

Minnesota

FY2009 Enhanced FAME Report - Final Corrective Action Plan Summary Sheet

#	Findings	Recommendation	State Response / Corrective Action	Interim Steps with Due Dates	Documentation Required with Due Dates	Outcome Measure	Completion Date	Status (tracked/updated by Region)
1	[18% of] non-formal complaint responses [from employers] were classified as 'accurate' without sufficient information provided by the employer to show that abatement of the alleged hazard has occurred or that no hazard existed.	Ensure that an adequate response to a non-formal complaint is received by MNOSHA in which the employer provides sufficient information to show abatement of the alleged hazard has occurred or the lack of any hazard.	MNOSHA examined its documentation requirements. The employer's responses have been considered an abatement certification, i.e., a signed notice that corrective actions have been completed or the necessary investigation has occurred. In most cases, the alleged hazards are of a non-serious nature and further documentation is not sought. In other cases, a follow-up call is made with the employer and staff may have omitted to note this in the file. The complainant is advised that the employer's response to the alleged hazards must be posted in the workplace.	MNOSHA reviewed ADM 3.16, Complaint Handling, and updated the directive to require abatement documentation on complaint items where potential high gravity serious hazards are alleged. The directive was forwarded to federal OSHA in a plan supplement.	Adequate abatement response submitted to federal OSHA is being reviewed.	Non-formal complaint cases files are closed when sufficient information provided by the employer to show no hazard exists.	1/14/2011	Pending further Federal review and monitoring. OSHA believes that consistent documentation of abatement is a necessary component of an effective program.
2	For fatality investigations, the form OSHA-170 was not filled out in adequate detail.	Ensure that the OSHA-170 narrative contains enough detail to provide a third party reader of the narrative with a mental picture of the fatal incident and the factual circumstances surrounding the event.	Federal OSHA requires that the OSHA-170 be submitted and saved as final as soon as MNOSHA becomes aware of a workplace fatality and determines that it is within its jurisdiction, even if most of the data fields are left blank. Often, the information that the OSHI has gathered at this time is not complete. MNOSHA enters the fatal incident details in the inspection file. MNOSHA uses the OSHA-1AC, Narrative, particularly Section F, Summary of Complaint, Referral, Accident or Followup Findings to document the details of the fatal incident and the factual circumstances surrounding the event. MNOSHA's MOOSE system allows users to access the incident details by simply opening the file and reading the narrative. Entering identical data into the 170 is redundant. However, MNOSHA will revise its MOOSE Manual to specify that the OSHA-170 narrative be updated later in the investigation and that it contain enough detail to provide a third party reader of the narrative with a mental picture of the fatal incident and the factual circumstances surrounding the event.	For every fatality case MNOSHA supervisors complete a Significant Activity Report prior to issuance of citations (or closing of the file if no citations are issued). This report includes a description of the event and a summary of the investigation findings. In response to the audit findings, MNOSHA supervisors were instructed to update the OSHA-170 form when they prepare the Significant Activity Report.	MNOSHA supervisors will review and ensure OSHA 170 forms are filled out in adequate detail.	OSHA-170 forms completion for fatality investigations.	12/3/2010	Subject to further Federal monitoring.

