipated that MOSH discrimination investigations will be properly monitored by management.

Status: Pending further Federal monitoring

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Finding #25: Enforcement staff, designated as benchmark positions, are not performing enforcement activities.

Recommendation #25: MOSH must ensure that personnel designated as fulfilling its benchmark requirements pursuant to 29 CFR §1952.213 are performing enforcement activities and conducting inspections for the majority of their work time.

State Response: MOSH disagrees with this finding. Benchmark staff do perform certain administrative functions, but all are engaged in performing enforcement work. However, although we do not believe to be an accurate statement, we will seek additional positions to begin to assign administrative duties to non-benchmark positions.

Corrective Action Plan: *MOSH has asked for clarification on whether staff that is conducting VPP and CCP inspections are appropriately counted toward benchmarks as it is required to be administered through enforcement. MOSH reports that it is their understanding that this work was an integral part of compliance and was an appropriate use of benchmark staff to identify and have hazards corrected through on-site visits under the enforcement program.*

Documentation to be submitted w. due date: Federal OSHA ran Micro-to-Host reports to determine if particular compliance staff had performed any inspection activity during the review period to the present date. No inspection activity was identified.

Anticipated Completion Date:

Outcome Measure/Expectation: It is expected that compliance staff designed as benchmark positions in yearly grants will be performing enforcement field inspection activities for a majority of their work time. Compliance assistance positions and their activities must not be counted toward enforcement activities or benchmark calculations in State grant applications, etc.

Status: Pending further discussion and submission of a revised Corrective Action Plan for this item. OSHA disagrees with the State's response. The Court decision in *AFL-CIO v. Marshall* dealt specifically with compliance staffing requirements. The Court order, OSHA's various reports to the Court and the AFL-CIO, and the 23(g) grant instructions specify that only field, non-supervisory, enforcement positions may be counted toward the compliance staffing benchmarks. Compliance assistance staff perform an important but separate function. Only staff that conduct compliance inspections resulting in enforcement action through citations and penalties meet the requirements of the Court Order and may be counted as allocated staff meeting the State's approved benchmarks, which is a condition of final approval status under Section 18(e). (OSHA recognizes that current State budgetary situations may affect the number of allocated staff positions, and does not intend to initiate action affecting a State's final

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approval status based solely on failure to meet the compliance staffing benchmark requirement.)

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Finding #26: Compliance officers' field notes were not contained in case files. (Are destroyed per State policy.)

Recommendation #26: Compliance officers' field notes must be maintained in case files. OSHA FOM Chapter XII, Inspection Records, should be adopted.

State Response: **We believe that this procedure is more effective than its federal counterpart.** MOSH has more stringent case writing and documentation requirement that makes the retention of field notes unnecessary. Our agency does not rewrite or add additional information before cases are sent to hearing. Before citations are issued the entire case file with all supportive documentation is written and field notes are unnecessary.

Corrective Action Plan: *MOSH continues to believe that it is critical for inspectors to include all pertinent information in case files and does not want to rely on inspector notes. MOSH contends that the case file is complete without having the inspector notes in them. Their notes are transcribed into the case file.*

Documentation to be submitted w. due date: We asked for further clarification on the position of MOSH's attorneys on this issue. We were advised by the Special Assistant to the Secretary of Labor that she spoke with MOSH counsel and they are comfortable with the current practice. Notes are viewed as draft materials that are used to write the report, and the report is the official record. Therefore, Federal OSHA will further review the impact that removing the handwritten CSHO notes has on the effectiveness of MOSH's enforcement program.

Anticipated Completion Date:

Outcome Measure/Expectation:

Status: Pending further Federal monitoring.