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3	Data Initiative inspections were conducted without information contained in the file to explain the compliance officer's discussions on site as it pertained to the injury and illness information reviewed during the inspections, including information showing the compliance officer's evaluation of the company's OSHA 300 logs.	Ensure that compliance officer's discuss and document the company's LWDIR [lost workday injury rate] to determine if there are specific work areas to be included in the inspection and document the evaluation as it relates to the on-site activity.	MNOSHA disagrees. Each year MNOSHA uses Data Initiative Safety Inspections as a priority. MNOSHA completes all of its safety data initiative inspections each year throughout the state in accordance with ADM 2.1, Scheduling, and the FCM. The reference to the excerpt of the FCM quoted in this concern is incorrect. The language quoted is found in Chapter III, section F.3.c.(1). It should be noted that section F is titled "Opening Conference," 3. is titled, "Other Opening Conference Topics," and c. (1) is specific instructions for checking all records required by the Act. This excerpt of the FCM is not limited to or related to the scheduling of data initiative inspections. OSHIs are trained to discuss the 300 log data with the ER in order to obtain information or insights the ER may have and to answer any of the ER's 300 log related questions. However, OSHIs are not required to document every topic of discussion that occurs, as this would be an impractical and over-burdensome requirement of OSHIs.	MNOSHA's current practices are not contrary to MNOSHA requirements. Investigators are trained to discuss data contained in the 300 log with employers in order to obtain any additional information or insights the employer may have and to answer any of the employer's 300 log related questions. MNOSHA will continue to follow its FCM and scheduling directive with regard to data initiative inspections.	MNOSHA will continue to follow FCM F.3.c.(1)	MNOSHA's supervisors will continue to ensure OSHIs investigate the company's LWDIR to determine injury and hazard trends relating to the inspections.	12/3/2010	Subject to further Federal monitoring.
4	Non-serious (other-than-serious) violations are classified as situations where an accident or exposure, resulting from a violation of a standard, would normally cause only minor injury or illness requiring one-time-only first aid treatment and subsequent observation. Recordable injury or illness is not a criterion in determining if a violation is classified as serious or not.	Ensure the determinations for violation classification as "other-than-serious" are independent of OSHA recordability requirements.	MNOSHA disagrees. OSHA based this recommendation on a sentence in the FCM that states a serious violation is one which "would cause a recordable injury or illness."MNOSHA's determination of whether a violation is serious does not rely solely on whether or not an injury is recordable. MN Stat.§ 182.651, subd. 12, defines a serious violation as "a violation of any standard, rule, or order other than a de minimis violation which is the proximate cause of the death of an employee. It also means a violation of any standard, rule, or order which creates a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such a place of employment, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation." OSHAs recommendation to separate classification from recordability is therefore unnecessary.	MNOSHA's determination of whether a violation is serious or non-serious does not rely solely on whether or not an injury is recordable. MNOSHA bases its determination on both the statutory definition and a section of the FCM that elaborates quite extensively on factors to consider whether a violation is serious. MNOSHA will continue to follow its FCM.	MNOSHA will continue to follow the FCM and MN Stat.§ 182.651, subd. 12.	MNOSHA's supervisors will continue to ensure non-serious (other-than-serious) and serious violations are classified appropriately.	12/3/2010	Subject to further discussion and Federal monitoring. OSHA does not agree that "recordability" should be a factor in violation classification.

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5	In 41% of the cases reviewed, penalty reduction recommendations for good faith credit were applied at levels higher than warranted.	Ensure good faith credit is applied and documented appropriately in the case files.	MNOSHA refutes federal OSHA's assertion that good faith credits were incorrectly applied in 15 of 37 inspection files. Chapter VI, Section B. 4.a.1 and 2 rely on the investigator's discretion to determine the difference between incidental deficiencies (30% credit), and more than incidental deficiencies (20% credit), of an employer's safety and health program. Investigator discretion is further relied upon to determine if an employer's safety and health program, either formal or informal, is not clearly implemented or effective or is a canned type program (10%). Zero percent credit is given where a FTA or willful citation is issued or the employer has no safety or health program. MNOSHA contends that in 10 of the 15 cases identified by federal OSHA, the investigator did document satisfactorily their justification of the good faith credits applied. However, MNOSHA does recognize that documentation was not satisfactory in 14% of the cases reviewed.	MNOSHA developed refresher training for all field staff on determining and documenting good faith credits. Refresher training was completed in September 2010 staff meetings.	MNOSHA supervisors will ensure good faith credits are applied appropriately.	Good faith credit is applied and documented appropriately in the case files.	12/3/2010	Subject to further Federal monitoring. Pending issuance of Federal guidance on revised penalty policy implementation.

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6	Of the [57] cases reviewed, abatement documentation for corrective action following inspections was not requested in any circumstance.	Ensure, when required, the receipt of documented proof of abatement.	MNOSHA did not adopt & is not required to follow, 1903.19, but follows its own Abatement Verification rule, Minn. Rules 5210.0532. The rule requires documentation when the citation indicates it is necessary. MNOSHA OSHIs are instructed to discuss abatement methods with ERs during all CCs. The discussion includes feasibility, timeframe for completion, as well as the need to submit progress reports. The citation contains language describing the need for progress rpts & the citation package which the ER receives includes a Mandatory Progress Report form. MNOSHA has obtained abatement certification from ERs, yet lacked documentation sought by OSHA. Certification includes a signed notice from the ER that corrective actions have been completed and the information in the progress rpt is accurate. In practice, this is not entirely inconsistent with OSHA, which does not require documentation on all items, just certain violations, such as willful, repeat and designated serious items.	MNOSHA has its own abatement verification rule, Minn. Rules 5210.0532, and corresponding abatement verification directive, ADM 3.4. The directive was reviewed and updated and will be forwarded to federal OSHA in a plan supplement. Updates include the addition of definitions for Certification of Abatement and Documentation of Abatement and when each is required. Documentation of Abatement is required for all citations with a combined severity and probability rating of E5 or greater for all inspections with an opening conference date of August 20, 2010, or later.	Adequate abatement response. MNOSHA supervisors will ensure the receipt of appropriate documentation when abatement is required. Anticipated completion date 1/14/2011.	Abatement documentation is required for all high gravity serious violations and low and moderate gravity violations that were cited Willful or Failure to Abate.	1/14/2011	Pending Federal review and monitoring. OSHA believes that consistent documentation of abatement is a necessary component of an effective program.

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7	In 31% of [the 13] fatality inspection files and in 21% of [the 25] files reviewed where serious hazards [violations] were identified and the abatement was classified as "Corrected During Inspection (CDI), No Abatement Documentation Required," the specific information outlining the corrective action observed by the compliance officer was not documented appropriately in the case file.	Ensure that] "Corrected During Inspection (CDI), No Abatement Documentation Required", is being applied appropriately, and the specific information outlining the corrective action observed by the compliance officer is documented in the case file.	MNOSHA did not adopt and is not required to follow, 1903.19, but rather follows its own Abatement Verification rule, Minn. Rules 5210.0532, which was adopted March 30, 1998. MNOSHA understands the importance of hazard abatement and its concurrent documentation needs. MNOSHA has obtained abatement certification from employers, yet lacked documentation sought by federal OSHA. MNOSHA developed new abatement documentation guidelines for its staff. The guidelines outline which documents an employer must provide to show abatement as well as the case file documentation desired. MNOSHA addressed the case file documentation needed when hazards are abated while inspectors are on site.	MNOSHA has its own abatement verification rule, Minn. Rules 5210.0532, and corresponding abatement verification directive, ADM 3.4. The directive was reviewed and updated and will be forwarded to federal OSHA in a plan supplement. Each supervisor covered this directive in their September 2010 staff meetings. All lead staff has been instructed when reviewing case files to ensure that Corrected During Inspection is adequately documented.	Adequate abatement response. MNOSHA supervisors will ensure that the specific information outlining the corrective action observed by the OSHI is documented in the case file. Anticipated completion date 1/14/2011.	Hazards corrected during inspection must be described in the case file on how the hazard was corrected.	1/14/2011	Pending further Federal review and monitoring. OSHA believes that consistent documentation of abatement is a necessary component of an effective program.
8	Petition for Modification of Abatement (PMA) requests are granted without employers providing all the required information in the requests.	Ensure [that] PMA requests contain all the required information before accepting the requests and extending the [abatement] dates.	MNOSHA did not adopt and is not required to follow, 1903.19, but rather follows its own Abatement Verification rule, Minn. Rules 5210.0532, which was adopted March 30, 1998. MNOSHA accepts the finding that some PMAs were granted based on incomplete information, most often via the Mandatory Progress Report. However, in many cases the employer included information similar to what would be contained in a PMA request. MNOSHA notes that the Mandatory Progress Report form must be posted in the workplace for employees to see and a copy must be given to all affected employee representatives. In addition, Minn. Rules 5210.0542 requires MNOSHA to wait 10 days before responding in order to give employees the time to notify MNOSHA of any concerns.	MNOSHA has its own abatement verification rule, Minn. Rules 5210.0532, and corresponding extension of abatement dates - PMA processing directive, ADM 3.5. The directive was reviewed, updated and issued on Aug. 20, 2010, and will be forwarded to federal OSHA in a plan supplement. As part of this directive, a PMA form was developed and is included in the citation package mailed to an employer. PMA requests will no longer be accepted on progress reports.	Adequate abatement response. MNOSHA supervisors will ensure the employers provide all the required information in PMA requests.	PMA requests contain all required information before extension of abatement dates.	1/14/2011	Pending further Federal review and monitoring. OSHA believes that consistent documentation of abatement is a necessary component of an effective program.

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9	Minnesota's On-Site Consultation conducts consultation visits and VPP evaluation visits concurrently with MNSTAR [VPP] staff funded with the 23(g) grant.	Ensure Consultation functions are conducted by 21(d) funded employees, and conduct VPP evaluations separately with 23(g) employees.	WSC reviewed and revised its prior practice.	The Minnesota Department of Labor and Industry (DLI) made changes to its MNSTAR and MNSHARP programs, which will increase program oversight and accountability. MNOSHA implemented direct time charging on time sheets for tracking 23g SHARP and 21d Consultation activity.	Adequate abatement response. MNOSHA consultation SHARP visits and MNSTAR evaluations will not be conducted concurrently. OSHA will review the MNOSHA SHARP and MNSTAR programs on-site to ensure that visits are not being conducted concurrently.	MNSTAR evaluations are conducted by staff funded by 23g.		Subject to further Federal monitoring. MNOSHA will submit documentation of its revised procedures for Regional review.
10	For corporate VPP applications, one application is being submitted for both the corporate and other locations.	Ensure each worksite applying for MNSTAR participation submits an application applicable to each worksite.	WSC will require corporate applications to VPP to include individual site applications, for each site within the corporation that wishes to apply for VPP.	The Minnesota Department of Labor and Industry implemented organizational changes that will increase VPP program accountability and oversight. MNOSHA will ensure that corporations applying for MNSTAR participation submit an application for each site.	MNOSHA will ensure that corporations applying for MNSTAR participation will submit an application for each site. OSHA will review the MNOSHA MNSTAR program on-site to ensure that corporations are submitting an application for each site.	One MNSTAR application must be received for each perspective MNSTAR site.	2/19/2011	Subject to further Federal monitoring. MNOSHA will submit documentation of its revised procedures for Regional review.
11	An employer working as a contractor at a worksite covered by the Process Safety Management standard did not submit an application with the appropriate VPP Process Safety Management (PSM) Application Supplement. The MNSTAR evaluation team did not have a PSM level one auditor participate in the on-site review.	Ensure all applications of contractors working at worksites covered by 29 CFR 1910.119 contain the PSM Application Supplement. Ensure the MNSTAR evaluation team consists of at least one PSM level one auditor.	Subsequent MNSTAR evaluations of contractors at PSM sites will include a level one auditor for PSM. VPP contractors at PSM covered sites have submitted the "Supplement B" as part of their annual self evaluation.	The Minnesota Department of Labor and Industry implemented organizational changes that will increase VPP program accountability and oversight. MNOSHA currently has three staff that meets the PSM level-one auditor status. All initial evaluations and recertification evaluations of contractors will include a PSM level one auditor to assess the PSM program.	MNOSHA will ensure that PSM evaluations are conducted appropriately at MNSTAR sites. OSHA will review the MNOSHA MNSTAR program on-site to ensure that PSM evaluations are conducted appropriately.	MNSTAR site applicants need the PSM Supplement submitted with application and the onsite evaluation team must consist of at least one PSM level auditor.	2/19/2011	Subject to further Federal monitoring.